Committee for Justice

Report on the Justice Bill (NIA 37/11-15) Volume 2

Together with the Minutes of Proceedings, Minutes of Evidence, Written Submissions and Other Memoranda and Papers relating to the Report

Ordered by the Committee for Justice to be printed 25 March 2015

Mandate 2011/16

Seventh Report - NIA 240/11-16

Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has the power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant subordinate legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquires and make reports; and
- consider and advise on any matters brought to the Committee by the Minister of Justice.

Membership

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee during the current mandate has been as follows:

Mr Alastair Ross (Chairman) [1]
Mr Raymond McCartney (Deputy Chairman)
Mr Stewart Dickson
Mr Sammy Douglas[2,3,4]
Mr Tom Elliott[5]
Mr Paul Frew[6]
Mr Chris Hazzard[7,8]
Mr Séan Lynch
Mr Alban Maginness
Mr Patsy McGlone[9]
Mr Edwin Poots[2,10]

1 With effect from 10 December 2014 Mr Alastair Ross replaced Mr Paul Givan as Chairman.
2 With effect from 1 October 2012 Mr William Humphrey and Mr Alex Easton replaced Mr Peter Weir and Mr Sydney Anderson.
3 With effect from 16 September 2013 Mr Sydney Anderson replaced Mr Alex Easton.
4 With effect from 6 October 2014 Mr Sammy Douglas replaced Mr Sydney Anderson.
5 With effect from 23 April 2012 Mr Tom Elliott replaced Mr Basil McCrea.
6 With effect from 6 October 2014 Mr Paul Frew replaced Mr Jim Wells.
7 With effect from 10 September 2012 Ms Rosaleen McCorley replaced Ms Jennifer McCann.
8 With effect from 6 October 2014 Mr Chris Hazzard replaced Ms Rosaleen McCorley.
9 With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Colum Eastwood.
10 With effect from 6 October 2014 Mr Edwin Poots replaced Mr William Humphrey.

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List of abbreviations and acronyms used in the report

AG	Attorney General
AOABH	Assault Occasioning Actual Bodily Harm
APIL	Association of Personal Injury Lawyers
CLC	Children's Law Centre
CRO	Criminal Records Office
DHSSPS	Department of Health, Social Services and Public Safety
DBS	Disclosure and Barring Service
DE	Department of Education
DoJ	Department of Justice
DPA	Data Protection Act
DVPO	Domestic Violence Prevention Order
ESR	Examiner of Statutory Rules
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EQIA	Equality Impact Assessment
FSNI	Forensic Science Northern Ireland
HSCB	Health and Social Care Board
ICO	Information Commissioner's Office
JJC	Juvenile Justice Centre
LCJ	Lord Chief Justice
LSC	Northern Ireland Legal Services Commission
NDPB	Non Departmental Public Body
NICS	Northern Ireland Civil Service
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICTS	Northern Ireland Courts and Tribunals Service
NIHRC	Northern Ireland Human Rights Commission
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
NSPCC	National Society for the Protection of Cruelty to Children
PPS	Public Prosecution Service
RPA	Review of Public Administration

RQIA	Regulation and Quality Improvement Authority
SAO	Supervised Activity Order
SCS	Senior Civil Service
SOPO	Sexual Offences Prevention Order
UNCRC	United Nations Convention on the Rights of the Child
VOO	Violent Offences Order
VOPO	Violent Offences Prevention Order

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- Presbyterian Church in Ireland
- PSNI
- Public Morals Committee of the Reformed Presbyterian Church of Ireland
- Public Prosecution Service
- Regulation and Quality Improvement Authority
- South Eastern Health and Social Care Trust
- Society for the Protection of Unborn Children
- St Patrick's Church
- Stanton Clinic
- The Children's Law Centre
- Victim Support NI
- Women's Aid Federation Northern Ireland
- Women's Network
- Youth4life

Written submissions received as part of the Legal Aid and Coroners' Courts Bill referring to the Attorney General's proposed amendment to the Coroners Act (Northern Ireland) 1959

- Association of Personal Injury Lawyers
- Castlereagh Borough Council
- Information Commissioner's Office
- KRW LLP
- Law Centre NI
- Law Society of Northern Ireland
- Northern Health and Social Care Trust
- Northern Ireland Human Rights Commission
- Northern Ireland Policing Board
- Office of the Lord Chief Justice
- PSNI
- Southern Health and Social Care Trust
- South Eastern Health and Social Care Trust

Attorney General for Northern Ireland

Attorney General
for Northern Ireland

Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Our Ref: 18/05/13/012

Date: September 16 2014

Dear Ms Darrah,

Justice Bill

Thank you for sending me the draft Justice Bill following its initial consideration by the Committee. I offer some comments below but am, of course, happy to deal with any specific issue that the Committee might later wish to raise with me.

Proposed amendment to the Coroners Act (Northern Ireland) 1959

By letter dated 5 March 2014, during the passage of the Legal Aid and Coroners Courts Bill I asked the Committee to give consideration to a potential amendment to the Coroners Act (Northern Ireland) 1959 ('the 1959 Act') which I considered would be of material benefit to the public.

My proposed amendment (drafted as an insertion into the 1959 Act) reads as follows:

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
Telephone: 028 90725333 Fax: 028 90725334 E-mail: contact@attorneygeneralni.gov.uk
www.attorneygeneralni.gov.uk

"Provision of information to Attorney General for purposes of section 14

14A.-(1) The Attorney General may, by notice in writing to any person who has provided health care or social care to a deceased person, require that person to produce any document or give any other information which in the opinion of the Attorney General may be relevant to the question of whether a direction should be given by the Attorney General under section 14.

(2)A person may not be required to produce any document or give any other information under this section if that person could not be compelled to produce that document or give that information in civil proceedings to the High Court.

(3)In this section-

"document" includes information recorded in any form, and references to producing a document include, in relation to information recorded otherwise than in legible form, references to providing a copy of the information in legible form;

(4)A person who fails without reasonable excuse to comply with a requirement under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale."

Under section 14(1) of the 1959 Act I can direct a coroner to hold an inquest where I consider it is 'advisable' to do so. I do not possess a statutory power to obtain papers or information that may be relevant to the exercise of this power. In recent years I have had some difficulty in securing access to documents from Health and Social Care Trusts ('HSC Trust'), such as

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
Telephone: 028 90725333 Fax: 028 90725334 E-mail: contact@attorneygeneralni.gov.uk
www.attorneygeneralni.gov.uk

Serious Adverse Incident ('SAI') report forms, which I have considered relevant to the proper exercise of my discretion. One recent, and high profile, incident involving a particular HSC Trust has served to strengthen my view that a power to obtain relevant material is crucial to the public interest in ensuring a high standard of healthcare and investigation of incidents that result in the death of a patient.

On 30 March 2014 I became aware of media reports concerning the deaths of at least twenty patients, including five babies, occurring between 2008 and 2013, at both Antrim Area and Causeway Hospitals. One report indicated that some of the deaths may have been treated as an SAI and reported to a coroner, but others may not.

I immediately sought information from the Northern HSC Trust concerning each death and on 6 June 2014 I was supplied with material relating to eleven deaths. Of these deaths, six had not been reported to a coroner at the time of death and four were only referred after my request for information. That medical practitioners had not reported these deaths before my intervention, and a considerable time after these deaths, is of very great concern and highlights the importance of my proposed amendment in closing the current information gap.

As you know, the proposed amendment was first considered during the Committee Stage of the Legal Aid and Coroners' Courts Bill. It was not thought possible to include the amendment in this Bill as further clarification was required. However, when the Committee took the opportunity of requesting written evidence on my proposed amendment a number of favourable responses were received from a wide variety of consultees including the Health Minister and HSC Trusts.

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
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Three HSC Trusts (South Eastern, Southern and Northern) responded with a spectrum of degrees of support for the amendment. The Health Minister is also supportive of the amendment, subject to further clarification on a number of discrete matters.

The Law Society indicated that I should have adequate powers in order to provide me with sufficient information to take a decision under section 14(1) and agreed with the proposed amendment. The Association of Personal Injury Lawyers, Castlereagh Borough Council and the Law Centre all agreed that the proposed amendment was necessary to ensure that deaths were investigated effectively.

The Information Commissioner's Office indicated that it would be appropriate to provide a specific statutory power to the Attorney General so that relevant documents could be disclosed.

The Northern Ireland Policing Board sought further clarity regarding the remit of the proposed amendment and was concerned about resource implications for the Police Service of Northern Ireland ('PSNI'). I have since written to Mr Jonathan Craig, the Chairman of the Policing Board Performance Committee, on behalf of the Policing Board, assuring him that no additional obligations will be placed on the PSNI as a result of the amendment.

When I gave evidence to the Committee on 28 May 2014 I indicated that the amendment would be confined to deaths that occurred within a health and social care setting and would not affect historic inquests which involved the police or military. This remains the case. Neither do I believe that the amendment will create a burden on the health service and I remain of the view that there is a degree of urgency with the issue that the amendment

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
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seeks to address, given the circumstances regarding the Northern HSC Trust outlined above.

Rights of audience for lawyers working in Attorney General's Office

In September 2013 I wrote to the Minister for Justice raising an issue which affects the operation of my office and which could usefully be dealt with in the Justice Bill. At present employed barristers and solicitors in my office cannot fully avail of their considerable advocacy skills because they do not have rights of audience in all courts. It would be of very great assistance to me, and would result in substantial savings, if the new Bill contained a clause conferring the rights of audience of barristers in independent practice on any lawyer working in the Office of the Attorney General for Northern Ireland and designated by the Attorney General. At present there are three barristers and five solicitors working in my office so this change will not deprive the Independent Bar of significant amounts of work.

The Minister for Justice wrote to me in August 2014 indicating that the Department of Justice had issued a short preliminary discussion paper to a number of key stakeholders inviting their views. The responses to this paper will be used to inform further consideration of the need for a wider consultation exercise. My view remains that this proposal should apply, at the outset, to the small number of lawyers working in my office and under my direct supervision.

I would be grateful if the Committee would look favourably on this proposal which, as well as having considerable substantive merit, has particular importance in this period of budgetary pressure.

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
Telephone: 028 90725333 Fax: 028 90725334 E-mail: contact@attorneygeneralni.gov.uk
www.attorneygeneralni.gov.uk

Proposed Clause 11A – Ending the life of an unborn child.

I have examined clause 11A and am satisfied that it would be within the legislative competence of the Assembly to enact this provision.

Comments on the Justice Bill as introduced

Part 1 Single Jurisdiction

In clause 3, a further safeguard could be added to protect local justice. I note that in clause 4(4) the Lord Chief Justice, in giving a direction, is to have regard to the desirability of a lay magistrate sitting in courts in reasonable proximity to where he or she lives or works. A similar duty to have regard to the benefit of justice being administered locally could be usefully added to clause 3.

Part 3 Prosecutorial Fines

Multiple Offences

Where a person is accused of a number of summary offences arising out of the same circumstances, a prosecutorial fine notice can only be offered in relation to *all* the offences and a person cannot accept a fine for one offence and proceed to trial on others (clause 17(2)). I understand that this arrangement is to avoid a prosecution for an offence being hampered by the suggested inability to refer at trial to the evidence relating to a separate offence, arising out of the same circumstances, for which a fine has been accepted. There may be some concern about a person being unduly pressured to accepting responsibility for one of the offences which they would otherwise have defended given the certainty of avoiding a conviction

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
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via a prosecutorial fine. There is no reason in principle why provision cannot be made to enable relevant evidence to be used despite the acceptance of a prosecutorial fine, if the person is to be prosecuted for an offence arising out of the same circumstances.

Part 4 Victims and Witnesses

Clauses 28(7) and 30(6) exclude judges and members of the prosecution service (in the exercise of a discretion) from any obligations under the Victim or Witness Charter. It seems to me that an obligation, for example, to treat a victim with courtesy, dignity and respect would not in any way impinge on judicial independence – and could be viewed as strengthening support for it. Further, it seems to me that the obligations in Article 1 of the Victims' Directive must apply to judges and prosecutors.

Part 7 – Violent Offences Prevention Orders

Clauses 51(4) and 53(3) contain retrospective provisions regarding the making of VOPO's when the offence was committed prior to the commencement of the Bill. A VOPO is more likely to constitute a public protection measure than a penalty. In that circumstance, the Committee can be confident that article 7 ECHR is not engaged. The severity of the VOPO prohibitions or requirements can be measured by the sentencing judge to ensure Convention compliance.

Part 8 - Miscellaneous

Avoiding delay in criminal proceedings

In relation to clause 79, rather than providing a power to make regulations outlining a general duty to progress cases, this duty could be placed onto

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
Telephone: 028 90725333 Fax: 028 90725334 E-mail: contact@attorneygeneralni.gov.uk
www.attorneygeneralni.gov.uk

the face of the Bill (perhaps as an amended clause 79). The duty might be phrased similarly to Rule 1.1 of the English Criminal Procedure Rules 2013.

Yours sincerely

John F Larkin QC
Attorney General for Northern Ireland

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
Telephone: 028 90725333 Fax: 028 90725334 E-mail: contact@attorneygeneralni.gov.uk
www.attorneygeneralni.gov.uk

Alliance for Choice

Jim Wells Proposed Amendments to the Justice Bill from the Department of Justice: Amendment, New Clause 'Ending the life of an unborn child

Alliance for Choice Response

Key Concerns

The proposed ammendment as currently drafted disregards the law and international human rights standards across a number of areas such as:

- The 1967 Abortion Act, permits abortions to be carried out only in England, Scotland and Wales. Exclusion from this legislation in Northern Ireland means that the issue of abortion continues to be governed by confusing and threatening legal ambiguity.[1]
- The exclusion of Northern Ireland from the 1967 Abortion Act and the continuing criminalisation of women from Northern Ireland seeking abortions denies them: equal entitlement to healthcare; and equal protection of the law enjoyed by their British counterparts;[2]
- The legal status given in the ammendment to the 'unborn child' is a non-existent legal term in the UK[3]. Most recenty the Chair of the UN Human Rights Committee, commenting at the conclusion of Ireland's fourth periodic examination by the Committee of its human rights record stated: "the recognition of the primary right to life of the woman who is an existent human being has to prevail over that of the unborn child and I can't begin to understand by what belief system the priority would be given to the latter rather than the former."[4]

We are also concerned that the purpose of the amendment, to restrict access to abortion to NHS premises, has serious implications for those who may seek an abortion. **In seeking to restrict access to abortions on NHS premises in Northern Ireland would likely result in an increase in those travelling outside of Northern Ireland**. The extremely negative reaction from professional bodies to the Dept. of Health draft guidelines was testament to the reluctance of professionals to provide abortion on NHS in Northern Ireland[5].

Financial Costs:

- The current high cost encountered by women in Northern Ireland in obtaining an abortion outside of the jurisdiction is clearly placing the UK in violation of the right to health. This service for women in England, Scotland and Wales is provided under the National Health Service, in that it is provided to the vast majority of women free of charge. Women from Northern Ireland, however, despite being UK citizens and paying the same fiscal taxes,

1 Bloomer, F and Fegan, E (2014) 'Critiquing Recent Abortion Law and Policy in NI' Critical Social Policy 34: 109-120; Fpani, Alliance for Choice, NIWEP 2010, Submission of Evidence to the CEDAW Committee Optional Protocol: Inquiry procedure. fpani, Belfast.

2 Bloomer, F & O'Dowd, K (2014) 'Restricted access to abortion in the Republic of Ireland and Northern Ireland: exploring abortion tourism and barriers to legal reform' Culture, Health & Sexuality: An International Journal for Research, Intervention and Care 16 (4):366-380

3 Several legal cases in UK courts have attested to this point, for instance: R v Tait [1990] CA Threat to kill unborn child to pregnant woman not a threat to kill a third person within meaning of s16 OPA 1861, Foetus not a third person distinct from its mother;

4 http://www.iccl.ie/news/2014/07/15/iccl-wholeheartedly-endorses-coruscating-un-comments-on-ireland-.html

5 BBC 2013 Draft abortion guidelines 'causing fear among NI health staff' [Homepage of BBC], [Online]. Available: http://www.bbc.co.uk/news/uk-northern-ireland-24550586.

have to access abortion services through the private sector and also must pay for travel and accommodation.[6] More individuals are likely to be placed in this category if the amendment proceeds. **The financial burden of travelling outside of Northern Ireland to access an abortion is experienced more by those living in poverty and they will therefore be unjustly affected by the restrictions**.

Emotional Consequences

- The strong anti-choice socialisation process that pervades Northern Ireland churches, schools and the political sphere makes choosing to have an abortion a more emotional decision for Northern Ireland women. Being forced to leave one's own country because abortion is defined as a criminal act, and being called 'murderers' by politicians and protestors stigmatises these women as criminals and inevitably leaves them with emotional scars which many of their British counterparts are spared.[7] **The stigma experienced by those obtaining abortions will thus likely increase as a result of the proposed restrictions**.

Public Opinion

There have been repeated calls by various International human rights committee's to have public consultation on reforming the law in Northern Ireland in relation to abortion[8]. Whilst this has yet to happen public polls by regional newspapers have indicated an appetite for legal reform to improve access not restrict it.[9] **The proposed amendment ignores calls on international bodies and is not in line with public opinion**.

In summary we would contend that the proposed amendment is a clear example of discrimination against those seeking abortions, a further example of secondary status of women in Northern Irish society prevalent within the Northern Ireland Assembly[10]**. We note that in relation to similar situation in Ireland the Ireland rapporteur on the Human Rights committee, Yuval Shany, said a majority vote in parliament could not be used to deny human rights to a section of society. To do so would amount to the "tyranny of the majority"**.[11]

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6 Fpani, Alliance for Choice, NIWEP 2010, Submission of Evidence to the CEDAW Committee Optional Protocol: Inquiry procedure. fpani, Belfast. Bloomer, F & O'Dowd, K (2014) 'Restricted access to abortion in the Republic of Ireland and Northern Ireland: exploring abortion tourism and barriers to legal reform' Culture, Health & Sexuality: An International Journal for Research, Intervention and Care 16 (4):366-380

7 Fpani, Alliance for Choice, NIWEP 2010, Submission of Evidence to the CEDAW Committee Optional Protocol: Inquiry procedure. fpani, Belfast; Boyle, M. & McEvoy, J. 1998. Putting abortion in its social context: Northern Irish women's experiences of abortion in England Health, 2, 283-304; for wider discussions on legal restrictions on abortion and stigma, Norris, A., Bessett, D., Steinberg, J.R., Kavanaugh, M.L., De Zordo, S. and Becker, D. (2011). Abortion Stigma: A Reconceptualization of Constituents, Causes, and Consequences. Women's Health Issues, 21 (3), Supplement, S49–S54.

8 Committee on the Elimination of Discrimination against Women (CEDAW) 2013, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, United Nations, Geneva. Committee on the Elimination of Discrimination against Women (CEDAW) 2008, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, United Nations, Geneva. Committee on the Elimination of Discrimination against Women (CEDAW) 1999, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, United Nations, Geneva. United Nations Human Rights Council, 2012 Report of the Working Group on the Universal Periodic Review - United Kingdom of Great Britain and Northern Ireland. New York: United NationsUnited Nations Committee on Economic, Social and Cultural Rights, 2009 General Comment No. 20. New York: United Nations UN Doc. E/C.12/GC/20, (CESCR General Comment No. 20).

9 Rutherford, M (2012) Just one in five believe rape victims should not be allowed an abortion. Belfast Telegraph 30 August;

10 Horgan, G. & O'Connor, J.S. 2014, "Abortion and Citizenship Rights in a Devolved Region of the UK", Social Policy and Society, , pp. 1-11.

11 http://www.irishtimes.com/news/crime-and-law/courts/irish-women-are-being-denied-human-rights-says-un-report-1.1877329

Amnesty International UK

Amnesty International UK

Justice Act – Jim Wells' amendment
Submission to the Northern Ireland Assembly Justice Committee

Amnesty International UK
397 Ormeau Road,
Belfast, BT7 3GP

Contact: Gráinne Teggart
Grainne.teggart@amnesty.org.uk
02890643000
www.amnesty.org.uk/ni

September 2014

Amnesty International NI – UK Section

1. Amnesty International UK (AIUK) is a national section of a global movement of over three million supporters, members and activists. We represent over 250,000 supporters in the United Kingdom. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Introduction

2. AIUK welcomes this opportunity to contribute to the evidence gathering of the Justice Committee on the Justice Bill and its proposed amendments. Our evidence focuses on Jim Wells' amendment which seeks to 'restrict lawful abortions to National Health Services premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. The amendment also provides an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine.

At the outset, AIUK takes this opportunity to remind the Justice Committee that restrictive abortion laws and practices and barriers to access safe abortion are gender-discriminatory, denying women and girls treatment only they need.[1]

AIUK demands the full decriminalisation of voluntary abortion in all cases, [subject only to such limitations as would be reasonable for any other type of medical intervention], and further demands that states ensure access to safe and legal abortions at a minimum in cases of risk to mental and physical health, or in circumstances where pregnancy is a result of sexual violence, rape, incest or in cases of fatal foetal impairment.

This is in line with international human rights standards, and would be a critical step to ensure that women in Northern Ireland can access a full range of health care, and that health professionals can provide such care, without the threat of prosecution.

Oral evidence Amnesty International would welcome the opportunity to discuss this paper at an oral evidence session with the Northern Ireland Assembly Justice Committee. Please refer to the cover for contact details.

1 See UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 24: Article 12 Of the Convention (women and health), paras. 14 and 31 (c)

Comments

3. Amnesty International is deeply concerned with the proposal to introduce further barriers to women and girls accessing abortion services in Northern Ireland in an already highly restrictive environment where abortion is regulated by gender discriminatory legislation[2] and in the context of the continuing failure of DHSSPS to publish guidelines on the termination of pregnancy in NI which has hindered access to / provision of lawful abortions.

This proposed amendment also seeks to introduce an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine on conviction on indictment which, as currently drafted, would apply to both health professionals and women. International human rights standards are clear on the criminalisation of abortion - UN Treaty bodies have consistently called on state parties to amend legislation criminalising abortion in order to withdraw punitive measures imposed on women who undergo abortion[3].

This amendment fails to do this.

Criminal penalties are recognised by these UN bodies, as by the European Court of Human Rights, to impede women's access to lawful abortion and post-abortion care[4]. This is especially the case where there are severely restrictive laws, such as those in Northern Ireland. Medical providers and women are reluctant to deliver or seek service and information under any circumstance, including those permitted by law, where there is a risk of prosecution and imprisonment.

The UN Special Rapporteur on the right to the highest attainable standard of health has also recently recommended that states 'decriminalize abortion, including related laws, such as those concerning abetment of abortion'[5]

The proposed amendment, therefore, is in direct contravention of these standards.

Amnesty International research on access to abortion has shown that a climate of fear can hinder the provision of care with serious health consequences for women.[6] In circumstances where abortion is subject to criminal law, such as in Northern Ireland, health care providers

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2 The Offences against the Person Act 1861, sections 58&59. http://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/attempts-to-procure-abortion. The Criminal Justice Act (Northern Ireland) 1945, specifically sections 25 http://www.legislation.gov.uk/apni/1945/15/section/25

3 (CEDAW Gen. Rec. No. 24, para. 31(c). See also Concluding Observations of the CEDAW Committee:Andorra, para. 48, U.N. Doc. A/56/38 (2001); Concluding Observations of the CEDAW Committee:Belize, para. 57, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee:Burkina Faso, para. 276, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee:Cameroon, para. 60, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Ireland, para. 186, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: Jordan, para. 181, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Namibia, Part II para. 127, U.N. Doc. A/52/38/Rev.1 (1997); Concluding Observations of the CEDAW Committee: Nepal, paras. 139 and 148, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee:United Kingdom, para. 310, U.N. Doc. A/55/38 (1999). See e.g., Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritius, para. 15, U.N. Doc. E/C.12/1994/8 (1994); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal, paras. 32 and 55, U.N. Doc. E/C.12/1/Add.66 (2001); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland, para. 29, U.N. Doc. E/C.12/1/Add.82 (2002); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal, paras. 26 and 47, U.N. Doc. E/C.12/1/Add.62 (2001).)

4 (ABC v. Ireland; Tysiac v.Poland No,o. 5410/03, para. 116, ECHR 2007).

5 (UN Special Rapporteur on the right to the highest attainable standard of health, 3 August 2011, A/66/254), para. 65(h)).

6 Amnesty International, The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized, AI Index AMR 43/001/2009 AMR 43/001/2009

are often compelled to make decisions regarding available health care interventions, with a view to avoiding potential prosecution, rather than a view to providing quality care.[7]

Detailed comments

4. *Barriers to abortion*

AIUK is concerned that the proposed amendment seeks to structure the legal framework in NI in a way which would further limit a woman obtaining an abortion.

Human rights standards are clear that access to abortion should not be hindered, should be easily accessible and of good quality and that states should eliminate, not introduce, barriers which prejudice access to abortion services, such as conditioning access to hospital authorities.

The European Court of Human Rights has said where states allow abortion they must ensure its access. The Court, in the case of Tysiąc v. Poland[8], held that Poland has an obligation to ensure effective access to abortion where it is legal, '[O]nce the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it.'[9] The Court found a violation of Article 8. The Court reaffirmed this position and found violations of numerous other rights in the Convention in two subsequent cases related to abortion, including the right to be free from inhuman and degrading treatment and the right to private life. These cases dealt with failings to ensure lawful and timely access to abortion and abortion-related information[10].

Furthermore, the 2008 Parliamentary Assembly of the Council of Europe Resolution on Access to Safe and Legal Abortion, called on member states of the Council of Europe to ensure access to abortion, including to 'lift restrictions which hinder, de jure or de facto, access to safe abortion…'.[11]

Amnesty International also refers the Justice Committee to United Nations standards, in particular The Committee on Economic Social and Cultural Rights' General Comment 14 (2000)[12] on the right to the highest attainable standard of health which notes that the right to health requires that health care services, including sexual and reproductive health care services, are available, accessible, acceptable, of good quality and designed to improve the health of those concerned - in this case women (para 12). The Comment specifically states:

> *'The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:*
>
> (a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party…
>
> (b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.
>
> (c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities,

7 Amnesty International, Briefing to the UN Committee on Economic, Social and Cultural Rights: Poland, 43rd session, November 2009, AI Index EUR 37/002/2009

8 http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":["814538"],"itemid":["001-79812"]}

9 Tysiąc v. Poland (2007), ECtHR, Appl. No. 5410/03, para. 116

10 RR v Poland (2011) http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104911#{"item id":["001-104911"]} and P&S v Poland (2012) http://hudoc.echr.coe.int/sites/fra/Pages/search.aspx?i=001-114098#{"itemid":["001-114098"]}.

11 http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11855&Language=EN

12 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.'[13]

Amnesty does not find the amendment and current legislative framework in NI to fulfil these standards and protect and promote women's reproductive rights.

In addition to this, CEDAW General Recommendation 24 on Women and Health (1999)[14] makes clear state responsibility to remove barriers that women face in accessing required medical care; this includes conditioning such care to hospital authorities as quoted below.

'States parties should report on measures taken to eliminate barriers that women face in gaining access to health care services ...Barriers include requirements or conditions that prejudice women's access such as … hospital authorities'[15]

This CEDAW recommendation goes on to call for and advocate Government action on women's rights and legislative reform needed to ensure women's rights are protected and promoted. Specifically, point 31 maintains;

'States parties should also, in particular:

(a) Place a gender perspective at the centre of all policies and programmes affecting women's s health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;

(b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health…;

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion;

(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.'[16]

5. *Criminalisation of abortion*

In addition to the human rights impact of barriers to accessing healthcare, we object to the criminalisation of women and medical professionals and the implications this has on abortion services being provided. The United Nations' independent expert body charged with overseeing the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), has issued guidelines on the implementation of the Convention provisions. In its General Recommendation 24 (Women and Health), the CEDAW Committee makes recommendations for government action to uphold Article 12 of the Convention. It identifies barriers to women's access to appropriate health care, and states that "laws that criminalise medical procedures only needed by women punish women who undergo those procedures"[17] and therefore are counter to the Convention. It includes a recommendation instructing States that "When possible, legislation criminalising abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion."[18]

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13 Para 12 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

14 http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24

15 http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24, point 21.

16 http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24

17 CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health) para.14

18 CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health) para.31 (c)

Several studies on access to abortion in countries with partial decriminalisation – such as in Northern Ireland - have concluded that as long as abortion is generally criminalised, medical service providers will be deterred even from providing care that is legal.[19] In its ruling in the case of A, B, and C v Ireland, the European Court of Human Rights said it considered it evident that the criminal provisions on abortion "would constitute a significant chilling factor for both women and doctors in the medical consultation process" and that women would be deterred from seeking legal and necessary care, and doctors from providing it, because of this chilling effect.[20]

Furthermore, affirming "the right of all human beings, in particular women, to respect for their physical integrity and to freedom to control their own bodies", the Parliamentary Assembly of the Council of Europe has stated that "the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising this right in an effective way."[21] It has invited member states of the Council of Europe to "allow women freedom of choice and offer the conditions for a free and enlightened choice without specifically promoting abortion."[22]

The World Health Organisation's (WHO) 'Safe abortion: technical and policy guidance for health systems' (second edition) reinforces human rights standards and details measures states should take to ensure access to abortion.[23]

> 'Policies should aim to:
>
> - respect, protect and fulfil the human rights of women, including women's dignity, autonomy and equality;
>
> …
>
> - prevent and address stigma and discrimination against women who seek abortion services or treatment for abortion complications;
>
> …
>
> While countries differ in prevailing national health system conditions and constraints on available resources, all countries can take immediate and targeted steps to elaborate comprehensive polices that expand access to sexual and reproductive health services, including safe abortion care.'[24]

The WHO also comments on the negative effects of legislative restrictions on abortion, which Amnesty International finds to be particularly relevant in limiting environments such as Northern Ireland.

> 'Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates… Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle effect is to shift previously clandestine, unsafe procedures to legal and safe ones… Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality.'[25]

19 Human Rights Watch, A State of Isolation: Access to Abortion for Women in Ireland, January 2010; Human Rights Watch, The Second Assault: Obstruction Access to Abortion after Rape in Mexico, March 2006.

20 European Court of Human Rights, Case of A,B, and C v. Ireland, Judgement of 16 December 2010, para 254.

21 Parliamentary Assembly of the Council of Europe Resolution 1607 (2008) Access to safe and legal abortion in Europe, para.6

22 Parliamentary Assembly of the Council of Europe Resolution 1607 (2008) Access to safe and legal abortion in Europe. Para. 7.3

23 http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

24 P98 http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

25 P90 http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf

Recommendations

1. Amnesty International recommends this amendment is rejected in its entirety, including the proposed limitation of abortion provision to NHS services alone, and that the NI Assembly and Executive act to ensure that existing barriers to women accessing safe abortion services, including a lack of guidance on the termination of pregnancy for medical professionals, are removed.

2. Amnesty International further recommends that the NI Assembly and Executive place a gender perspective at the centre of all legislation, policies and programmes affecting women's health and involve women in the planning, implementation and monitoring of such legislation, policies and programmes and in the provision of health services to women.

3. Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health.

4. Prioritise the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and pre-natal assistance. When possible, legislation criminalising abortion could be amended to remove punitive provisions imposed on women who undergo abortion.

5. Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.[26]

For enquiries about this submission, please contact:

Gráinne Teggart, Northern Ireland Campaigner
Amnesty International

26 http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24

Banbridge District Council

BANBRIDGE
DISTRICT COUNCIL

CIVIC BUILDING DOWNSHIRE ROAD BANBRIDGE CO. DOWN BT32 3JY
T: 028 4066 0600 F: 028 4066 0601 E: info@banbridge.gov.uk W: www.banbridge.gov.uk

PAT CUMISKEY - ACTING CHIEF EXECUTIVE

Our Ref: GD/14/CMcC

8 September 2014

The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Sir/Madam

JUSTICE BILL

At a recent meeting of Council, your letter dated 8 July 2014 seeking views on proposed amendments to the Justice Bill was considered by Members.

I wish to advise that Members made no comment on the proposed amendments during the meeting. However, Political Parties may wish to respond to your consultation on an individual basis.

Yours faithfully

PAT CUMISKEY
Acting Chief Executive

BUILDING CONTROL 028 4066 0623
COMMUNITY PLANNING 028 4066 0644
COMMUNITY SERVICES 028 4066 0643
ECONOMIC DEVELOPMENT & REGENERATION 028 4066 0629
ENVIRONMENTAL HEALTH 028 4066 0606

INVESTORS IN PEOPLE

FINANCE 028 4066 0607
HUMAN RESOURCES 028 4066 0636
LEISURE SERVICES 028 4066 0625
MEMBER SERVICES 028 4066 0602
TECHNICAL SERVICES 028 4066 0604

Bangor Free Presbyterian Church

Dear Justice Committee Clerk,

I write to you on behalf of Bangor Free Presbyterian Church voicing our full support to the proposed amendment to the Criminal Justice Bill that will ensure that private clinics like the Marie Stopes centre in Belfast cannot legally carry out abortions. We have a direct reference to the killing of the unborn in Exodus 21 v 22,23 “If men strive and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman’s husband will lay upon him; and he shall pay as the judges determine. And if any mischief follow, then thou shalt give life for life.” It is clear from Exodus 21 v 12 the punishment for taking the life of the unborn is the same as for killing a full grown man. “He that smiteth a man, so that he die, shall be surely put to death.”

John Calvin, commenting on this passage of Scripture protested vigorously against the murder of the unborn, “If it seems more horrible to kill a man in his own house than in a field, because a man’s house is his place of most secure refuge, it ought surely to be deemed more atrocious to destroy a foetus in the womb before it has come to light.”

Marie Stopes tells us they are pro-choice. As far as they are concerned the unborn child has no choice.

As stated above, we wholeheartedly support the proposed amendment to the Criminal Justice Bill and its prohibition of abortion services in Northern Ireland.

Yours faithfully,

David Priestley (Rev.)

Belfast Feminist Network

Belfast Feminist Network

Written evidence on the proposed amendment to the Justice Bill brought before the Justice Committee by Jim Wells MLA on 2 July 2014

Belfast Feminist Network is a community collective representing the views of over 1400 people. Established in April 2010, the group is committed to providing an open and inclusive space for discussions of gender inequality in Northern Ireland. Belfast Feminist Network have been responsible for organising a range of public events on issues affecting women's lives such as rape and sexual violence, political participation, reproductive justice and human trafficking. We have engaged a number of MLAs and Ministers of the NI Executive through our events and campaigning.

This response to the proposed amendment to the Justice Bill, brought before the Committee by Mr Wells, reflects a number of discussions involving Belfast Feminist Network (BFN) members, through the medium of our online community, our regular group meetings and at a public consultation event hosted in August 2014.

BFN asks the Committee to consider the following objections to this proposed amendment:

1. Incompatibility with the Justice Bill aims

BFN calls on the Justice Committee to reject the proposed new clause 11A as it is incompatible with the aims of the Bill. The Explanatory Memorandum of the Justice Bills states the following core aims:

- To improve services for victims and witnesses;
- To speed up the justice system;
- To improve the efficiency and effectiveness of key aspects of the system.

This amendment would run contrary to these aims as the wording of the amendment could lead to overlapping offences and would cause confusion in an area where clarity is needed. In addition, by attempting to criminalise the operation of private health clinics performing legal abortions this amendment is liable to create a dual offence, both under the Offences against the Persons Act 1861, the Criminal Justice (NI) Act 1945 and under this proposed amendment. This conflicts with the aim of improving the effectiveness of the Criminal Justice system by potentially creating duplicitous charges and causing ambiguity.

2. Lack of consultation on a contentious issue

For these reasons of obvious incompatibility BFN considers Mr Wells' proposal to be an attempt to tack on a contentious issue to an unrelated Justice Bill disposing of the need for consultation. This is an unacceptable way to create legislation on an area that will have such an acute impact on vulnerable women. It is important to remember that those women seeking abortions under the current legal framework in Northern Ireland are facing devastating impacts to their long-term physical or mental health and the state has a duty of care towards those women who are facing severe risks to their lives, health or well-being. If the Northern Ireland Assembly were to introduce new legislation as part of an unrelated bill that does not adequately deal with the complexity of the provision of reproductive healthcare services in these circumstances, this would represent a failure of the state to uphold that duty of care.

3. Risk of judicial review due to potential breach of human rights law

The European Court of Human Rights has established very clearly that states are under an obligation to facilitate access to abortion to the extent that it is provided for in domestic

law. States that have been found to have taken action to block an individual's access to an abortion where the domestic law should have allowed for it or have failed to implement the necessary legal and procedural arrangements to facilitate effective access, have been found to be in breach of Article 8 of the European Convention on Human Rights; the right to private and family life. (E.g. P. and S. v Poland, October 2012; A., B. and C. v Ireland, December 2010) BFN is extremely concerned that the proposed clause represents an attempt to block access to abortions for those individuals who should currently be able to have the procedure under Northern Ireland's legal framework. We believe it constitutes an interference with the right to private and family life of women seeking abortions that cannot be justified as a necessary or proportionate action and would therefore leave the Department of Justice open to the risk of being subject to a judicial review.

It is important to highlight that numerous international human rights bodies to which the Northern Ireland Executive Departments are all accountable, take a very dim view of any attempts to further criminalise women seeking abortions or to restrict access to this important healthcare service. For example, the CEDAW Committee expressed concern about the criminalisation of abortion in Northern Ireland in their concluding observations on the UK in the last two examinations:

> *"In line with its general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action, the Committee urges the State party to give consideration to amending the abortion law so as to remove punitive provisions imposed on women who undergo abortion."*

Paragraph 14 of general recommendation No. 24 requires that states act to remove, *"other barriers to women's access to appropriate health care includ[ing] laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."*

The Committee on Economic, Social and Cultural Rights has also called on the UK government to de-criminalise this vital healthcare service in their 2009 concluding observations:

> *"The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality."*

The **Council of Europe** has also been clear in its requirement on states to provide access to this service. In April 2008 the Parliamentary Assembly of the Council of Europe issued a report entitled *"Access to Safe and Legal Abortion in Europe"*, which called upon all member states to decriminalise abortion, to guarantee women's effective exercise of their right to a safe and legal abortion, and remove restrictions that hinder *de jure* and de facto access to abortion.

When the **UN Special Rapporteur on the right to health** issued a report into sexual and reproductive health in 2011, it stated more clearly than ever that laws restricting access to abortion and criminalizing women seeking abortions are not acceptable within the international human rights frameworks and states refusing to change such laws must be held to account:

> *"Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfil the right to health."*
>
> *(Para. 21)*

4. Equality impact on vulnerable and marginalized women

An equality impact assessment of this proposed legislation would obviously highlight that the amendment would disproportionately affect women over men as the only people seeking abortions will be women and some trans men. The restriction on access to a legal reproductive health procedure will have an adverse effect on this group that cannot be justified as men face no similar restrictions to their healthcare options. Furthermore, it will particularly impact women with specific vulnerabilities for whom access to this procedure from private providers can be extremely important. For example, women suffering domestic violence for whom confidentiality is a key concern may use a private provider for the purpose of increased anonymity and expediency. Women with acute or life threatening health conditions may choose this route due to expediency. Trans men may find the private route offers more confidentiality. Women who have insecure immigration status would have even fewer options than other women as they cannot travel to Great Britain. The proposed law would have a disproportionate impact on these groups because of their increased vulnerability.

Conclusion

BFN is opposed to the privatisation of healthcare services and would like to see Executive policy that strengthens and develops the NHS in all areas. However, we are acutely aware of the fact that the current lack of any clear or effective legal framework governing access to abortion in Northern Ireland has devastating effects on the lives of women who are already experiencing serious physical and mental health risks. With the current tug-of-war over the publication of DHSSPS guidance for medical professionals still ongoing and the intense media scrutiny of the disgraceful treatment some women have received in state hospitals in recent years, both here and in the Republic of Ireland, it is perfectly understandable that women might seek abortions from a legal provider who they know will have a consistent, unbiased approach. Using the law to prohibit private healthcare providers from delivering a legal service to the public in this one area alone, appears to be a selective and nonsensical action clearly driven by an agenda to obstruct women in desperate circumstances from accessing the abortions they are entitled to.

BFN urges the Justice Committee to reject the proposed amendment on the grounds that it is incompatible with the aims of the bill, incompatible with international human rights law and standards, leaves the Department of Justice at risk of judicial review and has a disproportionate adverse effect on vulnerable and marginalised women and trans

men. It is unacceptable for individual MLAs to use important legislation that has been designed to address key needs of the public in the area of justice as a vehicle for pursuing their own moral agendas. It is notable that the language of the ‘unborn child’ is used throughout the draft of the amendment which underlines the motives of the author in promoting a concept of personhood that has no legal or medical standing in our contemporary society. BFN expects, as do the vast majority of the public, that our legislation and policy will be evidence based and fair which this proposed amendment is clearly not.

CARE NI

Response to Justice Committee Consultation on proposed Clause 11A of the Justice Bill

Introduction

On the 2nd of June 2014, Jim Wells MLA informed the Justice Committee of his intention to introduce an amendment to the Justice Bill to restrict lawful abortions to National Health Services premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. CARE Northern Ireland fully supports this proposed amendment.

In this consultation response, we will outline why we believe that this amendment is the right way forward for Northern Ireland. We believe that two major arguments can be made in favour of the amendment. Firstly, we do not believe that there is any credible or compelling need within Northern Ireland for private companies to provide abortion services. Secondly, even if there was such a need, we do not believe that it is appropriate that this need be filled by a campaigning organisation such as Marie Stopes, who have promoted liberalised abortion regimes worldwide.

Do we need private companies to offer abortion services in Northern Ireland?

Northern Ireland has strict laws on abortion. It is important that we are clear on precisely when abortion is legal in Northern Ireland in considering whether or not we require charities like Marie Stopes or private companies to offer abortion services in the province. It is pertinent to consider the legal principles in this area. A useful summary of the current law can be found in the draft version of the guidelines for the termination of pregnancy published in April 2013.[1] It is important to note that this is only a summary of the law and that the final version of the guidelines is yet to be published.

"i. In Northern Ireland termination of pregnancies are unlawful unless performed in good faith only for the purpose of preserving the life of the woman. The life of the woman in this context has been interpreted by the courts as including her physical and mental health;

ii. A termination of pregnancy can therefore be lawful only where the continuance of the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health in a manner that is real and serious and permanent or long term.

iii. In any other circumstance it would be unlawful to perform such a procedure. Health and social care professionals have a legal duty to refuse to participate in, and must report, any procedure that would not be lawful in Northern Ireland. A person who has knowledge of the carrying out of a procedure which is not lawful in Northern Ireland and who has information which is likely to be of material assistance in securing the apprehension, prosecution, or conviction of any person in relation to that lawful procedure is under a duty to give that information, within a reasonable time, to the police. If that person fails to do so without reasonable excuse, he or she may be liable, upon conviction, to maximum penalty of ten years imprisonment.

iv. Fetal abnormality is not recognised as grounds for termination of pregnancy in Northern Ireland."

1 http://www.dhsspsni.gov.uk/guidance-limited-circumstances-termination-pregnancy-april-2013.pdf

The table below outlines the number of medical abortions were conducted in Northern Ireland over the last 7 years.[2]

Medical Abortions and Terminations of Pregnancy: 2006/07 to 2012/13[3]

Year	Medical Abortion	Termination of Pregnancy
2006/07	76	57
2007/08	76	47
2008/09	71	44
2009/10	64	36
2010/11	73	43
2011/12	56	35
2012/13	75	51

What is abundantly clear is that abortions are rare in Northern Ireland, especially in comparison with the situation on the UK mainland.

The question that therefore needs to be asked is why is there a need for private companies or charities to offer abortion services in Northern Ireland. If there was evidence that the NHS did not have the capacity to offer the necessary abortion services, perhaps it could be argued that private companies should be allowed to provide abortion services. However, there is no evidence whatsoever that the NHS lacks the capacity to conduct abortion services in Northern Ireland within the law that applies here. Consequently, we do not see any compelling case for permitting private companies to provide abortion services in Northern Ireland.

There are four additional points that need to be made:

First, legislators have never made express provision in law for the provision of abortion by private providers. Given the scope for abortion in Northern Ireland and the absence of any capacity problem it has previously been assumed that abortions would only be permitted in NHS hospitals. Marie Stopes, however, have in recent years presented themselves as a provider and when challenged about the appropriateness of this have simply pointed out that there is nothing in statute expressly prohibiting private providers.

Second, it should be further noted that the private charity which is offering abortion services in Northern Ireland, Marie Stopes International, does not offer its services for free. Marie Stopes International, who have stated that they will operate within the law in Northern Ireland, charge £450 to conduct a medical abortion and operate within the strict confines of the law here.[4] However, if a woman in need of abortion services goes through the NHS she will be able to obtain one for free if she fulfils the criteria for a termination.

Third, there are very real concerns about transparency where private providers are concerned. This has been clearly illustrated with regard to Marie Stopes in Belfast. When pressed for how many abortions they had conducted in the province so far in their appearance before the Justice Committee, representatives of Marie Stopes International consistently refused to inform the committee of how many abortions they had conducted. They further failed to offer

2 http://www.dhsspsni.gov.uk/termination-statement

3 http://www.dhsspsni.gov.uk/northern_ireland_termination_of_pregnancy_statistics_1213.pdf p1

4 http://www.guardian.co.uk/uk/2012/oct/11/northern-ireland-first-abortion-clinic and http://www.mariestopes.org.uk/Our_centres/Belfast.aspx

any more information than what the law strictly requires them to offer.[5] Indeed, it appears that no-one outside of Marie Stopes knows if an abortion has been conducted at the clinic since it opened.

Fourth, and in some ways more importantly, if there was a capacity problem and Northern Ireland legislators decided to make express legal provision for private providers with appropriate regulation, those regulations would need to be very clear that it would not be appropriate to permit a campaigning organisation like Marie Stopes to perform this role. Marie Stopes International does not hold a neutral view of abortion. They want to see 'abortion on demand' abortion laws and have advocated for legislative change to this end in various countries across the globe. (According to their website Marie Stopes International operates over 600 centres in 37 countries.[6])

The mission of the organisation, which was re-iterated by Marie Stopes representatives when they appeared before the justice committee, is "children by choice not chance."[7] Marie Stopes International has a "Policy and Partnerships Team" whose aim is to "work to transform policy environments and increase access to safe abortion and family planning services globally. As a team they do this through developing and strengthening relationships with key high profile and relevant stakeholders and support our programmes to develop their own strategic partnerships, reduce policy restrictions and maximise in-country donors."[8] This team actively seeks legislative change in the area of abortion law. What is patently clear from this is that Marie Stopes International is not a neutral organisation: it is in fact a campaigning organisation seeking to promote more widespread access to abortion services worldwide and in Northern Ireland in particular.

It is pertinent to consider how Marie Stopes operate on the UK mainland in particular, where they provide abortion services on behalf of the state. Although the legal situation is very different on the UK mainland, it is useful to consider the activities, the values and aims of the organisation, and to gain an insight into what would be likely to emerge in Northern Ireland if the legal regime was to change to make abortion more generally available.

Since 1991, there has been a massive increase in the number of abortions provided on the UK mainland by private providers. There are two main private providers - Marie Stopes International and the British Pregnancy Advisory Service. In 1991, the NHS in England and Wales only funded 9,197 abortions carried out by the private sector.[9] By 2012, this had increased to 114,999, an increase of 1250 per cent.[10] In 1991, private providers only performed around 50 per cent of abortions but by 2012 that figure had increased to 97 per cent.[11] The growth of NHS-funded but privately-provided abortions entirely accounted for the increase.[12] In 2010, abortion services provided by the private sector were worth an estimated £60 million in England and Wales.[13] It is likely that it remains of a similar value today.

It has been conclusively illustrated that Marie Stopes International has a financial motivation to grow revenues (though not for profit, see below) and increase the number of abortions that they perform. Marie Stopes International stated that one of their key goals for 2011-2015 is

5 http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/January-2013/Marie-Stopes-International-Compliance-with-Criminal-Law-on-Abortion-in-Northern-Ireland/

6 http://mariestopes.org/where-in-the-world

7 http://www.mariestopes.org.uk/About_us/Goal%2c_Mission_%5E_Vision.aspx

8 http://www.mariestopes.org/careers/meet-teams

9 https://www.cmf.org.uk/publications/content.asp?context=article&id=26066

10 http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140312/text/140312w0001.htm#140312w0001.htm_wqn87

11 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307650/Abortion_statistics__England_and_Wales.pdf

12 Ibid.

13 http://www.telegraph.co.uk/health/8727344/The-pregnant-pause.html

to "enhance revenue generation."[14] Undoubtedly it is true that Marie Stopes International do offer services beyond abortion services (particularly with regard to sexual health) and that they would be seeking to enhance revenue generation in those areas as well but it is clearly the case that a very significant part of this is through increasing the number of abortions they provide. Marie Stopes International has a "Global Marketing Team" that "focuses on demand creation for our reproductive health products and services using recognised communication techniques and channels. Their work helps clients choose the services which are right for them."[15] Marie Stopes International uses conventional advertising techniques to promote the services they offer. In England and Wales since 2000, Marie Stopes International has invested significant resources in public advertising online, on the London underground and in TV adverts to promote their services.

Marie Stopes International is a charitable organisation and does not operate for the purposes of profit in the same way as a business enterprise does. A fair question to ask therefore is what does Marie Stopes do with the revenues it produces? It is highly likely that part of the answer to this is that Marie Stopes International subsidises their clinics which are operating in other parts of the world where they are not state funded and or where the legal framework is such that don't have the opportunity to provide all the services they would like to. This probably includes the clinic situated on Great Victoria Street in Belfast.

So, in conclusion, if the NHS in Northern Ireland did not have the capacity to offer all of the requisite abortions necessary in the province, it would not be appropriate for Marie Stopes International to fill in the gap. Marie Stopes International is a campaigning organisation that has a clear desire to liberalise abortion laws worldwide. They further have a business ethos which seeks to promote the take up of abortion services. Consequently, if there was a lack of capacity in Northern Ireland to provide legal abortions, which we don't believe there is, Marie Stopes would be the very last organisation that should be providing that additional capacity.

It is important to be cognisant of the fact that Marie Stopes in Belfast does not solely provide abortion services. They do offer other services, particularly with regard to sexual health, and would be entitled to continue to offer these services even if this amendment was passed. This amendment would not lead to the closure of Marie Stopes in Belfast if the organisation decided that they would like to keep their operation open.

Conclusion

CARE in Northern Ireland does not believe that there is any need for private providers to offer abortion services in our province. Abortions only occur rarely in Northern Ireland **and we have not encountered any evidence that there is a lack of capacity in the NHS in Northern Ireland with regard to abortion provision**. If evidence becomes available in the future that there is a lack of capacity to provide legal abortions then **the law could be further amended to make provision for this but any future amendment should make it absolutely clear that additional service providers should not be campaigning bodies that promote a legal framework different from our own**.

_____

Mark Baillie
CARE in Northern Ireland Public Affairs Officer
55 Templemore Avenue
Belfast
BT5 4FP

September 2014

14 http://www.mariestopes.org/sites/default/files/MSI_financial%20statements%202011_1.pdf p8

15 http://www.mariestopes.org/careers/meet-teams

Catholic Bishops of Ireland

Northern Catholic Bishops

Response on the Proposed 'Abortion' Services Amendment to the Justice Bill (NI)

Friday,12 September 2014

Introduction

As Catholic Bishops we welcome the opportunity to respond to the proposed amendments to the Justice Bill (NI) currently under consideration by the Justice Committee of the Northern Ireland Assembly. While acknowledging the importance of the various amendments relating to the operation of the Courts and general administration of Justice in Northern Ireland, we wish to limit our comments in this submission to the central importance to justice and the common good of every society of respect for the fundamental right to life. Our comments, therefore, relate specifically to the proposed amendment on 'Ending the Life of an Unborn Child'.

It has been the consistent teaching of the Catholic Church that the lives of both a mother and her unborn child are sacred by virtue of their common humanity and therefore require equal protection under the law. The direct and intentional termination of an unborn child denies the humanity and inherent dignity of that child in the womb and violates the most basic human right of all; the right to life.

Intentionality re Direct Abortion

The Northern Catholic Bishops welcome this policy initiative underlying the proposed amendment. Since a fundamental concern for the Catholic Church is to sustain and promote respect for every human life, it is welcome to note that the draft amendment so clearly affirms the existing law prohibiting intentional and direct abortion. In particular, we approve the inclusion of the sub-clause at 11A(3) which expressly articulates the importance of intent with regard to direct abortion.

The Significance of Existing Statutory Provisions

We also note that the proposed new article begins and ends with references to the current statutory provisions, thereby underlining their significance.

Compliance with Existing Statutory Provisions

On a wider note, we would observe that monitoring to ensure compliance with the law is considered vital to secure respect for the life of the mother and her unborn child. The difficulty in monitoring compliance with the existing statutory law on abortion is one factor which makes it sensible and necessary to confine lawful abortion, within the existing legislative framework, to health service premises. The removal of any element of financial gain from the provision of abortion is also a positive step.

We trust that the new amendment, if it were to become law, would not be interpreted in such a way as to make 'location' a sole criterion when determining the legality of any act which results in the ending of the life of the unborn child. While the wording of the amendment is careful to avoid the possibility of such an interpretation, vigilance is needed to ensure that society does not make the assumption that all abortions performed in premises operated by a Health and Social Care Trust are therefore lawful in accordance with the existing legal provisions in Northern Ireland. For this reason, we welcome the incorporation at 11A(2)(a) of a reference to lawful abortion within the existing legislative framework. We trust that

the existing legal provisions shall remain in place in order to ensure the greatest possible protection for the life of the mother and her unborn child.

Points for Clarification

While welcoming the policy underlying the proposed amendment, we express an interest in exploring the implications of clause 11A(2)(b), and in particular would seek reassurance that it would not be interpreted in such a fashion as to facilitate abortion otherwise than on national health service premises. Further, we are aware that in medical practice, a distinction is made between procedures carried out in an emergency, and those conducted as a matter of urgency. Our query is whether the draft reflects this distinction.

By way of further inquiry, we seek clarification of the reason for introducing a new criminal offence.

Conclusion

We would welcome an opportunity to discuss with members of the Justice Committee any of the points arising from this submission.

Christian Medical Fellowship

2nd September 2014

Dear Sir/Madam,

We are writing with regard to the proposed amendment put down by Mr Jim Wells MLA to the Justice Bill in Northern Ireland, Clause 11a (Ending the Life of an Unborn Child).

Christian Medical Fellowship (CMF) was founded in 1949 and is an interdenominational organisation with over 4,000 British doctor members in all branches of medicine. A registered charity, it is linked to about 70 similar bodies in other countries throughout the world. Of these, approximately 350 are members in Northern Ireland.

We welcome, and fully support, the proposed amendment Clause 11a, for the following reasons:

The abortion law in Northern Ireland (NI) is more restrictive than the equivalent law in England and Wales. A termination of pregnancy in NI is lawful only where the continuance of the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health in a manner deemed to be real and serious and permanent or long term. Fetal abnormality is not recognised as grounds for termination of pregnancy in NI.

As a result, legal abortion is rare in NI. Official statistics show the number of abortions performed annually to be remarkably constant at about 120 (1). It is clear that the NHS has capacity in NI to offer the necessary abortion services and **there is no evidence that private companies or charities are needed to meet existing levels of demand**.

The private charity which is offering abortion services in Northern Ireland, Marie Stopes International (MSI), has stated that they will operate within the law in Northern Ireland. Their services are not free - they charge £450 to conduct a medical termination – and it is difficult to see why a woman who fulfilled the criteria for a legal and free termination of pregnancy through the NHS would need to opt for a private provider.

MSI representatives have been consistently coy about the number of abortions they have performed at their Belfast clinic and confidence that they are truly operating within the terms of the law is therefore undermined. It is also clear that MSI is committed to growing revenue and one way in which they seek to do so is by increasing the number of abortions that they perform (2). It is recognised that MSI also offer other services, particularly in the area of sexual health, and that they would seek to enhance revenue generation in those areas as well.

Despite being a charity, MSI operates with a business ethos. They have an aggressive marketing strategy that ‘focuses on demand creation for our reproductive health products and services using recognised communication techniques and channels’. (3) Their mission is to ‘work to transform policy environments and increase access to safe abortion and family planning services globally’ (3), in part by advocating legislative change that would reduce policy restrictions.

Even if the NHS in NI lacked capacity to provide necessary abortion services, we suggest that MSI would not be a suitable choice of ‘partner’ to make up the difference, because of their stated intention to promote a more liberal policy on abortion that is at odds with the law, culture, values of the people in NI.

We therefore strongly support Clause 11a (Ending the Life of an Unborn Child) of the Justice Bill in NI.

Yours faithfully

Philippa Taylor

Head of Public Policy
Christian Medical Fellowship

1. http://www.dhsspsni.gov.uk/northern_ireland_termination_of_pregnancy_statistics_1213.pdf
2. http://www.mariestopes.org/sites/default/files/MSI_financial%20statements%202011_1.pdf p8
3. http://www.mariestopes.org/careers/meet-teams

Commissioner for Older People for Northern Ireland

Written evidence submitted by the Commissioner for Older People for Northern Ireland

Summary and Recommendations

The Commissioner for Older People for Northern Ireland (the "Commissioner") welcomes the proposals to abolish the maximum age for jury service in Northern Ireland.

The proposed amendment outlined within Part 8 of the Justice Bill 2014 (The Bill) will provide an opportunity for older people to fully carry out an important civic function as members of a jury panel. The breadth of knowledge and experience that many older people will bring to this particular role will be of great benefit to many subsequent jury trials.

It is of equal import that Part 8 of the Bill also confirms that where older people over the age of 70 do not wish to participate as members of a jury that they have a right to be excused from service.

One of the primary roles of the Commissioner's office is to promote the provision of opportunities for and the elimination of discrimination against older people. The proposed amendments in Part 8 of the Bill are very much in keeping with these particular aims.

Introduction

1. The office of the Commissioner for Older People for Northern Ireland is an independent public body established under the Commissioner for Older People Act (Northern Ireland) 2011.

2. The Commissioner has an extensive range of general powers and duties which will provide the statutory remit for the exercise of her functions. In addition the Commissioner may provide advice or information on any matter concerning the interests of older people. Her wide ranging legal powers and duties include amongst others:

- To promote and safeguard the interests of older people (defined as being those aged over 60 years and in exceptional cases, those aged over 50 years);
- To keep under review the adequacy and effectiveness of law and practice relating to the interests of older people;
- To keep under review the adequacy and effectiveness of services provided for older persons by relevant authorities (defined as being local councils and organisations including health and social care trusts, educations boards and private and public residential care homes);
- To promote the provision of opportunities for and the elimination of discrimination against older persons;
- To review and where appropriate, investigate advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities;
- To assist with complaints to and against relevant authorities;
- The power to bring, intervene in or assist in legal proceedings in respect of relevant authorities;
- To issue guidance and make representations about any matter concerning the interests of older people.

3. The Commissioner's powers and duties are underpinned by the United Nations Principles for Older Persons (1991) which include Independence, Participation, Care, Self- fulfilment and Dignity.

4. The Commissioner welcomes the opportunity to comment to the Department of Justice on the proposed Justice Bill 2014.

Maximum Age for Jury Service

5. The Commissioner welcomes the proposal in Part 8 of the Bill to abolish the maximum age for jury service[1]. Under the current Juries NI Order 1996 the eligible age for jury service is between eighteen and seventy years.[2] Placing an age limit on jury service precludes a large section of older people in Northern Ireland. Many of those currently precluded from jury service as a result of age have wide ranging and relevant experience that would prove invaluable to any jury panel.

6. It is important that older people are given the opportunity to fully participate in and contribute towards civic society. The United Nations Principles for Older Persons (1991) indicated that Older People should be able to seek and develop opportunities for service to the community. Ensuring that as many older people as possible are given the opportunity to participate in jury panels adheres to the aspirations outlined within those United Nations Principles.

7. The Commissioner has a statutory duty to promote the provision of opportunities for, and the elimination of discrimination against, older persons.[3] The removal of an age limit on jury service is a welcome step in ensuring that no older person is prevented from service merely as a result of their age. The opportunity to sit on a jury panel should be open to as many people as possible to ensure a wide breadth of knowledge and life experience. Removing the age limit will ultimately provide opportunities for many older people to actively participate in and sit on jury panels bringing their individual skills and experience to the task.

8. The proposal to abolish the maximum age for jury service compliments the strategic aims of the *'Active Ageing Strategy 2014 -20'*[4]. In particular the strategic aim of promoting active participation and citizenship of older people is satisfied by this proposal. The Commissioner views participation as an essential part of any Active Ageing strategy and views this proposal as an opportunity for older people to maximise their potential.

Persons Excusable as of Right from Jury service

9. Part 8 of the Bill further amends the Juries NI Order 1996 by including older people aged over seventy years as persons excusable as of right from jury service.[5] Currently older people between the ages of sixty five and seventy are excusable[6]. Whilst many older people will engage with jury panels there may be others who do not wish to take part in this civic function.

10. Some older people may not wish to avail of the opportunity to sit on a jury for a number of reasons including concerns about the time commitment, family commitments and responsibilities as well as potential impact on health. The Commissioner welcomes the introduction of a right for persons to be excused from jury service over the age of seventy. However, the Commissioner also believes that a full and comprehensive equality impact review should take place to ensure that older people aged between sixty five and seventy are not disproportionately affected by this amendment.

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1 S. 72 Justice Bill 2014

2 Art 3(1) Juries NI Order 1996

3 Art 3(4) Commissioner for Older People Act (Northern Ireland) 2011

4 Active Ageing Strategy 2014-2020; Office of First Minister and Deputy First Minister – February 2014

5 S.76(4) Justice Bill 2014

6 Schedule 3 Juries NI Order 1996

11. It is essential that older people are provided with the opportunity to actively engage and participate in jury panels. Equally, there may be occasions when older people do not wish to sit as jury panel members. The legislation should adequately provide for those circumstances by including a right to be excused from service. There is no indication within the Bill as to why the age of older people being excused from service has been increased from sixty five to seventy years. As outlined above this amended change should be subject to a thorough equality impact assessment. There should not be any undue disadvantage placed on older people as a result of new legislation.

The Commissioner for Older People

Equality House

7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 90 890 892
Email: info@copni.org

Department of Education

Justice Bill – Proposed Amendments

Thank you for your letter of 8 July 2014 setting out the six proposed amendments being brought forward by the Department of Justice (DOJ) at the Committee Stage of the Bill.

The Department of Education (DE) has a particular interest in the proposed amendment to Part 5 – Criminal Records – Exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.

The safeguarding of pupils at school is a priority for DE. The vetting and barring procedures in place play a key part in the protection of children and in the recruitment and selection of staff who work in schools.

Although the DOJ explains that what is proposed is a minor amendment, DE welcomes the comment that it is "an important additional safeguard for vulnerable groups and should assist in ensuring that inappropriate persons are unable to get work with such groups".

Thank you for giving DE the opportunity to consider and comment on the proposed amendments.

Yours sincerely

Departmental Assembly Liaison Officer

Department of Employment and Learning

Mrs Cathie White
Clerk to the Committee
Committee for Employment and Learning
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Our Ref: COR/306/14

September 2014

Dear Cathie,

Thank you for your letter, 8 July 2014, welcoming views/comments on the contents of the Justice Bill, which commenced Committee Stage on 25 June 2014.

The Department notes the proposed amendments and has no further comments to make.

Yours sincerely

Departmental Assembly Liaison Officer

Department of Health, Social Services and Public Safety

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Jim Wells MLA

Department of
Health, Social Services and Public Safety
www.dhsspsni.gov.uk

Castle Buildings
Stormont Estate
BELFAST BT4 3SQ
Tel: 028 90 520642
Fax: 028 90 520557
Email: private.office@dhsspsni.gov.uk

Mr Paul Givan MLA
Chairman
Committee for Justice
Room 242
Ballymiscaw
Parliament Buildings
Stormont
BELFAST
BT4 3XX

Our Ref: AGY/547/2014

Date: 4 November 2014

JUSTICE BILL 2014

Thank you for the Committee's letter to Minister Poots of 10 July 2014, inviting views on the Justice Bill and in particular, three main issues:

(i) Proposed amendments from the Department of Justice;
(ii) An amendment to the Coroners Act (NI) 1959 proposed by the Attorney General; and
(iii) The amendment regarding 'Ending the life of an unborn child'.

Proposed amendments from the Department of Justice

The only issue of note to my Department is contained within Part 5 – Criminal Records – Exchange of information between Access NI and Disclosure and Barring Service (DBS) for barring purposes. I welcome the proposed amendment which seeks to include statutory powers to allow Access NI to share information with DBS.

The Attorney General's proposed amendments to the Coroners Act (NI) 1959

The previous Minister wrote to you providing comments about the Attorney General's proposed amendment to the Coroners Act (NI) 1959, which he first attempted to introduce through the Legal Aid and Coroners' Courts Bill.

I am aware that further to this correspondence, the Attorney General has given evidence to the Committee regarding his proposals. Having reviewed the official report of the evidence session there are some matters that should be brought to the attention of the Committee as they consider these proposals in the context of the Justice Bill.

These relate primarily to the policy context of the proposed amendments, understanding of the Serious Adverse Incident process and the exact scope and nature of the proposed new powers.

The policy context for the proposals is not currently sufficiently clear. The Attorney General has suggested that his concerns relate to deaths in hospital and his proposed powers would allow him to access to documentation such as Serious Adverse Incident (SAI) reports. He also has concerns that deaths are not referred appropriately to the Coroner. During his evidence session, the Attorney General also suggested that he anticipated that his powers could be extended to consider deaths in nursing homes, or those where the deceased had received treatment from the private sector. As such, it is not currently clear what the full extent of his concerns are, and therefore how these proposals would address them.

You will be aware that the HSC Trusts were asked to carry out a look back exercise of all SAIs over a five year period from 1 January 2014 – 31 December 2013. As part of this review, Trusts have been asked to review those SAIs where death has occurred, detailing the date the coroner was notified and providing an explanation if there was a delay in referral to the Coroner. This will provide evidence to indicate whether deaths are being referred appropriately to the Coroner and the outcome of the exercise will be shared with the Coroners' office and the Committee for Justice. The conduct of the look back exercise by Trusts will be independently validated by the RQIA.

I should also point out that the SAI process is a non-statutory based system to identify learning. It is not an investigative system for the purposes of investigating deaths. The role of investigating deaths sits with the Coroner and the police service. As a learning process, the SAI system supplements the statutory accountability reporting processes in dealing with deaths that meet the criteria for some form of formal investigative process. Not all SAIs relate to deaths or to patients, with some concerning estate type issues, the health and safety of staff, or information data breaches, all of which occur in a range of settings in an outside of hospitals.

As the precise policy intent of the Attorney General's proposals are currently not entirely clear, it is difficult to foresee the practical implications of the proposals and what impact they would have for staff and patients.

The Committee should also be aware that Sir Liam Donaldson is currently undertaking an Expert Examination of the Application of HSC Governance Arrangements for Ensuring the Quality and Care Provision in Northern Ireland (The Donaldson Review). I understand that the Attorney General met with Sir Liam on 28 August to discuss his concerns and it may be appropriate to await any recommendations from that review when considering how to take this matter forward.

In principle, I have no objection to the Attorney General having the power to access the information necessary to allow him to discharge his functions under section 14 of Coroners Act (NI) 1959. I firmly believe however that it would be important to have more policy clarity as to the precise intent of the proposals and how they would be used in practice.

Proposed amendment regarding 'Ending the life of an unborn child'

In order to avoid any unnecessary confusion in the health system, if this amendment is being taken forward and the Justice Committee is supportive, it may be useful for a discussion to take place with professionals in my Department on terminology and finalising the drafting in order to prevent any unintended consequences.

I would ask that the Committee consider the issues I have highlighted in this letter. My officials would be happy to meet with the Committee to provide further information if they deem that would be helpful.

Jim Wells MLA
Minister for Health Social Services and Public Safety

Disability Action

Introduction

1 Disability Action is a pioneering Northern Ireland charity working with and for people with disabilities. We work with our members to provide information, training, transport awareness programmes and representation for people regardless of their disability; whether that is physical, mental, sensory, hidden or learning disability.

2 21% (369,390) of adults and 6% (105,540) of children in Northern Ireland have a disability and the incidence is higher here than in the rest of the United Kingdom. Over one quarter of all families here are affected.

3 As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community. In pursuit of our aims we serve 45,000 people each year.

4 Our network of services is provided via our Headquarters in Belfast and in three regional offices in Carrickfergus, Derry and Dungannon.

5 Disability Action welcomes the opportunity to respond to this draft and to aid our response has put the relevant page/paragraph of the draft in brackets at the end of our comments.

Specific Commentary

6 Disability Action believes that the contact details in this consultation document should include a textphone or dedicated SMS number to enable deaf people the same access as those who are hearing. This is not the case in either the Clerk of the Justice Committee nor the Attorney General.

General Commentary

7 The Department of Justice has informed the Committee of eight amendments that it plans to bring forward for consideration during the Committee stage of the Bill. In addition to those parts Jim Wells has an amendment on abortion and there is another amendment to the Coroners Act, all 8 are listed below:-

Drafted as to ascertain to the Coroners Act (Northern Ireland) 1959 the Attorney's proposed amendment now reads as follows:-

8 Provision of Information to the Attorney General for Section 14.

14a-(1) The Attorney General may by notice in writing to any other person who has provided health care to a deceased person, requires that person to produce any document or to give any other information which in the opinion of the Attorney General may be relevant to the question of whether a direction should be given to the Attorney General under section 14.

(2) The person may not be required to produce any document or give any other information under this section if that person could not be compelled to produce that document or give that information in civil proceedings in the High Court.

(3) In this section 'document' includes information recorded in any form and references to producing a document include in relation to information recorded otherwise than in legible form references to providing a copy of the information in a legible form.

(4) A person who fails without reasonable excuse to comply with a requirement under this section commits an offence is liable on the summary conviction to a fine not exceeding level 5 on the standard scale.

Disability Action agrees with all four clauses, we would however say that, fines not exceeding level 5 on the standard scales does not mean anything to us. It must be proportionate with the cost of failure to provide such information.

9 Part 4 – Victims and Witnesses – Sharing Victim and Witness Information

The amendment proposed is intended to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available, that is Victim Support Services, Witness Services at Court, and the Access to Information Release Schemes. Most importantly the victims would not be obliged to avail of services, rather the purpose of the proposed change is to ensure that they are provided with the relevant information so that they can make an informed decision about the services on offer to them.

Subject to Legislative Counsels view the effect of this amendment is likely to be the insertion of a single new clause into the Bill setting out that certain information would be shared between specific organisations for the purpose of informing victims and witnesses about available services.

Disability Action agrees with the proposed amendment particularly as you have shared them with the Northern Ireland Human Rights Commission.

10 Part 5 – Criminal Records – Publication of the Code of Practice

We are proposing an amendment to the power of the Department to publish the Code of Practice provided for in clause 39 (2) of the Bill (which inserts a new subsection (4A) to section 113B of the 1997 Act). This new subsection provides for a statutory Code of Practice to which chief officers of police must have regard.

There has always been the intention that the Code of Practice would be published. The amendment would make it clear that the Code must be published and is being made at the suggestion at the Attorney General.

Disability Action agrees with this proposed amendment.

11 Part 5 – Criminal Records – Exchange of Information between Access NI and Disclosure and Barring Service for barring purposes.

However following legal advice it has become clear that a specific statutory power is required to allow to Access NI to share information with DBS which will be used for barring purposes. Again this is a minor amendment and should require no more than a single new clause, however this is an important additional safeguard for vulnerable groups and should assist in ensuring that inappropriate persons are unable to get work with such groups.

Disability Action agrees with this proposed amendment.

12 Part 5 – Criminal Records – Review of Criminal Record Certificates where convictions or disposals have not been filtered

Under what we propose an amendment will be required to section 117 of the 1997 Act which covers disputes about the accuracy of certificates. We think this will require a new clause in the Bill to provide for the introduction of the scheme and the drawing up of guidance by the Department setting out how it will operate.

The Bill already contains amendments to the 1997 Act designed to improve the efficiency and effectiveness of the criminal records disclosure system. We wish to introduce the review mechanism as soon as possible and the Justice Bill will be first opportunity to do so. An additional benefit of the review mechanism and it will make it more compatible with Article 8 of the European Convention on Human Rights and reduce the scope for legal challenge to the current filtering system.

Disability Action is glad to see that it targets a consultation with key stakeholders on the draft guidance.

13 Part 8 – Miscellaneous – Duty of Solicitors to advise client about early guilty appeal

Clause 78 creates a statutory duty on a defence solicitor when representing a person in connection with an investigation into an offence, to advise that person of the effect of Article 33 of the Criminal Justice (Northern Ireland) Order 1996 which enables a Court to give credit an early guilty appeal when sentencing the defendant) and to advise the client of the effect that a guilty plea might have on any sentence that might be passed on the person if he is found guilty of the offence.

The Minister has indicated that he will amend the clause to omit subsection (3) at an appropriate stage in the Bill. We think this too will be a minor amendment as it would have no substantive impact on the rest of the draft clause nor would it affect the policy intention behind the clause.

14 Part 8 – Miscellaneous – Defence Access to Premises

This provides that a Court shall not make an order permitting access to premises unless it is required in connection with the preparation of the person's defence or appeal.

The Attorney General has recommended an amendment to this provision so that a court could only grant an application for inspection of premises where it is necessary to ensure the fair trial rights of the defendant.

Subject to Legislative Counsel's views, we anticipate that it will be a matter of substituting the wording the Attorney has suggested for the wording currently in clause 82(4)(a).

15 Abortions

At a meeting on 2 July 2014 Mr Jim Wells MLA also advised the Committee that he intends to bring forward an amendment to the Bill to restrict lawful abortions to National Health Services premises, except in cases of urgency when access to NHS premises in not possible and where no fee is paid. The amendment also provides an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine on conviction of the indictment.

Disability Action has no comment to make on this issue.

Conclusion

16 Disability Action has welcomed the opportunity to make a submission. Disability Action looks forward to continued dialogue on this and other issues of major significance to people with disabilities throughout Northern Ireland.

Enniskillen Elim Pentecostal Church

Elim Pentecostal Church
Rossorry Church Road
Enniskillen
Co. Fermanagh
BT74 7HD

Tel: 028 6632 9972
www.enniskillenelim.com

26 August 2014

The Justice Committee Clerk
Room 242
Parliament Buildings
Stormont
BELFAST BT4 3XX

Dear Sirs

PUBLIC CONSULTATION ON PROPOSED AMENDMENT TO CRIMINAL JUSTICE BILL

I am writing to you in relation to the above Public Consultation and in my capacity as Senior Pastor of the Elim Pentecostal Church in Enniskillen.

I wish to take this opportunity to state my full and unequivocal support for the proposed amendment which Mr Jim Wells MLA has put forward to the Criminal Justice Bill. As a Minister of Religion I believe that the right to life is unconditional and that all children deserve to be protected before as well as after birth.

I am of the firm view that Northern Ireland continues to be one of the safest places for pregnant women and their babies. The law in Northern Ireland ensures that pregnant women receive world-class medical care because both the unborn child **and** the mother are treated as patients. As has always been the case in Northern Ireland, in difficult cases where the mother's life is in danger, both she and her unborn child receive the best obstetric care available.

I believe it remains an absolute essential that unborn children and their mothers remain fully protected from abortion, and to this end I unreservedly support Mr Jim Wells MLA's proposed amendment to this Bill. In respectfully urging the Justice Committee to adopt Mr Wells MLA's proposed amendment, I would appeal to the Committee to take the necessary steps to ensure that unborn children and their mothers remain fully protected from abortion and that Marie Stopes, or any other private medical centre, are unable to legally perform abortions in Northern Ireland.

Yours faithfully

NIGEL ELLIOTT
Senior Pastor

Showing His Love, Carrying His Message, Telling His Story

Evangelical Alliance

Evangelical Alliance

'Ending the life of an unborn child' Amendment to Justice Bill 2014

The Evangelical Alliance is the largest body serving the 2 million evangelical Christians in the UK. Its membership includes denominations, churches, organisations and individuals. The mission of Evangelical Alliance is to present Christ credibly as good news for spiritual and social transformation. The Evangelical Alliance office in Northern Ireland was opened in 1987 specifically to meet the needs of the community here. Our two main objectives are Unity and Advocacy- bringing Christians together and providing a voice to government, media and the public square.

As an organisation we believe that life in all circumstances is a generous gift from God. We believe in the sanctity of that life from the beginning and that is never to be ended at our convenience. The death of any child before birth is always a particular tragedy. Our members in Northern Ireland care deeply about the life, wellbeing and relationships of those affected by pregnancy crises and abortion.

The Evangelical Alliance broadly welcomes this amendment.

We will firstly outline our position in relation to the proposals in the amendment. We will then raise a few questions about terminology and phrasing.

Why we broadly welcome this amendment.

- **Ending the life of an unborn child is completely different to the provision of everyday health care services**.

Generally we are cautious when it comes to the State restricting personal freedoms and choice. We are also hesitant when the State attempts to reserve certain activities within only their control. However in this case we see

an argument for limiting the provision of abortions to Health and Social Trust property. This is partly for the accountability and regulatory reasons outlined below. The main reason however is that we believe that government has a duty in upholding the sanctity of life. In other parts of the UK, America and world-wide the provision of abortion 'services' on demand under the guise of 'reproductive rights' has led to a growth in the abortion industry. An industry making financial gain from the death of unborn children. Most of these abortions, over 99% in England and Wales are not for reasons that would be legal in Northern Ireland[1]. It is the ultimate consumerisation of humanity – the consumer's right to choose whether another human being lives or dies. Woven into the legal power to provide abortions in Northern Ireland comes the responsibility to protect the life of the mother and unborn child. As our law currently stands, we believe this responsibility is best held by the Health and Social Care Trusts and not those actively campaigning to change the law here for a narrow ideological or financial gain.

- **Lawful terminations outside premises operated by a Health and Social care Trust are hard to track**.

For the past few years the Health Service here has been able to provide figures relating to the number of abortions carried out by them in Northern Ireland. There is currently no mechanism to regulate or compel private providers of abortions to do likewise. This data is important to

1 Abortion Statistics: England and Wales 2013 - Section 2.13 'Abortions are rarely performed under grounds F or G. In the past 10 years, 4 such abortions have been performed, 1 in each of years 2006, 2011, 2012 and 2013.' https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319460/Abortion_Statistics__England_and_Wales_2013.pdf

identify trends and the information, pertaining to such a fundamental issue, is certainly in the public interest.

Allegations have been made that private health care providers are currently practicing unlawful abortions. In 2007 a Marie Stopes programme director admitted at a conference in London to carrying out '...illegal abortions all over the world'[2]. Comments like this do little to foster trust that such private providers will operate inside the law. In fact as the law stands it is impossible to determine if an abortion occurring in a private health care environment has been carried out within or outside the law. In an interview with the Justice Committee, Marie Stopes representatives refuse to state the number of abortions that had been carried out within the Belfast clinic until there was a legal framework that required them to do so[3]. There is currently no mechanism to provide accountability or transparency in Northern Ireland for private health providers which perform abortions. It is assumed that the implementation of this amendment, and making all abortions illegal outside of premises operated by a Health and Social Care Trust, will go some ways to avoiding this issue.

- **The issue of standards of clinical practice outside Health and Social Care Trusts**.

Guidelines have been produced by the Department of Health and Social Care entitled 'The limited circumstance for a lawful termination of pregnancy in Northern Ireland'. Although delayed and still in draft form this guidance document provides a practical steer for health and social care professionals within the Trusts. However these preferred practices do not apply to private health care facilities. We have concerns about the standards of care and accountability of private organisations operating outside of this framework.

There are a number of cases in recent years in other parts of the UK where private abortion procedures have gone wrong. In 2007 a fifteen year old girl died five days after an abortion at a Marie Stopes centre in Leeds. The clinic failed to give the young girl the antibiotics she required in order to combat infection, as a consequence the fifteen year old died of a heart attack[4]. In 2011 a doctor practicing in a Marie Stopes centre in London perforated a woman's uterus and left parts of her baby inside her after conducting an abortion[5]. Again in the Marie Stopes clinic in London a woman died after travelling from the Republic of Ireland to have an abortion. It is reported that she suffered a heart attack caused by extensive internal blood loss[6]. Although all of these cases involve Marie Stopes, the principle applies that guidelines for clinical practice relating to abortion cannot be enforced on any private hospital, clinic or health care provider in Northern Ireland. This amendment will ensure that all facilities that practice lawful terminations within Northern Ireland do so within the limits of the law and best medical practice.

- **We welcome the fact that in circumstances of urgency no fee will apply to the woman**.

It would surely be morally wrong to charge a woman for life-saving emergency care while she is in such a medically vulnerable state. We also wish to highlight the glaring conflict of interest when a private clinic counsels vulnerable women and yet receives revenue from providing the same woman with an abortion.

2 https://www.youtube.com/watch?v=9Cf7Rg8zxds

3 http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/January-2013/Marie-Stopes-International-Compliance-with-Criminal-Law-on-Abortion-in-Northern-Ireland/

4 http://www.dailymail.co.uk/news/article-1165048/Coroner-hits-Marie-Stopes-abortion-clinic-15-year-old-dies-following-termination.html

5 http://www.independent.ie/world-news/europe/doctor-struck-off-as-abortion-nearly-kills-irish-woman-26798027.html

6 http://www.bbc.co.uk/news/world-europe-23401781

Words and Phrasing

- **Clause 11A (1)** ***'End the life of the unborn child at any stage of that child's development'.***

This turn of phrase is not seen anywhere else in UK legislation and while we welcome the intention, we wonder if it could potentially be miss-interpreted? This phrasing appears at first reading to prohibit the distribution of contragestives like IUD's and the morning after pill. Contragestives prevent fertilised eggs, referred to as zygotes, from implantation in the womb lining. This zygote is new life; it is the first stage of a child's development. A zygote has all the characteristics of a unique human organism; given the right environment it can continue its own self-directed growth. We understand that the morning-after-pill is used as an 'emergency contraceptive' but that it also has contragestive properties, taking effect after fertilization occurs in some instances.

We note that in the last debate in the Assembly on this amendment, this phrasing and the morning-after-pill and IUD's were discussed. We welcome that many opponents of the clause readily accepted the premise that the life of the unborn child began at conception. Some were therefore concerned that a person supplying the morning after pill could be prosecuted for ending this life. At that time, Mr Edwin Poots and others stated that no-one could be prosecuted for an offence of ending a life where it could not be proved that a life indeed existed at the point when the morning-after-pill was taken[7].

Applying this logic, does it also need to be proved that a life existed before someone could be prosecuted under clause 3 of the amendment? i.e. Does the PPS have to prove a specific life existed before successfully prosecuting someone who supplies a woman with the abortion pill with the clear intention of ending her pregnancy? Perhaps the PPS or the Attorney General could clarify this point further?

- **Clause 11A (2b)** ***'Circumstance of urgency'***

Is there a clear definition of what is meant by a 'circumstance of urgency'? Would this include a threat to the mental health of the woman? This phrase 'circumstance of urgency' could be used to defend abortions performed outside the Health and Social Care Trust for a spectrum of mental health reasons. There is great ambiguity in what is termed as adverse effect on the woman's mental health. For example, if the amendment passes as it is, could a counsellor operating outside the Health and Social Care Trust decide that a woman's mental health constituted a 'circumstance of urgency' under the law and advise an abortion in a private clinic? We would suggest that this be amended to something like 'circumstance of urgency where the physical life of the woman is at immediate risk.'

- **Clause 11A (3)** ***'If that person does any act, or causes or permits any act'***

Does the amendment seek to include the distribution and/or purchase of abortifacients within Northern Ireland? Many women in Northern Ireland are now buying abortifacients online[8] [9]. This is unlawful both within existing law and within the proposed amendment. We are very concerned about the potential health risk for the women and the unborn child. There is however little or no evidence of these unlawful terminations and it is hard to imagine how this practice could be policed effectively. There are also potentially difficulties with prosecution as outlined above. If we are to protect the unborn child from online abortifacients we need to increase commitment to prevention of crisis pregnancies through relationship and

7 'How could Minister Ford suggest that someone could be prosecuted for giving out the morning-after pill or, indeed, IUDs — to say that there could be some prosecution involved in that, or the law was not clear on it — when there was no evidence of a pregnancy in the first instance? You could not prosecute someone for terminating that pregnancy.' Mr Edwin Poots - http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/12-March-2013/#7

8 http://www.safeabortionwomensright.org/myth-1-ireland-is-abortion-free/

9 http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/January-2013/Marie-Stopes-International-Compliance-with-Criminal-Law-on-Abortion-in-Northern-Ireland/

sex education. We also need to focus on pregnancy crisis care giving woman practical help and positive alternatives like adoption.

Existing problems which need to be addressed

As previously mentioned there is already admittance to illegal abortions within certain private clinics10 and there has already been a refusal to provide evidence of procedures carried out within private healthcare facilities[10]. Bearing this in mind, how will the department provide a legal framework to ensure implementation of the amendment by all private healthcare providers? We would suggest that such an amendment should be coupled more generally with the mandatory requirement to report (with due regard to patient confidentiality) on the types and numbers of medical procedures carried out in private clinics.

We would further suggest that every woman who identifies or presents with a pregnancy crisis within each Trust should be offered a tailor-made care pathway which operates with the law in Northern Ireland. This would help to identify the nature of the crisis and outline the financial, practical, social support which is available. A pathway of perinatal hospice care should be offered where the pregnancy crisis relates to a fatal life-limiting disability in the unborn child.

We make these propositions in line with our efforts to affirm the life and wellbeing of our entire community from the most vulnerable unborn child to the most vulnerable woman in the midst of a pregnancy crisis. This fundamental family relationship between woman and child cannot be reduced to mutually exclusive individual rights.

For further information please contact:

David Smyth

Public Policy Officer
Email: d.smyth@eauk.org
Tel: 028 9073 9079

1st Floor Ravenhill House
105 Ravenhill Road
Belfast BT6 8DR
www.eauk.org/northern-ireland

10 http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/January-2013/Marie-Stopes-International-Compliance-with-Criminal-Law-on-Abortion-in-Northern-Ireland/

Family Education Trust

Submission in response to the Northern Ireland Assembly Justice Committee

Call for Evidence on the Justice Bill and the Proposed Amendments

We write in support of new clause 11A on 'Ending the life of an unborn child' proposed by Jim Wells MLA.

In Northern Ireland abortion is restricted to cases where the mother's life is at risk. Under such rare circumstances, the NHS is perfectly capable of providing the necessary facilities for the operation to take place. There is no need for the involvement of private organisations. If abortions were to be performed in private clinics in Northern Ireland, we fear it could open the door to an undermining of the law and the creation of a profit-making abortion industry.

Since 2012 a private clinic run by Marie Stopes has operated in Belfast. Marie Stopes not only profits from women having abortions, but actively campaigns against Northern Ireland's abortion law. The UK policy and communications director for Marie Stopes, has described Northern Ireland's abortion law as a 'walloping inequality'.[1] An official statement of Marie Stopes UK states:

> *We're proud to join Voice for Choice, Abortion Rights, Abortion Support Network, Alliance for Choice, Antenatal Results and Choices, bpas, Brook, FPA and Reproductive Health Matters in calling for women's health and rights to be prioritised.*[2]

Marie Stopes' mission statement is 'children by choice not by chance' and they have advocated for the liberalisation of abortion laws all over the world. They have also failed to be transparent about the number of abortions they have provided in their Belfast clinic.

Marie Stopes have positioned themselves to be the prime beneficiaries from any private provision of abortion in Northern Ireland. Given the organisation's vigorous campaign in support of liberal abortion laws, it would be thoroughly inappropriate for the Northern Ireland Executive to turn to Marie Stopes for the provision of the limited abortion services that the law in the province allows. For these reasons we strongly support Jim Wells's amendment.

11 September 2014

1 Genevieve Edwards, 'Why abortion is the UK's most controversial postcode lottery', http://www.mariestopes.org.uk/news/comment-why-abortion-uks-most-controversial-postcode-lottery

2 'Marie Stopes United Kingdom sends message of solidarity to women in Ireland', http://www.mariestopes.org.uk/news/marie-stopes-united-kingdom-sends-message-solidarity-women-ireland

Tel: 01784 242340 E: info@familyeducationtrust.org.uk Web: www.familyeducationtrust.org.uk

Free Presbyterian Church of Ulster Government and Morals Committee

Dear Justice Committee Clerk,

We are writing in regard to the proposed amendment to the Criminal Justice Bill by Mr Jim Wells MLA.

In accordance with the teaching of Scripture we believe that life is to be protected at all cost. "Thou shalt not kill" (Exo 20:13) That belief is not to be diminished when the life in question is that of a child, whether it be in the early years of its life outside the womb or during the period of its development inside the womb. This view is contained in the "Infant Life (Preservation) Act 1929" and "Offences against the person Act 1861".

The law at present within Northern Ireland protects the life of the unborn child, with abortion only permitted *"where the continuance of the pregnancy threatens the life of the woman or would adversely affect her physical or mental health in a manner that is 'real and serious' and 'long term or permanent'".*

In the past most of these legal abortions have been carried out by the NHS. In recent years though the Marie Stopes organisation, which is known for performing abortions for a fee, has opened its doors in Northern Ireland. This organisation states "If a woman feels that an abortion is in her or her family's best interests, then she should have access to safe, supportive and non-judgmental advice and help." Rather than abortion being assessed on "risk to life" it is in Marie Stopes view, merely judged on what a woman feels are her best interests.

(http://mariestopes.org.uk/women/abortion/abortion-facts/what-abortion)

This is an unregulated, unaccountable private clinic opened in Northern Ireland with the aim of liberalising abortion legislation in a country which continues to be one of the safest places for pregnant women and their babies.

With this in mind we support Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill and its prohibition of commercial provision of abortion 'services' in Northern Ireland.

Yours faithfully,

Rev Raymond Robinson

(Convenor)
Free Presbyterian Church of Ulster Government and Morals Committee

Housing Executive

Housing Executive

Acting Chief Executive
Mags Lightbody MBA FCIH

2 Adelaide Street
Belfast BT2 8PB

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

12th September 2014

Dear Ms Darrah

Proposed Amendments to the Justice Bill

Thank you for the opportunity to comment on the proposed amendments to the Justice Bill. Of the six proposed amendments only two which relate to the provision of certificates and criminal records in Part 5 of the Bill touch upon matters any way relevant to the statutory functions and activities of the Housing Executive.

While the Housing Executive does not carry out any activities which fall within the meaning of a regulated activity for the purposes of the Safeguarding Vulnerable Groups Order (NI) 2007, as amended by s 78 and Schedule 2 of the Personal Freedoms Act 2012, and is not a registered body in respect of the criminal records checks regime, it maintains an interest in effective protections for vulnerable persons in its capacity as a funder of supporting people funding to service providers providing advice and help to make it easier for vulnerable people to maintain their independence in their home. People can receive support in a hostel or in sheltered housing or other type of supported living or alternatively by way of a support service in their own home. In that role, the Housing Executive requires service providers to seek and maintain appropriate criminal record checks in respect of their employees and monitors compliance.

The Housing Executive supports the amendment to empower Access NI to provide information to the Disclosure and Barring Service to enable determination as to whether a person should be barred from working with vulnerable people. It agrees that this a technical amendment is needed as an additional safeguard for vulnerable persons to be protected from inappropriate persons being able to get to work with such groups of people and welcomes it as such.

Yours sincerely

Mags Lightbody
Acting Chief Executive

Telephone 028 9031 8720 Fax 028 9043 9803
Typetalk no : 18001 03448 920 900 Email: mags.lightbody@nihe.gov.uk

INVESTORS IN PEOPLE

Health and Social Care Board

Health and Social Care Board

Health & Social Care Board
12-22 Linenhall Street
BELFAST BT2 8BS

Tel : 0300 555 0115
Web Site : www.hscboard.hscni.net

Ms Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

15 September 2014

Dear Ms Darrah

Re: Justice Bill 2014: Delegated Powers and Planned Amendments

Thank you for the opportunity to respond to these proposals. In general, the Health and Social Care Board (HSCB) considers most of the proposals to be both necessary and desirable and as such are to be welcomed. Our response addresses each proposal in turn and, where the HSCB cannot fully support an amendment, the reasons for that are set out in some detail.

Part 4: Victims and Witnesses – Sharing Victim and Witness Information

The HSCB is supportive of this amendment and considers it has the potential to be of particular benefit to vulnerable children and adults.

Part 5: Criminal records – Publication of the Code of Practice

The HSCB supports this proposed amendment.

Part 5: Criminal records – Exchange of Information between Access NI and Disclosure and Barring Service for barring purposes

The HSCB supports this amendment and considers that it has the potential to have an immediate and positive impact on the

wellbeing of vulnerable people by the provision of additional safeguards against abuse by those in paid care positions.

Part 5: Criminal records – review of criminal record certificates where convictions or disposals have not been filtered

The HSCB supports this proposal.

Part 8: Miscellaneous – Duty of solicitor to advise client about early guilty pleas

The HSCB supports this proposal and considers it has the potential to have a positive benefit on frail or vulnerable people who might otherwise be unnecessarily subjected to the emotional and mental strain of preparing to testify in a court.

Part 8: Miscellaneous – Defence Access to Premises

The HSCB supports this proposed amendment.

Provision of information to Attorney General for Purposes of Section 14 of the Coroners Act (Northern Ireland) 1959

The HSCB is unable to support this proposal.

Section 14 of the Coroners Act (Northern Ireland) 1959 reads as follows:
"(1) Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person, and that coroner shall proceed to conduct an inquest in accordance with the provisions of this Act (and as if, not being the coroner for the district in which the death occurred, he were such coroner) whether or not he or any other coroner has viewed the body, made any inquiry or investigation, held any inquest into or done any other act in connection with the death.

(2) Subsection (3) applies in relation to the death of a person if the Secretary of State certifies that there is information relevant to the question of whether a direction should be given under this section

in relation to the death which is or includes information the disclosure of which may be against the interests of national security.

(3) The functions of the Attorney General under this section are to be exercised by the Advocate General for Northern Ireland instead."

This section confers a general authority on the Attorney General to direct a Coroner to conduct an Inquest in any case where he has reason to believe that the Deceased died in such circumstances which in his opinion make the holding of an Inquest advisable. The coroner is required to comply with such a direction but a direction from the Attorney cannot enlarge the jurisdiction of the coroner under the 1959 Act. The power may be exercised whether or not the Coroner has taken any action in relation to the holding of an Inquest. There is no equivalent provision in England and Wales although a similar provision exists in the Republic of Ireland. The key phrases of the provision are "reason to believe" and "the circumstances of the death" and the key word is "advisable". In order to exercise his power all that is required is for the Attorney General to have a reason to believe that the circumstances of the death make the holding of an Inquest advisable. The use of these words and phrases seem to import a wide degree of discretion and a low threshold for taking action and the wording certainly does not envisage the Attorney General carrying out a significant investigative role in order to determine whether the holding of an Inquest is advisable.

When this provision was enacted it was envisaged that the discretionary power contained in Section 14 would be used sparingly and only in the most exceptional cases. See Senate Debates (Northern Ireland) vol 43, col 668 (3 November, 1959) (Minister of Home Affairs). It would clearly run contrary to the will and intention of Parliament if this provision was to be interpreted as conferring upon the Attorney General an investigatory function and role usurping and supplanting the function and role of the Coroners Service in Northern Ireland.

If it is accepted that the correct interpretation of Section 14 cannot involve the usurpation or supplanting of the Coroner's role, then Section 14 can only be interpreted so that the role of the Attorney General is akin to a supervisory or reviewing role. If this is correct

then the powers sought by the Attorney General are unnecessary to enable him to properly perform that role. He does not need to be satisfied on the basis of a careful analysis of all relevant documentation that an Inquest should be held. He simply needs to have a reason to believe that the circumstances of the death are such that the holding of an Inquest is advisable.

It would clearly be wrong to interpret this provision as enabling the Attorney General to direct the Coroner to conduct an Inquest in circumstances where the Coroner had not been given an opportunity to consider the issue of whether an Inquest was necessary. The correct interpretation of Section 14 would envisage the Attorney General exercising his discretion where a decision by the Coroner had been made not to hold an Inquest or an Inquest had been held but it was deficient in some material respect or fresh evidence had become available since the conclusion of the Inquest. In this reviewing or supervisory capacity the Attorney General would be able to request all relevant documentation obtained by the Coroner during his or her investigations into the death and could review this documentation. There would be no need or rationale for the enlargement of his powers to include the power to demand the production of documentation from Health Trusts or Health Boards in the context of health care related deaths. The information provided by the family and the information contained in the Coroner's file would in all likelihood be sufficient to enable him to form a reasonable belief in relation to the key issue i.e. whether the circumstances of the death were such as to render it advisable to hold an Inquest. The present system is sufficiently robust in order to ensure that the interests of justice are properly served.

In relation to the specific issue of the Attorney General obtaining access to Serious Adverse Incident Reports (SAIs) it should be remembered that these documents are prepared by investigatory teams in Trusts but then go through a validation process at the Regional Board. The SAI process is fully described in the explanatory documentation enclosed with this submission. During the Coronial investigation of healthcare related deaths such documentation is provided to the Coroner who then decides whether an Inquest should be held. The Attorney General can subsequently obtain this documentation from the Coroner if for some reason he considers that the exercise of the power granted to him in Section 14 may be required.

It is important to remember that the very clear purpose of SAI investigations is to extract learning from adverse incidents. As such, openness in reporting is positively encouraged in return for an assurance about the confidential nature of any such report. The SAI reporting system is expressly intended not to be an investigation to determine fault or blame but rather to try to facilitate learning in order to prevent recurrence. The granting of this statutory investigatory power to the Attorney General where he has expressly stated that he would intend to exercise this power to gain access to SAI documentation in order to assist him in exercising his discretion under Section 14 could well have the detrimental effect of discouraging openness and transparency during the SAI investigative process. For these reasons, it is considered that the amendment to the Legal Aid and Coroners' Courts Bill proposed by the Attorney General is neither necessary nor desirable.

Thank you once again for the opportunity to respond to these proposals. The HSCB would, of course, welcome the opportunity to discuss any aspect of this response further.

Yours sincerely

Valerie Watts
Chief Executive

Include Youth

Include Youth is an independent non-governmental organisation that actively promotes the rights, best interests of and best practice with disadvantaged and vulnerable children and young people.

The young people we work with and for include those from socially disadvantaged areas, those who have had poor educational experiences, those from a care background, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

The Give and Take Scheme aims to improve the employability and increase the self-esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 145 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. Seventy-five per cent of young people on the Scheme are care experienced, while over a third has a background in offending.

Include Youth also delivers an Employability Service on behalf of two of the Health Trusts for young people aged 16 + who have had experience of the care system. This service is designed to offer tangible and concrete opportunities to assist young people leaving care to prepare for, and engage in work.

The organisation also leads on the collaborative initiative START which operates across several sites in Northern Ireland, working with community based organisations to improve education, employment and training outcomes for the most disadvantaged young people.

Include Youth's Young Voices programme is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support marginalised young people at risk or with experience of the criminal justice system, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and in custody.

Include Youth's policy advocacy work is informed by relevant international human rights and children's rights standards, is evidence based, including that provided by young people and practitioners and is based on high quality, critical analysis.

Reflecting the profile of the young people we work with and with our service provision, Include Youth's two main policy priority areas are employability and youth justice. In light of this we have approached this consultation through the lens of those two areas as it were, as that is where both our expertise and interests lie.

Specific Comments

We welcome the opportunity to share a number of issues concerning the Justice Bill with members of the Justice Committee.

We will limit our comments to four specific aspects of the Bill:

- Part 4 Victims and Witness
- Part 5 Criminal Records
- Part 7 Violent Offences Prevention Orders
- Part 8 Aims of the Youth Justice System

Part 4 Victims and Witnesses

We welcome the moves to improve the experiences of victims and witnesses in the criminal justice system and to clearly set out the services that are to be provided and the standard of service that witnesses and victims can expect to receive. Include Youth welcome the development of the Victim Charter as this will be an important vehicle by which victims and witnesses can ensure they are receiving the necessary information and are made fully aware of what support services exist. It will also provide a vehicle through which victims and witnesses can seek advice and support about how to address failings in the system and to ensure their voices are heard when procedures are not followed correctly. Providing a statutory entitlement to make a victim personal statement will allow victims to describe the impact of the offence but we would guard against Victim Impact Statements being used as a means for victims to influence the sentence ordered by the Court.

While we welcome this progressive piece of legislation with regards to the needs of victims and witnesses we are somewhat disappointed about the lack of emphasis on the needs of young people as victims of crime.

As the evidence indicates that children and young people are more likely to be victims of crime than any other group in our society, it is essential that the Department makes every effort to ensure that the needs of children and young people are central to the Victim Charter.

Our work with young people would suggest that there is much work to be done with young people who are victims of crime to make them feel that they are a key stakeholder in the development and outworking of the Victim Charter. Our experience is that the majority of young people we come into contact with do not have faith in the criminal justice system and if they become a victim of crime do not believe that their views will be listened to or respected.

Include Youth has worked in partnership with Victim Support to seek out the views of young people on their experiences of crime and to assess their level of awareness of support services available to them. These focus groups have demonstrated that young people who are victims of crime, are largely unaware of victim's organisations, have serious reservations about reporting a crime and do not have a great deal of faith in a positive outcome if they do report a crime. The following quotes are an example of some of the views of the young people we spoke to in the Juvenile Justice Centre, the Young Offenders Centre and the community.

'That would be the last thing I would do (report to police) ……. If I went to the police and said someone hit me, they'd laugh at me! Cos they don't like me. And I don't like them.'

'No I don't like the police so I wouldn't go to them. Because if you're already a criminal and you say something happened to you they'd laugh at you, tell you to float.'

"Even if the house was robbed I wouldn't tell the peelers."

"I do report it but nothing gets done."

"I have reported stuff before, but it didn't get dealt with – nothing happens."

"Nothing ever happens anyway, it's always the way."

"You just get on with it and deal with it yourself."

This brief overview of the material gathered from a small number of focus groups clearly demonstrates the need to ensure that children and young people benefit from the development of the Victim Charter.

It is imperative that young people who are victims of crime are aware of what standard of service they can expect to receive from the system. Young victims should be made fully aware of their rights and informed and supported through each stage of the process, in a form which is appropriate to their capacity. Furthermore, they should also be informed about what

methods of redress exist if they are not content with the service or standard of information they receive.

The criminal justice system can be complex and overwhelming for all who come in contact with it, but it is especially confusing for children and young people.

We agree with the need to treat victims and witnesses with respect, dignity and sensitivity and this principle is especially relevant when dealing with children and young people.

The principle of equality of access to the justice system is particularly relevant for young people who experience crime. The level of underreporting from young people suggests that this is clearly an issue for young victims, and it is hoped that the Charter will improve accessibility for this group of victims.

Our view is that failing to include this significant representation of young victims and witnesses opinions and experiences would be a significant omission in the development of the Charter and the Charter will potentially be less effective as a result.

We would voice our concern about the current gap in information on the experiences of young victims and the urgent need to prioritise evidence gathering on this. This is especially urgent given that the NI Victims and Witness Survey does not include under 18 year olds. There is a need for detailed research on the nature of crimes committed against children and young people.

Part 5 Criminal Records

Include Youth has a number of concerns regarding the impact of disclosure of criminal records on young people.

We believe that the system of disclosure as it currently stands fails to recognise the damaging impact having a criminal record can have on a young person. It can affect

a young person's ability to secure education, training and employment. Shackling young people with a criminal record for a seemingly unending period of time, and all that that entails, runs counter to the argument that we need to get young people who have been in contact with the criminal justice system into jobs and education, if they are stand a chance of keeping out of the justice system.

Despite the fact that many of the young people we work with who have a criminal record, have not been convicted of a serious offence or have been deemed as being a risk to public safety, they still have to disclose the conviction in a wide range of circumstances.

A criminal record can have an impact on:

- Gaining employment
- Accessing further or higher education opportunities
- Accessing training opportunities
- Accessing volunteering opportunities
- Opening a bank account

This issue has become even more pertinent over the years as legislation has placed more requirements on individuals to disclose their past convictions. The Rehabilitation of Offenders legislation dates from 1978 and 1979. Over the years we have seen the development of complex and ad hoc legislation. The legislation is not well understood by all concerned which has resulted in mistakes and inconsistencies in practice. Access NI procedures can be abused by employers and we are calling for full accountability in Access NI's operation.

There has been a failure to inform young people that diversionary disposals such as cautions, informed warning and diversionary youth conferences will still be disclosed on certain checks, regardless of the length of time that has passed since the disposal was issued.

The new arrangements for 'filtering' criminal records which has been recently introduced means that individuals may be required to disclose involvement in diversionary youth conferences for offences committed when they were less than 18 years old. The filtering period for under 18s receiving a Caution is two years, one year for an Informed Warning and 5.5 years for those convicted with non-custodial sentences. It is concerning that Informed Warnings for under 18s should be disclosed for any period of time and we recommend that such disposals should always be filtered out from record checks.

We believe that special consideration should be given to the disclosure of young people's criminal records for employment purposes and that these should only be released where there is a proven risk of harm.

We support the recommendations made by the Youth Justice Review on this matter.

Recommendation 21 of the Youth Justice review stated that:

- young offenders should be allowed to apply for a clean slate at age 18
- diversionary disposals should not attract a criminal record or be subject to employer disclosure
- for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established.[1]

Recommendation 21 is the only recommendation to not be accepted by the Minister for Justice.

Sunita Mason's recommendations following the review of the criminal records regime differ considerably from those of the Youth Justice Review. Mrs Mason recommended that Access NI should routinely disclose informed warnings, cautions and details of diversionary youth conferences on Standard and Enhanced checks. The Department of Justice has said that they agree with Mrs Mason's view that to protect the public adequately there continues to be a need to retain diversionary information on an individual's criminal record for criminal justice purposes.

Young people already face numerous barriers to employment and we are concerned that young people with convictions and criminal records find it doubly hard to access employment, education and training. Employers and trainers in FE and HE sectors may be reluctant to engage with a young person who has declared a conviction. There can also be lack of awareness on behalf of the employer in understanding the implications or seriousness of the disclosed offence or record.

Non conviction information such as informed warning, cautions and diversionary youth conferences can significantly decrease the chances of a young person gaining employment or accessing training. Therefore we believe that non convictions should be 'spent' immediately and should only be subject to disclosure in limited circumstances.

The Department of Justice Reducing Offending Strategy highlights the importance of securing education, training and employment as a key strand in reducing offending. We agree that sustainable employment is a key factor in reducing reoffending and this is evidenced by the work of our Give and Take Scheme and our commitment to helping young people improve their chances at accessing training, education and securing employment opportunities. It is

1 A Review of the Youth Justice System in Northern Ireland, September 2011, Department of Justice, page 85.

imperative that we do not put more unnecessary barriers in the way of young people who are wanting to turn their lives around and to reintegrate into society. The following quotes from young people indicate the importance of securing employment.[2]

"See if I had a job, I wouldn't do any crime."

"You need support – to get a job and stay off drugs, help to try and get on with your life."

"There should be work out there, businesses, who would take you on and give you a chance."

"In 10 years I will be 26 – I will have a record that will stick with me for the rest of my life."

Part 7 Violent Offences Prevention Orders

Include Youth has been engaged in the discussion on Violent Offences Prevention Orders for some time. Our critique of the intention to apply VOPOs to all people aged 10 and over is well rehearsed. Include Youth do not support the use of VOPOs for children and young people. We raised our initial concerns in August 2013 in a written response to the Department of Justice proposals for legislation.[3] We welcome the Department of Justice's willingness to engage in dialogue with us surrounding our concerns and we have met with officials on several occasions over the past months. However, we believe that the issues we raised have still not been adequately addressed. We therefore welcome the opportunity to inform the members of the Justice Committee of our key concerns regarding the introduction of this legislation.

In July 2011 the Department of Justice issued a consultation outlining proposals for Sexual Offender Notifications and Violent Offender Orders (VOOs). The proposals for VOOs did not make reference to a minimum age but through the clearly stated intention to replicate the legislation in England and Wales (page 41 of consultation document) it was reasonably inferred by consultees that the intention was to apply these orders to adults (over the age of 18) only. Indeed none of the respondents to the consultation raised the age threshold as an issue.

It would seem that following the closure of the consultation, stakeholders within the criminal justice system have stated that they feel there may be children who require a VOPO in exceptional circumstances, akin to the use of the Sexual Offences Prevention Order. This has brought the Department of Justice to the position we have today wherein it is intended that VOPOs should, therefore, be applied to all people aged 10 and older who meet the "criteria". This represents a significant shift in Departmental thinking and we are deeply concerned that this decision has been taken with no explicit consultation with regards to whether and how VOPOs should apply to children.

We note that the VOOs which exist in England and Wales cannot be applied to under 18s. It is therefore even more surprising that the Department of Justice has decided that the order will apply to children and young people under 18 in NI, without appropriate consultation, given the fact that the model in England and Wales formed the basis for the original proposals.

International Standards

Include Youth believe that the introduction of VOPOs to children and young people is in contravention of the fundamental principles of the United Nations Convention on the Rights of the Child (UNCRC) and is not in keeping with a child's rights compliant youth justice system. The UNCRC article of particular relevance to these proposals is Article 40. The provisions contained within article 40 place an obligation on government to ensure that all children in contact with the juvenile justice system are 'treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect

2 Include Youth response to Department of Justice Reducing Offending Strategy, September 2012.

3 Include Youth response to Violent Offences Prevention Orders: Current Department of Justice Proposals for Legislation, August 2013.

for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.

In line with the UNCRC and other relevant international standards[4], reintegration and rehabilitation should be a key aspect of the juvenile justice system. The Youth Justice Review Team also made reference to the need to prioritise rehabilitation and reintegration.[5]

It is therefore disappointing that the current proposals under VOPOs appear to ignore the need to address the rehabilitation and reintegration of children on release from custody. The emphasis of VOPOs appears to be predominantly on the need to restrict the movements of young people and reduce risk. We are not disputing the need to address these issues and are completely in agreement with the need to ensure public safety at all times, but the reintegration and age-specific treatment of the child is the most effective way of achieving this goal.

Evidence to support introduction of VOPOs for children

Include Youth has consistently asked the Department of Justice to provide evidence to support the need for the introduction of VOPOs to children. We still have not been provided with any evidence to suggest that there are children who would meet the criteria for a VOPO. The Department have provided minimal information on their reasoning for having no minimum age threshold for the application of VOPOs. In a document published in February 2014[6] the Department stated:

'Key stakeholders within the criminal justice agencies, particularly PSNI and PBNI, have confirmed that there may be a need in exceptional cases for a VOPO to be used to manage risk from a person under 18.'

The Department has not elaborated on the definition of 'exceptional cases' nor have they given any information as to how a VOPO should be applied to children given that their maturity, needs and capacity are vastly different to adults.

In correspondence with the Head of the Criminal Policy Branch in February 2014[7], the Department noted that:

'based on the most recent data, we would expect that those with eligible offences for a VOPO may be less than 10 a year'.

We would welcome further explanation of this figure and a detailed outline of the data used to reach this figure.

Before any decision is made to extend VOPOs to children, there must be an examination of the data with regards to children convicted of violent offences to ascertain whether any would have benefited from a VOPO and whether such a move would have afforded more protection to the public or potential victims and would have reduced the child's recidivism. As stated above it is recognised internationally and within domestic legislation and practice that children and young people under the age of 18 must treated differently from adults if they are to desist from offending. As such any new provision that applies to implemented following full consideration of the evidence of numbers of young people involved with this sort of violent offending and the most effective ways of ensuring that the others are safe from a repeat of such violence.

4 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).

5 A Review of the Youth Justice System in Northern Ireland, September 2011, recommendation 20, page 85.

6 Department of Justice, February 2014, Violent Offences Prevention Order: Current Proposals for Legislation, para 12, page 4.

7 Letter from Amanda Patterson, Head of Criminal Policy Branch to Koulla Yiasouma, Director of Include Youth, 26 February 2014.

Despite repeated request we have not had sight of any robust evidence to support the extension of VOPOs for children. We are concerned that the Department of Justice are proposing legislation with no published evidence base for its need of likely effectiveness.

Existing Orders

Furthermore, we do not think it is necessary to apply VOPOs to children as there are already a number of custodial orders that can be used for children found guilty of violent offences which have as an integral element, supervision and prohibition of activities on release. A Juvenile Justice Centre Order (JJC Order) entails a child to be detained in custody for a period of time, followed by a period of supervision in the community. A JJC Order can be for a minimum of 6 months and a maximum of 2 years, with half of the time spent in custody and the remaining in the community under the supervision of the PBNI. Breach of supervision is treated extremely seriously and may result in the child being returned to detention.

There are also mechanisms already in place to deal with children convicted of 'serious' or 'specified' offences, which can relate to violent or sexual offences. Children can only be released on supervision on these orders if the court is satisfied that they no longer represent a danger to the public. We would question why it is necessary to replicate these protections by allowing the application of VOPOs to children. It would seem to us that protections already exist under current procedures. We are not convinced that the application of VOPOs to children will give any added value.

Section 75

Include Youth believes that the Department of Justice has not complied with its statutory equality obligations with regard to the current proposals. Section 75 of the Northern Ireland Act 1998 makes explicit the duties placed on public bodies with regards to the promotion of equality of opportunity across 9 groups, of which age (older and younger) is one. The Department of Justice Equality Scheme 2011 – 2015[8] (approved by ECNI, March 2012) specifies that:

> *"All consultations will seek the views of these directly affected by the matter/policy, the Equality Commission, representative groups of S75 categories, other public authorities, voluntary and community groups……."*

It is apparent that in the case of the application of VOPOs to children, the Department of Justice did not conduct a full consultation and as such it has failed to comply with this commitment. The Department appears to have consulted only with some "other public authorities", crucially doing nothing to consult with those "directly affected" or "voluntary and community groups".

Additionally, chapter 6 of the Equality Scheme goes some way to outlining the Department's specific commitment to engaging directly with children and young people, and the Department has signed the Northern Ireland Commissioner for Children and Young People's Participation Policy Statement.[9]

Despite us raising these concerns with the Department we are still waiting to be furnished with evidence that consultations have been conducted with those directly affected and with voluntary and community groups, specifically on the application of VOPOs to children. We would like the Department to provide us with any responses they have had to date from stakeholders which indicate a desire to apply VOPOs to children.

Therefore Include Youth believes that the Department of Justice has clearly breached the commitments that were made in their Equality Scheme.

8 Department of Justice Equality Scheme 2011-2015, para 3.4.

9 Ibid para 6.6.

As part of the equality consultation on the Justice Bill in May 2013, the Department stated that initial screening had indicated that there would be some potential for adverse impact on young males, given the fact they are statistically more likely to commit such offences than any other group in the Northern Ireland offending population. Include Youth took issue with the subsequent decision to not conduct an EQIA, and disagreed with the reasoning given to justify this decision. It was erroneous to decide not to screen the document wholly on the basis that the impact will only be on those young males who offend, rather than young males as a whole. The fact that the policy could potentially impact on young males is reason enough for it to be screened in. In our opinion, this policy should not have been screened out and a full equality impact assessment should have been conducted.

These proposals will undoubtedly impact on children and young people and as a result they must be consulted on the detail of their application.

Part 8 Miscellaneous

Aims of Youth Justice System

In line with our response to the recommendation from the lengthy Youth Justice Review that Section 53 of the Justice (NI) Act 2002 (the aims of the youth justice system) should be amended to fully reflect the best interest principles as espoused in Article 3 of the UN Convention[10] we welcome this clause which compels all those working in the youth justice system to take account of the best interests of the child with whom they are working as a primary consideration. We believe that the introduction of this clause will help to ensure children and young people involved with offending do not offend further.

Conclusions

Include Youth is pleased to have the opportunity to provide the members of the Justice Committee with this written evidence and are happy to provide any further information as required. We believe that this Bill will begin to address some of the legislative challenges within the system but we caution against any provision which has no evidence base.

10 A Review of the Youth Justice System in Northern Ireland, September 2011, recommendation 28, page 118.

Information Commissioner's Office

Information Commissioner's Office

Upholding information rights

3rd Floor, 14 Cromac Place, Belfast, BT7 2JB
Tel. 0303 123 1114
www.ico.org.uk

Ms Christine Darrah
The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

15 September 2014

Dear Ms Darrah

ICO Response - Justice Bill

The Information Commissioner's Office (ICO) is pleased to respond to the consultation on the draft Justice Bill for Northern Ireland. The ICO is the UK's independent public authority set up to uphold information rights. We do this by promoting good practice, ruling on concerns, providing information to individuals and organisations and taking appropriate action where the law is broken. The ICO enforces and oversees the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004, the Data Protection Act 1998 (the DPA) and the Privacy and Electronic Communication Regulations 2003.

The main focus of interest for the ICO in the draft Bill is compliance with the DPA and our response will concentrate on the aspects and areas we feel are relevant in relation to this area. We have previously responded to certain amendments which are proposed under the Justice Bill, which we outlined in the Department of Justice's Consultation 'Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime: A Five Year Strategy'. In addition we have also responded to a consultation on the proposal from the Attorney General for Northern Ireland for a potential amendment to the Coroner's Act (Northern Ireland) 1959, specifically to allow him to obtain papers relevant relevant to exercising his existing power to direct an inquest where he considers it advisable to do so.

We have some overall points to make with regard to the further amendments proposed for inclusion in the Bill, particularly with regard to sharing of witness and victim information and in relation to criminal records. Sharing information in the aspects highlighted in the draft Bill is likely to involve the 'processing' of both personal data and sensitive personal data. The sharing of personal data must meet certain conditions, which are stricter in relation to sensitive personal data. If we consider the circumstances here, the proposals provided in this draft Bill would mean that these conditions would be met. If consent can be obtained, or in the case of sensitive personal data, explicit consent, then the conditions may exist for sharing or disclosing of information. This could apply to the sharing of witness and victim statements and criminal convictions for example, therefore ensuring the conditions would exist within the draft Bill to allow this to take place in limited circumstances.

In our previous correspondence with the Department with regard to the 'Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime: A Five Year Strategy', we highlighted the importance of obtaining further information with regard to the proposed Victim and Witness Care Unit. We are pleased to note in the draft Victim Charter, additional information with regard to this Unit and in section 67, p.27 the requirement for consent in relation to any referral of a victim or a witness to other appropriate support services.

Section 28 of the draft Bill, relating to victims and witnesses makes a clear basis for allowing a statutory provision to be put in place for a Victim Charter. The ICO welcomes this overall proposal and are pleased that one of the overall principles in this Charter relates to providing victims with relevant information, clearly setting out what they can expect as they move through the criminal justice system. We strongly feel that this principle with regard to providing information at the development aspect of this Charter should follow a 'privacy by design' approach from the outset, particularly with regard to the processing and sharing of personal data as well as requiring appropriate safeguards to be in place with regards to the security of the information.

In addition with relation to this Charter, we believe there is an opportunity through this statutory provision to clarify information with regard to privacy, what 'consent' is, how it can or needs to be given and under which circumstances, under the DPA, why consent may not be required in relation to the disclosure or sharing of sensitive personal data. We feel that this information is of crucial importance to ensure the protection of privacy for the victim or witness, as well as providing clarity as to what may or may not happen with this information. Through this proposed statutory function, and building on what exists currently, it is important for victims and witnesses to understand what they may be consenting to, how their privacy will be respected and under what circumstances, aspects such as the common law duty of confidentiality may fall under the requirements of the DPA. We also note that the consultation on the draft Victim Charter is also currently live and we will highlight these aspects in our response to this consultation in this regard also.

Therefore we strongly feel that victim and witness statements should only be shared where it is absolutely necessary to do so. Any agency or organisation within the criminal justice sector who 'needs' such information must be able to justify that need. This extends to all stages of the criminal justice process. Such justification is required in order to minimise the risk of information being shared or held excessively which may lead to a breach of the third data protection principle with regard to ensuring that personal data must be adequate, relevant and not excessive. We would consider the condition most likely to be appropriate in order to facilitate the sharing of any victim personal statement (beyond the purpose they are used at present) will be explicit consent. As highlighted above, inherent in this condition will be the need for the individual to understand what is happening to their information, agree to the sharing and they should signify that agreement, to qualify their 'explicit' consent.

We would further like to take the opportunity with regard to personal and sensitive personal data to highlight the importance of security aspects relating to records management of this type of information. The requirements of the DPA, in relation to security are clear. Appropriate safeguards must be put in place with adequate processes for how and under what circumstances lawful and fair sharing can and should take place. Given the sensitive nature of the type of sensitive personal data that may be contained in a victim personal statement this will require careful consideration. We note in section 35 (20) the provision for the Department to make a copy of any victim statement, and would advise that due regard is given in light of this and other relevant activity. We would welcome further clarification on this, particularly with regard to how long the statement will be kept, the security considerations about the information and the need for appropriate retention and disposal schedules to be in place.

The amendments include a proposal likely to lead to the insertion of a single new clause into the Bill, setting out that certain information will be shared between specific organisations for the purpose of informing victims and witnesses about available services. We note at present, an 'opt in' is required in order for this to be effective and the statistics on the take up of this current provision. We would remind the Department in this regard the importance of ensuring that fair notice

is given in relation to this activity, which again needs to meet the requirements of the DPA in relation to how and why the conditions can and will be present for this provision to take

effect. We would also highlight the issues we have addressed with regard to the sharing of sensitive personal data, such as in the case of a victim personal statement.

We note the amendments to the draft Bill with regard to (Part 4), the 'Exchange of Information between Access NI and Disclosure and Barring Service for barring purposes' (Part 5) and the 'Review of criminal records certificates where convictions or disposals have not been filtered' (Part 5). As highlighted in our earlier comments the issues relating to conditions for processing as well as the requirements to ensure that personal and sensitive personal data must be kept secure are all issues for consideration with regard to these parts of the Bill. As a general point, we support the proposal to publish a statutory Code of Practice with relation to Criminal Records. In addition, we welcome the proposal with regard to ensuring there is a statutory basis to allow Access NI to share information with the Disclosure and Barring Service. Whereas we note the intention of the statutory basis in this regard we would stress the importance of compliance of the DPA principles in these circumstances, particularly with regard to the fair and lawful processing of the sensitive personal data, in this case and also in light of the security measures that must be in place.

With regard to the review of criminal record certificates where convictions or disposals have not been filtered we would stress again the importance of the DPA compliance required in these circumstances with regard to the fair and lawful processing of personal data. The DPA requires that personal data must not be kept for longer than is necessary, we therefore welcome the introduction of filtering with regard to criminal records in this light. It is important that this takes into consideration retention and disposal schemes of organisations to ensure this sensitive personal data is processed fairly and lawfully. We note that following the introduction of the filtering scheme in April of this year, the provision on behalf of the Attorney General and the Minister with regard to the introduction of a review process to determine the provision for potential discretion on behalf of individuals. We would welcome further information on this in due course. In addition further information on the new guidance proposed with regard to accuracy of criminal record certificates will also be welcome. We would highlight principle 4 of the DPA in this light which includes the requirement that personal data must be kept accurate and point out the potential issues with regard to again fair and lawful processing of sensitive personal data in these situations. We look forward to responding and reviewing further information in future consultations as highlighted in these matters.

In conclusion we hope that the issues we have raised are useful and we look forward to engaging with the Department in the future on many of the matters we have highlighted in our response

Yours sincerely

Dr Ken Macdonald

Assistant Commissioner for Scotland & Northern Ireland

Knock Presbyterian Church

I understand that the consultation on the proposed Justice Bill is currently open for public consultation.

I further understand that there is an amendment proposed by Mr Jim Wells MLA in relation to the restriction of abortion provision to NHS premises, except in cases of urgency (and where this is does not involve a fee).

I realise that this is a subject of great delicacy and touches on many emotions, however I support the amendment of Mr Wells as providing the best protection for society from any potential misuse of abortion provision.

Yours sincerely

David Moore

–

Rev David Moore
Knock Presbyterian Church
53 Kings Road
Belfast BT5 6JH

http://www.knockpresbyterian.co.uk/

Law Society

The Law Society of Northern Ireland

Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,600 solicitors working in some 570 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

September 2014

Executive Summary

- Importance of a through cost-benefit analysis of processes and procedures within the Justice system in delivering real efficiencies;
- Supportive of development of a single jurisdiction in County Court and Magistrates Courts but the Bill must ensure access to justice is a prime consideration alongside efficiency;
- Courts' process must serve the interests of victims, witnesses and defendants rather than the ease of administrators;
- Caution about dismissing the worth of oral evidence at committals- rules on vulnerable witnesses could be reformed whilst preserving this process as a filter to weed out cases which should not proceed to trial;
- Prosecutorial fines as with other discretionary disposals, have a place within the justice system but their use must be appropriately confined and monitored;
- The Society is broadly supportive of case management duties, but these must serve the interests of justice as their primary aim, with expeditious proceedings subordinate to that. This will appropriately target the duty if these considerations apply consistently in the Bill;
- Solicitors already advise clients of the appropriateness of early guilty pleas as part of their professional obligations. The Society states that any statutory duty to provide advice on the discount scheme for early guilty pleas should rest with the PPS in the first instance;
- The solicitor then would have to comply with a duty to explain the effect of this to their client. This preserves the independence of the defence in the mind of their clients;

- The Society considers the role of the Lay Magistrate as a measured restraint on the prosecutorial power of the state and we do not favour vesting the power to issue summons solely in the hands of the PPS;
- The Society considers that important checks and balances should be placed on prosecutorial powers within the justice system and this will be served by the amendments suggested within this response;

Introductory Remarks

1.1 The Society welcomes the Committee's invitation to make comments in respect of the draft Justice Bill. The Committee will be aware that it is the Society's view that a fair and efficient justice system is secured by an evidence-based approach to policy which looks at the system as a whole. We are aware of the significant work undertaken by the Committee in respect of vulnerable witnesses within the justice system and are supportive of these efforts. We will comment on a number of provisions within this Bill, with suggestions in terms of amendments which we feel would help improve the Bill and the system as a whole.

Part 1: Single Jurisdiction for County Courts and Magistrates Courts Business

2.1 The Society does not disagree in principle with the move to establish a single jurisdiction for County Courts and Magistrates Courts in Part 1 of the Draft Bill. In addition, the Society reposes confidence in the Lord Chief Justice (LCJ) to ensure the fair and efficient operation of the courts system in Northern Ireland. The LCJ is ideally placed to represent the views of the Bench and other stakeholders within the Justice system.

3.1 It will be important to ensure that a robust set of guidelines is introduced to ensure that the assignment of business takes into account the needs of witnesses, victims and defendants in terms of ensuring a fair process. For example, although flexibility is welcome, it is important that access to justice is promoted through avoiding unnecessarily long journeys for participants in the court process where possible.

4.1 The Society is of the view that the Department should set out the balance between ensuring adequate provision of court divisions to preserve access to justice and developing flexible and efficient boundaries on the face of the Bill. This test could be comfortably included within a revised clause 2 of the Bill. In addition, the Society takes the view that the Bill should include scope for a re-appraisal and re-drawing of the administrative boundaries in light of practical experience against this test.

5.1 Such amendments would ensure that the LCJ will be able to assign court business within a framework which is both adequate and flexible, with provision for feedback mechanisms if the established arrangements are not functioning as intended. The Society is aware of the background of court closures and consolidation and we think that such a test would concentrate minds on balancing fairness and efficiency as a central focus of 'faster, fairer' justice.

Part 2: Abolition of Oral Evidence at Committal Proceedings

6.1 The Society notes that the Department has proceeded with the proposal to abolish the provision for oral evidence at preliminary investigations and mixed committals. Under Sections 7 and 8 of the Bill, all committal proceedings are to proceed on the papers only.

7.1 There are two broad justifications supplied by the Department for this change. The first is that the impact on vulnerable witnesses of examination at committal proceedings is disproportionate to the usefulness of those proceedings. Secondly, it is suggested that speeding up the movement to a full hearing removes a layer of bureaucracy and will produce a more efficient system of criminal justice.

8.1 The Society understands the concern expressed by the Department and the Justice Committee in respect of vulnerable witnesses. We note however that special rules already

exist to ensure that vulnerable witnesses are not unduly subjected to the stress of having to give evidence. For example, there are existing provisions to ensure that in cases involving alleged sexual offences, no cross-examination takes place at the PE stage. We feel that these court rules could be revisited and developed whilst retaining the benefits of oral evidence in committal proceedings.

9.1 Secondly, we do not support the assertion that committal proceedings necessarily slow down the process of justice. Such proceedings offer an opportunity for both the defence and the prosecution to assess the credibility of witnesses.

10.1 An early determination of the strength of a case can produce earlier guilty pleas and the withdrawal of charges where there is insufficient evidence to proceed on one or more counts. The earlier in the process such determinations can be arrived at, the higher the cost savings in the longer term by avoiding a lengthier trial.

11.1 The Society accordingly believes that the current clauses are flawed and that the Bill should have focused on a duty to balance the needs of vulnerable witnesses with the requirement to ensure efficient committals. It should not be assumed that simply removing a step in the process of justice will necessarily lead to cost savings.

12.1 A thorough cost-benefit examination is required to arrive at that judgment and this supports the view of the Society that a fundamental review of the justice system is required to identify how to maximise efficiency and access to justice. Such an approach would avoid short-term policymaking, taking a longer-term view and prioritising an evidence base.

Part 3: Prosecutorial Fines

13.1 The Society does not object in principle to the appropriate use of discretionary disposals as a means of expediting the process of justice for less serious offences. We note that clause 17 of the Bill makes provision for the use of prosecutorial fines in summary or either way offences. Similarly, clause 17 (2) of the Bill provides that a prosecutorial fine may attach where a number of summary offences have been committed as part of the same circumstances.

14.1 The Society does however consider that strong accountability mechanisms should be put in place to ensure that these penalties are not used excessively or inappropriately. These are quasi-judicial powers being vested in the PPS and it is important to stress that our justice system works on the basis of a number of checks and balances placed on the prosecutorial power of the State.

15.1 In addition, there needs to be an awareness of equality issues arising under Section 75 of the Northern Ireland Act 1998. Given that these penalties do not attach to an offender's record, access to them should be fair and equal to avoid injustice. There may be some issues for example in relation to sections of the community building relationships with the criminal justice system and care should be taken to ensure that no inequalities arise from the issue of prosecutorial fines.

16.1 The Society takes the view that these issues can be resolved through published guidelines regulating the use of prosecutorial fines along with a commitment to review their uptake across the system. It would be preferable if the Bill required a review mechanism and identified criteria which could be used to assess the use of these disposals. Examples of relevant factors include the history of the offender, the impact on victims and possibility of diversionary approaches.

17.1 Recent evidence has suggested that there has been an inappropriate use of discretionary disposals in dealing with offences at a level of seriousness beyond their intended remit. Accordingly, it is important that the perception is not created that these disposals will be used as a means of producing more favourable statistics. Such a perception would damage the confidence of victims of crime in the justice system, a key focus of this Bill. This is an

example of a set of circumstances in which a "just outcome" may require greater time and resources to achieve.

18.1 This risk of inappropriate use is increased in circumstances of multiple offences and the PPS should develop a transparent and tiered approach to the application of prosecutorial fines and other discretionary disposals. The fact that such offences subject to these disposals are not disclosed through standard criminal record checks renders the need to guarantee their appropriate use more important.

19.1 The Society is concerned that there is no limitation on the face of the Bill to the number of prosecutorial fines that may be issued to a single offender. The over-use of prosecutorial fines for repeat offenders may undermine their credibility as a tool in the armoury of the PPS. Although the legislation leaves much to the discretion of the PPS, some clear guidelines need to be forthcoming to confine the use of prosecutorial fines to appropriate circumstances.

20.1 For example, although the Bill provides for enhanced fines for those defaulting on payment, it does not specify any limitation on receipt of prosecutorial fines for those with outstanding arrears. It is important that these disposals retain credibility and deterrence. This is an area which could be looked at either through amending the Bill or in terms of guidelines following implementation.

Part 8: Duty of Solicitor to Advise Client about Early Guilty Plea (Clauses 77-78)

21.1 The Society notes that the original draft of clause 78 of the Draft Bill required the Society to make Regulations concerning the provision of advice about the effect of early guilty pleas on sentencing. This follows the preceding section requiring a court to advise of the discount in sentence that would have been available had a client entered a guilty plea at an earlier stage of proceedings.

22.1 The Society notes the decision of the Department to withdraw clause 78 (3) requiring the Society to make regulations to give effect to this duty. We agree with the observations made by the Attorney General that such a burden would be unnecessary in light of the existing clause setting a clear duty and penalty for non-compliance.

23.1 We would begin by stating that solicitors are under a professional obligation to provide their clients with the best possible legal advice in line with their circumstances. This duty encompasses advising the client of the benefits of early guilty pleas in cases where the strength of the prosecution evidence suggests little prospect of a successful defence.

24.1 The ability to provide appropriate advice in this context is connected to adequate disclosure by the PPS and can vary in line with different cases. The role of the defence solicitor is to represent clients fairly and impartially and to safeguard the presumption of innocence in the justice system by testing the evidence of the prosecution. As a result, the core area of reform which will produce appropriate guilty pleas at an earlier stage is to ensure greater front-loading of evidence in criminal cases.

25.1 It is notable that in Scotland the procedural reforms to the system of encouraging appropriate early guilty pleas focused on disclosure from the prosecution service. It was accepted in that context that defence solicitors require this information to make a decision over whether it is appropriate to advise a client to enter a guilty plea.

26.1 Accordingly, the Society does not believe that creating a mandatory duty to advise of the impact of early guilty pleas will increase their frequency, as solicitors already provide this advice at appropriate stages. On the contrary, this clause has the potential to impact on the solicitor-client relationship for little return in terms of efficiencies.

27.1 For example, we have strong reservations about creating a perception that defence solicitors are acting as agents for the prosecution. The perception that pressure is being applied to clients by defence solicitors to plead guilty irrespective of the circumstances should

be avoided. This is because vulnerable clients who may be innocent could plead guilty, particularly in cases with lesser penalties. Blurring these boundaries does not serve the interests of a fair and efficient justice system.

28.1 In order to avoid this perception and to maintain the spirit of our adversarial justice system with independent pillars, the Society recommends that the Bill is amended to place a duty on the PPS to notify the client of the discount scheme for earlier guilty pleas as part of their duties in relation to summonses and charging procedures and disclosure. This ensures that solicitors advise in depth about this when it is appropriate for their clients and will discuss the contents of the PPS letter with their clients. This allows solicitors to put this information into context for their clients and will increase the confidence of defendants in the fairness and transparency of the criminal justice system.

29.1 Crucially, no change to the penalty for non-compliance by defence solicitors would be required by this change so it does not disrupt the intent of the legislation. The Society considers it will be extremely rare for this penalty to be used in any case.

Part 8: Case Management Provisions (Clauses 79-80)

30.1 The Society is not opposed in principle to statutory case management provisions. The profession agrees that an efficient justice system will seek to eradicate unnecessary causes of delay and that it is the duty of practitioners, the PPS and the Department to address these issues.

31.1 There are two broad aspects to a properly functioning justice system. The first is the delivery of robust and fair justice and the second is reasonable promptness of proceedings. The first of these takes precedence as the interests of justice varies with different circumstances. Whilst justice and swiftness of disposal often work in harmony, in some instances justice requires prolonged proceedings. Accordingly, the drafting of any case management duties is of crucial importance. A strong but flexible duty must be implemented to serve the purposes of the Bill.

32.1 The Society notes that the Bill introduces a broad power to make Regulations in this area and Clause 79 grants the Department the right to impose a general duty on appropriate persons to reach a "just outcome" as swiftly as possible. The phrase "just outcome" recognises that a duty to expedite proceedings should not be at the expense of the interests of justice. The Society prefers the term "serve the interests of justice" as this recognises that participants in the justice system should apply their minds to this at each stage of the process, rather than unduly focusing on arriving at any particular outcome.

33.1 However, the Society believes that the Bill should identify the interests of justice as the paramount consideration. Accordingly, any Regulations made under this provision should prioritise the interests of justice above swiftness of disposal. The duty to ensure efficient disposal should then follow as a secondary duty to achieve justice in the individual case. Such an approach does not impair the duty to manage cases efficiently whilst remembering the fundamental principle that the interests of justice must be served.

34.1 Clause 80 of the Draft Bill confers a regulation-making power on the Department covering the management and conduct of proceedings within the Crown Court and Magistrates' Courts. We believe that the Bill should be amended to include the phrase "serve the interests of justice" as we recommend for clause 79. Failing that, the term "just outcome" should at least be included in both clauses for clarity and consistency of purpose.

35.1 This will ensure that any Regulations are interpreted as dependent on their contribution to serving the interest of justice. As stated, the swift progression of proceedings often produces a just outcome, but there will be circumstances in which flexibility is required for the judiciary to do justice in particular cases. Legislation and Regulations which reflect this position will allow the stakeholders within the system to deliver on the duties imposed.

36.1 The Society believes that the regulation-making powers on case management should require an explicit duty to consult with the judiciary and the profession, who will be charged with implementing any changes. The Society believes that these key stakeholders should be included as more than merely as general consultees. Including such a duty in the Bill would encourage a collaborative approach to case management informed by practical experience and ensure a wide range of voices within the justice system are heard.

37.1 In addition, the Society notes that clause 87 of the Bill provides for Regulations made under the Bill's powers other than in the area of notifications to be subject to the negative resolution procedure. The Society believes that the Assembly should scrutinise and vote on these Regulations, given their importance to the administration of justice. Therefore, the Society suggests that clause 87 (1) of the Bill should be amended to make regulations made under clauses 79-80 subject to the affirmative resolution procedure.

Part 8: Public Prosecutor's Summons (Clause 81)

38.1 The Society remains of the view we expressed during the consultation process that the issuing of summonses is most appropriately carried out as a judicial function. The role of the Lay Magistrate is to act as a measured restraint on the prosecutorial power of the PPS and a safeguard against arbitrariness in decision-making.

39.1 Under the current procedure, the Lay Magistrate determines at the point of application whether sufficient grounds exist for the granting of a summons. The removal of this function was not originally envisaged by the CJINI Report on Avoidable Delay. Moreover, the Court of Appeal in Northern Ireland has stated that the determination of whether summonses should be issued is a judicial function which cannot be delegated.[1]

40.1 The Society notes the Delay Action Team at the Criminal Justice Board conceded that the input of Lay Magistrates did not add a significant amount of time to the process. As a result, an important safeguard may be removed from the prosecutorial process without any significant improvement in case handling times.

41.1 The Society is concerned about the concentration of powers given to the PPS without adequate checks and balances built in to the system. The approach appears to be to increase the discretion of prosecutors without recognising the role of safeguards in protecting the system against charges of arbitrary decision-making. An efficient justice system is one which is robust against challenge. Furthermore, the Society is of the view that lay involvement in the judicial system provides an important link between the justice system and the wider community.

42.1 The Society supports the removal of this clause and a review of the causes of delay from the PPS prior to applications for summonses. The CJINI Report identified issues concerning the compilation and release of files between the PSNI and the PPS as a key factor of delay. Although we appreciate the PPS is an independent body, the Department should take a global view of the causes of delay in partnership with other organisations. As with summons reform, the assumption appears to be that stripping out a layer of process necessarily increases efficiency, without harming the interests of justice. It is the failure to take an overall, long-term approach which produces this assumption.

43.1 The Society has reservations about section 81(4) of the Draft Bill which provides that a Public Prosecutor may re-issue summonses which they determine have not been served. Given that time limits applied to the PPS are an important aspect of ensuring a disciplined and efficient system of prosecution, it is concerning that power for extension of these limits will reside with the PPS under the Bill.

44.1 The Society considers that the separation of prosecutorial and judicial functions maintains a system of checks and balances to ensure that each limb of the justice process operates fairly

1 DPP v Long, Long and Johnston (2008) NICA 15, para 17.

and accountably. This reform has the potential to create new anomalies. For example, it is not clear from the Bill how Form 1 applications to waive time limits applying to the prosecution will be processed. The removal of the Magistrate appears to leave this solely as a decision for the PPS giving rise to a potential conflict of interest. The Department should clarify how this is to be resolved in the event of the Bill proceeding in its current form. The Society would be supportive of and would consider any amendments which may remedy these defects.

Concluding Remarks

45.1 The Society has outlined for the Committee our views on some of the key provisions within the Justice Bill. In particular, we have covered issues concerning the appropriate balance between prosecutorial and judicial functions, the independence of the legal profession and the need to take a global view of achieving efficiencies within the justice system. We have endeavoured to provide a constructive response which will help inform the Committee's scrutiny of the legislation.

Life Northern Ireland

Life Northern Ireland fully support the proposed amendment from Jim Wells MLA to restrict lawful abortions to National Health Service (NHS) premises, except in urgent cases when NHS services are not available and where no fee is paid.

In 2012/13 only 51 abortions were provided under the current NI laws on abortion, which make it permissible to perform an abortion in order to save the life of the mother. There is no evidence to suggest our National Health Service is unable, or has been unable, to provide sufficient care in these difficult pregnancy situations, which suggests there is not any justification for the introduction of private abortion providers in Northern Ireland.

As it stands, Marie Stopes is the only private abortion provider in Northern Ireland and since its opening the clinic has not made it clear if any abortions were provided in that time and equally if abortions have been carried out, it is impossible to determine if they were lawful. This lack of information, coupled with Marie Stopes' international reputation, makes its presence in Northern Ireland concerning.

It is our belief that the NHS provide sufficient services to women whose lives are put at serious risk by their pregnancy and that the Justice Committee should continue to put their trust in a service which is regulated; a service that the people of Northern Ireland can place their trust in.

Newbridge Church

Parish of Newbridge – *Newbridge & Ballymaguigan*

Parochial House
153 Aughrim Road
Toomebridge
Antrim
BT41 3SH

Email : newbridgechurch@googlemail.com
Tel: 028 79468277

8 Sept 2014.

Dear Sir/Madam,

I wish to support the amendment to the Criminal Justice Bill proposed by Mr Jim Wells MLA. I think the law should give protection to the life of the unborn child. I also think that private facilities such as the Marie Stopes centre should not be allowed to carry out abortion practices in Northern Ireland.

Yours faithfully

John Fox (Rev)

Newtownards Reformed Presbyterian Church

Newtownards Reformed Presbyterian Church

Website: www.newtownards.rpc.org
SermonAudio: www.newtownsardsrpc@sermonaudio.com

Re Consultation on the Criminal Justice Bill:
Ending the Life of an Unborn Child

I am writing on behalf of the session and congregation of Newtownards Reformed Presbyterian Church regarding Marie Stopes International (MSI), one of the biggest abortion providers in the world, which, in October 2012, opened a facility in Belfast.

All children deserve to be born, we therefore support the amendment proposed by Jim Wells MLA to protect Northern Ireland's unborn children from abortion businesses like Marie Stopes International.

Scripture is quite clear about God's view of the foetus (Psalm 139:3–16, Psalm 51:7, Jeremiah 1:4–5 and Isaiah 49:1, 5) - he affords them human status. If every unborn child is an individual human being, then abortion is not merely a matter of maternal choice. Another human being is affected; the child's rights to life are being violated. Every human being possesses that basic right. God in his Word emphasises, not the exercising of our own rights, but rather the defending of the rights of others. We have a responsibility first and foremost to love God and then our neighbour. In the light of the above argument on the status of the unborn child, surely he/she is one of those neighbours.

We are therefore taking the time to write to you as your valued citizens to ask you to defend the laws which protect our unborn children. We would urge you to support all measures available to prevent MSI from performing any abortions at its Belfast facility. It is a threat to both women and unborn children and should be closed down.

All children deserve to be born.

Kind regards,

Robt McCalla

NI Legal Services Commission

lsc
NORTHERN IRELAND
Legal Services
Commission

2nd Floor Waterfront Plaza
8 Laganbank Road
Mays Meadow
Belfast
BT1 3BN

Tel: 028 9040 8805

Office of the Chairman and Chief Executive

Email: accesstojustice@nilsc.org.uk

By e-mail only to: justice.bill@niassembly.gov.

Our Reference CEO/14/229

Date 1 August 2014

Dear Ms Darragh

Re: Justice Bill

I refer to your letter dated 8 July 2014.

On behalf of the Commission I would confirm we have no contrary views to the proposed amendments to the Justice Bill.

The Commission welcomes the introduction of Section 78, Duty of solicitor to advise about client about early guilty pleas, as this could serve to reduce the volume of contested cases coming before the courts and will monitor if the introduction of this section results in a saving for the Legal Aid Fund.

I would like to take this opportunity to thank you for inviting the Commission to formally respond to the proposed amendments.

Yours sincerely

N Smylie

Noleen Smylie
Secretary to the Board

NI Policing Board

Peter Gilleece
Director of Policy

Date: 10 October 2014

Mr Paul Givan MLA
Chair of the Justice Committee
Room 242
Parliament Buildings
Stormont
BT4 3ZZ

Dear Paul

JUSTICE BILL

Please find enclosed the Performance Committee's response to the Justice Committee's consultation on the Justice Bill. I hope that the comments will assist your Committee in its deliberations and I would be grateful if you would keep the Performance Committee informed as to progress.

Yours sincerely

PETER GILLEECE
Director of Policy

cc: Ms Christine Darrah
Clerk to the Committee for Justice

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Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

PERFORMANCE COMMITTEE RESPONSE TO THE JUSTICE BILL

PART OF BILL	OVERVIEW	PERFORMANCE COMMITTEE RESPONSE
1. Single Jurisdiction for County Courts and Magistrates' Courts	Part 1 of the Bill creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. This will allow greater flexibility in the distribution of court business by enabling cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so.	No specific comments.
2. Committal Proceedings	Part 2 of the Bill reforms the committal process to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries. DOJ has said that during consultation, this was identified by victims' groups as a key area for change to avoid victims having to undergo the ordeal of giving evidence twice. Part 2 will also speed up the process by providing for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences.	No specific comments.

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Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

3. Prosecutorial Fines	Part 3 of the Bill creates new powers to enable public prosecutors to offer lower level adult offenders a financial penalty, up to a maximum of £200, as an alternative to prosecution of the case at court. Prosecutors will also be able to attach a financial compensation order to the fine in cases of criminal damage only. Prosecutorial fines are not applicable where the offender was below the age of 18 at the time of the offence.	Clause 17 sets out a list of information that prosecutors must include in a notice of offer for a prosecutorial fine. It requires the notice to indicate that if the offer is accepted, the alleged offender will be discharged from liability to be prosecuted for the offence. **You may wish to consider adding to clause 17 and making it a requirement that the notice recommends that the offender seeks independent legal advice before accepting the offer.** By admitting to the offence out of court, the offender might avoid receiving a 'criminal conviction' per se, but presumably the fact they have admitted the offence means it could still be used against them as evidence of previous history should they go on to reoffend. It could also potentially be disclosed through an enhanced criminal record check. **Furthermore, the notice and the offer document itself should both clearly set out the consequences of failing to pay the fine once it has been accepted.** In giving evidence to the Justice Committee in June 2014, DOJ officials advised that the fines will be used "for low-level summary offences by non-habitual offenders who admit responsibility in cases that would currently go to court and, most likely, result in a fine in any event." However **the Bill does not appear to limit use of the fines to first time or non-**

249840

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
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policingboard @nipolicingboard

		habitual offenders. Presumably this is to allow prosecutors a degree of discretion as to the appropriate cases in which the fines could be offered, but it would be of concern to the Committee if repeat offenders were continually being offered a fine so **some degree of assurance as to how DOJ intends to safeguard against this would be welcome.** **<u>General comment on this part</u>** While developments in the youth sector (e.g. the introduction of Youth Engagement Clinics) are aimed at making out of court disposals more restorative and targeted at reducing re-offending, the same approach does not appear to be being taken in respect of adult offenders. Although prosecutorial fines for adults will assist with reducing delay in the criminal justice system, they do not appear to require prosecutors to consider the causes of offending behaviour or to make referrals to appropriate support services. This could potentially be a missed opportunity and **the Justice Committee may wish to consider whether there is scope to make the fines more restorative in nature.** Even if the view is reached that prosecutorial fines do not provide the correct vehicle for offering a restorative alternative to prosecution, it is an issue that the Justice Committee may wish to discuss during its deliberations on the Justice Bill. The Board has held discussions with relevant agencies (including DOJ) in relation to the Hull triage

249840

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
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policingboard @nipolicingboard

		model, which although developed initially for young offenders, was extended to include female adult offenders with reported positive results as regards reoffending rates.
4. Victim Charter and Witness Charter	Part 4 of the Bill places a duty on the DOJ to issue both a Victim Charter and a Witness Charter setting out the services, standards of services and treatment of victims and witnesses by specified criminal justice agencies. It requires criminal justice agencies to have regard to the Charter in carrying out their functions. A "victim" is defined as being an individual who is a victim of criminal conduct (provided they are not under investigation for, or have not been charged with, an offence arising from the criminal conduct concerned). It is immaterial that no person has been charged with or convicted of an offence in respect of the conduct. If (whether as a result of the criminal conduct concerned or not) (a) the physical or mental state of a victim is such that it is unreasonable to expect the victim to act on his or her own behalf, or (b) a victim has died, references in the Bill to the victim are to be read as references to a member of the family of the victim. If a criminal justice agency fails to comply with the Victim or Witness Charter, the failure does not of itself make the agency liable to criminal or civil	The Committee welcomes the introduction of Victim and Witness Charters. Part 4 of the Bill simply requires the DOJ to 'issue' the Victim and Witness Charters. While the Justice Bill would be too high level a document to specify the communication strategy for ensuring that the existence and contents of the Charter are made known to, and can be understood by, Victims and Witnesses, **the Bill and/or the Charter itself could perhaps include a clause requiring the relevant criminal justice agencies (or at least the Court Service) to visibly display a copy of each Charter at their publically accessible offices and on their websites.** By way of example, the PACE Codes of Practice contain a requirement that the Code is readily available for consultation by police officers, police staff, detained persons and members of the public. When the Victim Charter is put in place will it be applicable to all persons (or their families if applicable) who have ever been a victim of criminal conduct, regardless of when that criminal conduct

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Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
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policingboard @nipolicingboard

	proceedings. But the Charter is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the Charter in determining a question in the proceedings.	occurred? Or will it only apply to victims of criminal conduct occurring from the date the Charter is put in place? Clause 29, which defines a 'victim' for the purposes of the Victim Charter, could make this explicitly clear.
4. Victim Personal Statements	Part 4 also gives victims a statutory entitlement to be afforded the opportunity to make a written 'victim personal statement' which sets out the way in which, and degree to which, the offence or alleged offence has affected and continues to affect, the victim. A family member can make the statement if the victim is deceased or is unable to give a statement due to their physical or mental state. If the victim is under the age of 18, a parent can make the statement in addition to the young person. DOJ will be empowered to make Regulations which set out the manner in which the statement will be used and taken into account by the court when it is determining a sentence for the offence in question.	The introduction of victim personal statements on a statutory footing is welcomed by the Committee and provides the opportunity to consider the types of cases in which the statements could be better utilised than they perhaps have been to date. For example, hate crime cases. The disconnect between the number of hate crimes recorded by the police and the number of enhanced sentences passed by the court under the Criminal Justice (No.2) (Northern Ireland) Order 2004 is in part attributable to the fact that the police record hate crime using a perception based test, whereas an enhanced sentence can only be passed if the hate motivation of the crime has been proved beyond all reasonable doubt. **If victims of hate crime are able to express through their personal statements the impact that the perceived hate element of the offence has had upon them, and the court takes this into account when passing a sentence, it would mean that the victim might be left with a better sense that**

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
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Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

		justice has been served, even if the evidential burden of the 2004 Order cannot be overcome. For this to occur, victims would need support and assistance with preparing the statement and judges would need to explicitly state when passing the sentence that they have taken account of the impact on the victim of the perceived hate motivation.
4. Sharing Victim and Witness Information **(DOJ amendment)**	DOJ proposes to add a clause setting out that certain information would be shared between specified organisations for the purpose of informing victims and witnesses about available services (i.e. Victim Support Services; Witness Services at Court; and access to information release schemes).	The Committee would need to see the text of the proposed amendment in order to be able to comment or express a view upon it. For example, it is not clear from the letter provided by the DOJ the stage at which victims could 'opt-out' from their information being shared. It is not clear what the 'certain information' is and who the 'specified organisations' will be. However, **the Committee is broadly supportive of steps being taken to ensure that victims and witnesses are equipped with relevant information in order to make an informed decision about the services on offer to them.**
5. Criminal Records	Part 5 modernises arrangements for the disclosure of criminal records and allows for (amongst other things): • Portable disclosures - currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate is required as the information on it is only valid when issued. Updating arrangements will allow an	The Performance Committee recently discussed the disclosure of criminal records with ACC Mark Hamilton, in particular the impact on young people's employability following disclosure of criminal records and other police information relating to low-level offending. The Committee is aware that the Justice Minister has rejected the recommendation in the Youth Justice Review whereby out of court

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
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policingboard @nipolicingboard

	individual to use their certificate for a variety of positions (i.e. to make it portable), and an online facility will be available to enable employers to establish whether the information on the existing certificate remains valid and up to date or whether a new certificate should be requested. • Additional safeguards for enhanced criminal record certificates, e.g: ○ When police information is sought as part of an enhanced disclosure application, the application must be sent to the 'relevant chief officer' (currently it is just the 'relevant police service' that the application must be sent to); ○ The chief officer determining whether information should be included in the certificate must "reasonably believe the information to be relevant" (currently they must just be satisfied that the information "might be relevant"); ○ Chief officers must have regard to a statutory Code of Practice; and ○ A person may apply to the Independent Monitor to determine whether information provided by the police is relevant or ought to	diversionary disposals would not be subject to employer disclosure and that he instead opted for the recommendations made by Sunita Mason and recently introduced new filtering arrangements.[1] This means that diversionary disposals will continue to be disclosed to employers on standard and enhanced Access NI checks, albeit for a limited period of time in most cases. Furthermore any information held on police systems can potentially be disclosed as 'police information' as part of an enhanced check. Such police information might include conviction information (even if filtered), pending proceedings, unsuccessful prosecutions, intelligence, diversionary disposals (even if filtered), discretionary disposals and any other information that may have a bearing on a vulnerable group. Given that the new filtering arrangements do not apply to the disclosure of police information on an enhanced certificate, the police are instead required to exercise professional judgement when determining what information to disclose. That judgement should be exercised within clearly defined parameters. **Although the Justice Bill does propose to tighten**

[1] Filtering came into effect in April 2014 and means that some minor convictions will no longer be automatically disclosed on standard and enhanced Access NI chec after a certain period of time has passed (for young people, the time period is 5 ½ years). Out of court diversionary disposals for certain offences will also be filter after a certain period of time has passed (for young people, the time period is 1 year for informed warnings and 2 years for cautions and diversionary you conferences). However even if information has been filtered, a record of it will remain on police systems and thus it may still be disclosed as 'police information' in t 'other' section of an enhanced certificate.

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

	be included on an enhanced certificate. DOJ proposes making 3 amendments to Part 5: (1) An amendment to make it clear that the DOJ *must* publish a Code of Practice to which chief officers must have regard. (2) An amendment to empower Access NI to share information with the Disclosure and Barring Service (DBS) to enable the DBS to determine whether a person should be barred from working with vulnerable people. (3) A filtering scheme came into operation in April 2014 whereby certain old and minor convictions and other disposals (e.g. cautions) are filtered out of Standard and Enhanced certificates. DOJ proposes to add a clause to the Justice Bill which will introduce a review mechanism for criminal record certificates where convictions or disposals have not been filtered and which will require DOJ to introduce guidance setting out how it will operate. DOJ intends to carry out a targeted consultation with key stakeholder on the draft guidance.	**up the relevancy test contained within the Police Act 1997, additional wording could perhaps be inserted into the 1997 Act to expressly require that any disclosure must be in pursuit of a legitimate aim (as set out in Article 8(2) ECHR), necessary and proportionate.[2]** The Committee supports the introduction of a Code of Practice for police officers and asks that the DOJ consults with PSNI and the Board when developing this Code. Guidance on the new filtering rules and the review mechanism would also be welcomed by the Committee. The Committee would be grateful if the DOJ would include the Board in the targeted consultation it intends to carry out with key stakeholder on the draft guidance. **There would appear to be a lack of public knowledge as to the extent of information that might be disclosed during a criminal record check, in particular the disclosure of non-conviction information, therefore it would be important that the guidance is publically accessible and easily understood by a lay reader. It would be fair to assume that most**

[2] Although it would seem that ACC Mark Hamilton (PSNI's authorising officer for enhanced disclosure checks) already applies such a test before releasing informatio any successors to this role might not apply as rigorous an approach. While such requirements could be built in to a Code of Practice, why not take the opportunity enshrine them in primary legislation? (for an example of primary legislation which expressly incorporates requirements of necessity and proportionality, see RIPA)

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Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
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policingboard @nipolicingboard

		members of the public do not routinely browse the DOJ's website, therefore targeted publicity of the guidance, for example aimed at the legal profession, community/youth workers etc. should also be considered.
6. Live Links in Criminal Proceedings	Part 6 expands provision for the use of live video link ('live link') facilities in courts. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses.	No specific comments.
7. Violent Offences Prevention Orders	Part 7 of the Bill creates a new tool – the Violent Offences Prevention Order (VOPO) - to assist relevant criminal justice agencies in the management of risk from violent offending. A VOPO can contain such prohibitions or requirements as the court making the order considers necessary in order to protect the public (or any particular member of the public) from the risk of serious violent harm caused by the offender. Persons subject to a VOPO will also be subject to notification requirements and must advise the police of any changes to their personal information, home address etc. A VOPO can last for between 2 and 5 years and can be renewed or discharged by the court. VOPOs can be issued by the court upon conviction for a specified offence, or it can	**The Committee supports the introduction of VOPOs, particularly as they may aide the police in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes.** The Committee hopes that this would allow the PSNI to be more pro-active in situations where the victim is too fearful to apply to court for Non-Molestation Orders as it would not necessitate the victim's cooperation.

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

	be issued by the court upon an application by the Chief Constable in respect of a qualifying person who has, since being convicted of a specified offence, acted in such a way as to give the Chief reasonable cause to believe that it is necessary for an order to be made. The police may search a person's home for the purpose of risk assessment provided specified requirements are met and provided the court has issued a warrant to enable them to do so. The making/refusal/renewal of a VOPO can be appealed through the court system. Failure to comply with a VOPO or notification requirements is an offence. Note that in developing these proposals, DOJ has worked closely with PSNI and the Probation Board as they will be the agencies primarily responsible for delivery of the new orders. Both organisations have expressed a strong desire for VOPOs to be introduced to Northern Ireland as soon as possible. They have pointed to a gap in the provision for applying the public protection arrangements in an effective way to violent offenders, as compared with sex offenders which is due to the availability of Sexual Offences Prevention Orders (SOPOs), which is considered to be a valuable tool in the risk management of sex offenders.	
8. Jury Service	Clause 72 abolishes the upper the age limit for jury service, making everyone over 18 qualified for jury	No specific comments.

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

	service (at present it is only persons aged 18 – 70 who are eligible). Persons over the age of 70 have an automatic right to be excused should they wish.	
8. Early Guilty Pleas	Two statutory provisions are introduced to encourage the use of earlier guilty pleas in Northern Ireland. The provisions will provide legislative support to a (non-legislative) scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and the Crown Court. The provisions will: (i) require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity and; (ii) place a duty on a defence solicitor to advise a client about the benefits of an early guilty plea.	No specific comments.
8. Avoiding Delay	The Justice Bill will enable the DOJ to make Regulations for statutory case management (i.e. the Regulations will impose duties on the prosecution, defence and the court, which set out what must be completed prior to the commencement of court stages). DOJ will also be empowered to make Regulations which impose a general duty to reach a just outcome as swiftly as possible on anyone exercising a function in relation to criminal proceedings.	The Committee broadly welcomes the steps being taken to reduce delay and better manage cases in the criminal justice system given the effect delay can have on the efficiency and effectiveness of the PSNI. The Committee would however require sight of the DOJ Regulations before being in a position to endorse these.
8. Public Prosecutor's	Prosecutors will be empowered to issue a summons to an accused person without first having to get a lay	No specific comments.

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8525 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

Summons	magistrate to sign the summons.	
8. Defence Access to Premises	Courts will be given a power, in criminal proceedings, to order access to specified premises for the defendant. The Justice Bill as originally drafted directs that an order will only be made where appropriate, and "where it is required in connection with the preparation of the defendant's defence or appeal." DOJ proposes amending this so that the court could grant an order allowing access to premises where it is "necessary to ensure the fair trial rights of the defendant."	No specific comments.
8. Court Security Officers	Court Security Officer's powers to search, exclude, remove or restrain an individual is extended to include the grounds on which the court buildings sit.	No specific comments.
8. Youth Justice	Section 53(3) of the Justice (NI) Act 2002 will be amended to include a requirement that all persons and bodies exercising functions in relation to the youth justice system have the best interests of children as a primary consideration.	The Committee supports the incorporation of the UNCRC best interests principle into the 2002 Act. With regard to the criminal justice system generally, is there scope to introduce a similar principle whereby the best interests of vulnerable groups, e.g. older people, will be a primary consideration?
Proposed Amendment by Mr Jim Wells MLA	Mr Wells has proposed an amendment to restrict lawful abortions to NHS premises except in cases of urgency when access to NHS premises is not possible and where no fee is paid.	No specific comments.

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Proposed Amendment to the Coroners Act (NI) 1959	The proposed amendment would confer upon the Attorney General a power to obtain information. This proposed power, and a corresponding duty to provide information, would be specifically limited to persons who have provided health or social care to a deceased person.	The Performance Committee has already corresponded with the Justice Committee in relation to the Attorney General's proposal and has sought reassurance that should consideration be given to extending his proposal beyond the scope of deaths that occur in a health and social care setting, that the Performance Committee is notified in order that it can consider the policing implications.

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Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
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Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
policingboard @nipolicingboard

NIACRO

12th September 2014

Dear Christine,

Thank you for the opportunity to respond to the Committee Stage of the Justice Bill. NIACRO is a voluntary organisation, working for more than 40 years to reduce crime and its impact on people and communities. NIACRO provides services for and works with children and young people, with adults in the community, and with people in prison and their families, whilst working to influence others and apply all of our resources effectively.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others.

We welcome the opportunity to provide comments on the proposals and are keen to engage further if that would be helpful.

If you require any further information, please do not hesitate to contact me.

We look forward to receiving the final document.

Yours sincerely

Olwen Lyner
Chief Executive

Justice Bill – Comments on Part, 3, 4, 5 and 8

Introduction

- NIACRO welcomes the opportunity to respond to the Committee Stage of the Justice Bill.
- NIACRO is a voluntary organisation working for more than 40 years to reduce crime and its impact on people and communities. We provide services for children and young people, people in prison and their families, and adults in the community. The services we deliver inform our policy position and provide us with the insight needed to provide meaningful comment on policy and legislation.
- We have previously provided responses to many of the consultations which have formed the basis of the proposals in this legislation including: the NIO Alternatives to Prosecution Discussion Paper; the DOJ consultation on the Victims and Witnesses Strategy; Part 1 and Part 2 of Sunita Mason's Review of the Criminal Records Regime in Northern Ireland; the DOJ consultation on Managing Criminal Cases; the DOJ consultation on the Reform of the Committal Proceedings; and the DOJ consultation on Encouraging Earlier Guilty Pleas.
- In developing our response to the draft Justice Bill, we have engaged with Victim Support Northern Ireland. Many of the points made in this response are supported by Victim Support, and we would be happy to provide joint oral evidence with the organisation – particularly on Parts 4 and 8. This is indicative of both NIACRO and Victim Support's commitment to justice, truth and connectivity, as well as partnership working in the voluntary and community sector.
- We have provided comments in this paper on **Parts 3, 4, 5 and 8**, which are informed by our work with people in, affected by or at risk of entering the Criminal Justice System.

Part 3 Prosecutorial Fines – Clauses 17 - 26

- Part 3 of the Bill creates new powers to enable public prosecutors to offer people who have committed lower level offences a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court.

General Comments

- We welcome proposals to divert people from the courts process which can have a detrimental financial and emotional impact.
- However, we believe that many of the people who currently receive fines for minor offences or for civil matters should, as an alternative, be offered appropriate intervention on a voluntary basis at an early stage and be diverted out of the Criminal Justice System altogether. Using financial penalties in lieu of prosecution will mean that people who don't have the financial capability to pay will be discriminated against and will be more likely to end up with a criminal record.
- Our position in relation to defaulting on the payment of fines, imposed for minor offences or for civil matters, is that it should not result in imprisonment. It is estimated that a four day committal to prison costs £3,000 per person and this doesn't include the financial cost to families and children. We have examples of people being imprisoned for not paying penalties as little as £5 and £10. The cost of sending people to prison for such minimal amounts is grossly disproportionate to the cost of the original fine, to the detriment of the person imprisoned, their family and the Criminal Justice System. We recognise that the practice of automatically imprisoning fine defaulters is currently on pause, however we recommend this policy is clarified and formalised.
- Under these proposals, failure to pay a Prosecutorial Fine is likely to lead to enforcement and the possibility of imprisonment for a matter which the Public Prosecution Service initially regarded as a low level summary matter. NIACRO therefore is concerned that this could regress recent progress in fine default.

Using Prosecutorial Fines

- It is proposed that Prosecutorial Fines will be used for low level summary offences. However, no definition has been given in the legislation by what is meant by a 'low level summary offence'. **We recommend that a low level summary offence is clearly defined in the secondary guidance and reviewed regularly to an agreed timescale**.

Fine default

- We welcome that the recovery of Prosecutorial Fines will use existing court fine recovery mechanisms. We welcomed the proposals[1] to establish a Fine Collection and Enforcement Service in the DOJ's consultation on Fine Collection and Enforcement in Northern Ireland. The new Service should carry out a financial assessment so that the individual's responsibilities in respect of his/her self and his/her dependents are taken into consideration before a fine is given.
- In this consultation, we also welcomed the proposals to establish a civilian based approach to fine collection instead of a police arrest warrant approach. We believe that it would be appropriate for the Fine Collection Service to become involved as a first step where a fine has been imposed, offering the opportunity to complete a Supervised Activity Order (SAO) to those for whom payment of a fine is unrealistic. The service could use positive measures such as extending the time available to pay; making arrangements to

1 NIACRO (2014) Consultation response to the DOJ Consultation on Fine Collection and Enforcement in Northern Ireland http://www.niacro.co.uk/filestore/documents/current_issues/web_response1.pdf

pay by instalments; and issuing reminders when a fine is overdue, which have already been shown to be useful in reducing default.

- We understand, for many people, under the present arrangements, it just doesn't make sense to pay. For example, for those individuals who have been in and out of prison in the past, their choice is between either paying a fine out of a limited income, or going into prison for a relatively short period of time. Going into prison may well be the 'lesser of two evils' or the easiest choice to make. For others who are still appearing before the courts on other matters and there is perhaps a likelihood of imprisonment in the near future, it might make sense to them to have the fine warrant lodged at the same time so that the required period of time can be served concurrently with their sentence.
- **Based on this, we recommend that**:
  - any legislative proposals to improve the system need to recognise the choices individuals will make depending on their particular circumstances; and
  - any improvements to the system must also make sense to and appeal to, the individuals concerned.

Alternatives to financial penalties

- Conscious of the impact that a criminal conviction can have on access to a range of services and employment opportunities, it is important that society does not impose penalties which can have far reaching negative consequences and which could be regarded as disproportionate to the seriousness of the original offence.
- In our response to the DOJ Consultation on Fine Collection and Enforcement in Northern Ireland[2], we recommended that for those individuals who are unable to pay a fine in the first place, they should be offered the opportunity to complete a Supervised Activity Order as a direct alternative to paying the fine. It should not be an alternative to going into custody for non-payment of a fine. We recommended that an SAO should be offered as an direct alternative for payment of fines up to £500 given that 86% of fines imposed are for less than £500 and 90% of people defaulting on fines do so for amounts less than £500.
- We know from experience that the reasons why people offend are complex and varied. Fines continue to be the most popular disposals used by courts, and for the majority of people appearing there for the first time, paying a fine will be a salutary lesson and they are unlikely to re-offend. However, imposing repeat fines is clearly not addressing the offending behaviour and **we recommend that the courts should be able to direct people to complete an appropriate SAO as an alternative to a payment of a fine**.
- We welcome efforts by the courts to establish clarity about a person's financial circumstances before imposing a fine. If a person has been shown to have had a history of defaulting in respect of fines, then the Court could consider allowing a Supervised Activity Order (SAO) to be completed instead of going into prison. However, the person with such a history is likely to view going to prison as the option which makes most sense to them. It is therefore not surprising that the pilot SAO scheme experienced a significant number of people breaching the order. Furthermore, it stated in the DOJ consultation on Fine Collection and Enforcement in Northern Ireland that "those participating agreed that the SAO had a deterrent effect and if the same situation arose in the future they would pay the fine". This comment appears to suggest that completing the SAO would effectively deter a person from defaulting on their fine in future.
- **We recommend that an SAO (which will be established in statute in the forthcoming Fines and Enforcement Bill) should be purposeful and relevant**. It should be related to the original offence, proportionate, and contribute towards desistance from offending. For

2 NIACRO (2014) Consultation response to the DOJ Consultation on Fine Collection and Enforcement in Northern Ireland http://www.niacro.co.uk/filestore/documents/current_issues/web_response1.pdf

example, if an individual is experiencing difficulty managing money, they could be directed to participate in a Managing Money Matters accredited programme, such as that delivered regularly by NIACRO. **We recommend that if a person has been fined for an alcohol related offence, which is common, they could be directed to complete an Alcohol Awareness programme**.

Right to seek legal advice

- It must be noted that the person who is alleged to have committed an offence has the right to due process and justice. They can choose not to accept the Prosecutorial Fine notice and go to court and challenge it. NIACRO believes that anyone in contact with the Criminal Justice System has the right to seek legal advice before accepting a disposal.

Avoiding criminal record?

- Prosecutorial Fines aim to divert people out of the Criminal Justice System like diversionary disposals. However, such disposals, even though they aren't convictions, can be disclosed in an Enhanced Check if deemed relevant by the police.
- On page 18 pt 77 of the Explanatory Memorandum, it states that a person will avoid a formal criminal record if the Prosecutorial Fine is accepted and paid; however, the justice system will retain a record of such disposals to inform decision on any future offending by the recipients of Prosecutorial Fines. **We recommend that clarification is given about how long this information will be disclosable for and under what circumstances**. Information such as this (non conviction) can be disclosed in an Enhanced Disclosure Check for certain convictions. If the aim of a Prosecutorial Fine is to divert people from entering the Criminal Justice System and getting a criminal record, retaining this information would constitute that they have some sort of record (informal).
- For certain convictions, there are rehabilitation periods after which they become spent and aren't disclosable anymore. **We recommend that clarification is needed about whether Prosecutorial Fines will be subject to the new filtering arrangements**.
- We believe that there should be a duty on the solicitors and the legal profession to make the defendant aware of the potential impact that accepting a Prosecutorial Fine could have. For example, it could show up on an Enhanced Disclosure Certificate. By making their client aware, the client can make an informed decision about what course of action to take.
- People also need to be made aware that if they default on the fine, it will become a court ordered fine, which is a conviction and is disclosable under the Rehabilitation of Offenders legislation.
- We comment on non-conviction information in Part 5 of this response. Non - conviction information can result in barriers to an individual's employment. We know from our experience of working with those seeking training and employment that education or placement providers may choose to cancel offers of enrolment on a course or of employment on the basis of non-conviction information. Employers and training providers do not understand how to interpret, or make any distinction between, conviction and non-conviction information, resulting in people being excluded from opportunities, unfairly judged and criminalised.
- NIACRO has repeatedly called for non-conviction information to be stepped down immediately and not disclosed unless there is a proven risk of harm. This should apply to adults as well as young people.
- In our comments on Clause 39 (Part 5, pg 12) of the Justice Bill, NIACRO states that the current system in relation to disclosure of conviction information is inconsistent and open to interpretation, because the PSNI uses its discretion to disclose information

that "might be relevant", which is not always necessary or proportionate. **We would therefore recommend a more robust system that allows information to be disclosed in a consistent manner with clearer guidelines in place for the PSNI, as currently the wrongful disclosure of this kind of conviction has a negative impact on the employment opportunities of people**.

- **We recommend that the PPS publishes guidance for individuals who have been offered a Prosecutorial Fine**. The guidance must be published and subject to full public consultation before this part of the Bill is enacted. It should outline: the Prosecutorial Fine process; what a low level summary offence is; in what scenarios the Fine will be offered; outline the obligation of the prosecutor to explain what the Fine is; the long terms impacts it could have; the alternatives available to not paying the Fine; what the record on the Fine will be used for; and who can access the record. **We also recommend that the guidance clarifies how or whether the record of the Prosecutorial Fine could be accessed by the PSNI** or AccessNI; as stately previously, where non conviction information has been wrongfully disclosed, it can lead to people being denied access to education, training, employment and other services.

Part 4 Victims and Witnesses

The Victim Charter

- NIACRO understands that the Justice Bill will place the Victim Charter currently being developed by the Department of Justice (DOJ) on a statutory footing. We support the Charter being included in the Justice Bill, and in general agree with the principles outlined and the approach of the Charter. We have provided more detailed comments on the content of the Charter in our response to the DOJ consultation on the Draft Victim Charter (September 2014). **Key recommendations made in our response include**:
  - The Charter should recognise the specific circumstances of victims who are family members of the defendant (see case study 1, Appendix 1).
  - It should also be expanded to recognise the indirect victims of crime, which includes the families of the defendant who also need the guidance and support provided in the Charter when they come into contact with the Criminal Justice System. These families are victims of the Criminal Justice System and of the sentence, especially when there is a custodial sentence. There must be a clear emphasis on the concept of 'innocent until proven guilty' and the 'silent sentence' handed to the families of defendants (see case study 4, Appendix 1).
  - The Charter (or the information contained in it) must be accessible and clearly communicated. This should include the use of visual aids such as diagrams, plain and understandable language, audio descriptions, and copies in different languages. Victims should also have the opportunity to have it explained to them face-to-face.

Meaning of Victim

- The draft Bill describes a victim as "an individual who is a victim of criminal conduct". We agree with the definition of victim given, in relation to the Victim Charter, but advise that "an individual who is a victim of criminal conduct" can reasonably also include indirect victims and victims of the Criminal Justice System, namely the family of the defendant. **We therefore recommend that the meaning of victim is expanded to include all those impacted by the offence, the System's processes and the sentence, and that the Charter relates to all those affected by the Criminal Justice System**.

The Witness Charter

- The Witness Charter should recognise the specific circumstances and vulnerabilities of witnesses who are family members of the defendant.

Effect of Non Compliance

- **We recommend that stringent measures are put in place** to ensure that criminal justice agencies take their responsibility to comply with each Charter seriously, to ensure the best interests of victims and witnesses are protected.

Victim Personal Statements

- NIACRO recognises the merit of Victim Personal Statements and acknowledges that they can be cathartic for the victim, as well as insightful for the judge. We also see the potential for the Statement to be incorporated into a restorative justice approach; for example, **we recommend that the Statement is shared with PBNI if appropriate**, particularly if it has been taken into account in sentencing, to promote effective resettlement and understanding, thereby helping to reduce the risk of reoffending.
- **We recommend that clarity is provided about how the Statement can and should be used by judges**. This is important in relation to managing the expectations of victims and in making the process clearer to both the victim and defendant.
- We welcome that victims have the opportunity to provide a statement "supplementary to, or in amplification of" their original Statement. **We recommend that victims are also given the option to withdraw their Statement before a certain point in proceedings, in recognition of the heightened emotions often present in the aftermath of an offence**.
- The vulnerability of victims in the immediate period after a crime must be acknowledged and their best interests protected. **It is for this reason that we recommend the DOJ introduces clear guidelines and regulations as to who can access the Statement**. While arguably the victim can share the content of their Statement with whoever they choose, the actual Statement must remain within the Criminal Justice System and shared with only a finite and specified group of people or organisations – including, for example, PBNI. It should not be published online. We are concerned that victims may regret granting permission for the publishing of their own statement more widely in the longer term and that the easy accessibility of their Personal Statement by the media and general public may make it more difficult for them to move on from the offence; similarly, it may negate resettlement efforts when the person who offended completes their sentence. The current system, where the victim can request or allow for their Statement to be shared with anyone, has the potential to allow for the exploitation of the victim's vulnerability at that time.
- As outlined above, **we recommend that the Justice Bill acknowledges the families of people who offend or who are accused of offending are indirect victims of crime and of the System**. As with Victim Statements, **we recommend that there is a statutory right for children of defendants to also be given the opportunity to submit personal impact statements, to be taken into account in sentencing**. This is recommended in the Quaker United Nations Office report 'Collateral Convicts: Children of Incarcerated Parents' (2012). Alternatively, there is scope for this to be included in the pre-sentencing report. It is estimated that 1,500 children in Northern Ireland are affected by parental imprisonment at any moment. Every year, there are more children with a parent in prison than the number of children on the Child Protection Register or the number of children affected by parental divorce. However, we are concerned that there is no statutory responsibility for these children. Evidence shows that when a parent goes to prison, their child is three times more likely to suffer mental health problems than other children and is susceptible to bullying, isolation and stigma. These children also typically have poorer educational outcomes and are unfortunately more likely to develop offending behaviour. We are concerned that the impact of custodial sentencing on children and the wider family is often underestimated by the judiciary and that by giving the child the opportunity to submit – with the help of an agreed representative – a personal statement, alongside the Victim Personal Statement, the judge will have a better insight into what disposal is the most appropriate and effective for all parties concerned.

Part 5 Criminal Records

Introduction

- NIACRO accepts that when people break the law, it is right that they are held to account for their offending behaviour through the justice system. It is for the justice system to decide the appropriate severity of any given person's sentence, and we in NIACRO believe that these decisions should always be proportionate, with custodial sentences reserved for those most serious offences. What the justice system seems to fail to consider at present are the long term effects of a criminal record on a person's ability to gain employment, access further or higher education or training opportunities, volunteer, or obtain insurance or a bank account. Not only are these long term effects manifestly unfair, but they are also counter-productive as they prevent people from securing the basic support they need to reduce their risks of becoming involved in anti-social or offending behaviour, such as stable accommodation and employment, and they disempower people from reducing their dependence on welfare support. In other words, they run completely contrary to the desistance approach to reducing offending.
- As highlighted in the Northern Ireland Strategic Framework for Reducing Offending[3], access to education, training and employment is a key factor in reducing the risk of offending and reoffending. Research shows that employment can reduce re-offending by between one third and a half[4]. We believe that barriers (attitudinal, structural and legislative) to accessing education, training and employment need to be minimised to ensure that people with convictions can be supported to effectively resettle back into their community and desist from offending.

General comments

- We welcome the intent of the proposals, which aim to streamline the arrangements for criminal records disclosure, put in place a number of additional protections regarding what information can be disclosed, and clarify the age limit for young people subject to criminal records checks. However, we believe that there needs to be a balance between the need to protect the public and ensuring effective resettlement. Whilst any process of criminal records checking must have the protection of society's most vulnerable at its core, we are concerned that in recent years the respect for the rights of those with criminal records has disproportionately declined.
- As stated in our previous responses to Sunita Mason's Part 1 and Part 2 Reviews of the Criminal Records Regime in Northern Ireland, we are concerned that no measures have been put in place to gauge the extent to which the new provisions have achieved their purpose of providing increased protection in Northern Ireland. There is further evidence that the introduction of AccessNI has led to a practice of unnecessary/inappropriate "weeding" (using legislation to discriminate when that was not its intention).
- In general terms, we would question whether the criminal record vetting regime protects the most vulnerable in society, and indeed whether rehabilitation legislation does enable rehabilitation. Since the introduction of vetting, evidence suggests that employers can arbitrarily use criminal record information to deny people access to opportunities without penalty. This often malevolent use of criminal record information should be addressed by Government as a matter of urgency and explicit statements made that the inappropriate use of such information will lead to sanctions on those organisations who unfairly discriminate.

3 DOJ (2013) Strategic Framework for Reducing Offending http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety/reducing-offending/doj-strategic-framework.pdf

4 Home Office (2002), Breaking the Circle: a report on the review of the Rehabilitation of Offenders Act. London: Home Office.

Clause 36 Restriction on information provided to certain persons

- In our response to Sunita Mason's Review of the Criminal Records Regime Part 1 in April 2011, we welcomed the exploration of portability in providing updates about conviction information. The current system places unnecessary administrative and financial burdens on both employers and AccessNI.
- We agree with the concept of portability on the basis there is a clear mechanism for employers to use. Portability could potentially allow any employer to request copies of Standard or Enhanced AccessNI Checks. **We recommend that the new arrangements are closely monitored to ensure discrimination does not increase**.
- To avoid disputes and inaccurate information being forwarded directly to employers, we agree that individuals should be given the opportunity to have sight of the information in the first instance to enable them verify its accuracy or otherwise.
- The portability of disclosures should be sector specific i.e. within the context of either the children's or vulnerable adults sector. Where an individual moves between sectors, a new Enhanced Disclosure should be requested.
- **We recommend that clarification is needed on how AccessNI intends to regulate and monitor the usage of portability** to ensure that organisations fully comply with the AccessNI Code of Practice requirements and do not unfairly discriminate against those who submit their copies of disclosure certificates.

Clause 37 Minimum age for applicants for certificates or to be registered

- In work or training settings, NIACRO does not consider it appropriate to carry out criminal record checks on under 16s. The only circumstances where it may be appropriate would be where childcare takes place in a domestic setting, for example, fostering, adoption or child-minding, where risk factors may be increased.

Clause 38 Additional Grounds for refusing an applicant to be registered

- In previous responses we have repeatedly highlighted the inappropriate, unlawful and illegal acquisition of AccessNI disclosures requested on individuals by Registered Bodies. These are extremely worrying, yet we are unaware of any sanctions or penalties imposed on any employers to date.
- In our 2010 response to the AccessNI consultation on Registered Bodies (RBs), we stated that AccessNI compliance teams should be more adequately resourced to carry out effective and meaningful monitoring and controlling of RBs. We would question the effectiveness of compliance checks in their current form given that, where self assessment audits have been requested, there has been little evidence of follow up with RBs. We have been told this is a "resourcing issue".
- **Based on this, we recommend that**:
  - AccessNI needs be more proactive in monitoring requests for checks and take appropriate action where illegal checks have been requested;
  - Registered and Umbrella Bodies need clear guidance about their roles and responsibilities when obtaining and assessing disclosure certificates;
  - AccessNI must ensure implementation of its own Code of Practice to hold Registered Bodies to account and address the issue of discriminatory practices of employers;
  - a schedule of comprehensive audits is implemented based on increased awareness-raising for employers on their responsibilities under the AccessNI Code of Practice; and
  - there is a greater commitment by the DOJ and the Executive regarding enforcement of an individual's rights is needed.

Clause 39 Enhanced Criminal Record Certificates: additional safeguards

Relevancy test

- NIACRO believes that non-conviction information should be stepped down immediately and not disclosed unless there is a proven risk of harm. This should apply to adults as well as young people. We accept that it may be necessary to disclose police intelligence when there is a direct risk of harm to the child or vulnerable adult with whom the individual seeks to engage. Information must be relevant and current. **Where non-conviction information is disclosed on an Enhanced Disclosure Certificate, we recommend that it is relevant and up to date**.
- NIACRO considers the current system to be inconsistent and open to interpretation, as the PSNI uses its discretion to disclose information that "might be relevant", which is not always necessary or proportionate. We would therefore welcome a more robust system that allows information to be disclosed in a consistent manner with clearer guidelines in place for the PSNI.
- Whilst NIACRO welcomes greater transparency and accountability in the decision making process, **we recommend that any new system of a "higher test" is clearly defined**. There needs to be a clearer process of quality assurance checking to ensure any decision making is not subject to subjective interpretation by one individual i.e. proposed chief officer. Any decision to disclose information that the chief officer "reasonably believes to be relevant" should therefore be examined and signed off by a panel of experts. NIACRO has encountered previous disparities regarding differences between PSNI Criminal Records Office (CRO) staff in the decision making process which, by their own admission, is due to a lack of guidance and under resourcing
- **We therefore recommend that the CRO needs to be adequately resourced to implement and apply new guidance** which should be underpinned by a transparent quality assurance process to reflect greater openness and fairness for those affected by the criminal record checking process. **We also recommend that the guidance for chief officers should clearly outline the restricted circumstances in which information should be released under Section 113B (4)(a) i.e. in cases where public protection and risk factors are clearly overarching factors**.
- In addition to the above recommendations, **we recommend that there should be clear guidance produced and made available to the public as to how decisions are made in releasing police intelligence**.
- Non-conviction information, such as non molestation orders, adult cautions, informed warnings, juvenile cautions and diversionary youth conferences, while attempting to deal with causes of crime, can also result in barriers to an individual's chance of employment. For instance, if an individual requires an Access NI Enhanced Disclosure Check, there is a possibility that non conviction and conviction information will appear. We know from our experience of working with those seeking training and employment that education or placement providers may choose to cancel offers of enrolment on a course or of employment on the basis of non-conviction information. Employers and training providers do not understand how to interpret, or make any distinction between, conviction and non-conviction information, resulting in young people being excluded from opportunities, unfairly judged and criminalised. To avoid this practice, organisations should only receive information about non conviction disposals in circumstances where the risk factors are significant.
- Evidence gathered through NIACRO's Employment Advice Line reflects the difficulties encountered by Registered Bodies and employees when non conviction information has been released under section 113B (4)(a). The reality is that employers, in the main, are not equipped to deal with the information and, as a result, often fail to explore the information with applicants and put a halt to their recruitment process. We would therefore

question the necessity to release information in many instances which is often not relevant to particular posts and which presents difficulties for all parties involved.

Code of Practice

- Clause 39 makes provision for a statutory Code of Practice when chief officers are discharging their functions under section 113B (4) of the 1997 Police Act and allows parties other than the applicant to dispute the accuracy of info on certificates.
- Whilst NIACRO welcomes the provision to include a statutory Code of Practice, **we recommend this should be subject to full public consultation**.
- We are concerned about the proposal in Clause 39 to allow parties other than the applicant to dispute the accuracy of information on certificates. Would this be third parties carrying out an advocacy role on behalf of the applicant e.g. legal advisors / advocacy organisations such as NIACRO? **We would question how this would fit with Data Protection legislation. We recommend that there needs to be a clear definition of who this does and does not cover and clear guidelines need to be published**.

Independent Monitoring

- We welcome that Clause 39 allows a person to apply to the Independent Monitor to determine whether information provided under section 113 (B) (4) of the 1997 Act is relevant or ought to be included on an Enhanced Criminal Record Certificate. We called for a structure similar to this in our previous consultations. We believe that this development will provide a fairer process and remove the current difficulties individuals are experiencing.
- In our experience, AccessNI's current disputes and complaints procedures are unclear to many of our service users. Some have attempted to raise disputes but have had very negative experiences of the process. Quite often, final responses from AccessNI state that "AccessNI has fulfilled its statutory duty", meaning that some callers have not been able to obtain satisfactory and timely responses to queries or disputes.
- **We recommend that AccessNI needs to be more customer focussed**, on those individuals subject to criminal record checks, which would be aided by more accountable processes for dispute resolution. Given its role as an agency of the DOJ, it is questionable how the public would perceive AccessNI's representations process as independent.

Clause 40 Updating Certificates

- We welcome the exploration of portability in providing updates about conviction information. The current system places unnecessary administrative and financial burdens on both employers and AccessNI. In principle, NIACRO agrees with the concept of portability on the basis there is a clear mechanism for employers to use. Portability could potentially allow any employer to request copies of Standard or Enhanced AccessNI Checks. The new arrangements must therefore be closely monitored to ensure discrimination does not increase. To avoid disputes and inaccurate information being forwarded directly to employers, individuals should be given the opportunity to have sight of the information to verify its accuracy or otherwise prior to disclosure. We agree that the portability of disclosures should be sector specific i.e. within the context of either the children's or vulnerable adults sector. Where an individual moves between sectors, a new Enhanced Disclosure should be requested.
- **We recommend that further clarification is given as to how AccessNI intends to regulate and monitor the usage of portability** to ensure that organisations do not unfairly discriminate against those who submit their copies of disclosure certificates. We therefore question how portability fits with the AccessNI Code of Practice compliance.
- We welcome the proposal (to issue a single certificate to the applicant only) as it will provide individuals with the opportunity to have greater control over their personal

information. Particularly, it will provide opportunities to challenge discrepancies, in regards to accuracy of information directly with the disclosure body, before employers receive it.

Clause 41 Applications for Enhanced Criminal Record Certificates

- NIACRO welcomes the opportunity for self-employed individuals to access Enhanced Checks on the basis that Checks are requested and obtained legally for host organisations/Registered Bodies. **We recommend that clarification is provided regarding the circumstances under which it is appropriate to obtain Enhanced Checks**. Does this cover the following kinds of occupations?
  - Taxi Drivers
  - Construction Contract Works e.g. in schools
  - Fitness Instructors e.g. contracted by leisure centres
  - Personal Trainers
  - Those providing services in their homes e.g. music teachers etc…

Clause 42 Electronic transmission of applications

- This need to be clearly regulated to ensure information transmitted from Registered Bodies is secure and fully compliant with Data Protection. The information Commissioner should play some kind of advisory role in the establishment of this process with its support services actively promoted among Registered and Umbrella Bodies.

Amendments to the Bill

- AccessNI's Circular 2/2014 sets out their proposed amendments to the Justice Bill. They have proposed the following additions to the Bill:
  - to give AccessNI powers to share conviction and other information found on applicants to the Disclosure and Barring Service for the purposes of considering whether that applicant should be barred from working with children or adults; and
  - to introduce an appeal mechanism for applicants who consider, even after filtering has been applied to any convictions or other diversionary disposal information on the criminal record, that the release of such information is disproportionate.
- We welcome the proposal to incorporate an appeals mechanism into the new filtering scheme to reflect a fairer and more transparent process for those with more than one conviction or a diversionary disposal that under current arrangements would not be subject to filtering. We recommend that this process is included in the Justice Bill. The appeals process must be monitored and should be overseen by the proposed Independent Monitor. **We strongly believe that people should have the opportunity to apply to have old and minor convictions wiped form their criminal records, as recommended in the Youth Justice Review (Recommendation 21)**.
- **We recommend that there needs to be a provision for considering offences committed as a child (under the age of 18) and to afford greater protection to those with minor or older disposals or sentences who cannot avail of the protection under the current filtering scheme**.
- In the four months since the Scheme has been introduced, NIACRO's advice line has encountered numerous cases where individuals were unable to have their convictions filtered. Examples are highlighted below:
  - A young person, aged 16, with one caution for a specified offence of possession of cannabis, which means it will not be filtered. He hopes to apply for teaching courses and is concerned about the impact of his disclosure in the short and longer term.
  - An individual, aged 22, with two fines: one for disorderly behaviour and the other for allowing his car to be driven without insurance. Again, these are not filterable because

there are two convictions. He obtained employment in the financial services sector and was subsequently dismissed when his AccessNI Standard Check was returned with the information displayed.

- An individual, aged 31, applying for a law degree had three separate fines for obtaining goods by deception and two counts of non payment of a TV licence. His last conviction was 11 years ago however these are not filterable as he has more than one conviction. In the interim, the individual is attempting to gain part time work in the care sector and cannot access employment opportunities due to the information on the AccessNI Enhanced Check.
- An individual, aged 19, with a two year conditional discharge for a specified offence of breach of the peace, had experienced difficulties being accepted for a nursing degree due the information on the AccessNI Enhanced Check. As a result she has decided to follow an alternative career path to avoid her conviction being a continual barrier, despite having the skills and abilities to follow her chosen path of nursing.

- The examples cited above provide just a small sample of the kinds of issues we are encountering through our advice line. These people, and many like them, are unfairly denied opportunities due to the current restrictive and discriminatory disclosure practices.
- While NIACRO welcomes an appeals mechanism, we believe it does not go far enough for young people. **We therefore continue to call for the implementation of recommendation 21 of the Youth Justice Review for under 18s to be able to apply to wipe their slate clean of old and minor convictions**.

Part 8 Miscellaneous - Clause 77, 78, 79 and 80

Avoiding unnecessary delay (Clauses 79 and 80)

- We strongly support any efforts to reduce unnecessary delay within the Criminal Justice System. Delay has detrimental impacts not only on the accused and the victim, but on their families, witnesses, prisons, courts and the police as well as the public confidence in the system.
- Delays in the system were highlighted in the Northern Ireland Strategic Framework for Reducing Offending and the Youth Justice Review (YJR). The YJR recommended that there needs to be a meaningful connection between offending behaviour and the outcome of the case (acquittal, disposal or sentence). It was stressed that delays such as of a year (which commonly occur) between an allegation arising and the conclusion of youth justice cases means that sentencing is so remote from the offending behaviour that it is often too late to achieve the intended effect.
- Based on our experience of working with people going through the Criminal Justice System, we know that people who offend and the victims of offending behaviour wish to see the process made more efficient. This was also a finding in a recent report by CJINI[5] which found that people who had offended wished to see their cases progress swiftly so that they had certainty in terms of sentence and outcome. However, this should not be to the detriment of justice: it is critical that justice is delivered efficiently and appropriately and not in haste. Our engagements with both those who offend and those who are the victims of offending behaviour show that it is more important for the Criminal Justice System to communicate effectively with those affected by it at every stage, rather than to just speed up an already isolating process.
- Delays within the Criminal Justice System can also prolong the bail and remand process. Long periods spent on bail limit the opportunities to address the root causes of offending behaviour and increase the risk of further offending, and long periods on remand can

5 CJINI (2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

have a detrimental impact on the person's life[6]. Unnecessary delays also do not support desistance from reoffending. Research shows that effective responses to reducing reoffending work when practical support is provided both in custody and in the community, including access to housing and welfare advice. In our experience, long periods on remand or bail impacts on a person's ability to access training, employment and education which has been proven to reduce reoffending. We recognise, therefore, that long remand periods are often a dysfunctional period in the delay and should be addressed. We would consider this to be one of the most injurious periods in delay.

- In Appendix 1, we have provided case studies of our service users who were impacted negatively by delays in the Criminal Justice System.
- We also have provided an overview of the experience (see Appendix 1) of working with an individual who was negatively impacted upon as a result of delays in the system. He was convicted of an offence he committed when he was 17. As a result of this delay, his conviction will become spent under the adult rehabilitation period instead of the rehabilitation period for those aged under 18.
- Based on this, we recommend that steps are taken to: reduce unnecessary delay at all stages of the Criminal Justice System; to reach a just outcome for the accused, the victim and their families; and minimise the impact delay can have on the accused, the victim and their families. In parallel to this recommendation, **we recommend that the mechanisms for explaining decisions, to the accused and to the victim, taken at all stages of an investigation and trial are enhanced**.

General Comments on Clause 79 and 80

- We welcome that Clause 79 will give the DOJ the power to bring forward regulations to impose a general duty to reach a just outcome. In making those regulations, **we recommend that they should take in particular account the needs of all those individuals coming into contact with the Criminal Justice System, regardless of what circumstances preceded that initial contact**. In some cases, an individual who has offended could be a victim as well.
- We believe that a general duty (Clause 79 and 80) will allow for sufficient flexibility dealing with complex cases whilst still ensuring people are held accountable by placing a duty and obligation on the judiciary, rather than just the prosecution or defence counsel, to ensure that case management rules are applied in a manner appropriate to each case.
- **We recommend that the onus must be placed on the legal profession to increase efficiency in case preparation, and the courts system to process cases quickly**, given that these two elements combined constitute the largest proportion of the overall time taken to progress cases. Statistics cited by the CJINI (2013)[7] in the inspection report on 'The use of early guilty pleas in the Criminal Justice System in Northern Ireland' showed that at the case progression stage of proceedings, the vast majority of all adjournments in Adult Magistrates and Crown Courts could be attributed to the prosecution, defence or the court.
- In making regulations which will govern the management and conduct of criminal cases, **we recommend that attention must be given to the relationships between the PPS and PSNI**, as we know that delays often occur over issues such as file accuracy, file preparedness, etc.
- Conscious that the DOJ has consulted on introducing Statutory Time Limits (STLs) in youth courts, which we welcome with the recommendations made in our response to that

6 YJR Team (2012) A Review of the Youth Justice System in Northern Ireland - http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf

7 CJINI(2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

consultation[8], **we recommend these are introduced in the adult courts as well**. STLs will enforce the importance of case preparation and management by requiring agencies to work collaboratively and be jointly accountable for achieving the scale of reductions that are required.

- Whilst we advocate greater partnership working between each of the agencies involved in the system, we believe it is unreasonable to expect any agency to re-prioritise their workload as a result of the failings within another. **We, therefore, recommend that time limits place clear targets on each agency involved at each stage of these processes, with clear penalties outlined should an agency fail to meet its obligation**.
- We welcome that case management (Clause 80) has been given a statutory footing and look forward to commenting on these proposals when they are published for consultation. We support CJINI's recommendation[9] that the DOJ should consider how sanctions should be applied to address unnecessary delay and **recommend that a mechanism is included to address breaches. We also recommend the introduction of penalties for legal representatives who repeatedly request adjournments** as they have failed to meet the court's deadlines. Their lack of preparation should not be allowed to impact upon the defendant and victim's right to access swift and effective justice.

Use of communication

- Professionals in the justice system should be aware of the language they use when communicating with vulnerable people, including young people. **We recommend training is given to justice professionals to ensure they recognise vulnerabilities and potential mental capacity issues**. If the police or defence encourage an accused person to plead guilty because evidence against them exists, it could unfairly coerce an innocent person into pleading guilty because they believe they will be found guilty even though they didn't commit the offence. The person has a right to wait for a clear summary of the evidence to be put to them so that they can clarify what they accept in terms of the evidence against them and also what areas they wish to challenge. They should have the opportunity to discuss the evidence with their solicitor and another individual, such as an Appropriate Adult, to ensure that they have a full understanding of the case against them before entering their plea.
- People who have experience of the Criminal Justice System will often tell us of cases that are adjourned for reasons that are never properly explained, or of times when they simply didn't know how or whether a case was progressing. They were frustrated by the lack of communication or explanation of potential outcomes as a case progressed, rather than the time that a particular case may be taking per se. **We therefore recommend that communication is central to all proceedings, and that all parties – victim, witness and defendant – are kept up to date and appropriately informed**.
- People coming into contact with the Criminal Justice System are more likely to have literacy issues, mental health difficulties or learning difficulties. This can result in problems such as the accused receiving a letter, which they cannot fully understand, advising them of a hearing date and attending court unaware of the subject of the hearing. **We recommend that the Department should seek to mitigate these issues by engaging with the voluntary and community sector to scope needs**.
- Victims need to be included in discussions about the strength of evidence available against the accused, what charges will be put before the sentencing court and what aspects of the case are being challenged. Otherwise, it can come as quite a shock to them to find charges reduced and a lenient sentence imposed. This can leave victims of crime feeling very let down by the Criminal Justice System and should be addressed.

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8 NIACRO and Victim Support NI(2014) Response to DOJ Consultation on Statutory Time Limits in youth courts. Link: http://www.niacro.co.uk/filestore/documents/current_issues/Response_by_NIACRO_and_Victim_Support_NI.pdf

9 CJINI(2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

- **We recommend, therefore, that in parallel to any measures that are introduced to tackle unnecessary delays, steps are taken to enhance the mechanisms for explaining decisions**, to the accused and the victim, taken at all stages of an investigation and trial, and support offered to those who may be traumatised by the process itself.

Impact of advice

- We know from experience that some of our service users have received poor advice and guidance during the police investigation into the offence they were accused of committing. Some people were inappropriately advised by their solicitor about pleading guilty and the impact of that. There sometimes appears to be a focus on quickly finding someone guilty of a crime, rather than examining the evidence, searching for the truth and reaching a just outcome for all those involved.
- **We recommend that independent advocacy services are made available for people with particular difficulties as they move through the Criminal Justice System**. People who are vulnerable may feel pressured into pleading guilty as they don't fully understand the process or the evidence against them.
- Vulnerable people and young people, in particular, need to be supported through the Criminal Justice System, from initial contact through to the outcome to ensure that they can talk through their case with someone outside of the System such as an Appropriate Adult, so that they have a full understanding, are informed and then can make an informed decision in terms of their plea, bail etc. If someone is identified as being vulnerable, there should be a duty, on those people advising them, to ensure that the person fully understands the charges against them, so that they are informed, can make informed decisions, and can give informed instructions.
- Any advice/legal advice given in the course of criminal proceeding needs to be governed by a statutory code of practice including police officers and solicitors. **We recommend that there should be a statutory code of practice for solicitors in relation to the advice underpinned by a general duty when providing advice to their client about entering a plea (Clause 78)**. This will ensure that anyone receiving legal advice will receive the same information about their case from investigation through to disposal/outcome. We have found that some people are misinformed about the consequences of pleading guilty i.e. when their conviction will become spent and that they will have a clean record after they have served a custodial sentence.
- **We recommend that there is a mechanism built into the sentencing process where the person is informed about the following**: the outcome of their case (acquittal, sentence, dismissal); what it means; the impact it will have on accessing training, education or employment and other services; when it will become spent; and under what circumstances it will be disclosable. NIACRO provides free independent advice on disclosure through its Employment Advice Line to employers and individuals currently in or seeking employment, education or training. The long term impact of criminal records on peoples' access to education, training and employment is often entirely disproportionate to their initial offence, creating barriers to effective resettlement and desistance.

Data collection

- In measuring reduction in delay, we must ensure that all agencies are measuring the same thing. The introduction of Statutory Time Limits in the adult courts will enable measurement of the start and end point of a case, the number of and reasons for adjournments and benchmark how long on average it takes to start and end a case. In our response to the consultation on the introduction of Statutory Time Limits in the youth courts, we highlighted that the "delay" as most people understand and experience it, is from the actual incident occurring until disposal by the courts not, as some would suggest, from the time a charge is issued.

- The only real "start" point for measuring the time taken to complete a case for a victim can be the date of the offence, and the only "end" point the final disposal. The only real "start" point for someone accused of an offence is either the moment of arrest (in a charge case) or the moment they are informed that they are being referred to the PPS for prosecution (in a summons case), and the "end" point can again only be the final disposal. These are the moments at which the people affected by the decisions that the system will make become emotionally involved and will experience varying degrees of stress as the case progresses. Whilst there are understandable reasons why a time limit could not commence from the moment an offence is committed, there does not seem to be any clear reason why measurement cannot commence from the date the offence is reported/detected, which is a defined and, therefore, measurable point in any case, and is the moment at which the case becomes part of the victim's, and indeed the accused person's, reality. By delaying the start point beyond this, the Statutory Time Limit does not take into account the emotional distress and other impacts on the victim, the accused and both of their families.
- **We recommend that it is defined in legislation that Statutory Time Limits start from the date the offence is reported/detected and end when the case is disposed of**. Recommendations of the Prison Review Team, the Youth Justice Review Team and CJINI have been well documented and contain clear expectations that any Statutory Time Limit would cover the whole period from arrest to disposal.
- By establishing data collection systems and benchmarking time limits, gaps and issues in the system can be identified and addressed.
- CJINI[10] showed that there were a quite a high number of cases (more than 11,000) withdrawn or had alternative charges put forward in 2010-2011. One of the reasons for this was overcharging by the police. **We recommend that data is collated on the numbers and reasons for withdrawn/reduced charges to identify trends and gaps in the system**.

Early guilty pleas (Clause 77 and 78)

- We strongly disagree with the terminology 'early guilty pleas' and the focus on encouraging them. This terminology creates an expectation that the defendant is guilty. We should not be seeking to extract more guilty pleas at any stage of the process. Instead, **we recommend that the emphasis is placed on 'efficient case resolution', ensuring justice and thereby better outcomes for victims and defendants**. This approach would protect the statutory presumption of innocence, and encourages greater focus on resolving cases efficiently and effectively. We are disappointed this was not taken into consideration in the Department's analysis of the consultation responses and we recommend this terminology is reconsidered. This change in terminology and approach is supported by Victim Support NI.
- We note that achieving this efficient case resolution approach will be dependent on the reform of Committal Proceedings, changes in processes and procedures and the ability of PPS, PSNI and legal representatives to work together.
- As highlighted in the CJINI report 'The use of early guilty pleas in the Criminal Justice System in Northern Ireland'[11], there is no single coherent approach to 'encouraging early guilty pleas.' This is concerning as it means there are inconsistent approaches in how early guilty pleas are encouraged, which means those who are accused will receive different information and advice as they move through the justice system.
- We advocate that there needs to be a balance between reducing unnecessary delay and achieving a just outcome. Faster cases may not necessarily be better and longer cases in certain circumstances will be required. Too much focus on reducing delay may

10 CJINI(2013) The use of early guilty pleas in the Criminal Justice System in Northern Ireland. Link: http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

11 http://www.cjini.org/CJNI/files/6b/6bf65923-3cab-4dee-a2a3-717cee809e80.pdf

inadvertently affect the System's ability to achieve the right outcome. This emphasis is in line with Victim Support NI's view that speed should never act in a manner contrary to the interests of justice.

Early engagement between the prosecution and defence

- In our response to the consultation on early guilty pleas, we recommended that the accused should be provided with a clear summary of the case against them at the earliest possible opportunity. This would allow the person to clarify what they accept in terms of the evidence against them and also what areas they would wish to challenge. We believe that the defendant has the right to have a clear understanding of the extent of the case against them before entering a plea – regardless of incentives. **We recommend clarification is given about the recognised 'earliest reasonable opportunity'. The defendant may want to wait until after the first sitting for the case to be put forward against them, before entering a plea**.
- Statistics show that significant delay in terms of adjournments in courts proceedings at the case progression stage can be attributed in to the prosecution, defence or courts.[12] To enable early service of evidence and early disclosure of evidence, CJINI13 has recommended that early engagement between the defence and the prosecution, to enable early service of evidence and early disclosure of evidence. Not only is engagement between the prosecution and defence important, the relationship between the PPS and the PSNI is also important as we know that delays occur over issues such as case file quality, case readiness, over-charging etc.
- The focus on encouraging 'an early guilty plea' to obtain a reduced sentence might put pressure on vulnerable individuals to plead guilty to the title charge. In reality, many accused persons will say "I did this…but I was not responsible for that…."
- Under present arrangements, the person has a choice only to plead guilty or not guilty – or to negotiate (between defence and prosecution) a "lesser" charge which may come closer to what the accused person believes he was actually responsible for.
- Whilst it is necessary to examine the strength of evidence, there seems to be insufficient emphasis on the "search for truth". And in reality, whilst the practice of "plea-bargaining", or "sentence-bargaining", is not enshrined in legal practice, the willingness of an individual to plead guilty will certainly be encouraged if facing a less serious charge which attracts a lesser penalty.
- We want to see an early/efficient case resolution approach which encourages greater focus on resolving cases efficiently and effectively. We believe that an efficient case resolution approach would actually be more positive for victims of criminal behaviour, for the accused and indeed for the wider public. This should be supported by reforms to reduce necessary delay in other areas of criminal proceedings, such as case file quality, case readiness and early service of evidence.

Sentencing credit

- Clause 77 will require a court in certain circumstances to indicate the sentence that would have been passed had the defendant entered a guilty plea at the earliest reasonable opportunity. We believe that this approach would not effectively address offending behaviour of the defendant and has very little merit in terms of encouraging other defendants in different circumstances.
- **We recommend that the 'earliest reasonable opportunity' is given clarity in regulations and practice guidance**. If a person wishes to wait until the case against them has been

12 In 2011, 84.2% of all Adult Magistrates' court cases were adjourned; 48.1% of adjournment reason were attributed to the prosecution, 47.9% were attributed to the defence and 3.8% to the court. 60.2% of all court cases were adjourned in the Crown Court.13.6% reasons were attributed to the prosecution, 47.5% to the defence and 38.8% to the court.

put forward and then enter their plea, it must be outlined whether they will be unfairly disadvantaged because they did not show willingness to plead guilty at the police interview.

- In order to achieve efficient case resolution, **we recommend that there should be greater certainty about credit available and greater transparency in sentencing for the person accused from the outset**. Some people believe that if they enter a guilty plea at any stage of legal proceedings, they will get sentencing credit no matter the nature of the crime. **We recommend that there needs to be a requirement on the police, solicitors etc. to explain information in a format to the person which they understand, the consequences of pleading guilty, not pleading guilty and withholding a plea**. We note that early indication of sentence is dependent on early engagement of prosecution, defence, and a summary of evidence being available.

Victim Impact

- As stated previously, **we recommend that the particular needs of all those individuals coming into contact with the Criminal Justice System should be considered**, regardless of what circumstances preceded that initial contact. In some cases, an individual who has offended could be a victim as well.
- Any proposals need to take into account the impact of crime on victims. Victim participation across all stages in the Criminal Justice System is important and will provide a more positive experience of going through the system. Victims need to be included in discussions about the strength of evidence available against the accused, what charges will be put before the sentencing court and what aspects of the case are being challenged. Otherwise, it can come as quite a shock to them to find charges reduced and a lenient sentence imposed. This can leave victims of crime feeling very let down by the Criminal Justice System and impact on their overall confidence in the system.
- **We recommend there should be a restorative justice approach where the victim's journey through the Criminal Justice System is brought alongside that of the accused**. Victims should be kept informed about the investigation, trial and sentencing arrangements and given explanations of how and why decisions were reached. We welcome the proposed Victims Personal Statements which will give victims the opportunity to put forward in their own words how they have been affected by crime during proceedings.
- We believe that Clause 77 would not have any rehabilitative effect on the accused and will have little impact for the victim. The judge in summing up and during sentencing should focus on the effect and impact of the crime. The process of encouraging the accused to admit to his/her part in an offence could perhaps be strengthened by a different, more transparent approach which gives emphasis to the impact of the crime and away from focussing primarily on the interests of the accused. This would involve prosecution, those representing the victim(s), and defence. The prosecution process should provide opportunity for the accused person to really consider and be encouraged to understand the impact of their offence(s). The present adversarial approach allows accused persons to focus mainly on themselves and their case, and what might happen to them - rather than on the impact of what they have done. This is often only addressed at the point of imposing sentence, when assessments are carried out by the Probation Board on behalf of the Court.

Appendix 1

The following case studies are based on real life examples of people who have engaged with NIACRO.

Case Study 1: Family Members as Direct Victims

Sarah*, is a single parent to her son Joe*, who is 23 years old. Joe has been in and out of custody for the last four years for minor offences. However, recently his offending behaviour has been directed towards his mother. He has physically assaulted her on a number of occasions and has stolen from her house. However, as Sarah is his mother she does not want to press charges. Joe is therefore arrested for other, lesser offences including disorderly behaviour and resisting arrest, and receives a custodial sentence. Sarah is conflicted but, as his mother, does not want to exacerbate his situation by formally reporting the offences carried out against her. As Sarah does not press charges, she is not referred to an official support service for victims. Instead, she contacts NIACRO's Family Links project, initially to find out more information about supporting her son in prison. The Family Links Project Worker becomes aware of what has happened and offers Sarah emotional and practical support to help her come to terms with the assault and theft, and to help her support Joe and visit him while he is in custody. Although Sarah is a direct victim of an offence, she is reluctant to be formally recognised as such and so sought support from Family Links rather than seek prosecution.

** Names have been changed*

Other examples of victim journeys are presented on Victim Support NI's YouTube channel: http://www.youtube.com/victimsupportni

Case Study 2: The Consequence of Delay

An individual, aged 17, has been on bail for a significant period of time waiting to be sentenced. He has several pending charges which are quite serious. As a part of his bail conditions, he is subject to a curfew. He has to attend one-to-two appointments on a daily basis as part of his bail package.

His case has been adjourned on several occasions. Reasons for this have included case files not being ready, waiting for forensic reports and communication issues about the court date.

Overall, delay has resulted in the young person being on bail and not sentenced for a long period of time. His restrictive bail conditions have impacted on his ability to access education, training and employment in the interim period. It has also affected his family, both emotionally and financially.

Case Study 3: The Consequence of Delay

An individual, aged 19, was convicted of an offence he committed when he was 17. As a result of delay in his case getting to court, his conviction became spent under the adult rehabilitation period and not the rehabilitation period that applies to those under the age of 18.

This meant he had to disclose his conviction for a longer period of time in circumstances such as accessing education and employment and in obtaining insurance; if he had been convicted as child, he would not have had to disclose his conviction as it would have become spent after a shorter period of time. The impact of this longer rehabilitation period was increased barriers to education, training and employment, hindering effective resettlement and desistance.

Case Study 4: The Silent Sentence

"The night my mother and father were arrested was one of the worst days of my life. Nothing prepared me for the year that lay ahead. I was sitting in my room doing my school work when I heard heavy banging at out door. It made me jump so I went to see what it was. My dad answered the door and it was the police. I was curious why they were calling at our door. I heard them telling my dad something about a search warrant and cannabis but I never thought for one minute it had anything to do with my family. My dad let the police in and we all sat in the living room. My mother was crying as she was so confused. She doesn't speak English so my dad and I had to keep explaining to her what was happening. The police explained that they were arresting my mother and father and that immigration was also going to be looking into our legal status in this country.

That night my brother and I spent the night in our house alone. I didn't slept all night thinking about my parents and worrying about what was going to happen to them. Were where they? When would they be coming home? Who could I ring to find out what was happening? The police had given me a number for a police officer to phone but I couldn't find it due to all the chaos earlier.

Within two days Social Services had called and a lady phoned me from NIACRO's Family Links project. I felt more at ease. She explained that they were going to help support me and my brother as best they could. She explained that my mother and father were both in custody. I realised I would have to fend for myself and my brother. I was in school so I didn't know how I was going to cope financially. How was I going to pay the bills? What would I tell the school? Would I be able to visit my parents?

The lady from Family Links explained that housing benefit would pay for my rent and that Social Services would pay me money on a weekly basis for electric, oil and food. She helped me get some money to get us new clothes and shirts and trousers for school. She also arranged for me and my brother to visit my mother in custody.

Visiting my mother was a very distressing experience for me. I hated seeing my mother in prison. She was very distressed as she was so worried about me and my brother. She had not spoken to my dad either and was concerned about him too. I was finding this whole experience very stressful.

Over the next six months, until my mother was released, I did not tell any of my friends were my parents were as I was so ashamed. The only people who knew were my head teacher, Social Services and Family Links. These were the only people I would speak to about my situation as I was so embarrassed.

I wasn't sleeping as I was worried about my brother and my parents. Family Links advised me to go to the doctor and he gave me sleeping tablets and referred me to a mental health counsellor who I had to meet with weekly. We were visiting mum as much as we could but for a long period we were unable to visit as our passports were being held by immigration. Family Links applied for citizen cards for us but they took weeks to come back. I had to attend a few meetings with the Law Centre and immigration to talk to them about our legal status. Family Links supported me through this which was great and she helped keep me calm and feel at ease about the whole situation. There were still so many questions running through my head. Were we going to be sent back to Hong Kong? What about my parents? What about all the school work I had done to try to get a place in university?

In December my mother was released without charge just in time for Christmas and a few months later my father was released on bail. Things started to get back to normal again, however there were many problems. My dad's health had deteriorated with the stress of the court case and he was unable to work. My family were trying to survive on just my father's benefits which was very stressful. Social Services had to help us pay some of our bills and Family Links got us food parcels when they could.

Everyday we waited to hear from immigration and from the courts about a date for my father's trail. We didn't know where to get the information and it felt like we were in limbo. As time passed, things became harder. I was concerned about immigration sending us back to Hong Kong and dad's health was deteriorating.

In September, my father had a heart attack and passed away due to stress of the past eighteen months. This was a devastating time for myself and my family. My mother is still finding it very hard to cope as she misses my father. She is still unable to work as we still have not heard back from immigration and therefore is very lonely. I am at college and my brother is finishing school this year. We need to hear soon from immigration about our legal status as we all need to know whether we can work or not so we can stay in Northern Ireland and support ourselves."

NICCY

NICCY PROMOTING THE RIGHTS OF CHILDREN & YOUNG PEOPLE

Committee for Justice
The Committee Clerk
Room 242 Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

By email only to: justice.bill@niassembly.gov.uk

12 September 2014

Dear Madam

Justice Bill

Thank you for the invitation to provide evidence to the Committee for Justice in respect of the above Bill.

On this occasion, the Northern Ireland Commissioner for Children and Young People (NICCY) will not be providing detailed advice. However, in addressing the issues in the consultation, NICCY would urge the Committee to take account of the four guiding principles of the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC provides the overarching framework which guides NICCY's work. The UK Government, including Northern Ireland, is a signatory to the Convention and it has agreed to uphold the rights of children and young people based on the Convention. The principles are:

- **Article 2**: '*Children shall not be discriminated against and shall have equal access to all articles in the UNCRC*'. This means every child within a jurisdiction should be able to enjoy the provisions and protections enshrined in law, policy and practice, without discrimination of any kind and irrespective of their or their parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- **Article 3**: *'All decisions taken which affect children's lives should be taken in the child's best interests'*. Essentially, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration.'
- **Article 6**: '*All children have the right to life and to the fullest level of development*'. The rights contained in this article are linked to an enjoyment of the 'highest attainable

Northern Ireland Commissioner for Children and Young People
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP
T: 028 9031 1616
E: info@niccy.org
W: www.niccy.org
Patricia Lewsley-Mooney
Commissioner

standard' of health and living and to specific issues including child protection, poverty and care.

- **Article 12**: '*Children have the right to have their voices heard in all matters concerning them*'. This article asserts that 'States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting them, the views of the child being given due weight in accordance with their age and maturity'. Children and young people should therefore be afforded genuine opportunities to participate in decision making in relation to matters affecting their lives.

NICCY would strongly advise that these key articles from the UNCRC inform the Committee's decision-making in respect of all matters arising in the Justice Bill which may impact directly or indirectly on children and young people.

Yours sincerely

Patricia Lewsley-Mooney

Patricia Lewsley-Mooney
Commissioner

NI Human Rights Commission

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Justice (NI) Bill

1. The Northern Ireland Human Rights Commission ('the Commission'), pursuant to Section 69(4) of the Northern Ireland Act 1998 is obliged to advise the Assembly whether a Bill is compatible with human rights. In accordance with this function the following statutory advice is submitted to the Committee for Justice ('the Committee').

2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. Each of the international treaties is potentially relevant to the development of domestic laws and policies that seek to implement the State's obligations. In the context of this advice, the Commission relies in particular on,

   - European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998;
   - The United Nations Convention on the Rights of the Child, 1989 (UNCRC);
   - The International Covenant on Economic, Social and Cultural Rights (ICESCR) ;
   - The United Nations Convention on the Rights of Disabled People, 2009 (UNCRPD)

3. The NI Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's (UK) ratification. In addition, Section 26(1) of the Northern Ireland Act 1998 provides that *"If the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations… he may by order direct that the proposed action shall not be taken."* Further, Section 26(2) states that *"the Secretary of State may, by order, direct that an action be taken on a matter within the legislative competency of the Assembly as required for the purpose of giving effect to international obligations. Such action can include the introduction of a Bill into the Assembly."*

4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include;

   - *The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 ('Basic Principles')*

5. The NIHRC further recalls that Section 24 (1) of the Northern Ireland Act 1998 provides that *"A Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention [ECHR] rights".*

1. Declaration of Compatibility

6. The Commission notes that paragraph 100 of the Explanatory and Financial Memorandum states that "All proposals have been screened and are considered to be Convention compliant". The Commission recalls that, acting on advice from the the Joint Committee of Human Rights, the Westminster Government has issued guidance to departments

encouraging fuller disclosure of views about Convention compatibility in the Explanatory Notes which accompany a Bill.[1]

The Commission advises the Committee to ask the Department to share its legal analysis upon which its statement of compatibility is based.

2. Prosecutorial Fines Clauses 17 – 27

7. The Commission notes that clauses 17 – 27 of the Bill will make provision for prosecutorial fines. The Commission recalls that the Treaty bodies of the United Nations have continually recommended that the UK address the over use of imprisonment for low level offenders, the UN Committee against Torture has urged the UK Government:

> *"to strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment…".*[2]

In light of the UNCAT Committee's recommendation, the Commission advises that the Committee enquire as to the impact the provision of prosecutorial fines will have upon the number of persons imprisoned in Northern Ireland annually. The Commission advises the Committee to enquire how this impact will be monitored, monitoring should include the number of occasions upon which a non-payment has occurred and enforcement action has been taken.

8. With respect to the procedure set out in the Bill, the Commission notes that under clause 19 in determining the amount of a prosecutorial fine a Public Prosecutor must have regard to the circumstances of the offence, but not to the circumstances of an offender and their ability or inability to pay. The Commission notes that under ICESCR, Article 11 the state must guarantee to everyone an adequate standard of living.

The Commission advises the Committee to consider if clause 45 should be amended to provide that a Public Prosecutor must have regard to the circumstances of an offender.

3. Victims and Witnesses Clauses 28 – 35

9. The Commission notes that clause 28 requires the Department to issue a Victims Charter and that clause 30 requires the Department to issue a Witnesses Charter.

10. The Commission submitted a detailed response to the Department of Justice consultation on Improving Access to Justice for Victims and Witnesses of Crime.[3] In its response the Commission advised that the Department ensure that any definition of victim in a Victim's Charter should fully reflect international human rights standards.

11. The UN Basic Principles define victims as:

> *"persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member states, including those laws proscribing criminal abuse of power."* [4]

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1 Murray Hunt 'Reshaping Constitutionalism' in Judges, Transition, and Human Rights 2007 pg 473

2 Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) Para 30

3 NIHRC 'Response To The Public Consultation on Making A Difference: Improving Access to Justice For Victims and Witnesses of Crime' 2013 available at: http://www.nihrc.org//uploads/documents/advice-to-government/2013/NIHRC%20Response%20on%20the%20Victims%20Strategy%201%202%202013-Final.pdf

4 Annex to Basic Principles: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

12. The UN Basic Principles further state:

> *"A person may be considered a victim... regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim." [the definition of victims] "includes, where appropriate, the immediate family or dependants of the direct victim .."*[5]

The Commission advises that the broad definition of victim provided at clause 29 is compliant with the UN Basic Principles.

4. Criminal Records Clauses 36 – 43

13. The Commission notes that clauses 36 to 43 of the Bill will make provision for reform of the law governing criminal records. The Commission recalls that the recording and communication of criminal record data amounts to an interference with the right to private and family life, ECHR Article 8. The ECHR, Article 8 states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.".

14. The case of M.M v UK concerned the indefinite retention and disclosure of data regarding a police caution for child abduction received by the applicant following a family dispute in 2000.[6] The applicant lived in Northern Ireland. In light of various shortcomings in the legal framework in place, the ECt.HR found that there were insufficient safeguards in the system for retention and disclosure of criminal record data to ensure that data relating to the applicant's private life had not been, and would not be, disclosed in violation of her right to respect for private life.[7]

15. With respect to the statutory framework in Northern Ireland the ECt.HR stated:

> *"No distinction is made based on the seriousness or the circumstances of the offence, the time which has elapsed since the offence was committed and whether the caution is spent. In short, there appears to be no scope for the exercise of any discretion in the disclosure exercise. Nor, as a consequence of the mandatory nature of the disclosure, is there any provision for the making of prior representations by the data subject to prevent the data being disclosed either generally or in a specific case. The applicable legislation does not allow for any assessment at any stage in the disclosure process of the relevance of conviction or caution data held in central records to the employment sought, or of the extent to which the data subject may be perceived as continuing to pose a risk such that the disclosure of the data to the employer is justified."*[8]

16. The Commission notes that the Northern Ireland Executive is required to introduce general measures to ensure compliance with the judgement. An action plan has been submitted to the Committee of Ministers setting out measures to be taken to ensure compliance with the ECt.HR judgement in M.M.[9]

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5 Ibid

6 (Application no. 24029/07) 13 November 2012

7 See Council of Europe Case descriptor available at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=UK.&SectionCode=

8 M.M v UK (Application no. 24029/07) 13 November 2012Para 204

9 Council of Europe DH-DD(2014) 770 13/06/2014

17. To address the need for some distinction between criminal records the Department of Justice introduced a filtering scheme for criminal record disclosures, this measure was approved by the Assembly on 24 March 2014.[10] The Commission further notes that the relevancy test which is referred to when determining details for inclusion in an enhanced criminal record disclosure is to be amended, to require a chief officer to have a reasonable belief in the relevancy of the information.[11] This provision increases scope for discretion. In addition the Commission notes that individuals will be able to apply to the Independent Monitor to question the relevancy of information to be provided in an enhanced criminal record certificate.

The Commission advises the Committee to ask the Department to provide details on how an individual will apply to the Independent Monitor. In addition the Commission advises the Committee to ask the Department if the proposals are considered sufficient to ensure full compliance with M.M v UK.

5. Live Links Clauses 44 – 49

18. The Commission notes that the Bill at clauses 44 - 49 will make provision for the enhanced use of live links. With regard to the use of live links the ECt.HR has found:

> *"that this form of participation in proceedings is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for."*[12]

19. The use of live links must not impact on the ability of a defendant to effectively participate in proceedings. The ECt.HR has elaborated on the essential elements of effective participation in the case of SC v UK, in which it stated:

> *""Effective participation" in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence."*[13]

The Commission advises that the Committee seek an assurance from the Department that the extended use of live links will not impede upon the ability of an accused to effectively participate in proceedings. The Committee should also enquire how the Department will in practical terms ensure that an accused is able to effectively participate. Furthermore the Committee should enquire how the confidentiality of communications is to be assured.

5.1 *First Remands*

20. The Commission notes the proposal that the law allow for an individual appearing before a court for a first remand hearing to appear by live link during the weekend or on bank holidays.[14]

10 See DoJNI Press Release http://www.northernireland.gov.uk/news-doj-270314-ford-introduces-filtering

11 Amendments to section 113B(4) Police Act 1997

12 Sakhnovskiy v Russia (App. No. 21272/03) 2 November 2010 para 98

13 S.C v UK (App. No. 60958/00) 10/11/2004 para 29

14 Clause 45

21. The ECHR, Article 5(3) states:

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

22. In the case of Ocalan v Turkey the ECt.HR said that the purpose of Article 5(3) is "to ensure that arrested persons are physically brought before a judicial authority promptly".[15]

23. The Commission notes that remand hearings held under this provision may take place during the weekend or on public holidays. During such times it may be difficult for an individual to seek legal advice relating to bail or to prepare properly for the hearing to enable their effective participation.

The Commission advises that the Committee ask the Department to set out what additional provision has been made to ensure that individuals participating in a first remand hearing by way of a live link are able to seek and obtain legal advice and representation to enable their effective participation.

24. With respect to the wording of section 45, the Commission notes that the court may not grant a live link hearing unless it is satisfied that it is not "contrary to the interests of justice". The Explanatory Memorandum does not contain examples of scenarios in which a live link direction will be considered to not be in the interests of justice.

25. In addition whilst the court may adjourn a live link hearing when it appears the individual "is not able to see and hear the court and to be seen and heard by it …", there is no obligation to ensure the individual is able to effectively participate in the proceedings.[16]

The Commission advises that the wording of clause 45 be amended to ensure that a live link should never be authorised or continue to be authorised where its use undermines the effective participation of an accused in a hearing.

6. Violent Offenders Prevention Orders

26. The Commission notes that clauses 50 – 71 propose to make provision for violent offences prevention orders. The Commission notes that in 2010 the Criminal Justice Inspectorate recommended the introduction of Domestic Violence Protection Orders.[17] DVPOs allow the police to prevent the suspected perpetrator from entering the victim's residence for a set period of time. In a follow up review in 2013 the Department of Justice stated they were awaiting the outcome of a pilot of DVPOs in England & Wales.[18] The Commission notes that following a successful pilot DVPOs are now available throughout England & Wales.[19] Furthermore the Commission notes that similar systems have been found to be successful in many EU states.[20] However, no provision is included in the current Bill for the introduction of DVPOs.

The Commission advises the Committee to ask the Department to explain why legislative provision for Domestic Violence Prevention Orders has not been included within the Bill.

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15 Para 103

16 Clause 45 (9)

17 CJINI 'Domestic Violence and Abuse: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland' December 2010 Recommendation 2

18 CJINI 'Domestic Violence and Abuse - A follow up review' 29/10/13 pg 9

19 The Rt Hon Theresa May MP Written statement to Parliament 'Domestic violence protection orders and domestic violence disclosure scheme' 25 November 2013

20 It was first piloted in Austria in 1997. See, European Institute for Gender Equality, 'Review of the implementation of the Beijing Platform for Action in the EU Member States: Violence Against Women - Victim Support: Main findings' EU (2013), para 1.3.3.

7. Early guilty pleas

27. The Commission notes proposals relating to early guilty pleas at clauses 77 and 78. The ECt. HR has noted:

> *"that it may be considered as a common feature of European criminal justice systems for an accused to obtain the lessening of charges or receive a reduction of his or her sentence in exchange for a guilty or nolo contendere plea in advance of trial…"*[21]

28. The ECt.HR has further ruled that by pleading guilty a defendant is waiving his/her right to have the criminal case against them examined on the merits, such a decision should only be taken when fully aware of the facts and the legal consequences and should be entered in a genuinely voluntary manner.[22]

29. The Commission notes that under clause 78 a solicitor is to advise his or her client on the likely effect on any sentence that might be passed on pleading guilty at the earliest reasonable opportunity. The term "earliest reasonable opportunity" is not defined in the Bill or in the explanatory memorandum. It is unclear if a definition will be included within the required regulations.

The Commission advises that the "earliest reasonable opportunity" should occur only when a defendant is fully aware of the facts of the case and the legal consequences of his or her decision.

8. Youth Justice

30. On publication of the Youth Justice Review the Commission advised the Minister of Justice that the Justice (NI) Act 2004 should be amended to fully reflect the best interest principles as espoused in Article 3 of the UNCRC.[23]

The Commission advises that the amendment at clause 84 is a positive measure.

9. Amendment: Inclusion of a clause amending the Coroners Act (NI) 1959

31. The Commission notes that the Committee is giving further consideration to the proposal that the Attorney General for NI be empowered to obtain papers or information that may be relevant to the exercise of his power to direct an inquest. The Commission previously provided views in its submission to the Committee stage on the Legal Aid and Coroners Bill.[24]

32. The power of the Attorney General to order an inquest provides a safeguard to ensuring an effective investigation into the circumstances of a death is carried out. The empowerment of the Attorney General to obtain relevant papers and information to inform the exercise of powers under section 14 (1) of the Coroners Act (NI) 1959 should further strengthen this safeguard.

33. Noting that the Attorney General has raised specific concerns regarding deaths in which there is a suggestion that a medical error has occurred, the Commission recalls that the procedural obligation under Article 2 of the ECHR extends to deaths in a medical context.[25]

The Commission advises the Committee to enquire if the current arrangements in place for the investigation of deaths in which there is a suggestion that a medical error has occurred, are sufficiently robust to satisfy the requirements of Article 2 of the ECHR and to consider the potential strengthening impact of this amendment.

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21 SN v Sweden (app. No. 34209/96) 2 July 2002 para 44

22 Ibid

23 NIHRC ' Response to a Review of the Youth Justice System in Northern Ireland' January 2012

24 NIHRC 'Submission to the Committee for Justice Call for Evidence on Legal Aid and Coroners Court Bill' 2014

25 Silih v Slovenia, ECtHR, App No. 71463/01 (9 April 2009) see para 155

10. Amendment: 11A "Ending the life of an unborn child"

34. The Commission notes that an amendment entitled "Ending the life of an unborn child" ("the proposed amendment" or "the current amendment") has been proposed to the draft Bill.

35. The Commission notes that the proposed amendment is untimely in light of the Minister for Justice's expressed intention to publish proposals for abortion law changes in NI by the autumn,[26] and the UN Committee on the Elimination of Discrimination against Women's ("CEDAW Committee") follow-up to its concluding observation regarding women's access to termination of pregnancy in NI, which is due in November 2014.[27]

10.1 *The Right to Privacy*

36. The Commission recalls that ECHR, Art. 8 protects the right to respect for private and family life;

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Similar protections of the right to privacy are found in ICCPR, Art. 17.[28]

37. The European Court of Human Rights (ECt.HR) has found that:

> *the decision of a pregnant woman to continue her pregnancy or not belongs to the sphere of private life and autonomy. Consequently, also legislation regulating the interruption of pregnancy touches upon the sphere of private life, since whenever a woman is pregnant her private life becomes closely connected with the developing foetus.*[29]

38. The UN Human Rights Committee has noted that an "area where States may fail to respect women's privacy relates to their reproductive functions..."[30] and has also considered the prohibition of abortion in the context of the right to privacy.[31]

10.1.1. *Interference*

39. The Commission recalls that any interference with the right to privacy protected under the first paragraph of ECHR, Art 8 must be justified in terms of the second paragraph as being "in accordance with the law" and "necessary in a democratic society" for one or more of the legitimate aims listed therein.[32]

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26 BBC News Northern Ireland, David Ford: NI abortion consultation 'ready by autumn',18 August 2014, available at: http://www.bbc.co.uk/news/uk-northern-ireland-28833136.

27 UN CEDAW Committee, Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, July 2013, paras. 51 and 68.

28 ICCPR, Art. 17. 1: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2: Everyone has the right to the protection of the law against such interference or attacks.

29 R.R. v. Poland, ECt.HR, no. 27617/04, 26 May 2011, §181. See also, P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §96; A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, §214.

30 UN Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women), 2000, para 20.

31 K.L. v. Peru, UN Human Rights Committee, CCPR/C/85/D/1153/2003, 22 November 2005, Para 6.4.

32 P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §94; A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, § 218.

10.1.1.1 *In accordance with the law*

40. In a case examining access to abortion in Ireland the ECt.HR explained that in order to satisfy the requirement that it is "in accordance with the law":

> an impugned interference must have some basis in domestic law, which law must be adequately accessible and be formulated with sufficient precision to enable the citizen to regulate his conduct, he or she being able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.[33]

41. The ECtHR has further noted that "the domestic law must indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise"[34] and "must afford adequate legal protection against arbitrariness."[35]

42. The Commission notes that the proposed amendment does not provide definitions for a number of terms used, including for example: what would constitute "circumstances of urgency"; what conditions are required so that "access to premises operated by a Health and Social Care Trust was not possible"; and what conduct is encompassed in the phrase "causes or permits any act, with the intention of bringing about the end of the life of an unborn child, and, by reason of any such act, the life of that unborn child is ended."

43. The Commission further notes that the accessibility and clarity of the current amendment is compromised by cross-referencing the Offences Against the Person Act 1861 ("the 1861 Act") and the Criminal Justice Act (Northern Ireland) 1945. The Commission also notes that practitioners have expressed concerns regarding the accessibility of the existing law regarding termination of pregnancy in NI.[36]

10.1.1.2 *Necessary in a democratic society and pursuing a legitimate aim*

44. As noted above, any interference with the right to privacy must be "necessary in a democratic society" for one or more of the legitimate aims listed in ECHR, Art 8.2.[37] The Commission recalls that the ECtHR has made clear, including in the context of termination of pregnancy, that the concept of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities.[38]

45. The ECtHR has set out that in this assessment a fair balance must be struck between the relevant competing interests, in respect of which the State enjoys a margin of appreciation.[39] The Commission notes that this margin of appreciation is not unlimited and any impugned

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33 A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, §220.

34 Petrova v Latvia, ECt.HR, no. 4605/05, 24 June 2014, §86.

35 L.H. v Latvia, ECt.HR, no. 52019/07, 29 April 2014, §47.

36 See for example, The Royal College of Midwives, Response to DHSSPS on The Limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland, July 2013; Royal College of Nursing Northern Ireland, Response of the Royal College of Nursing to a DHSSPS consultation on The limited circumstances for a lawful termination of pregnancy in Northern Ireland: a guidance document for health and social care professionals on law and clinical practice, July 2013.

37 P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §94; A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, § 218.

38 P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §94; R.R. v. Poland, ECt.HR, no. 27617/04, 26 May 2011, §183; Tysiąc v. Poland, ECt.HR, no. 5410/03, 20 March 2007, §109; Norris v Ireland, ECt.HR, no. 10581/83, 26 October 1988, §44.

39 Tysiąc v. Poland, ECt.HR, no. 5410/03, 20 March 2007, §111; A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, §229.

provision must be compatible with a State's Convention obligations.[40] The Commission recalls that in assessing proportionality the severity of the relevant sanction will be considered.[41]

46. The Commission notes that pursuant to the proposed amendment "any person who ends the life of an unborn child at any stage of that child's development shall be guilty of an offence..." The Commission notes that the restriction in the amendment may be read as being so broad as to include certain forms of contraception which are legally available in Northern Ireland.

47. The Commission recalls that in Northern Ireland termination of pregnancy is lawful only where the continuance of the pregnancy threatens the life of the woman, or would adversely affect her physical or mental health. The adverse effect on her physical and mental health must be a 'real and serious' one, and must also be 'permanent or long term'. The Commission notes that the proposed amendment would introduce further additional restrictions on access to termination of pregnancy and reproductive rights for women in NI. These additional restrictions are unclear in scope and yet are accompanied by the threat of serious criminal sanctions.

The Commission notes that the proposed amendment would constitute a further significant restriction on the right to privacy in NI. The Commission advises that it is likely that the current amendment does not satisfy the criteria set out above and thus adoption of the amendment would be a violation of ECHR, Art 8 and ICCPR, Art 17.

10.1.2 *Framework*

48. The ECtHR has held that ECHR Art 8 contains certain duties (positive obligations), which are inherent in ensuring effective respect for private life.[42] Thus, the State must fulfil positive, as well as negative, obligations in order to comply with the ECHR and the Human Rights Act protections of the right to privacy.

49. The Grand Chamber of the ECt.HR has determined that the State's obligations

> *may involve the adoption of measures, including the provision of an effective and accessible means of protecting the right to private life... including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individual's* rights and the implementation, where appropriate, of specific measures in an abortion context.[43]

50. In the context of termination of pregnancy the ECtHR held that

> *once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion.[44]*

51. The Commission recalls that in Tysiąc v. Poland the ECt.HR noted the "chilling effect" of criminal provisions regarding abortion on the medical consultation process, stating that:

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40 A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, §238; Norris v Ireland, ECt.HR, no. 10581/83, 26 October 1988, §45.

41 Norris v Ireland, ECt.HR, no. 10581/83, 26 October 1988, §46; Mahmudov and Agazade v Azerbaijan, ECt.HR, no. 35877/04, 18 March 2009, §48-49.

42 P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §95.

43 A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, §245. See also, P. and S. v. Poland, ECt. HR, no. 57375/08, 30 January 2013, §96; Tysiąc v. Poland, ECt.HR, no. 5410/03, 20 March 2007, §110; R.R. v. Poland, ECt.HR, no. 27617/04, 26 May 2011, §184.

44 P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §99. See also, A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, §249; Tysi c v. Poland, ECt.HR, no. 5410/03, 20 March 2007, §116-124; R.R. v. Poland, ECt.HR, no. 27617/04, 26 May 2011, §200; UN Committee Against Torture, Concluding Observations regarding Ireland, 17 June 2011, para 26.

> *the legal prohibition on abortion, taken together with the risk of their incurring criminal responsibility… can well have a chilling effect on doctors when deciding whether the requirements of legal abortion are met in an individual case. The provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate this effect.*[45]

52. The ECtHR similarly noted the "chilling effect" of the 1861 Act in A, B and C v. Ireland.[46]

The Commission recalls that it has previously advised the Department of Health Social Services and Public Safety that the legal and procedural framework in place regarding termination of pregnancy in Northern Ireland would likely be held not to meet the requirements of the ECHR as it does not provide the essential elements required in ECtHR jurisprudence.[47] The Commission observes that these concerns have not been addressed.

Moreover, the Commission advises that contrary to the requirements reiterated in recent ECtHR jurisprudence, the proposed amendment would further hinder the State's ability to fulfil its positive obligation to "create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion."[48]

10.2 *The Right to Life*

53. The right to life is protected by ECHR, Art. 2[49] and ICCPR, Art. 6.[50] The State is not only required to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.[51] In a case examining the death of a pregnant woman the ECtHR reiterated that:

> *The positive obligations imposed on the State by Article 2 of the Convention imply that a regulatory structure be set up, requiring that hospitals, be they private or public, take appropriate steps to ensure that patients' lives are protected.*[52]

54. The Commission notes that the proposed amendment would impose restrictions that may hinder the ability of health care professionals to "take appropriate steps to ensure that patients' lives are protected."[53]

55. The Commission recalls, for example, that the proposed amendment, without providing further definition, states that:

> *It shall be a defence for any person charged with an offence under this section to show – …*
>
> *(b) that the act or acts ending the life of the unborn child were lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.*

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45 Tysiąc v. Poland, ECt.HR, no. 5410/03, 20 March 2007, §116. See also, A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, § 254; R.R. v. Poland, ECt.HR, no. 27617/04, 26 May 2011, §193.

46 A, B and C v. Ireland, ECt.HR, [GC], no. 25579/05, 16 December 2010, § 254.

47 NIHRC, Response to the Public Consultation on the Draft Guidance on Termination of Pregnancy in Northern Ireland, July 2013.

48 P. and S. v. Poland, ECt.HR, no. 57375/08, 30 January 2013, §99.

49 ECHR, Art. 2.1: Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

50 ICCPR, Art. 6.1: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

51 Şentűrk v. Turkey, ECt.HR, no. 13423/09, 9 April 2013, §79. See also, Hristozov and others v Bulgaria, ECt.HR, Nos. 47039/11 and 358/12, 13 November 2012, §106; UN Human Rights Committee, General Comment No. 6, Article 6: The right to life, 1982, para 5: "The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures."

52 Şentűrk v. Turkey, ECt.HR, no. 13423/09, 9 April 2013, §81. See also, Z. v Poland, ECt.HR, no. 46132/08, 13 November 2012, §76; Csoma v. Romania, ECt.HR, no. 8759/05, 15 April 2013, § 41.

53 Şentűrk v. Turkey, ECt.HR, no. 13423/09, 9 April 2013, §81.

56. The proposed amendment clearly sets out the threat of criminal sanction of ten years' imprisonment and a fine of undefined amount which may be imposed on "any person who ends the life of an unborn child at any stage of that child's development". However, the Commission notes that the proposed amendment does not provide guidance as to the meaning of the requirement that acts are "performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible."

The Commission notes that the right to life would be engaged in certain circumstances covered by the proposed amendment. The Commission advises that the proposed amendment would likely not be compatible with the State's positive obligations to protect the right to life pursuant to the ECHR and the ICCPR.

NSPCC

The NSPCC welcome the opportunity to present written evidence on the content of the Justice Bill 2014 and proposed Ministers amendments to the Committee; and acknowledge that the safeguarding and protection of children and young people must be a paramount component in the operation of the justice system.

NSPCC is the lead child protection voluntary organisation in Northern Ireland delivering a range of pioneering evidence-based therapeutic and protection services directly to children and families. We have statutory child protection powers by virtue of the Children (NI) Order 1995; we are also a core member of the Safeguarding Board for Northern Ireland (SBNI) and are a member of the Strategic Management Board of Public Protection Arrangements Northern Ireland (PPANI) as provided for by article 49 and 50 of the Criminal Justice (NI) Order 2008.

NSPCC has a range of services and functions that have significant interface with the justice system, our Young Witness Service continue to work closely with the Department of Justice to improve young victim and witness experiences in the criminal justice system and our services work extensively with victims of abuse in a range of setting. From a policy perspective, we have worked considerably in the development of vetting, barring and disclosure arrangements in Westminster and the NI Assembly; provided evidence to the Protection of Freedoms Bill Select Committee as well as contributing to Sunita Mason's two consultations on criminal records and disclosure arrangements.

In our response to the Committee we have provided commentary on a number of specific provisions and where relevant made a number of suggestions.

Part V CRIMINAL RECORDS

Clause 36 amends The Police Act 1997 so that the current practice of sending both a certificate to a Registered Body (RB) and to the applicant ceases, this is in line with practice in England and Wales. Instead one certificate is issued to the applicant subject to a number of caveats as set out in Clause 120AC around informing the person that the certificate has been issued; and/or where it is at the enhanced level that it has been issued and contains no relevant matter recorded in central record or suitability information i.e. the person is barred from work with children or vulnerable adults.

NSPCC understand the reasoning for the introduction of one certificate, however there are a number of practice outworking of this which we believe have been particularly problematic in England, not least around having to chase certificates for employees and registered bodies; and the additional administration required by many voluntary associations which we fear could encourage employers to take shortcuts in employment decisions.

In essence, it is very important for employers to have physical sight of an AccessNI certificate or to be electronically advised that there is no conviction data recorded to inform employment decisions in the context of a job, not just satisfy themselves that an individual is not barred. Employment decisions need to be based on range of considerations including criminal record information that falls short of barring and many convictions may be material for particular roles.

Registered Persons: Copies of Certificates in Certain Circumstances

We have no difficultly with the new clause 120AD as drafted but offer some commentary on the concept of portability which we have supported in the Protection of Freedoms Act 2012.

While the operation of a continuous updated service has attractions in practice it has been operationally more difficult. We have supported portability of certificates as a concept and for a small number of people who work across a range of roles and organisations. For most roles

in the voluntary sector we have suggested that it is easier for employers to seek a period new certificate on a three yearly basis.

We have also cautioned about the over reliance on what is in a certificate in that there may be a considerable period of time for material to be updated on CRO. The Home office Noticeable Occupations Scheme (NOS) which is in PSNI force orders provides a further safeguard to more immediate situations when an employer will be advised of allegations by the police in certain circumstances. **The Committee may find it helpful to look at the interface between NOS and continuous updating scheme in particular how long it will be before information on individual around i] relevant non conviction data and ii] conviction information would appear on a certificate**.

Our advice to employers is always to have sight of the original certificate to satisfy themselves of any criminal record content or other relevant commentary. Individual employers and roles have different thresholds for what is acceptable and where an individual is relying on updating this should be standard good practice. It would be useful if the Committee would endorse this as part of their debate on this clause.

We suggest that a further sub section be introduced in the Clause requiring the Department to issue statutory guidance on this process and to promote good employment practice in relation to certificates.

Minimum Age for Certificates

We are supportive of 16 being the threshold for eligibility for checks, bar situations where a check is needed for a household in situations such as fostering, adoption and child-minding where children over 10 will be subject to a check at the enhanced level. We see this is proportionate and reasonable.

Additional Grounds for Refusing and Applictaion to be Registered

There are important responsibilities on those Registered Bodies and Umbrella Bodies. We are supportive of this clause for breaches of the Departmental Code of Practice.

Sharing Victim and Witness Information

We welcome this proposal as it will help agree the provision of timely victim information and allow our Young Witness Scheme to deliver a more responsive service to victims and witnesses. As it is we have had significant difficultly because of the Data Protection Act in obtaining information from statutory agencies in particular:

- The Investigating officer's name;
- Actual charge;
- Level of court;
- Whether victim and witness;
- Updates on case progression; and
- Appeals.

At the time of our submission we have not seen the detail of the proposed clause but suggest that **it would be helpful for us to agree the information that is needed with the Department of Justice and to collectively develop a template for this.**

Publication of a Code of Practice

We are happy with this proposal as it will ensure a consistent and open approach to disclosure decisions by the police. **We would however wish that the Department consult on the provisions in such a code**.

Exchange of Information Between Access NI and the Disclosure and Barring Service (DBS)

It is very important that the DBS and AccessNI are able to share information and intelligence. The DBS carries out a barring function for Northern Ireland and there is an interface in the legislation between barring, disclosure and unsuitable people seeking work. For example, certain autobars on the foot of a criminal conviction will only commence if an individual seeks to work in regulated activity. Conversely in considering barring an unsuitable person it is material to know if that person has ever worked in regulated activity and been subject to an Access NI check. This Clause ensures NI has parity with barring processes that apply in England and Wales and is probably also material for those from this jurisdiction who seek work in E&W. It is very important that UK legislation on vetting and barring while in separate provisions provides consistency across the UK in operation.

Review of Criminal Record Certificates

We are content that a scheme is established to deal with disputes around criminal record information that is not filtered. Filtering of convictions for the purposes of disclosure is a finely balanced issue and we will look forward to further discussion with the Department on the guidance. It is important to recognise as a safeguard that Chief Officers in the Police should always have discretion to disclosure a conviction however minor under Part V of the Police Act 1997 in the context of other relevant information.

Colin Reid

Policy and Public Affairs Manager NSPCC Northern Ireland
creid@nspcc.org.uk

NUS-USI

Opening comments

NUS-USI welcomes the opportunity to provide comments to the Committee for Justice in relation to the Justice Bill and proposed amendments, as we believe that it is extremely important that the views of the public are heard on the important issues being addressed in the Bill and proposed amendments. NUS-USI does not wish to be considered to provide oral evidence on this, as this written evidence covers NUS-USI's key thoughts on this.

Comments on the amendment from Jim Wells MLA

NUS-USI strongly opposes the amendment from Jim Wells MLA. The restrictions that this amendment might introduce could make it almost impossible for any private clinic to operate in Northern Ireland. The restrictions that this amendment could impose could pose significant problems for women.

The amendment could result in the closure of any private clinic here and this could mean less information potentially being available for women around health and reproductive rights. If this amendment passes it could create difficulties for women in that it might pose problems for women who are trying to access guidance around health.

NUS-USI would like to see the Committee for Justice and the Assembly oppose this amendment.

The message that this amendment could send out if passed could be extremely negative. It could send out the message that Northern Ireland is

being left behind by its stance on abortion rather than moving to deliver choice for women.

Choice needed now

NUS-USI believes that women in Northern Ireland should have choice as regards abortion. We believe that government should bring forward legislation to enable women to have choice as soon as possible.

Office of the Lord Chief Justice

Laurene McAlpine
Principal Private Secretary

LORD CHIEF JUSTICE'S OFFICE,
ROYAL COURTS OF JUSTICE, BELFAST, BT1 3JF
TELEPHONE: (028) 9072 4614 • FAX: (028) 9023 6838
E-MAIL Laurene.McAlpine@courtsni.gov.uk

16 July 2014

Dear Christine

Thank you for your letter of 8 July which was addressed to Paula Stevenson in this office. You may wish to note that Ms Stevenson has moved post.

The Chief Justice does not comment on substantive policy issues other than to identify any significant operational implications. Officials in the Department of Justice have kept this office informed as work on the Bill has progressed and there are no matters which the Chief Justice wants to raise with the Committee.

The Committee will already have the Chief Justice's letter of 9 April in respect of the Attorney General's proposed amendment to Section 14 of the Coroners Act (NI) 1959 which was originally raised in the context of the Legal Aid and Coroners Bill.

Yours sincerely

Laurene McAlpine

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont Estate
BELFAST
BT4 3XX

Police Federation for Northern Ireland

Police Federation for Northern Ireland
77-79 Garnerville Road, Belfast BT4 2NX
Tel: 028 9076 4200
Web: www.policefed-ni.org.uk
E-mail: office@policefedni.com
Twitter: @PoliceFedforNI

Our Ref: TS/eme/345
Your Ref:

Justice Committee
The Committee Clerk
Room 242, Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Email Only To: justice.bill@niassembly.gov.uk

Wednesday, July 23, 2014

Dear Ms Darrah

Justice Bill

I refer to your correspondence and associated enclosures of 08 July 2014.

Having carefully considered the content of same, I correspond on behalf of the Police Federation for Northern Ireland to advise that we have no issues of concern with any of the specific clauses as outlined, and do not wish to propose any further amendments to the text.

Thank you for the opportunity to consider the document.

Yours sincerely

Terry Spence QPM
Chairman

Police Federation NI
WELFARE & EFFICIENCY
Established by Act of Parliament

Precious Life

Precious Life

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

17th September 2014

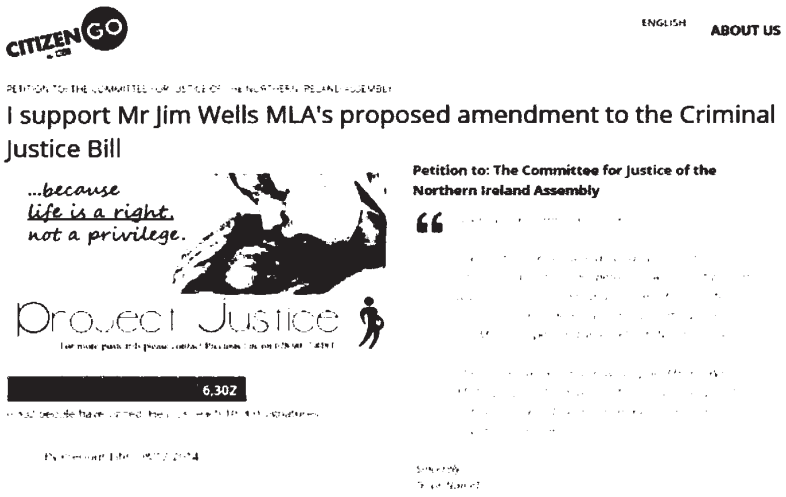
Dear Ms Darrah,

In response to the Justice Committee's call for evidence on the Criminal Justice Bill and the Proposed Amendments, Precious Life launched the **Project Justice Campaign**. This campaign gave the people of Northern Ireland an opportunity to show their support for Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill and its prohibition of commercial provision of abortion 'services' in Northern Ireland. Precious Life produced thousands of submission postcards outlining the responder's support for Mr Wells' amendment. These postcards were distributed in churches and communities throughout Northern Ireland.

On behalf of the people of Northern Ireland, Precious Life is pleased to present to the Justice Committee **22,000 signed postcards**, in addition, we also present **1,048 submission sheets,** urging the Justice Committee to adopt Mr Wells' proposed amendment to the Criminal Justice Bill, and ensure that the *Marie Stopes* centre in Belfast, or any private abortion facility, does not perform abortions in Northern Ireland. We also present **6,302 signatures** collected as part of our CitizenGO campaign. I have included a photo-shot of the online CitizenGO petition.

Yours sincerely,

Bernadette Smyth
Director
Precious Life



PO Box 4[illegible] • Belfast • BT1 4YH • Telephone [illegible]
info@preciouslife.com • www.PreciousLife.com

Precious Life

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

17th September 2014

Dear Ms Darrah,

I, Bernadette Smyth, am writing on behalf of Precious Life, the leading prolife group in Northern Ireland, in response to the Justice Committee's call for evidence on the Criminal Justice Bill and the Proposed Amendments. Since 1997 Precious Life has worked tirelessly to protect Northern Ireland's unborn children through activism in the Northern Ireland Assembly, the courts, and on the streets. Through our many lobby campaigns, education outreaches and counselling services, we have saved many babies and their mothers from the horror of abortion.

I am writing in regard to Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill. I wish to state from the outset of this submission that Precious Life fully supports Mr Wells' proposed amendment to the Criminal Justice Bill.

Abortion in Northern Ireland is a criminal offence, governed by sections 58 and 59 of the Offences Against the Person Act and section 25 of the Criminal Justice Act (Northern Ireland) 1945. There is a defence which may be raised; that the abortion was performed to save the life of the pregnant woman or to prevent a real and serious adverse effect on her physical or mental health. This defence is not automatic and depends on the circumstances of the act carried out. The sole purpose of the above legislative provisions is the protection of the unborn child. Mr Wells' proposed amendment makes clear that a defence to the criminal charge of abortion would not be available to anyone who performed an abortion for a fee at a private medical centre. The purpose of this amendment is to ensure that private medical centres, such as the *Marie Stopes* centre which opened its doors in Belfast in October 2012, cannot legally carry out abortions in Northern Ireland. A private abortion facility's sole purpose is to destroy unborn children and its sole interest is profit. *Marie Stopes*' professed mission is 'children by choice not chance'. However, the law in Northern Ireland ensures that every human being, born and unborn, has a right to life; a right not to be intentionally killed. As stated above, Precious Life wants unborn babies and their mothers protected from abortion, and is therefore totally opposed to the *Marie Stopes* centre, or any private abortion facility, in Northern Ireland. Precious Life wholeheartedly supports Mr Wells' proposed amendment to the Criminal Justice Bill and its prohibition of commercial provision of abortion 'services' in Northern Ireland.

PO Box 425 • Belfast • BT1 4YF • Telephone 028 9027 8484
info@PreciousLife.com • www.PreciousLife.com

I would like to address to the Justice Committee a number of concerns regarding *Marie Stopes* or any private abortion facility in Northern Ireland.

***Marie Stopes* or any other private abortion facility is not needed in Northern Ireland**

It has been widely reported that both Northern Ireland and the Republic of Ireland, at least, before the enactment of the Protection of Life During Pregnancy Act 2013, are among the safest places for women to give birth. Over the forty years of legalised abortion in Britain there has been a consistent pattern in which higher abortion rates have run parallel to higher incidence of stillbirths, premature births, low birth-weight neonates, cerebral palsy, and maternal deaths as sequelae of abortion. In contrast, according to a research paper in 2012 by Byron Calhoun, John Thorp and Patrick Carroll, both Northern Ireland and the Republic of Ireland have displayed lower rates of all morbidities and mortality associated with legalised abortion. The law in Northern Ireland ensures pregnant women receive world-class medical care because both the mother and unborn child are treated as patients. In difficult cases where the mother's life is in danger, she and her unborn child receive the best obstetric care as has always been the case in Northern Ireland.

Marie Stopes proudly professes to be the UK's leading provider of sexual and reproductive healthcare services. However, abortion should not be understood as a 'health service', a 'treatment' for a physical or mental condition, as it is in fact the deliberate killing of an unborn child. It must be understood that there are no medical conditions when the life of a pregnant woman can only be saved by abortion. Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are legally permissible when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child. If through careful treatment of the pregnant woman's pathological condition the unborn child inadvertently dies or is injured, this is tragic and, if unintentional, is not unethical and not a criminal offence.

In order to determine the appropriate treatment of suicidality in a pregnant woman, one must turn to the evidence provided by consultant psychiatrists with extensive experience in caring for patients who are suicidal and pregnant women with mental health problems. When suicide does occur in pregnancy, it is in the context of mental illness. A suicide risk assessment must be carried out when a pregnant woman threatens suicide and this will determine the appropriate care plan. Appropriate treatment involves psychological intervention, nursing, social support, and perhaps medication as indicated by the needs outlined in the case history and examination of the patient. According to Professor Patricia Casey, a professor of psychiatry at the University College Dublin, in her submission to the Oireachtas Committee on Health and Children in May 2013, there is no evidence that abortion is a treatment for suicidal intent. In fact, to offer an abortion to a distressed woman, who is psychiatrically ill, is seriously ill advised since the woman's capacity to make such a life-changing decision is frequently impaired. Moreover, those with previous mental health problems are at an increased risk of relapse, both immediately and in the long term, post-abortion. It is important to stress that preserving the pregnant woman's safety is done by care, support and psychological and pharmacological interventions; not by the killing of her unborn child.

As stated above, in difficult cases where the mother's life is in danger, she and her unborn child receive the best obstetric care as has always been the case in Northern Ireland. *Marie Stopes* or any private abortion facility is not offering or providing any treatment that cannot be ethically and legally provided by the NHS free of charge. Pregnant women in Northern Ireland do not need *Maries Stopes* or any private abortion facility to receive necessary treatment and care. As Mr Edwin Poots, the Northern Ireland Health Minister, stated, 'there are no cases of women dying in Northern Ireland'.

Lack of transparency and accountability

In a meeting with the Justice Committee on 10th January 2013, representatives of the *Marie Stopes* centre in Belfast failed to provide a detailed explanation of how pregnant women are medically assessed in order to determine whether an abortion can be performed 'to save the life of the pregnant woman or to prevent a real and serious adverse effect on her physical or mental health'. The representatives failed to defend how *Marie Stopes*' healthcare professionals could hold an honest belief, and have reasonable grounds to believe, that abortion was necessary to save a pregnant woman's life or to prevent injury to her physical or mental. Alarmingly, Dawn Purvis, the Programme Director of the *Marie Stopes* centre in Belfast, when questioned by the chairperson of the Justice Committee, admitted that there is nothing to stop the *Marie Stopes* centre in Belfast from carrying out abortions right up to birth. There appears to be no accountability for 'services' provided by the *Marie Stopes* centre in Belfast. Although it has registered with the Regulation and Quality Improvement Authority (RQIA), the RQIA has no control over the clinical judgements of the healthcare professionals at *Marie Stopes* and has no role in ensuring that abortions are carried out 'within the legal framework'.

Precious Life's concern that *Marie Stopes* will not be providing pregnant women with the medical treatment and care that they need is amplified by *Marie Stopes*' association with reported deaths of numerous women. In 2007 a fifteen year old girl died five days after an abortion at a *Marie Stopes* centre in Leeds. She was supposed to have been given antibiotics to combat infection after the procedure but she never received the medication and died of a heart attack. In 2011 a doctor perforated the uterus of a woman and left parts of the baby inside her after an abortion at a *Marie Stopes* centre in London. He was later struck off the medical register. In 2012 a woman travelled from the republic of Ireland to have an abortion a *Marie Stopes* centre in London. She died in a taxi hours after the procedure. She is said to have suffered a heart attack caused by extensive internal blood loss. In June 2014, three nurses were arrested in relation to the death of a young girl after an abortion at a Marie Stopes centre in Uganda. She died of excessive bleeding.

It has been reported that *Marie Stopes* has performed illegal abortions all over the world, including South Sudan, Zambia and Kenya. In 2007 Paul Cornellisson, the then *Marie Stopes International* Programme Director, admitted at an abortion conference in London that *Marie Stopes* 'do illegal abortions all over the world'. Since its opening in Belfast in October 2012, *Marie Stopes* has sought to challenge our pro-life laws in Northern Ireland. It appears that Marie Stopes does not wait for the law to change, but brazenly opens its doors in a country where abortion is illegal with the objective to soften individual consciences and gradually render the country's pro-life laws unenforceable in preparation for a widespread push for legalised abortion.

There must be accountability, transparency and an open working relationship between healthcare providers and the Department of Health, Social Services and Public Safety. Healthcare professionals need to account for their decisions, explain exactly what was done to save the life of an aborted child and why that was not possible. Precious Life and wider society have reason to believe that such accountability, transparency and an open working relationship with the Department of Health is not welcomed by the *Marie Stopes* centre in Belfast. Without these safeguards, pregnant women in Northern Ireland are vulnerable to exploitation and exposed to physical, emotional and psychological harm, and unborn children in Northern Ireland will be afforded no protection.

Precious Life urges the Justice Committee to adopt Mr Wells' proposed amendment to the Criminal Justice Bill, and ensure that the *Marie Stopes* centre in Belfast, or any private abortion facility, does not perform abortions in Northern Ireland. As explained above, pregnant women in Northern Ireland do not need *Maries Stopes* or any private abortion facility to receive necessary treatment and care. Considering that abortion is the deliberate killing of an unborn child, a cold and costly, direct and wrong social solution to the troubles faced by a vulnerable pregnant woman, one can appreciate why Britain falls below Northern Ireland and the Republic of Ireland's standards of maternal health. *Marie Stopes*' rhetoric of 'children by choice not chance' does not serve women's needs or best interests, but only dupes them into believing that the choice to pay for highly skilled hands to eradicate the existence of their unborn children is what they deserve.

With loving care, support and appropriate medical treatment, every pregnant woman should be comforted and assured that she is not alone to cope with her pregnancy and the birth of her child. Abortion is never the solution to an unplanned pregnancy, and *Marie Stopes* or any private abortion facility will never be wanted or needed in Northern Ireland.

Thank you for taking the time to read this submission.

Yours sincerely,

B Smyth

Bernadette Smyth

Director
Precious Life

Presbyterian Church in Ireland

Presbyterian
CHURCH IN IRELAND

From the Clerk of the General Assembly and General Secretary, Rev T D Gribben

10 September, 2014

The Committee Clerk of the Justice Committee,
Room 242,
Parliament Buildings,
Stormont,
Belfast,
BT4 3XX.

Dear Sir,

With regard to the consultation on the current Bill before the Justice Committee, the Presbyterian Church in Ireland would wish to make the following submission relating to one issue being considered by the Committee:

> *The Presbyterian Church in Ireland supports the amendment tabled to the Justice Bill by Mr Jim Wells. We would however ask the Committee to scrutinise the wording in detail to ensure that there will be no unexpected consequences arising from the amendment if it were to be accepted by the Assembly.*

Yours sincerely,

TREVOR D. GRIBBEN

Assembly Buildings, 2-10 Fisherwick Place, Belfast BT1 6DW
Tel: 028 9032 2284 Direct: 028 9041 7208
Fax: 028 9041 7301 Email: clerk@presbyterianireland.org

PSNI

Police Service of Northern Ireland

Northern Ireland Assembly - Justice Bill 2014

PSNI Response

The Police Service of Northern Ireland has no specific issues to highlight in respect of the proposed Bill.

We support the addition of a Victim and Witness charter as a means to help further improve their experience and confidence in justice. The recently established Victim and Witness Care Units provide a valuable mechanism to help deliver the charter standards however full analysis of the impact on delivering the standards will only be clear when they have been fully identified.

Public Morals Committee of the Reformed Presbyterian Church of Ireland

Public Morals Committee of the Reformed Presbyterian Church of Ireland

Dear Sir/Madam

I am writing to you on behalf of the Public Morals Committee of the Reformed Presbyterian Church of Ireland. The Reformed Presbyterian Church has had a separate existence in Ireland for over 250 years and currently has 36 congregations in Northern Ireland and the Republic of Ireland.

I am writing to you in response to a letter sent to us by Christine Darragh, Clerk to the Committee for Justice, inviting submissions in relation to the draft Justice Bill.

We support the aim of the amendment proposed by Mr Jim Wells MLA to prevent lawful abortions being conducted outside of NHS premises. The RPCI accepts that the Bible is God's authoritative Word to the human family. This authoritative Word gives us the basis upon which to value human life, namely that we are created in the image of God. It also demonstrates that the image of God is impressed on us at conception. The destruction of an embryo is therefore the destruction of an image-bearer, an action of the most serious kind. As a consequence the RPCI is supportive of this of this amendment to the law in Northern Ireland .

We would ask you to desist from this proposal to interfere with the right of parents.

Yours sincerely,

S.Drennan (Mr.)

The Convener
Committee on Public Morals
Reformed Presbyterian Church of Ireland
560 Doagh Road
Newtownabbey

Public Prosecution Service

Call for Evidence on the Justice Bill and Proposed Amendments

I refer to your letter to the Director of Public Prosecutions dated 8 July 2014 inviting him to respond to the Justice Committee with the views of the Public Prosecution Service (PPS) on those aspects of the Justice Bill which affect the PPS. The Director has asked me to respond. I apologise for the delay in responding.

As requested, this submission is structured to address the specific clauses and schedules of the Bill and amendments.

The PPS remains committed to delivering a first class prosecution service to the people of Northern Ireland and we welcome any adjustments to the criminal justice system which are intended to make it more efficient and effective.

We would caution, however, that the proposals in the Bill would require an impact assessment to determine the extent to which systematic changes will be required and the potential cost of those changes.

Turning now to our submission.

Part 1

Single Jurisdiction for County Courts and Magistrate's Courts

The provisions contained within this part of the Justice Bill propose abolishing the existing County Court boundaries and Petty Sessions Districts and replacing them with as yet undefined Administrative Divisions. The PPS is structured around the present County Court boundaries and any changes to this system could leave the PPS regional structure differing from that of the Courts with Regions cutting across Administrative Divisions. Were we to change our structure to fit with the new Court Boundaries this would have a considerable

impact on the PPS organisation and resources the extent of which we are not yet able to assess. We are also aware that the PSNI are considering changes to their District structure which could again have a significant impact on the PPS.

We would have further concerns that the ability to move cases from one Magistrate's Court venue to another, potentially at short notice, would have a significant impact on those victims and witnesses who wished to or were required to attend the court proceedings. We note the guidance issued by the Department of Justice and we would expect that guidance to be administered in such a way as to minimise the inconvenience to victims and witnesses. We note that the circumstances where the Court could depart from the guiding principle that most criminal offences should be prosecuted in the court division where the offence occurred or the defendant resides includes the provision that this principle could be departed from to assist "the efficient management of court accommodation" and "to facilitate the effective distribution and disposal of business". We would hope that these considerations would not be given priority over those that are protecting the interests of victims and witnesses.

Part 2

Committal for Trial

We intend to deal with all the provisions of this part together. We welcome the changes to the committal process in the criminal courts and in particular the abolition of preliminary investigations and mixed committals.

We have previously indicated in correspondence dated 26th October 2012 to the Minister of Justice that the proposals in the Bill are more limited than we would have wished. We recognise that Committal reform is a staged process however the PPS position in respect of committal proceedings remains that they should be abolished altogether.

We note the provisions for direct transfer for trial of cases where an indication of an intention to plead guilty has been made and for specified offences. Whilst we will return to the provisions around early guilty pleas later in this letter we do, however, have concerns around the provisions for the direct transfer of specified offences. We observe that the Bill as currently drafted does not provide that where a defendant faces charges in addition to the specified offences or where a co-defendant is charged with a non-specified offence that those additional

charges or the co-defendant can also be directly transferred to the Crown Court. We consider it in the interests of justice to permit the additional charges or the charges faced by a co-accused to be prosecuted at the same time as the specified offence so a jury can hear all the relevant evidence. We are concerned there is no structure to allow this to happen contained within the Bill.

Whilst the specified offences at this time are limited to the offences of murder and manslaughter we note that provision exists at Article 12(4) for the list of specified offences to be expanded. We hope that should the limited reform proposed prove successful in reducing delay without prejudicing defendant's rights that the list of specified offences can be expanded.

We would consider that in those cases that do directly transfer robust case management will be essential and we shall return to this issue later.

Part 3

Prosecutorial Fines

The option for a prosecutor to offer an offender a prosecutorial fine is something we believe has the potential to reduce the number of cases of low level offending that go to court and result in small fines but at the same time take up valuable court and prosecutor time to no apparent benefit and require an offender to attend Court or retain the services of a solicitor to represent them. We therefore welcome in principle the introduction of prosecutorial fines however we make the following observation. In the present environment police have a number of non-court disposals which they are able to offer for low level offending; PNDs (Penalty Notice for Disorder), Fixed Penalty Notices and police use of discretion has taken out of the court system a large number of low level cases. In these circumstances a smaller number of low level cases are being submitted to the PPS for decision.

Our own enquiries have lead us to conclude that if the power to offer prosecutorial fines is one that is to be of significant benefit to the Public, the PPS and the Courts it must be designed in a way that captures not only all those low level cases in which a monetary penalty alone could be imposed but also all the low level road traffic cases in which mandatory penalty points would be imposed at a court hearing. To this end we feel that for prosecutorial fines to be effective, prosecutors should, in addition to the provisions to offer a fine and in appropriate cases compensation to an offender, have the power to offer penalty points to an

offender in those cases where there are mandatory penalty points attached to an offence. We appreciate this may require an amendment to the present Bill however we feel such a change is necessary to make this provision effective.

We have no comment to make on the proposal that a prosecutorial fine would not result in a criminal conviction but we consider that a record of the imposition of a prosecutorial fine should be recorded in the same way as cautions are.

Part 4

Victims and Witnesses

We have worked with the Department of Justice in assisting with the development of the Victim's Charter for some time. We welcome the enshrining in law of the Victim's Charter and those provisions of the EU Directive on Victim's Rights which are contained within it. We consider this document a valuable addition to the work we have been carrying out with victims and witnesses, to give them a greater say in the criminal justice process, to provide them with sufficient support and services in the lead up to criminal proceedings and to give them access to enough information in a timely manner to allow them to be fully engaged in any case in which they are involved.

Part 5

Criminal Records

The PPS has no comment upon this provision.

Part 6

Live Link in Criminal Proceedings

We welcome the provisions within this section which extend the use of live links to a range of court hearings and to witnesses outside of the United Kingdom which presently is not available to us. We also welcome the provisions that make it easier for expert witnesses to give evidence by live link thus avoiding their unnecessary attendance at court.

Part 7

Violent Offences Preventions Order

Whilst such Orders fall within the sentencing responsibility of the Judiciary the PPS welcomes their introduction as a further means of protection for those who might otherwise be at risk from Violent Offenders. We will work with the other Criminal Justice Agencies to make the most efficient use of this provision.

Part 8

Miscellaneous

We intend to deal with the miscellaneous parts as they arise.

(i) Jury Service. We have no comment to make on this provision.

(ii) Early Guilty Pleas. We note the provisions in Section 77 provide for the sentencing Judge to inform a defendant who is considered not to have pleaded guilty at the earliest reasonable opportunity of the sentence they would have received had they done so. We consider that informing a defendant at this stage, when they cannot change how they have approached the case to date, on its own will have limited impact on the number of early guilty pleas. We suggest that provision should be made obliging a Judge to enquire of a defendant's Advocate if they have advised the defendant of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 – which contain those provisions around a reduction in sentence for a guilty plea entered at the first reasonable opportunity - before they have entered any plea to the charges

they face. The Court can then be satisfied that the defendant would then be fully informed of the benefits of entering a guilty plea at the earliest reasonable opportunity.

We note that Section 78 places a duty on the Solicitor to advise their client of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 and the impact of entering a guilty plea at the earliest reasonable opportunity will have on their sentence. We observe that the proposal we have made above would give this duty even more significance and should assist in encouraging early guilty pleas. We suggest, however, that the duty to advise should sit with the advocate whether that advocate is a solicitor advocate or counsel and it they who will be asked by the judge whether they had advised the defendant as suggested above.

Consideration should, in our view, be given to a statutory provision providing an additional discount to those who avail of the early guilty plea provisions. We understand that this has been very successful in England and Wales.

(iii) Avoiding delay in criminal proceedings. The PPS makes significant efforts to avoid delay in both Crown Court and Magistrates Court proceedings. We note the provisions that the department may, by regulations, impose a general duty on persons exercising functions in relation to criminal proceedings and that these regulations must take into account the needs of victims, witnesses and persons under the age of 18. Whilst we have no difficulty in principle with these provisions, we question whether in light of the efforts we make on a regular basis to achieve these ends, they are necessary as far as the PPS is concerned.

The PPS welcomes the provisions around case management regulations. We welcomed the introduction of the Protocol for Case Management in the Crown Court by the Lord Chief Justice in his Practice Direction of 2011 and believe the case management regulations referred to by the Bill have the potential to mirror the positive impact on effective case management in criminal cases that the introduction of the Criminal Procedure Rules has had in England and Wales.

(iv) Public Prosecutor Summonses. The PPS welcomes this provision which allows a summons' to be issued by a public prosecutor. We believe giving prosecutors this power will result in efficiencies in the initiation of criminal proceedings and, as a consequence, will facilitate the electronic submission of complaints to a Court Office without the need for the involvement of a lay magistrate.

We note that the provision contained in Article 81(4) is limited to the power to re-issue those summons' issued by a public prosecutor in the first instance. We consider there would be merit in extending this power to include those summons originally issued by a lay magistrate.

(v) Defence access to premises. The PPS has no comment to make upon this provision.

(vi) Powers of Court Security Offices. The PPS has no comment to make upon this provision.

(vii) Aims of the Youth Justice System. The PPS notes the provisions contained within this section but has no comment to make upon them.

(viii) Amendment to Section 10 of the Criminal Justice Act (Northern Ireland) 2013. The PPS has no comment to make upon this section.

Part 9

Supplementary Provisions

The PPS has no comment to make upon this part of the legislation.

We shall now turn to the amendments contained within the legislation as set out in your letter of 8th July 2014.

The Department of Justice's proposed amendments

The PPS has no comment to make on any of the proposed amendments put forward by the Department of Justice.

The amendment proposed by Mr Jim Wells MLA

New Clause, Ending the Life of an Unborn Child

The PPS has no comment to make upon this amendment.

This concludes any commentary we have on the Justice Bill as currently formulated. We would be more than happy to attend with the Justice Committee to expand on any of the comments contained within this correspondence or to give evidence to the Committee on the Bill generally.

Yours faithfully

Ciaran McQuillan
Assistant Director
Policy Section
Public Prosecution Service for Northern Ireland

Regulation and Quality Improvement Authority

The **Regulation** and
Quality Improvement
Authority

GH/KF/dep

15 September 2014

Ms Christine Darrah
Clerk to the Committee for Justice
The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Ms Darrah

In response to your letter of 8 July 2014, please find attached a written submission of evidence to inform the next stage of development of The Justice Bill.

The submission from the Regulation and Quality Improvement Authority focusses on the proposed amendment of a new clause 11a ending the life of an unborn child, provides some general comment on the proposed new clause and the implications for the regulator in the exercise of its statutory functions.

Yours sincerely

for **Glenn Houston**
Chief Executive

Assurance, Challenge and Improvement in Health and Social Care

9th Floor, Riverside Tower, 5 Lanyon Place, Belfast BT1 3BT Northern Ireland
tel: 028 9051 7500 fax: 028 9051 7501 email: info@rqia.org.uk web: www.rqia.org.uk
Established under The Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003

RESPONSE BY THE REGULATION AND QUALITY IMPROVEMENT AUTHORITY TO CLAUSE 11A OF THE JUSTICE BILL.

The clause as presently drafted reads as follows:

"**Ending the life of an unborn Child**

11A – (1) Without prejudice to section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945 and subject to subsection (2) any person who ends the life of an unborn child at any stage of that child's development shall be guilty of an offence and liable on conviction on indictment to a period of not more than ten years' imprisonment and a fine.

(2) It shall be a defence for any person charged with an offence under this section to show-

(a) that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust, or

(b) that the act or acts ending the life of the unborn child were lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.

(3) For the purposes of this section a person ends the life of an unborn child if that person does any act, or causes or permits any act, with the intention of bringing about the end of the life of an unborn child, and, by reason of any such act, the life of that unborn child is ended.

(4) For the purposes of this section 'lawfully' in subsection (2) means in accordance with any defence or exception under section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945."

The whole subject of abortion in Northern Ireland and the "legal criteria" within which it can be performed are controversial subjects but the reported case law establishes that a clinician who procures an abortion in good faith for the purpose of preserving the life of the mother would be acting within the law. In order to be guilty of an offence under the Offences against the Person Act 1861 or the Criminal Justice (Northern Ireland) Act 1945, the prosecution would have to establish that the person who procured the abortion did not believe that there was a risk that the mother might die if the pregnancy was continued. Further, if a clinician held the honest opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy would have a significant adverse effect upon the mother's physical or mental health, the procurement of an abortion in such circumstances would be lawful.

It is important to note that the law envisages that serious long-term psychological harm can be precipitated by reason of giving birth to a child suffering from an abnormality. Again, in order to be guilty of an offence, it would be necessary for the prosecution to prove that the person who procured the abortion did not believe that the mother would probably suffer serious long-term harm to her physical or mental health, including harm caused by her giving birth to a child suffering from an abnormality. The adverse effect on the health of the mother would have to be a real and serious one and one which was permanent or long-term. In most cases the adverse effect would need to be a probable risk but a possible risk of death might well be sufficient if the imminent death of the mother was the risk in question. It is a question of fact and degree whether the perceived effect of a non-termination is sufficiently grave to warrant terminating the pregnancy in any particular case. It can be seen from the above summary of the law that the case law as it has developed has allowed the law to be stated with a tolerable degree of certainty. The first issue to be considered is whether this provision irrespective of its intended purpose detracts from this tolerable degree of certainty and introduces an element of uncertainty and confusion.

Sub-paragraph (1) of Clause 11A, read in isolation, makes it an offence to end the life of an unborn child at any stage of that child's development. It is clear from the decision of Mumby J in *Smeaton v Secretary of State for Health* [2002] EWHC 610

(Admin) (18th April, 2002) that the Courts are likely to interpret the phrase "at any stage of that child's development" as meaning at any time after implantation of the embryo in the uterine wall has been established. Therefore, any treatment that has the effect of preventing successful implantation of the fertilised embryo such as the morning after pill will not fall within the scope of the proposed provision.

One issue which will have to be addressed is whether an ectopic pregnancy would be included within the ambit of this provision. In such a case the embryo is implanted but not in the uterine wall. Rather it is implanted in the falopian tube. Could the removal of a six week embryo from its site of implantation in a fallopian tube be considered to be the ending of the life of an unborn child at a stage of that child's development? Should the law as it presently stands be amended to include a provision which may be interpreted to so as to possibly criminalise the ending of an ectopic pregnancy?

The blanket prohibition on the ending of the life of an unborn child at any stage of that child's development is qualified to some extent by the defences set out in sub-paragraph (2), (3) and (4) of Clause 11A. These provisions seem to mean that the defences which are available to a charge levelled under the Offences against the Person Act 1861 or the Criminal Justice (Northern Ireland) Act 1945 would be available to a charge levelled under Clause 11A but only if the act complained of was lawfully performed at premises operated by a Trust or if the act complained of was lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.

In instances where a hospital clinician considers that the prescription and administration of oral abortifacient pharmaceutical drugs such as mifepristone followed by prostaglandin would be warranted, the manner in which the Clause is drafted would criminalise the practice of the actual taking of progesterone at home, as the act ending the life of the unborn child would have occurred outside premises operated by a Health and Social Care Trust. This would be so even though the medication was prescribed by an NHS doctor on Trust premises. The provision would also appear to prevent Consultant Gynaecologists in their private practice or even General Practitioners in their NHS practice lawfully prescribing oral

abortifacient pharmaceutical drugs. Is it intended that the provision of otherwise lawful treatment to women be restricted in such a manner? It might be regarded as highly anomalous that the decision by a doctor in a Trust run clinic to allow a patient in early pregnancy to ingest the second stage oral abortifacient pharmaceutical drug in the privacy of her own home might give rise to the commission of a criminal offence under this Clause whereas no offence would be committed under this proposed provision in the case of a driver who negligently knocked down a heavily pregnant pedestrian who suffered a miscarriage as a result.

If it is the intention of the promoters of this Clause to impose a blanket ban on private healthcare entities providing pharmaceutical early pregnancy termination services to women in Northern Ireland then it would seem from the above analysis of the law that the manner in which the Clause is drafted is such that, if enacted, a wider range of otherwise lawful activities may be criminalised.

In addition to the above matters, even a cursory consideration of the issue of enforcement reveals significant potential difficulties which are of such a magnitude as to have the potential to bring the law into disrepute. Who is going to police this law? How is it going to be enforced? Would its implementation simply have the effect of forcing women to purchase the two stage oral abortifacient pharmaceutical drugs on the internet and to take them at home without medical supervision? Is such a foreseeable consequence so potentially significant as to make it difficult to ignore when considering the overall impact of this draft Clause?

The potential role of the Regulation and Quality Improvement Authority (RQIA) in relation to the possible enforcement of this novel piece of criminal law must also be considered. The statutory role of the RQIA is outlined in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. The RQIA is Northern Ireland's independent health and social care regulator. In its work, the RQIA encourages continuous improvement in the quality of health and social care services through a programme of inspections and reviews.

It is not the role and function of the RQIA to operate as an enforcer of criminal law provisions outside of its present regulatory framework. To do so would change the

whole ethos of the RQIA from quality and improvement to policing and enforcement and would require significant changes to the legislative framework under which this body was established. If the RQIA were to be required to take on the role of enforcer of the criminal law provisions of Clause 11A, then consideration would have to be given to the following matters:

- A thorough and detailed equality impact assessment would have to be performed in order to ensure that all regulated services currently inspected by RQIA are treated in a fair and equitable manner.
- Detailed cost analysis would have to be performed on the basis that this novel role would necessitate the employment of additional inspectors and administrators and would mandate the provision of additional specialist training to enable inspection staff to effectively undertake this role and gather evidence which would be admissible in the Crown Court.
- It would be necessary to take into account the effect on the relationship between the RQIA and the registered providers of services which the change in the role and function of the RQIA would bring about. It is highly probable that a negative dynamic would be established which could hinder quality and improvement.
- Finally, in view of the forensic complexities associated with the investigation of potential offences of this nature, it may well be the case that RQIA inspectors would have to be accompanied by specially trained PSNI officers during inspections.

In essence, it is the submission of the RQIA that this draft Clause is ill thought out both in terms of its scope and in terms of the potential unintended and deleterious effects upon the provision of healthcare in Northern Ireland and the proper and effective discharge of its functions by the RQIA.

South Eastern Health and Social Care Trust

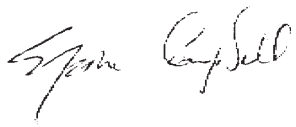
South Eastern Health and Social Care Trust

JUSTICE BILL

The Trust welcomes the opportunity to respond to the above consultation.

The Trust has considered the consultation document and has no further comments.

Yours sincerely



Elaine Campbell
Corporate Planning & Consultation Manager

South Eastern Health and Social Care Trust, Strategic & Capital Development Department, Kelly House, Upper Newtownards Road, Dundonald, Belfast BT16 1RH, Tel: 028 9055 0434

Society for the Protection of Unborn Children

The Society for the Protection of Unborn Children

Tel 028 9077 8018 belfast@spuc.org.uk

Submission on the Proposal by Mr Jim Wells MLA for Public Consultation: Ending the Life of an Unborn Child

12 September 2014

Introduction

The Society for the Protection of Unborn Children (SPUC) is an independent education, research, advocacy and lobby group with active members throughout Britain and Northern Ireland. We are committed to affirming, defending and promoting the inherent value of human life from the moment of conception until its natural end. We defend, assist and promote the life and welfare of mothers during pregnancy and of their unborn children from fertilisation up to, during and after birth. We reassert the principle laid down in the Declaration of the Rights of the Child that:

> *…the child by reason of his physical and mental immaturity, needs special safeguards and care, including legal protection, before as well as after birth.*[1]

We are opposed to the intentional killing of unborn children through abortion, whether by chemical or surgical means (including the use of drugs and devices to cause abortion of the early embryo) as morally unjustifiable. We are opposed to abortion whether performed within the health service or the private sector.

It is tragic that decisions taken by the Courts mean that the law in Northern Ireland does not provide absolute protection for children before they are born. In spite of this babies are undoubtedly much safer here than they would be under the British Abortion Act. SPUC would therefore welcome the adoption of this proposed legislation as it promises to prevent the current level of legal protection from being further undermined.

The first part of this submission will deal directly with the aims and the anticipated consequences of the proposal. Part two of the submission will focus on the threat to public safety posed by the presence of the commercial abortion provider Marie Stopes International (MSI). The opening of the Marie Stopes abortion facility in Belfast 2012 was a clear challenge to the laws protecting our unborn children. This threat cannot be ignored. SPUC believes this proposal needs to be adopted as a matter of urgency.

New Legislation Proposed by Mr Jim Wells

Ending the Life of an Unborn Child

11A.-(1) Without prejudice to section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945 and subject to subsection (2) any person who ends the life of an unborn child at any stage of that child's development shall be guilty of an offence and liable on conviction on indictment to a period of not more than ten years' imprisonment and a fine.

1 Submission on the Proposal by Mr Jim Wells MLA for Public Consultation:

(2) It shall be a defence for any person charged with an offence under this section to show-

(a) that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust, or

(b) that the act or acts ending the life of the unborn child were lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.

(3) For the purposes of this section a person ends the life of an unborn child if that person does any act, or causes or permits any act, with the intention of bringing about the end of the life of an unborn child, and, by reason of any such act, the life of that unborn child is ended.

(4) For the purposes of this section 'lawfully' in subsection (2) means in accordance with any defence or exception under section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945.'

This proposal essentially seeks to do two things:

i) to ensure that unborn children in Northern Ireland continue to benefit fully from the legal protection which currently exists, and

ii) to prohibit the activities of commercial abortion providers, such as Marie Stopes International (MSI).

Strengthening the Law

If enacted this proposal would offer a number of benefits. It would:

- remove the threat to women and children posed by the presence of the MSI abortion facility in Belfast (See Part two of this submission for details of just how grave this threat is.)
- prohibit other commercial abortion providers from expanding their business into Northern Ireland
- reaffirm the current level of protection for unborn children
- silence abortion advocates who claim Northern Ireland is governed by a Victorian abortion law
- send a clear message to Westminster that the people of Northern Ireland are committed to protecting their unborn children

Part Two

Marie Stopes International: damaging women and babies

MSI is registered as a charity and claims a not-for-profit status. However, not-for-profit doesn't mean unprofitable. While it doesn't pay a dividend to shareholders, MSI is in fact a lucrative business. Figures published by the Charity Commission show that MSI's income for 2012 was £173,412,000[2] (mostly made up of fees and grants from government bodies but also fees from clients) for abortion and other "sexual health services" (see list of charges below). Its financial statements for that year show total unrestricted reserves of £59.7 million.[3] MSI claims to offer advice to women but it stands to benefit from encouraging vulnerable women to have abortions.

2 http://www.charitycommission.gov.uk/find-charities/ accessed 11 September 2013

3 MSI Financial Statements 31 December 2012 http://apps.charitycommission.gov.uk/Accounts/Ends43/0000265543_AC_20121231_E_C.pdf

Despite the fact that each year the National Health Service pays MSI millions of pounds for the abortions it carries out, there is not one medical benefit associated with abortion. There are, however, hundreds of studies showing the damaging effects abortion has on women and their subsequent children.

The largest European study of abortion and pre-term birth was carried out in 1998 and involved 106,345 women.[4] This study showed that with one prior induced abortion, the odds ratio for having an early preterm birth in future was 2.5; if two past abortions, the odds ratio was 5.2; for more than two prior abortions, an odds ratio of 8.0. It demonstrated that abortion is clearly associated with an increased risk of preterm birth of less than 37 weeks, but that the association was even stronger for the risk of early preterm birth. Early preterm infants constitute a majority of those with serious disabilities, including mental disability, epilepsy, blindness, deafness, lung infections, and cerebral palsy.[5]

MSI: a vested financial interest in abortion

The fees MSI charges for abortions demonstrate the level of income which could potentially be generated by its new centre in Belfast initially from medical abortions and referrals to other MSI facilities for surgical abortions.

Belfast service fees6

Unplanned pregnancy	Fee
Pregnancy test	£40
Consultation	£80
Post-op Consultation	Free
Treatment	£350

The 'treatment' referred to is an RU 48[6] medical abortion. Misleadingly, it appears from the MSI website that this abortion is lawfully available on the grounds of an "unplanned pregnancy."

MSI have repeatedly refused to rule out the expansion of its service to include surgical abortions. When asked by the Chairman of the Justice Committee6 about carrying out abortions beyond its nine-week limit, at 18 or 24 weeks for example, Tracey McNeil, MSI's UK director, acknowledged that: "There is nothing stopping us.[7]"

Fees for other UK MSI facilities[8]

Pregnancy test	£5
Telephone consultation	£82
One to one consultation	£82
Medical abortion up to 9 weeks (abortion pill)	£464

Surgical abortion

Up to 14 weeks, non anaesthetic	£562
Up to 14 weeks sedation	£643
Up to 14 weeks general anaesthetic	£707

4 Martius JA, Steck T, Oehler MK, Wulf K-H. Risk factors associated with preterm (<37+0 weeks) and early preterm (<32+0 weeks): univariate and multi-variate analysis of 106,345 singleton births from 1994 statewide perinatal survey of Bavaria. Eur J Obstet Gynecol Reprod Biol 1998;80:183-189

5 Escobar GJ, Littenberg B, Petitti DB. Outcome among surviving very low birthweight infants; a meta-analysis. Arch Dis Child 1991;66:204-211.

6 http://www.mariestopes.org.uk/Fees/Belfast_integrated_services.aspx accessed 8 January 2013

7 Official Report (Hansard) 10 January 2013 Committee for Justice - Marie Stopes International: Compliance with Criminal Law on Abortion in Northern Ireland

8 http://www.mariestopes.org.uk/Fees/Womens_services/Abortion.aspx accessed 11September 2014

Over 14-19 weeks sedation	£845
Over 14-19 weeks general anaesthetic	£899
Over 19-24 weeks general anaesthetic	£1958

MSI in Brixton: 'like a car production plant'

In 2005 Maria Georgiou, a former administrator at MSI Raleigh centre in Brixton, alleged that nurses were offered payments of hundreds of pounds to increase the number of NHS-funded abortions they performed each day.

Georgiou told the Mail on Sunday[9]: "Everything is geared to getting as many people in for terminations as possible.' She claimed: "When I started in July 2004, the branch was performing between 20 and 30 surgical abortions a day. But we were told Essex was doing 50 a day and that we were under-performing. So they called a meeting last November at which we were told our bonuses were being withheld until we caught up.

> *"We had two wards upstairs and it was like a car production plant.*
>
> *"When I started, people would be given a few hours to recover, but by the end they were* waking them up within half an hour and getting them out.

MSI began a television marketing campaign advertising in England in 2010, but stopped after advertising groups received a record number of objections. SPUC pointed out that the advertising was both grossly offensive and illegal.

MSI's deadly abortion drugs

The RU 486 drug which MSI uses for so-called medical abortions is extremely dangerous. Research has shown that the death rate from infection following medical abortion has been ten times higher than the death rate from infections following surgical abortion[10] and 50 times more compared to childbirth.[11] Women frequently are alone in their homes when the abortion occurs. RU 486 is known to have killed 15 women worldwide including Manon Jones[12] (18) from Bristol and Jessie-Maye Barlow[13] (19) from Staines.

Short of death, the most serious concerns are haemorrhage and sepsis. Women who take RU 486 usually bleed for one or two weeks, with 8% bleeding more than one month.[14] This leaves women exposed to infection for an extended period of time. The average woman using RU 486 experiences four times the average blood loss associated with a surgical abortion. The US Food and Drug Administration (FDA) Medication Guide for RU 486 states that "in about 1 out of 100 women, bleeding can be so heavy that it requires a surgical procedure (surgical abortion/D&C) to stop it.

Sometimes the bleeding is of massive proportions well beyond the amount of bleeding typically experienced in usual gynaecological cases. Dr Donna Harrison, co-author of a published report on 607 of the Adverse Event Reports received by the FDA on RU 486, testified before a U.S. Congressional committee regarding the severity of some of the cases:

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9 Mail on Sunday 4 September 2005

10 Donna Harrison, M.D. before the House Subcommittee on Criminal Justice, Drug Policy and Human Res., Committee on Government Reform on RU-486: Demonstrating a low standard for women's health. 109th Congress (May 17, 2006) The FDA and RU-486: lowering the standard for women's health. Staff report prepared for the Hon. Mark Souder, Chairman, Subcommittee on Criminal Justice, Drug Policy and Human Resources, October 2006. Greene M F. Fatal infections associated with mifepristone-induced abortion. N Engl J Med 2005;353(22):2317-8. Fischer M. Fatal toxic shock syndrome associated with Clostridium sordellii after medical abortion. N Engl J Med 2005;353:2352-60.

11 Harrison, op. cit

12 Western Mail 13 July 2008

13 Daily Mail 20 September 2012Mail on Sunday 4 September 2005 13Mifeprex (RU 486) Label, FDA, Revision 2: 7/19/05. Available from: http://www.fda.gov.cder.foi/ lable/2005/020687s3lbl.pdf (Accessed April 13, 2007)

14 Mifeprex (RU 486) Label, FDA, Revision 2: 7/19/05. Available from: http://www.fda.gov.cder.foi/ lable/ 2005/020687s3lbl.pdf (Accessed April 13, 2007).

"In my experience as an obstetrician and gynaecologist, the volume of blood loss seen in the life- threatening cases is comparable to that observed in major surgical trauma cases like motor-vehicle accidents. This volume of blood loss is rarely seen in early surgical abortion without perforation of the uterus, and it is rarely seen in spontaneous abortions."[15]

MSI's deadly record

MSI has been responsible for the death or serious injury of a long list of its clients.

Sarbjit Lall (29) from Bradford died after an abortion arranged by Marie Stopes in Leeds in 1993.[16] Mrs Lall wanted an abortion when she found out she was expecting a baby girl. Sex-selection is not grounds for abortion under the Abortion Act. MSI accepted no responsibility for arranging the illegal abortion or Mrs Lall's death. There is, however, growing concern over the practice of sexselective abortions in the UK. Dr Vincent Argent, who previously worked for the British Pregnancy Advisory Service and is now a GP and consultant obstetrician and gynaecologist, told the Daily Telegraph[17] that he had "no doubt" that women were terminating pregnancies because of the sex of the baby and that he believed the practice was "fairly widespread".

In 2011 an MSI abortionist in London nearly killed a woman from the Republic of Ireland. Gynaecologist Phanuel Dartey[18] who was struck off for his treatment of five patients – including the Irishwoman – worked at the MSI centre in Ealing.

In December 2011 The Age[19] newspaper in Australia reported the death of an unnamed 42 year-old woman at the MSI Maroondah centre in Victoria. The surgery's owner, Dr Mark Schulberg, was in 2009 found guilty of unprofessional conduct for failing to gain legal consent to perform a late-term abortion on an intellectually disabled woman.

The centre's anaesthetist James Latham Peters allegedly infected more than 50 women with hepatitis C at the same clinic in 2008 and 2009. He faced 162 charges of infecting women patients he aborted at the surgery during this time.

Earlier in 2011 it was revealed that Pheap Sem (40) was left fighting for her life after Schulberg performed a late-term abortion on her.

Marie Stopes and the law

In a letter to the Chairman of the Stormont Justice Committee (17 October 2012) John Larkin QC, the Attorney General, spelt out the law in a clear, concise summary.

> *"[A]bortion in Northern Ireland is a matter regulated by the criminal law primarily by two statutes; the Offences Against the Person Act 1861, and the Criminal Justice Act (Northern Ireland) 1945. The subject falls squarely within the jurisdiction of the [Justice] Committee. Abortion in Northern Ireland is a criminal offence which is punishable by a maximum sentence of life imprisonment.*
>
> *"An abortion carried out in Northern Ireland may [emphasis added] not result in a criminal liability if, on a trial for that offence, a jury considers that the person who procured it was a*

15 Harrison, op. cit

16 The Independent Saturday 5 March 1994

17 Daily Telegraph 24 Feb 2012 http://www.telegraph.co.uk/health/healthnews/9104994/Sex-selection-abortions-arewidespread.html

18 Belfast Telegraph 3 December 2011 http://www.belfasttelegraph.co.uk/news/local-nationalrepublic-of-ireland/irishwoman-left-fighting-for-life-after-abortion-in-uk-clinic-16086044. html#ixzz2ClKfHcy3

19 Woman dies after abortion clinic visit 21 December 2011 http://www.theage.com.au/victoria/woman-dies-afterabortion-clinic-visit-20111220-1p414.html#ixzz2F6te0vcE

suitably qualified person[20] who believed, and had reasonable grounds for believing,[21] that the continuation of the pregnancy would have created a risk to the life of the mother or would have probably caused serious and long- term harm to her physical or mental health.

"It must be stressed that termination of a pregnancy based solely on the abnormality of an unborn child is always unlawful." [22]

Abortion is a criminal offence. By opening a facility, which it says provides abortion as a commercial service, MSI is directly challenging Northern Ireland's protection for children before birth.

For decades MSI has campaigned to overturn Northern Ireland's abortion laws. Despite claims that it merely wishes to offer a service to the women here, the MSI website calls for the law in Britain "to enshrine a woman's right to choose and self-determination, allowing abortion on request and to be extended to women in Northern Ireland."[23]

MSI also has a record of breaking abortion laws in various countries in which it operates.

In 2007 Paul Cornellisson, the MSI programme director in South Africa, was filmed discussing ways in which MSI could circumvent abortion laws in the neighbouring country of Namibia. He said: *"...there are various options... once we open a centre, I mean we do illegal abortions all over the world... There are various things we can look at if we can just get our foot in the door."*[24]

In July 2012 the Zambian Minister of Health Joseph Kasonde issued an indefinite ban on MSI carrying out abortions for committing 490 illegal abortions earlier in the year.[25]

Abortion is unlawful in Bangladesh. To circumvent the law MSI refers to the abortions it performs in that country as menstrual regulations.[26] The menstrual regulation procedure is identical to a suction abortion but is carried out without definite verification that the woman is pregnant. However, outside Bangladesh MSI equates its "menstrual regulation" services to abortion. In one table on its website, MSI compared the rate of abortion provided in eight countries where it operates. Bangladesh was the second of the eight, showing that MSI provided a steadily increasing percentage of the abortions in the country, reaching 15% in 2010. A small asterisk after the name of the country clarified that MSI had tabulated "menstrual regulations" in Bangladesh but "abortions" in every other country. If MSI did not acknowledge that the menstrual regulations it carries out are in fact abortions, the inclusion of Bangladesh in the table would be inappropriate.

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20 Original footnote: It appears therefore that, where the potential long term harm relied upon consists of harm to the mother's mental health the opinion of a qualified specialist in psychiatry would be required to have been obtained and considered.

21 Original footnote: In the case of R v Bourne (1939) 1KB 687, McNaughton J said, "If the doctor is of the opinion, on reasonable and with adequate knowledge, that the probable consequence of the continuation of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor, who under those circumstances and in that honest belief, operates, is operating for the purpose of saving the life of the mother."

22 Original footnote: See judgement of Sheil J at paragraph (9) and Nicholson LJ at paragraph (73) in the Family Planning Association v The Minister of Health, Social Services and Public Safety (2004) NICA and (2004) NICA 39

23 MSI Campaigning for safe abortion, our recommendations - Marie Stopes Clinics. http://www.mariestopes.org.uk/Campaigning/Campaigns_%5e_ advocacy/Safe_abortion/Our_recommendations.aspx Accessed 18 Jan 2013

24 https://www.youtube.com/watch?v=9Cf7Rg8zxds

25 Times of Zambia 26 Juy 2012 Zambia: Govt 'Aborts' Marie Stopes http://allafrica.com/stories/201207260525.html

26 EUROPEAN DIGNITY WATCH The Funding of Abortion through EU Development Aid: An Analysis of EU's Sexual and Reproductive Health Policy March 2012

St Patrick's Church

Dear Justice Committee Clerk,

I am writing in regard to Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill and assert my firm belief that the right to life is unconditional.

All children deserve to be born and protected. Children before as well as after birth deserve the same treatment and care. This theme was expanded in the United Nations Declaration of the rights of the Child (1959) which declares: "the child, bt reason of his physical or mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as afterbirth."

Mr Paul Cornellisson, the then Marie Stopes' Director in South Africa, admitted at an abortion conference in London 2007 that Marie Stopes "do illegal abortions all over the world".

According to a research paper by Byron Calhoun, John Thorp and Patrick Carroll, Northern Ireland continues to be one of the safest places for pregnant women and their babies.

I therefore urge the Justice Minister to adopt Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill, and ensure that the Marie Stopes centre does not perform abortions in Northern Ireland and that Northern Ireland continue to be one of the safest places for pregnant women and their babies.

Yours faithfully

Michael Sheehan

Very Rev Michael Sheehan Adm
St Patrick's Presbytery
199 Donegall Street
Belfast BT1 2FL

Tel: 028 9032 4597

Stanton Clinic

TO: Committee for Justice, Northern Ireland Assembly

SUBJECT: Proposed Amendment to the Criminal Justice Bill

Dear Sir/Madam,

I am writing in regard to Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill. I wish to state from the outset of my submission that I fully endorse the current law in Northern Ireland which states that abortion is a criminal offence. This law has served the people well and ensures pregnant women obtain world class medical care as both the mother and unborn child are treated as humans with an absolute right to life.

This proposed amendment will copper-fasten this fundamental civil right of mother and child, and will ensure that private clinics such as the Marie Stopes centre which opened in Belfast in October 2012 will be forbidden to contravene the current law.

I have worked both at home and abroad in New Zealand as a Senior Counselling Psychologist for 17 years. I treat a wide spectrum of psychological problems affecting children, adolescents and the adult population. In the course of my clinical work I have encountered the devastating psychological damage caused to girls and women in their lives who have had abortions. Many suffer from chronic depression, anxiety, suicidality and substance abuse disorders. There is frequently a history of failed relationships, broken marriages, and underachievement /discontent in their occupational lives.

These girls and women have experienced biased societal attitudes, fear, shame and utter panic at the time of the confirmed pregnancy. Their increased vulnerability renders them as instant fodder for the highly organised abortion industry whose goal is to make millions from legalised genocide.

A truly caring society will provide for the humanitarian needs of its citizens, born and unborn. It does not seek to facilitate the destruction of human life. It rejects the mechanisms that confers irreversible damage on the mental health and wellbeing of its population. I would like to present the findings of an excellent longitudinal study conducted in New Zealand over a thirty year period on this vital issue. The conclusions of this study were published in 2006.

Professor David Fergusson and his colleagues at the University of Otago, Christchurch gathered data on the pregnancy and mental health history of a birth cohort of over 500 women up to their 30th year. The aim of this study was to examine links between pregnancy and mental health outcomes.

Their evidence concluded that experiencing abortion is associated with a highly significant increase in the development of mental health disorders such as depression, anxiety, suicidal behaviours, and substance abuse disorders. The rate of mental disorders among those who had undergone abortions was **30% higher** than those women who did not choose to have abortions. **Thirty Per Cent**.

Our humanity informs us that it is grossly abnormal for a mother to choose to end the life of her child, born or unborn. It is against Natural Law. Therefore it is consistent with Natural Law that a mother cannot avoid suffering the psychological consequences of this abnormal act. Yet the highly deceptive narrative of the abortion industry manipulates the rules of Natural Law by deluding pregnant women into believing that the hideously abnormal becomes the sanitised norm. Society also becomes deluded and buys into the lie.

Not alone the Mental Health but the very SOUL of this province must be protected from those who wish to exploit and destroy that which is precious and what makes Northern Ireland so robust and natural.

One only has to look down South to witness how a neighbouring state who once were proud torchbearers for the Right to Life up to 2013 has now withered into a shadow nation which recently permitted the forced abruption of a healthy 25 week old baby boy from his rightful sanctuary of his mother's womb.

This baby will most likely suffer the physical consequences of an unnatural premature birth.

I urge this Justice Committee to stand strong against the forces of Mammon, the deceptions of the abortion industry and the immorality of agencies, pressure groups and politicians in their lust for power and control.

My professional experience has convinced me of the indisputable destructive effects of abortion at both a personal and societal level. There are no winners. The one exception is the bank balance of the abortion industry.

Yours sincerely,

Mary Smyth,

Registered Counselling Psychologist (AFPs.SI,Reg.Psychol)

The Children's Law Centre

Written Evidence to the Committee for Justice on the Justice Bill 2014

1. The Children's Law Centre

1.1 The Children's Law Centre (CLC) is an independent charitable organisation established in September 1997, which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

1.2 CLC undertakes education, training and research on children's rights, produces information on a wide range of children's rights topics and makes submissions on law, policy and practice affecting children and young people. We have a dedicated free phone legal advice line for children and young people and their parents and carers, known as CHALKY, through which we offer free legal advice and information on a wide range of children's legal rights issues. CLC also has a youth advisory group called youth@clc that act as peer advocates and inform our work.

CLC provides free legal representation in strategic cases. We represent at the Special Educational Needs and Disability Tribunal, School Admission and Expulsion Appeals Tribunals and the Mental Health Review Tribunal. We also provide legal representation in a limited number of strategic cases via judicial review and have experience of submitting written and making oral interventions as a Third Party to proceedings in a small number of cases with a particular focus on children's rights.

Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and children and young people from ethnic minority backgrounds, including Traveller children.

1.3 Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

1.4 We believe that the human rights standards contained in the UNCRC should be reflected in all laws and policies emanating from the Northern Ireland Assembly as one of the devolved regions of the UK Government. The UK Government as a signatory to the UNCRC is obliged to deliver all of the rights contained within the Convention for children and young people. From its perspective as an organisation which works with and on behalf of some of our most vulnerable and socially excluded children and young people, both directly and indirectly, CLC is grateful for the opportunity to provide evidence on the Justice Bill. CLC has been very involved in discussions and consultation processes leading up to the introduction of this Bill. Given the length of the Bill and the scope of the issues covered by it, we do not intend to comment on each clause of the Bill, restricting our comments instead to areas of particular concern and those of most relevance to children and young people and therefore to the work of CLC.

CLC would welcome the opportunity to present oral evidence to the Committee for Justice on the Justice Bill, as we believe that the Bill has potentially far reaching implications for the protection of children's rights in a number of areas.

2. International Human Rights Standards

2.1 CLC believes that consideration of the Justice Bill must be directed by the international children and human rights standards, in particular the European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998 and the UNCRC. CLC would submit that consideration of the Justice Bill should also take into account all of the Committee on the Rights of the Child's[1] Concluding Observations made following examinations of the United Kingdom's compliance with the UNCRC and relevant General Comments issued by the Committee to assist in interpreting the obligations under the UNCRC. CLC welcomed the commitment made under the Hillsborough Agreement to review how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice[2] as a recognition of the fundamental importance of international children and human rights standards in relation to youth justice.

2.2 Through the ratification of the UNCRC the Government has committed to giving effect to a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives. Government has also committed to the implementation of the Convention by ensuring that United Kingdom (and that of the devolved administrations) law, policy and practice relating to children is in conformity with UNCRC standards. The UK Parliamentary Joint Committee on Human Rights in its report[3] on the UNCRC described the obligations the UNCRC places on Government as follows:

> *"The Convention should function as the source of a set of child-centred considerations to be used as yardsticks by all departments of Government when evaluating legislation and in policy-making… We recommend, particularly in relation to policy-making, that Government demonstrate more conspicuously a recognition of its obligation to implement the rights under the Convention."*[4]

2.3 All children and young people under 18 are entitled to enjoy the protection of all rights afforded by the UNCRC and to the rights enshrined in other international standards such as the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),[5] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)[6] and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules).[7]

3. Part 1 – Single Jurisdiction for County Courts and Magistrates' Courts

3.1 Part 1 of the Justice Bill (clauses 1 – 6) provides for the creation of a single court jurisdiction for the County Court and Magistrates' Courts. The Explanatory and Financial Memorandum for the Bill explains that historically, court boundaries for these courts have been based upon local government districts. This presents limitations on the ability to manage the distribution of court business and it is suggested that a single territorial jurisdiction would allow greater flexibility in the distribution of court business, by allowing cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so.[8] Clause 2 of the Bill provides for powers to divide Northern Ireland into administrative court divisions, including

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1 The independent body that monitors implementation of the UNCRC by its States parties.

2 'Agreement at Hillsborough Castle' 5th February 2010, Section 1, para.7.

3 Joint Committee on Human Rights 'The UN Convention on the Rights of the Child' Tenth Report of Session 2002 – 03, HL Paper 117, HC 81.

4 Ibid, para 25.

5 Adopted by General Assembly Resolution 45/112 of 14th December 1990.

6 Adopted by General Assembly Resolution 40/33 of the 29th November 1985.

7 Adopted by General Assembly Resolution 45/113 of the 14th December 1990.

8 'Justice Bill – Explanatory and Financial Memorandum' NIA Bill 37/11-15 EFM, para.71 - 72.

divisions for specified purposes of a court (for example for the purposes of a County Court sitting as a Family Care Centre).

3.2 CLC made a submission to the Northern Ireland Court Services Consultation on this proposal in May 2010 and also commented on these proposals as part of our response to the Department of Justice's (DoJ) Equality Consultation on the Justice Bill in May 2013. Whilst we are neither in favour of nor fundamentally opposed to the proposal to create a single jurisdiction in Northern Ireland for Magistrates' Courts and the County Court, we highlighted that the focus of these proposals appeared to be about providing additional flexibility to facilitate more effective management of court business, with our concern being that the main benefit of the proposals to make the system more flexible would be for the Court Service and not the user, who could be required to travel some distance to attend court proceedings. In CLC's view, court users who are children should be able to have full access to justice at a convenient court. Children and young people can regularly be involved in legal proceedings at both the Magistrates' Court and County Court level, such as young people involved in criminal proceedings in the Youth Court. In 2013, there were 2,241 youth criminal defendants received into the Youth Court.[9] These children can often have considerable difficulty travelling to their local court which would be exacerbated if they were expected to travel to a court further afield. Many of the children who use CLC's services and particularly those who come into contact with the criminal justice system come from economically deprived backgrounds. For children like these access to transport would be a difficulty when it comes to attending court. The consequence for these children in certain circumstances if they do not attend court can be extremely serious, such as an arrest warrant being issued.

3.3 It had been CLC's understanding that under the proposals put forward by the Northern Ireland Court Service for the creation of a single jurisdiction for County Courts and Magistrates' Courts, the distribution of court business would be underpinned by an administrative framework.[10] The Northern Ireland Courts Service was clear in its proposals that providing customers with access to justice at a convenient court location would always be a significant consideration when listing court business.[11] The administrative framework proposed in this consultation document provided for a 'guiding principle' in relation to the allocation of court business, but set out that this guiding principle may be departed from with the agreement of the Lord Chief Justice or local judiciary for 'good reason'. The document stated that such a 'good reason' may include for example, the place in which the witnesses, or the majority of witnesses, reside, the avoidance of unnecessary delay, the efficient management of court accommodation, the request of a party, victim or witness to the proceedings (for example a victim in a domestic violence case, or a child witness), or to facilitate the efficient distribution and disposal of business. The consultation document released in 2010 stated that a case may be transferred where a court or judge considers it appropriate to do so, having regard to the Guiding Principle and that the factors to be taken into account when considering a transfer included those mentioned above.[12] In the summary of responses to the consultation, the Courts Service proposed to develop a protocol which would supplement the administrative framework and would prescribe the manner in which an application to depart from the guiding principle should be made, give affected parties a right to make representations and set out specific grounds on which parties could object.[13]

CLC would respectfully suggest that in scrutinising this part of the Justice Bill, the Committee may wish to inquire as to status of the proposal for an administrative framework to underpin the distribution of court business and a protocol to supplement

9 'Judicial Statistics 2013' Northern Ireland Courts and Tribunals Service, Table E.7.

10 'Redrawing the Map' A Consultation on Court Boundaries in Northern Ireland, Northern Ireland Courts Service, March 2010, para.1.3, para.3.3, para.4.1.

11 Ibid, para.3.3.

12 Ibid, Annex C.

13 'Redrawing the Map' A Consultation on Court Boundaries in Northern Ireland – Summary of responses and proposed way forward, Northern Ireland Courts Service, October 2010, para.3.10.

that framework. Whilst we note that Clause 3 of the Bill provides the Lord Chief Justice with the power to give directions detailing the arrangements for the distribution of business among the County Courts and Magistrates' Courts and for transferring business from one County Court or Magistrates Court to another County Court or Magistrates Court, this does not clearly provide for the development of the type of administrative framework previously consulted upon, nor does it clearly state how applications to transfer business from one court to another will be made. CLC would welcome any proposed policy, directions, administrative framework or protocol being developed in relation to the distribution of court business being subject to further public consultation. In the summary of responses to the consultation carried out by the Courts Service, it was indicated that a draft of both the administrative framework and the protocol would be consulted on prior to the introduction of the single jurisdiction reforms.[14] In its equality consultation on the Justice Bill, the DoJ stated that the single jurisdiction model would be underpinned by an administrative framework, set out in Directions issued by the Department and the Lord Chief Justice respectively after appropriate consultation.[15] In relation to the administrative framework described above, CLC believes that consideration should not only be given to the facilitation of victims and witnesses, which we would welcome, in deciding to depart from normal listing arrangements, but that consideration should also be given to the requests of all children involved in cases, including child defendants in criminal cases.

3.4 CLC is also concerned by the impact that the creation of a single court jurisdiction could have on the promotion of equality of opportunity under Section 75 of the Northern Ireland Act 1998. In responding to the Courts Service consultation on the proposals in 2010, CLC highlighted our concern that the policy may have a differential adverse impact upon children as they will have considerable difficulty with travelling to courts other than their local court. We requested that full consideration be given as to how to mitigate against this potential differential adverse impact, such as by providing transport or making provision for the cost of transport. However in the Equality Consultation on the Justice Bill in 2013, the DoJ concluded that any impacts on those with disabilities, those with dependants and people of different ages would be minor and, in the main, positive, a conclusion that CLC does not support.[16] As a designated public authority for the purposes of section 75 of the Northern Ireland Act 1998, the DoJ is required to take action to mitigate against adverse impact or inequality as well as to proactively promote equality of opportunity. We are challenged as to how the DoJ can assert that this policy will only have a negative impact in exceptional cases[17] or that it is only anticipated small numbers of children and young people will be affected[18] when no quantitative evidence has been provided to support these assertions. As we have already highlighted above, large numbers of children and young people in Northern Ireland can be involved in court proceedings. Even if the numbers affected will be small, as suggested by the DoJ, the potential consequences for children who may not be able to attend court are so grave that they constitute a major impact on their enjoyment of equality of opportunity. CLC notes that in the summary of responses to its Equality Consultation on the Justice Bill, the DoJ states that safeguards will be contained in the administrative framework and that a final version will be consulted upon.[19] However, we were also concerned to note that the DoJ has already rejected the idea of amending the framework to provide that precedence should be given to the needs of young people, on the basis that developing this kind of priority list could create an artificial hierarchy and could fetter the judge's discretion in a way that is unhelpful.[20] CLC welcomes the prospect of further consultation on these issues and would

14 Ibid, para.4.4.

15 'Equality Consultation for a proposed Justice Bill (NI) 2013' Department of Justice, March 2013, para.5.4.

16 Ibid, para.5.5.

17 'DoJ Section 75 Equality Screening Form – Single Jurisdiction', Department of Justice, 2012, p. 20.

18 Ibid, p. 15.

19 'Report of the Equality Consultation on the Proposed Justice Bill (Northern Ireland) 2013' Department of Justice, June 2013, para.4.40.

20 Ibid, para.4.45.

emphasise that we do not wish to see judicial discretion fettered, but rather exercised in a way that has the best interests of all children and young people, be they victims, witnesses or defendants, as a primary consideration as required by Article 3 of the UNCRC. We would welcome the Committee considering how these concerns can be addressed.

4. Part 3 – Prosecutorial Fines

4.1 Part 3 of the Justice Bill (clauses 17 – 27) provides for the creation of prosecutorial fines, through which a Public Prosecutor can offer a person alleged to have committed a summary offence the opportunity to deal with the case through the payment of a fine of up to £200 as an alternative to the case being prosecuted through the courts. Clause 17 of the Bill is clear that a prosecutorial fine cannot be offered unless the alleged offender was aged over 18 at the time of the offence, or offences. CLC is supportive of this aspect of the Bill. CLC has previously expressed serious concerns about the payment of money by young people for low level offending and minor offences, in that we believe there is potential for the payment of money to disproportionately impact on groups with very low incomes who are already living in socially deprived areas who may not possess the means to pay. The National Association for the Care and Resettlement of Offenders (NACRO) has expressed its concern about the use of fixed penalty notices for young people and has stated that they do not believe that fines are either an effective deterrent or an effective punishment for many. They have stated their opposition to the use of fines for young people as they do not believe that they will reduce bad behaviour or address the underlying causes, stating that any approach to get to the root causes of bad behaviour should be done after an assessment of need, so that the appropriate services can be brought in to intervene if required. The young person is unlikely to be 'punished' by the fine or payment of money, so there will be little incentive for them to change their behaviour. Instead the punishment will fall to the parents, who are unlikely to have spare money to pay, causing undue hardship. NACRO has warned that this could also put increased stress on the parent/child relationship, with parents blaming their child for the extra financial burden they have created and the child rebelling with more bad behaviour.[21]

5. Part 4 – Victims and Witnesses

5.1 Part 4 of the Justice Bill (clauses 28 – 35) relates to the establishment of Victim and Witness Charters and provides a statutory entitlement to be afforded the opportunity to make a victim personal statement. Clause 28 of the Bill requires the DoJ to issue a Victim Charter, which must set out the services which are to be provided to victims by specified criminal justice agencies and the standards which are to be expected in relation to those services, as well as the standards which are to be expected in relation to the treatment of victims by such agencies. The DoJ is currently separately consulting on a draft Victim Charter. Clause 30 of the Bill requires the DoJ to issue a Witness Charter, which must set out the services which are to be provided to witnesses by specified criminal justice agencies and the standards which are to be expected in relation to those services, as well as the standards which are to be expected in relation to the treatment of witnesses by such agencies. Clause 32 states that if a criminal justice agency fails to comply with either Charter, that failure does not make the agency liable to criminal or civil proceedings. However, the Charter is admissible as evidence in such proceedings and a court may take a failure to comply with the Charter into account when determining a question in proceedings. Clause 33 provides victims with the opportunity to make a statement. If the victim is under 18, a parent of the victim is also afforded this opportunity in addition to the victim. Under clause 35, such statements must be considered by the court when determining sentence following conviction of the person. 5.2 The needs of children and young people who are victims or witnesses of crime are recognised throughout the UNCRC. In particular Article 39 provides that State Parties shall take all

21 NACRO Policy Lines http://www.nacro.org.uk/criminal-justice-expertise/policy-lines/on-the-spot-fines-for-children-and-young-people,214,NAP.html

appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. The UN Committee on the Rights of the Child has recommended during its examinations of the United Kingdom's compliance with the UNCRC both in 2002 and 2008 that it should be ensured that abused children are not victimised during legal proceedings and that the care, recovery and reintegration of victims is provided for.[22] The Committee has also recommended in 2008 that appropriate measures be adopted to protect the rights and interests of child victims and witnesses of crime at all stages of the criminal justice process.[23]

5.3 It is generally acknowledged that children and young people are more likely to be the victims, rather than the perpetrators of crime. NSPCC has noted that between 1st April 2008 and 31st March 2010, 63,325 sexual offences and offences against the person were recorded by the PSNI, 19% of which (11,927) involved children and young people aged 0–17 years as victims. The NSPCC also recognised that those who report violent crime are only a minority of those who are victims.[24] This report also refers to numerous pieces of research which indicate that a frequently cited reason for victims withdrawing their complaints was not wishing to go through the investigative or court process and that both professionals and parents will likely play an important role in encouraging/discouraging the young person's continued engagement with the criminal justice process.[25] In a report commissioned by the Department of Justice in 2011, NSPCC and Queen's University Belfast examined the views and experiences of young witnesses giving evidence in criminal proceedings in Northern Ireland. 40.5% of young witnesses involved in the report suggested some changes to the way witnesses are supported, with a number suggesting more pre trial contact and support to help prepare them for court, whilst others thought more post trial support should be provided.[26]

5.4 CLC is broadly supportive of this Part of the Bill as we believe that it has the potential to improve the experience of child victims and witnesses within the criminal justice system. However, we believe that there other issues which must be considered and taken forward in relation to child victims and witnesses outside of the measures outlined within the Bill. These include ensuring that children who are victims of crime can recover from their experiences through the provision of adequate counselling and therapy where necessary and ensuring that children are not victimised during proceedings. It is CLC's view that the strength of these provisions will lie in their effective implementation, particularly through measures such as the draft Victim Charter which is currently being consulted upon.

5.5 In relation to the specific clauses themselves, CLC would welcome clauses 28 and 30 of the Bill making reference to the need to include within both the Victim Charter and the Witness Charter a requirement that in all actions concerning child victims and witnesses, that their best interests will be a primary consideration. This would reflect the requirements of Article 3 of the UNCRC and would also be in keeping with the requirements of EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of

22 United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/15/Add.188, 9th October 2002, para.40. United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para.51.

23 United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para.78(h).

24 'Child Victims in contact with the criminal justice system in Northern Ireland' Lisa Bunting, 2011, NSPCC Northern Ireland Policy, Practice and Research Series, p.6.

25 Ibid, p.11.

26 'The Experiences of Young Witnesses in Criminal Proceedings in Northern Ireland – A Report for the Department of Justice (NI)' Hayes, Bunting, Lazenbatt, Carr and Duffy, May 2011, p.57.

crime.[27] Currently, the DoJ is seeking to transpose this EU Directive into Northern Ireland via the draft Victim Charter.[28] We note that under clause 28, victims will have the opportunity to make a complaint to an independent body against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency. We believe that it would be useful to also extend this right to witnesses under clause 30. As we outline below in more detail in relation to criminal records, CLC would also welcome consideration being given at this stage as to how children and young people wishing to make a complaint will be supported and assisted in doing so. The Committee on the Rights of the Child has previously commented on the need to ensure that complaints mechanisms are accessible and child friendly.[29]

5.6 CLC also notes that the DoJ intends to bring forward an amendment to the Bill, setting out that certain information would be shared between specific organisations for the purposes of informing victims and witnesses about available services. This would appear to be designed to create a system where victims would 'opt out' of being approached regarding support rather than 'opting in'.[30] Whilst CLC can see the merits of such an approach in order to ensure that victims receive as much information and support as possible, we wish to emphasise the need for the sharing of personal data and sensitive information to be disclosed/shared only when absolutely necessary, shared discreetly and with the minimum information disclosed in order to protect the rights of the child about whom personal data is being shared. The privacy and security of child victims and witnesses must be ensured at all times and information relating to a child should only be shared when it is in their best interests.

6. Part 5 – Criminal Records

6.1 Part 5 of the Justice Bill (clauses 36 – 43) relates to arrangements for the disclosure of criminal records checks. The Explanatory and Financial Memorandum for the Bill refers to how full consultation exercises have been completed on proposals relating to the reform of the criminal record regime[31] and reference is made to the consultation document on Part One of the Review of the Criminal Records Regime in Northern Ireland (March 2012).[32] The Explanatory and Financial Memorandum then goes on to state that many of the provisions of the Bill have been developed following comprehensive options appraisals,[33] but in relation to criminal records reference is only made to the recommendations made by Sunita Mason, the Independent Adviser for Criminality Information Management for England and Wales, in her report on Part One of her review of the criminal records regime in Northern Ireland.[34] CLC is very disappointed to note the lack of reference to consideration having been given to the recommendations of the Youth Justice Review around the disclosure of criminal record information in relation to children and young people.

6.2 The Youth Justice Review considered the issue of the disclosure of criminal record information in the context of considering how young people who offend should be reintegrated and rehabilitated. The Youth Justice Review stated that:

> *"It is somehow perverse that while all the research evidence suggests that providing offenders with stable employment is one of the most powerful ways of preventing re-*

27 EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, para.14, Article 1(2).

28 'Draft Victim Charter: A Department of Justice Consultation' Department of Justice, May 2014, para.4.

29 'General Comment No.5 (2003) General measures of implementation of the Convention on the Rights of the Child' United Nations Committee on the Rights of the Child, CRC/GC/2003/5, 27th November 2003, para.24.

30 Letter to Christine Darrah, Clerk to the Committee for Justice, 24th June 2014.

31 Op Cit 8, para.8.

32 Ibid, p.4.

33 Ibid, para.15.

34 Ibid, paras.32 – 36.

offending, the current system of informing potential employers of an offender's criminal history acts as the most potent barrier to accessing such employment. What chance do young offenders have of securing employment when the only entry on their CV is a criminal record?"[35]

The Youth Justice Review noted that even those diverted from formal proceedings, who are not convicted, can receive a criminal record that can subsequently be disclosed under pre-employment checks and that this can lead to confusion. The Review also referred to the mistaken belief expressed in the consultation with young people which VOYPIC (Voice of Young People in Care) carried out for the review, that some young people believed that a criminal record gained as a juvenile would not affect their later life as it would be wiped clean at 18.[36] The Review noted the importance of young people being able to reach fully informed decisions about whether to accept a "diversion" or challenge the case in court and highlighted that if the disclosure implications of diversionary disposals became widely known, there is every possibility that increasing numbers of young offenders would choose to take their chances in court, thus undermining the whole purpose of diversion.[37] In relation to the disclosure of criminal records, the Youth Justice Review was clear that if young people's futures were not to be unfairly jeopardised by their offending behaviour while growing up, there is a need for change. The Review also recognised the importance of screening out from the workforce those who pose a real danger to children and vulnerable adults but stated that the vast majority of children and young people who offend do not however fall into this category.[38] The Review team also noted that their perspective on these issues was somewhat different to the review conducted by Sunita Mason.[39]

The Youth Justice Review set out a number of principles that should underpin any new arrangements on the disclosure of criminal records. Firstly, children must be protected and so if a young offender presents a real and serious risk, there can be no objection to the relevant information being made available as part of pre-employment or pre-training checks. The Youth Justice Review also stated that relevancy is best assessed at a time close to the incident and in a transparent process in which challenge is possible. Secondly, the public must be protected and the Review highlighted that one of the most effective ways to reduce offending is by helping young people acquire stable employment, meaning that artificial and unnecessary barriers to achieving that aim should be removed wherever possible. Thirdly, children and families must be treated fairly, with disposals offered as "diversionary" truly constituting diversion away from the criminal justice system and all of the consequences of involvement in that system. Diversionary disposals should not, in principle, constitute a criminal record and be subject to employer disclosure. Where children are convicted, the consequences must be proportionate to the real risk they present, which should be reviewed regularly. Fourthly, children must be given the best possible chance to succeed in life and become responsible citizens, meaning that they should be given every opportunity to put youthful misdemeanours and even serious offending behind them. In most cases, there should be a real possibility of having the "slate cleaned" at age 18 or 21 on application by the young person.[40] The Youth Justice Review recommended therefore that:

"21. Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include:

a. diversionary disposals should not attract a criminal record or be subject to employer disclosure;

35 'A Review of the Youth Justice System in Northern Ireland', September 2011, p.82.

36 Ibid, p.82.

37 Ibid, p.83.

38 Ibid, p.84.

39 Ibid, p.84.

40 Ibid, p.84 – 85.

b. young offenders should be allowed to apply for a clean slate at age 18;

c. for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed."[41]

6.3 CLC is supportive of the recommendations of the Youth Justice Review with regard to the disclosure of criminal records. Similar to the concerns expressed by the Youth Justice Review, CLC is extremely supportive of children being diverted away from harmful contact with the formal criminal justice system, as we see diversion as a positive response to youth crime which avoids the formal retribution of the criminal justice system. We believe however that the operation of diversionary measure at present do not have enough emphasis on diversion out of the formal criminal justice system where this is possible. CLC is aware that there are competing rights of children and young people engaged with regard to the retention and disclosure of criminal records. The UNCRC is clear about the rights of children to be protected from violence, abuse and exploitation as provided for under Articles 19, 34, 36, 37, and 39. However, the UNCRC is also clear that the treatment to be accorded to children in conflict with the law should take into account the child's age and promote the child's reintegration and the child's assuming a constructive role in society (Article 40). The Committee on the Rights of the Child's General Comment on Juvenile Justice makes it clear that this principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child.[42] This General Comment also recommends the introduction of rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).[43] The Beijing Rules provide that records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorised persons. Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.[44]

6.4 It is our view that the approach to the retention and disclosure of criminal records of young people as advocated in the Youth Justice Review is the correct approach in terms of balancing the competing rights of children and young people who require protection and those who have offended. We also believe that the approach advocated by the Youth Justice Review is as per the commitment under the Hillsborough Agreement, i.e. in line with international children's rights standards and has the rehabilitation and reintegration of young people who offend at its core. It has always been CLC's main concern with regards to the retention and disclosure of criminal records that their disclosure can prevent children and young people from accessing mainstream education, training and employment, which are so important in facilitating their successful reintegration into society and preventing reoffending. In particular the evidential link between employment and successful reintegration and resettlement in the community is unequivocal. Research shows that people with convictions who get into – and stay – in jobs are significantly less likely to engage in criminal behaviour than those who do not. Employment can reduce reoffending by between a third and a half.[45]

41 Ibid, p.85.

42 'General Comment No.10 (2007) Children's rights in juvenile justice' United Nations Committee on the Rights of the Child, CRC/C/GC/10, 25th April 2007, para.13.

43 Ibid, para.67.

44 Op Cit 6, Rule 21.

45 'Breaking the Circle:a report on the review of the Rehabilitation of Offenders Act', Home Office, July 2002, p.II.

6.5 It was with some concern therefore that CLC has noted the new arrangements for filtering that came into operation on 14th April 2014. Under these arrangements, Access NI will filter some old and minor convictions and other criminal information such as cautions from Standard and Enhanced checks. However all informed warnings, cautions, details of diversionary youth conferences and convictions held on criminal record databases will be considered for disclosure in the first instance.[46] Access NI has not, since April 2011, routinely disclosed informed warnings, cautions or details of diversionary youth conferences on certificates.[47] Whilst some cautions, diversionary youth conferences or informed warnings for certain offences will be filtered after a period of time, some will not be. Any conviction or caution, diversionary youth conference or informed warning for 'specified offences' will not be filtered. Any conviction resulting in a custodial sentence (including suspended sentences), regardless of offence, will not be filtered. A conviction will only be filtered if there is no other conviction on the individual's record. A conviction for a non-specified offence will be filtered after a period of 5½ years for those under 18 at the time of the conviction. Cautions and diversionary youth conferences will be filtered after 2 years for those under 18 at the date of the caution; with informed warnings being filtered after 1 year. However, if the caution, diversionary youth conference or informed warning was for a 'specified offence', then these will not be filtered at all. This list of 'specified offences' contains almost 1200 offences. CLC accepts that the majority of these offences relate to sexual or violent offending, though offences such as possession of drugs and criminal damage are also contained in this list. However, we do not believe that it is compliant with international standards or the recommendations of the Youth Justice Review that all convictions, cautions, informed warnings or diversionary youth conferences for such offences should be automatically disclosed. CLC is of the view that only information relating to convictions should routinely be considered for disclosure. **Information relating to cautions, informed warnings and diversionary youth conferences should only be disclosed in exceptional circumstances where the offence is sufficiently serious, is relevant and where there are concerns for public safety if the disposal were not to be disclosed. Information about old and minor convictions should only be disclosed where there is a proven risk of harm due to the potential negative impact on the training and employment prospects of young people of disclosure**. CLC considers the current filtering arrangements to be rigid and incapable of taking into account the particular circumstances of a child's case, or the genuine risk which exists to the public from the young person, on a case by case basis.

6.6 We believe that the rigid nature of the current filtering arrangements will disproportionately and negatively impact on many young people who have had contact with the criminal justice system but who now wish to seek education, employment and training opportunities; which are evidenced as the most positive influencers in reintegrating young people. The challenge for these young people is particularly difficult in the current economic climate even without the disclosure of information in relation to their contact with the criminal justice system. The implications of being excluded from education, employment and training are far reaching. A report from the Centre for Social Justice[48] commented that the disillusionment surrounding worklessness amongst young people has become a critical problem in Northern Ireland. Young people aged between 16 and 24 are particularly affected by worklessness. In January - March 2014, there were 14.6%, which equates to 32,000 young people (aged from 16 to 24) in Northern Ireland who were Not in Education, Employment or Training (NEET).[49] Youth unemployment in particular remains high. From April – June 2014, the rate of unemployment amongst young people aged 18 – 24 was 19.4%. The rate was as high as 24.7% in July –

46 http://www.dojni.gov.uk/index/accessni/disclosures/filtering.htm

47 http://www.dojni.gov.uk/index/accessni/disclosures/ani-1-2014—filtering-of-old-and-minor-convictions-and-cautions.pdf

48 Breakthrough Northern Ireland, September 2010.

49 'Northern Ireland Labour Force Survey' January – March 2014, p.17 http://www.detini.gov.uk/lfs_quarterly_supplement_january-march_2014.pdf?rev=0

September 2013.[50] A recent study found that a third of long term unemployed young people have contemplated taking their own lives. The research found that long term unemployed young people were more than twice as likely as their peers to have been prescribed anti-depressants. One in three (32%) had contemplated suicide, while one in four (24%) had self-harmed. The report found 40% of jobless young people had faced symptoms of mental illness, including suicidal thoughts, feelings of selfloathing and panic attacks, as a direct result of unemployment. [51]

6.7 CLC also shares the concerns of the Youth Justice Review that the disclosure implications of diversionary disposals could increase the numbers of young offenders who choose to go to court, thus undermining the whole purpose of diversion and the DoJ's 'Faster, Fairer Justice' agenda. If a young person is accused of a specified offence and is offered the opportunity to have the offence dealt with by way of diversion, they may be less inclined to admit guilt and accept the informed warning, restorative caution or diversionary youth conference which is offered if they are aware that this will always be disclosed in future.

6.8 CLC is concerned that there is currently no transparent process for the disclosure of information, based on a risk assessment which can be challenged, nor is there any mechanism to regularly review the decision to disclose and the assessment on which the decision to disclose was based. There is no opportunity under the filtering scheme for young people to apply for a clean slate at the age of 18. We do not believe that the current approach sufficiently promotes the child's reintegration, nor does it allow for an automatic removal from criminal records of the name of the child who committed an offence upon reaching the age of 18 in line with international children's rights standards and the Youth Justice Review recommendations. CLC also believes that the current filtering arrangements are in conflict with the proposed new aim of the youth justice system, set out in clause 84 of the Justice Bill, which we discuss below. In our view, a more balanced and proportionate system for the disclosure of criminal records is required.

6.9 We are encouraged to note that the DoJ has indicated its intention to bring forward amendments to the Justice Bill to provide for a review process to give effect to the recommendation of the Attorney General that there should be provision for a person to ask for discretion to be exercised in their particular case. This will require an amendment to section 117 of the Police Act 1997 and reference is also made to the Department drawing up guidance as to how such a scheme would operate. The DoJ therefore states that it wishes to introduce a review mechanism as soon as possible and believes that it will strengthen the filtering regime, making it more compatible with Article 8 ECHR and will reduce the scope for legal challenge. [52] It is of concern to CLC that the DoJ clearly believes that the current filtering arrangements are not currently compatible with Article 8 ECHR, given that section 6 of the Human Rights Act 1998 makes it unlawful for the Department to act in a way which is incompatible with a Convention right. We are challenged as to why the DoJ would have proceeded to propose to introduce the filtering scheme prior to the creation of a review mechanism if it did not believe that the scheme was fully compatible with the ECHR at that time. We would have welcomed sight of the draft clauses in relation to the review process to enable us to make informed comment on them. We would encourage the Department to publish its draft clauses as soon as possible to enable the Committee and stakeholders to engage with them on their new proposals.

6.10 In CLC's view, the recent judgment of the Supreme Court in *R (on the application of T and another) v. Secretary of State for the Home Department and another*[53] should be considered highly relevant in developing any review mechanism and in ensuring that arrangements for the

50 http://www.detini.gov.uk/index/what-we-do/deti-stats-index/labour_market_statistics/stats-labour-market-unemployment.htm Table 2.9 'Unemployment by age'.

51 The Prince's Trust Macquarie Youth Index, January 2014

52 Op Cit 30.

53 [2014] UKSC 35.

disclosure of criminal records are compliant with the ECHR. In this judgement, the Supreme Court was asked to consider the cases of two individuals, T and JB. In 2002 the police issued two warnings to T, who was then aged 11, in respect of the theft of two bicycles. T had no other criminal record. In 2008 a football club, to whom he had applied for part-time employment, required T to obtain an enhanced criminal record certificate ("an ECRC") under section 113B of the Police Act 1997 Act. Under the law which existed at that time in England, disclosure was made of 'every relevant matter' contained on the Police National Computer, which included any caution or conviction. The certificate initially disclosed the warnings. In 2010, T applied for enrolment on a sports studies course, which was to entail his contact with children. The college required him to obtain an ECRC and this certificate again disclosed the warnings.

In 2001 the police issued a caution to JB, then aged 41, in respect of the theft from a shop of a packet of false fingernails. She had no other criminal record. In 2009 she completed a training course arranged by the Job Centre for employment in the care sector. The provider of the course asked her to obtain an ECRC, which disclosed the caution. It then felt unable to put her forward for employment in the care sector.

Both T and JB claimed that the reference in certificates issued by the state to cautions given to them violated their right to respect for their private life under Article 8 of the ECHR. T further claimed that the obligation upon him to disclose the warnings violated Article 8. The court held here that the cautions issued did form part of the private life of T and JB. The court was also satisfied that the disclosure of the data relating to the cautions was an interference with the right protected by Article 8(1). Lord Reed pointed out here that whilst T was eventually allowed to enrol on the sports studies course and that it was possible, albeit unlikely, that notwithstanding the refusal of the provider of the training course to put her forward for work in the care sector, JB could have secured the post by direct application, the point was that, in both cases, the disclosure of the cautions issued to them significantly jeopardised entry into their chosen field of endeavour. This meant that the disclosure of the information was not just capable of interfering with the rights under Article 8 of the two applicants but did interfere with them. The majority of the Supreme Court took the view that the interference in the private lives of T and JB as a result of the Police Act 1997 had not been in accordance with the law, as would be required to comply with Article 8. Lord Reed highlighted that legislation which requires indiscriminate disclosure of personal data does not contain adequate safeguards against arbitrary interference with Article 8 rights. He further notes that there is undoubtedly a public interest in ensuring the suitability of applicants for certain positions, including those involving the supervision or care of children or vulnerable adults, but that in this case he could not see any rational connection between minor dishonesty as a child and the question whether, as an adult, the person might pose a threat to the safety of children with whom he came into contact.[54]

It should be noted that this judgment considered a system of disclosure in England under which disclosure of all spent as well as unspent convictions and of all cautions was required in specified circumstances, rather than the present system in Northern Ireland. CLC would submit however that the principles outlined throughout the judgment must be complied with in order to ensure that any review mechanism and arrangements for the disclosure of criminal records are compliant with the ECHR.

6.11 CLC has already had positive engagement with the DoJ in relation to a potential Independent Review mechanism and we look forward to taking part in further consultation and engagement with the DoJ on this. In CLC's view, the creation of an Independent Review mechanism provides a significant opportunity to greater reflect the recommendations of the Youth Justice Review and to ensure the current filtering process is rendered ECHR compliant. Any new Independent Review mechanism should be set within the framework of the ECHR, UNCRC

54 CLC has compiled a summary of this case and an analysis of its relevance to criminal records disclosure which we will make available to the Committee on request.

and the other relevant international standards. However we are concerned that the DoJ has to date only referred to targeted consultation taking place with key stakeholders on the draft guidance and that no commitment is made to consulting on the nature of the Review mechanism itself or the new clauses that will be put in place within the Justice Bill.[55] CLC believes that in compliance with its statutory obligation under section 75 of the Northern Ireland Act 1998 the DoJ must carry out a full public consultation on its proposed Review mechanism.

6.12 In relation to the clauses currently contained within Part 5 of Justice Bill that relate to criminal records, CLC would have a number of comments. Clause 36 of the Bill repeals various pieces of existing legislation so that only applicants will now routinely

receive a copy of a certificate, rather than employers or registered persons. CLC is supportive of disclosures being sent to the applicant, as opposed to the applicant and the registered person. CLC also believes that it is vital in the interests of due process that an applicant should have the opportunity to challenge or appeal information contained on a disclosure certificate and that such a challenge is overseen by an independent and competent authority, and we note the proposals for an Independent Review mechanism and clause 39 of the Bill in this regard. However, we are concerned that Clause 36 still allows for registered persons to have access to certain information about certain certificates that stops short of indicating whether the certificate contains convictions or other information. Clause 36 allows the Department to indicate that a certificate has been issued and to indicate that the certificate contained no information if that was the case. The clause also provides that Standard or Enhanced certificates must be provided to the registered person or employer in certain circumstances. CLC would welcome clarity as to the circumstances in which this obligation would apply, as this is presently unclear. We are concerned that these exceptions could undermine the purpose of sending a certificate to the applicant only in the first instance. The implication of the Department not indicating to a registered person that a certificate contains no information will be that it does contain information, even though the applicant may proceed to challenge that information.

6.13 Clause 37 of the Bill provides that children under the age of 16 should not be subject to criminal records checks except in prescribed circumstances. These 'prescribed circumstances' are not set out in clause 37, though the DoJ suggests in the Explanatory and Financial Memorandum that they would include those under 16s in home-based occupations.[56] The exact circumstances where criminal record checks against children under the age of 16 would be allowed are unclear. We welcome any limitation of the circumstances in which criminal records checks could be sought against children, as we believe that such an approach is in keeping with the international standards outlined above. However, we are concerned that the clause only applies to children up to the age of 16 rather than 18 in line with the definition of a child under the UNCRC.

6.14 Clause 39 of the Justice Bill amends the test that is applied by the police when deciding whether information should be included on an enhanced criminal record certificate. Currently, section113B of the Police Act 1997 allows information to be disclosed where the police judge that it might be relevant and ought to be disclosed. This test will be amended so that the police must now reasonably believe the information to be relevant and that it ought to be disclosed. CLC welcomes the fact that a more stringent test is now being put in place for the disclosure of information such as police intelligence. CLC believes that disclosure of police intelligence must be open and transparent and compliant with human and children's rights standards. Where possible, we believe that there should be a presumption of non-disclosure of 'soft intelligence' up to the age of 18, which we believe would be in compliance with international standards. As a minimum, decisions around the disclosure of police intelligence information in relation to a child or young person under 18 must be made at, at least

55 Op Cit 30.

56 Op Cit 8, p.30.

Assistant Chief Constable level, within a framework for the proper consideration of all of the children's rights issues, with the best interests of the child as a primary consideration.

CLC notes that Clause 39 provides for the publication of guidance in relation to the disclosure of information, which the police will be required to have regard to. The DoJ has also indicated that it intends to amend the Bill so that this Code of Practice must be published.[57] We would welcome urgent consultation on the Code of Practice and also the Committee exploring how the Department intends to discharge its obligations under section 75 of the Northern Ireland Act 1998 with regard to the Code of Practice which is a policy in its own right, and should be subject to all of the section 75 processes.

CLC also notes that Clause 39 will allow persons to apply to an Independent Monitor to determine whether information disclosed is relevant and ought to be disclosed. This application will be made in writing. The Independent Monitor will then ask a chief officer to review the information, though the ultimate decision appears to rest with the Independent Monitor. Both the chief officer and the Independent Monitor must have regard to the Code of Practice published by the Department. It is extremely important that that this process is entirely independent. However, if the application is to be referred to the police, the Bill should clearly specify that the application will be referred to a different chief officer then the one who made the initial decision to disclose the information. CLC would also welcome consideration being given as to how children and young people wishing to apply to the Independent Monitor will be supported and assisted to make an application to the Independent Monitor. This is particularly important given the profile of children likely to come into contact with the criminal justice system i.e. disproportionate levels of children with Special Educational Needs (SEN), learning disability, mental health, literacy and communication problems and English as an additional language.

6.15 Clause 40 of the Bill provides for the creation of portable certificates, meaning that individuals will not have to apply for a new certificate for each job or volunteering opportunity for which one is required. CLC is supportive of the concept of 'portability' as it would enhance the operation of the checking system, while making the entire checking process less burdensome for individual applicants. However, we would again emphasise that the importance of disclosures being sent to the applicant in the first instance, to allow them the opportunity to challenge or appeal against any new information. Under clause 40, a 'relevant person', which the Explanatory and Financial Memorandum states will in many circumstances will be an employer, will be permitted to ask whether there is any new information.[58] The response which the registered person can receive will either indicate effectively that there is no new information, or that a new certificate should be applied for. We are again concerned that the implication of indicating to a registered person that a new certificate should be sought is that there is information to disclose, even though the applicant may proceed to challenge that information.

7. Part 6 – Live Links in Criminal Proceedings

7.1 Part 6 of the Justice Bill (clauses 44 – 49) relates to expanding the use of live video links in courts to include committal proceedings, first remands at weekends and public holidays and breach proceedings for failure to comply with certain orders. This part of the Bill would also allow persons detained under the Mental Health Order to appear in court via video link and would extend the circumstances in which witnesses may give evidence via video link. **CLC has serious concerns with regard to the use of live links in criminal cases which involve children and young people, as we believe they are potentially in breach of Article 6 of the ECHR and Articles 3, 12 and 40 of the UNCRC**. Article 12 of the UNCRC provides children with the right to be heard in judicial or administrative proceedings affecting them.

57 Op Cit 30.

58 Op Cit 8, p.31.

7.2 CLC is concerned that extending the use of live links will remove any personal connection that would otherwise have been established had the child been present in court. This is also true of the child's relationship with their legal representative. We believe that a child needs to have personal contact with their own legal representative so that they can instruct their legal representative and communicate effectively. If the child is not present in court and does not have direct personal contact with their legal representative there may be huge implications for establishing informed consent. It is well acknowledged that effective communication with children, particularly vulnerable and marginalised children with disabilities who are disproportionately more likely to come into contact with the criminal justice system, is challenging and that barriers exist. If the child is not present in court, the child's legal representative and the court itself are greatly disadvantaged in being able to determine the competency of the child to give instructions and understand the implications of the hearing and participate effectively, particularly with regard to children as young as ten.

7.3 The need for children to be able to fully participate in and understand proceedings in which they are involved have been identified as fundamental to guaranteeing the right to a fair trial under Article 6 of the ECHR by the European Court of Human Rights. In the case of *T & V v UK*[59] the European Court of Human Rights stated in its judgment that it is essential that in the case of children charged with an offence that steps must be taken to ensure that children are able to understand and participate in the proceedings. In the case of *S.C v UK60*[60] the European Court of Human Rights found that the right of an accused to effective participation in his or her criminal trial generally included not only the right to be present, but also to hear and follow the proceedings. In the case of a child it was essential that he or she be dealt with in a manner which took full account of his or her age, level of maturity and intellectual and emotional capabilities and that steps were taken to promote his or her ability to understand and participate in the proceedings, including conducting the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition. Further comment has also been made by the High Court in England in the case of *TP v West London Youth Court*.[61] The High Court found that there were a number of measures which should always be taken to ensure that a child receives a fair hearing including keeping the child's level of cognitive functioning in mind, using concise and clear language, having regular breaks, taking additional time to explain court procedures, being proactive to ensure that the child has access to support, explaining and ensuring the child understands the charge as well as explaining possible outcomes and sentences and ensuring that cross-examination is carefully controlled so that questions are short and clear and frustration is minimised. In this jurisdiction, the Lord Chief Justice has issued a Practice Direction in relation to the Trial of Children and Young Persons in the Crown Court, which includes as part of its overriding principle that:

> *"All possible steps should be taken to assist the young defendant to understand and participate in the proceedings. The ordinary trial process should so far as necessary be adapted to meet those ends."*[62]

It goes on to state that:

> *"The court should explain the course of proceedings to a young defendant in terms he can understand, should remind those representing a young defendant of their continuing duty to explain each step of the trial to him and should ensure so far as practicable that the trial is conducted in language which the young defendant can understand."*[63]

59 T & V v UK (EurCtHR), App. No. 24724/94 and App.No.24888/94, (16th Dec 1999).

60 EurCtHR, App No 60958/00, (15th June 2004).

61 [2005] EWHC 2583.

62 Practice Direction 2/11, 'Trial of Children and Young Persons in the Crown Court', 14th February 2011, para. 3.

63 Ibid, para. 11.

In CLC's view, the use of live links has the potential to exacerbate the difficulty of ensuring that vulnerable children can understand the proceedings in which they are involved and would in our view be potentially inconsistent with the judgments cited above

7.4 A report commissioned by the Northern Ireland Office (NIO) in 2008 has been used by the DoJ as evidence in support of extending the use of live links. This report indicated that three quarters of the 20 young people sampled were in favour of video links on the grounds of convenience and speed. However, this report also identified that one young person sampled justified his preference for being escorted to court on the grounds that he could hear what was happening better in court, and that he preferred speaking to his solicitor in person.[64] The report also noted that in a few cases there were some difficulties, mainly of a technical nature, concerning sound and picture quality, for example when it was not always easy to hear what participants were saying. This question was also referred to by some interviewees, who spoke of occasional technical difficulties with the sound and picture, though some young people identified that hearing properly could be a difficulty when physically present in court. The report also identified a very small number of instances where an apparent lack of communication between the court or the defence solicitors and the staff in Juvenile Justice Centre resulted in longer than normal waits for the children, and even occasions when cases were heard in the child's absence.[65] The report also notes in its conclusions that young defendants did appear confused at times when they were unable to hear their solicitor or other court personnel, and they would sometimes turn to the member of staff to ask questions. They also occasionally appeared to be confused about the outcome.[66]

CLC believes that this evidence highlights concerns regarding the use of live links and their potential to adversely affect a child's ability to participate in and understand legal proceedings, which should be given serious consideration before decisions are taken to extend their use. We note that Include Youth conducted consultations with young people in both the Juvenile Justice Centre and Hydebank Wood Young Offenders Centre in February 2012 that suggested that, four years on from the NIO report, there remained significant problems with technical difficulties in the use of live links and issues regarding children's ability to fully participate through a live link.[67]

More recent research carried out by Include Youth concluded that the majority of the issues raised as being problematic with the use of live links remain unaddressed, that young people do not appear to be fully aware of the available options when it comes to using live links, that young people using live links can feel removed from the process, that technical problems are an issue and that some young people cannot accurately hear proceedings and that the quality of the engagement with solicitors appears to be called in to question.[68]

Given the importance of the child's right to a fair trial we would be supportive of the DoJ being as robust in the implementation of its policy proposals as possible, relying on recent independent research into the use of live links in proceedings involving children and scrutinising the impact on the child's ability to participate in and understand the court proceedings. It is extremely disappointing that the DoJ has not moved to commission such research, given CLC's recommendation that it do so in responding to the initial consultation on some of these proposals in September 2012. In its summary of responses to that consultation, the DoJ undertook to review the operational capacity of existing systems

64 'Evaluation of the Woodlands Juvenile Justice Centre Youth Court Video Link' Northern Ireland Office Statistics and Research Branch, NIO Research and Statistical Series: Report No. 19, Independent Research Solutions Helen Dawson, Seamus Dunn and Valerie Morgan, June 2008, p. 19.

65 Ibid, p. 2.

66 Ibid, p. 22.

67 Include Youth Response to Department of Justice consultation on proposals to extend the use of live links in court, September 2012.

68 Include Youth Response to the Department of Justice consultation on proposals for the use of live links in weekend courts, 31st May 2013.

on which any new facilities would be built before any additional services arising from the current proposals are put in place.[69] However, in its summary of responses for the equality consultation on the Justice Bill, the DoJ stated that it could not provide further details as to what this would mean in practice, as the legislation had not yet received assent. The DoJ did however reaffirm its commitment to review the operational aspects of the system before any of the live links proposals are actually brought into force.[70] Given the problems with the current operation of the live link system, CLC is challenged as to why the DoJ would delay any review of the system until after legislation was passed. In our view, before proposing to extend the use of live links, the DoJ must be satisfied that the current system is working effectively and fundamentally that the use of live links can ensure the child's right to a fair trial. In the summary of responses for the consultation undertaken on extending the use of live links to weekend courts, the DoJ indicated that it would take the suggestion for consultation with young people forward as part of the review to improve the operation of live links in young people's cases.[71] We would welcome the Committee inquiring as to whether the DoJ has taken forward consultation with children and young people to improve the operation of live links for them.

7.5 CLC also notes with some concern that the various consultation documents released by the DoJ on these proposals have made reference to the expanded use of live link facilities helping to *"obtain maximum value from the equipment already installed"*.[72] We firmly believe that the use of live video links must always be driven by the interests of justice and the best interests of the child and not simply by what is cost effective or to "obtain maximum value from the equipment already installed". We have noted the DoJ's assertion in the summary of responses to the consultation on this issue in 2012 that the DoJ accepts that administrative ease or financial expediency must never take precedence over the rights of often extremely vulnerable children and young people and that it will ensure that that is not the case.[73]

7.6 Notwithstanding CLC's opposition to the use of live links, we would make the following comments on the draft clauses contained in Part 6 of the Justice Bill. CLC notes that several of the new scenarios in which live links may be employed under the Bill require the consent of the accused person (clauses 44 and 46). Whilst the DoJ did not accept, in the summary of responses to the consultation on this issue in 2012, that a live link would diminish the ability of the defendant to instruct their legal representative to make representations on their behalf around the prosecution of their offence, it did recognise the importance of informed consent and support, particularly where young people are concerned. The Department has therefore undertaken to establish enhanced procedures for young people involved in considering the use of a live link to ensure that informed consent is present.[74] However, in its summary of responses for the equality consultation on the Justice Bill, the DoJ indicated that it again could not provide any further detail on what this would mean in practice, as the legislation had not yet received assent. Whilst the DoJ reaffirmed its commitment to this proposal for enhanced procedures and indicated that it will provide information publicly in due course,[75] CLC is challenged as to why the DoJ is proposing to bring forward this legislation without having firm safeguards in place to protect young people. CLC has major concerns about the use of live links and obtaining informed consent and this issue should be resolved before the use of live links with children and young people is legislated for.

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69 'Summary of responses and way forward: Consultation on proposals to extend the use of live links in court' Department of Justice, October 2012, p. 13.

70 'Report of the Equality Consultation on the Proposed Justice Bill (Northern Ireland) 2013' Department of Justice, June 2013, p.23.

71 'Consultation on Live Links in Weekend Courts – Summary of Responses and Way Forward' Department of Justice, July 2013, p.8.

72 Op Cit 15, para. 5.27.

73 Op Cit 69, p. 10.

74 Ibid, p. 12.

75 Op Cit 70, p.23.

7.7 In equality screening the proposals for the equality consultation on the proposed Justice Bill in 2013, it was also stated by the DoJ in relation to children and young people, that legislative safeguards will be put in place to ensure that direct participation in the proceedings is maintained, similar to those that exist within current live link provisions.[76] In this regard we note the reference within clauses 44 and 45 to the court being under a responsibility to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it, if this cannot be immediately corrected. We do not however see any reference to this safeguard within clause 46 of the Bill which deals with breach proceedings for failing to comply with certain orders or licence conditions. We would suggest that this safeguard also be added in clause 46.

7.8 Clause 44 of the Bill allows for the accused to appear at committal proceedings via live link and to give evidence at committal proceedings via live link. The accused must consent to appearing at the hearing via live link and to giving evidence in this way. Our concerns regarding the child's ability to participate and understand proceedings through a live link and the importance of personal contact with the court and legal representatives also apply here. Clause 46 allows for proceedings for failure to comply with certain orders, such as probation orders, attendance centre orders, youth conference orders or the supervision requirements of Juvenile Justice Centre Orders to occur via video link. In all of the proceedings set out in clause 46 that will now be capable of being undertaken via live links, children and young people may be required to participate to a large degree, either personally or through their legal representatives. For example, the young person may dispute that they have breached the requirements of their supervision or their youth conference order, or may offer a reasonable excuse as to why they breached the requirements of their supervision. CLC would question whether a child or young person will be able to effectively participate and understand proceedings if they appear in such proceedings via live link. We accept that children will have to consent to attend breach proceedings via live link, but again we would have concerns that children and young people may consent without fully understanding the consequences of doing so, believing that the live link will simply be a more convenient course of action.

7.9 Clause 45 of the Bill introduces a power to hold hearings where an accused is appearing before the court for the first time on a Saturday or Sunday or a public holiday. These proposals were subject to a separate consultation exercise in 2013 to which CLC responded. The DoJ's proposals at this time were to create a more centralised system of weekend bail courts based on the use of live link facilities. Currently at weekends, when a person is charged with an offence, a court is often specially convened for bail purposes. This process is replicated across Northern Ireland and the DoJ argued that this provides a very inefficient and costly judicial system as often a spread of courts have to be arranged across a number of court districts with defendants brought to them and police, court and legal costs incurred. Under the proposals a bail court would sit in a centralised location or locations linked to "feeder" locations by video link. This would allow cases from across Northern Ireland to be considered by a single judge. Operationally, hearings would be scheduled from around those feeder locations into a weekend rota court. The DoJ argued that cases could be dealt with speedily and a more efficient police, court and judicial system would be provided.[77]

CLC wishes to again highlight that the use of live video links must always be driven by the interests of justice and the best interests of the child and not what is considered to be more efficient or cost effective. CLC continues to have concerns at the lack of clarity regarding whether legal representatives will physically attend court to represent their clients under these arrangements, or whether they will be expected to also appear via video link from the 'feeder' location. If legal representatives are expected to travel to the centralised location and appear physically in court, then CLC could envisage significant practical problems arising, including implications for the solicitor's ability to effectively communicate with the young

76 'DoJ Section 75 Equality Screening Form – Extending the use of live links' Department of Justice, p.13.

77 Consultation on proposals for the use of live links in weekend courts' Department of Justice, March 2013.

person and take instructions, as they may have to make lengthy journeys under significant time pressures. This could also impact on their ability to challenge the prosecution case, particularly if the prosecution is objecting to the child or young person being granted bail. There could be equally significant implications if legal representatives are instead expected to represent their clients via video link from a 'feeder' location. Whilst personal contact between the child and their legal representative will be maintained, there will be absolutely no personal connection between the child, their legal representative and the court. In its summary of responses to the consultation on these proposals, the DoJ indicated that any weekend remand hearing to be held by live link could see persons taken to a number of "feeder" courthouses where their legal representatives could be available for connection to a judge at a central location and that a fully operational model would be developed ahead of legislation.[78] This situation is not clarified by clause 45 and CLC would welcome the Committee considering this issue, particularly in relation to the operational model which the DoJ intends to put in place.

CLC also has concerns at the lack of reference to the need to secure the informed consent of the child to appear via video link prior to the video link hearing. It is stated in the Explanatory and Financial Memorandum that the provisions of the Bill relating to live links do not change a patient or defendant's entitlement to be present at a hearing.[79] Clause 45 however makes no reference to the need to secure the consent of the accused to appear via video link, which is a major difference between this power and other powers that allow the appearance of a person in court via video link. The requirement that an accused person consent to the use of video links has been presented as a safeguard within the process in the past, allowing children and young people to appear physically in court if they so wish. In any event, even if the child was asked to consent, CLC has already expressed concerns that in practice, it will be exceptionally difficult for children to object to the use of live link in this way. For example, if a child has been arrested and charged in Enniskillen and objects to the use of live link, insisting instead that they wish to appear personally in court, but the centralised court location is Belfast, how will they be securely transported there? How will the child have the opportunity to provide full instructions to their legal representative if they are forced to make such a significant journey in order to appear in person? What if the court sittings for that day will conclude by the time the child arrives? These considerations in relation to the consent of the child reaffirm our concern that these proposals are being driven by what is considered to be efficient and cost effective, rather than what is in the best interests of the child. The absence of the requirement for an accused person to consent to appear via video link and the difficulties that an accused person may encounter in objecting to appearing via video link, even if consent were required, makes clause 45 in our view fundamentally flawed.

7.10 Clause 49 of the Bill extends the use of live links in certain court proceedings to include patients detained in hospital under Part 2 of the Mental Health (Northern Ireland) Order 1986. Part 2 of the 1986 Order relates to persons compulsorily detained in hospital in relation for assessment or treatment of a mental illness. Currently, only patients detained under Part 3 of the 1986 Order, i.e. those patients compulsorily detained via the criminal justice system, are able to appear via video link. Whilst we appreciate that the DoJ's rationale behind these proposals may be to avoid disturbance to patients and to assist with the management of risk, patients who are detained under Part 2 *for the purposes of being assessed* and who have criminal proceedings pending alongside their status under Part 2 should not be required to attend court at all, regardless of whether this is in person or via video link. We believe this to be justified given that the assessment period is a maximum of 14 days. The need to ensure that a child can understand and participate in proceedings is more acute whenever that child or young person is being treated for a mental illness and appearing in court via live link could prove to be a confusing and disorientating experience. Such children and young people are in need of intensive, specialist help in order

78 Op Cit 71, p.9.

79 Op Cit 8, para.86.

to understand and participate in criminal proceedings and we would question whether this can be readily achieved via live link. We note that several of the legislative provisions around preliminary hearings, which clause 49 will amend in order to extend them to include Part 2 of the 1986 Order, do not require that the person consents to appearing via video link, which we have expressed concerns about above.

The Department has previously recognised in equality screening these proposals that live links arrangements for young people and patients in psychiatric hospitals will require particular consideration and development and indicated that arrangements will be made to consult with these groups and the locations where they will be used. It was also indicated that guidance notes for practitioners would be produced to ensure that live links are only used in appropriate circumstances.[80] CLC welcomed the prospect of consultation with children and young people, as one of the groups likely to be affected by this policy and would welcome the Committee exploring the results of such consultation with the Department as part of scrutinising the Bill. CLC is unaware of any guidance produced by the Department to ensure that live links are only used in appropriate circumstances and we would welcome the Committee enquiring as to the status of such guidance. We would welcome full public consultation on guidance produced by the Department in line with section 75 of the Northern Ireland Act 1998.

CLC would also welcome the Committee enquiring as to whether the DoJ has considered the potential impact that the proposed Mental Capacity Bill will have in relation to these proposals. It is expected that the Mental Capacity Bill will lead to the repeal of the Mental Health (Northern Ireland) Order 1986 in its entirety for those aged 16 and over. For under 16s, the Mental Health (Northern Ireland) Order 1986 will be retained with some amendments due to the assumption that under 16s may lack capacity due to immaturity.

8. Part 7 – Violent Offences Prevention Orders

8.1 Part 7 (Clause 50 – 72) of the Bill proposes the creation of the Violent Offences Prevention Order (VOPO). VOPOs would allow the courts to place conditions on the behaviour of those convicted of violent offences and would also require such persons to notify the police of various personal details. VOPOs will be civil orders imposed on convicted violent offenders. They will impose conditions on violent offenders which they must comply with or actions which they must refrain from. Breach of a VOPO will be a criminal offence which may result in up to 5 years in prison. CLC believes that the imposition of additional conditions through the application of VOPOs to under 18s is unnecessary, as violent young offenders being released from custody should in reality be already subject to conditional release, such as release on licence. In addition, VOPOs are civil orders, breach of which is a criminal offence with criminal consequences, which will draw young people further into the criminal justice system and are in conflict with the fundamental principles of reintegration and rehabilitation as clearly detailed in international children's rights standards. **Similar provisions do not apply to under 18s in England and Wales**.

8.2 Proposals for the creation of VOPOs were first consulted upon in 2011. VOPOs were at this point referred to as the Violent Offender Order (VOO). This consultation did not address the issue of the age of persons to whom VOPOs would be applied specifically. However, at that point the proposals for VOPOs were based on the VOO in England and Wales, which can only be applied to persons aged 18 and over under the Criminal Justice and Immigration Act 2008, a point which was made in the consultation paper.[81] It was not proposed in the consultation paper that VOOs should be extended to apply to under 18s.

8.3 Following this consultation, CLC was notified by the DoJ that it intended to make VOPOs available in respect of all eligible offenders, regardless of their age, including under 18s. The

80 'DoJ Section 75 Equality Screening Form – Extending the use of live links' Department of Justice, p. 25.

81 'Sex Offender Notification and Violent Offender Orders – Proposals for Legislation' Department of Justice, 2011. p.41.

DoJ indicated to CLC that the key criminal justice agencies had asked for these proposals to more fully replicate provisions made for Sexual Offences Prevention Orders, upon which the VOPO proposals were now being modelled.[82] It appears that following the public consultation process on the creation of VOPOs, a small number of criminal justice agencies made a proposal that VOPOs should be extended to under 18s. As we have already stated, this was not part of the original consultation proposals and CLC is unaware of any consultee having suggested that VOPOs be extended to under 18s. CLC was asked for its views on this issue of age thresholds and expressed firm opposition to the extension of VOPOs to under 18s. However the extension of VOPOs to under 18s appears to be reflected within the Justice Bill; clause 50 does not exclude under 18s from persons who may be subject to VOPOs, clause 53 of the Bill does not specifically exclude under 18s from the definition of a 'qualifying offender' for a VOPO and clauses 51 and 52 do not limit the ability of the courts to make VOPOs in respect of under 18s.

8.4 **CLC is strongly opposed to the proposal that VOPOs should be made available in relation to children and young people and we would welcome the Justice Bill being amended to clearly define that a VOPO can only be sought against a person who was aged over 18 at the time that they committed the relevant offence or offences which have led to a VOPO being sought**.

8.5 CLC is concerned that VOPOs have not been developed with the intention of rehabilitating children who commit violent offences and reintegrating them into society, which in CLC's view is the best method of protecting the public from future offending. VOPOs appear to be focused only on the protection of the public from the risk of serious violent harm rather than on the child's rehabilitation and reintegration. The Bill allows a wide discretion in terms of the conditions that a VOPO may contain. Clause 54 states that a VOPO may contain provisions prohibiting the person subject to it from doing anything described in the order, or requiring them to do anything described in the order. These prohibitions or requirements may only be included if they are necessary to protect the public from the risk of serious violent harm. In notifying CLC of the intention to extend VOPOs to include under 18s, the DoJ informed CLC that VOPOs would place requirements and prohibitions on young people, such as their access to certain places, premises, events or those persons to whom it is considered that they will pose a risk.[83]

8.6 CLC would also question the practical need for VOPOs in this jurisdiction in relation to children and young people. VOOs, which exist in England and Wales and which formed the basis for the original proposals for VOPOs, cannot be applied to under 18s. In our view, the DoJ has provided no evidence that suggests that VOPOs are needed in relation to children and young people in Northern Ireland. Indeed, the DoJ has proposed extending VOPOs to under 18s on the basis that they would only be applied for against young offenders in a very few exceptional cases, with data demonstrating that those eligible for a VOPO may be in the region of 7 per year, and that only a proportion of the 7 identified as eligible may have an order applied.[84] In our view, such information does not support the extension of VOPOs to children and young people. Numerous orders currently exist that can be used by the courts when dealing with children and young people found guilty of violent offences, and which all contain elements of supervision or prohibition of activities. These include Juvenile Justice Centre Orders, Youth Conference Orders and Probation Orders. Failure to comply with the requirements of these orders can result in the child being returned to court to be dealt with in an alternative manner. Various orders can also be made to detain children in custody where they have been found guilty of 'serious' or 'specified' offences, which are listed in Schedules 1 and 2 of the Criminal Justice (Northern Ireland) Order 2008, and which relate generally to violent or sexual offences. Before making these orders, the courts are required to consider whether there is a significant risk to members of the public of serious harm occasioned

82 Letter to Paddy Kelly, Director of Children's Law Centre, 4th March 2014.

83 Paper attached to Letter to Paddy Kelly, Director of Children's Law Centre, 4th March 2014.

84 Op Cit 82.

by the commission by the child of further 'specified' offences. Children and young people can only be released on license under these orders where the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that they should be confined. Licenses vary in length under this legislation, depending upon the sentence imposed, but they can be revoked and individuals can be recalled to custody. Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 also provides the courts with an additional option in relation to the punishment of what it describes as certain grave crimes. This again involves releasing the child on license at some point, with the Parole Commissioners again directing release once they are satisfied that it is no longer necessary for the protection of the public from serious harm that the child should be detained. The Department of Justice has the power to revoke the license and recall the child to custody.

8.7 Given that this menu of legislative disposals already exists, we are challenged as to why VOPOs are considered necessary in relation to children and young people at all. In particular we note that under clause 51 and 52 of the Justice Bill, a court cannot make a VOPO unless it is satisfied that it is necessary to make such an order for the purpose of protecting the public from the risk of serious violent harm caused by the person. A risk of serious violent harm is defined under clause 50 as meaning serious physical or psychological harm caused by that person by committing one or more specified offences. Under clauses 51 and 52 of the Bill, the courts may only make a VOPO in respect of persons convicted of a specified offence, which is defined under clause 50 as meaning an offence listed under Part 1 of Schedule 2 of the Criminal Justice (Northern Ireland) Order 2008. These considerations all appear to be very similar to the considerations that the courts will already be required to have undertaken when deciding whether to make an order under the Criminal Justice (Northern Ireland) Order 2008, as outlined above. If the court is of the view that a sentence under the Criminal Justice (Northern Ireland) Order 2008 is required, which will result eventually in the person being released on license, we are challenged as to why a VOPO will be necessary at all. If a VOPO is sought for a young person who has been released on license under the 2008 Order, on the basis that a person continues to pose a risk of serious violent harm to the public, it should be remembered that the Parole Commissioners will not have directed the release of the young person unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that the person should be confined. In circumstances where the Parole Commissioners have determined that the person can be released on license, it would seem incongruous to then apply to the court for a VOPO on the basis that the person continues to pose a risk of serious violent harm to the public.

8.8 We note that under clause 52, the Chief Constable will have the power to apply for a VOPO in relation to persons who have been convicted of specified offences. The court must be satisfied that the person's behavior since their conviction makes it necessary to make a VOPO for the purpose of protecting the public from the risk of serious violent harm caused by the person. In deciding whether to make such an order, the court is required to consider whether any other statutory provision or measures are operating to protect the public from the risk of harm. It is not clear from this provision whether such applications will be decided on the civil standard of proof i.e. proof on the balance of probabilities, or the criminal standard of proof i.e. proof beyond reasonable doubt. The Explanatory and Financial Memorandum for the Bill states that VOPOs will be a civil preventative measure,[85] which implies that applications for VOPOs will be decided on the balance of probabilities. The use of the civil standard of proof in such proceedings would greatly concern CLC, as we believe it would blur the distinction between criminal and civil proceedings, as the VOPO could be granted on the civil standard of proof, but with breach of the VOPO being a criminal offence. Clause 66 of the Bill states that failure to comply with the requirements of a VOPO is an offence, punishable by imprisonment of up to 5 years or a fine, or both.

8.9 CLC also has serious concerns with regard to the DoJ's compliance with its statutory equality obligations under section 75 of the Northern Ireland Act 1998 in the development of these

85 Op Cit 8, para.87.

proposals. Since being notified of the DoJ's intention to extend the use of VOPOs to under 18s, we have been concerned to note that there has been no evidence that these proposals have been assessed for their impact on the promotion of equality of opportunity through equality screening and equality impact assessment (EQIA). As outlined above, proposals for the creation of VOPOs were first consulted upon in 2011 (at this stage they were referred to as VOOs) and an equality screening was conducted at this time. It was not proposed in the consultation paper that VOOs should be extended to apply to under 18s. Following this consultation process, CLC was made aware that it was now proposed that VOPOs should be available in respect of all eligible offenders, regardless of their age, meaning that the order could be applied for in relation to children and young people under the age of 18. Given that this was a new policy proposal, it should have been subject to thorough equality screening and a comprehensive EQIA, including direct consultation with children and young people, should have been carried out. CLC has requested that the DoJ comply with its obligations under section 75 of the Northern Ireland Act 1998 as a matter of urgency by carrying out an urgent screening exercise on its proposals to extend VOPOs to children and young people, and where differential adverse impact or ways to greater promote equality of opportunity are identified as we believe they will be, to carry out a comprehensive EQIA. This request has not been responded to.

9. Part 8 – Miscellaneous

Early Guilty Pleas

9.1 Clauses 77 and 78 of the Justice Bill relate to the issue of encouraging early guilty pleas in Northern Ireland. Clause 77 of the Bill requires a court in passing sentence to indicate the sentence that it would have passed had the defendant entered a guilty plea at the earliest reasonable opportunity. The court is only required to do this when the defendant did not plead guilty at any stage of the proceedings, or pleaded guilty to the offence or indicated an intention to plead guilty, but did not do so in the opinion of the court at the earliest reasonable opportunity. In the Explanatory and Financial Memorandum for the Bill, it is stated that this clause is intended to increase awareness of the availability of sentencing credit for an early guilty plea and to add clarity around the level of credit that may be awarded.[86] Clause 78 of the Bill requires defence solicitors to advise their clients of the effect of Article 33 of the Criminal Justice (Northern Ireland) Order 1996 when representing them in connection with the investigation of an offence or in proceedings against them for the offence. Article 33 of the 1996 Order requires a court, when sentencing a person who has pleaded guilty, to take into account the stage at which a person indicated an intention to plead guilty and the circumstances in which that indication was given. Clause 78 also requires that the solicitor must advise the client of the likely effect on any sentence that might be passed on the client if convicted, of pleading guilty to the offence at the earliest reasonable opportunity or indicating an intention to plead guilty at the earliest reasonable opportunity. CLC is conscious that the DoJ intends that these clauses will provide legislative support to a non-legislative scheme being developed to provide a structured early guilty plea scheme in the Magistrates' Courts and Crown Court, as indicated in the Explanatory and Financial Memorandum for the Bill.[87] We would welcome the Committee exploring the status of this scheme as part of its scrutiny of the Bill, with particular consideration being given to the issues we have outlined below.

9.2 CLC has a number of concerns regarding putting in place adequate safeguards and protections to ensure that proposals aimed at tackling delay, such as encouraging early guilty pleas, do not interfere with the child's fundamental right to a fair trial under Article 6 of the ECHR as incorporated by the Human Rights Act 1998. As we have highlighted above in relation to live links, case law is unequivocal with regard to the need for a child to be facilitated to adequately participate in and understand proceedings in order to have the right

86 Ibid, p.43.

87 Ibid, para.92.

to a fair trial under Article 6 of the ECHR upheld. In implementing clauses 77 and 78 of the Bill and in taking forward any nonlegislative early guilty plea scheme, CLC wishes to see the Department proactively taking measures to protect and uphold the child's right to a fair trial as outlined above. There is a need for adequate safeguards and protections for young people in any system aimed at encouraging early guilty pleas. These safeguards and protections must be clear and robustly applied to ensure that young people in the criminal justice system are aware of the implications of pleading early and have their right to a fair trial upheld. CLC appreciates that there are already provisions in the criminal justice system for defendants to plead early and that there is significant discretion for judges to reduce an offender's sentence where there is an admission of guilt at an early stage. We also appreciate that the DoJ has previously emphasised when consulting on these proposals that the intention of the proposals is not to encourage more guilty pleas overall, or seek to diminish the presumption of innocence, but only to encourage those offenders who are guilty and who will eventually plead guilty to do so earlier. However, we have some concerns about the profile and vulnerabilities of young people who come into contact with the criminal justice system, who are more likely to have special educational needs, learning disabilities, mental health issues and literacy and communication problems.

9.3 The Criminal Justice Inspectorate (CJINI) published a report on early guilty pleas in February 2013, within which it conducted 62 interviews with sentenced prisoners, both male and female who represented a broad range of ages from young offenders (including those who were juveniles at the time of their offences) to older offenders. Also included were a range of minority groups including some from the Travelling Community and foreign nationals, including Chinese, Polish and Lithuanian nationals. CJINI noted that:

> *"Across the broad range of individuals who are before the courts there are a wide range of vulnerabilities. This is a widely accepted principle. Indeed during the course of inspection, Inspectors heard from some consultees who expressed direct concern at the possibility of early guilty plea schemes impacting negatively on vulnerable defendants"*[88]

CJINI went on to note concerns about vulnerable defendants and those with learning disabilities expressed by the Prison Reform Trust as well as empirical studies which strongly suggest that suspects and defendants with learning disabilities are 'vulnerable.' These can include vulnerabilities by reason of age (young or old) and those with mental health and cognitive understanding issues. CJINI also referred to its own previous inspection reports around mental health in the criminal justice system and noted that:

> *"In the course of fieldwork Inspectors did not hear any specific concerns on the negative effect of an early guilty plea scheme. However, we did experience a range of cognitive understanding amongst the group of offenders spoken to. This reinforced the need to ensure that whatever steps are taken to encourage guilty pleas that the range of vulnerabilities for those in the justice system are considered and given due weight. Inspectors considered that in any early guilty plea scheme it will be important to ensure that the rights and understanding of an accused person in pleading guilty early are protected. This will largely mean that defence practitioners must ensure adequate advice is provided and that the courts should ensure unrepresented defendants are adequately informed of their rights."*[89]

9.4 CLC believes that there is considerable potential for vulnerable young people to be more susceptible to pleading guilty at the earliest possible opportunity, particularly where they feel pressured or intimidated by court proceedings or wish the case to be over. It will be extremely important that the particular needs of the child are taken into account when applying these clauses and any non-legislative early guilty plea scheme, in relation to children with learning disabilities, those with additional needs and/or mental health problems and those for whom English is an additional language. These particular needs may result in a lack of

88 'The use of early guilty pleas in the Criminal Justice System in Northern Ireland',Criminal Justice Inspection Northern Ireland, February 2013, para.4.42.

89 Ibid, para.4.45 – 4.46.

understanding of the implications of pleading guilty and may impact on the child's enjoyment of his/her right to a fair trial.

Avoiding delay in criminal proceedings

9.5 Clauses 79 and 80 of the Justice Bill confer regulation making powers onto the DoJ in relation to the issue of delay in criminal proceedings. Clause 79 provides the DoJ with the power to make regulations imposing a general duty on persons exercising functions in relation to criminal proceedings in the Crown Court or the Magistrates' Court to reach a just outcome as swiftly as possible. Clause 79 provides that the regulations must in particular take account of the need to identify and respect the needs of persons under the age of 18. Clause 80 of the Bill provides the Department with the power to make regulations in relation to the management and conduct of criminal proceedings in the Crown Court or the Magistrates' Court. These regulations may impose duties on the court, the prosecution and the defence and may confer functions on the court in relation to the active case management of criminal cases. Clause 80(4) then outlines the features that active case management should include, such as the early identification of the real issues, encouraging cooperation in the progression of the case and discouraging delay.

9.6 CLC is extremely supportive of reducing delay in children's case in line with Article 40 and 37(d) of the UNCRC, Article 6 of the ECHR and the various CJINI reports on this issue.[90] The Youth Justice Review also placed a great deal of emphasis on the need to tackle delay within the youth justice system, stating that the issue of delay stands out above all others as being in urgent need of reform.[91] The Youth Justice Review highlighted that delay is a serious problem that impacts on virtually every judicial process and practice, from bail and remand to sentencing and rehabilitation.[92] The Youth Justice Review recommended that statutory time limits should be introduced for all youth justice cases, providing for a maximum period from arrest to disposal of 120 days, a recommendation which CLC supports. The issue of avoidable delay is an area which requires immediate attention, not least due to unacceptable delays in processing children through the criminal justice system in Northern Ireland breaching children's rights and domestic obligations. However, CLC would emphasise that the delay which requires addressing is avoidable delay and in addressing avoidable delay, the child's rights under Article 6 of the ECHR and their UNCRC rights should not be compromised.

9.7 CLC notes that clause 79 specifically requires any regulations to take account of the need to identify and respect the needs of persons under the age of 18. We welcome this aspect of the clause and believe that a similar requirement should be included within clause 80. We are concerned that no definition is provided within the Bill in relation to reaching a 'just outcome'. We believe that this should be further clarified in order to ensure that the duty imposed under clause 79 is implemented consistently. **We would also welcome the Committee, as part of its consideration of these clauses, inquiring as to the DoJ's plans for consulting on the development of any regulations under clauses 79 and 80**.

Aims of the youth justice system

9.8 Clause 84 of the Justice Bill will amend section 53 of the Justice (Northern Ireland) Act 2002, which sets out the statutory aims of the youth justice system in Northern Ireland. Section 53 of the 2002 Act currently states that:

"(1) The principal aim of the youth justice system is to protect the public by preventing offending by children.

90 'Avoidable Delay', Criminal Justice Inspection Northern Ireland, June 2010. 'Avoidable Delay: A Progress Report' Criminal Justice Inspection Northern Ireland, January 2012.

91 Op Cit 35, p.68.

92 Ibid, p.68.

(2) All persons and bodies exercising functions in relation to the youth justice system must have regard to that principal aim in exercising their functions, with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions.

(3) But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development."

Clause 84 proposes to amend section 53 of the 2002 Act by substituting the following in place of section 53(3):

"(3) But all such persons and bodies must also

(a) have the best interests of children as a primary consideration; and

(b) have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development."

9.9 CLC has consistently raised concerns about the fact that the current statutory aims of the youth justice system are not in compliance with international standards due to the failure to include the 'best interests' principle within the Justice (Northern Ireland) Act 2002. This is contained within Article 3(1) of the UNCRC, which states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The UN Committee on the Rights of the Child, in its 2002 and 2008 Concluding Observations following an examination of the United Kingdom's compliance with the UNCRC, has recommended that the United Kingdom take all appropriate measures to ensure that the principle of the best interests of the child be adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice.[93] CLC particularly welcomed the recommendation within the Youth Justice Review that section 53 of the 2002 Act should be amended to fully reflect the best interest principle as set out in Article 3 of the UNCRC.[94]

9.10 CLC welcomes the amendment to the aims of the youth justice system but we are aware that the strength of any legislation is judged by its implementation and operation. We wish to see the translation of the best interest principle into a meaningful reality for children coming into contact with the youth justice system. All professionals coming into contact with children within the criminal justice system must have comprehensive and ongoing training on how to apply the amended aims of the youth justice system and how to implement these in practice. Effective training must be taken forward as a matter of urgency, given that under clause 91 of the Bill, clause 84 will come into operation on the day that the Act receives Royal Assent.

10. Conclusion

10.1 The Children's Law Centre is grateful for the opportunity to submit evidence on the Justice Bill and we hope that the Committee finds our comments helpful in examining the contents of the Bill. We would very much welcome the opportunity to provide oral evidence to the Committee on the contents of the Bill, and are happy to further discuss or clarify anything within this written evidence in advance of this.

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93 United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para. 27. United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/15/Add.188, 9th October 2002, para. 26.

94 Op Cit 35, Recommendation 28.

Victim Support NI

1.0. About Victim Support

Victim Support Northern Ireland welcomes the opportunity to comment on the Justice Bill.

Victim Support provides practical and emotional support to victims of crime across Northern Ireland. During the period 1st April 2013 to 31st March 2014, we received over 40,000 referrals to our Community Services. Out of this number around 3,000 people who were affected by crime were supported face to face, to work through the effects those crimes have had on their lives. In addition, more than 8,500 victims and witnesses were supported through the process of attending court and giving evidence and over 1,500 citizens injured as a result of violent crime were assisted with their criminal injuries compensation application.

2.0. General Comments

2.1. For the purposes of this response, Victim Support NI will confine our comments to a number of specific parts of the Bill. Specifically, Part One: Single Jurisdiction for County Courts and Magistrates Courts; Part 2: Committal for Trial; Part 4: Victims and Witnesses and Part 8: Miscellaneous.

3.0. Part 1: Single Jurisdiction for County Courts and Magistrates' Courts

Our organisation welcomes the move to a single jurisdiction for Northern Ireland, with the abolition of county court divisions and petty session's districts. Also, that the jurisdiction and powers of a county or magistrates' court are exercisable throughout Northern Ireland.

It is our hope that this decision will result in services which are much more adaptable and responsive, particularly to the needs of victims and witnesses and that there will now be greater opportunity to ensure that the location of trials are convenient and that safety issues in respect of victims and witnesses are not only considered but addressed.

4.0. Part 2: Committal for Trial

Victim Support NI welcomes the intention to repeal article 30 of the Magistrates Courts (NI) Order 1981, which enables a magistrates' court to conduct preliminary investigation of an indictable offence. We have long been of the firmly held opinion that the abolition of preliminary investigations and mixed committals would represent a significant step in addressing some of the considerable trauma and distress experienced by victims and witnesses of crime, during the court process. The experience of being cross-examined is a highly stressful experience when it occurs on one occasion, but to then be required to give your evidence again, compounds the anxiety. This, we would strongly contend, is contrary to the interests of justice.

We can also see potentially significant benefits arising from the process of direct transfer, particularly in the contest of effective case management and speeding up justice. We appreciate however, that there may be an initial requirement to assess the overall impact on the system of these changes and therefore have no fundamental objection to a staged and gradual transition to direct transfer, beginning with Murder/Manslaughter cases. We would however, wish to see the ultimate aim of abolishing Committal in all cases.

5.0. Part 4: Victims and Witnesses

Our organisation welcomes the publication of a Victim Charter and have proactively engaged with the Department of Justice in the development of the proposals in this regard. We note that the Charter will initially be enacted on an administrative basis but will subsequently be placed on a statutory footing.

We firmly believe that the Charter represents a vital step in ensuring that Victims receive the highest standard of services as they progress through the Criminal Justice System. Also, that they are made aware of what services are provided and by whom and of how they may seek redress, should the service they receive not reach the required standard. We are additionally, fully supportive of the introduction of a Witness Charter on a similar basis.

In particular we welcome the acknowledgement of the need for victims to be treated with courtesy, dignity and respect. Additionally, we support the importance placed on the timely and accurate supply of information to victims and witnesses. This is an issue frequently raised by those who access our services and which we feel can and will have a demonstrable impact on the experiences of victims and witnesses of crime in Northern Ireland.

The provisions in respect of the right to be informed about any Special Measures if called as a witness in any criminal proceedings, is potentially of considerable benefit, particularly to vulnerable and intimidated witnesses. We would strongly contend that an individual's ability to give their evidence in a confident manner and without fear, can only be in the interests of justice.

Victim Support NI is already actively involved in assisting victims of crime to make a Victim Impact Statement. That the Charter sets out that victims must be informed about the opportunity to make this statement, should they wish to do so, is, in our view, a positive step. It is also essential that they are fully aware of how this statement will be used and specifically who will have access to its content and when. This is particularly relevant in light of the steps outlined in the Bill in respect of early guilty pleas and specifically the implications on sentencing.

6.0. Part 8: Miscellaneous

Victim Support NI supports the steps to avoid delay in criminal proceedings. In addition to the debilitating stress and anxiety caused to victims and witnesses by unnecessary delay in the system, there are often significant financial implications. Delay is also cited as a key contributory factor to rates of attrition and can have an enormously detrimental effect on wider attitudes to the Criminal Justice System. We therefore welcome that the Department may, by regulations, impose a general duty on persons exercising functions in relation to criminal proceedings in the Crown Court, or Magistrates Court, to reach a just outcome as swiftly as possible. We are pleased to note that the regulations must, in particular take account of the need to identify and respect the needs of victims and witnesses.

Similarly, we see considerable merit in the stipulations in respect of active Case Management Regulations and that the regulations may impose duties on the court, prosecution and the defence. We fully support some of the key components of active cast management, as outlined in the Bill (Pg.56, 80). Specifically, the early identification of the real issues; the early identification of the needs of witnesses; achieving certainty as to what must be done, by whom and when, in particular, by the early setting of a timetable for the progress of the case; monitoring the progress of the case and compliance with directions; ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way; discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings; encouraging the participants to co-operate in the progression of the case; making use of technology and giving any direction appropriate to the needs of that case as early as possible.

We would however caution that in encouraging the participants to co-operate in the progression of the case, all due care should be taken throughout the process, to ensure the safety and well-being of the victim and witnesses involved. Particularly where they may be vulnerable or subject to intimidation. We would also welcome some clarification of what sanctions may be put in place should there be a breach of the regulations and a failure to adhere to the functions of active case management.

7.0. Conclusions

Victim Support NI welcomes the publication of the Justice Bill and considers many of the provisions contained within it, to be positive developments. In particular we welcome the inclusion of the Victim and Witness Charters and the recognition of the key role of victims and witnesses in the Criminal Justice System, the importance of ensuring that they are treated in a respectful manner throughout the process and that they receive access to the information, care and support that they need.

We also support steps to encourage a more adaptable and responsive system and to reduce unnecessary delay in the system and to encourage active case management in this regard. We would caveat this support by stressing that speed should never act in a manner contrary to the interests of justice. While unnecessary delays are enormously frustrating for victims, there is an understanding that in some cases the process will, by necessity, be a lengthy

one. It is therefore of vital importance that victims and witnesses received timely and appropriate communication from Criminal Justice Agencies and that they are not left to feel abandoned and confused by the process. Similarly, that they are fully aware of what support is available to them, before, during and after the process.

If you require further information about this response please contact:

Gillian Clifford

Policy & Information Manager
Tel: 028 90277757
Email: gillianc@victimsupportni.org.uk

Victim Support Northern Ireland
Central Office,
Annsgate House,
70-74 Ann Street,
Belfast BT1 4EH
Switchboard: 028 9024 4039 Fax: 028 9031 3838
Company limited by guarantee NI20562. Registered office as above.
A charity recognised by the Inland Revenue.
www.victimsupportni.co.uk

Women's Aid Federation Northern Ireland

Women's Aid Federation Northern Ireland – Submission of Evidence on Amendments to the Justice Bill to Justice Committee– FINAL – 12 September 2014

Women's Aid Federation Northern Ireland welcomes the opportunity to provide evidence to the Justice Committee on the proposed amendments to the Justice Bill. We have focused our comments specifically on amendments which affect victims of domestic and sexual violence and abuse in Northern Ireland.

Sharing Victim and Witness Information (Part 4)

Women's Aid supports the proposed amendment. There is an inherent benefit in improving the process by which victims and witnesses of crime receive information about victim support services available to them. Allowing for the sharing of a victim's information to facilitate this will result in a better victim / witness experience of the criminal justice system, and will provide better support for all victims of crime. An "opt out" system is a sensible means of communicating the available support to victims, while still retaining a victim's autonomy to decide whether they want to take up any of these services.

Criminal Records (Part 5)

Women's Aid supports the mandatory publication of the Code of Practice, and views it as a positive step in ensuring transparency and accountability in policing.

Women's Aid supports proposals for the exchange of information between Access NI and Disclosure and Barring Service for barring purposes. It is essential for every possible step to be taken to safeguard vulnerable people from predators who, in our experience, exploit every avenue possible in order to abuse their victims. We believe that this new process will result in better and more effective screening of those seeking to work with vulnerable groups, contributing to better safeguarding of children and vulnerable adults.

Regarding the proposal to include a review mechanism of criminal record certificates where convictions or disposals have not been filtered, we are concerned that the establishment of such an approach may lead to serial perpetrators of domestic violence slipping through the cracks and facilitating their abuse of future victims. In many domestic violence cases, a perpetrator may have committed serious and sustained acts of abuse, yet have no substantial criminal record that reflects the heinousness or extent of that abuse. This may be for a number of reasons:

- Many forms of abuse, particularly psychological abuse, do not constitute a crime in Northern Ireland.
- It is well-established that many victims of domestic violence do not report domestic violence either due to fear of their perpetrator, because of the intimate relationship with their perpetrator, or because the abuse has left them with low self-esteem or confidence and a belief that they are to blame for their abuse;
- Many women in our services have reported that perpetrators use threats and coercion to keep them subjugated and in the relationship, such as threatening to take their children or report a victim to social services, or threatening physical harm against them, family, friends or pets if they try to leave or report the abuse.
- Although domestic violence is categorised by a pattern of abuse, which can include a combination of physical, psychological, financial and sexual violence, our criminal justice system deals with domestic violence incident by incident. Therefore criminal penalties or cautions are imposed on a perpetrator of domestic violence for an individual incidence of violence, which may in itself be considered minor. The penalty does not reflect the damage

done by the cumulative effect of sustained abuse on a victim. A perpetrator of abuse may therefore only have some minor convictions / disposals on his record.

It is vital that such a record is able to remain in such cases, particularly given the prevalence of serial perpetrators of domestic violence.

Proposed Amendment from the Attorney General in Northern Ireland

Women's Aid supports this amendment. We believe that the power to obtain information and compel Health and Social Care Trusts to furnish the Attorney General with documents and information for the purposes of conducting an inquest should be enshrined in law, in the interests of transparency and accountability.

Proposed Amendment from Jim Wells MLA

Women's Aid is extremely concerned about the amendment forwarded by Jim Wells MLA to restrict legal abortion to be carried out on NHS premises only where no fee is paid.

The provision of abortion in Northern Ireland is already extremely restricted to the most grave cases in order to preserve the life of the woman, and it is these cases that the amendment targets. In such cases, where the life and wellbeing of a woman is in such danger, it is a dangerous precedent to further restrict access to a legal procedure in this country.

Victims of domestic and sexual violence often face crisis pregnancies. They are extremely vulnerable due to the abuse they have endured, which may include repeated rape and forced pregnancy. Such abuse is part of a continuum of violence against women relating to pregnancy, which can also include forced abortion and sexual or physical violence resulting in miscarriage. Research shows that 30% of domestic violence starts during a woman's pregnancy.[1]

Domestic violence is a health issue as well as a justice issue for the women we support. This is recognised internationally by experts and also by our own Tackling Violence At Home strategy (soon to be Stopping Domestic and Sexual Violence and Abuse strategy). The health impacts of domestic violence on women are numerous, and are a result of the combination of physical, psychological, sexual and financial abuse present in a domestic violence situation.

Health issues connected with domestic violence include:

- Depression
- Anxiety
- Suicidal ideation and self-harm
- Eating disorders
- Physical disabilities, some as a result of physical abuse
- PTSD
- Addictions

Given these effects of domestic violence on the physical and mental wellbeing of a woman, and the potential for a crisis pregnancy to exacerbate those effects to the point that her life is placed in danger, it is imperative that legal abortion to preserve her life is available in reality as well as in statute. Women's Aid believes that for this to be the case, further restrictions on who can carry out such legal procedures in this country should not be restricted along the lines of this legislation.

1 Confidential Enquiry into Maternal and Child Health, Why Mothers Die, Royal College of Obstetricians and Gynaecologists

The current guidance on abortion from the Department of Health has, according to medical professionals, placed the health profession in an extremely difficult situation. The Royal College of Midwives in their response to the draft guidance issued in 2013, opined that

> *"The document would appear to have been written in such as way as to create uncertainty and fear of possible criminal or legal repercussions amongst those working in this area of healthcare and thereby exert a 'chilling' effect' on the provision of abortion services for women in Northern Ireland."*

This has created real difficulties for medical professionals in the exercise of their medical duty to act to protect women whose lives are in danger as a result of pregnancy. Women's Aid believes that placing even further restrictions on the provision of legally permissible abortion in Northern Ireland will render the legal exception on abortion to preserve the life of a woman effectively meaningless and will act to circumvent the law currently on the statute books.

Adding this further legal restriction in the absence of proper clear guidance would place many vulnerable women, including victims of domestic and sexual violence at the hands of their perpetrator, in an extremely vulnerable and tenable position. We need laws which protect our most vulnerable, and which recognise the realities and horror of suicide and permanent mental trauma that can result from crisis pregnancies among those who are already physically and mentally scarred by abuse and violence.

For the reasons above, Women's Aid is strongly opposed to the amendment, and urges the Justice Committee not to support the amendment.

For further information about this response please contact:

Louise Kennedy

Regional Policy and Information Co-ordinator
Women's Aid Federation Northern Ireland 129 University Street BELFAST
BT7 1HP Tel: 028 9024 9041

Email: louise.kennedy@womensaidni.org
Website: www.womensaidni.org

24 Hour Domestic & Sexual Violence Helpline – 0808 802 1414
Email Support: 24hrsupport@dvhelpline.org
Text support to 07797805839

Open to all women and men affected by domestic & sexual violence

Women's Network

Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

17th September 2014

Dear Sir/Madam,

I, Caitriona Forde, am writing on behalf of *Women's Network*, a pregnancy counselling service that fully informs pregnant women of the very serious risks associated with abortion, including detrimental physical, emotional and spiritual consequences, and provides help and care during pregnancy and after birth. I am writing in regard to Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill. I wish to state from the outset of this submission that *Women's Network* fully supports Mr Wells' proposed amendment to the Criminal justice Bill.

Women's Network wants unborn babies and their mothers protected from abortion, and is therefore totally opposed to the Marie Stopes centre, or any private abortion facility, in Northern Ireland. *Women's Network* wholeheartedly supports Mr Wells' proposed amendment's prohibition of commercial provision of abortion 'services' in Northern Ireland.

Marie Stopes proudly professes to be the UK's leading provider of sexual and reproductive healthcare services. However, abortion should not be understood as a 'health service', a 'treatment' for a physical or mental condition, as it is in fact the deliberate killing of an unborn child.

Many women suffer from chronic depression, anxiety, suicidality and substance abuse disorders after abortion. There is frequently a history of failed relationships, broken marriages, and underachievement /discontent in their occupational lives.

With loving care, support and appropriate medical treatment and counselling, every pregnant woman should be comforted and assured that she is not alone to cope with her pregnancy and the birth of her child. Abortion is never the solution to an unplanned pregnancy, and *Marie Stopes* or any private abortion facility will never be wanted or needed in Northern Ireland.

Yours faithfully,

Caitriona Forde

Youth4Life

Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

A GENERATION CALLED & EQUIPPED TO END ABORTION

17th September 2014

Dear Justice Committee Clerk,

I am writing to you on behalf of *Youth4Life*. *Youth4Life* is a group of young people between the ages of 16-25 who are active in public squares throughout Northern Ireland every Saturday, educating people on the humanity of the unborn child and the horrific reality of abortion.

Youth4Life are passionate about protecting life from conception and giving real care and support to women in crisis pregnancies.

The Northern Ireland Justice Minister, David Ford, has stated that any proposed amendment to the Criminal Justice Bill requires a consultation to ensure that all viewpoints are considered.

Therefore, we are bringing forward our full support of Mr Jim Wells MLA's proposed amendment to the Criminal Justice Bill and its prohibition of commercial provision of abortion 'services' in Northern Ireland.

The individual members of *Youth4Life* all agree that the right to life is unconditional and all children deserve protection from conception, and mothers deserve the best care available and real support.

Northern Ireland has been consistently one of the safest places for pregnant women and their babies, ensuring world-class medical care because both the unborn child and mother are treated as patients. Every life is respected.

In contrast, 'clinics' that provide abortion 'services' make their money primarily from abortions, so it is in their best interest to 'sell' abortions to vulnerable women in order to stay in 'business'. In 2012 *Marie Stopes International* made an income of over £172million, almost £86million of that was fees for abortion. They are not beyond breaking the law in order to make their money, as Paul Cornellisson, former *Marie Stopes'* Programme Director in South Africa, admitted at an abortion conference in London when he proclaimed that Marie Stopes 'do illegal abortions all over the world'.

I urge the Justice Committee to adopt Mr Jim Wells' proposed amendment to the Criminal Justice Bill, and ensure that Marie Stopes or any other private medical centre cannot legally perform abortions in Northern Ireland.

Yours faithfully,

Rachael McEvoy,

Youth4Life

Association of Personal Injury Lawyers

Paul Givan MLA Chairperson
Committee for Justice
Room 242, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

16 April 2014

Dear Mr Givan

Call for evidence: Legal Aid and Coroners' Courts Bill The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our membership comprises principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has more than 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

APIL welcomes the opportunity to submit evidence to the Committee for Justice, having previously responded to the Department of Justice consultation Safeguards to protect the individual decisions on the granting of civil legal aid, which in part has led to the Legal Aid and Coroners' Courts Bill. The future of civil legal aid for personal injury cases in Northern Ireland is currently uncertain, and although this particular issue is not covered in this Bill, we would like to take this opportunity to support the availability of legal aid for the most vulnerable people in personal injury cases.

APIL welcomes the assurance in the explanatory and financial memorandum that there will be no ministerial involvement in individual decisions on civil legal aid funding. Legal aid should always be awarded on a case by case basis, and funding should be awarded based on the merits of a case, and not based on a political agenda. Clause 2 of the Bill states that the Department of Justice "must designate a civil servant in the Department as the Director of Legal Aid Casework". We remain concerned, however, that there is no provision in the Bill to ensure that the Director of Legal Aid Casework is legally trained. A legally trained Director of Legal Aid Casework will have more experience when it comes to making decisions on individual cases. Decisions being made by a director who is not legally trained could face a lot more challenges through the appeals process, which would lead to an increase workload and costs.

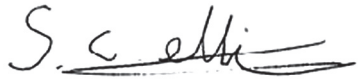
Clause 4 gives the power to the Director of Legal Aid Casework to delegate functions to other individuals in the Department of Justice, while regulations under schedule two will create appeal panels. It is important that anyone in the Department of Justice who is involved in considering an application for legal aid funding, as well as those people on the appeal panels, should be legally trained.

The letter from the committee clerk, dated 4 April, includes a proposal from the Attorney General for Northern Ireland to amend the Bill to address his concern that he has problems obtaining documents in relation to inquests. In the letter, it says that the Attorney General's principle focus is deaths that occur in hospital.

It is important that inquests are conducted thoroughly, and concluded as quickly as possible, so a bereaved family can rebuild their lives following the loss of a loved one. Whilst it is difficult to comment fully on the Attorney General's proposal without sight of the amendment,

in principle we support any measures which ensure that those families are able to have all the answers to their questions as to why their loved ones needlessly died.

Yours sincerely



Sam Ellis
Parliamentary Officer

Association of Personal Injury Lawyers
3 Alder Court
Rennie Hogg Road
Nottingham
NG2 1RX
DX: 716208 Nottingham 42

Email: sam.ellis@apil.org.uk
Telephone: 0115 943 5426

Castlereagh Borough Council

Castlereagh Borough Council

Stye Braes o Ulidia Burgh Cooncil

Civic & Administrative Offices
Bradford Court, Upper Galwally
Castlereagh BT8 6RB Northern Ireland
TEL: (028) 9049 4500 FAX: (028) 9049 4515
Email: council@castlereagh.gov.uk

Joan McCoy MBA
Acting Chief Executive

Ms Christine Darrah
The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

9 April 2014

Our Ref: 01/CEP090414/02

Dear Ms Darrah

Legal Aid and Coroners' Court Bill

I refer to your letter of 4 April 2014 regarding the above.

Having consulted with the Council's Registrar, the Council would be of the view that the proposed amendment to the above bill would be welcome as it would put in place a more structured process for dealing with medical errors which result in death. Our Registrar is of the view that it adds to the bereaved relative's pain when an acknowledgement of medical mistakes is not forthcoming and that greater transparency in the process is a positive step.

If you require any additional information then please do not hesitate to contact me.

Yours sincerely

Joan McCoy
Acting Chief Executive

Cc: Registrar; Administration Manager; Acting Director of Administration and Community Services

Information Commissioners Office

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Information Commissioner's Office

Upholding information rights

3rd Floor, 14 Cromac Place, Belfast, BT7 2JB
Tel. 0303 123 1114
www.ico.org.uk

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

24 April 2014

Dear Ms Darrah

The Legal Aid and Coroners' Courts Bill introduced into the Northern Ireland Assembly on 31 March 2014 ('the Bill')

The Information Commissioner regulates, inter alia, the Data Protection Act 1998 (the DPA) and the Freedom of Information Act 2000. On his behalf, I am pleased to provide a written submission to the Justice Committee in relation to the above Bill and also a response to the proposal highlighted from the Attorney General in Northern Ireland. The comments below are limited to aspects of the Bill which relate to information rights in general and to our regulatory responsibilities in particular.

The Bill

The Bill provides for the dissolution of the NI Legal Services Commission and for its functions to be transferred to the Department of Justice and to a Director of Legal Aid Casework designated by the Department. The transparency afforded by the statutory requirement for the Department of Justice to publish directions and guidance given to the Director of Legal Aid Casework in respect of his functions as laid out in s3(3) is welcomed. The requirement under s4(1) for the Director to produce an Annual Report to be laid before the Assembly is also welcomed.

The Schedules to the Bill cover matters relating to the transfer of assets, liabilities and staff of the Commission to the Department (Schedule 1), various amendments to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) (Schedule 2) and a number of repeals (Schedule 3).

Information Commissioner's Office (Head Office)
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel. 0303 123 1113 Fax. 01625 524510

ico.
Information Commissioner's Office

Schedule 1 - Transfer of Assets, Liabilities and Staff of Commission

I have no comment to make on the proposals contained in Schedule 1 other than to welcome the requirement under Section 4 for the Department to lay before the Assembly, and thereafter publish, a report on how the Commission carried out its functions in the final period.

There are practical matters related to the transfer of records from the Commission to the Department which need to be considered in advance of the dissolution date. The ICO will contact both the Commission and the Department regarding this and will provide advice as necessary.

Schedule 2 -Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8)

The statutory bar on the disclosure of information contained within draft Article 38A of the Order is noted. The bar will not apply where the consent of the person who provided the information has been obtained or unless permitted by rules made under Article 36. Information which is contained in an anonymised form and information relating to grants, loans and payments made to any person or body is also exempted from this bar.

It is recommended that unless otherwise contained in legislation, the Bill is amended to require that the rules made under Article 36 be published.

Amendment proposed by the Attorney General

It is noted that the Attorney General for Northern Ireland has proposed that the Bill should be amended to extend his powers under the Coroner's Act (Northern Ireland) 1959 to allow him to obtain papers relevant to exercising his existing power to direct an inquest where he considers it advisable to do so. The Attorney General has indicated that his principle focus would be in relation to deaths which occur in hospital or where medical error may have occurred.

ico.
Information Commissioner's Office

Although a substantial amount of the information sought by the Attorney General will relate to deceased persons and be of no relevance under the DPA, other information may be personal data relating to family and friends of the deceased as well as to medical staff. Given the public interest involved and the difficulties which the Attorney General has found in obtaining the papers or other information, it would appear appropriate to invest an explicit power on him and provide a statutory basis for disclosure. However, consideration should be given to limiting such power solely to cases involving deaths which have occurred in hospital or where medical error is thought to have led to a death.

I trust you find this submission helpful and please do not hesitate to contact me should you wish to discuss it in any more detail.

Yours sincerely

Dr Ken Macdonald
Assistant Commissioner for Scotland & Northern Ireland

KRW LLP

LEGAL AID AND CORONERS' COURT BILL (33/11-15)

Submissions made by KRW LLP

1. KRW LLP make the following submissions in response to the call for evidence made by the Committee for Justice of the Northern Ireland Assembly in its scrutiny of the Legal Aid and Coroners' Court Bill 2014 (33/11-15).

2. Our submissions concern the provisions of the Bill in relation to the dissolution of the Northern Ireland Legal Services Commission (NILSC) and the creation instead of a Director of Legal Aid Casework within the Department of Justice. Therefore, we limit the scope of our submissions to Part 1 of the Bill.

3. Our submissions are in two parts. First, regarding the schema proposed in the Bill and issues of independence and human rights compliance in relation to the creation of the new office of the Director of Legal Aid Casework within the Department of Justice. Second, regarding the schema proposed in the Bill and the specific matter of the conflict related legacy cases particular to aspects of litigation in Northern Ireland as part of dealing with the past in Northern Ireland in accordance with human rights compliance jurisprudence.

4. We note that Part 1 of the Bill mirrors in part those provisions in relation to the creation of the office of the Director of Legal Aid Casework of the Legal Aid Agency for England and Wales within the Ministry of Justice introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LAPSO).

5. We request that the Committee of Justice take note of the many concerns expressed when that legislation was being processed through the Houses of Parliament and reflect on these concerns in its scrutiny of the proposed Legal Aid and Coroners' Bill for Northern Ireland as many of those concerns are similar to those we hold.

6. We request also that the Committee of Justice further reflect on the particular circumstances of Northern Ireland in relation to litigation issued, pending and proposed in relation to the conflict related legacy cases both of the families of the deceased victims of the conflict and those surviving as the injured of the conflict.

7. At this juncture we point out that the juridical mechanisms for dealing with the past in the Northern Ireland – the legacy cases of conflict related deaths and injury – have been and continue to be subject to judicial challenge to ensure human rights compliance and common law probity. We specifically draw your attention to the 'package of measures' accepted by the Council of Ministers of the European Union following the *McKerr* group of judgments of the European Court of Human Rights (ECtHR): OPONI, PSNI HET, the coronial process and inquiries. This is out with any future proposed mechanism which may be legislated for including the Historical Investigations Unit as proposed to the Northern Ireland Executive (NIE)/OFMDFM by the Panel of Parties (Haass) in its Proposed Agreement of 31st December 2013.

8. The legacy of conflict related violence is, as the Committee of Justice is acutely aware, specific to Northern Ireland and a mirror Bill to legal aid provision arrangements in England and Wales – which was not passed without criticism and opposition – should not pass

without intense scrutiny including broader political considerations as to how to litigate the past in the Northern Ireland and how this can be achieved with appropriate systems and resources in a human rights compliant manner which offers truth and justice to both all the bereaved families of the victims and survivors of the conflict who are forced to resort to litigation in the absence of agreed political alternatives which are human rights compliant.

The Dissolution of the NILSC and the creation of the Director of Legal Aid Casework

9. The Bill proposes the dissolution of the NILSC and the creation of a Director of Legal Aid Casework within the Department for Justice of Northern Ireland similar to the Director of Legal Aid Casework (the Legal Aid Agency) within the Ministry of Justice of England and Wales.

10. Provisions on the administration of legal aid and litigation funding engage serious issues of access to justice. We recognise that access to justice is a fundamental human right recognised in common law, the European Convention on Human Rights (ECHR), the EU Charter of Fundamental Rights and in other international human rights instruments. An understanding of the context of access to justice within a society is therefore essential to any policy or legislative consideration of how access to justice can be secured for all and efficiently financed and appropriately resourced.

11. We are not blind to the economic drivers at work in political decision making relating to the legal aid budget in Northern Ireland but we are aware that resource arrangements must be balanced by human rights considerations and jurisprudential obligations within that balance. This is particularly so in litigation around the conflict related legacy cases. We note that, as the Committee of Justice will be aware, much conflict related litigation has been bought about because of state failings to expedite dealing with the past through the mechanisms available or through its own mindful deliberation to create a conflict related litigation surplus.

12. In Northern Ireland in relation to the conflict related cases it is especially pertinent that those affected by the conflict and seeking access to justice should have the financial provisions available to do so if they do not have independent means to do so for themselves. We would add the caveat that all those affected by the conflict no matter of what means should receive the support of the state and that the relevant institutions of the state should be effectively resourced so to discharge the investigatory procedural obligations arising under Article 2 (right to life) and Article 3 (prohibition of torture, inhuman and degrading treatment) of the ECHR. Without effective resourcing of the means to investigate the conflict related legacy cases of the dead and injured then litigation when systems fail will be an inevitable consequence thus further delaying truth and justice. This was most recently addressed in the judgement of Stephens J in *Jordan* [2014] NIQB 11 at paragraph 125 (o) (v).

13. We would specifically identify the coronial process in Northern Ireland and the litigation resource surplus generated by state failings to engage with it or to resource it so that it can discharge its functions in a human rights compliant manner including the demand for openness, promptness and with victim participation. Our point is that an adequately resourced office such as that of the Coroners Service for Northern Ireland able to prosecute its duties promptly, efficiently and inclusively would avoid generating further legally aided challenges for its failings. Similar arguments would apply to the Historical Directorate of

OPONI. The state's insistence on defending all judicial review challenges in this area of the legacy of conflict related deaths and injuries serves to generate further budgetary strain on the allocation of legal aid (if policing the past in Northern Ireland is estimated to be £30 million by the Northern Ireland Criminal Justice Inspectorate then the question must be asked of the Northern Ireland Executive – and the Secretary of State for Northern Ireland – what is cost of defending all legacy related litigation across the spectrum?) The proposed Bill does nothing to allay this problem and in fact may exacerbate it for reasons we lay out below.

14. The NILSC is a non-departmental public body. It therefore has the importance of being independent from the executive arm of the state. The Bill abolishes the NILSC and transfers to the Department of Justice the day-to-day administration of legal aid allocation decisions in Northern Ireland. In practice this function will be carried out by civil servants in an executive agency of the Department of Justice. The Department of Justice, in effect the Minister of Justice, is placed under a duty to secure that legal aid is made available in accordance with the provisions in the Bill. Decisions on legal aid in individual cases will be taken by a civil servant designated by the Minister of Justice as the Director of Legal Aid Casework.

15. Under the Bill Article 3(a) and (b), the Minister of Justice has the power to issue guidance and directions to the Director of Legal Aid Case Work about the carrying out of the Director's functions, and the Director is under a duty to comply with the directions and to have regard to the guidance. Although the Bill expressly prevents such guidance and directions from being issued in relation to individual cases (Article 2(a) and (b)) there is nothing in the Bill to prevent the Minister of Justice from issuing such guidance or directions in relation to categories of cases, for example, judicial review, in which the Northern Ireland Executive and Assembly would clearly have a direct interest thus giving rise, in our opinion, to a conflict.

16. During the passage of LAPSO, the Law Society of England and Wales commented on this lack of independence in the following terms which we consider apposite to the proposed Bill for Northern Ireland: "a gatekeeper who is answerable to the Secretary of State does not have sufficient impartiality to enable their decisions as to the grant of legal aid to comply with Article 6 ECHR" (letter from the President of the Law Society of England and Wales to the Chair of the Joint Committee on Human Rights (JCHR) 10 November 2011 and cited in the JCHR Legislative Scrutiny Report of the LAPSO Bill: see: JCHR) Article 6 of the ECHR is the right to a fair trial and due process thereon.

17. It is not clear how the independence of the Director of Legal Aid Casework will be achieved given the proposed schema and we request that the Committee of Justice request clarification from the Department of Justice and at least achieve some minimal level of assurance as to practical protocols, procedures and systems to maintain the necessary degree of rigorous independence required for this key law office post in Northern Ireland.

18. Regarding the potential for a conflict of interest in judicial review cases it will be important, if the Bill proceeds in its present form, that the Northern Ireland Executive maintains a policy that in proceedings where the litigant is seeking to hold the state to account by judicial review, provisions will be retained within the scope of civil legal aid to enable such litigation and that the Director of Legal Aid Casework be required to determine whether an individual

qualifies for funding for a judicial review in accordance with the provisions in the Bill and applying the relevant financial eligibility and merits criteria, and in line with any published guidance and directions.

19. However, even if the Northern Ireland Executive were to adhere to such a policy in relation to judicial review (and in terms of the conflict related legacy cases this would be further complicated when respondent notice parties in litigation could include the Secretary of State for Northern Ireland, the Ministry of Defence *and others*) the problem remains that the Director of Legal Aid Casework will be a civil servant bound by the Northern Ireland Civil Service Code of Ethics which sets out the constitutional framework within which he/she works. Civil servants owe their loyalty to the duly constituted Executive and are accountable to the Minister responsible for their Department. The same consideration will apply to the Department of Justice civil servants who will be provided to the Director of Legal Aid casework: even if accountable to the Director when exercising functions delegated to them by the Director, they are ultimately accountable to the Minister for Justice, and will, moreover remain directly accountable to the Minister for Justice in respect of all their other functions as civil servants.

20. Notwithstanding our concerns about the lack of institutional independence of the Department of Justice civil servant who will be responsible for administering the legal aid scheme in Northern Ireland, the Bill does not contain any right of appeal to an independent body against a determination by the Director of Legal Aid Casework of whether a person qualifies for legal aid. We are concerned that the absence of such a provision when a legal aid decision which may lay against the state, for example in terms of a breach of an Article 2 conflict related legacy case when state collusion is in issue, has been *ipso facto* determined as not eligible by the state, out with any equality of arms issue, may be incompatible with Article 6 of the Convention: see *MAK and RK v UK* (45901/05 and 40146/06 (23 March 2010).

21. *MAK and RK v UK* makes clear that there must be sufficient guarantees against arbitrariness in the legal regime governing determinations of entitlement to legal aid in order for that regime to be compatible with Article 6. We are of the view that in the absence of requisite independence in the proposed office of the Director of Legal Aid Casework and in the absence of an independent appeal mechanism against an individual legal aid eligibility decision the proposed system is compromised by arbitrariness ultimately vested in the Executive arm of the Northern Ireland constitutional arrangement.

22. Under the Scheduled of Amendments to existing legislation (Section 6 of the Bill), The Access to Justice (Northern Ireland) Order 2003 (NI 10) Article 12A is amended to bring into the proposed Bill matters relating to exceptional funding provisions. It will be recalled that the state has a responsibility to ensure that legal aid is available to secure access to justice for those with insufficient resources (we note our caveat on this resource issue above regarding the conflict related legacy cases) in relation to legally complex disputes including matters of human rights (Article 12A (3) (a) (i) (ii) (b)) specifically regarding legal representation at inquests).

23. We are not convinced that under the proposed scheme exceptional funding decisions made by the Director of Legal Aid Casework within the Department of Justice will be necessarily prompt and fair given the compromised nature of the position (for example in themed or

linked applications relating to the conflict related legacy cases) or subject to interference because of policy guidance compliance strictures or directions as issued by the Department as proposed under Article 3 (a) and (b) of the Bill. We address this concern further below in relation to the particular circumstances of Northern Ireland and the conflict related legacy cases.

24. We note that in relation to exceptional funding Article 10(A) (2) (b) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 remains in force: "10A. (1) The Lord Chancellor may by direction require that legal aid is to be available in connection with excluded proceedings in circumstances specified in the direction. (2) If the Commission requests him to do so, the Lord Chancellor may authorise legal aid to be available in connection with any proceedings (whether excluded proceedings or not) — (a) in circumstances specified in the authorisation; or (b)in an individual case so specified." This decision now taken by the Minister of Justice under devolved powers would remain challengeable by way of judicial review as it is an Executive decision.

25. Regarding the particular circumstances of Northern Ireland it will have become clear from the thrust of these submissions on the Bill that we are concerned that the provisions of the Bill are unsatisfactory when considered in relation to the conflict related legacy cases and prospective litigation thereon in the absence of alternative human rights compliant mechanisms of truth recovery, justice and accountability. We forward this as a reason to oppose the Bill on the following points:

- Recent events in Northern Ireland including the failure to secure the political consensus of the main political parties on the Proposed Agreement of the Panel of Parties (Haass) on dealing with the legacy of the past in Northern Ireland, the recent judgment in *Jordan* [2014] NIQB 11 (see: *Jordan)* and the revisiting of controversial On the Run (OTR) policy in the wake of the *Downey* judgment *(see: Downey)* judgment make us minded to venture that conflict related legacy litigation is a key aspect in the present dealing with the past matrix for many bereaved families and victim survivors.
- Recent comments by the Attorney-General and a previous Secretary of State for Northern Ireland regarding conflict related prosecutions compound our concerns particularly since the comments of the Attorney-General and his refusal in a number of section 14 new inquest applications into collusion/British army killing cases appear to be a fettering of his own jurisdiction and ousting the authority of the Public Prosecution Service.
- The most recent comments of the incumbent Secretary of State for Northern Ireland (16 04 14) raise further concerns regarding the state's acceptance of its role in the conflict, specifically in terms of collusion/shoot-to-kill and its apparent derogation of its procedural investigatory obligations under Article 2 of the ECHR.
- This being the case we cannot advance support for a Bill which in effect brings legal aid decision making, so crucial to those victims and survivors who want to litigate about the past to obtain truth, justice and accountability, into the sphere of the Executive without proper independent accountability or an acceptable independent mechanism to appeal against its decisions.
- To establish the office of Director of Legal Aid Casework within the Department of Justice, accountable as a civil servant and charged with compliance with directions

and having regard to guidance from the Department of Justice will, in our opinion, give rise to a conflict of interest.

This will be particularly so when the Department of Justice is joined as a respondent in conflict related legacy litigation. We envisage that when Article 2 (right to life) of the ECHR is engaged, as in many conflict related legacy cases, and the state is tasked with discharging it procedural obligations to investigate following such a breach/violation in compliance with both domestic and Strasbourg jurisprudence, then legal aid funding decisions as a part of a matrix of public resource policy (and there could be multiple such applications depending on the complexity of the case, taking account of themed/systemic/linked applications including state collusion, public interest disclosure and PII challenges and so forth) will be a key point of contest and to ensure probity and fairness the office making these key legal aid funding decision must be independent from the Executive arm of the state.

We are minded to remind the Committee of Justice of the problems around independence which surround the operation of the PSNI HET and which have manifestly undermined its credibility as a conflict related legacy case review mechanism.

- The devolution of policing and criminal justice to Northern Ireland following the Hillsborough Agreement of 2010 (excluding matters of national security) is a relatively recent constitutional development as part of the Belfast/GFA 1998. We are of the opinion that this Bill has been proposed too early for the Assembly in light of the continuing debate regarding dealing with the legacy of the conflict including recent events noted above. Victims of the conflict, the bereaved and survivors, who want to undertake publically funded litigation including against the state, must be able to do so secure in the knowledge that their applications for legal aid are being decided by a rigorously independent authority given the severity of the issues for themselves and for society in post conflict Northern Ireland, distinguishable from political, constitutional and economic factors applying to England and Wales. We therefore oppose the introduction of Part 1 of the Legal Aid and Coroners' Bill.

KRW LLP

LEGAL AID AND CORONERS' COURT BILL (33/11-15)

Supplementary Submissions made by KRW LLP

1. We note from the Committee of Justice website the following request made to the Committee on the foot of the Legal Aid and Coroners' Bill (33/11-15) by the Attorney-General:

   "The Committee has also received a proposal from the Attorney General for Northern Ireland for a potential amendment to the Bill. The Attorney General has the power under section 14(1) of the Coroners Act (Northern Ireland) 1959 to direct an inquest where he considers it 'advisable' to do so but has no powers to obtain papers or information that may be relevant to the exercise of that power. He has experienced some difficulty in recent years in securing access to documents that he has needed and the proposed amendment to the 1959 Act would confer a power on the Attorney General to obtain papers and provide a clear statutory basis for disclosure. He has indicated that the principle focus of his concern is deaths that occur in hospital or where there is otherwise a suggestion that medical error may have occurred. The Committee would also welcome views on the inclusion of such a provision in the Bill."

2. Whilst the proposal of the Attorney-General has a principal focus we consider that it has broader effect especially in relation to the conflict related legacy cases. We note that when considering whether to order a fresh inquest under section 14 (1) of the Act those bereaved victims in a conflict related application for a fresh inquest (compliant with Article 2 (right to life) of the ECHR) are assisted if they can furnish the Attorney-General with the original inquest papers which can inform his decision.

3. We therefore support the proposal of the Attorney-General on the proviso, as he suggests, of a clear statutory basis for disclosure. Our request is that should an Article be drafted to legislate the proposal of the Attorney-General or amend the existing legislation then there should be provisions in place that disclosure of material directly relating to the deceased is automatically made to the families of the bereaved being so considered for a new inquest by the Attorney-General to comply with the next of kin participation requirement of the Article 2 procedural investigatory obligation arising following a breach. This would be in the form of a presumption of disclosure following an Article 2 assessment of risk by the Attorney-General.

KRW LLP

Coroners Service
for Northern Ireland

ROSALIND JOHNSTON LLB
SOLICITOR TO THE CORONERS FOR NORTHERN IRELAND

Mr David Ford MLA
Minister for Justice
Department of Justice
Block B
Castle Buildings
Stormont Estate
Belfast
BT4 3SG

6th May 2014

Dear Minister

Re: Stalker/Sampson Related Inquests

Thank you for your letter of 8th January. The Senior Coroner is grateful to you for taking the time to consider his stated observations and requests. You correctly detected a not inconsiderable amount of frustration on the part of the Senior Coroner. He has been endeavouring to hold these Inquests for many years. It should be viewed as an enormous source of embarrassment to the State that these Inquests have not been held. He instructs me that he has done his best to cajole and persuade those who, at one level, hold the key to the holding of the Inquests – PSNI and Court Service – to provide the necessary resources in terms of funding, personnel and practical arrangements. Ultimately, the question of their (and his) resourcing lies with you, at least in as far as National Security is not being asserted. In that regard, resourcing clearly becomes a matter for central government and the Coroner would wish to be assured that you have pursued this with the Secretary of State and/or other individuals with particular responsibility in respect of the assurance of Article 2 compliance. The Senior Coroner, himself, intends to pursue this matter directly with central government as a means of assuring that sufficient resourcing will be provided to allow him to fulfil his obligation to hold Article 2 compliant Inquests in these matters.

The Senior Coroner is of the view that the Inquests are being funded on a drip feed basis and that there is no demonstrable commitment to ensure that these Inquests are properly resourced and otherwise facilitated so that they can take

Tel: 028 9044 6800 Fax: 028 9044 6801
May's Chambers, 73 May Street, Belfast, BT1 3JL

place timeously. In the meantime, the families of the deceased and the witnesses age, and many have already died without these Inquests having been heard. The delay for the families of the deceased and for many of the witnesses involved must be nothing short of intolerable. Neither is the public interest, more broadly, served by the state of affairs which has been allowed to pertain.

The Senior Coroner has also asked me to make the following points arising from your most recent correspondence:

(a) Your correspondence stated that the PSNI has carried out a review of the resourcing structure for the Legacy Support Unit and has identified additional resources. It remains the Senior Coroner's view, however, that the additional resourcing indicated to date is inadequate for the task in hand. The disclosure exercise, in respect of the currently presented PSNI Stalker Sampson archive, even with the additional resources in place, will apparently still not be complete for a number of months and, at the current rate of progress, the final timescale, judging from past experience, remains uncertain. In terms of trying to book Courthouses, to ensure witness availability and to address all of the attendant issues that fall to be considered by this office, this is a wholly unsatisfactory position.

(b) The current arrangements that exist for the sharing of information between Senior and Junior Counsel for the Senior Coroner is wholly inadequate. The position that we have at present is that Junior Counsel is working on a full time basis and this is essential work which shall continue. At a point in time Senior Counsel will be required to commit full-time to the preparation and presentation of the Inquests. This point will only be reached when we are sufficiently far on with the disclosure issues and can meaningfully identify a point in time when the Inquests shall take place. In the meantime, Senior Counsel has continued with his other work and advises the Senior Coroner and his team strategically as well as conducting reading as time allows. However, it should not be his role to duplicate the work of Junior Counsel, particularly in relation to the reading of disclosure. He needs, however, to be briefed by Junior Counsel as to the unredacted content of the disclosure and to advise both as to the content of material and strategically. It is this point of communication that is impossible on a practical basis as the permitted level of contact between them, given the restrictions imposed by classification of this material as Top Secret, does not take account at all of the method by which Junior and Senior Counsel must work in order to do their work in an efficient and cost effective manner. In the context of the efficient use of budgetary resources, the present attitude of the PSNI to the classification of the Stalker/Sampson material is only serving to drive up costs, not reduce

them. This problem has been longstanding, and has been raised with PSNI, who advise they can declassify no faster than the disclosure exercise allows. The Senior Coroner will bring this issue up again with the Head of the LIU, as you suggest, but you do need to be aware of the problem.

(c) The Senior Coroner remains deeply frustrated by the absence of an appointed Investigator. It is essential that this role is filled as early as possible. In the context of Article 2 compliant Inquests, there is no scope for any argument over budgetary constraints. The Senior Coroner has been actively seeking the appointment of an Investigator for going on three years and, while he appreciates the need for any appointment to follow a transparent and fair process, the reality is that he needs to ensure that all the evidence has been reviewed in light of modern day policing standards and this cannot happen until the Investigator is appointed. This Office has indicated the need for such an appointment for several years now and resources should have been in place to allow me to move directly to this appointment at the point it was required. Instead, the process currently embarked upon is highly bureaucratic and overly attenuated, with the practical effect being that we are still some considerable away from a substantive appointment – with a lack of clarity still hanging over the appropriate method to be deployed for the appointment process itself. This situation is clearly untenable, and meanwhile, valuable time is being wasted and evidence likely deteriorating further.

(d) You have raised budgetary issues and value for money issues and it is appreciated that money is not plentiful currently. It has to be stressed, however, that the obligation of the Senior Coroner's office is to satisfy an unconditional obligation imposed on the United Kingdom to carry out an Article 2 Investigation into the circumstances of these deaths. It is not a task that can be avoided because there is no or insufficient money. Nor can judicial directions in terms of ensuring compliance with this obligation be deemed subject to a business case to the point of becoming lost in a mess of bureaucratic wrangling. Money has to be prioritised to the completion of these Inquests. Otherwise, the further sanction of the European Court of Human Rights awaits. The Senior Coroner is determined to ensure that if an enquiry into the conduct of those responsible for the discharge of the State's obligation occurs, there can be no doubt that he has set out continuously his dissatisfaction over the resourcing and other issues which have prevented such Inquests occurring before now.

The Senior Coroner has asked that you take these observations and expressed deep concerns into account in ensuring that your Department provides the necessary resources to the PSNI and to Court Service and to the Legal Services

Commission to enable these important Inquests to take place timeously, and also that you press central government to address relevant issues which come within their purview in these and other regards.

He awaits your further assurances such as to indicate that real progress is being facilitated.

Yours faithfully

Cathy McGrann

Cathy McGrann
Solicitor

CC:

Interested Persons

Mr Justice Weir

Ms Laurene McAlpine, OLCJ

Ms Jacqui Durkin, NICTS

Mr Peter Luney, NICTS

Brian Grzymek, DOJ

Dr Jane Holmes, Coroners Service

Law Centre NI

Email to committee.justice@niassembly.gov.uk

For the attention of Christine Darrah

Dear Christine

Thank you for your letter dated 4 April 2014 seeking comments on the Legal Aid and Coroners' Courts Bill. I have set out the Law Centre's comments below:-

Legal Aid Part 1

The provision to designate a director of legal aid casework is identical to provisions contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced in England and Wales. The Westminster joint committee on human rights reported that it was not satisfied that the legislation in Britain provided sufficient institutional guarantees that the independence of the proposed director of legal aid casework would not be compromised. In particular, the committee was concerned about preventing any conflict of interest arising when making decisions about the availability of legal aid to challenge decisions of the government. These concerns were subsequently rejected by the government.

We share two concerns about the independence of the director of legal aid casework. The first is around challenges to government and the second is around cases which may have significant financial consequences to the legal aid fund (for example, a lead public interest case where many other cases may follow). The provisions as drafted provide that the Director is legally obliged to comply with directions given by the Department, while the Department must not provide a direction or guidance in relation to an individual case. This does not appear to preclude any direction on a class of cases. At the same time, the Department must ensure that the Director acts independently when applying a direction or guidance in relation to an individual case.

On our reading of the legislation there appears to be no impediment to the Department instructing the Director of Legal Aid Casework in a way which restricts decision-making across a class of cases which will impact indirectly on a particular case without addressing the specific case itself.

We would therefore suggest the following amendments.

To clause 3 line 27 by adding after functions the words

'save where this compromises the director's independence'

to clause 3 line 32 after the word case add the words

'or to a class of cases where it unreasonably impinges on the Director's ability to act independently in an individual case'.

These amendments should provide further safeguards to the independence of the Director of casework.

We welcome the Department's commitment to publish any directions or guidance. Nonetheless, we would suggest that the committee obtain an unambiguous assurance as to where the directions and guidance will be published so that it is clear that such directions and guidance are made widely available and accessible to interested parties.

The annual reports of the Legal Services Commission have regularly been published more than 12 months after the end of the relevant financial year covered by the report. As a result, we would suggest an amendment to clause 5 line one after the word practicable add

"and in any event within nine months'.

This will copper fasten the commitment to provide a timely report.

Coroners' Courts

We welcome the clause to make the Lord Chief Justice the President of the coroners' court.

We would also support the proposal of the Attorney General to provide an additional power to access documents. Deaths in hospital or after treatment are cases that regularly proceed to inquests. The recent experience of public enquiries has been that it is not always easy to access all relevant material in a timely and straightforward manner. In the interests of openness, administrative and financial efficiency we would support a clause enabling the Attorney General as an independent law officer to obtain all papers. We would not circumscribe this power to cover only deaths that occur in hospital in recognition of the fact that the principles enunciated above apply in other deaths that may fall within the ambit of the Attorney General's powers to direct an inquest.

I hope this submission is of some assistance to the committee in their deliberations.

Yours sincerely

Les Allamby
Director
Law Centre(NI)

The Law Society of Northern Ireland

THE LAW SOCIETY OF NORTHERN IRELAND

COMMITTEE FOR JUSTICE: CALL FOR COMMENTS ON THE DRAFT LEGAL AID AND CORONERS' COURTS BILL

Response of the Law Society of Northern Ireland

96 Victoria Street
Belfast BT1 3GN
Tel: 02890 23 1614
Fax: 02890 232606
Email: info@lawsoc-ni.org
Website:www.lawsoc-ni.org

Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,600 solicitors working in some 530 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Law Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

April 2014

Introductory Remarks

1.1 The Society welcomes the invitation from the Committee for Justice to make comments on the draft provisions of the Legal Aid and Coroners' Courts Bill. This is an important piece of legislation and the Society aims to make a constructive contribution to the Committee's deliberation on the issues raised by the draft Bill and subsequent Regulations bringing its provision into force. The Society has a number of concerns and observations about the proposed new legal aid arrangements as described in the draft Bill and Schedules set out and we address each of these below.

Independence of the Director of Legal Aid Casework

2.1 The Society made representation in its response to the initial consultation on the conversion of the NILSC into an Executive Agency that the statutory safeguards concerning the independence of decision-making by the new Director of Legal Aid Casework did not go far enough.

3.1 In respect of clause 2, the Department has not taken on board the concerns of the Joint Committee on Human Rights in England and Wales about the designation of a Departmental official as Director of Legal Aid Casework. It was felt that the adherence of such an official to the Civil Service Code pledging loyalty to the Minister of State effectively trumped the practical arrangements for independence. In that regard, it is disappointing that the Department did not consider giving this role to an externally recruited figure, preferably someone with experience in civil justice matters.

4.1 Clause 3 (1) of the draft Bill places the Director under a statutory duty to comply with directions and have regard to guidance given by the Department, subject to clause 3 (2) which provides that there must not be directions about decisions in individual cases. The clause is silent however in relation to attempts to influence decision making in classes of cases. This is important as it is vital in terms of securing independence that the Bill prevents the potential for political interference in the patterns and norms of decision-making in respect of legal aid.

5.1 It is also questionable whether the requirement for the Director to comply with guidance requires to be set out explicitly on the face of the Bill. Drafting the Bill where this appears as the first clause arguably places the primary duty of the Director as obedience to Departmental direction, rather than to the impartial application of consistent principles in relation to legal aid decision making. The Society considers that this arrangement removes the judicious distance provided by separation of the legislative power to determine broad principles of decision making from the operational responsibility for providing legal aid in a just manner which preserves access to justice for all.

6.1 The importance of independence is of more than theoretical significance. The European Court of Human Rights in the *Del Sol V France*[1] case heard a case in which it was alleged that a refusal to grant legal aid constituted an infringement of the

[1] *[2002] App Nr 46800/99.*

applicant's rights to a fair hearing under Article 6 (1) ECHR. Although it dismissed the application in the particular circumstances of that case, the Court said the following about the administration of legal aid:

"...the Court considers it important to have due regard to the *quality of a legal aid scheme within a State*. The scheme set up by the French legislature offers individuals *substantial guarantees to protect them from arbitrariness.*"[2]

7.1 The above judgment demonstrates that the qualities of a legal aid scheme, including the degree of independence and provision for effective appeals against decisions taken are relevant to the compliance of that scheme with Article 6 ECHR. Given the potential deficiencies in terms of the preservation of independent decision-making identified above, the Society is of the view that the Department and the Committee may wish to look at amendments to this clause to ensure compliance with the ECHR.

Statutory Exceptional Grant Scheme

8.1 In the case of the Statutory Exceptional Grant funding provision, which is covered in the Schedule to the Bill under the proposed new Article 12A of the Access to Justice (NI) Order 2003 (the 2003 Order), the importance of independence in decision-making is paramount. The Society stated in its response to the initial consultation by the Department on these issues that caution should be taken in ensuring the effective operational independence of decision making in Inquest/legacy cases and civil actions in terrorist cases. This is particularly the case in a post-conflict society in which the application of clear, consistent and impartial legal principles to some controversial cases is necessary to ensure widespread confidence in the administration of justice.

Legal Aid Appeals Panels

9.1 The Society welcomes the fact that the Department has moved away from the original proposal for a single member appeals process proposed in the initial NILSC consultation, in line with the Society's concerns at the time. We considered that a single member panel was more vulnerable to accusations of bias and arbitrariness than a multi-member panel and this safeguard is welcome.

10.1 Paragraph 6 (22) of Schedule 2 amends the 2003 Order to provide powers for the Department to make Regulations for the composition of a multi-member appeals panel with a Presiding Member. It does not state that such panels will be composed of externally recruited lawyers, considered by the Commission as a vital safeguard in terms of independence. Such indications as the Department has given are that the Presiding Member or Chair will be legally qualified but that the other members may be lay in a mixed panel.

11.1 Given the need for knowledge of the legal issues involved in legal aid appeals and the failure to require that the Director has a background in civil justice affairs, the new arrangements may be lacking in the expertise and distance necessary to create a balanced, arms-length relationship between the Department and the new agency. The Society is of the view that paragraph 6 (22) of Schedule 2 should specify that

[2] Ibid at paras 25 & 26

appeals panels will be made up of a majority of legal members, with provision for the third member of that panel to be drawn from other relevant backgrounds.

12.1 Paragraph 6 (22) of Schedule 2 also contains a provision stating that oral appeals will be available only in circumstances to be prescribed in the Regulations to follow under the proposed new Article 20A (2) (f) of the 2003 Order. The Society stated in its response to the initial NILSC Consultation that provision should be made for oral appeals when it is considered that the complexity of the circumstances render this appropriate.

13.1 A clause that was redrafted in this way would provide greater flexibility than a prescriptive list of hurdles, which is a more narrowly exceptional approach. The Society believes that the proposed new Article 20A (2) (f) should be redrafted to remove the phrase "except in such cases as may be prescribed" in favour of a phrase along the lines "except in cases where the complex issues of law or fact requires an oral appeal".

The Proposed 'Value for Money' Clause

14.1 At paragraph 6 (11) of Schedule 2 of the draft Bill under the heading "Funding of civil legal services by the Department", the Department propose a revised Article 11 of the 2003 Order to provide the Department with an explicit aim to "obtain the best possible value for money" in funding civil legal services. The Society believes that this provision should be clarified in statute.

15.1 This phrase is not defined or qualified in any way, nor is its relationship to other clauses in the 2003 Order set out in the subsequent sections, leaving its meaning vague and open to interpretation.

16.1 The Society appreciates the importance of focusing resources on cases of merit, but we would caution that this clause has the potential to tip the balance of decision-making priorities over the long term towards cost-cutting rather than ensuring access to justice as the core principle. There are various accountability mechanisms built into the framework of legal aid governance which have the effect of rationing resources to cases of genuine need, such as the means and merits tests.

17.1 These tests ensure that resources are targeted to those most deserving in circumstance and in need financially. The operation of these tests strikes a balance between preserving access to justice for meritorious cases and applicants in socio-economic need under Article 6 ECHR with the reality of scarce resources. The Society submits that the *Brownlee*[3] judgment makes clear that for an applicant's access to justice to be effective, quality legal representation must be available at levels of remuneration adequate to guarantee those rights in practice.

18.1 A broad 'value for money' clause cannot avoid these public law requirements.

[3] [2014] UKSC 4.

Proposed Alternative Clause

19.1 If the Department is committed to proceed with this clause, the Society would suggest to the Committee that the clause is clarified to include matters to be taken into account.

20.1 Such an amendment would place the new clause on a consistent footing with long-held principles of civil legal aid provision, which is to ensure access to justice for those in genuine need whilst requiring that those who are in a financial position to pay their own legal costs do so.

Proposed Amendment from the Attorney General to the Legal Aid and Coroners Courts Bill

21.1 As a first point, the Society considers that in order to allow for full consideration of the proposed amendment we would need to see a draft clause. Effective scrutiny of any clause would examine how it interacts with other clauses in this legislation and any other relevant legislation or Regulations.

22.1 The Society does however agree in principle that in order for the Attorney General (AG) to take reasonable decisions under the *Wednesbury* standard in respect of directing an Inquest under Section 14 of the Coroners' Act 1959, he must have adequate powers in order to provide him with sufficient information to take such decisions.

23.1 Given that the proposed amendment to the draft Bill by the AG is apparently designed to provide the AG with a power to compel the surrender of documents and computer records with respect to NHS Trusts regarding deaths in care, it is within the above criteria. In particular, without this additional power, the AG has stated that the Trusts maintain an understandable reluctance to disclose such documents on grounds of confidentiality.

24.1 Given that the legislation proposes to install the Lord Chief Justice as President of the Coroners' Courts and to create a Presiding Coroner, any such amending clause should clarify the procedures between the AG and the Courts. Consequently, there is a need to look at any new powers in detail to ensure that they are procedurally appropriate and clear. Doing so would ensure that any clause operates as a safety valve to provide for exceptional circumstances or circumstances in which it would be in the public interest for the AG to exercise his powers under the 1959 Act.

25.1 On the basis of the information provided and the broad scope of the power being sought, the Society would argue that any proposed new arrangements should provide for the AG to make application to the High Court to exercise such discretion to call for evidence. There is a similar provision provided for the AG of England and Wales in directing Inquests under Section 13 of the Coroners' Courts act 1988 in England and Wales. This brings the jurisdiction of the AG within the supervision of the court and guarantees a collaborative, 'joined up' approach to policy on Inquests.

Conclusion

26.1 The Society appreciates the opportunity to submit a response in respect of the Committee's evidence-gathering stage on the Draft Legal Aid and Coroners' Court Bill.

27.1 We trust our contribution is constructive and we are happy to meet with the Committee to discuss any of the issues raised in our response.

Northern Health and Social Care Trust

HSC Northern Health and Social Care Trust

30 April 2014

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Ms Darrah

Legal Aid and Coroner's Courts Bill

With reference to your letter dated 4 April addressed to Ms Mary Hinds, the Trust's former Senior Director, please see below comments on the content of the Bill.

The Trust agrees that it would be important for the Attorney General to have access to relevant information to allow him to make an informed decision as to whether to direct that an Inquest be held, in cases where the Coroner has previously decided not to.

To this end, it is important that the potential amendment to the Bill should also clearly set out what such information the Attorney General is entitled to receive.

However, the Trust considers it to be essential that this proposed power should only be exercised by the Attorney General when a decision has been made by the Coroner, on conclusion of his investigations, that an Inquest is not to be held. To do otherwise would cause the Trust serious concerns regarding duplication of process and the resultant adverse impact on resources.

I trust that these comments will be of interest.

Yours sincerely

Paul Cummings

Paul Cummings
Senior Director

INVESTOR IN PEOPLE

Northern Ireland Human Rights Commission

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Legal Aid and Coroner's Courts Bill

Introduction

1. The Northern Ireland Human Rights Commission (the Commission), pursuant to section 69(4) of the Northern Ireland Act 1998, advises the Assembly whether a Bill is compatible with human rights. In accordance with this function the following statutory advice is submitted to the Committee for Justice on the Legal Aid and Coroner's Courts Bill.

2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In the context of this advice, the Commission relies in particular on:

- The International Covenant on Civil and Political Rights, 1966 (ICCPR);[1] and
- The CoE European Convention on Human Rights, 1950 (ECHR).[2]

3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom Government's ratification. In addition, the Northern Ireland Act 1998, section 26 (1) provides that *'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken.'*

[1] Ratified in 1976
[2] Ratified in 1951

Declaration Compatibility

4. The Commission notes that paragraph 19 of the Explanatory and Financial Memorandum states that *"All proposals have been screened and are considered to be Convention compliant".* **The Commission advises the Committee to ask the Department to share its legal analysis upon which this statement is based.**

Part 1 dissolution of Northern Ireland Legal Services Commission

5. The right to a fair trial is protected by the ICCPR, Article 14 and the ECHR, Article 6. Article 6 of the ECHR states:

> *"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*
>
> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> *(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
>
> *(b) to have adequate time and facilities for the preparation of his defence;*
>
> *(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
>
> *(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
>
> *(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

6. While Article 6(3)(c) provides that in criminal proceedings a person with insufficient means is to be given free legal assistance when the interests of justice so require, there is no express provision for legal aid in civil proceedings. However the European Court of Human Rights (ECtHR) has recognised that the rights protected by the ECHR must be practical and effective and that in disputes relating to a "civil right" the provision of legal assistance will be required, when it:

> *"… proves indispensable for an effective access to a court either because legal representation is rendered compulsory…., or by reason of the complexity of the procedure or of the case".*[3]

7. The ECtHR has further held that:

> *"It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side."*[4]

8. The ECtHR has acknowledged that the provision of legal aid is one of the methods of guaranteeing the right to equality of arms.[5] Whether the provision of legal aid is necessary is determined on the basis of the particular facts and circumstances of each case.[6]

9. The Bill dissolves the Northern Ireland Legal Services Commission and makes provision for a Director of Legal Aid Casework, a civil servant in the Department of Justice, to make decisions on civil legal aid funding.[7] The Commission notes that the Director must comply with directions given by the Department and must have regard to guidance issued by the Department.[8]

10. The Commission notes that on analysing comparative provisions contained within the Legal Aid Sentencing and Punishment of Offenders Bill, as it progressed through Parliament,[9] the Joint Committee on Human Rights (JCHR) were not satisfied that the provisions provided sufficient institutional guarantees of the independence of the Director to prevent any appearance of a conflict of interest arising.[10] The JCHR stated:

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[3] Airey v UK (Application no. 6289/73) 9 October 1979 para 26
[4] Steel and Morris v UK (Application no. 68416/01) para 59
[5] ibid para 60
[6] ibid para 61
[7] Clause 2
[8] Clause 3
[9] The territorial extent of which covered England & Wales only
[10] JCHR 'Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill' HL Paper 237 HC 1717 19 December 2013

> *"Civil servants are bound by the Civil Service Code which sets out the constitutional framework within which they work. Civil servants owe their loyalty to the duly constituted Government and are usually accountable to the Minister responsible for their Department. Even if the Director reports to the Permanent Secretary in the Ministry of Justice (as the Government anticipates), the Permanent Secretary is responsible to the Lord Chancellor and the line of management accountability does not therefore secure institutional independence from the Government. The same consideration applies to the Ministry of Justice civil servants who will be provided to the Director: even if accountable to the Director when exercising functions delegated to them by the Director, they are ultimately accountable to the Lord Chancellor, and moreover remain directly accountable to the Minister in respect of all their other functions as civil servants."*[11]

12. To ensure compatibility with Article 6 of the ECHR a regime governing eligibility for legal aid must contain sufficient guarantees against arbitrariness.[12] In the case of Del Sol the ECtHR noted:

> *"The scheme set up by the French legislature offers individuals substantial guarantees to protect them from arbitrariness. The Legal Aid Office of the Court of Cassation is presided over by a judge of that court and also includes its senior registrar, two members chosen by the Court of Cassation, two civil servants, two members of the Conseil d'Etat and Court of Cassation Bar and a member appointed by the general public (section 16 of the Law of 10 July 1991 cited above). Moreover, an appeal lies to the President of the Court of Cassation against refusals of legal aid (section 23 of the Law). In addition, the applicant was able to put forward her case both at first instance and on appeal."*[13]

13. The Commission notes that Schedule 2 to the Bill proposes the establishment of an appeals panel to hear appeals against prescribed decisions taken by the Director. The full details of the appeals process are not set out in the Explanatory Memorandum.

The Commission advises the Committee to request that the Department set out how it will ensure the institutional independence of the Legal Aid Agency and the Director to

[11] JCHR 'Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill' HL Paper 237 HC 1717 19 December 2013 para 1.21
[12] MAK and RK v UK , App. No. 45901/05 (23 March 2010) para 45
[13] del sol v. france, no. 46800/99, echr 2002-iiPara 26

ensure full compliance with Article 6 of the ECHR. In particular the Committee may wish to consider whether the right of appeal is sufficiently robust.

Schedule 2 Exceptionality provisions

14. The Commission notes the proposal that the Director be empowered to make an exceptional case determination in circumstances in which a failure to do so would result in a breach of an individual's Convention/ECHR rights.[14] The Commission notes that the JCHR raised concerns regarding the comparable provision within the Legal Aid Sentencing and Punishment of Offenders Bill, stating:

> *"We are not convinced that the provision in the Bill to fund exceptional cases, including where a failure to make the services available to a person would be a breach of their Convention rights or EU rights, is a sufficient guarantee that the new legal aid regime will not create a serious risk that its operation will lead to breaches of Convention rights."*[15]

15. In England & Wales further concerns have been raised since the Legal Aid Sentencing and Punishment of Offenders Bill came into law with only 35 or 4.2% of applications for exceptional funding being granted in the period April 2013 to December 2013.[16] **The Commission advises the Committee to seek estimates of the number of cases which the Department envisages will be funded by way of the exceptionality provision each year, these should be categorised.**

Schedule 2 Exceptional funding inquests

16. The right to life enshrined in Article 2 of the ECHR has been regarded by the ECtHR as one of the most fundamental provisions of the ECHR, so much so that, in addition to the substantive right, there exists a procedural requirement on the part of the state to conduct an effective investigation following an alleged breach of the substantive limb. In *Jordan v the United Kingdom,*[17] the ECt.HR stated:

> *Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified,*

[14] See Schedule 2 pg 14
[15] JCHR 'Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill' HL Paper 237 HC 1717 19 December 2013 para 1.31
[16] Ministry of Justice 'Ad Hoc Statistical Release: Legal Aid Exceptional Case Funding Application and Determination Statistics: 1 April to 31 December 2013' 13 March 2014 , See further "Legal Aid Agency refuses to fund exceptional cases" Legal News | 9 September 2013 Read more: http://ilegal.org.uk/thread/8106/laspo-exceptional-funding-scheme-working#ixzz2z8ago1Jt
[17] *Hugh Jordan v the United Kingdom*, European Court of Human Rights, Application No 24746/94 (4 May 2001).

> *ranks as one of the most fundamental provisions in the Convention, to which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe… The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective.*
> *…*
> *The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.*[18]

17. Five essential elements of an effective investigation have been identified by the ECtHR as:

> 1) The persons responsible for carrying out the investigation must be independent from those implicated.
>
> 2) The investigation must be capable of leading to the identification and punishment of those responsible. The authorities must have taken all reasonable steps available to secure the evidence concerning the incident.
>
> 3) The investigation must be prompt.
>
> 4) There must be public scrutiny of the investigation or its results sufficient to secure accountability.
>
> 5) The next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his/her justifiable interests. [19]

18. The involvement of the next of kin of the victim may in certain circumstances require the provision of legal assistance to ensure their effective participation in the procedures of an inquest.[20]

19. The Bill proposes to introduce a new Article 12A to the Access to Justice (NI) Order 2003 appearing to provide two grounds for a family member seeking legal assistance in inquest proceedings to

[18] ibid, paras 102 and 104.
[19] Jordan principles emerging from [19] *Hugh Jordan v the United Kingdom*, European Court of Human Rights, Application No 24746/94 (4 May 2001).
[20] McCaughey and Others v UK (Application no. 43098/09) 16 July 2013 See further R Humberstone (on the application of) v Legal Services Commission [2010] EWHC 760 (Admin) (13 April 2010) paras 61 and 62

obtain legal aid.[21] The Commission has previously queried why funding for inquests raising issues with regard to Article 2 of the ECHR are not within the scope of the mainstream legal aid system.[22] **The Commission advises the Committee to seek an assurance from the Department that the requirement on a family member, seeking legal assistance in inquest proceedings, to apply for legal aid by way of the exceptionality provisions will not unnecessarily burden them.**

Part 2 Coroners' Courts

20. The Commission notes the proposal that the Lord Chief Justice be president of the Coroner's Court and that he be required to appoint a Presiding Coroner with responsibility for the Coroners' Courts. The Committee will be aware of the McKerr group of cases against the UK regarding the investigation of conflict related deaths in NI.[23] A package of measures has been developed to ensure compliance with these judgements, including measures relating to the Coroners Court.[24] At the time of writing the Committee of Ministers of the Council of Europe continue to monitor the implementation of these measures. In the judgement of McCaughey and Other the ECtHR stated:

> *"The Court considers that the carrying out of investigations, including holding inquests, into killings by the security forces in Northern Ireland has been marked by major delays. It further considers that such delays remain a serious and extensive problem in Northern Ireland".*[25]

The Commission advises the Committee to enquire if the new proposed arrangement is likely to have any positive implications for addressing delay in the Coroner's Court.

Additional Proposal

21. The Commission notes the proposal that the Attorney General for NI be empowered to obtain papers or information that may be relevant to the exercise of his power to direct an inquest. The power of the Attorney General to order an inquest provides a safeguard to ensuring an effective investigation into the circumstances of a death

[21] Legal Aid Agency 'Inquests – Exceptional Cases Funding – Provider Pack' 1st April 2013 pg 3
[22] NIHRC Submission to the Access to Justice Review January 2012 para 9 – 14
[23] App. No. 28883/95 4 May 2001
[24] CM/Inf/DH(2006)4 revised 2 23 June 20061 - Cases concerning the action of security forces in Northern Ireland – Stocktaking of progress in implementing the Court's judgments - Memorandum prepared by the Secretariat incorporating information received up to 12 June 2006. Paras 85 - 109
See further Communication from the UK concerning the McKerr group of cases against UK (App. No. 28883/95)
[25] McCaughey and Others v UK (Application no. 43098/09) para 144

is carried out. The empowerment of the Attorney General to obtain relevant papers and information to inform the exercise of powers under section 14 (1) of the Coroners Act (NI) 1959 may further strengthen this safeguard. The Commission will provide further advice on publication of the proposed amendment as required.

22. Noting that the Attorney General has raised specific concerns regarding deaths in which there is a suggestion that a medical error has occurred, **the Commission advises that the procedural obligation under Article 2 of the ECHR extends to deaths in a medical context.**[26]

April 2014

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA
Tel: (028) 9024 3987
Textphone: (028) 9024 9066
SMS Text: 07786 202075
Fax: (028) 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org

[26] Silih v Slovenia, ECtHR, App No. 71463/01 (9 April 2009) see para 155

Northern Ireland Policing Board

Northern Ireland PolicingBoard

Jonathan Craig MLA
Chair of Performance Committee

Date: 1 May 2014

Mr Paul Givan MLA
Chair of the Justice Committee
Room 242
Parliament Buildings
Stormont
BT4 3ZZ

Dear Paul

LEGAL AID AND CORONERS' COURTS BILL

At its meeting on 17 April 2014 the Performance Committee considered the Justice Committee's consultation on the Legal Aid and Coroners' Courts Bill.

The Performance Committee noted that during the briefing to the Justice Committee on 13 March 2014, a Department of Justice official committed to provide additional information regarding the provisions in the Bill relating to the Coroners' Courts. I would be grateful if this information could be shared with the Performance Committee. The Committee would be particularly interested to know what the role and remit of the presiding coroner will be and whether he/she will be responsible for managing the ongoing issue of delay in relation to legacy inquests. If the Justice Committee is able to provide any additional information in this regard, it would be appreciated.

The consultation letter from the Justice Committee advises that the Attorney General for Northern Ireland has proposed a potential amendment to the Bill. The Attorney General has the power under the Coroners Act (Northern Ireland) 1959 to direct an inquest into a death where he considers it 'advisable' to do so. Mr Larkin has advised the Justice Committee that he has experienced some difficulty in recent years in securing access to documents that he has needed. His proposed amendment to the 1959 Act would confer on the Attorney General a power to obtain papers and it would provide a statutory basis for disclosure. Mr Larkin has indicated to the Justice Committee that the principle focus of his concern is deaths that occur in hospital or where there is a suggestion that medical error may have occurred.

The Performance Committee noted that the Attorney General for Northern Ireland's power to direct an inquest is not limited to deaths involving hospital/medical failings and there is no time limit as regards the date of death. For example, it was reported in 2013 that the Attorney General had ordered a new inquest into the Kingsmill massacre of 1976; and earlier this year it was reported that he had ordered a new inquest into the death of Thomas Friel who was killed by a rubber bullet in Derry/Londonderry in 1973. The Performance Committee would therefore be grateful to receive clarity on the nature of the Attorney General's proposed amendments – would they enable the Attorney General to obtain only certain types of documents, such as medical records, and only in respect of certain types of cases, such as medical cases, or would he be empowered to obtain any documents connected with any death in respect of which the Attorney General is considering directing an inquest?

Northern Ireland PolicingBoard

The Committee looks forward to hearing from you. I would be grateful if you would copy your response to the Board's Director of Policy, Peter Gilleece.

Yours sincerely

Jonathan Craig MLA
Chair of Performance Committee

cc. Ms Christine Darrah, Clerk to the Committee for Justice

Northern Ireland Policing Board
Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG
Tel: 028 9040 8500 **Fax:** 028 9040 8544 **Textphone:** 028 9052 7668
Email: information@nipolicingboard.org.uk **Web:** www.nipolicingboard.org.uk
Facebook: www.facebook.com/policingboard

Office of the Lord Chief Justice

Laurene McAlpine
Principal Private Secretary

LORD CHIEF JUSTICE'S OFFICE,
ROYAL COURTS OF JUSTICE, BELFAST, BT1 3JF
TELEPHONE: (028) 9072 4614 • FAX: (028) 9023 6838
E-MAIL Laurene.McAlpine@courtsni.gov.uk

Dear Christine

9 April 2014

LEGAL AID AND CORONERS' COURTS BILL

Thank you for your letter of 7 April addressed to the Lord Chief Justice.

The Chief Justice welcomes the provision which the Bill will make to appoint him President of the Coroners' Courts in Northern Ireland. This is consistent with his judicial leadership role for other judicial tiers.

The Chief Justice notes the proposal that the Bill be amended to allow the Attorney General to call for papers when considering the exercise of his power to direct an inquest under Section 14 of the Coroners' Act (Northern Ireland) 1959. The Chief Justice has indicated that it would be helpful if, as in England & Wales, the Attorney General made an application to direct an inquest through the High Court. This additional step in the process would be of assistance to the Coroners in allowing for greater understanding of why an inquest was directed.

I hope these comments are helpful. The Chief Justice has asked me to thank the Committee for consulting him.

Yours sincerely

Laurene McAlpine

Laurene McAlpine

Ms Christine Darrah
Clerk to the Committee for Justice
Rm 242 Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX

PSNI

Personal, Professional, Protective Policing

MARK HAMILTON
ASSISTANT CHIEF CONSTABLE

Our Ref: 14\4286

Please quote our reference number on all correspondence

12 May 2014

Ms Christine Darrah
The Committee Clerk
Room 242
Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Christine

RE: LEGAL AID AND CORONERS' COURTS BILL

Thank you for your letter of 4 April 2014 requesting the views and comments of PSNI on the Legal Aid and Coroners' Courts Bill. The Chief Constable has requested that I respond on his behalf.

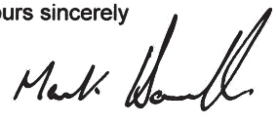
The Bill in its current form reorganises certain functions within the Department relating to Legal Aid and appoints the Lord Chief Justice as President of the coroners' courts. It is my view that this will not impact on normal policing and as such it would not be appropriate for me to comment.

However, you have indicated in your letter that the Attorney General intends to amend the Bill to include a provision that will enable him to gain access to certain records more easily. The intention is to use this provision principally in relation to medical records relating to deaths in hospital and due to medical error. Whilst I would have no view on such actions I am concerned that the provision may be drafted so that it could potentially extend the power to police records and if it did I would need to consider the implications for policing.

I would be grateful if you could send me a copy of the proposed amendment so that I may give it full consideration. This could have significant implications for policing and I consider it to be important that the committee is aware of PSNI view of the amendment.

I hope this is of assistance.

Yours sincerely



MARK HAMILTON
Assistant Chief Constable
Service Improvement Department

Assistant Chief Constable's Office
PSNI Headquarters, 65 Knock Road, Belfast BT5 6LE
Telephone: (028) 9056 1596 Fax: (028) 9070 0192

Southern Health and Social Care Trust

Southern Health and Social Care Trust

25th April 2014 Our Ref: JS/lw

By Email: committee.justice@niassembly.gov.uk

The Committee Clerk,
Room 242,
Parliament Buildings,
Ballymiscaw,
Stormont,
Belfast BT4 3XX.

Dear Ms Darrah,

RE: LEGAL AID AND CORONER'S COURT BILL

Thank you for your letter of 04th April 2014. I have discussed the proposal from the Attorney-General that the Bill should be amended to confer a power on the Attorney-General to require access to documents to enable him to exercise his power under Section 14(1) of the Coroners Act(Northern Ireland) 1959 with the Chief Legal Advisor in the Directorate of Legal Services.

In principle we consider that, where the Coroner has decided not to hold an Inquest, it would be necessary for the Attorney-General to have access to relevant information in order for him to reach an informed decision as to whether to direct an Inquest in a particular case. It would be important that the legislation clearly sets out what information the Attorney-General is entitled to access.

However, if the Attorney-General were to exercise the power to request information while the death is still under investigation by the Coroner and a decision to hold an Inquest has not yet been taken by the Coroner, we would be concerned about duplication of processes and the consequent impact on resources.

Southern Trust Headquarters, Craigavon Area Hospital, 68 Lurgan Road, Portadown, BT63 5QQ
Tel: [028] 3861 3978/Fax: [028] 3833 5496/Email: john.simpson@southerntrust.hscni.net

Kind regards

Dr J Simpson
Medical Director

Cc: Mairead McAlinden, Chief Executive
Karen Wasson, Acting Litigation Manager

Southern Trust Headquarters, Craigavon Area Hospital, 68 Lurgan Road, Portadown, BT63 5QQ
Tel: [028] 3861 3978/Fax: [028] 3833 5496/Email: john.simpson@southerntrust.hscni.net

South Eastern Health and Social Care Trust

HSC South Eastern Health and Social Care Trust

25 April 2014

The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Sir/Madam

LEGAL AID AND CORONERS' COURTS BILL

The South Eastern Trust welcomes the opportunity to respond to the consultation on the proposed amendment by the Attorney General for Northern Ireland to the above Bill.

The proposed amendment is to provide a clear statutory basis for disclosure of papers to assist the Attorney General in relation to direction of an Inquest under Section 14(1) of the Coroner's Act (Northern Ireland) 1959.

In relation to the proposed amendment by the Attorney General this would assist the Trust where required to be clear about what documentation could be released to the Attorney General

The Trust has no comments to make in relation to the content of the Bill.

The Trust would have no objection to the amendment suggested by the Attorney General in relation to this Bill.

Yours sincerely

Elaine Campbell
Corporate Planning & Consultation Manager

South Eastern Health and Social Care Trust, Strategic & Capital Development Department, Kelly House, Upper Newtownards Road, Dundonald, Belfast BT16 1RH, Tel: 028 9055 0434
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Appendix 4

Memoranda and Correspondence from the Department of Justice

Contents

Written briefing from the Department on the draft Justice Bill 2014

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
private.office@dojni.x.gsi.gov.uk

Our ref SUB/728/2014

FROM: **TIM LOGAN**

DATE: 10 **JUNE 2014**

TO: **CHRISTINE DARRAH**

SUMMARY

Business Area: Access to Justice

Issue: Oral briefing on the draft Justice Bill 2014.

Restrictions: None.

Action Required: To consider the draft Bill (Annex A) and draft Explanatory and Financial Memorandum (Annex B).

Attendees: Maura Campbell (Deputy Director, Criminal Justice Development Division (CJDD));
Chris Matthews, (Bill Manager, CJDD);
Amanda Patterson (Criminal Justice Policy and Legislation Division);
Tom Clarke, (AccessNI).

BACKGROUND

1. The draft Justice Bill seeks to create a faster, fairer justice system. At its core are three aims: to improve services for victims and witnesses; to speed up the justice system; and to improve the efficiency and effectiveness of key aspects of the system.

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2. The Executive agreed to the introduction of the Bill to the Assembly at its meeting on 5 June 2014. First reading is scheduled for 16 June with second reading to follow on 24 June.

3. This oral briefing session provides an opportunity for the Bill team to give an outline of the key content of the Bill and for the Committee to ask questions or seek clarification on any matters contained within the draft legislation.

KEY ISSUES

4. In summary, the Bill contains measures:

(i) creating a single jurisdiction for county courts and magistrates' courts;

(ii) reforming the process of committal for trial;

(iii) introducing prosecutorial fines;

(iv) establishing separate victim and witness charters and creating a legal entitlement to make victim statements;

(v) reforming the criminal history disclosure regime;

(vi) providing for wider use of video links in criminal proceedings;

(vii) creating Violent Offences Prevention Orders (VOPOs);

(viii) reforming juries, including the removal of the prohibition on people over 70 serving as jurors;

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(ix) encouraging earlier guilty pleas;

(x) establishing a statutory framework for the management of criminal cases in order to avoid delay;

(xi) creating a prosecutorial summons;

(xii) allowing defence access to premises in connection with the preparation of a defence case;

(xiii) addressing a lacuna in the current powers of court security officers; and

(xiv) updating the aims of the youth justice system.

5. The provisions are described in greater detail in the attached Explanatory & Financial Memorandum (EFM) (Annex B); the draft Bill is also attached (Annex A).

6. The Committee has been involved in the development of the proposals which form the provisions of the Bill. Indeed, a number of the key provisions in the Bill flow directly from recommendations made by the Committee. The measures on victims and witnesses and on statutory case management address recommendations made by the Committee in its *Inquiry into the Criminal Justice Services available to Victims and Witnesses of Crime in Northern Ireland.* In addition, the creation of a duty on solicitors to advise their clients as to the availability of credit for an early plea gives effect to a suggestion made by the Committee during a session to consider the results of the Department's consultation on measures to encourage earlier guilty pleas.

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NEXT STEPS

7. Second stage of the Bill is due to take place on 24 June.

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TIM LOGAN
DALO

Enc: Draft Bill and Explanatory & Financial Memorandum

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Correspondence from the Department on the Delegated Powers and Planned Amendments to the Justice Bill

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90529272
private.office@dojni.x.gsi.gov.uk
Our ref SUB/814/2014

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

24 June 2014

Dear Christine,

JUSTICE BILL 2014: DELEGATED POWERS AND PLANNED AMENDMENTS

At its meeting on 18 June, the Committee asked officials to provide details of the amendments currently planned for the Justice Bill 2014 in order to enhance the Committee's public consultation on the Bill.

This letter sets out each of the amendments which the Department has, at this stage, decided to bring forward and provides details on the background to the amendments and their effects. Some of these amendments address issues raised by the Attorney General during the pre-introductory stages of the Bill while others put forward new policy proposals which we would like to advance in this Bill, given that they fit within its core themes.

Given the scope and complexity of the Justice Bill, it is likely that the Department will wish to bring forward further amendments at a later stage, and so this should not be taken as a definitive list of all potential Departmental amendments.

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Finally, in view of the timing of this letter, I am also taking the opportunity to attach, for the attention of the Committee, the Delegated Powers Memorandum for the Justice Bill **(Annex A).**

Sharing Victim and Witness Information (Part 4)

At present, relevant information (contact details, as well as crime type for (i) below) about victims is shared between criminal justice organisations so that they can be provided with information on, and be offered timely access to, support services. The nature of this sharing is as set out below:

(i) Between the Police and Victim Support NI (VSNI) to enable information to be given about the services that VSNI provides. The three key service areas are community services - practical and emotional support; witness support services at court, when a person is giving evidence; and compensation services. At present, fewer than 40% of victims 'opt in' to being notified about the services provided by VSNI. The Department considers that this is in part due to a limited understanding of the range of services that are available.

(ii) Between the Public Prosecution Service and VSNI/NSPCC witness support services, so that witnesses (including victims) can be offered support when giving evidence – including pre-trial visits and separate waiting areas.

(iii) Between the police and the post-conviction victim information release schemes, so that a victim can be provided with information on the schemes and elect to receive information about the release of an offender and their management in the community.

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The amendment proposed is intended to provide for a more effective mechanism through which victims could automatically be provided with timely information about the services available, that is: Victim Support Services; witness services at court; and access to information release schemes. Victims would not be obliged to avail of services; rather, the purpose of the proposed change is to ensure that they are provided with relevant information so that they can make an informed decision about the services on offer to them.

Subject to Legislative Counsel's views, the effect of this amendment is likely to be the insertion of a single new clause into the Bill, setting out that certain information would be shared between specified organisations for the purpose of informing victims and witnesses about available services.

A key theme of the Bill is to improve the quality of services provided to victims and to ensure that they have as much information as possible in their journey through the criminal justice system. The amendment would secure this and provide for the change at the earliest possible opportunity.

The matter was considered as part of your Inquiry into the services provided to victims and witnesses of crime. The Committee recommendation was that an "opt out" system on being approached by Victim Support NI and the Probation Board should be developed to replace the current "opt in" system. In response to this recommendation, we included an action in the five-year victim and witness strategy to explore the scope for better ways of sharing victims' information between the criminal justice organisations and also with voluntary sector partners. There was strong support for this action when we consulted publicly on the draft strategy and action plan. There have also been useful discussions with the Information Commissioner's Office and the Human Rights Commission on the detail of the proposed change.

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Criminal Records (Part 5)

Publication of the Code of Practice

We are proposing an amendment to the power of the Department to publish the Code of Practice provided for in clause 39(2) of the Bill (which inserts a new subsection (4A) to section 113B of the 1997 Act). This new subsection provides for a statutory Code of Practice to which chief officers of police must have regard.

It had always been the intention that the Code of Practice would be published. The amendment would make it clear that the Code *must* be published and is being made at the suggestion of the Attorney General. Subject to Legislative Counsel's views, this is likely to be a very minor, technical change to the Bill. As it relates to the Code of Practice for which provision is being made in the Justice Bill, we think it is sensible to make this minor amendment at the same time.

Exchange of information between AccessNI and Disclosure and Barring Service for barring purposes

Section 16 of Schedule 8 of the Protection of Freedoms Act 2012 (POFA 2012) enables information obtained by the Disclosure and Barring Service (DBS) in connection with the exercise of any of its functions to be used by DBS in connection with the exercise of any of its other functions. This allows information obtained by those in the DBS who deal with disclosure (i.e. the issue of checks with criminal record and other information) to provide it to those in DBS who deal with the "barring" of individuals from working with vulnerable people.

It was always the Department's intention that AccessNI would take a similar power within the Justice Bill, as the DBS undertakes the barring function for Northern Ireland. AccessNI would pass to DBS details of any criminal or other information disclosed on individuals seeking an enhanced criminal record check to enable the DBS to determine whether that person should be barred. In addition, AccessNI would advise DBS if any person they were considering for a bar had ever applied to AccessNI for a check. When the Bill was being drafted, it was incorrectly thought

that there were already sufficient powers within Part V of the Police Act to exchange information with DBS and no additional powers were required. However, following further legal advice, it has become clear that a specific statutory power is required to allow AccessNI to share information with DBS which will be used for barring purposes.

Again, subject to Legislative Counsel's views, this is a minor amendment and should require no more than a single new clause. However, this is an important additional safeguard for vulnerable groups and should assist in ensuring that inappropriate persons are unable to get to work with such groups.

Review of criminal record certificates where convictions or disposals have not been filtered

The Attorney General supported the introduction of a scheme to filter certain old and minor convictions and other disposals such as cautions from Standard and Enhanced criminal record certificates. However, he has suggested that there should be provision for a person to ask for discretion to be exercised in their particular case and the Minister has agreed to the introduction of a review process to give effect to this.

The filtering scheme came into operation on 14 April 2014 following the approval of the necessary secondary legislation by the Assembly. The review mechanism will require primary legislation to amend the Police Act 1997.

Under what we propose, an amendment will be required to section 117 of the 1997 Act which covers disputes about the accuracy of certificates. Subject to Legislative Counsel's views, we think this will require a new clause in the Bill to provide for the introduction of the scheme and the drawing up of guidance by the Department setting out how it will operate.

The Bill already contains amendments to the 1997 Act designed to improve the efficiency and effectiveness of the criminal records disclosure system. We wish to

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introduce the review mechanism as soon as possible and the Justice Bill is the first opportunity to do so. An additional benefit of the review mechanism is that it will strengthen the filtering regime, making it more compatible with Article 8 of the ECHR and reducing the scope for legal challenge to the current filtering system.

We plan to carry out a targeted consultation with key stakeholders on the draft guidance.

Duty of solicitor to advise client about early guilty plea (Part 8)

Clause 78 creates a statutory duty on a defence solicitor, when representing a person in connection with an investigation into an offence, to advise that person of the effect of Article 33 of the Criminal Justice (Northern Ireland) Order 1996 (which enables a court to give credit for an early guilty plea when sentencing the defendant) and to advise the client of the effect that a guilty plea might have on any sentence that might be passed on the person if he is found guilty of the offence.

Clause 78 (3), as currently drafted, requires the Law Society, with the concurrence of the Lord Chief Justice, to make regulations regarding the giving of this advice.

Our original intention was to confer a power on the Law Society to make regulations under clause 78 (3). Prior to Introduction of the Bill, however, the Attorney General advised the Department that such regulations would be otiose on the basis that the clause already sets out the nature of the duty (at clause 78 (2)) together with the sanction for failure to comply with the duty (at clause 78 (5)). He suggested, therefore, that clause 78 (3) would simply place a regulatory burden on the Law Society for no practical benefit.

On the basis of this advice, the Minister has indicated that he will amend the clause to omit subsection (3) at an appropriate stage of the Bill. Subject to Legislative Counsel's views, we think this would be a minor amendment; it would have no

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substantive impact on the rest of the draft clause nor would it affect the policy intention behind the clause.

Defence Access to Premises (Part 8)

Clause 82(4)(a) (defence access to premises) of the Bill provides that a court shall not make an order permitting access to premises unless it is required in connection with the preparation of the person's defence or appeal.

The Attorney General has recommended an amendment to this provision so that a court could only grant an application for inspection of premises where it is necessary to ensure the fair trial rights of the defendant. His concern is that the threshold for an order allowing access to property is set too low as drafted, and he believes that the amendment he suggests will ensure proportionality and greater clarity in the use of the power.

Subject to Legislative Counsel's views, we anticipate that it will be a matter of substituting the wording the Attorney has suggested for the wording currently in clause 82(4)(a), and we agree that it is an appropriate amendment.

I trust that Committee members find this helpful. Officials are happy to provide further information or clarification should this be necessary.

Tim Logan

TIM LOGAN
DALO

(Enc). Delegated Powers Memorandum for the Justice Bill

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Annex A

Delegated Powers Memorandum
Justice Bill 2014

Introduction

1. The Bill gives effect to the desire of the Justice Minister to improve the operation of the justice system. At its core are three aims: to improve services for victims and witnesses; to speed up the justice system; and to improve the efficiency and effectiveness of key aspects of the system.

2. Services and facilities for victims and witnesses will be improved by creating a new statutory Victim and Witness Charters; the introduction of a legal entitlement to be afforded the opportunity to make a victim statement (to be known as a victim personal statement); and proposals for video link powers being expanded between courts and a number of new locations.

3. The Bill will tackle delay and speed up the justice system. Prosecutorial Fines will be introduced to reduce the number of cases going unnecessarily to court. New arrangements to encourage earlier guilty pleas will be introduced and judges will be given new case management powers and responsibilities. Committal proceedings will be streamlined and prosecutors will be given the ability to issue summonses directly.

4. The Bill will also introduce a series of standalone reforms to improve the effectiveness, efficiency and fairness of the system. This includes modernisations of the criminal history disclosure service; the introduction of a single territorial jurisdiction for the county courts and magistrates' courts; the expansion of eligibility for jury service; and the creation of new civil orders to manage the risks posed by violent offenders.

5. The Bill amends some previous legislation as well as creating new freestanding provisions. This memorandum considers each delegated power in the sequence of the Bill.

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

Delegated Provisions

Clause	Title	Assembly Procedure
4	Lay magistrates	Laid before, and approved by, resolution of the Assembly.
12	Direct committal: specified offences	Laid before, and approved by, resolution of the Assembly.
13	Direct Committal: procedure	Negative resolution
14	Specified offences: application to dismiss	Negative resolution
24	Registration of sum payable in default	Negative resolution
31	Procedure for issuing Charters.	Various
33	Persons to be afforded an opportunity to make a victim statement	Negative resolution
34	Supplementary statement	Negative resolution
35	Use of victim statement	Negative resolution

Clause	Title	Assembly Procedure
36	Restriction on information provided to certain persons	Negative resolution
37	Minimum age for applicants for certificates or to be registered	Negative resolution
40	Updating certificates	Negative resolution
45	Live links from another courtroom: first remands, etc	Laid before, and approved by, resolution of the Assembly
46	Live links: proceedings for failure to comply with certain orders or licence conditions	Laid before, and approved by, resolution of the Assembly.
47	Live links: expert witnesses	Laid before, and approved by, resolution of the Assembly.
60	Notification requirements: initial notification	Laid before, and approved by, resolution of the Assembly.
62	Notification requirements: periodic notification	Laid before, and approved by, resolution of the Assembly.
64	Notification Requirements: travel outside the United Kingdom	Laid before, and approved by, resolution of the Assembly.
69	Information about release or transfer	Negative resolution.
79	General duty to progress criminal proceedings	Negative resolution.
80	Case management regulations	Negative resolution.
86	Supplementary, incidental, consequential and transitional provision, etc.	Various.
91	Commencement	Not subject to any Assembly procedure.

Part 1: Single Jurisdiction for County Courts and Magistrates' Courts

Clause 4: Lay Magistrates

Purpose of delegated legislation

7. Clause 4 re-enacts section 9 of the Justice (Northern Ireland) Act 2002 (which set the framework for the appointment of lay magistrates), with appropriate amendments to take account of the creation of a single territorial jurisdiction for the county courts and the magistrates' courts.

8. Under clauses 4(5) and (6) in order to be eligible for appointment as a lay magistrate, a person must have completed a course of training approved by the Lord Chief Justice after consultation with the Department of Justice (or have undertaken to attend such a course).

9. Clause 4(7) permits the Department, after consultation with the Lord Chief Justice, by order, to make further provision about eligibility for appointment as a lay magistrate.

10. Clause 4(8) sets out a list of examples of the types of conditions that might be included in an order. In particular this refers to a person's ineligibility if he: holds a prescribed office;

has an occupation of a prescribed description; or is selected as a candidate for election to a prescribed body ('prescribed' meaning prescribed in an order made under clause 4(7)).

11. None of clauses 4(5) to 4(8) are affected by the creation of a single territorial courts' jurisdiction, and accordingly these provisions simply replicate (with some updates) the existing provisions of sections 9(2) to 9(5) of the 2002 Act.

Reason for delegated legislation

12. It is the Department's view that it would not be appropriate for the primary legislation to include the level of detail likely to be needed in an order made under clause 4(7).

Assembly control

13. By virtue of clause 87(6) and (7), an order made under clause 4(7) may not be made unless a draft of it has been laid before, and approved by resolution of, the Assembly. This is consistent with the level of Assembly control required for orders made under section 9 of the 2002 Act, which the Department continues to consider appropriate, given the potential cross-cutting interests of any inclusions in, or amendments to, an eligibility order.

Part 2: Committal for Trial

Clause 12: Direct committal: specified offences

Purpose of delegated legislation

14. Clause 12 provides for the direct committal (i.e. without holding a preliminary inquiry) to the Crown Court for trial where the accused is charged with a specified offence. Clause 12 (3) provides that a specified offence is murder or manslaughter (or aiding, abetting, conspiring etc. to commit such an offence). Clause 12 (4) confers a power on the Department to amend subsection (3).

Reason for delegated legislation

15. This delegated power will allow the Department, in due course, to add to the list of specified offences that are capable of being directly committed to the Crown Court. The provision is specific and technical and is, therefore, more suited to subordinate legislation.

Assembly Control

16. The Department considers that any order made under this delegated power should be laid in draft before and approved by a resolution of, the Assembly.

Clause 13: Direct committal: procedures

Purpose of delegated legislation

17. Clause 13 (2) allows Magistrates' Court Rules to be made for the purpose of prescribing the procedure to be followed by a magistrates' court when directly committing an accused person to the Crown Court.

Reason for delegated legislation

18. Rules made under the delegated power will set out the manner by which the magistrates' court gives notice to the Crown Court, along with specifying the documents relating to the case that are to be sent to the Crown Court, and such other information that may be required. The provisions will be specific and technical and are more suited to subordinate legislation.

Assembly Control

19. Magistrates' Court Rules are made by the Magistrates' Courts Rules Committee after consultation with the Department and with the agreement of the Lord Chief Justice under Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 ("the 1981 Order"). They are subject to the negative resolution procedure of the Assembly under Article 13A (2) of the 1981 Order.

Clause 14: Specified offences: application to dismiss

Purpose of delegated legislation

20. Clause 14 (7) allows Crown Court Rules to be made relating to the making of an application to dismiss the charges on which an accused person has been directly committed.

Purpose of delegated legislation

21. In particular, the Rules may make provision as to the time or stage in the proceedings at which anything required to be done is to be done, and may prescribe the content of notices and other documents, the manner in which material is to be submitted and the persons on whom such material is to be served. Such provision will be technical and specific and is more suited to subordinate legislation.

Assembly Control

22. Crown Court Rules are made by the Crown Court Rules Committee and allowed by the Department, and are subject to negative resolution of the Assembly under sections 52 (1) and 53A of the Judicature (Northern Ireland) Act 1978.

Part 3: Prosecutorial Fines

Clause 24: Registration of sum payable in default

Purpose of delegated legislation

23. Clause 24 makes provision for the registration of a prosecutorial fine as a court fine where it has not been paid within the 28 day suspended enforcement period from the date of issue. As the original fine is not issued by a court, the clause provides that any existing statutory provision referring to fines imposed at court on conviction will have effect in relation to the registered sum as though it were a fine imposed by a court on the date of registration.

24. Clause 24(4) provides a delegated power for the Department to make regulations in relation to enforcement of the registered sum. Its purpose is to enable such statutory provisions, relating to the enforcement of sums to be paid on conviction, to be modified or such incidental, supplemental or consequential provision to be made as may be necessary in order to achieve the legislative intention of this clause.

Reason for delegated legislation

25. The power has been provided to enable the Department to make more detailed regulations about the enforcement of registered penalties. The power includes the ability to modify the provisions of Magistrates' Courts (Northern Ireland) Order 1981 relating to the enforcement of fines, as those provisions apply to the enforcement of registered penalties. This is to ensure that those provisions work effectively in respect of the enforcement of sums registered under Article 24. The power also enables regulations to include incidental supplemental or consequential provisions, including the modification of statutory provisions.

26. The Department cannot discount the possibility that it may be necessary to make consequential amendments to legislation to ensure that the enforcement of registered penalties works effectively. The power is strictly limited to the enforcement of penalties registered under Clause 24. An identical power is contained in Article 67 of the Justice Act (Northern Ireland) 2011 in respect of police issued fixed penalty notices. In essence, the powers are required because the penalty subject to registration has not originally been issued by a court.

Assembly control

27. The Department considers that the delegated powers under clause 24(4) to (6) should be subject to the negative resolution procedure, as the modifications to other statutory provisions would be minor or consequential in nature, made simply to give effect to provisions for the enforcement of the registered sum as already set out in the primary legislation.

Part 4: Victims and Witnesses

Clause 31: Procedure for issuing Charters

Purpose of delegated legislation

28. Clause 31 sets out the procedure for issuing a Victim or Witness Charter. Clause 31(3) provides that a Charter will come into operation on the date set out in an Order, enabling the operational date to be established. Clause 87 provides for the type of control that will apply to the Order.

Reason for delegated legislation

29. A Victim or Witness Charter will be periodically updated to take account of policy and operational developments over time, aimed at further improving the services provided to victims and witnesses and taking account of emerging good practice. The delegated legislation provides for the date that a Victim or Witness Charter, or revised Charter, will come into operation.

Assembly control

30. The Department considers that the date that a Charter comes into operation should be the subject of Assembly control. This would also provide an opportunity for the Assembly to consider the content of a Charter. Clause 87 provides the Assembly control mechanism, for the operative date, which can be either affirmative in draft or negative resolution. Where a draft of the Order has been laid before the Assembly it is subject to the approval of a resolution of the Assembly. Where a draft of the Order has not been laid the negative resolution procedure would apply to such an Order.

31. It is intended that the former control would apply for the coming into operation of a new Charter, or where significant differences have been made to a Charter that is already in operation. Otherwise the negative resolution procedure would apply.

Clause 33: Persons to be afforded an opportunity to make a victim statement

Purpose of delegated legislation

32. Clause 33 makes provision in relation to who is to be given the opportunity to make a victim statement (what is known as a victim personal statement), setting out the impact that a crime has had. This covers a victim, a parent where the victim is under 18 and a family member where the victim has died or is unable to act on their own behalf.

33. Clauses 33(4) and 33(5) provide a delegated power for the Department to make regulations giving other persons the opportunity to make a victim personal statement, in certain circumstances. This power would enable the Department to set out additional circumstances where it would be appropriate to afford someone else the opportunity to make a statement. This could be instead of, or in addition to, those set out in the primary legislation, providing increased flexibility if deemed necessary while also ensuring that the use of the facility is not used excessively. This could apply to, for example, additional family members or a representative.

34. Clause 33(6) provides that the Department may prescribe in regulations who will provide the opportunity to make a victim personal statement, how and when. It is intended that this will be provided by the Victim and Witness Care Unit and will be after a decision has been taken to prosecute an individual.

Reason for delegated legislation

35. The delegated power enables the operation of the victim personal statement mechanism to be expanded, as operational requirements may dictate, ensuring that the mechanism operates as efficiently as possible.

Assembly Control

36. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for this regulation making power.

Clause 34: Supplementary statement

Purpose of delegated legislation

37. Clause 34(1) makes provision in the relation to an opportunity being afforded to make a supplementary victim personal statement, where this is requested, through regulations. The power in Clause 34(2) would enable the Department to set out when this opportunity would be given, how and by whom, and ensure that this would apply where it is practical to do so under Clause 34(2). This power enables the Department to set out the conditions that would apply to the provision of a supplementary statement.

Reason for delegated legislation

38. The delegated power enables the provisions relating to a supplementary statement to be provided for, and modified as may be required, ensuring that the mechanism operates as efficiently as possible.

Assembly Control

39. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for this regulation making power.

Clause 35: Use of victim statement

Purpose of delegated legislation

40. Clause 35(1) permits the Department to set out in regulations about the submission of a copy of a victim statement to the defence and the court.

Reason for delegated legislation

41. The delegated powers enable the arrangements for providing a copy of a statement to be set out. It is considered that regulations are more appropriate for the operational provisions. It is intended that the statement would be provided where a person is convicted of an offence, ahead of sentencing.

Assembly Control

42. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for this regulation making power.

Part 5: CRIMINAL RECORDS

Clause 36: Restriction on information provided to certain persons

Purpose of delegated legislation

43. Clause 36(2) introduces a new section 120AC into Part V of the Police Act 1997 to deal with the circumstances as to when registered persons may be informed about the progress of an application. Section 120AC(7) directly follows on from the new section 120AC(1) that requires the Department to advise a registered person if a certificate has been issued in relation to an application for a standard or enhanced criminal record check. 120AC(7) enables the Department to refuse to provide this information to the registered person after a specified period of time has elapsed after the certificate has been issued.

44. Clause 36(2) also introduces a new section 120AD into Part V of the Police Act 1997 to deal with the circumstances in which registered persons may receive copies of certificates where an application has been made specifically for and where the Department has provided, up to date or new information on an individual in what will be known as the Update Service. The delegation enables the Department to set time periods and circumstances in which such copies can be provided.

Reason for delegated legislation

45. The delegated power in the new section 120AC enables the Department to set a reasonable period of time for requests to be made as to whether a certificate has been issued. The Department will provide an on-line case tracking system that will easily identify for registered persons when certificates have been issued. This system needs to be updated regularly to ensure that only current information is held on it. The Department therefore wishes to have powers to delete "old" information about whether a certificate has been issued after an appropriate period of time has passed and to have flexibility to determine the appropriate period.

46. Section 120AD of the legislation relates to applications where updated or new information is available for an applicant and that applicant has been advised to obtain a new AccessNI certificate with this new information. The delegation provides a framework for the release of such information that protects the applicant but enables the registered person who asked the applicant to obtain the updated information to receive this where it is not supplied to them by the applicant within a reasonable period of time. In turn this reduces the safeguarding risk that the applicant may pose as a result of the updated or new information available on them.

Assembly Control

47. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for both of these order making powers.

Clause 37: Minimum age for applicants for certificates

Purpose of delegated legislation

48. Clause 37(1) introduces a minimum age of 16 years for those applying for standard or enhanced criminal record certificates. The Department wishes to make some exceptions to this age limit, but to prescribe these circumstances in Regulations

Reason for delegated legislation

49. The Department of Health, Social Services and Public Safety has asked the Department to introduce an exclusion to the age criteria where work with children is undertaken at an individual's home, for example, fostering, adoption or child-minding. This would enable applications to be made for all members of the applicant's family who are aged 10 years and greater; 10 years of age being the age of criminal responsibility, but allow flexibility to make changes in the future if required.

Assembly control

50. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for this order making power.

Clause 40: Up-dating certificates

Purpose of delegated legislation

51. Clause 40 sets out arrangements for the provision of update certificates under a new section 116A of the Police Act 1997. Sub-section (4)(b) enables the Department to charge a fee where an applicant asks for his certificate to be subject to up-dating arrangements. Sub-section (5)(b) is similar to 4(b).

Reason for delegated legislation

52. The Department will use the updating service provided by the Disclosure and Barring Service (DBS) in England and Wales to provide an update service to applicants in Northern Ireland. The DBS charges a fee for such applications and the Department requires the ability to charge this fee to applicants and to amend it in line with DBS changes. It currently stands at £13 per annum though volunteers can join free of charge.

Assembly control

53. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for this order making power. This is line with other powers in relation to fees charged by AccessNI.

Part 6: Live Links in Criminal Proceedings

Clause 45: Live links from another courtroom: first remands, etc.

Purpose of delegated legislation

54. Clause 45 provides for certain persons to attend specified types of court hearings – all of which involve a person's first appearance at court following arrest or charge in certain circumstances – by live link at weekends and public holidays. Subsection (11) provides a delegated power to permit the Department, by order, to amend the specified list of hearings and to amend the days on which live links may be used for these purposes.

Reason for delegated legislation

55. The delegated powers under subsection (11) would allow the Department to respond quickly, without recourse to an Executive Bill, to changes needed to the live links scheme.

Assembly control

56. The Department considers that changes to the provision for live links on first remand should be the subject of Assembly debate. Clause 87(6), as applied by subsection (7)(a), therefore provides that an order under clause 45(11) should be laid in draft before, and approved by resolution of, the Assembly.

Clause 46: Live links: proceedings for failure to comply with certain orders or licence conditions

Purpose of delegated legislation

57. Clause 46 permits the use of live links in proceedings where a person, already in custody, has to be brought before the court for failing to comply with a specified court order, such as a probation order, an attendance centre order or a supervision order.

58. Clause 46 also allows for the use of live links in proceedings where a sexual offender has failed to comply with conditions for release on licence.

59. Subsection (11) enables the Department, by order, to amend the list of specified orders or conditions subject to this provision.

Reason for delegated legislation

60. The delegated powers under subsection (11) would allow the Department to respond quickly, without recourse to an Executive Bill, to changes needed to the live links scheme.

Assembly Control

61. The Department considers that such changes should be the subject of Assembly debate. Clause 87(6), as applied by subsection (7)(a), therefore provides that an order under clause 46(11) should be laid in draft before, and approved by resolution of, the Assembly.

Clause 47: Live links: expert witnesses

Purpose of delegated legislation

62. Clause 47(3) inserts a new provision, Article 11A, into the Criminal Justice (Northern Ireland) Order 2004 ("the 2004 Order"), which amends the current procedure under which witnesses may provide evidence by live link.

63. At present, any witness other than the defendant at a preliminary hearing, a trial or an appeal may apply for a direction from the court to provide evidence by means of a live link. The new provision will apply to specified expert witnesses, who will in future normally provide their evidence by live link, unless the court directs that they should appear in person. A personal appearance direction will be given only where the court considers that it is in the interests of justice and the efficient administration of justice.

64. Subsection (6) of Article 11A of the 2004 Order provides that the expert witnesses subject to this provision are to be prescribed in regulations.

Reason for delegated legislation

65. A flexible approach to the definition of an expert witness will allow for additions to take account of further developments in the judicial system, or the emergence of new specialisms caused by, for example, technological advances.

Assembly control

66. The Department considers that the range of expert witnesses subject to this provision should be the subject of Assembly debate. Therefore subsection (7) of Article 11A of the Criminal Justice (Northern Ireland) Order 2004 – as inserted by clause 47(3) – provides that regulations prescribing classes or descriptions of expert witnesses should be laid in draft before, and approved by resolution of, the Assembly.

Part 7: Violent Offences Prevention Orders

Clause 60: notification requirements – initial notification

Purpose of delegated legislation

67. Clause 60 sets out the information which an offender must provide to police when they first make a notification, and the timescales within which they are required to provide that information. Clause 60 (2)(h) provides a delegated power to allow the Department, by order, to add to the list of required information already identified in subsection (2) (a) – (g).

Reason for delegated legislation

68. The delegated power under clause 60 (2)(h) would provide the Department with flexibility to impose further requirements on the offender, as may be considered appropriate at a future stage.

Assembly control

69. The Department considers that the inclusion of additional requirements in the future should be the subject of Assembly debate and therefore clause 60 (2)(h) specifies that a draft of the order is laid before, and approved by resolution of, the Assembly.

Clause 62: notification requirements: periodic notification

Purpose of delegated legislation

70. Clause 62 requires an offender to re-notify to the police, information required at initial notification, within a defined period. Where no changes have been made since the person's initial notification, the person would be required to re-notify information on an annual basis. Clause 62 (5) provides a delegated power to allow the Department, by order, to stipulate a different frequency of notification requirement for those who do not have a sole or main residence in the United Kingdom.

Reason for delegated legislation

71. The delegated power under clause 62 (5) will provide flexibility to enable the Department to prescribe, by regulation, and to change if necessary, a more frequent re-notification requirement for those who do not have a fixed residence, and who are therefore obliged to notify a place or location where they can regularly be found by police. It is considered that those with no fixed abode need to notify their whereabouts more frequently in order that the police have access to up to date information.

Assembly control

72. The Department considers that the inclusion of additional requirements in the future should be the subject of Assembly debate and therefore clause 60 (2)(h) specifies that a draft of the order is laid before, and approved by resolution of, the Assembly.

Clause 64: notification requirements: travel outside the United Kingdom

Purpose of delegated legislation

73. Clause 64 provides the Department with the ability to make regulations which would prescribe the notification requirements for those travelling outside the United Kingdom. The regulations would require the offender to notify certain details concerning their travel plans to and from the destination: the date of travel and destination/s, to include their proposed point of arrival.

Reason for delegated legislation

74. The delegated power under clause 64 would provide the Department with an ability to be specific and detailed about the travel requirements in a way which might be more suited to subordinate legislation.

Assembly control

75. The Department considers that the inclusion of such prescriptive requirements should be the subject of Assembly debate and therefore clause 64 specifies that a draft order is to be laid before, and approved by resolution of, the Assembly.

Clause 69: Information about release or transfer

Purpose of delegated legislation

76. Clause 69 allows the Department to make regulations requiring those responsible for an offender whilst he is serving a custodial sentence or detained in a hospital, to notify other specified persons of the fact that they have become responsible for that individual, and of the time they are released from custody or transferred to another institution. The regulations would specify the person responsible and the person who must be notified.

Reason for delegated legislation

77. The delegated power under clause 69 would provide the Department with an ability to be specific about the requirements in a way which might be more suited to subordinate legislation.

Assembly control

78. Under clause 69, such orders are to be subject to negative resolution of the Assembly. The Department considers that this procedure would allow a sufficient and appropriate level of scrutiny by the Assembly of orders of this sort.

Part 8: Miscellaneous

Avoiding delay in criminal proceedings

Clause 79: General duty to progress criminal proceedings.

Purpose of delegated legislation

79. Clause 79 allows the department to make regulations to impose a general duty on anyone involved in a criminal case to progress cases in a just way as quickly as possible. The clause also requires the department, in any regulations made, to take particular account of the needs of victims, witnesses and young people.

Reason for delegated legislation

80. This delegated power will allow the department to set out the detail of this duty to progress cases in regulation, allowing for the creation of a single set of "case progression" regulations which will combine the duty under this clause with the statutory case management regulations under Clause 80.

Assembly control

81. Under Clause 87 these regulations would be made by negative resolution. As the intent and scope of this duty will be prescribed in primary legislation, the Department's view is that it is appropriate to proceed by way of the negative resolution procedure.

Clause 80: Case management regulations

Purpose of delegated legislation

82. Clause 80 allows the Department to make regulation on the management and conduct of criminal cases and includes the power to impose duties on the court, the prosecution and the defence. It also defines what is meant by the "active management" of cases by the court.

Reason for delegated legislation

83. This delegated power will allow the department to set out the detail of these duties on all parties and will allow for the creation of "case progression" regulations which will combine the duty under this clause with the general duty to progress cases set out in Clause 79.

Assembly control

84. Under Clause 87 these regulations would be made by negative resolution. As the scope of these duties will be prescribed in primary legislation, and the detail of the regulations will be largely procedural and technical, the Department's view is that it is appropriate to proceed by way of the negative resolution procedure.

Part 9: Supplementary Provisions

Clause 86: Supplementary, incidental, consequential and transitional provision, etc.

Purpose of Delegated Legislation

85. This Clause confers power on the Department to make such supplementary, incidental, consequential, transitory, transitional, or saving provision as it considers appropriate for

the purposes of the Bill. The power includes the power to amend or repeal any statutory provision.

Reason for Delegated Legislation

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

Assembly Control

87. To the extent that an order under this Clause amends or repeals primary legislation, it will be laid before, and approved by resolution of, the Assembly. Otherwise an order under Clause 86 will be subject to negative resolution.

Clause 91: Commencement

Purpose of Delegated Legislation

88. The power in Clause 91(2) and (3) has been provided to enable certain provisions of the Bill to be brought into operation by Commencement Order made by the Department.

Reason for Delegated Legislation

89. The delegated power has been provided to enable provisions of the Bill to be brought into force on a date determined by the Department, when appropriate administrative and other arrangements have been made. The ability to make transitional or transitory modifications to the Justice Act that are considered necessary in connection with the commencement of the provision is included.

Assembly Control

90. As is usual with commencement orders, these are not subject to any Assembly procedure.

Correspondence from the Department providing a Preliminary Discussion Paper inviting views on any wider implications of making legislative provision in relation to rights of audience for lawyers working in the Attorney General's Office

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90529272
private.office@dojni.x.gsi.gov.uk

Our ref: SUB/991/2014

Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

8 August 2014

Dear Christine,

PRELIMINARY DISCUSSION PAPER INVITING VIEWS ON ANY WIDER IMPLICATIONS OF MAKING LEGISLATIVE PROVISION IN RELATION TO RIGHTS OF AUDIENCE FOR LAWYERS WORKING IN THE ATTORNEY GENERAL'S OFFICE

The Attorney General has invited the Minister of Justice to consider making legislative provision to confer rights of audience equivalent to those of barristers in private practice on any barrister or solicitor working in his office and designated by him. Such provision would sit outside the existing provision on solicitors' and barristers' rights of audience prescribed in legislation and the Bar Code of Conduct respectively.

The Department's provisional soundings with key stakeholders indicated that extending rights of audience for lawyers in the Attorney General's Office may have implications for the wider legal services landscape and its regulation, which would need to be identified and evaluated. Therefore, whilst acknowledging the potential benefits of making such legislative provision, the Minister of Justice advised the

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Attorney General that he considered it appropriate to allow key stakeholders the opportunity to formally comment on the proposal.

The Department is issuing a short preliminary discussion paper to a number of key stakeholders (copy enclosed for the Committee's information) inviting views on any implications for the legal profession of the Attorney General's proposal and whether there is a case for treating lawyers working in his office differently to other employed lawyers. The responses to the discussion paper will be used to inform further consideration of the proposal and the need for a wider consultation exercise. The Committee will of course be kept informed.

Tim Logan

TIM LOGAN
DALO

Enc: Preliminary Discussion Paper

Department of Justice
www.dojni.gov.uk

Preliminary Discussion Paper

Proposal by the Attorney General for Northern Ireland for legislative provision in relation to rights of audience for lawyers working in his office

Introduction

1. The Attorney General for Northern Ireland has invited the Minister of Justice to consider legislating to confer the same rights of audience as barristers in private practice on lawyers working in his office and designated by him.

2. Such statutory provision would sit outside the provision on solicitors' and barristers' rights of audience prescribed in legislation and in the Bar Code of Conduct respectively.

3. The purpose of this paper is to formally seek views from the key stakeholders listed at **Annex A** on any wider implications for the legal profession and how it is regulated, or for the provision of legal services, of making discrete provision in relation to rights of audience for lawyers working in the Office of the Attorney General. The responses to the paper will inform further consideration, advice to Ministers and the need for a wider consultation exercise. Responses are requested by **10 October 2014**. There is information about how to respond at the end of this paper.

Attorney General's Proposal

4. There are presently eight lawyers (three barristers and five solicitors) working in the Attorney General's office. The Attorney General's legal staff are appointed by him and work under his personal supervision but are members of the Northern Ireland Civil Service. Their role is to assist the Attorney General in carrying out his statutory and other functions.

5. The Attorney General has highlighted that the lawyers working in his office cannot avail of their very considerable advocacy skills because they do not have rights of audience in all courts. He has also noted that the position of the employed barristers is particularly odd because their rights of audience are tied to those of solicitors.

6. The Attorney General has advised that it would be of considerable assistance to him if legislative provision were to be made conferring the rights of audience of barristers in private practice on any lawyer working in his office and designated by him.

7. The Attorney General has suggested that the number of lawyers employed in his office is so small that this would not deprive the independent Bar of significant amounts of work but would on the other hand enable his office to make full use of the talent in it and result in substantial savings.

8. The Attorney General's main responsibilities include acting as the Executive's most senior representative in the courts (representing Ministers or Departments in court), protecting the public interest in the courts (which can include both bringing proceedings and participating in extant proceedings) and defending the interests of charities in proceedings before the High Court. The Attorney's proposal, if taken forward, would enable his staff to act as junior counsel in the High Court in such proceedings.

9. Under section 22 of the Justice (Northern Ireland) Act 2002 the Attorney General's functions are exercised independently of any other person.

Existing Provision on Rights of Audience of Solicitors and Barristers

Solicitors

10. At present, solicitors have rights of audience in all courts except the High Court and Court of Appeal, where they may only appear in limited circumstances, mainly insolvency related proceedings or where Counsel is instructed but unable to appear (section 106, Judicature (Northern Ireland) Act 1978).

barrister who represents to the public generally that he is willing, in return for payment of fees, to render legal services to a client." Barristers in independent practice have rights of audience in all courts.

Employed Barristers

17. An employed barrister is defined in the Bar Code as "a barrister who, in return for the payment of a salary, is employed wholly or primarily for the purpose of providing legal services to an employer either under a contract or employment, or by virtue of an office under the Crown or in the institutions of the European Communities". Under the Code an employed barrister may appear on behalf of their employer in any court, in any circumstances where barristers in independent practice do not have an exclusive right of audience in such court (paragraph 28.02). The rights of audience of employed barristers are therefore linked to the rights of audience of solicitors. This means that employed barristers presently do not have rights of audience in the High Court and Court of Appeal but (subject to any amendment of the Bar Code) this would change once the provision in the Justice Act extending solicitors' rights of audience comes into operation.

18. However, it is to be noted that the rights of audience of employed barristers would (again subject to any amendment of the Code) remain subject to the other restrictions in the Bar Code, in particular that, in general, they may only provide legal services (defined to include representation in court) to their employer (paragraph 28.04). There are a few exceptions to this rule including:

- a barrister in the government legal service (defined as meaning being employed or holding office as a lawyer in any Government Department or the Public Prosecution Service) can act on behalf of Ministers / Officers of the Crown / organisations or public officers or servants for whom GLS customarily acts;

- a barrister employed by trade assocations may act for the association in matters affecting all or a class of members; and

- a barrister employed in a Law Centre or Citizens' Advice Bureau.

Questions

24. We welcome comments on the following issues and any other issues which you think may be relevant:

- What would be the wider implications for the legal profession and the provision of legal services, of making discrete provision on rights of audience for lawyers working in the Attorney General's office? Please give reasons for your answer.

- Is there a case for treating lawyers working in the Attorney General's Office differently to other employed lawyers? Please give reasons for your answer.

Responses

25. Responses should be submitted **no later than 5.00pm on 10 October 2014**. If you have any queries please contact Civil Justice Policy Division on 028 9016 9539.

26. When responding please state whether you are making your comments as an individual or representing the views of your organisation.

27. Unless respondents specifically indicate that they wish their response or part of it to be treated in confidence, their name and the nature of their response may be included in any summary of responses made publicly available. Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any responses not subject to specific exemptions under the Act be disclosed to third parties on request. Any personal data which you provide will be handled in accordance with the Data Protection Act 1998.

28. Please forward your responses to:

Post: Civil Justice Policy Division
Department of Justice
Massey House
Stormont Estate
Belfast
BT4 3SX

E-mail: [To be inserted]

Annex A

Copies of this paper are being sent to:

Departmental Solicitor's Office
Public Prosecution Service
Directorate of Legal Services
Crown Solicitor's Office
The Bar Council of Northern Ireland
The Law Society of Northern Ireland
Law Centre (Northern Ireland)

Correspondence from the Department on Clause 84 of the Justice Bill – Revised Aims of the Youth Justice System

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of
Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 9052 8121
private.office@dojni.x.gsi.gov.uk

Our ref: SUB/1012/2014

Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

2 September 2014

Dear Christine,

JUSTICE BILL CLAUSE 84 – REVISED AIMS OF THE YOUTH JUSTICE SYSTEM

Thank you for your letter of 31 July 2014 on Clause 84 of the Justice Bill, which deals with a proposed amendment to the statutory aims of the youth justice system.

Having now had a chance to consider the drafting of this clause with the relevant policy officials, we remain confident that the clause will deliver both the spirit and the letter of what was recommended in the Youth Justice Review. It remains our assessment, therefore, that Clause 84 would be compliant with the terms of the United Nations Committee on the Rights of the Child (UNCRC).

I hope the Committee finds this confirmation helpful.

Tim Logan

TIM LOGAN
DALO

Correspondence from the Department regarding the report by the Examiner of Statutory Rules on the Delegated Powers of the Justice Bill

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
private.office@dojni.x.gsi.gov.uk

Our ref SUB/1288/2014

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

24 October 2014

Dear Christine,

JUSTICE BILL 2014: REPORT BY THE EXAMINER OF STATUTORY RULES ON THE DELEGATED POWERS

Thank you for your letter of 13 October and for forwarding a copy of the report from the Examiner of Statutory Rules on his scrutiny of the delegated powers contained in the Justice Bill.

As the Examiner notes, he has engaged informally with the Bill Team and policy officials in relation to his observations on the delegated powers proposed by clauses 79 and 80 of the Bill, and the Department has indicated to him that it is receptive to the suggestions that he has made.

Policy officials will brief the Committee in due course during the Committee's consideration of the detail of the clauses, although at this juncture I can advise that

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the Department is minded to amend those clauses, at Consideration Stage, to give effect to the Examiner's observations.

Tim Logan

TIM LOGAN
DALO

Correspondence from the Department providing responses to a Preliminary Discussion Paper inviting views on any wider implications of making legislative provision in relation to rights of audience for lawyers working in the Attorney General's Office

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
private.office@dojni.x.gsi.gov.uk
Our ref SUB/1280/2014

Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings, Stormont Estate
Belfast BT4 3XX

7 November 2014

Dear Christine,

RESPONSES TO PRELIMINARY DISCUSSION PAPER INVITING VIEWS ON ANY WIDER IMPLICATIONS OF MAKING LEGISLATIVE PROVISION IN RELATION TO RIGHTS OF AUDIENCE FOR LAWYERS WORKING IN THE ATTORNEY GENERAL'S OFFICE

As the Committee is aware from previous correspondence, dated 8 August, the Department issued a short discussion paper (copy enclosed again for reference) to a number of key stakeholders inviting views on any wider implications of a request by the Attorney General for legislative provision to confer on lawyers employed in his office and designated by him, the same rights of audience as barristers in private practice.

A summary of the responses received by the Department is enclosed for the Committee's information. As the Committee will note, many of the responses express concern that such bespoke provision would fragment the rights of audience landscape and dilute the role of the professional bodies. Some also request the same special rights of audience for lawyers in their offices.

Having considered the matter carefully, including the responses, the Minister is not persuaded that it is necessary to make the particular legislative provision which the Attorney General has requested and which others might now also seek.

[redacted]

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The Minister recognises the potential benefits of suitably skilled lawyers in the Attorney General's office (and those in other offices) having the right to appear in the higher courts. He considers, however, that this will be achievable under the mechanisms already legislated for in the Justice (Northern Ireland) Act 2011. As the Committee may recall, the relevant provisions of that Act confer power on the Law Society to make Regulations authorising solicitors, with the prescribed training or experience, to exercise the same rights of audience in the higher courts as barristers in independent practice. Under the current Bar Code such rights of audience would also then extend to employed barristers. (It is possible that the Bar may wish to amend its Code in this regard, but we expect that any proposal that employed barristers should have fewer rights of audience than authorised solicitors would be the subject of some consultation.)

Key to progressing this matter is the Law Society Regulations under the 2011 Act. The Minister has asked his officials to continue working with the Law Society to establish a timeline for the making of those Regulations as soon as possible.

Once those Regulations are in place, the lawyers employed in the Attorney General's office (and those elsewhere) will be able to obtain rights of audience in the higher courts on the same basis as other lawyers. The Minister does not therefore think that a bespoke arrangement under the Justice Bill is necessary to achieve the desired outcome.

Officials would be happy to brief the Committee further if required.

Tim Logan

TIM LOGAN
DALO

Enc – preliminary discussion paper and summary of responses

[redacted]

Preliminary Discussion Paper

Proposal by the Attorney General for Northern Ireland for legislative provision in relation to rights of audience for lawyers working in his office

Summary of Responses

Introduction

1. This paper summarises the responses to the preliminary discussion paper on the proposal by the Attorney General (AG) for legislative provision to confer the same rights of audience as barristers in private practice on lawyers working in his office.

2. The paper invited views on two issues:

   (i) the wider implications for the legal profession and the provision of legal services of the AG's proposal; and

   (ii) whether there is a case for treating lawyers working in the AG's office differently to other employed lawyers.

3. The paper was issued to the following key stakeholders: the Departmental Solicitor, the Director of Public Prosecutions, the Director of Legal Services, the Crown Solicitor, the Bar Council, the Law Society and the Law Centre. Responses were received from all except the Law Centre.

Responses

Issue (i)

4. Several of the responses express concern about making discrete provision on rights of audience for any group of employed lawyers outside the provision on rights of audience prescribed in legislation (in the Justice Act (Northern Ireland) 2011, which is still to be commenced) and the Bar Code of Conduct.

5. The Departmental Solicitor considers that this issue is primarily one for the professional bodies however, is concerned that exempting one group from the

normal arrangements would diminish the standing of the process of authorisation and the requirements for education, training and experience and undermine its rationale.

6. Similarly, the Crown Solicitor expresses concern that making the discrete provision proposed would serve to fragment the rights of audience available throughout public sector lawyers generally and that this would be detrimental to the consistency of standards, training and regulation. The Crown Solicitor considers that it is questionable whether the factors on which the AG has based his proposal are sufficient to justify a fragmented approach.

7. The Bar Council advises that they are not in favour of carving out a distinct class of lawyers who enjoy rights of audience independently from the rights of audience conferred on barristers or solicitors generally. They highlight the safeguards contained in the Justice Act (Northern Ireland) 2011 in relation to the exercise by solicitors of rights of audience in the higher courts and that the Bar Council has its own procedures for ensuring the highest standards of training and provision of professional services. The Bar considers that the use of in-house lawyers by the AG's office would undermine these protections and interests. In addition the Bar Council (without in any way challenging the good faith of the AG) expresses concern that the AG's ability to personally supervise his staff may be overstated and about the impact on the independent Bar.

8. The Law Society notes that the Justice Act (Northern Ireland) 2011 confers responsibility on them to set regulatory requirements for solicitors seeking to exercise rights of audience across higher court tiers and considers that no departure from this holistic and comprehensive regulation is warranted without good reason. The Law Society emphasises that exempting all or some solicitors working in the public service from the new advocacy regulations has the potential to diminish the importance of the regulations and undermine attempts to successfully launch and accredit solicitor advocacy in the higher courts. Whilst the Law Society does not doubt the professional credentials of the current AG, they do not regard investing oversight within a particular individual as best practice in terms of designing regulation of the profession. The also

express concern that crafting exemptions from regulatory requirements also carries with it the potential for unintended consequences. The Law Society suggests that irrespective of the organisation a solicitor works for, the substance of the skills required remain the same and that regulatory requirements should reflect this. The Law Society concludes that the test for departing from comprehensive application of the advocacy regulations has not been met in the circumstances proposed.

Issue (ii)

9. All of the respondents consider that a case for treating lawyers working in the AG's Office differently to other lawyers employed in the public sector has not been made out.

10. The Departmental Solicitor is of the view that legislating as proposed by the AG would make an unnecessary and undesirable distinction between lawyers working in one branch of the public sector and those working in other branches. He notes that his office also has a number of barristers and solicitors skilled in advocacy and rights of audience similar to those sought by the AG for his staff would also be helpful to his own staff. The Departmental Solicitor, making reference to the AG's rationale for his proposal, also states that he believes the AG would not suggest that he (or indeed the Crown Solicitor, the Director of Public Prosecutions or the Director of Legal Services) would be in any way inferior in terms of conscientiousness, concern for the reputation of their offices or engagement in cases where their staff had an advocacy role. The Departmental Solicitor concludes that either all lawyers in the public service should have a statutory right of audience or all should be subject to the same arrangements as apply to the professions in general. He expressly requests that if provision is made in respect of the staff in the AG's office, it extend beyond the AG's staff at the very least to his staff also.

11. The Director of Legal Services considers that the same arguments used on behalf of lawyers working in the AG's Office can be extended to those working elsewhere in the public and private sectors. He notes that within DLS there are 18 (of 43) solicitors who have completed the Advanced Advocacy course,

whose skills and ability have been recognised by clients and who are subject to rigorous management and administrative systems and concludes that, if there is a case for treating the lawyers in the AG's office differently, that must logically extend to the 18 solicitors working in DLS.

12. The Crown Solicitor is of the view that, if the Department considers it appropriate to take forward the AG's proposal, a case could be made for other employed lawyers based on factors of equal if not greater strength as those highlighted by the AG and that this should be taken into account.

13. The Director of Public Prosecutions (DPP) does not oppose the AG's proposal however, considers that this facility should not be exclusive to the office of the AG. The DPP suggests that the reasons cited by the AG in support of his proposal would apply equally to him and expressly requests that he is also given the power to designate the small group of experienced advocates currently prosecuting as Higher Court Advocates in the Crown Court as lawyers who have rights of audience to conduct work in the High Court and Court of Appeal.

14. The Bar Council considers that there is no convincing justification as to why it is necessary to extend rights of audience to the AG's legal staff. Whilst acknowledging it may be of assistance to the AG, they consider this is not the same as these rights of audience being necessary or in the public interest. They also consider that the AG's proposal would see employed barristers working in his office treated more favourably than other employed barristers.

15. The Law Society considers that many of the arguments for making special provision for the AG's legal staff could apply equally to solicitors working in the public sector and therefore it is not possible to justify bespoke provision limited to the AG's office without opening up the question of exemptions more broadly.

Department of Justice
November 2014

Correspondence from the Department regarding additional amendments to the Justice Bill

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90529272

private.office@dojni.x.gsi.gov.uk

Our ref SUB/1416/2014

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

18 November 2014

Dear Christine,

JUSTICE BILL: PLANNED AMENDMENTS

My letter to you of 24 June 2014 provided details on a number of amendments that the Department planned to bring forward in the Justice Bill 2014. The letter also advised that it was likely that the Department would wish to bring forward further amendments at a later stage, given the scope and complexity of the Bill, and I write now to offer details of a number of additional amendments that the Department wishes to bring to the attention of the Committee.

None of these proposed additional amendments represent significant new policy. They are, instead, all relatively minor in nature and offer adjustments to existing clauses in the Bill to ensure the clauses operate as originally envisaged; enhance existing clauses to reflect ongoing stakeholder engagement post-Introduction; or correct errors and close gaps in other existing legislation.

[redacted]

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With the Committee's focus in coming months due to be concentrated on taking oral evidence on the Bill, as drafted at Introduction, and the potential amendments proposed by Jim Wells MLA and the Attorney General, we agreed that it would be helpful if the Department was to provide some information at this stage on the nature of our proposed amendments. If the Committee is content, the Bill Team will seek Executive approval to draft the proposed Departmental amendments so that they may be shared with the Committee before appearances by officials commence in January 2015.

The Department believes that this will assist the Committee with its scrutiny of the Bill by enabling officials, at that point, to speak to the clauses of the Bill as drafted at Introduction; address any points raised with the Committee by witnesses through their written and oral evidence; discuss the background to and text of the proposed amendments; and take account of Committee suggestions as to how the draft clauses and draft amendments could be enhanced and improved.

Subject to the Committee's views, and in addition to the proposed amendments that the Committee is already aware of, the Department would propose to proceed to draft the following amendments:

- a number of further consequential amendments for inclusion in Schedule 1 (Single Jurisdiction), primarily to remove references to 'petty sessions district' and 'county court division' in existing legislation;

- an amendment to PACE (NI) legislation to make provision for the retention of fingerprints and the DNA profile taken from persons on arrest who have subsequently been offered and accepted a Prosecutorial Fine in respect of that offence (created by clauses 17 - 27 of the Bill).

- an adjustment to existing Clause 33 (Victim Statements) arising from stakeholder comments received during consultation on the Victim Charter, to

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allow a victim or a bereaved family member to include in a victim statement the impact a crime has had on other family members;

- an enhancement to existing Clause 40 (Criminal Records), arising from ongoing stakeholder engagement, to prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home based positions from the Update Service, where third party personal information could potentially be disclosed unintentionally;

- a minor new Criminal Records provision to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database;

- a small number of adjustments to the Violent Offences Prevention Orders provisions (Part 7 of the Bill) to reflect comments and suggested improvements to the clauses by the Attorney General;

- a tidy up adjustment to the regulation making powers in existing Clauses 79 and 80 (Statutory Case Management) to reflect comments and advice from the Examiner of Statutory Rules following his scrutiny of the Bill's Delegated Powers Memorandum;

- a minor new provision to deliver a Justice Committee request to change the affirmative resolution procedure for the annual determination of Lands Tribunal salaries;

- three minor adjustments to PACE (NI) legislation relating to the retention of fingerprints and DNA profiles to ensure that provisions relating to retention of material for a different offence; retention of samples that may be disclosable; and powers to take samples where an investigation is

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discontinued but subsequently resumed (which were inserted into PACE (NI) by the Criminal Justice Act (NI) 2013) operate as originally intended; and

- subject to the conclusion of a current consultation exercise and Committee consideration of the summary of responses and way forward, a proposed amendment to create an offence of causing or allowing serious physical harm to a child or vulnerable adult and which will address a lacuna that prevents PPS from being able to prosecute in circumstances where injuries must have been sustained at the hands of limited number of members of a household but there is insufficient evidence to point to the particular person responsible.

I trust this is helpful, and please do not hesitate to get in touch if you have any queries.

Tim Logan.

TIM LOGAN
DALO

Correspondence from the Department in relation to amendments to the Justice Bill regarding Sexual Offences Against Children

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of
Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3SG
Tel: 028 9052 8121
private.office@dojni.x.gsi.gov.uk

Our ref: SUB/1600/2014

Alastair Ross MLA
Chair
Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont BT4 3XX

6 January 2015

Dear Alastair

SEXUAL OFFENCES AGAINST CHILDREN: JUSTICE BILL

I am seeking the Committee's view on my intention to proceed, by way of amendment to the Justice Bill, to provide for a new offence of communicating with a child for sexual purposes and to make an amendment to the existing offence of meeting a child following sexual grooming.

I have recently been informed by Home Office Ministers that an amendment to the Serious Crime Bill at Commons Committee Stage will introduce a new offence of communicating with a child for sexual purposes. This new offence arises from a national NSPCC lobby campaign to close what is seen as a gap in the law relating to 'sexting'. The NSPCC in Northern Ireland is therefore in support of this change and would wish to see provision in or around the same timescale as in England and Wales. There is already law covering this behaviour in Scotland.

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I would wish to make similar provision for Northern Ireland and trust that the Justice Committee would agree that it would be wrong not to provide the same level of protection for children here.

As a result, I had initially considered the possibility of seeking to extend the provision in the Serious Crime Bill by asking the Assembly to agree to a legislative consent motion. However, there is already an available legislative vehicle currently in the Assembly which could be used to carry this provision. My preference would be to add the new offence, for inclusion in the Sexual Offences (NI) Order 2008, at Consideration Stage of the Justice Bill. The timing is not quite perfect, but it would seem to me to allow for the provision here and in England and Wales to commence within a few months of each other. I think that this would be largely acceptable, and my officials have tentatively discussed this proposal with NSPCC officials who have signalled that they would be content with this approach.

The second issue is to make a small, but significant, amendment to the existing offence in the Sexual Offences (NI) Order 2008 of meeting a child following sexual grooming. Again, I think it would be appropriate to follow an amendment made in Westminster by the Criminal Justice and Courts Bill which was born out of a report by Barnardo's and which reduces the evidence threshold for the offence to be engaged. As it stands, an adult must have communicated with a child on two occasions before meeting them, or travelling to meet them, before the offence is committed. This amendment would reduce that requirement from two occasions to one.

The major benefit is that the amended offence would obviously enable the police to take action after only one contact. The report by Barnardo's shows how quickly contact offending can occur following just one communication or meeting. It also emphasises that, if amended, the grooming offence could play a much more important role in preventing such contact offending ever taking place. Also,

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reducing the number of required contacts from two to one would reduce the police burden of the collection of evidence even where there had been multiple contacts. The report highlights the difficulties that the police in England and Wales face in obtaining communications evidence. The amendment would, to some degree, reduce this burden on the police, though they would still need to establish the other elements of the offence; in particular, the necessary intent on the part of the suspect to commit a relevant sexual offence (and that may not always be apparent from a single instance of contact).

I feel that not to make a similar change here would be to the detriment of our sexual offences law. I am therefore seeking the Committee's view on my proposal to see this included in the Justice Bill at Consideration Stage.

I am aware that these are two additional issues which have not been previously presented to the Committee. I appreciate that this is unfortunate, but I have sought to respond as promptly as possible to these developments in the UK-wide efforts to keep children safe. I believe that both changes will be widely welcomed and that if we can use our own legislative vehicle to make the changes as quickly as possible then that is the best way to proceed.

I look forward to your response. I will also ensure that draft clauses are made available to the Committee as soon as we have them.

DAVID FORD MLA
Minister of Justice

Correspondence from the Department providing a response to the issues raised in the Committee's summary of evidence tables

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
private.office@dojni.x.gsi.gov.uk

Our ref SUB/83/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

27 January 2015

Dear Christine,

JUSTICE BILL: TABLES OF SUMMARY EVIDENCE

Thank you for your correspondence of 19 December and 5 January in which you forwarded tables of summary evidence presented to the Committee in respect of the Justice Bill and asked for responses from the Department to the issues raised.

Policy leads have reflected on the points raised in evidence and recorded in the tables and have offered comments under the 'Department of Justice response' column, as requested. As the summary of stakeholder comments received from the Committee ran to some 180 pages, the Bill Team thought that it might be useful to summarise the main points arising from the Committee's Call for Evidence. Comments on **Part 1** of the Bill (single jurisdiction) were broadly supportive, although some consultees requested further information on the operational details of the proposal.

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On **Part 2** (committal for trial), stakeholders expressed opposing views in respect of the scale of the reform. The Law Society suggested in its evidence that the case for change had not been sufficiently made and that the reforms (particularly the abolition of the use of oral evidence) were too radical. Advancing a contrary view, the Public Prosecution Service contended that the reforms were not ambitious enough and, in particular, they argued for the outright abolition of committal proceedings. Victim Support expressed support for the proposals and indicated that it appreciated the need to ensure that any steps towards eventual abolition were staged and gradual.

Part 3 (prosecutorial fines) generated a number of comments from stakeholders, largely around their operational application and observations on the wider context of fine collection and enforcement. In addition, whilst welcoming the introduction of prosecutorial fines, the Public Prosecution Service suggested enhancements to enable penalty points to be imposed alongside the fine.

The victims and witnesses provisions (**Part 4**) received a broad measure of support from stakeholders. There was also support for the Department's proposed amendment to introduce information sharing provisions, which will benefit victims and witnesses in availing of services. Some issues that were raised in respect of the content of the Victim Charter have since been addressed on foot of the Department's public consultation on the draft Charter, which ran concurrently with the Committee's consultation on the Bill.

On criminal records (**Part 5**), stakeholders were broadly supportive of the measures being taken to modernise and streamline the disclosure of information, However, NIACRO, CLC, Include Youth and others proposed the removal from criminal records of old and minor convictions relating to offences committed under the age of 18.

Comments received in response to the live links provisions (**Part 6**) were largely general in nature and focused on whether their use has the potential to remove

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personal connections and create disadvantages to the defendant by not being in court; the importance of access to legal representation; and the potential impact on the defendant's understanding of proceedings, and effective participation.

Part 7 of the Bill (Violent Offences Prevention Orders) attracted a number of comments around whether, or not, the Orders should be available to use in respect of offenders under the age of 18. In addition, the Northern Ireland Human Rights Commission suggested an opportunity had been missed by not including Domestic Violence Protection Orders in the Bill.

Of the miscellaneous measures contained in **Part 8** of the Bill, the bulk of comments by stakeholders related to early guilty pleas, avoiding delay in criminal proceedings (statutory case management) and the proposal on public prosecutor's summons. On early guilty pleas, stakeholders sought clarity around the purpose and likely impact of the provisions, with some suggesting that the proposed duty on solicitors should apply also to advocates. Comments on statutory case management were largely supportive, though the PPS suggested the duties should not fall on their organisation. The Law Society queried the efficacy of the proposal to allow the PPS to issue summonses on their own behalf.

The completed tables are now returned for your consideration and we trust that the Committee will find the Department's contributions helpful in the progression of its ongoing scrutiny of the Bill. Officials are ready to appear before the Committee during February to speak to their respective parts of the Bill as drafted at Introduction; to address the points raised with the Committee by respondents; and to discuss proposed amendments.

In terms of groupings of parts of the Bill for the evidence sessions on 4 – 18 February, the Department would propose the potential groupings at **Annex A** as offering most benefit in terms of thematic content and locations.

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I trust this is helpful, and please do not hesitate to get in touch if you have any queries.

Tim Logan

TIM LOGAN
DALO

Enc. Tables (Part 1 to 8) and Annex A

PART 1: SINGLE JURISDICTION FOR COUNTY COURTS AND MAGISTRATES' COURTS AND SCHEDULE 1: AMENDMENTS: SINGLE JURISDICTION

Part 1 of the Bill creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. This will allow greater flexibility in the distribution of court business by enabling cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so.

Schedule 1 of the Bill contains amendments consequential to the provisions on single jurisdiction.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
General Comments	**Law Society**	The Law Society outlined that it did not disagree in principle with Part 1 of the Bill and stated that it had confidence in the Lord Chief Justice to ensure the fair and efficient operation of the courts system in Northern Ireland.	The Department welcomes the Law Society's comments and their recognition that the Lord Chief Justice will be responsible for the development and implementation of the directions setting out the guiding principles for the listing of court business and the reasons for possible departure from the guiding principles, under the creation of a single jurisdiction.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
	Public Prosecution Service	The Public Prosecution Service (PPS) highlighted that it is structured around the present County Court boundaries and any changes to this system could leave the PPS regional structure differing from that of the Courts with Regions cutting across Administrative Divisions. The PPS outlined that the changes would have a considerable impact on the PPS organisation and resources the extent of which the PPS is not yet able to assess.	The Department's intention has always been that the new Administrative Court Divisions will share their boundaries with local government districts (in the same way as current county court division boundaries do). The new boundaries will therefore be shaped by the implementation of the Review of Public Administration (RPA). The Department has taken the opportunity to discuss these comments with PPS who have advised that they have established a Transformation Working Group to assess, among other things, the impact of the Review of Public Administration (RPA), the introduction of the Single Jurisdiction and the potential restructuring of other Criminal Justice Organisations. This may

2

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
			mean that a re-alignment of the existing PPS regional structure is required. The PPS is working closely with PSNI, NICTS and DOJ in planning for any changes. Any final decisions regarding future PPS structures will be subject to the outcome of the NICTS's consultation on the court estate. It appears, therefore, that RPA, rather than the introduction of the single jurisdiction, will be the catalyst for changes in PPS structure. As RPA will be implemented before these provisions the impact is yet to be assessed, but may, in effect, be negligible.
	Victim Support	Victim Support welcomed the move to a single jurisdiction which it hoped would result in services which are much more adaptable and responsive, particularly to the needs of victims and witnesses and that there will now be greater opportunity to ensure that the location of trials are convenient and that safety issues in respect of victims and witnesses are not only considered but addressed.	The Department welcomes the comments made by Victim Support, who have recognised that the input of victims and witnesses will be considered as part of any decision to transfer court

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
			business under the single jurisdiction provisions.
	Children's Law Centre	The Children's Law Centre (CLC) outlined that whilst it is neither in favour of nor fundamentally opposed to the creation of a single jurisdiction in Northern Ireland for Magistrates' Courts and the County Court, it highlighted that the focus of these proposals appeared to be about providing additional flexibility to facilitate more effective management of court business, and was concerned that the main benefit of the proposals to make the system more flexible would be for the Court Service and not the user, who could be required to travel some distance to attend court proceedings. The CLC suggested that court users who are children should be able to have full access to justice at a convenient court. It highlighted that children often have considerable difficulty travelling to their local court and this would be exacerbated if they were expected to travel to a court further away. It added that children who come into contact with the criminal justice system frequently come from economically deprived backgrounds and access to transport can be difficult when it comes to attending court but that the consequence if they do not attend can however be extremely serious e.g. an arrest warrant being issued. In oral evidence the CLC suggested that in order to mitigate	It is intended that arrangements for listing court business will remain unchanged in the majority of cases, but that these new provisions will introduce an element of flexibility where particular circumstances so demand. No greater focus is placed on effective management of court business than on any other reason, and it should be noted that it is anticipated that any decision to move court business in an individual case will only happen following input from all parties involved in that case. As regards CLC's specific

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		against this the Department should consider providing for the cost of travel or providing travel options. The CLC highlighted that its concern is that children are not drawn further into the criminal justice system through no fault of their own and that mitigating measures are put in place to ensure access to justice for all.	concern in relation to children the Children (NI) Order 1995 ensures that the needs of the child are paramount and the court would be required to be mindful of this when considering whether, or not, to transfer a case involving a child (whether as a witness or a party to the proceedings).
Clause 2: Administrative Court Divisions Confers a power on the Department of Justice to divide Northern Ireland into administrative court divisions, after consultation with the Lord Chief Justice, and allows for Departmental directions to	**Law Society**	The Law Society outlined the view that the Department should set out the balance between ensuring adequate provision of court divisions to preserve access to justice and developing flexible and efficient boundaries on the face of the Bill. The Law Society suggested that the test could be included within a revised Clause 2 of the Bill and that the Bill should include scope for a re-appraisal and re-drawing of the administrative boundaries in light of practical experience against this test. Such a test, it suggested, would concentrate minds on balancing fairness and efficiency as a central focus of 'faster, fairer' justice.	We believe that the proposals strike the correct balance between ensuring that cases continue to be listed in a convenient court location whilst providing some additional flexibility to transfer cases in particular circumstances and subject to judicial oversight. The operation of the post RPA administrative boundaries will be subject to post implementation review.

5

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
specify different administrative court divisions for different court purposes.		In oral evidence the Law Society stated that an amendment would put onus and premise on the idea that not everything should be cost-driven from the Court Service point of view. The Law Society suggested possible wording to "take into account the accessibility of courts to ensure access to justice".	These proposals recognise the importance of access to justice. It is anticipated that the Lord Chief Justice's directions on the guiding principles for the distribution (listing) and transfer of court business will take account of the importance of access to justice. However, it would not be realistic to suggest that the ongoing budgetary pressures will not impact on the court estate. The Northern Ireland Courts and Tribunals Service intends to consult separately on proposals to rationalise the court estate.

6

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
Clause 3: Directions as to distribution of business Confers a power on the Lord Chief Justice to give directions detailing the arrangements for the distribution of business among the county courts and magistrates' courts, and for the transfer of business from one court to another. The clause also allows the Department to give directions as to the distribution among the chief clerks and clerks of petty sessions of the exercise of any functions conferred by any statutory	**Attorney General for Northern Ireland**	The Attorney General suggested that a further safeguard could be added to protect local justice. The Attorney General noted that in Clause 4(4) the Lord Chief Justice, in giving a direction, is to have regard to the desirability of a lay magistrate sitting in courts in reasonable proximity to where he or she lives or works. The Attorney General expressed the view that a similar duty to have regard to the benefit of justice being administered locally could usefully be added to Clause 3.	It is anticipated that the Lord Chief Justice's directions on the guiding principles for the distribution (listing) and transfer of court business will take account of the importance of access to justice and that they will reflect the need for judicial agreement to depart from usual listing arrangements and, where practicable, the need to allow for representations before any decision is made to depart from the usual arrangements in any individual case. The Department considers that this strikes an appropriate balance.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
provision on them.			
	PPS	The PPS was concerned that the ability to move cases from one Magistrate's Court venue to another, potentially at short notice, would have a significant impact on those victims and witnesses who wished to or were required to attend the court proceedings.	The Northern Ireland Courts and Tribunals Service acknowledge that there are practicalities to be taken into consideration and are currently considering how this might work in practice. It is anticipated that all first hearings will, more than likely, occur in the original court location and that sufficient notice will be given to all those involved in a hearing which is to take place elsewhere, where this is practicable. In individual cases, it is anticipated that the process will provide for parties to be able to make representations.
	Law Society	In oral evidence the Law Society stated, in relation to Clause 3(7) that there should be a provision requiring the Department, in making any directions in respect of the administration of its business, to consult the Lord Chief	The issue raised appears to relate to Clause 3 (1). This issue was considered by the Department in the

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		Justice. The Law Society highlighted that it would not be prudent for the Lord Chief Justice to make directions in respect of where court business goes and the Department perhaps taking a different view.	formulation of the policy. It was not considered appropriate to give the Department a role in the listing of court business as this is an exclusive function of the Lord Chief Justice under existing legislation and there are no proposals to fundamentally change this position.
Clause 5: Justices of the Peace This clause re-enacts section 103 of the Judicature (Northern Ireland) Act 1978, with amendments so that justices of the peace shall have jurisdiction throughout Northern Ireland. The clause also provides for the centralisation of record-keeping in	**Law Society**	In oral evidence the Law Society stated that, in respect of Clause 5(2), justices of the peace had carried out effective judicial functions that lay magistrates have carried out since 2002. The Law Society suggested that if there are justices of the peace still in existence and still carrying out some sort of judicial functions, their appointment should be made by the NI Judicial Appointments Commission and not by the Department as would be normal.	All judicial functions of justices of the peace were transferred to lay magistrates under the Justice (Northern Ireland) Act 2002. Lay magistrates are appointed by NI Judicial Appointments Commission. Those functions of justices of the peace which remain are generally administrative or ceremonial in nature and it is not considered appropriate to transfer their

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
relating to justices of the peace, so that the Department will be responsible for these.			appointment to NI Judicial Appointments Commission.
Administrative Framework (for the distribution of court business)	**Children's Law Centre**	The CLC outlined that under the proposals put forward by the NI Court Service for the creation of a single jurisdiction for County Courts and Magistrates' Courts, the distribution of court business would be underpinned by an administrative framework. The CLC explained that the administrative framework proposed in this consultation document provided for a 'guiding principle' in relation to the allocation of court business, but set out that this guiding principle may be departed from with the agreement of the Lord Chief Justice or local judiciary for 'good reason'. The CLC outlined that the Document stated that such a 'good reason' may include for example, the place in which the witnesses, or the majority of witnesses, reside, the avoidance of unnecessary delay, the efficient management of court accommodation, the request of a party, victim or witness to the proceedings (for example a victim in a domestic violence case, or a child witness), or to facilitate the efficient distribution and disposal of business. The CLC suggested that in scrutinising this part of the Justice Bill, the Committee may wish to inquire as to status of the proposal for an administrative framework to underpin the	It is anticipated that the Lord Chief Justice will consult on draft directions containing guiding principles for the distribution (listing) and transfer of court business in advance of implementation of the provisions. It is anticipated that the draft directions will take account of the importance of access to justice and that they will reflect the need for judicial agreement to depart from usual listing arrangements and, where practicable, the need to allow for representations before any decision is made to depart from the usual arrangements in any individual case.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		distribution of court business and a protocol to supplement that framework. The CLC outlined that they would welcome any proposed policy, directions, administrative framework or protocol being developed in relation to the distribution of court business being subject to further public consultation. The CLC stated during oral evidence that it is concerned regarding how decisions will be made determining where court business will be allocated. The CLC was of the view that, in relation to the administrative framework, consideration should not only be given to the facilitation of victims and witnesses in deciding to depart from normal listing arrangements, but that consideration should also be given to the requests of all children involved in cases, including child defendants in criminal cases. The CLC also highlighted in oral evidence that if one of the parties to proceedings had a disability or an issue that made travelling to a certain location difficult that would have to be considered.	The Northern Ireland Courts and Tribunals Service intend to consult separately on proposals to rationalise the court estate. The Department is grateful to CLC for its comments which have been passed to the Office of the Lord Chief Justice. As an over-riding principle, however, it should be remembered that the Children (NI) Order 1995 ensures that the needs of the child are paramount and the court would be required to be mindful of this.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
	Law Society	The Law Society highlighted that it would be important to ensure that a robust set of guidelines is introduced to ensure that the assignment of business takes into account the needs of witnesses, victims and defendants in terms of ensuring a fair process and that although flexibility is welcome, it is important that access to justice is promoted through avoiding unnecessarily long journeys for participants in the court process where possible. In oral evidence the Law Society outlined the example of holding a Youth Court in Belfast and requiring young people from around the country to travel to that Court. The Law Society stated that whilst this would be very cost-efficient for the Court Service, it would be difficult for young people to make travel arrangements. The Law Society highlighted that this could result in adjournments and consequential costs in respect of the legal aid fund.	It is anticipated that the Lord Chief Justice's directions on the guiding principles for the distribution (listing) and transfer of court business will take account of the importance of access to justice and reflect the need for judicial agreement to depart from usual listing arrangements and, where practicable, the need to allow for representations before any decision is made to depart from the usual arrangements in any individual case.
	PPS	The PPS noted the guidance to be issued by the Department of Justice and Outlined that it would expect the guidance to be administered in such a way as to minimise the inconvenience to victims and witnesses. The PPS noted the circumstances where the court could depart from the guiding principle and hoped that such	The Department is grateful to PPS for its comments which have been passed to the Office of the Lord Chief Justice. It is anticipated that the Lord Chief Justice's directions on the guiding principles for the distribution (listing) and

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		considerations would not be given priority over those that are protecting the interests of victims and witnesses.	transfer of court business will take account of the importance of access to justice, reflect the need for judicial agreement to depart from usual listing arrangements and, where practicable, the need to allow for representations before any decision is made to depart from the usual arrangements in any individual case.
Equality Issues	**Children's Law Centre**	The CLC was concerned about the equality implications of Part 1 of the Bill. The CLC outlined that the potential consequences for children who may not be able to attend court, as previously highlighted, are so grave that they constitute a major impact on their enjoyment of equality of opportunity. The CLC noted that in the summary of responses to its Equality Consultation on the Justice Bill, the DoJ states that	The Explanatory and Financial Memorandum that accompanied the Bill indicates that Part 1 of the Bill, together with all of the constituent parts of the Bill (excluding juries) had been screened out as not having any adverse impacts on the s.75 categories. The proposed guiding principles, and reasons for

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		safeguards will be contained in the administrative framework and that a final version will be consulted upon. However, CLC was concerned to note that the DoJ has already rejected the idea of amending the framework to provide that precedence should be given to the needs of young people, on the basis that developing this kind of priority list could create an artificial hierarchy and could fetter the judge's discretion in a way that is unhelpful. The CLC welcomed the prospect of further consultation on these issues and emphasised that it would not wish to see judicial discretion fettered, but rather exercised in a way that has the best interests of all children and young people, be they victims, witnesses or defendants, as a primary consideration as required by Article 3 of the UNCRC.	departure from these, will be set out in directions issued by the Lord Chief Justice which will be subject to further consultation in advance of the implementation of the provisions. The Children (NI) Order 1995 ensures that the needs of the child are paramount. The court would be required to be mindful of this when considering whether, or not, to transfer a case involving a child (whether as a witness or a party to the proceedings). The Department also intends that the operation of the arrangements will be monitored, following implementation, to assess any equality impact.

PART 2: COMMITTAL FOR TRIAL , SCHEDULE 2: AMENDMENTS: ABOLITION OF PRELIMINARY INVESTIGATIONS AND MIXED COMMITTALS AND SCHEDULE 3: AMENDMENTS: DIRECT COMMITTAL FOR TRIAL

Part 2 of the Bill reforms the committal process to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries; provide for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences.

Schedule 2 of the Bill contains amendments consequential to the abolition of preliminary investigations and mixed committals.

Schedule 3 of the Bill contains amendments consequential to the provisions on direct committal.

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Chapter 1 – Abolition of preliminary investigations and mixed committals **Clause 7: Abolition of preliminary investigations.** Clause 7 repeals Article 30 of the Magistrates' Courts	**Law Society**	The Law Society referred to two broad justifications by the Department for proceeding with the proposal to abolish the provision for oral evidence at preliminary investigations and mixed committals. The first was that the impact on vulnerable witnesses of examination at committal proceedings is disproportionate to the usefulness of those proceedings. Secondly, that speeding up the movement to a full hearing removes a layer of bureaucracy and will produce a more efficient system of criminal justice.	The Department notes these comments. Whilst the reform of committal proceedings is expected to streamline procedures and result in some improvement in efficiency, the Department considers that the primary driver behind the reform is to reduce the impact on vulnerable victims and witnesses.

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(NI) Order 1981 ("the 1981 Order") and abolishes the use of preliminary investigations so that all future committal hearings in the magistrates' court shall be by way of preliminary inquiry.		The Law Society outlined that it understands the concern expressed by the Department and the Justice Committee in respect of vulnerable witnesses. However, the Law Society stated that special rules already exist to ensure that vulnerable witnesses are not unduly subjected to the stress of having to give evidence e.g. there are existing provisions to ensure that in cases involving alleged sexual offences, no cross-examination takes place at the PE stage. The Law Society expressed the view that these court rules could be revisited and developed whilst retaining the benefits of oral evidence in committal proceedings.	The Department recognises that special rules already exist to ensure that vulnerable witnesses are not unduly required to give traumatic evidence. Enhancing these rules would not, however, achieve the same policy outcome as proposed by clause 7. Existing rules preclude the giving of evidence by persons up to the age of 17 at preliminary investigations in cases alleging sexual offences and facilitate the giving of evidence (through the use of special measures) by vulnerable and intimidated witnesses at trial. The Department believes that the giving of oral evidence, at committal, by persons (other than the defendant) should not be required and that the proper venue to test the detail of the evidence is at trial.
Clause 8: Abolition of mixed committals: evidence on oath not to be given at preliminary		In oral evidence the Law Society stated that a more measured approach would be if the District Judge had limited discretion to allow the calling of key witnesses where he believes that it is in the interests of justice to do so. The Law Society suggested that this would allow some	The Department notes these comments. It considers, however, that this proposal would risk replicating the existing arrangements as applications to the court to allow the calling of key witnesses could

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Inquiry. Clause 8 repeals Article 34(2) of the 1981 Order so that it will no longer be possible to require witnesses at a preliminary inquiry to give evidence on oath.		element of safeguard but would mitigate any risk that the call for a mixed committal is not abused.	become commonplace. It is worth noting that under clause 7, the District Judge (Magistrates' Courts) will retain their existing power to decide whether a prima facie case against the defendant is disclosed by the evidence. The judge can, therefore, discharge the defendant on the basis that no such case exists.
		The Law Society outlined that it does not support the assertion that committal proceedings necessarily slow down the process of justice indicating that such proceedings offer an opportunity for both the defence and the prosecution to assess the credibility of witnesses.	The Department notes these comments. It takes the view, however, that the purpose of committal proceedings is solely to test whether a prima facie case exists to justify putting the defendant on trial. The correct venue to test the credibility of witnesses is at trial in the Crown Court and not at committal.
		The Law Society stated that an early determination of the strength of a case can produce earlier guilty pleas and the withdrawal of charges where there is insufficient evidence to proceed on one or more counts and highlighted that the earlier in the process such determinations can be arrived at, the higher the	The Department agrees that the earlier that the strength of a case can be determined, the greater the opportunity for swifter resolution. The Department, together with PPS and PSNI, has developed an administrative scheme which is

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		cost savings in the longer term by avoiding a lengthier trial.	currently being piloted in the Crown Court in the Division of Ards which will, *inter alia*, promote earlier engagement between PPS and the defence and reduce the time taken to disclose the strength of the prosecution case to the defence.
		The Law Society expressed the view that the current clauses are flawed and that the Bill should have focused on a duty to balance the needs of vulnerable witnesses with the requirement to ensure efficient committals and that it should not be assumed that simply removing a step in the process of justice will necessarily lead to cost savings.	The Department notes these comments. It believes, however, that the clause strikes an appropriate balance between protecting the needs of vulnerable victims and witnesses, and continuing to safeguard a defendant's right to a fair trial.
		The Law Society suggested that a thorough cost-benefit examination is required to arrive at that judgment and that this supports the view of the Society that a fundamental review of the justice system is required to identify how to maximise efficiency and access to justice. It stated that such an approach would avoid short-term policymaking, taking a longer-term view and prioritise an evidence base.	The Department notes these comments. Committal reform represents part of a package of measures to improve services for victims and witnesses, speed up the justice system, and improve its overall efficiency and effectiveness. This programme of reform will reach into the next mandate. Whilst it is expected that committal reform will result in some efficiency gains and

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			cost savings, this is not the primary driver for the reform.
		In oral evidence the Law Society outlined that, when the Committal Stage is reached, papers are served so that the defendant is aware of what case he faces. The Law Society suggested that if committal is to be abolished there has to be a fair procedure within that structure to ensure that the defendant is ultimately aware of what case he is actually facing.	The Department agrees with this. Clause 13 of the Bill provides that, where a person is directly committed for trial to the Crown Court, the prosecution must serve the documents containing the evidence on which the charge is based on the defendant and the Crown Court upon committal, or as soon as practicable thereafter.
	Public Prosecution Service	The PPS welcomed the changes to the committal process in the criminal courts and in particular the abolition of preliminary investigations and mixed committals. In oral evidence the PPS outlined the view that it could result in an eight-to-ten week saving in the trial process.	The Department notes these comments.
		The PPS outlined that it had previously indicated in correspondence dated 26 October 2012 to the Minister of Justice that the proposals in the Bill are more limited than it would have wished. The PPS outlined that it recognised that Committal reform is a staged	The Department recognises that the PPS would have wished that the proposals had gone further than those in the Bill, and wishes to reinforce the Minister's ultimate intention to abolish committal

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		process but stated that the PPS position in respect of committal proceedings remains that they should be abolished altogether.	proceedings. The current proposals are, however, a proportionate approach to achieving that aim in the longer-term.
		In oral evidence the PPS stated that this aspect of the Bill is limited in two specific ways – it applies only to the question of cross-examining witnesses and leaves in place the committal procedure. The PPS indicated that it cannot see why the committal procedure is left in place in a situation where the right to call witnesses is being abolished. By not abolishing committals altogether, there remains in place an additional process in the trial procedure which it believes, ironically now that the right to call witnesses is abolished, is even more unnecessary that it was when that right existed.	The provisions on committal reform propose a package of measures and relate not only to the abolition of the use of oral evidence but also to the direct transfer of certain offences to the Crown Court without committal (starting with murder and manslaughter) and of cases where the defendant indicates an intention to plead guilty. Although committal *per se* will be retained in the remainder of cases, it should be noted that all such proceedings will take place by way of preliminary enquiry, or "on the papers", significantly reducing the time taken to conclude these matters. The Minister has indicated that he is in favour of the outright abolition of committal but only when the system has the capacity to support this. The

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			Department is also mindful of the experience in England and Wales when the abolition of committal was achieved over a decade and within a programme of associated supporting structural reforms. The Department believes that the staged abolition of committal, including the retention of a streamlined committal procedure for the remainder of cases for an interim period, is the correct approach.
		The PPS stated that the new process will allow the defence to seek disclosure, to make applications for abuse of process and to make an application to a district judge not to return the case. It will require the Public Prosecution Service to staff a lawyer to go through that process, and it will take time. The PPS also highlighted that there is another process in sending it to the Crown Court, where it will begin all over again, applications for abuse of process can be renewed, applications for disclosure can be renewed and an application for a no bill, for example, can be made. The PPS suggested that defendants will effectively get "two bites at the cherry". The PPS stated that it was not aware of any construction of	The Department notes these comments but would also note that the provisions in the Bill will not impose any new duties or burdens upon the PPS as the position for the remainder of cases will be the status quo. In some ways, the effect of the reforms proposed by Part 2 Chapter 2 of the Bill will reduce the burden on the PPS as mixed committals and preliminary investigations will be abolished and direct transfer for murder/ manslaughter/ guilty pleas should free up capacity to prepare for

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		human rights jurisprudence that allowed a person to have it twice. In its view it is a luxury and a historical anomaly that no longer exists in the GB jurisdictions and is expensive for the public purse, not only with the extra cost to legal aid, but with the burden that it puts on the Public Prosecution Service.	preliminary inquiry (PE) proceedings in the remainder of cases.
		The PPS also stated in oral evidence that one of the benefits of automatic or straight referral to the Crown Court in all indictable cases is that management at the early stages of the case will then be carried out by the court of trial rather than the lower-tiered court. The PPS suggested that this would concentrate the minds of all those preparing the papers much more stringently if the court of trial is the court putting on the pressure with regard to progress.	The Department recognises the benefits of active case management and agrees in principle that the court of trial might more robustly manage case preparation. Indeed, this is one of the drivers behind the proposal to transfer directly murder and manslaughter cases to the Crown Court. The Department is, however, mindful of the need not to create capacity issues in the Crown Court and, therefore, proposes the gradual increase of the range of offences that can be directly transferred, once it is satisfied that the system as a whole can cope with this.

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		In relation to disclosure, the PPS stated that the law on disclosure is very clear. The prosecution has a duty to disclose anything that is of assistance to the defence and detrimental to the prosecution and it is constantly reviewed and the trigger for the second review is when the defence declares its hand. Therefore if this is earlier in the process then disclosure can occur earlier. The PPS outlined the view that abolishing committals could also benefit defendants.	The Department has noted these comments. In relation to the proposal for the direct transfer of murder and manslaughter cases, Schedule 3 paragraph 8 of the Bill amends the disclosure provisions within the Criminal Procedure and Investigations Act 1996 to provide that defence disclosure is triggered by the service of documents on the defence by the PPS, following transfer to the Crown Court.
	Victim Support NI	Victim Support welcomed the intention to repeal article 30 of the Magistrates Courts (NI) Order 1981, which enables a magistrates' court to conduct preliminary investigation of an indictable offence. Victim Support outlined that it has long been of the firmly held opinion that the abolition of preliminary investigations and mixed committals would represent a significant step in addressing some of the considerable trauma and distress experienced by victims and witnesses of crime during the court process. Victim Support stated that the experience of being cross-examined is highly stressful when it	The Department notes these comments. The Department notes these comments. The Department notes these comments.

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		occurs on one occasion, but to then be required to give your evidence again compounds the anxiety and is contrary to the interests of justice.	
Chapter 2 – Direct Committal for trial in certain cases **Clause 11: Direct committal: indication of intention to plead guilty** This clause makes provision for the direct committal (without conducting committal proceedings) of an accused person to the Crown Court who wishes to plead guilty to an offence	**PPS**	The PPS noted the provisions for direct transfer for trial of cases where an indication of an intention to plead guilty has been made and for specified offences. The PPS outlined concerns around the provisions for the direct transfer of specified offences. The PPS highlighted that the Bill as currently drafted does not provide that where a defendant faces charges in addition to the specified offences or where a co-defendant is charged with a non-specified offence that those additional charges or the co-defendant can also be directly transferred to the Crown Court.	The Department notes these comments. In relation to the circumstance where a defendant faces charges in addition to "specified" charges, the Department sought advice during policy development from the PPS in 2013. The PPS responded to say that this was not an issue and is covered by existing practice. We have confirmed again with PPS that existing law provides for any indictable offence disclosed by the evidence to be added to an indictment and, accordingly, the Bill makes provision to ensure that these arrangements are attracted to the new proposals on direct committal. PPS have now expressed themselves content with this aspect.

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Clause 12: Direct committal: specified offences This clause provides for the direct committal to the Crown Court for trial where an accused person is charged with a specified offence		The PPS outlined the view that it is in the interests of justice to permit the additional charges or the charges faced by a co-accused to be prosecuted at the same time as the specified offence so a jury can hear all the relevant evidence. The PPS was concerned that there is no structure to allow this to happen contained within the Bill. The PPS outlined that whilst the specified offences at this time are limited to the offences of murder and manslaughter it noted that provision exists at Article 12(4) for the list of specified offences to be expanded. The PPS expressed the view that should the limited reform proposed prove successful in reducing delay without prejudicing defendant's rights that the list of specified offences can be expanded. In oral evidence the PPS stated that it welcomed that very serious cases can now be directly transferred to the Crown Court judges, but in its view, other serious offences would benefit from immediate transfer to the Crown Court and should be included. The PPS stated that in those cases that do	The Department is exploring this point with the PPS and Office of the Lord Chief Justice with a view to considering a suitable amendment and will provide an update to the Committee in our oral evidence sessions. The Department notes these comments. The Department notes these comments. As earlier stated, outright abolition is the Department's ultimate aim, but only when the system has capacity to cope.

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		directly transfer, robust case management will be essential.	The Department agrees with this. It is intended that the introduction of statutory case management will support the judiciary's role in actively managing case preparation.
	Victim Support NI	While Victim Support could see potentially significant benefits arising from the process of direct transfer, particularly in relation to effective case management and speeding up justice, it appreciated there may be an initial need to assess the overall impact on the system of these changes and therefore had no fundamental objection to a staged and gradual transition beginning with murder/manslaughter cases. Ultimately however Victim Support wished to see Committal proceedings abolished in all cases.	The Department has noted these comments. As noted earlier, the outright abolition of committal is the Department's ultimate aim once it is clear that the system has the capacity to cope with this change.

PART 3: PROSECUTORIAL FINES

Part 3 of the Bill creates new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine), as an alternative to prosecution of the case at court.

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General Comments	**Public Prosecution Service**	The PPS stated that the option for a prosecutor to offer an offender a prosecutorial fine is something it believes has the potential to reduce the number of cases of low level offending that go to court and result in small fines but at the same time take up valuable court and prosecutor time to no apparent benefit and require an offender to attend Court or retain the services of a solicitor to represent them.	The Department notes these comments.
	NIACRO	NIACRO welcomed proposals to divert people from the courts process which it stated can have a detrimental financial and emotional impact. However, in its view, many of the people who currently receive fines for minor offences or for civil matters should, as an alternative, be offered appropriate intervention on a voluntary basis at an early stage and be diverted out of the Criminal Justice System altogether. NIACRO outlined that using financial penalties in lieu of prosecution will mean that people who don't have the financial	The prosecutorial fine is designed as a disposal for low-level non-habitual offending giving an offender the opportunity of accepting a prosecutorial fine and avoiding a criminal record rather than going to court.

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		capability to pay will be discriminated against and will be more likely to end up with a criminal record. NIACRO outlined that for many people, under the present arrangements, it just doesn't make sense to pay. For example, for those individuals who have been in and out of prison in the past, their choice is between either paying a fine out of a limited income, or going into prison for a relatively short period of time. Going into prison may well be the 'lesser of two evils' or the easiest choice to make. NIACRO suggested that for others who are still appearing before the courts on other matters and there is perhaps a likelihood of imprisonment in the near future, it might make sense for them to have the fine warrant lodged at the same time so that the required period of time can be served concurrently with their sentence. NIACRO recommended that any legislative proposals to improve the system needs to recognise the choices individuals will make depending on their particular circumstances; and any improvements to the system must also make sense to and appeal to, the	Prosecutorial fines will be subject to existing procedures in place for the administration of fines. It was not seen as efficient or effective to design a proprietary payment system for the prosecutorial fine in isolation, however, the forthcoming Fines and Enforcement Bill will enable the recipient of a prosecutorial fine to avail of the revised fine collection and enforcement arrangements which will be provided in that legislation.

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		individuals concerned.	
	NI Policing Board	The NI Policing Board outlined that while developments in the youth sector (e.g. the introduction of Youth Engagement Clinics) are aimed at making out of court disposals more restorative and targeted at reducing re-offending, the same approach does not appear to be being taken in respect of adult offenders. The Board stated that although prosecutorial fines for adults will assist with reducing delay in the criminal justice system, they do not appear to require prosecutors to consider the causes of offending behaviour or to make referrals to appropriate support services. The Policing Board expressed the view that this could potentially be a missed opportunity and suggested that the Justice Committee may wish to consider whether there is scope to make the fines more restorative in nature. It suggested that even if the view is reached that prosecutorial fines do not provide the correct vehicle for offering a restorative alternative to prosecution, it is an issue that the Justice Committee may wish to discuss during its deliberations on the Justice Bill.	The Department notes these comments. The prosecutorial fine is intended to be an easily managed diversion giving offenders the opportunity to avoid a criminal record by paying a fine for low level offending. As a fine disposal for low level and non-habitual offending, it was not considered that prosecutorial fines offer an appropriate vehicle for restorative interventions.

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		The Board outlined that it has held discussions with relevant agencies (including DOJ) in relation to the Hull triage model, which although developed initially for young offenders, was extended to include female adult offenders with reported positive results as regards reoffending rates.	The Department notes these comments.
	Women's Aid	Women's Aid stated in oral evidence that if prosecutorial fines applied to domestically motivated offences it could send a message to perpetrators that they can act with impunity or reinforce the "it's just a domestic" myth that society holds dear. Women's Aid highlighted that it could also make it more difficult for something like Claire's law, which is the disclosure law in England, to be implemented in Northern Ireland because many perpetrators would not have a criminal record with which to reference for women seeking information about serial perpetrators. Women's Aid also stated that it could deter victims from coming forward if it resulted in only a fine.	The prosecutorial fine is intended for use with first time and non-habitual low level offending. The Department expects that the underpinning guidance which will be consulted upon and produced by the PPS will provide that the disposal will not be suitable for offences involving domestic violence.
Guidance for offenders	**NIACRO**	NIACRO recommended that the PPS publishes guidance for individuals who have been offered a prosecutorial fine and that the guidance must be published and subject to full	The prosecutorial fine will be operated within detailed internal guidance which will be subject to consultation. In addition, offenders will be fully

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		public consultation before this part of the Bill is enacted. NIACRO suggested that it should outline: • the prosecutorial fine process; • what a low level summary offence is; • in what scenarios the fine will be offered; • outline the obligation of the prosecutor to explain what the fine is; • the long terms impacts it could have; • the alternatives available to not paying the fine; • what the record on the fine will be used for; and • who can access the record including clarification of how or whether the record of the fine could be accessed by the PSNI or AccessNI as, where non-conviction information has been wrongfully disclosed, it can lead to people being denied access to education, training, employment and other services.	informed of the details of the process and of the implications of accepting a prosecutorial fine.

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Recording of Prosecutorial Fines and Filtering Arrangements	**NIACRO**	NIACRO highlighted that on page 18 point 77 of the Explanatory Memorandum, it states that a person will avoid a formal criminal record if the prosecutorial fine is accepted and paid; however, the justice system will retain a record of such disposals to inform decisions on any future offending by the recipients of prosecutorial fines. NIACRO recommended that clarification is given about how long this information will be disclosable for and under what circumstances. NIACRO highlighted that information such as this (non-conviction) can be disclosed in an Enhanced Disclosure Check for certain convictions and if the aim of a prosecutorial fine is to divert people from entering the Criminal Justice System and getting a criminal record, retaining this information would constitute that they have some sort of record (informal). NIACRO indicated that for certain convictions, there are rehabilitation periods after which they become spent and aren't disclosable anymore. NIACRO recommended that clarification is needed about whether prosecutorial fines will be subject to the new filtering arrangements.	Although a formal criminal record will not result from receipt of a prosecutorial fine, a record of the disposal will be accessible by organisations within the criminal justice system, as part of an individual's criminal history, to inform future decision making in the event of further offending by a prosecutorial fine recipient. Receipt of a prosecutorial fine could only be disclosed as part of an enhanced check, if relevant. Prosecutorial Fine records will be dealt with similarly to the police issued fixed penalty ("PND") as regards disclosure, and will be subject to any policy developed in relation to retention and disclosure of records. Those offered a prosecutorial fine will be provided with all relevant information to enable them to make an

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		NIACRO was of the view that there should be a duty on the solicitors and the legal profession to make the defendant aware of the potential impact that accepting a prosecutorial fine could have e.g. it could show up on an Enhanced Disclosure Certificate. NIACRO suggested that by making their client aware, the client can make an informed decision about what course of action to take. NIACRO also highlighted that people also need to be made aware that if they default on the fine, it will become a court ordered fine, which is a conviction and is disclosable under the Rehabilitation of Offenders legislation. NIACRO highlighted that non - conviction information can result in barriers to an individual's employment and that its experience shows that for those seeking training and employment, education or placement providers may choose to cancel offers of enrolment on a course or of employment on the basis of non-conviction information.	informed choice on acceptance or refusal of the offer, and will explain in detail the consequences of failing to pay the fine. The Department notes these comments.

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	Public Prosecution Service	The PPS outlined that it had no comment to make on the proposal that a prosecutorial fine would not result in a criminal conviction but that it considered that a record of the imposition of a prosecutorial fine should be recorded in the same way as cautions are.	The Department notes these comments.
Equality Issues	**Law Society**	The Law Society stated that there needs to be an awareness of equality issues arising under Section 75 of the Northern Ireland Act 1998. The Law Society highlighted that given that these penalties do not attach to an offender's record, access to them should be fair and equal to avoid injustice. The Society expressed the view that there may be some issues for example in relation to sections of the community building relationships with the criminal justice system and care should be taken to ensure that no inequalities arise from the issue of prosecutorial fines. The Law Society expressed the view that these issues could be resolved through published guidelines regulating the use of prosecutorial fines along with a commitment to review their uptake across the system. It suggested that it would be preferable if the Bill required a review mechanism and identified	Acceptance of a prosecutorial fine is voluntary, and it may not be issued without an alleged offender's consent. Evidence gathered during the equality assessment of prosecutorial fines suggests that any alteration to policy on offending in Northern Ireland is likely to have a differential impact upon male offenders, and younger offenders aged 18 to 29. Younger males are more likely to commit crime than any other group and prosecutorial fines will impact on these section 75 groupings as it does in relation to existing criminal law penalties for the same offences. Prosecutorial fines will however offer a more beneficial impact than existing criminal penalties in that, where accepted, individuals will not receive a criminal record which might

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		criteria which could be used to assess the use of these disposals. Relevant factors could include the history of the offender, the impact on victims and possibility of diversionary approaches.	otherwise have an adverse impact on their future life choices. Prosecutorial fines will be operated according to detailed guidance consulted upon and provided by the Director of Public prosecutions, and will be subject to periodic evaluation.
Clause 17: Prosecutorial fine: notice of offer This clause empowers a prosecutor to issue a notice offering an alleged offender over age 18 a prosecutorial fine for one or more summary offence(s) and specifies the information which the notice must contain. The notice of offer will indicate that refusal of the offer may	**Attorney General**	The Attorney General indicated that where a person is accused of a number of summary offences arising out of the same circumstances, a prosecutorial fine notice can only be offered in relation to *all* the offences and the person cannot accept a fine for one offence and proceed to trial on others (Clause 17(2)). The Attorney General stated that his understanding is that this arrangement is to avoid a prosecution for an offence being hampered by the suggested inability to refer at trial to the evidence relating to a separate offence, arising out of the same circumstances, for which a fine has been accepted. He suggested that there may be some concern about a person being unduly pressured to accepting responsibility for one of the offences which they would otherwise have defended given the certainty of avoiding a conviction via a prosecutorial fine.	Prosecutorial Fines are designed to be offered as a diversionary measure; they are intended to divert an alleged offender from a court prosecution because he does not have a history of criminality and the offence(s) are comparatively minor. PPS advise that it has never been the case that prosecutors make split decisions - for example, prosecuting for some offences and cautioning for others in the same case. The decision is taken on the totality of the offences either to prosecute the offender or divert him from involvement with the courts by using a different sanction. It is accepted that there is always a possibility that an alleged offender

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result in prosecution for the offence, and that acceptance of the offer discharges the alleged offender's liability for that offence. The alleged offender is given 21 days to accept or reject the offer, and no further proceedings may be undertaken during this 21 day period. If the prosecutorial fine notice of offer is accepted, then a prosecutorial fine notice will be issued.		The Attorney General stated that there is no reason in principle why provision cannot be made to enable relevant evidence to be used despite the acceptance of a prosecutorial fine, if the person is to be prosecuted for an offence arising out of the same circumstances.	may accept the penalty in cases where he is not convinced of his guilt to avoid the risk of conviction at court. This possibility is present whether a single or multiple offences are at issue. Alleged offenders will be fully advised of the implications of accepting or declining the offer of a prosecutorial fine, so as to allow them to make a fully informed decision about their options.
	Law Society	The Law Society outlined that it does not object in principle to the appropriate use of discretionary disposals as a means of expediting the process of justice for less serious offences. However, the Law Society expressed the view that strong accountability mechanisms should be put in place to ensure that these penalties are not used excessively	The operation of prosecutorial fines will take place within a detailed framework of guidance, and within existing PPS accountability mechanisms.

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		or inappropriately. The Law Society added that these are quasi-judicial powers being vested in the PPS and that it is important to stress that our justice system works on the basis of a number of checks and balances placed on the prosecutorial power of the State. In oral evidence the Law Society stated that care should be taken that the notices are not considered as something akin to paperwork and that there are only so many a person can receive before they lose all credibility. The Law Society suggested that evidence indicates that there has been an inappropriate use of discretionary disposals in dealing with offences at a level of seriousness beyond their intended remit. Accordingly, it highlighted that it is important that the perception is not created that these disposals will be used as a means of producing more favourable statistics. Such a perception would damage the confidence of victims of crime in the justice system, a key focus of this Bill. The Law Society stated that this is an example of a set of circumstances in which a "just outcome" may require greater time and resources to achieve. The Law Society indicated that the risk of	The prosecutorial fine is designed as a disposal for low-level non-habitual offenders, and is not intended for use with serial or serious offenders.

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		inappropriate use is increased in circumstances of multiple offences and that the PPS should develop a transparent and tiered approach to the application of prosecutorial fines and other discretionary disposals. The fact that such offences subject to these disposals are not disclosed through standard criminal record checks renders the need to guarantee their appropriate use more important. The Law Society was concerned that there is no limitation on the face of the Bill to the number of prosecutorial fines that may be issued to a single offender. It stated that the over-use of prosecutorial fines for repeat offenders may undermine their credibility as a tool in the armoury of the PPS. It suggested that although the legislation leaves much to the discretion of the PPS, some clear guidelines need to be forthcoming to confine the use of prosecutorial fines to appropriate circumstances. The Law Society suggested that although the Bill provides for enhanced fines for those defaulting on payment, it does not specify any limitation on receipt of prosecutorial fines for	The Director of Public Prosecutions will produce detailed guidance on the operation of the disposal. The guidance will stipulate the circumstances in which a prosecutorial fine may and may not be issued, and any instances of a prosecutorial fine having been issued previously to an alleged offender will be taken into consideration.

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		those with outstanding arrears. It stated that it is important that these disposals retain credibility and deterrence and this is an area which could be looked at either through amending the Bill or in terms of guidelines following implementation. In oral evidence the Law Society stated that care should be taken with the 21-day period taking effect from the point of service, rather than the point of issue as a scenario could arise where the Public Prosecution Service has issued a notice of offer but the defendant has moved away, is in hospital or is incapacitated.	Prosecutorial fines will initially operate within existing arrangements. The broader issue of fine management is to be addressed in the forthcoming Fines and Enforcement Bill.
	Children's Law Centre	The CLC stated that it is supportive of the fact that Clause 17 makes it clear that a prosecutorial fine cannot be offered unless the alleged offender was over 18 at the time of the offence(s). The CLC outlined that it has previously expressed serious concerns about the payment of money by young people for low level offending and minor offences, believing there is potential for the payment of money to disproportionately impact on groups with very low incomes who are already living in socially	The Department notes these comments.

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		deprived areas who may not possess the means to pay. The CLC referred to the concerns expressed by NIACRO about the use of fixed penalty notices for young people and that organisation's view that fines are neither an effective deterrent or an effective punishment for many and the punishment will instead fall to parents.	The Department notes these comments.
	NIACRO	NIACRO indicated that no definition has been given in the legislation for what is meant by a 'low level summary offence'. NIACRO recommended that a low level summary offence is clearly defined in the secondary guidance and reviewed regularly to an agreed timescale. NIACRO also highlighted that the person who is alleged to have committed an offence has the right to due process and justice and that they can choose not to accept the prosecutorial fine notice and go to court and challenge it. NIACRO expressed the view that anyone in contact with the Criminal Justice System has the right to seek legal advice before accepting a disposal.	A prosecutorial fine offer will be made by a prosecutor on consideration of the merits of each individual case. A precise definition is not provided as suitability will be determined not only by the specific offence, but the full circumstances of a case. Anyone in receipt of a prosecutorial fine offer will be advised that acceptance of a fine is entirely voluntary and that they may seek legal advice if they so wish.

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	NI Policing Board	The NI Policing Board suggested that the Committee considers adding to the notice of offer for a prosecutorial fine at Clause 17 and make it a requirement that the notice recommends that the offender seeks independent legal advice before accepting the offer. The NI Policing Board highlighted that by admitting to the offence out of court, the offender might avoid receiving a 'criminal conviction' per se, but presumably the fact they have admitted the offence means it could still be used against them as evidence of previous history should they go on to reoffend and it could also potentially be disclosed through an enhanced criminal record check. The NI Policing Board also suggested that the notice should clearly set out the consequences of failing to pay the fine once it has been accepted. The NI Policing Board noted that in giving evidence to the Justice Committee in June 2014, DOJ officials advised that the fines will be used "for low-level summary offences by non-habitual offenders who admit responsibility in cases that would currently go to court and,	An alleged offender in receipt of a prosecutorial fine has 21 days to consider the offer and is entitled to seek legal advice if they so wish. The prosecutorial fine offer and notice documents will ensure that recipients of a prosecutorial fine will be provided with all the information they require to make an informed decision, and will inform recipients of the consequences of failing to pay the fine. The Director of Public Prosecutions will produce detailed guidance on the operation of the disposal. The guidance will stipulate the circumstances in which a prosecutorial

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		most likely, result in a fine in any event." The NI Policing Board highlighted that the Bill does not however appear to limit use of the fines to first time or non-habitual offenders. The NI Policing Board stated that it would be concerned if repeat offenders were continually being offered a fine and that some degree of assurance as to how DOJ intends to safeguard against this would be welcome.	fine may and may not be issued, and any instances of a prosecutorial fine having been issued previously to an alleged offender will be taken into consideration.
	Northern Ireland Human Rights Commission (NIHRC)	The NIHRC noted that clauses 17 – 27 of the Bill will make provision for prosecutorial fines and highlighted that the Treaty bodies of the United Nations have continually recommended that the UK address the over use of imprisonment for low level offenders - the UN Committee against Torture has urged the UK Government: *"to strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment…".*[1]	The Department notes these comments.

[1] Committee Against Torture 'Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) Para 30

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		The Commission suggested that, in light of the UNCAT Committee's recommendation, the Justice Committee should enquire as to the impact the provision of prosecutorial fines will have upon the number of persons imprisoned in Northern Ireland annually. The Commission also advised the Justice Committee to enquire how this impact will be monitored and that monitoring should include the number of occasions upon which a non-payment has occurred and what enforcement action has been taken.	The forthcoming Fines and Enforcement Bill will provide potential defaulters with additional ways to pay, and assist people avoid getting into arrears or default in the first instance. If arrears occur, the Bill will provide ways in which debts can be cleared and imprisonment avoided. This will include opportunities for supervised activity in the community instead of imprisonment. We do not expect the prosecutorial fine to have a significant effect on prison numbers, as those who receive a prosecutorial fine in future would likely have been fined at court under existing arrangements in any event.
Clause 18 Prosecutorial fine notice This clause is engaged if an	**NI Policing Board**	The NI Policing Board suggested that the offer document itself should both clearly set out the consequences of failing to pay the fine once it has been accepted.	The prosecutorial fine offer and notice documents will ensure that recipients of a prosecutorial fine are provided with sufficient information to make an informed decision and will explain in detail the consequences of failing to

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offender accepts the offer of a prosecutorial fine.On receipt of acceptance of a prosecutorial fine offer, a prosecutor must issue a prosecutorial fine notice to an alleged offender, containing details of the offence and how payment of the fine may be made. The clause requires payment of the fine within 28 days of the date of issue of the notice, and requires the prosecutor to alert the fines clerk that a fine notice has been issued			pay the fine.
	Northern Ireland Human Rights Commission	The NIHRC suggested that the Committee could consider an amendment to Clause 18, which provides for payment within 28 days and	The prosecutorial fine uses existing fine procedures, which do not provide for the facility suggested. The

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	(NIHRC)	add words to the effect of "or otherwise a period as deemed reasonable in the circumstances".	forthcoming Fines and Enforcement Bill will, however, address this and other issues with fine collection and enforcement more generally.
	Law Society	In oral evidence the Law Society highlighted that there is no provision for an extension of the period allowed to pay the fine. The Law Society suggested that this does not reflect the current situation as currently if the defendant shows he is of limited means he can seek an extension beyond four weeks.	The forthcoming Fines and Enforcement Bill will provide potential defaulters with additional ways to pay, and assist people to avoid getting into arrears or default in the first instance. If arrears occur, that Bill will provide ways in which debts can be cleared and imprisonment avoided. This will include opportunities for supervised activity in the community instead of imprisonment.
Clause 19: Amount of prosecutorial fine This clause defines the amount of the prosecutorial fine as the total of the amount determined by the prosecutor plus a £10 offender levy. The clause also	**PPS**	The PPS welcomed in principle the introduction of prosecutorial fines but suggested that, given the number of non-court disposals which the PSNI can offer for low level offending a smaller number of low level cases are being submitted to the PPS for decision. If the power to offer prosecutorial fines is one that is to be of significant benefit to the Public, the PPS and the Courts it must be designed in a way that captures not only all those low level cases in which a monetary penalty alone could be imposed but also all the low level road traffic cases in which mandatory	The Department recognises that enabling a prosecutor to issue penalty points in conjunction with a prosecutorial fine may be a valuable addition to existing out of court disposals. It was agreed at the policy development stage by a Steering group comprising DOJ, PPS and Court Service officials that traffic penalties would not form part of the prosecutorial fine disposal, and the

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provides that in the case of an offence of criminal damage the prosecutor may also order an amount of compensation in respect of damage caused to be paid to a victim. The clause sets the maximum value of a prosecutorial fine at £200 (level 1 on the standard fine scale) and the maximum compensation at £5000 (the maximum compensation awardable in a Magistrates' court).		penalty points would be imposed at a court hearing. The PPS therefore suggested that prosecutors should, in addition to the provisions to offer a fine and in appropriate cases compensation to an offender, have the power to offer penalty points to an offender in those cases where there are mandatory penalty points attached to an offence and the Bill should be amended to provide for this. In oral evidence the PPS stated that, in its view, a large number of low level offences would be low-end traffic offences. A number of these, for example, driving without undue care and attention, carry a mandatory three points. If the PPS does not have the power to offer penalty points it would preclude those offences being dealt with under these provisions.	issue was therefore not investigated further as a part of the policy process. The responsibility for traffic penalties currently lies with the Department of the Environment, and the Department of Justice will explore with them the possibility of developing the suggested powers. Due to the requirement for cross-departmental cooperation and agreement, and the possibility of a requirement for public consultation, it is not currently thought feasible to incorporate these additional powers within the necessary timeframe in the current Bill.
	Northern Ireland Human Rights Commission	With respect to the procedure set out in the Bill, the NIHRC noted that under clause 19 in determining the amount of a prosecutorial fine a Public Prosecutor must have regard to the	The prosecutorial fine is intended as an out of court disposal which allows for an efficient way to deal with low-level and non-habitual offending.

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		circumstances of the offence, but not to the circumstances of an offender and their ability or inability to pay. The Commission noted that under ICESCR, Article 11 the State must guarantee to everyone an adequate standard of living. The Commission advised the Justice Committee to consider if Clause 19 should be amended to provide that a Public Prosecutor must have regard to the circumstances of an offender.	As with similar alternatives to prosecution, provision is not made for an assessment of the means of an alleged offender. Inclusion of this level of complexity would reduce its usefulness as an appropriate disposal for low level offences. An alleged offender can choose to decline the disposal. The broader issue of fine management will, however, be addressed in the forthcoming Fines and Enforcement Bill.
	NIACRO	NIACRO stated that, in its response to the DOJ Consultation on Fine Collection and Enforcement, it recommended that for those individuals who are unable to pay a fine in the first place, they should be offered the opportunity to complete a Supervised Activity Order (SAO) as a direct alternative to paying the fine. NIACRO suggested that it should not be an alternative to going into custody for non-payment of a fine. NIACRO recommended that an SAO should be offered as a direct alternative for payment of fines up to £500	The forthcoming Fines and Enforcement Bill will provide potential defaulters with additional ways to pay, and assist people avoid getting into arrears or default in the first instance. If arrears occur, the Bill will provide ways in which debts can be cleared

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		given that 86% of fines imposed are for less than £500 and 90% of people defaulting on fines do so for amounts less than £500. NIACRO suggested during oral evidence that it has looked at models whereby a referral would be made to someone who had a duty in court, a third-party provider, to assess means and incomes. NIACRO suggested that imposing repeat fines is clearly not addressing the offending behaviour and recommended that the courts should be able to direct people to complete an appropriate SAO as an alternative to a payment of a fine. NIACRO added that the DOJ consultation on Fine Collection and Enforcement stated that "those participating agreed that the SAO had a deterrent effect and if the same situation arose in the future they would pay the fine" and that this comment appears to suggest that completing the SAO would effectively deter a person from defaulting on their fine in future. NIACRO stated during oral evidence that there are other ways of people providing payback. It stated that the Republic of Ireland and Scotland are running quite significant payback	and imprisonment avoided. This will include opportunities for supervised activity in the community instead of imprisonment. See above comment.

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		schemes which have been well received by the public and which offenders are engaging with positively. NIACRO recommend that an SAO (which will be established in statute in the forthcoming Fines and Enforcement Bill) should be purposeful and relevant and that it should be related to the original offence, proportionate, and contribute towards desistance from offending. NIACRO recommended that, for example, if a person has been fined for an alcohol related offence, which is common, they could be directed to complete an Alcohol Awareness programme or if a person is experiencing difficulty managing money they could participate in an accredited Managing Money Matters programme. NIACRO stated during oral evidence that there should be measures which have a restorative element which are diversionary and which keep people out of the high-cost end of prison.	As a fine disposal, it is considered that a prosecutorial fine does not constitute an appropriate vehicle for a restorative approach.
Clause 21 Clause 21 sets out the detailed	**NIACRO**	NIACRO welcomed the fact that the recovery of prosecutorial fines will use existing court fine recovery mechanisms. NIACRO suggested that the new Service should carry out a	

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arrangements for the payment of a prosecutorial fine. Sums paid by way of a prosecutorial fine for an offence are treated as if they were fines imposed on summary conviction of that offence to allow the use of existing court fine recovery and compensation payment mechanisms.		financial assessment so that the individual's responsibilities in respect of his/her self and his/her dependents are taken into consideration before a fine is given. NIACRO also welcomed the proposals to establish a civilian based approach to fine collection instead of a police arrest warrant approach. NIACRO outlined the view that it would be appropriate for the Fine Collection Service to become involved as a first step where a fine has been imposed, offering the opportunity to complete a Supervised Activity Order (SAO) to those for whom payment of a fine is unrealistic. NIACRO added that the service could use positive measures such as extending the time available to pay; making arrangements to pay by instalments; and issuing reminders when a fine is overdue, which have already been shown to be useful in reducing default.	The forthcoming Fines and Enforcement Bill will provide for the establishment of a Fine Collection and Enforcement Service, with powers to provide potential defaulters with additional ways to pay, and assist people avoid getting into arrears or default in the first instance. If arrears occur, the Bill will provide ways in which debts can be cleared and imprisonment avoided. This will include opportunities for supervised activity in the community instead of imprisonment.
Clause 22 Clause 22 details the process to be undertaken if a prosecutorial fine is	**NIACRO**	NIACRO suggested that in relation to defaulting on the payment of fines imposed for minor offences or for civil matters - it should not result in imprisonment. NIACRO outlined that it is estimated that a four day committal to prison costs £3,000 per person and this	

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unpaid when the 28 day period allowed for payment has elapsed. In this case the fine is increased by 50% and the total amount is pursued as a court fine. Only the fine and offender levy elements are increased, the compensation element (if any) is not.		doesn't include the financial cost to families and children. NIACRO referred to examples of people being imprisoned for not paying penalties as little as £5 and £10 and stated that the cost of sending people to prison for such minimal amounts is grossly disproportionate to the cost of the original fine, to the detriment of the person imprisoned, their family and the Criminal Justice System. NIACRO stated that it recognised that the practice of automatically imprisoning fine defaulters is currently on pause, and recommended this policy is clarified and formalised. NIACRO outlined that under these proposals, failure to pay a prosecutorial fine is likely to lead to enforcement and the possibility of imprisonment for a matter which the Public Prosecution Service initially regarded as a low level summary matter. NIACRO was concerned that this could regress recent progress in fine default and could have far reaching negative consequences which could be regarded as disproportionate to the seriousness of the original offence.	See above comment. See above comment.

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	Law Society	In oral evidence the Law Society highlighted that the enhanced sum is calculated as being one and a half times the amount of the prosecutorial fine but that this does not take into account that it may have been paid in part.	The payment system currently in place for the prosecutorial fine makes no provision for part payment of the fine at that point in the process. The fine amount must be paid in full.

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PART 4: VICTIMS AND WITNESSES

Part 4 of the Bill improves services and facilities for victims and witnesses by providing for the establishment of statutory Victim and Witness Charters and providing a statutory entitlement to be afforded the opportunity to make a victim personal statement.

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General comments	**Children's Law Centre**	The Children's Law Centre (CLC) indicated that it was broadly supportive of this Part of the Bill seeing its potential to improve the experience of child victims and witnesses within the criminal justice system. The CLC did however state that there were other issues to be considered and taken forward in relation to child victims and witnesses outside of the measures outlined within the Bill. These included ensuring that children who are victims of crime can recover from their experiences through the provision of adequate counselling and therapy where necessary and ensuring that children are not victimised during proceedings. The CLC commented that the strength of these provisions will lie in their effective implementation, particularly through measures such as the draft Victim Charter which is currently being consulted upon by the Department of Justice. The CLC also highlighted during oral evidence that agencies implementing the charter should ensure the information they provide should be accessible	The Department has noted these comments. The Victim Charter provides that a vulnerable or intimidated victim, or those identified as having particular needs, are entitled to be informed about pre-trial therapy and counselling, where appropriate. A young person's guide to the Charter has been produced, setting out their entitlements and information on the criminal justice process. This was produced by young people, in association with the NSPCC. A guide for young people giving evidence at court is also available, along with a separate guide for their parents/carers.

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		to children and young people so that they can understand what is going on at all stages in the process.	
	Include Youth	Include Youth voiced its concern about the current gap in information on the experiences of young victims and highlighted an urgent need to prioritise evidence gathering on this stating that it is especially urgent given that the NI Victims and Witness Survey does not include under 18 year olds. Include Youth stressed the need for detailed research on the nature of crimes committed against children and young people.	The Department is undertaking research with those not covered by the Northern Ireland Victim and Witness Survey (bereaved families, victims of domestic and sexual violence, young people, etc.) to gather their experience of the criminal justice system. This covered bereaved families in 2013/14 and domestic violence victims in 2014/15. The aim is to carry out research with young people in 2015/16. Research will also be carried out with victims of sexual violence.
	Information Commissioner's Office (ICO)	The ICO stated that sharing information in the aspects highlighted in the Bill is likely to involve the 'processing' of both personal data and sensitive personal data and indicated that the sharing of personal data must meet certain conditions which are stricter in relation to sensitive personal data. In the view of the ICO the proposals in the Bill mean these conditions would be met. The ICO stated that if consent can be obtained, or in the case of sensitive	The Department has noted these comments. A victim personal statement would only be shared where the victim agreed to this and was advised about the purpose for which it would be used.

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		personal data, explicit consent, then the conditions may exist for sharing or disclosing of, for example, witness and victim statements.	
	Public Prosecution Service (PPS)	The Public Prosecution Service stated that it had worked with the Department of Justice in assisting with the development of the Victim Charter for some time. It considered Part 4 a valuable addition to the work it has been carrying out with victims and witnesses, to give them a greater say in the criminal justice process, to provide them with sufficient support and services in the lead up to criminal proceedings and to give them access to enough information in a timely manner to allow them to be fully engaged in any case in which they are involved.	The Department has noted these comments.
	Women's Aid	In oral evidence Women's Aid highlighted that there is no statutory entitlement per se in the Bill for specialist support services for victims. Women's Aid stated that Article 4 of the Victims Directive states that a victim must be informed about any specialist support relevant to them at first contact with a competent authority and that the EU Directive and guidance specifically mentioned domestic violence in that respect. Women's Aid stated	The issue of specialist support is dealt with in the Victim Charter, which the Bill will place on a statutory footing. The Charter provides that if a victim reports a crime to the police they are entitled to receive either written information on what to expect from the criminal justice system (such as the 'Information for victims of crime' leaflet) or the details of a

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		that it is crucial that there is direction and referral to specialist services at an early stage.	website which contains the same information, as soon as possible after reporting the crime. The leaflet makes reference to both general and specialist support services (including Women's Aid). The information sharing provisions that we are proposing to add to the Bill will enable victims' details to be passed from the police to Victim Support NI, who can advise victims of (or refer them to) specialist support services as appropriate.
Clause 28 – Victim Charter This clause places a duty on the Department to issue a Victim Charter setting out the services, standards of services and treatment of victims by specified criminal justice agencies. It highlights what	**The Children's Law Centre**	The CLC welcomed clauses 28 and 30 of the Bill and referred to the need to include within both the Victim Charter and the Witness Charter a requirement that, in all actions concerning child victims and witnesses, that their best interests will be a primary consideration. This would reflect the requirements of Article 3 of the UNCRC and would also align with the requirements of EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime which the DoJ is seeking to transpose via the draft Victim Charter.	The Victim Charter states that in providing services under the Charter the best interests of a child or young person will be a primary consideration and will be assessed on an individual basis. Account will be taken of their age, maturity, views, needs and concerns. The Victim Charter is the primary mechanism through which EU Directive 2012/29/EU is being transposed. The issues raised will also be considered in taking forward the

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services must be covered by the Charter and enables exceptions and restrictions to be applied to the Charter's general provisions that would allow a more targeted service to be provided. Clause 28 also makes provision enabling the services to a victim to be provided to others as well as the victim and requires criminal justice agencies to have regard to the Charter in carrying out their functions		The CLC noted that under clause 28, victims will have the opportunity to make a complaint to an independent body against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency and stated that it would be useful to also extend this right to witnesses under clause 30. CLC would also welcome consideration being given at this stage as to how children and young people wishing to make a complaint will be supported and assisted in doing so and cited that the Committee on the Rights of the Child had previously commented on the need to ensure that complaints mechanisms are accessible and child friendly.	drafting of the Witness Charter. The Department notes the suggestion that the right of complaint for victims should apply also to witnesses. We consider that it would be more appropriate to set out in the Witness Charter itself how complaints processes would operate, given that this Charter is intended to cater for a diverse range of witnesses, including expert witnesses.
	Include Youth	Include Youth welcomed the development of the Victim Charter and stated that it would be an important vehicle by which victims and witnesses could ensure they are receiving the necessary information and are made fully aware of what support services exist. It stated that it would also provide a mechanism whereby victims could seek advice and support about how to address failings in the system and to ensure their voices are heard	The Department has noted these comments. As noted previously, a young person's guide to the Charter is now available, setting out their entitlements and information on the criminal justice process. The Department is undertaking research with those not covered by the Northern Ireland Victim and

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		when procedures are not followed correctly. Include Youth highlighted that it is imperative that young people who are victims of crime are aware of what standard of service they can expect to receive from the system. Include Youth also agreed with the need to treat victims and witnesses with respect, dignity and sensitivity. Include Youth outlined that its work and research with young people demonstrates that young people who are victims of crime are largely unaware of victims organisations, have serious reservations about reporting a crime and do not have a great deal of faith in a positive outcome if they do report a crime. In its view there is much work to be done with young people who are victims of crime to make them feel they are a key stakeholder in the development and outworking of the Victim Charter.	Witness Survey, to gather their experience of the criminal justice system. The aim is to carry out research with young people in 2015/16.
	Attorney General	The Attorney General outlined that Clauses 28(7) and 30(6) excludes judges and members of the prosecution service (in the exercise of a discretion) from any obligations under the Victim or Witness Charter. The Attorney General expressed the view that an	The Department is content that the necessary obligations on service providers, as set out in the Victim Charter, apply to the Public Prosecution Service. This includes Article 1 of the EU Directive, as well

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		obligation for example to treat a victim with courtesy, dignity and respect would not in any way impinge on judicial independence and could be viewed as strengthening support for it. The Attorney General added that the obligations in Article 1 of the Victims' Directive must apply to judges and prosecutors.	as a wide range of other obligations in the Charter. The exclusion in the Bill has a narrow application, and it relates solely to prosecutorial decision-making rather than general contact with the victim or witness. With regard to the judiciary, the provisions in the Bill relating to case management will be beneficial to victims and witnesses, in that these will take account of the need to identify and respect the needs of victims and witnesses. We consider that other matters relating to the treatment of victims are more properly dealt with through the Judicial Studies Board and practice directions.
	Public Prosecution Service	The PPS welcomed the enshrining in law of the Victim Charter and those provisions of the EU Directive on Victim's Rights which are contained within it.	The Department has noted these comments.
	NIACRO	NIACRO supported the inclusion of the Charter in the Justice Bill, and supported in general, the principles outlined and the approach of the Charter. It provided more detailed comments on the content of the draft	The Department has noted these comments, including those related to information for the family of a defendant.

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		Victim Charter in its response to the Department of Justice (DoJ) consultation. Key recommendations in its response included: the Charter should recognise the specific circumstances of victims who are family members of the defendant; and the Charter should also be expanded to recognise the indirect victims of crime, which includes the families of the defendant who also need the guidance and support provided in the Charter when they come into contact with the Criminal Justice System. These families are victims of the Criminal Justice System and of the sentence, especially when there is a custodial sentence. It stated that there must be a clear emphasis on the concept of 'innocent until proven guilty' and the 'silent sentence' handed to the families of defendants; the Charter (or the information contained in it) must be accessible and clearly communicated and should include the use of visual aids such as diagrams, plain and understandable language, audio descriptions, and copies in different languages and that victims should also have the opportunity to have it explained to them face-to-face. In oral evidence NIACRO stated that, under	The entitlements of the Charter will apply regardless of a victim's relationship to the accused or offender. Family members of the victim are also entitled to access support services. More generally, however, the Department does not consider it appropriate to extend the provisions of the Charter to an accused person. We advised the Committee of the Department's position on this point when we briefed it on the outcome of public consultation on the Victim Charter. While we do not see the Charter as the vehicle for improving support for the families of prisoners, the Department is happy to consider this issue further in consultation with NIACRO. In terms of accessibility a number of documents have been prepared to accompany the main Charter. A summary of the Charter is available as well as an easy read guide, which uses simple language and pictures. A young person's guide to the

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		the Victim Charter, easy to read leaflets are being compiled, and every time that somebody reports a crime, they are given a leaflet. NIACRO suggested that there is no reason why a similar leaflet could not also be given to a family member of the defendant. NIACRO outlined an example of a father being arrested and his wife and children were left not knowing where he had been taken or how they could visit.	Charter has also been prepared by young people, in association with the NSPCC. The Department is also looking at developing a walkthrough to the criminal justice system and bringing together video clips dealing with explaining key elements of the criminal justice system.
	PSNI	The PSNI supported the addition of a Victim and Witness Charter as a means to help further improve their experience and confidence in the justice system and noted that the recently established Victim and Witness Care Unit provides a valuable mechanism to help deliver the Charter standards.	The Department has noted these comments.
	Northern Ireland Policing Board	The Northern Ireland Policing Board welcomed the introduction of a Victim Charter. The Board noted that Clause 28 of the Bill simply requires the DOJ to 'issue' the Victim and Witness Charters. It expressed the view that while the Justice Bill would be too high level a document to specify the communication strategy for ensuring that the	The Charter states that all service providers (covered by the Charter) must include information about the Victim Charter on their websites and, where appropriate, make available other relevant web pages where additional information can be found. They must also include a way for

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		existence and contents of the Charter are made known to, and can be understood by, Victims and Witnesses, the Bill and/or the Charter itself could perhaps include a clause requiring the relevant criminal justice agencies (or at least the Court Service) to visibly display a copy of each Charter at their publically accessible offices and on their websites.	victims to comment on the services that they provide under the Victim Charter. The Department has asked the various bodies that have duties under the Charter to make the range of Charter documentation available on their website. A poster, setting out the key entitlements in the Charter, will be distributed to relevant organisations as well as hard copies of the Charter.
	Victim Support	Victim Support welcomed the publication of a Victim Charter and outlined that it has pro-actively engaged with the Department of Justice in the development of the proposals. Victim Support noted that the Charter will initially be enacted on an administrative basis but will subsequently be placed on a statutory footing. Victim Support stated that the Charter represents a vital step in ensuring that victims receive the highest standard of services as they progress through the Criminal Justice System and are made aware of what services are provided and by whom and of how they	The Department has noted these comments.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		may seek redress, should the service they receive not reach the required standard. Victim Support in particular welcomed the acknowledgement of the need for victims to be treated with courtesy, dignity and respect. Additionally, Victim Support supported the importance placed on the timely and accurate supply of information to victims and witnesses. It outlined that this is an issue frequently raised by those who access its services and which, in its view, can and will have a demonstrable impact on the experiences of victims and witnesses of crime in Northern Ireland. Victim Support stated that the provisions in respect of the right to be informed about any Special Measures if called as a witness in any criminal proceedings, is potentially of considerable benefit, particularly to vulnerable and intimidated witnesses. Victim Support strongly contends that an individual's ability to give their evidence in a confident manner and without fear, can only be in the interests of justice.	

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	Information Commissioners Office (ICO)	The ICO stated that it was pleased to note in the draft Victim Charter additional information with regard to the Victim and Witness Care Unit and in section 67, p.27, the requirement for consent in relation to any referral of a victim or a witness to other appropriate support services. The ICO outlined that Section 28 of the draft Bill, relating to victims and witnesses makes a clear basis for allowing a statutory provision to be put in place for a Victim Charter. The ICO welcomed this overall proposal and was pleased that one of the overall principles in this Charter relates to providing victims with relevant information, clearly setting out what they can expect as they move through the criminal justice system. The ICO outlined that it felt strongly that this principle with regard to providing information at the development aspect of this Charter should follow a 'privacy by design' approach from the outset, particularly with regard to the processing and sharing of personal data as well as requiring appropriate safeguards to be in place with regards to the security of the information.	The Department has noted these comments. Once the information sharing provisions are introduced, subject to Assembly approval, the information leaflet given to all victims of crime will advise on the sharing of their contact details with victim support service providers. If the victim objects their details will not be shared. In addition, documentation issuing from the Victim and Witness Care Unit, about giving evidence at court and the outcome of a case, will refer to the victim's details being shared (for the purpose of advising them about available services). Again should the victim indicate that they object to this their details would not be shared. The various bodies will ensure that the necessary safeguards are in place for holding the information securely.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		The ICO stated that, in relation to the Charter, there is an opportunity through this statutory provision to clarify information with regard to privacy, what 'consent' is, how it can or needs to be given and under which circumstances, under the Data Protection Act (DPA), why consent may not be required in relation to the disclosure or sharing of sensitive personal data. The ICO expressed the view that this information is of crucial importance to ensure the protection of privacy for the victim or witness, as well as providing clarity as to what may or may not happen with this information. It outlined that, through this proposed statutory function, and building on what exists currently, it is important for victims and witnesses to understand what they may be consenting to, how their privacy will be respected and under what circumstances, aspects such as the common law duty of confidentiality may fall under the requirements of the DPA. The ICO also indicated that it would highlight these aspects in its response to the consultation on the draft Victim Charter.	

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	Women's Aid	In oral evidence Women's Aid referred to the provision that "the Charter may not require anything to be done by a person acting in a judicial capacity". Women's Aid was concerned that, notwithstanding the importance of judicial independence, without proper training on specialist issues such as domestic violence, many provisions of the Charter might be rendered meaningless for victims of domestic or sexual violence if they are heard by a judge who does not have an expert understanding of the issues. Women's Aid also highlighted that Article 25 of the Victims Directive specifically calls for the specialist training of judges.	The Department has been advised that judges receive periodic briefings on victim and witness issues which are relevant to their specific judicial roles, through the Judicial Studies Board (JSB) for Northern Ireland. The Department will consider this matter further with JSB, including in relation to Article 25 of the EU Directive.
Clause 29 – Meaning of Victim This clause defines a victim, sets out other people to be treated as a victim (for example where a person has died or is incapacitated) and circumstances where this would not apply. It	**Include Youth**	Include Youth highlighted that while it welcomed this legislation with regard to the needs of victims and witnesses it was disappointed about the lack of emphasis on the needs of young people as victims of crime given that evidence indicates that children and young people are more likely to be victims of crime than any other group in society. It stated that it is essential that the Department of Justice makes every effort to ensure that the needs of children and young people are central to the Victim Charter. Include Youth	The Department has worked with the NSPCC on the development of the Charter (through the Victim and Witness Steering Group, chaired by the Department) and consulted with other youth organisations. An NSPCC participation group, made up of young victims of crime, developed a young person's guide to the Charter. This sets out their entitlements and provides information on key parties in the criminal justice

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enables the Charter to set out who are family members for this purpose.		stated that failing to include this significant representation of young victims and witnesses opinions and experiences would be a significant omission in the development of the Charter and the Charter will potentially be less effective as a result.	system. The Charter also has a section dealing with vulnerable and intimidated victims, which includes children.
	NIACRO	NIACRO agreed with the definition of victim given in relation to the Victim Charter, but indicated that "an individual who is a victim of criminal conduct" could reasonably also include indirect victims and victims of the Criminal Justice System, namely the family of the defendant. NIACRO therefore recommended that the meaning of victim is expanded to include all those impacted by the offence, the system's processes and the sentence, and that the Charter relates to all those affected by the Criminal Justice System.	The entitlements of the Charter will apply regardless of a victim's relationship to the accused or offender. Family members of the victim are also entitled to access support services. More generally, however, the Department does not consider it appropriate to extend the provisions of the Charter to an accused person and their relatives.
	Northern Ireland Human Rights Commission (NIHRC)	The NIHRC advised that the broad definition of victim provided at clause 29 is compliant with the UN Basic Principles. The Commission highlighted that it submitted a detailed response to the Department of Justice consultation on Improving Access to Justice for Victims and Witnesses of Crime. In	The Department has noted the Commission's position that the broad definition of victim provided at clause 29 is compliant with the UN Basic Principles.

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		its response it advised that the Department ensure that any definition of victim in a Victim Charter should fully reflect international human rights standards. The Commission cited the UN Basic Principles definition of Victim (Part V(8)) as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member states, including those laws proscribing criminal abuse of power" and further cited part V(9): "A person may be considered a victim... regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim." [the definition of victims] "includes, where appropriate, the immediate family or dependants of the direct victim ...".	
	Northern Ireland Policing Board	The NI Policing Board questioned whether the Victim Charter would be applicable to all persons (or their families) who have ever been a victim of criminal conduct, regardless of when that criminal conduct occurred, or	The Charter states that the majority of the entitlements and services are only available where criminal proceedings are being taken forward. This may include cases where the

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		whether it only applies to victims of criminal conduct occurring from the date the Charter is put in place. It suggested that Clause 29 could make this explicitly clear.	criminal conduct occurred prior to the publication of the Charter. This is on the basis that the majority of services provided are where a case is progressing through the criminal justice system. Access to support services is not conditional on this.
Clause 30 – Witness Charter This clause places a duty on the Department to issue a Witness Charter setting out the services, standards of services and treatment of witnesses in criminal investigations and criminal proceedings by specified criminal justice agencies. It enables exceptions and restrictions to be applied to the Charter's general provisions that would	**NIACRO**	NIACRO stated that the Witness Charter should recognise the specific circumstances and vulnerabilities of witnesses who are family members of the defendant.	The Department has noted these comments. The Witness Charter will be taken forward as part of the second action plan under the five year Victim and Witness Strategy.
	Children's Law Centre	The CLC welcomed clauses 28 and 30 of the Bill and referred to the need to include within both the Victim Charter and the Witness Charter a requirement that in all actions concerning child victims and witnesses, their best interests will be a primary consideration. This would reflect the requirements of Article 3 of the UNCRC and would also align with the requirements of EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime which the DoJ is seeking to transpose via the draft Victim Charter. The CLC noted that under clause 28, victims will have the opportunity to make a complaint	The Victim Charter states that in providing services under the Charter the best interests of a child or young person will be a primary consideration and will be assessed on an individual basis. Account will be taken of their age, maturity, views, needs and concerns. The Victim Charter is the primary mechanism through which EU Directive 2012/29/EU is being transposed. The issues raised will also be considered in taking forward the detail of the Witness Charter.

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allow a more targeted service to be provided. The clause also makes provision enabling the services provided to a witness to be provided to others as well as, or instead of, the witness and requires criminal justice agencies to have regard to the Charter in carrying out their functions.		to an independent body against a criminal justice agency in relation to any provision of the Charter which has not been resolved by that agency and stated that it would be useful to also extend this right to witnesses under clause 30. CLC would also welcome consideration being given at this stage as to how children and young people wishing to make a complaint will be supported and assisted in doing so and cited that the Committee on the Rights of the Child had previously commented on the need to ensure that complaints mechanisms are accessible and child friendly.	The Department notes the suggestion that the right of complaint for victims should apply also to witnesses. We consider that it would be more appropriate to set out in the Witness Charter itself how complaints processes would operate, given that this Charter is intended to cater for a diverse range of witnesses, including expert witnesses.
	Attorney General for Northern Ireland	The Attorney General's comments in relation to Clause 28 (above) also refer to this clause.	See earlier comments in response to the Victim Charter.
	Northern Ireland Policing Board	The NI Policing Board welcomed the introduction of a Witness Charter.	The Department has noted these comments.
	Victim Support	Victim Support stated that it was fully supportive of the development of a Witness Charter and, as outlined above in relation to the Victim Charter, it welcomed the	The Department has noted these comments.

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		importance placed on the timely and accurate supply of information to victims and witnesses.	
Clause 32 – Effect of Non-compliance This clause sets out the effect of non-compliance with a Charter.	**NIACRO**	NIACRO recommended that stringent measures should be put in place to ensure that criminal justice agencies take their responsibility to comply with each Charter seriously, to ensure the best interests of victims and witnesses are protected.	The Department will monitor compliance with the Victim and Witness Charters through the Victim and Witness Steering Group, chaired by the Department, and through liaising with the Victims Champions in each organisation.
Clause 33 – Persons to be afforded opportunity to make victim statement This clause provides that a victim is to be afforded an opportunity to make a written victim statement (to be known as a victim personal statement), setting out effect of an offence or alleged offence. Regulations may provide for others	**Northern Ireland Policing Board**	The introduction of Victim Personal Statements on a statutory footing was welcomed by the NI Policing Board which outlined that it provides the opportunity to consider the types of cases in which the statements could be better utilised than they perhaps have been to date. The Policing Board cites hate crime cases as an example and outlined that if victims of hate crime are able to express through their personal statements the impact that the perceived hate element of the offence has had upon them, and the court takes this into account when passing a sentence, it would mean that the victim might be left with a better sense that justice has been served, even if the	The Department has noted these comments. The process for victim personal statements was revised so that victims are given information on the purpose and use of the statements and have access to support and assistance (from Victim Support NI, NSPCC Young Witness Service or a police Family Liaison Officer for a bereaved family member) to make the statement. The Bill makes provision that "the court must in determining the sentence in respect of the offence have regard to so much of any victim statement provided to it … as it

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to be afforded the opportunity, setting out when, how and by whom the opportunity should be afforded.		evidential burden of the 2004 Order cannot be overcome. The Policing Board expressed the view that, for this to occur, victims would need support and assistance with preparing the statement and judges would need to explicitly state when passing the sentence that they have taken account of the impact on the victim of the perceived hate motivation.	considers to be relevant to that offence". The Department does not consider it appropriate to place a duty on judges to state what account they have taken of the statement, given that this will be one of a number of factors considered.
	Victim Support	Victim Support outlined that it is already actively involved in assisting victims of crime to make a Victim Impact Statement. Victim Support stated that the fact that the Charter sets out that victims must be informed about the opportunity to make this statement, should they wish to do so, is a positive step. It highlighted that it is also essential that they are fully aware of how this statement will be used and specifically who will have access to its content and when and that this is particularly relevant in light of the steps outlined in the Bill in respect of early guilty pleas and specifically the implications on sentencing.	See above. In addition, the information leaflet provided to victims makes clear who will see the statement and when the statement will be used.
Clause 34 – Supplementary statement	**NIACRO**	NIACRO welcomed the fact that victims have the opportunity to provide a statement "supplementary to, or in amplification of" their original Statement. NIACRO recommended	See above. A victim personal statement will typically not be taken immediately after, or in the aftermath of, a crime. Victims will only be

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This clause enables Regulations to make provision related to supplementary victim personal statements		that victims are also given the option to withdraw their Statement before a certain point in proceedings, in recognition of the heightened emotions often present in the aftermath of an offence.	advised of the victim personal statement facility when there is a decision to prosecute. The statement is only used following conviction and ahead of sentencing. While a statement cannot be withdrawn, once made, a supplementary statement can be made to reflect any change in circumstances.
Clause 35 - Use of victim statement following conviction This clause enables Regulations to set out the use of the victim personal statement and make provision for the court to have regard to so much of any statement that it considers relevant to the offence in determining a sentence.	**NIACRO**	NIACRO recognised the merit of Victim Personal Statements and acknowledged that they can be cathartic for the victim, as well as insightful for the judge. It also saw the potential for the Statement to be incorporated into a restorative justice approach and recommended that the Statement is shared with PBNI if appropriate, particularly if it has been taken into account in sentencing, to promote effective resettlement and understanding, thereby helping to reduce the risk of reoffending. NIACRO recommended that clarity is provided about how the Statement can and should be used by judges as this is important in relation to managing the expectations of victims and in making the process clearer to both the victim and defendant.	Victim personal statements are to be used following conviction and ahead of sentencing. Victims are given information on the purpose and use of the statements, who will see the statement and when it will be used. This is set out in the information leaflet on victim personal statements. This information is available online and the leaflet issues to victims once a decision to prosecute is taken. The Charter makes reference to victim personal statements being shared, where the victim agrees to this, as below.

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		NIACRO highlighted that the vulnerability of victims in the immediate period after a crime must be acknowledged and their best interests protected and recommended that the DOJ introduce clear guidelines and regulations as to who can access the Statement. NIACRO noted that the current system, where the victim can request or allow for their Statement to be shared with anyone, has the potential to allow for the exploitation of the victim's vulnerability at that time. In its oral evidence NIACRO stated that, in order to protect the victim, there should be a finite list of agencies and people with whom the Statement can be shared. NIACRO recommended that the Justice Bill acknowledges the families of people who offend or who are accused of offending are indirect victims of crime and of the system. As with Victim Statements, it recommended that there is a statutory right for children of defendants to also be given the opportunity to submit personal impact statements, to be taken into account in sentencing. NIACRO was concerned that the impact of custodial sentencing on children and the wider family is	"Where you engage with other criminal justice service providers (the Northern Ireland Prison Service, the Probation Board for Northern Ireland or the Youth Justice Agency) they may find it helpful to see your victim personal statement. This could help them provide services to you. In such cases you can tell them that you want them to see your statement – this is entirely your choice. They will explain what the statement would be used for, get your written consent to it being shared with them and then get the statement from the Public Prosecution Service. Steps will be taken to ensure that the statement is stored securely." The Department has noted the comments related to impact statements for children of defendants. The Department considers that this is not a matter that should be within the remit of the Victim Charter.

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		often underestimated by the judiciary.	
	Include Youth	Include Youth noted that providing a statutory entitlement to make a Victim Personal Statement would allow victims to describe the impact of the offence but it would guard against Victim Impact Statements being used as a means for victims to influence the sentence ordered by the Court.	The Department has noted these comments. Sentencing is, of course, a matter for judicial discretion.
	Information Commissioners Office	ICO highlighted the importance of security aspects relating to records management of this type of personal and sensitive data and indicated that the requirements of the DPA are clear - appropriate safeguards must be put in place with adequate processes for how and under what circumstances lawful and fair sharing can and should take place. It outlined that, given the sensitive nature of the type of sensitive personal data that may be contained in a Victim Personal Statement this will require careful consideration. The ICO noted in section 35 (20) the provision for the Department to make a copy of any Victim Statement, and advised that due regard	The Department has noted these comments. The necessary steps have been taken to ensure that information is both held and shared appropriately and securely. As noted above, victim personal statements will only be shared where the victim agrees to this. The victim would be advised what the statement would be used for, and would be asked to provide written consent to it being shared. In terms of retention and disposal PPS have advised that the VPS is held on the case file for the retention period applicable to the file.

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		is given in light of this and other relevant activity. It would welcome further clarification on this, particularly with regard to how long the Statement will be kept, the security considerations about the information and the need for appropriate retention and disposal schedules to be in place.	
Proposed amendment by the Department of Justice The amendment proposed is intended to provide for a more effective mechanism through which victims could automatically be provided with timely information about the services available, that is: Victim Support Services; witness services at court; and access to information	**Children's Law Centre**	The CLC stated that the DOJ proposed amendment would appear to be designed to create a system where victims would 'opt out' of being approached regarding support rather than 'opting in'. The CLC saw the merits of this approach but wished to emphasise the need for the sharing of personal data and sensitive information to be disclosed/shared only when absolutely necessary, shared discreetly and with the minimum information disclosed in order to protect the best interests and rights of the child concerned. The CLC expressed the view that the privacy and security of child victims and witnesses must be ensured at all times and information relating to a child should only be shared when it is in their best interests.	The Department has noted these comments. Information will only be shared to ensure that victims can be advised of available services - for example, the name, address, date of birth, telephone number/email address of the victim and the crime type.

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release schemes. Victims would not be obliged to avail of services; rather, the purpose of the proposed change is to ensure that they are provided with relevant information so that they can make an informed decision about the services on offer to them. Subject to Legislative Counsel's views, the effect of this amendment is likely to be the insertion of a single new clause into the Bill, setting out that certain information would be shared between specified organisations for the purpose of informing victims and witnesses about available	**Northern Ireland Policing Board**	The Northern Ireland Policing Board stated that it would need to see the text of the proposed amendment in order to be able to comment or express a view upon it highlighting that it is not clear from the letter provided by the DOJ the stage at which victims could 'opt-out' from their information being shared. Additionally it noted that is not clear what the 'certain information' is and who the 'specified organisations' would be. However, the NI Policing Board is broadly supportive of steps being taken to ensure that victims and witnesses are equipped with relevant information in order to make an informed decision about the services on offer to them.	The Department has noted these comments. The information would be shared between: (i) the police and Victim Support NI/NSPCC Young Witness Service following the report of a crime; (ii) the PPS and Victim Support NI/NSPCC Young Witness Service, where a person is to give evidence at court; and (iii) The police and the Department/Probation Board for Northern Ireland, where the outcome of the case involves a sentence for an adult of six months or more, or the offender is going to be supervised by the Probation Board for Northern Ireland or the offender has been sent to a hospital under a restriction order. Information will only be shared to ensure that victims can be advised of available services. The type of information that would be shared

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services.			would be the name, address, date of birth, telephone number/email address of the victim and the crime type. This will enable appropriate services to be offered in a targeted fashion, also focusing resources on those most in need.
	Disability Action	Disability Action noted that, importantly victims would not be obliged to avail of services, and the amendment would mean the proposed change would ensure that they are provided with the relevant information so that they can make an informed decision about the services on offer to them. Disability Action agreed with the proposed amendment particularly as it had been shared with the Northern Ireland Human Rights Commission.	The Department has noted these comments.
	Health and Social Care Board (HSCB)	The HSCB was supportive of the proposed amendment and considered it has potential to be of particular benefit to vulnerable children and adults.	The Department has noted these comments.
	Northern Ireland Probation Board	The Probation Board stated that it fully supported the proposed amendment to enable the provision of information on available services as it is of the view that enabling victims to make informed decisions is	The Department has noted these comments.

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		important at all stages of the criminal justice process. It stated that this amendment would enable more effective and efficient working arrangements between PSNI and PBNI with regard to the operation of PBNI's Victim Information Scheme.	
	Information Commissioner's Office	The ICO noted that at present, an 'opt in' is required in order for information to be shared between specific organisations for the purpose of informing victims and witnesses about available services and also noted the statistics on the take up of the current provision. The ICO stated that it would remind the Department of the importance of ensuring that fair notice is given in relation to this activity, which again needs to meet the requirements of the DPA in relation to how and why the conditions can and will be present for this provision to take effect. The ICO also highlighted the issues it had previously outlined with regard to the sharing of sensitive personal data, such as in the case of a Victim Personal Statement.	The Department has noted these comments. Discussions have been held with both the Information Commissioner's Office and the Human Rights Commission on the information sharing provisions and these have been considered in developing the legislative provisions.

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	Women's Aid	Women's Aid supported the proposed amendment stating that there is an inherent benefit in improving the process by which victims and witnesses of crime receive information about victim support services available to them. Women's Aid stated that allowing for the sharing of a victim's information to facilitate this will result in a better victim / witness experience of the criminal justice system, and will provide better support for all victims of crime. Women's Aid also stated that an "opt out" system is a sensible means of communicating the available support to victims, while still retaining a victim's autonomy to decide whether they want to take up any of these services. In oral evidence Women's Aid stated that often, in the intial stage, victims are dealing with a lot of information and that having an opt-out system gives victims the opportunity to consider support options once the initial traumatic event has passed.	The Department has noted these comments. Information will be shared, unless a victim objects to this. The initial contact with victims, following the sharing of information, would be to advise them of available services so that they can make an informed decision about whether or not to avail of those services. It would be for the victim to then decide as to whether or not to avail of the services. It would be entirely their choice with no obligation to avail of services.
	NSPCC	NSPCC welcomed the proposed amendment stating it will help agree the provision of timely victim information and allow its Young Witness	The Department has noted these comments. In developing the draft provisions the Department liaised

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		Scheme to deliver a more responsive service to victims and witnesses. The NSPCC highlighted that it has had significant difficultly because of the Data Protection Act in obtaining information from statutory agencies in particular with regard to the Investigating officer's name; actual charge; level of court; whether victim and witness; updates on case progression; and appeals. NSPCC suggested that it would be helpful to agree the information that is needed with the Department of Justice and to collectively develop a template for this.	with the various organisations that will be involved in the sharing of information.

PART 5: CRIMINAL RECORDS
This part modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single disclosures; an independent appeals mechanism; and a range of other improvements.

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General Comments	**Children's Law Centre (CLC)**	The CLC conveyed its disappointment regarding the lack of consideration given to the recommendations of the Youth Justice Review around the disclosure of criminal record information in relation to children and young people and indicated it supported that approach in terms of balancing the competing rights of children and young people who require protection and those who have offended. In its oral evidence the CLC stated that its main concern regarding the retention and disclosure of criminal records is that it can prevent children and young people from accessing education, training and employment which are vital elements in successful reintegration into society and in preventing re-offending.	**<u>Issue 1: Balancing the competing rights of children and young people</u>** **(also raised by CLC; Include Youth; NIACRO; NIHRC)** Part 5 of the Justice Bill modernises aspects of the arrangements for the disclosure of criminal records, as carried out by Northern Ireland's criminal history disclosure service, AccessNI. Some of the points made to the Committee relate to wider policy issues that go beyond AccessNI's remit. How we manage criminal records is a complex issue within which there are many, potentially competing, factors in play. AccessNI's role is primarily about the safe-guarding of children and vulnerable adults. Naturally, however, it recognises the importance of balance in terms of its approach. The 2011 Review of the Criminal Records Regime in Northern Ireland (carried out by Mrs Sunita Mason), sought to ensure a simpler, more proportionate, and speedier system of

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		The CLC referred to the seriousness of excluding children and young people from education and employment opportunities and the impact on youth unemployment rates. The CLC outlined that it had a sense that the use of diversionary measures in the youth justice system is on the rise. The CLC stated that the Youth Justice Review highlighted concerns about young people understanding fully the implications of accepting those diversions. The CLC outlined that diversionary disposals were not, prior to 2011, routinely disclosed on criminal records certificates and, with the introduction of the filtering arrangements, all disposals are considered in the first instance for disclosure. The CLC stated that international standards are clear that diversionary disposal should not be disclosed on criminal records checks. CLC is strongly of the view that	disclosure for safe-guarding purposes in NI, whilst not undermining public protection. The statutory **filtering scheme**, introduced, following Justice Committee approval in April 2014, represented a first step in achieving such a balanced approach, by ensuring that certain convictions and disposals are not disclosed after a period of time. It also incorporates a graduated approach for younger people, with significantly shorter time frames applying to the disclosure of information relating to those under 18 when they offend. The operation of the filtering scheme **will be reviewed later this year**, and stakeholders, including those who contributed to the Committee's work, will be engaged in that process. **The additional changes** to the Police Act 1997, being provided for in the Justice Bill, further improve, modernise and streamline the arrangements for the disclosure of criminal records and provide additional safeguards in relation to disclosure. In particular, the introduction of a **filtering review mechanism** will allow individuals, in certain circumstances, to seek an independent review of their case where a conviction or disposal has not been filtered from their standard or

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		information relating to cautions, informed warnings and diversionary youth conferences should only be disclosed in exceptional circumstances where the offence is sufficiently serious, is relevant and where there are concerns for public safety if the disposal were not to be disclosed. CLC also believes that the current filtering arrangements are in conflict with the proposed new aim of the youth justice system as set out in Clause 84.	enhanced criminal record certificate. Following discussion with organisations working in this field, including the Children's Law Centre (CLC) and NIACRO, the review mechanism being proposed includes **an automatic referral** to an independent reviewer for those cases where disclosure relates only to offences committed **under the age of 18.** The detail of how the review mechanism will operate will be set out in **guidance,** and subject to **full public consultation**. <u>Context</u> It is important to put the issue of disclosure in context - enhanced checks are only applicable in relation to those who want to work within a small number of regulated activities, including working closely with children and vulnerable adults (approximately 30% are volunteers). The Youth Justice Review and the Review of the Criminal Records Regime in Northern Ireland, together with a number of court decisions, have informed and directed the Department's thinking on disclosure.

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			When deciding on the introduction of filtering, and the routine disclosure of non-conviction information in August 2013, the Justice Minister considered carefully the Youth Justice Review (YJR) recommendation in relation to a 'clean slate' approach, as well as Sunita Mason's recommendations and, of course, the Department's obligations in relation to article 8 and ECHR. In coming to a decision, he took account of the best interests of the wider community, including those children and young people who may be victims. **Issue 2: Improving young people's understanding of the impact of accepting diversions** The re-introduction of the disclosure of non-conviction disposals and the introduction of the filtering scheme in April 2014 do not appear to have acted as a disincentive for young people to accept a diversionary disposal at Youth Engagement Clinics. CLC raises concerns about young people understanding fully the implications of accepting those diversions; however Youth Engagement Clinics play a significant role in ensuring that this is not the case. The Clinics are staffed by practitioners from the Police Service of Northern Ireland (PSNI) and the Youth Justice Agency

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			(YJA) who are trained in restorative practice and who explain to the young person the nature of the case against them, the disposal directed by the Public Prosecution Service (PPS) and the options open to them. Practitioners will also explain to a young person how a diversionary disposal is recorded and may be disclosed as part of a criminal record check and a young person can be given additional time to take further advice before they decide whether to accept a diversionary disposal or contest the matter in court. This means the young person can make an informed choice. In the course of setting up YE Clinics, the Department has also developed guidance for practitioners on the disclosure and filtering arrangements. This has recently been updated to include the contact details for the NIACRO Employment Advice Line in the event that young people want to seek further advice on their specific circumstances. Officials are also working with Include Youth and NIACRO to develop an easy to ready guide on the disclosure of diversionary disposals and filtering arrangements that can be shared with young people.

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			<u>Issue 3: Filtering/disclosure of diversionary disposals</u> **(also raised by CLC; Include Youth)** The resumption of routine disclosure of informed warnings, cautions and diversionary youth conferences on standard and enhanced certificates was a recommendation of the review of the Criminal Records Regime in Northern Ireland. Significant safeguards are in place - the filtering scheme provides an opportunity for young people who meet the relevant criteria to have certain disposals and convictions removed; and the periods for disclosure, which are shorter in relation to under 18 offending than those for an adult, recognise the concerns about not stigmatising young people. While this does not fully meet the recommendation in the YJR report, it has gone some way towards softening the disclosure regime, whilst also reflecting the findings of the review of the Criminal Records Regime, which stressed the importance of not eroding public protection. The filtering review mechanism will go some way further towards ensuring that information is disclosed only when it is proportionate to do so by allowing an individual to seek, in certain circumstances, an independent review of their case

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			where a conviction or disposal has <u>not</u> been filtered from their standard or enhanced criminal record certificate. Officials have been engaging with stakeholders around the concerns that have been raised in relation to the disclosure of under 18 offending; the draft amendment provides for an automatic referral to an independent reviewer for those cases where disclosure relates only to offences committed under the age of 18. The Department believes that this goes a long way towards addressing the concerns raised by CLC and others (whilst, again, ensuring that public protection is not undermined). **The detail of how the review will operate will be set out in guidance,** and **subject to full public consultation**.
	Include Youth	Include Youth has a number of concerns regarding the impact of disclosure of criminal records on young people. Include Youth stated that the current system of disclosure fails to recognise the damaging impact having a criminal record can have on a young person highlighting it can affect a young person's ability to secure education;	Include Youth raise issues similar to those identified by CLC; the Department's response is as above.

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		training and employment. In the view of Include Youth shackling young people with a criminal record for a seemingly unending period of time runs counter to the argument that we need to get young people who have been in contact with the criminal justice system into jobs and education. It highlighted that, despite many young people who have a criminal record have not been convicted of a serious offence or deemed as being a risk to public safety, still have to disclose the conviction in a wide range of circumstances with the resultant negative impact. Include Youth believes that non convictions should be 'spent' immediately and only subject to disclosure in limited circumstances.	
	NIACRO	NIACRO welcomed the streamlining of the arrangements for criminal records disclosure. However, it believes that there needs to be a balance between the need to protect the public and	**Issue 4: Effectiveness of AccessNI/ addressing poor practice by employers** (N.B.The issues raised by NIACRO in relation to the need to balance public protection and effective resettlement are

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		ensuring effective resettlement. NIACRO stated that in its previous responses to Sunita Mason's 'Reviews of the Criminal Records Regime' in Northern Ireland, it was concerned that no measures have been put in place to gauge the extent to which the new provisions have achieved their purpose. NIACRO argues that there is evidence that the introduction of AccessNI has led to a practice of unnecessary/inappropriate "weeding" (using legislation to discriminate when that was not the intention). NIACRO questions whether the criminal record vetting regime protects the most vulnerable in society and is concerned that in recent years respect for the rights of those with criminal records has disproportionately declined. In NIACRO's view since the introduction of vetting, evidence suggests that employers can arbitrarily use criminal record information to deny people access to opportunities without penalty.	similar to those identified by CLC and Include Youth; the Department's response - under Issue 1 above - addresses many of the points.) The use of criminal record checks and the disclosure of other relevant information is well-established Government policy across the UK and the Republic of Ireland. In the interests of protecting the public and, in particular those who are most vulnerable in our society, it is important that employers can obtain criminal record information on potential employees. For a range of positions, which are mainly, but not exclusively, those involving working with children and vulnerable adults, it is appropriate that this should include information about spent convictions. The establishment of AccessNI introduced, for the first time, a proper legislative framework and accountability for the use of criminal record checks. Previously, information was provided to employers on a non-statutory basis, without the potential employee being aware of what was being disclosed and on what basis. The Department is clear that these checks should, first and foremost, be informative, not prohibitive; and as part of its compliance work, AccessNI checks that organisations registered with it are complying with its (statutory based) Code

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			of Practice. Specific checks are undertaken to ensure organisations are seeking the appropriate level of checks for employees and volunteers. Where it is found that an organisation has sought an inappropriate check, appropriate action is taken.
	NI Human Rights Commission	NIHRC generally noted issues with article 8 ECHR compliance given that the recording and communication of criminal record data amounts to an interference with the right to private and family life. (Specific commentary may be seen below under Clause 39).	**Issue 5: Human rights compliance** The Department is mindful of its obligations in relation to article 8 and ECHR, and is confident that its disclosure processes are compliant.

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	NI Policing Board (NIPB)	The NIPB advised that it had recently discussed the disclosure of criminal records with the PSNI and in particular the impact on young people's employability following disclosure of criminal records and other police information relating to low-level offending. The NIPB was also aware that the Justice Minister has rejected the recommendation in the Youth Justice Review whereby out of court diversionary disposals would not be subject to employer disclosure and that he instead opted for the recommendations made by Sunita Mason and introduced new filtering arrangements. The Board noted that the result is that diversionary disposals will continue to be disclosed to employers on standard and enhanced Access NI checks albeit for a limited time in most cases. It further noted that any information held on police systems can potentially be disclosed as 'police information' as part of an enhanced check.	**Issue 6: Police information** (The Department notes the points made by the NI Policing Board (NIPB) in relation to the impact on young people's employability, the Youth Justice Review and filtering which are, in the main, similar to those identified by CLC and others, and are dealt with under Issues 1 and 3 above.) NIPB also note that any information held on police systems can potentially be disclosed as 'police information' as part of an enhanced check. This is, indeed the case - within the scope of the current filtering scheme, the chief officer of any force can provide any information that he reasonably believes to be relevant and ought to be disclosed. An Independent Monitor (IM) was appointed to review a sample of cases in which a certificate is issued under Part 5 of the 1997 Police Act. The IM also carries out this function in relation to enhanced certificates issued by AccessNI in Northern Ireland. The functions of the IM were widened under the Protection of Freedoms Act 2012, and provide that an individual can apply to the IM to determine whether any information provided by the police under the 1997 Act is relevant or ought to be included in an enhanced criminal record certificate. This change in the IM's functions is being extended to Northern Ireland via the Justice Bill.

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Clause 36 – Restriction on information provided to certain persons; This clause repeals s101 of the Justice Act (Northern Ireland) 2011 and sections 113A(4) and 113B(6) of the Police Act 1997 Act which require that an employer or registered person	**Children's Law Centre**	The CLC was supportive of disclosures being sent to the applicant, rather than the applicant *and* the registered person because it allows an applicant to have the opportunity to challenge the information. The CLC was however concerned that Clause 36 will allow the Department to indicate whether a certificate had been issued and whether the certificate contained no information if that was the case and provides that certificates must be provided to the registered person or employer in certain circumstances. CLC has requested clarity on the circumstances in which this would apply and is concerned that these exceptions could undermine the purpose of sending a certificate to the applicant only in the first instance.	**Issue 7: Information provided to employers** The overwhelming majority of AccessNI checks contain no information (approximately 95%). This provision is, therefore, designed to ensure that employers do not have to wait in every circumstance for the applicant to provide their AccessNI check before making an offer of employment. A similar provision exists in England and Wales. In operational terms, this process will work through the case tracking system. This will identify whether or not there is information on an individual's certificate. Employers will be able to access this system and, where it is clear that an individual's certificate contains no information, they can proceed to make an employment decision. This removes potential delay in making an appointment. Where the case tracking system does not indicate that there is no information, this will alert the employer to ask the applicant to provide a copy of their certificate for consideration. This does not undermine the concept of sending the certificate to the employee only. Where information is included on a certificate, that employee/volunteer continues to have the option of deciding whether or not to provide this to the employer or proceeding with their employment/voluntary opportunity. They could also seek a review of the information.

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should be sent a copy of a certificate. Such provision is no longer required as only applicants will routinely receive a copy of a Standard or Enhanced certificate. It also makes provision for registered persons to have access to information about certain	**NIACRO**	NIACRO welcomed the proposal (to issue a single certificate to the applicant only) as it will provide individuals with the opportunity to have greater control over their personal information. Particularly, as it will provide opportunities to challenge discrepancies, with regard to the accuracy of information directly with the disclosure body, before employers receive it.	The Department welcomes this positive response.
	NSPCC	NSPCC highlighted a number of operational issues regarding the provision of one certificate which have arisen in England, such as; having to chase certificates and the additional administration required which could encourage employers to take shortcuts in employment decisions. NSPCC also cautioned about the over reliance on what is in a certificate in that there may be a considerable period of time for material to be updated on CRO. The Home office Noticeable	**Issue 8: Operational issues/administration** The concern raised by NSPCC is that if an employer no longer receives a second copy of the certificate, they may make a decision to employ without having sight of the relevant information. This is why the Department has introduced a provision that enables employers to check on-line whether a certificate has been issued, and whether or not there is information in it. As the vast majority of certificates contain no information, this reduces the number of applicants that an employer will have to approach with a request to view the certificate.

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certificates that stop short of indicating whether any criminal convictions or other information has been provided on that certificate. It also provides that AccessNI must, in certain circumstances, send a copy of a certificate to the registered		Occupations Scheme (NOS) which is in PSNI force orders provides a further safeguard to more immediate situations when an employer will be advised of allegations in certain circumstances. NSPCC stated that the Committee may find it helpful to look at the interface between NOS and the continuous updating scheme particularly how long it will be before information on an individual would appear on a certificate. NSPCC's advice to employers is always to have sight of the original certificate to satisfy themselves of any criminal record content or other relevant commentary and it states that it would be useful if the Committee would endorse this as part of their debate on this clause. NSPCC also suggested that a further sub section be introduced in the clause requiring the Department to issue statutory guidance on this process and to promote good employment practice in relation to certificates.	**Issue 9: Reliability of information on certificate/delay in criminal record updating** The Update Service, or portable disclosure, works on the basis that an employer can check on-line to see if there is any change in the information provided in a certificate presented to them by an individual who has subscribed to the Update Service. Criminal record information, and information such as that relating to pending prosecutions, is updated weekly on the Update Service. The Department believes that the risk is extremely limited in relation to a delay in changes to police information within the Update Service; this has been the experience in England and Wales where an Update Service has been in operation for some 18 months. AccessNI's advice to any employer, relying on an AccessNI certificate where the applicant has subscribed to the Update Service, is that they should always have sight of the original certificate. The Department is of the view that there is no need for

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person. This provision is limited to those that apply for the new Update Service. Also repeals s.113B (5) of the 1997 Act under which information, which might be relevant, may be provided to a registered person without it being copied to the applicant. This is not regarded as			statutory guidance on this process; it can be adequately dealt with in good practice guidance.

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human rights compliant and the PSNI have not used the powers for some time and have no plans to do so.			
Clause 37 – Minimum age for applicants for certificates to be registered This clause provides that children under 16 should not be subject	**Children's Law Centre**	The CLC commented that the prescribed circumstances in which those under 16 should not be subject to criminal records checks are not set out in Clause 37 and so are unclear. CLC welcomed any limitation of the circumstances in which criminal records checks could be sought against children but raised concerns that the clause only applies to children up to 16 rather than 18 in line with the definition of a child under the UNCRC.	**Issue 10: Clarity in relation to prescribed circumstances** The provision requires that anyone under 16 should not be subject to a criminal record check except in **prescribed circumstances**. These circumstances will be established through secondary legislation, to be introduced at the same time as commencement of the provisions in the Bill. This will enable further consultation to be taken forward. The Department's initial views are that the prescribed circumstances should reflect those of recommendation 4 of the review of the Criminal Records Regime, and be restricted

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to criminal record checks except in prescribed circumstanc es (such as those in home-based occupations) and that an individual under the age of 18 applying for registration must satisfy the Department that there is good reason for being registered.			to home-based occupations such as child-minding, adoption and fostering. This enables members of the family of a child-minder, adopter or fosterer to be checked. **Issue 11: Clause should apply up to age 18** The Department believes that this is an appropriate measure, given that individuals under 18 engage in regulated activity on exactly the same basis as those over 18. Examples include working in care homes or in domiciliary care, or on courses that enable those under 18 to work unsupervised with children.
	NIACRO	NIACRO does not consider it appropriate to carry out criminal record checks on under 16s and stated that the only circumstances where it may be appropriate would be where childcare takes place in a domestic setting e.g. fostering, adoption or child-minding where risk factors may be increased.	The Department notes the support for this measure within the parameters identified.

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	NSPCC	NSPCC supported the threshold of 16 for eligibility checks, bar situations where a check is needed for a household in situations such as fostering, adoption and child-minding where children over 10 will be subject to a check at the enhanced level and views this position as proportionate and reasonable.	The Department notes the support for this measure within the parameters identified.
Clause 38 - Additional grounds for refusing an application to be registered This clause provides a power to refuse to register an individual or organisation	**NIACRO**	NIACRO highlighted that in previous responses it has repeatedly drawn attention to the inappropriate, unlawful and illegal acquisition of AccessNI disclosures requested on individuals by Registered Bodies but is unaware of any sanctions or penalties imposed on any employers to date. NIACRO recommends that: • AccessNI needs to be more proactive in monitoring requests for checks and take appropriate action where illegal checks have been requested. • Registered and Umbrella Bodies	**Issue 12: Inappropriate acquisition of AccessNI disclosures by Registered Bodies/implementation of AccessNI Code of Practice** Only the employer can fully understand what specific work will be undertaken in the position for which a check is being sought. AccessNI must, therefore, rely heavily on the employer's assessment that a position is eligible for a check. AccessNI will, however, act on specific complaints brought forward by applicants or others, where relevant information is provided. As part of its ongoing compliance work, AccessNI checks that organisations registered with it are complying with its (statutory based) Code of Practice. Specific checks are undertaken to ensure organisations are seeking the

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that has previously been removed from the register as a result of a breach of the Department's Code of Practice and/or Conditions of Registration as set out within the Police Act 1997 (Criminal Records) (Regulations) (Northern Ireland)		need clear guidance about their roles and responsibilities when obtaining and assessing disclosure certificates. • AccessNI must ensure implementation of its own Code of Practice to hold Registered Bodies to account and address the issue of discriminatory practices of employers. • a schedule of comprehensive audits is implemented based on increased awareness-raising for employers on their responsibilities under the AccessNI Code of Practice • a greater commitment by the DOJ and the Executive regarding enforcement of an individual's rights is needed. In its oral evidence NIACRO repeated its experience that some employers use	appropriate level of checks for employees and volunteers. At the end of each compliance visit, AccessNI provides organisations with a list of recommendations in relation to the operation of the Code of Practice, and then ensures that these are implemented. Failure to do so would ultimately result in AccessNI withdrawing registration. Where AccessNI finds that an organisation has sought an inappropriate check it takes the appropriate action. In addition, AccessNI runs a free of charge, 2 hour monthly training event that is open to all counter-signatories in Registered Bodies. One of the elements of this training emphasises the need to make checks only where the position is eligible for an AccessNI check. If anyone has evidence of employers undertaking ineligible checks, we would very much welcome having that brought forward to AccessNI. AccessNI is unable to respond to anecdotal reports alone.

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2007.		criminal record information, including very old and minor convictions as a means to deny people opportunities. NIACRO highlighted that while AccessNI does have a Code of Practice, its evidence suggests that this is not always being effectively implemented and that registered bodies are not regularly being held to account. NIACRO suggested that this needs to be addressed urgently so that employers cannot use the disclosure of convictions to weed out applicants at the shortlisting stage and that legislation for this fair recruitment practice would help to reduce offending and make communities safer. NIACRO outlined that, in the last 12 months, there has been a marked increase to its advice line, mainly by applicants but also by employees experiencing difficulties in how an employer is using or interpreting the disclosure of the information in the check to dismiss someone or rescind a job offer.	

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	NSPCC	NSPCC highlighted that there are important responsibilities on Registered and Umbrella Bodies and stated that it is supportive of this clause for breaches of the Departmental Code of Practice.	The Department notes the support for this measure.
Clause 39 - Enhanced criminal record certificates : additional safeguards This clause replaces the duty on the Department to send applications for Enhanced disclosures to relevant police forces with a duty to	**Children's Law Centre**	The CLC welcomes the fact that a more stringent test is now being put in place for the disclosure of information such as police intelligence and stated that disclosure of police intelligence must be open and transparent and compliant with human and children's rights standards. Where possible, the CLC stated that there should be a presumption of non-disclosure of 'soft intelligence' up to the age of 18. The CLC indicated that, as a minimum, decisions around the disclosure of police intelligence in relation to a person under 18 must be made at the least at Assistant Chief Constable level, within a framework for the proper consideration of all of the children's rights issues, with the best interests of the child as a primary consideration.	**Issue 13: Dealing with disclosure in relation to under 18s** All decisions in relation to whether or not to disclose non-conviction information are taken in line with the Quality Assurance Framework (QAF) document to ensure appropriateness and consistency. QAF is a detailed working document, agreed between the Association of Chief Police Officers (ACPO) and the Disclosure and Barring Service (DBS) that sets out the steps and considerations to be taken into account before non-conviction information can be disclosed. Where information is to be released in relation to those under 18, there will be a process whereby police will advise the applicant of the information they intend to disclose and provide them with an opportunity to make representations. Often, information released on those under 18 is designed to explain the background to offences so that employers can assess for themselves whether this would be relevant to the

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send these to relevant chief officers. It also amends the 'relevancy' test in section 113B(4)(a) of the Police Act 1997 to be applied by a chief officer when determining whether information should be included in an Enhanced criminal record certificate from		The CLC noted that Clause 39 provides for the publication of guidance in relation to the disclosure of information and calls for urgent consultation on the Code of Practice. The CLC would welcome the Committee exploring how the Department intends to discharge its obligations under section 75 of the Northern Ireland Act 1998 with regard to the Code of Practice which is a policy in its own right, and should be subject to all of the section 75 processes. The CLC also noted that because Clause 39 will allow persons to apply to an Independent Monitor to determine whether information disclosed is relevant and ought to be disclosed, it is	position for which employment is being sought. This is especially helpful where the offence relates to assault of another young person where a charge of aggravated assault is normally laid. **Issue 14: Code of Practice – consultation** **(also raised by NIACRO and NIHRC)** The Department will consult on the proposed Code of Practice. The Code will reflect the Home Office Guidance which is currently in place and operated by police forces in England and Wales, and by PSNI. This will ensure consistency of decision-making across police forces whether the applicant comes from Northern Ireland or elsewhere. The Code should complement the current QAF process. **Issue 15: Independent Monitor process** **(also raised by NIHRC)** The process for making an application to the Independent

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information which 'might be relevant' and ought to be included in the certificate, to a higher test of information which the chief officer 'reasonably believes to be relevant' and which ought to be included in the certificate. The clause also makes provision for a statutory Code of		extremely important that this process is entirely independent. If the application is to be referred to the police, the Bill should clearly specify that the application will be referred to a different chief officer then the one who made the initial decision to disclose the information. CLC would also welcome consideration being given as to how children and young people wishing to apply to the Independent Monitor will be supported and assisted. The CLC stated in oral evidence that nothing should ever be routinely disclosed and that there should be a weighing up of whether the offence is serious enough, whether it is relevant and whether there are genuine concerns for the safety of the public if it were to be disclosed.	Monitor to review police or non-conviction information on a certificate is well established in England and Wales. This is a fully independent process, which requires AccessNI to amend a certificate where the Independent Monitor requests this. The Independent Monitor already has a role in Northern Ireland in reviewing a sample of cases in which disclosures have been made. It is the Department's intention to extend his role here (in line with his existing role in England and Wales) to include this function of determining, on application by individuals, whether information disclosed is relevant and ought to be disclosed. The process will be publicised widely. The Department is confident that the process involved is sufficient to ensure full compliance with European Court of Human Rights judgment *M.M v UK*. The Independent Monitor's experience to date is that it has not been necessary for him to refer any cases he has reviewed to a chief officer.
	NI Human Rights Commission	The Commission noted that the provision to require a chief officer to have a reasonable belief in the	A response to these comments is included in the detail given above.

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Practice to which chief officers must have regard in discharging their functions under section 113B(4) of the 1997 Act and allows parties other than the applicant to dispute the accuracy of the information contained in a certificate. Finally, the clause also allows a		relevancy of the information increases scope for discretion. In addition the Commission notes that individuals will be able to apply to the Independent Monitor to question the relevancy of information to be provided in an enhanced criminal record certificate. The Commission advises the Committee to ask the Department to provide details on how an individual will apply to the Independent Monitor. In addition the Commission advises the Committee to ask the Department if the proposals are considered sufficient to ensure full compliance with European Court of Human Rights judgement *M.M v UK*. In oral evidence the NIHRC stated that, in relation to applying to the Independent Monitor, it must be very widely publicised and it must be clear to the individual so that he or she is aware of the provision available. The NIHRC suggested that the effectiveness of the Independent Monitor as a safeguard will	

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person to apply to the Independent Monitor (appointed under section 119B of the 1997 Act) to determine whether information provided under section 113(B)(4) of the 1997 Act is relevant or ought to be included on an Enhanced criminal		depend on exactly what powers it has, how it is allowed to exercise them and the degree of discretion and resources to deal with cases properly. The NIHRC also highlighted the importance of the Code of Practice stating that in the past very limited discretion had been given and the judicial decisions, in the early stages, often seemed to back that up. The NIHRC suggested that the Code should be the subject of a targeted consultation in order to reinforce safeguards around the disclosure of criminal records.	
	NI Policing Board	NIPB noted that given the new filtering arrangements do not apply to the disclosure of police information on an enhanced certificate, police are instead required to exercise professional judgement when determining what information to disclose. That judgement should be exercised within clearly defined parameters.	A response to these comments is included in the detail given above.

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record certificate.		The Policing Board indicated that although the Justice Bill proposes to tighten up the relevancy test contained within the Police Act 1997, additional wording could perhaps be inserted into the 1997 Act to expressly require that any disclosure must be in pursuit of a legitimate aim (as set out in Article 8(2) ECHR), necessary and proportionate.	
	NIACRO	NIACRO believes that non-conviction information should be stepped down immediately and not disclosed unless there is a proven risk of harm and this should apply to adults as well as young people. NIACRO welcomes a more robust system that allows information to be disclosed in a consistent manner with clearer guidelines in place for the PSNI and recommends that any new system of a "higher test" is clearly defined. NIACRO also recommends that decisions to disclose information that	**Issue 16: Comments on the general process** **(also relates to NIPB comments)** It is worthy of note that only around 0.3% of all enhanced criminal record checks have non-conviction information disclosed. There is already a robust procedure in place to consider whether non-conviction or police information should be disclosed on enhanced checks. The Quality Assurance Framework (QAF) is a detailed working document, agreed between the Association of Chief Police Officers (ACPO) and the Disclosure and Barring Service (DBS) that sets out the steps and considerations to be taken into account before non-conviction information can be disclosed. This process is used

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		the chief officer "reasonably believes to be relevant" should be examined and signed off by a panel of experts because there has been previous disparities regarding differences between PSNI Criminal Records Office (CRO) staff in the decision making process which, by their own admission, is due to a lack of guidance and under resourcing. NIACRO also recommends that the CRO needs to be adequately resourced to implement and apply new guidance which should be underpinned by a transparent quality assurance process to reflect greater openness and fairness for those affected by the criminal record checking process. The guidance for chief officers should clearly outline the restricted circumstances in which information should be released under Section 113B (4)(a) i.e. in cases where public protection and risk factors are clearly overarching factors. Additionally, NIACRO recommends that	by all police forces in the UK. The document and process is available to the public. PSNI's Criminal Records Office is adequately resourced by AccessNI to enable these matters to be fully considered. The DBS audit all police forces on an annual basis to ensure that QAF is being correctly implemented and that there is consistency, both in consideration of individual cases, and across police forces. In addition, the Independent Monitor of police information samples cases from all police forces where information was considered but not disclosed. QAF already requires forces to consider whether disclosure should be made in accordance with the European Convention on Human Rights. The proposal to enable persons other than the applicant to raise disputes is primarily to enable solicitors, MLAs or other organisations to represent applicants in disputes with AccessNI. AccessNI would always seek assurance that a third party was acting on behalf of, and with permission from, the applicant

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		there should be clear guidance produced and made available to the public as to how decisions are made in releasing police intelligence. NIACRO pointed out that non-conviction information can also result in barriers to an individual's chance of employment as well as causing confusion for employers. To avoid this practice, organisations should only receive information about non conviction disposals in circumstances where the risk factors are significant. It also questions the necessity to release information in many instances which is often not relevant to particular posts and which presents difficulties for all parties involved. NIACRO welcomed the provision to include a statutory Code of Practice and recommended this should be subject to full public consultation. NIACRO expressed concern about the proposal to allow parties other than the	

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		applicant to dispute the accuracy of information on certificates and questioned how this fits with Data Protection Legislation: It recommends that there needs to be a clear definition of who this does and does not cover and clear guidelines need to be published. NIACRO welcomed the provision to apply to an Independent Monitor to determine whether information provided under section 113 (B) (4) of the 1997 Act is relevant or ought to be included on an Enhanced Criminal Record Certificate. It believes that this development will provide a fairer process and remove the current difficulties. NIACRO also recommends that AccessNI needs to be more customer focussed and stated that, given its role as an agency of the DOJ, it is questionable how the public would perceive AccessNI's representations process as independent.	

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Clause 40 – Updating certificates This clause inserts s.116A into the 1997 Act. This makes provision for updating arrangements. Currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate is required as the	**Children's Law Centre**	The CLC was supportive of the concept of portable disclosure certificates as it would enhance the operation of the checking system, while making the process less burdensome for individual applicants. CLC again emphasised the importance of disclosures being sent to the applicant in the first instance given a 'relevant person' will be permitted to ask whether there is any new information. CLC is concerned that the implication of indicating to a registered person that a new certificate should be sought is that there is information to disclose even though the applicant may proceed to challenge that information.	**Issue 17: Importance of disclosures being sent to the applicant first** **(also raised by NIACRO)** The relevant provision requires the Department to send a copy of the certificate to the applicant only (the applicant can of course waive this right or give express permission for the information to be shared or sent to an employer). This enables the applicant to raise any concerns they may have about the accuracy of the information, or to indicate if they believe it is not relevant or ought not to be disclosed. **Issue 18: Implication of indicating to a registered person that a new certificate should be sought** The Department notes this concern, but is of the view that this is the only way the portable disclosure process can work. It is appropriate to notify an employer that information has changed. If this was not the case it would undermine the portability process, in that employers would simply ask for a new certificate for each change of job or role, so that they could be sure there was no change in the information. Once an employer is aware that there is a change of

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information on it is only valid when issued. Updating arrangements will allow an individual to use their certificate for a variety of positions (i.e. to make it portable) as the legislation enables the Department to permit a relevant person, in many circumstances this will be an employer, to			information they will ask the applicant to make a fresh application for a new disclosure check. Here again the individual has the option of deciding whether or not they wish to proceed.
	NIACRO	NIACRO welcomed the exploration of portability in providing updates about conviction information since the current system places unnecessary administrative and financial burdens on both employers and AccessNI. In principle, NIACRO agreed with the concept of portability on the basis there is a clear mechanism for employers to use, but noted it could potentially allow any employer to request copies of AccessNI Checks. The new arrangements must be closely monitored to ensure discrimination does not increase. Furthermore, to avoid disputes and inaccurate information being forwarded directly to employers, individuals should be given the opportunity to have sight of the	**Issue 19: Portability mechanism** **(also relates to NSPCC comments)** Update certificates (portable disclosures) will be available for those who work across both the adult and children's workforce – for example a doctor or nurse. It will be a matter for voluntary organisations to determine whether or not they wish to seek a new certificate every three years or to suggest to applicants they subscribe to the Update Service. There is no cost attached to either route for volunteers. **Issue 20: Regulation and monitoring of the usage of portability** Employers are not able to make "status checks" (that is a check to see if the information on a portable certificate has changed) without the employee's consent.

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ask, subject to certain conditions, whether there is any new information. This will be done by means of an on-line facility and will enable the relevant person to establish whether the information on the certificate remains valid and up to date or whether a new certificate		information to verify its accuracy or otherwise prior to disclosure. NIACRO agreed that the portability of disclosures should be sector specific and where an individual moves between sectors, a new Enhanced Disclosure should be requested. NIACRO recommended that further clarification is given as to how AccessNI intends to regulate and monitor the usage of portability to ensure that organisations do not unfairly discriminate against those who submit their copies of disclosure certificates and therefore questions how portability fits with the AccessNI Code of Practice compliance.	
	NSPCC	NSPCC indicated that it supported portability of certificates for a small number of people who work across a range of roles and organisations. NSPCC has also suggested that for most roles in the voluntary sector it is	A response to these comments is included in the detail given above.

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should be requested.		easier for employers to seek a new certificate on a three yearly basis.	
Clause 41 - Applications for Enhanced criminal record certificates This clause makes provision in section 113B for those who are self-employed to apply for an Enhanced certificate. Section 113B(2)(b) currently	**NIACRO**	NIACRO welcomed the opportunity for self-employed individuals to access Enhanced Checks on the basis that checks are requested and obtained legally for host organisations/Registered Bodies. NIACRO recommended that clarification is provided regarding the circumstances under which it is appropriate to obtain Enhanced Checks. They queried whether it covered the following kinds of occupations: – Taxi Drivers – Construction Contract Works e.g. in schools – Fitness Instructors e.g. contracted in Leisure Centres – Personal Trainers – Those providing services in their homes e.g. music teachers etc…	**Issue 21: Clarification regarding the circumstances under which it is appropriate to obtain Enhanced Checks** Self-employed checks are designed for those who are currently not able to obtain a check. Some of the examples given by NIACRO are employed by an organisation that can currently obtain such checks – taxi drivers, for example, are licensed by the Driver and Vehicle Licensing Agency; and contractors working in schools are checked by the relevant Education and Library Board. The checks referred to here are primarily aimed at those who provide services to individual members of the public, particularly children. Examples would include transfer test coaches and piano tutors. AccessNI will recommend that those applying for such checks also subscribe to the Update service and make their details available so that up to date checks can be made by parents etc.

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provides that an application must be accompanied by a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose. (The term Exempted question is defined in Section			This is in line with a recommendation made by the Committee for the Department of Culture, Arts and Leisure (DCAL) in its report in respect of its investigation into gaps in Child Protection and safeguarding across the Culture, Arts and Leisure sector, published in 2013. The Committee recommended that the DCAL Minister should examine what work was underway around the regulation of "self-employed persons" who work with vulnerable groups. This new AccessNI service helps to eliminate gaps in this area of safeguarding.

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113A(6) and demonstrates in broad terms that the certificate is required for a purpose that has been excluded from the Rehabilitation of Offenders (Northern Ireland) Order 1978 by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland)			

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1979). If the position is one where the individual is self-employed the registered person is unable to provide such a statement. Clause 41 will enable self-employed persons to provide, under Section 113B of the 1997 Act, a statement that the			

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certificate is required for the purposes of an exempted question asked for a prescribed purpose. Application from the self-employed must also be submitted to AccessNI via a registered person in the same way that other applications are made.			

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This means that the registered person will carry out functions such as checking identity.			
Clause 42 - Electronic transmission of applications Makes provision in sections 113A and 113B for applications for Standard and Enhanced certificates	**NIACRO**	NIACRO stated that this needed to be clearly regulated to ensure information transmitted from Registered Bodies is secure and fully compliant with Data Protection. NIACRO recommended that the Information Commissioner should play some kind of advisory role in the establishment of this process with its support services actively promoted among Registered and Umbrella Bodies.	**Issue 22: Regulation of electronic transmissions** The Department has assessed that there is no requirement for the Information Commissioner's Office to be consulted about the proposed method of transferring information to AccessNI via electronic means, given that the accredited NI Direct website will be the primary vehicle for this. The Department is subject to the Data Protection Act and fully complies with this, whether applications are made on the current paper-based system or electronically.
	Health and Social Care Board	The Health and Social Care Board supports this proposed amendment.	The Department welcomes the Board's support for this provision.

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to be sent electronically by inserting a new subsection (2A).			
Amendment - Publication of the Code of Practice	**NSPCC**	NSPCC is content with this proposal as it will ensure a consistent and open approach to disclosure decisions by the police but recommends that the Department consult on the provisions in such a code.	The Department welcomes NSPCC's support for this amendment, and has already given an undertaking to consult on the Code, and to publish it.
	Women's Aid	Women's Aid supports the mandatory publication of the Code of Practice, and views it as a positive step in ensuring transparency and accountability in policing.	As above.
	Disability Action	Disability Action agrees with the amendment suggested by the Attorney General to make it clear that the Code must be published highlighting that it has always been the intention that the Code of Practice would be published.	As above.

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	NI Policing Board	The Committee supports the introduction of a Code of Practice for police officers and asks that the DOJ consults with PSNI and the Board when developing this Code.	As above.
	Information Commissioner's Office	The ICO supports the proposal to publish a statutory Code of Practice.	As above.
Amendment - Exchange of information between Access NI and the Disclosure and Barring Service for barring purposes.	**Department of Education (DE)**	The Department of Education indicated that it had a particular interest in this amendment as safeguarding of pupils at school is a priority and the vetting and barring procedures in place play a key part in the protection of children and in the recruitment and selection of staff who work in schools. DE welcomed the proposed amendment noting that the DoJ has outlined that it is "an important additional safeguard for vulnerable groups and should assist in ensuring that inappropriate persons are unable to get work with such groups".	The Department welcomes the support for this amendment.

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	Housing Executive	The Housing Executive supports the amendment and agrees that this technical amendment is needed as an additional safeguard for vulnerable persons to be protected from inappropriate persons being able to get to work with such groups of people.	As above.
	NSPCC	NSPCC stated that it is very important that the DBS and AccessNI are able to share information and intelligence since the DBS carries out a barring function for Northern Ireland. NSPCC supported the amendment as it would ensure NI has parity with barring processes that apply in England and Wales and it is probably also material for those from this jurisdiction who seek work in E&W. NSPCC expressed the view that it is very important that UK legislation on vetting and barring, while in separate provisions, provides consistency across the UK in operation.	As above. **<u>Issue 23: Consistency of vetting and barring provisions across the UK</u>** NSPCC expresses the view that it is very important that UK legislation on vetting and barring, while in separate provisions, provides consistency across the UK in operation. The Department agrees with this view; it is one of the reasons that this amendment has been introduced.

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	Disability Action	Disability Action views this proposed amendment as an important additional safeguard for vulnerable groups which should assist in ensuring that inappropriate persons are unable to get work with such groups and supports it.	The Department welcomes the support for this amendment.
	Women's Aid	Women's Aid supports proposals for the exchange of information between Access NI and DBS for barring purposes. They pointed out that it is essential for every possible step to be taken to safeguard vulnerable people from predators. Women's Aid believe that this new process will result in better and more effective screening of those seeking to work with vulnerable groups and will contribute to better safeguarding of children and vulnerable adults.	As above.
	Health and Social Care Board	The Health and Social Care Board supports this amendment and considers that it has the potential to have an immediate and positive impact on the	As above.

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		wellbeing of vulnerable people by the provision of additional safeguards against abuse by those in paid care positions.	
	Information Commissioners Office (ICO)	The ICO highlighted issues for consideration relating to conditions for processing as well as the requirements to ensure that personal and sensitive personal data must be kept secure but welcomed the proposal to ensure there is a statutory basis to enable AccessNI to share information with the Disclosure and Barring Service. The ICO did however stress the importance of compliance with DPA principles, particularly with regard to the fair and lawful processing of the sensitive personal data and the security measures that must be in place.	**Issue 24: Data protection** The Department recognises the importance of ensuring that personal and sensitive data is kept secure. It is subject to the Data Protection Act and will fully comply with this in respect of all the services provided by AcccessNI.
	Department of Health, Social Services and Public	The DHSSPS welcomed this proposed amendment which will allow AccessNI to share information with DBS	The Department welcomes the support for this amendment.

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	Safety		
Amendment - Review of criminal record certificates where convictions or disposals have not been filtered	**Children's Law Centre**	The CLC stated in oral evidence that it was supportive of the Department's intention to bring forward amendments to the Bill to provide for an independent review mechanism to make the current filtering regime more compatible with Article 8 ECHR. The CLC outlined that it wished to see the implementation of recommendation 21 of the Youth Justice Review including non-disclosure for diversionary disposals and disclosure of criminal records information relating to the offending of children and young people except in exceptional circumstances, where the offence is sufficiently serious and relevant and where there are concerns for public safety were the information not to be disclosed. The CLC outlined that one of the issues in relation to the current filtering arrangements is that, if a young person has more than one conviction,	**Related to Issues 1 and 3: Under 18s/non-disclosure of diversionary disposals** **(also raised by Include Youth and NIACRO)** This issue has been addressed in some detail under the general comments section. How we manage criminal records is a complex issue within which there are many, often competing, factors in play. The Department recognises the importance of getting the balance right between ensuring that individuals are not labelled forever because of a poor choice at an early age and the right of the public, and particularly vulnerable groups, to be protected from harm. When deciding on the introduction of filtering, and the routine disclosure of non-conviction information in August 2013, the Justice Minister considered carefully recommendation 21 of the Youth Justice Review, as well as the review of the Criminal Records Regime in NI, and various court decisions. In coming to a decision, he took account of the best interests

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		that will never be filtered out, regardless of what those convictions are for and stated that the recent judgement of the Supreme Court in R (on the application of T and another) v Secretary of State for the Home Department and another should be considered highly relevant in developing any review mechanism and ensuring that that arrangements for the disclosure of criminal records are compliant with the ECHR. The CLC suggested that decisions should be taken on a case by case basis and that the independent review mechanism would make those decisions.	of the wider community, including those children and young people who may be victims. The filtering scheme, introduced in April 2014, already provides significant safeguards by ensuring that certain conditions and disposals are not disclosed after a period of time; it also incorporates a graduated approach for younger people. The review mechanism being proposed includes an automatic referral to an independent reviewer for those cases where disclosure relates only to offences committed under the age of 18. **The Review Mechanism detail/guidance** **(also raised by Disability Action; NIPB; Information Commissioner's Office)** The detail of how the review mechanism will operate will be set out in guidance, and subject to full public consultation. All relevant court decisions and human rights considerations will be taken into account.

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	Include Youth	Include Youth point out that under new arrangements for 'filtering' criminal records which has been introduced recently the filtering period for under 18s who received a Caution is two years; it is one year for an Informed Warning and 5.5 years for those convicted with non-custodial sentences. Include Youth is concerned that Informed Warnings for under 18s should be disclosed for any period of time and recommends that such disposals should always be filtered out from record checks. Include Youth believes that special consideration should be given to the disclosure of young people's criminal records for employment purposes and these should only be released where there is a proven risk of harm. Include Youth supports the recommendations made by the Youth Justice Review on this matter and notes that recommendation 21 is the only one not accepted by the Minister of Justice.	As above.

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	Disability Action	Disability Action welcomes a consultation with key stakeholders on the draft guidance to be prepared by the Department.	As above.
	Health and Social Care Board	The Health and Social Care Board supports this proposal	The Department welcomes the support for this amendment.
	NIACRO	NIACRO welcomed the proposal to incorporate an appeals mechanism into the new filtering scheme to reflect a fairer and more transparent process for those with more than one conviction or a diversionary disposal that under current arrangements would not be subject to filtering. NIACRO stated that the appeals process must be maintained and should be overseen by the proposed Independent Monitor. NIACRO recommended that there needs to be a provision for considering offences committed while under the age of 18 and to afford greater protection to those with minor or older disposals or	The response given at issue 1 and 3, and above, in relation to under 18s/non-disclosure of diversionary disposals is also relevant here. The Department believes that the filtering scheme, introduced in April 2014, provides significant safeguards by ensuring that certain convictions and disposals are not disclosed after a period of time; and the filtering review mechanism will provide a further opportunity for disclosures to be considered for removal. The filtering scheme will be reviewed later this year, and stakeholders will have the opportunity to contribute to that process. The detail of how the filtering review mechanism will operate will be set out in guidance, and subject to full public

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		sentences who cannot avail of the protection under the current filtering scheme. While NIACRO welcomed an appeals mechanism, they believed it does not go far enough and called for the implementation of recommendation 21 of the Youth Justice Review for under 18s to be able to apply to wipe their slate clean of old and minor convictions. In its oral evidence NIACRO outlined the example of someone who comes to the attention of police for a traffic offence and there is evidence of an invalid licence because they have not changed their name e.g. a woman who got married. This becomes two offences and therefore neither will be filtered. NIACRO questioned whether keeping that person in the criminal justice system, subject to the record keeping processes etc is really acting to protect the public.	consultation.

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	NSPCC	NSPCC is content that a scheme be established to deal with disputes around criminal record information that is not filtered. It pointed out that filtering of convictions for the purposes of disclosure is a finely balanced issue and it is important to recognise as a safeguard that Chief Officers in the Police should always have discretion to disclosure a conviction however minor under Part V of the Police Act 1997 in the context of other relevant information.	The Department recognises the importance of this safeguard, and this provision remains an integral part of the disclosure process.
	NI Policing Board	The NI Policing Board would welcome guidance on the new filtering rules and review mechanism and wants to be included in the targeted consultation the Department intends to carry out. The Board stated that there appears to be a lack of public knowledge regarding the extent of information that might be disclosed during a criminal record check in particular the disclosure of non-conviction information therefore it would be important that the guidance is publicly accessible and easily	The response given against CLC (above) in relation to guidance and consultation is also relevant here.

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		understood.	
	Women's Aid	Women's Aid is concerned that the establishment of this approach may lead to serial perpetrators of domestic violence slipping through the cracks and facilitating their abuse of future victims. Women's Aid highlighted that, in many domestic violence cases a perpetrator may have committed serious and sustained acts of abuse yet have no substantial criminal record. Women's Aid stated that it is vital that records are able to remain in such cases, particularly given the prevalence of serial perpetrators of domestic violence.	The Department acknowledges that this is a concern for some; however, the fact that police will still be able to add relevant information should ensure that such records are taken into account.

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	Information Commissioner's Office	The ICO again stressed the importance of DPA compliance which requires that personal data must not be kept for longer than is necessary and welcomed the introduction of filtering with regard to criminal records. The ICO would welcome further information on the review process and the new guidance.	The Department recognises the importance of looking after data in an appropriate way. It is subject to the Data Protection Act and will fully comply with this in respect of all the services provided by AccessNI. Guidance on the review process will be subject to full public consultation.

PART 6: LIVE LINKS

Part 6 of the Bill expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before Magistrates' Courts from outside the United Kingdom and for patients detained in hospital under mental health legislation and they will be the norm for evidence given by certain expert witnesses.

The provisions do not change a patient's or defendant's entitlement to be present at a hearing nor do they alter the right to consult privately with their legal representative before, during or after a live link. As a package they are designed to increase the use of live links in courts, prisons and hospital psychiatric units providing a cost effective and secure means for patients/defendants to participate in hearings.

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General Comments	**Children's Law Centre (CLC)**	CLC stated it had serious concerns with regard to the use of live links in criminal cases which involve children and young people, as it believed they are potentially in breach of Article 6 of the ECHR and Articles 3, 12 and 40 of the UNCRC.	(i) The Department has reviewed the various Convention Articles alongside the legislative proposals and is content that the provisions and their operation would not be in breach of Convention requirements. (ii) It is important to be aware of the various legal requirements set out in statutory frameworks that must be, and have been, in place for all age groups before any live link can be invoked.

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			(iii) Across all live link procedures there is a statutory requirement for the person to be able to see, hear, be seen and be heard via the live link. (iv) Live links can only be used when the Department has satisfied itself with the arrangements and has notified the court that live links are available. For nearly all live link procedures, the consent of the defendant in required in law. (v) Additionally, live links have been in operation for many years – since the late 1990s - under the authority and supervision of the courts and judiciary. Any Convention breaches would not have been, nor would they be, permitted.
		CLC stated that it was concerned that extending the use of live links would remove any personal connection that would otherwise have been established had the child been present in court. This is also true of the child's relationship with their legal representative. CLC highlighted that if the child is not present	(vi) The Department recognises the importance of personal connections which are not solely built up in the context of live link arrangements. Defendants can and do see their legal representatives by way of visits whilst in detention in prisons or the Juvenile

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		in court and does not have direct personal contact with their legal representative, to enable them to instruct and communicate effectively with them, there may be huge implications for establishing informed consent. CLC highlighted that it is well acknowledged that effective communication with children, particularly vulnerable and marginalised children with disabilities who are disproportionately more likely to come into contact with the justice system, is challenging. CLC stated that if the child is not present in court, the child's legal representative and the court itself are greatly disadvantaged in being able to determine the competency of the child to give instructions and understand the implications of the hearing and participate effectively, particularly with regard to children as young as ten.	Justice Centre (JJC) for example. In terms of live links themselves, personal contact is also available by way of private consultation immediately before hearings, alongside the ability to halt proceedings for private discussions where needed. (vii) The Department has in the past also consulted with the judiciary about the impact of live links and the ability of children to understand and participate in proceedings. The advice received was that, from a judicial perspective, a live link facility whereby the child can speak directly and more visibly with the bench actually assists the contribution the young person him/herself can make. An on-screen, face to face exchange can be more effective in this area than the child sitting more remotely in a busy and possibly intimidating courtroom.

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		CLC indicated that the need for children to be able to fully participate in and understand proceedings in which they are involved have been identified as fundamental to guaranteeing the right to a fair trial under Article 6 of the ECHR by the European Court of Human Rights. CLC cited several case rulings and referred to the Practice Direction issued by the Lord Chief Justice in relation to the Trial of Children and Young Persons in the Crown Court in Northern Ireland. It was CLC's view, that the use of live links has the potential to exacerbate the difficulty of ensuring that vulnerable children can understand the proceedings in which they are involved and would in its view be potentially inconsistent with the judgements referred to.	(viii) The Department has also consulted with those who provide and operate the live link facilities in the JJC and is aware that at an operational level the Centre constantly seeks to improve the live link service to the courts and for the young people. On the day-to-day, case by case delivery of the system, the Centre's Care Workers constantly seek to ensure that the system operates to the best effect for both the children and the court. (ix) The Department has reviewed its proposals alongside the Practice Direction issued by the Lord Chief Justice in relation to the Trial of Children and Young Persons in the Crown Court in Northern Ireland. The Direction includes a series of procedures and requirements as to how the court should operate within an over-riding principle of preventing the child's exposure to intimidation, humiliation or distress and all possible steps to be taken to assist the young defendant to understand and

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			participate in the proceedings. Whilst it will be for individual courts to ensure compliance, the Department is content that our proposals are in accordance with the Direction and meet its requirements.
		CLC referred to evidence contained in a report commissioned by the Northern Ireland Office (NIO) in 2008 regarding the use of live links and more recent research by Include Youth which, in its view, highlights concerns regarding the use of live links and their potential to adversely affect a child's ability to participate in and understand legal proceedings which should be given serious consideration before decisions are taken to extend their use. CLC was very disappointed that the Department had not commissioned independent research into the use of live links in proceedings involving children and the impact on their ability to participate in and understand the court proceedings before extending the use of live links as it must be satisfied that the current system is working effectively and that the use of live links can ensure the child's right to a fair trial. CLC asked the Committee to inquire whether the	(x) As indicated at (vi) and (vii) above the Department has consulted with the Judiciary, the Juvenile Justice Centre, prison establishments, Shannon Clinic and NI Courts and Tribunals Service – all of the key service providers - to ensure that the services provided operate properly and compliantly. Once again it is important to stress that the live links procedures are operated within a statutory framework and are delivered under the scrutiny of the Judiciary. (xi) Departmental officials are also consulting in particular with young people in the JJC about their experience of live links and the current proposed changes.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		Department has taken forward any consultation with children and young people to improve the operation of live links for them. In oral evidence the CLC stated that, in terms of research, there needs to be some comparison between the outcomes of cases where young people have participated in cases via live link and where young people are present in court. CLC suggested that there are serious questions around the ability of a young person to give informed consent to appearing via live link if they are unaware of what the likely impact will be on the outcome of their case.	(xii) The substantive hearing of cases cannot be undertaken by way of live link. Live links are available for preliminary stages such as remands; for the sentencing process where this is to be done in a stand-alone fashion after the hearing; and for the giving of evidence by vulnerable witnesses or defendants. Full and substantive hearing or trials cannot be undertaken unless the defendant is present in court, and the Department has no evidence to suggest that such hearings are influenced by previous or subsequent live links. The Department does not see the need to commission further research but will continue to monitor current and any new systems that are introduced.
	Public Prosecution Service (PPS)	The PPS welcomed the provisions within this section which extend the use of live links to a range of court hearings and to witnesses outside the United Kingdom which presently is not available.	(xiii) The Department welcomes the PPS support for expanded live links opportunities proposed in Clauses 47 and 48.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		It also welcomed the provisions that make it easier for expert witnesses to give evidence by live link thus avoiding their unnecessary attendance at court.	(xiv) Allowing witnesses from outside the United Kingdom to give evidence by live link will help to reduce what can be severe delays that can be caused when scheduling their attendance in person during proceedings. As such delays can be a source of further stress and uncertainty for the defendant, this provision is to be welcomed. (xv) The arrangements that will make it standard practice for certain categories of expert witnesses to give evidence to the court by live link will help reduce the significant impact on work that can occur if required court attendance is postponed over a number of days, or even cancelled.
	Northern Ireland Human Rights Commission (NIHRC)	The Northern Ireland Human Rights Commission (NIHRC) outlined that the use of live links must not impact on the ability of a defendant to effectively participate in proceedings and indicated that the European Court of Human Rights has elaborated on the essential elements of effective participation in the case of SC v UK in which it stated:	(xvi) The Department is content that live link proceedings are not detrimental to effective participation, understanding, or access to legal representation.

		"Effective participation" in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence". The Commission advised that an assurance should be sought from the Department that the extended use of live links will not impede upon the ability of an accused to effectively participate in proceedings. The Commission also stated that the Committee should enquire how the Department will, in practical terms, ensure that an accused is able to effectively participate and how the confidentiality of communications is to be assured.	(xvii) There are statutory requirements that the person must be able to see, hear, be seen and be heard for a live link to take place otherwise the hearing must be adjourned. Interpreter services are also available and can be provided as part of the live link procedure where required. (xviii) The arrangements outlined at (vii) above whereby a defendant can speak directly with the bench via live link can assist the contribution the person him/herself can make. An on-screen face to face exchange can be more effective than sitting more remotely in a busy and possibly intimidating courtroom. (xix) Whilst it is for the courts and the judiciary to ensure and monitor compliance with the statutory requirements, the Department is content that its proposals do not impede effective participation. (xx) In addition to private face to face meetings whilst on remand and throughout detention, individuals have confidential access to their legal representatives by live link before and during the court procedure.

			(xxi) One-to-one private discussions with lawyers by live link are provided ahead of any court proceedings on a confidential basis. During proceedings, where the defendant needs to consult with the lawyer during proceedings, the court link is suspended to allow a one-to-one discussion by secure telephone link from the courtroom. In terms of ensuring confidentiality on a more technological basis, the live link system provides secure and confidential linkages and connections.
		In oral evidence the NIHRC stated that, in relation to live links, the legislation states that "it must not be contrary to the interests of justice". The NIHRC suggested that this is a very broad test and that it may be more appropriate to state that "it must not undermine the effective participation of the accused in a hearing".	(xxii) Regarding the "interests of justice", the Department accepts that this is a broad test but sees that as being one of its strengths. The Department would not wish – nor would it seem appropriate – to define in law how the interests of justice should be interpreted by the courts. Indeed it is a term that is used in other aspects of the criminal law and even within Article 6 of the ECHR. The Department is therefore content with the terminology as drafted.

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Clause 44- Live Links: accused at committal proceedings **This clause allows for the accused ('A') to appear and give evidence by live link in committal proceedings in magistrates' courts, if A is likely to be held in custody or detained in hospital during the proceedings. The clause includes several safeguards, such as requiring A's consent to a live link direction; the parties must have been given the opportunity to make representations; and the court must be satisfied that it is not contrary to the interests of justice for A to appear or give evidence by live link. The clause also includes the procedure for giving or rescinding a direction, as well as**	**Children's Law Centre**	CLC expressed concerns regarding the child's ability to participate in and understand proceedings through a live link and the importance of personal contact with the court and legal representatives also apply here. CLC noted that under Clauses 44 and 46 several of the new scenarios in which live links may be employed require the consent of the accused person. Whilst in the summary of responses to the consultation the Department did not accept that a live link would diminish the ability of the defendant to instruct their legal representative it did recognise the importance of informed consent and support, particularly where young people are concerned and undertook to establish enhanced procedures for young people involved in considering the use of a live link to ensure informed consent is present. Details of this are not yet available and CLC cannot understand why the Department is bringing forward this legislation without having firm safeguards in place to protect young people. CLC has major concerns about the use of live links and obtaining informed consent and believes this issue must be resolved before the use of live links with children and young people is legislated for.	(xxiii) As indicated at (vi), (vii) and elsewhere above, the Department recognises the importance of personal connections which are not solely built up in the context of live link arrangements. Defendants can and do see their legal representatives by way of visits whilst in detention in prisons or the Juvenile Justice Centre (JJC), for example. (xxiv) Personal contact is also available by way of private consultation by live link immediately before hearings, alongside the ability to halt proceedings for private discussions where needed. (xxv) Such contact will help inform the defendant's decision around consent to a live link direction, and outline what to expect in the conduct of the proceedings.

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the requirement that the court state and record its reasons for refusing or for rescinding a direction.			
Clause 45 – Live links from another courtroom: first remands, etc. **This clause provides for certain persons to attend court hearings by live link at weekends and public holidays. This will allow, for example, for a small number of courts to hear certain cases, with defendants or offenders attending by live link from other courthouses.** **Subsection (1) sets out the sorts of hearing covered – these all involve the person's first appearance at court following arrest or charge in specified**	**Children's Law Centre**	CLC highlighted that the use of live video links must always be driven by the interests of justice and the best interests of the child and not what is considered to be more efficient or cost effective. CLC continued to have concerns at the lack of clarity regarding whether legal representatives would physically attend court to represent their clients under these arrangements, or whether they would be expected to also appear via video link from the 'feeder' location. If legal representatives were expected to travel to the centralised location and appear physically in court, then CLC could envisage significant practical problems arising, including implications for the solicitor's ability to effectively communicate with the young person and take instructions, as they may have to make lengthy journeys under significant time pressures. This could also impact on their ability to challenge the prosecution case, particularly if the prosecution is objecting to the child or young person being granted bail. There could be equally significant implications if legal representatives are instead expected to represent their clients via video link from a	(xxvi) On the issue of access to legal representation in the weekend feeder court system for first remands, the system proposed is one that will be used at weekends and public holidays to ensure that overnight cases on those occasions can be brought to court promptly for remand to be considered. (xxvii) The question was posed as to whether lawyers would be in the feeder court or the remanding court. Either approach could be followed subject to the location of the legal representative. (xxviii) If the defendant had contacted his/her representative after arrest and before court appearance, the lawyer could attend the feeder court or the remanding court as would be the most appropriate. (xxix) The provision being created is therefore a permissive one subject to

circumstances. **The clause contains safeguards including that the court must be satisfied that it is not contrary to the interests of justice for the person to appear by live link. It also lays down the procedure for giving or rescinding a live link direction.** **The clause provides that the Department may, by order, amend the type of hearings that may be covered and the days of the week that live links can be used for these purposes.** **Such an order would be subject to the affirmative resolution procedure**		'feeder' location. This situation is not clarified by clause 45 and CLC would welcome the Committee considering this issue, particularly in relation to the operational model which the DoJ intends to put in place. CLC also has concerns at the lack of reference to the need to secure the informed consent of the child to appear via video link prior to the video link hearing. CLC stated that Clause 45 makes no reference to the need to secure the consent of the accused to appear via video link which is a major difference between this power and other powers that allow the appearance of a person in court via video link. The requirement that an accused person consent to the use of video links has been presented as a safeguard within the process in the past, allowing children and young people to appear physically in court if they so wish. In any event, even if the child was asked to consent, CLC has already expressed concerns that in practice, it will be exceptionally difficult for children to object to the use of live link in this way.	the requirement that the court is satisfied as to the procedure not being contrary to the interests of justice. (xxx). Given that this would be a completely new arrangement along with the NI Courts and Tribunals Service and the Office of the Lord Chief Justice, the Department will undertake to develop guidance for courts, legal representatives and defendants on the new arrangements (xxxi) Although formal consent is not required for remands, parties to the proceedings must be given the opportunity to make representations and defendants can consult their lawyers. To have a statutory consent requirement for such short proceedings – many thousands of which occur each year – would result in a system whereby every defendant who did not consent would have to be physically taken to the remanding court. What might only require a two minute hearing could involve a full day's travel, which not only defeats the purpose of live link remands, but might also be difficult and unsettling for the individual.

		The absence of the requirement for an accused person to consent to appear via video link and the difficulties that an accused person may encounter in objecting to appearing via video link, even if consent were required, makes clause 45 fundamentally flawed in the view of CLC and reaffirms its concern that the proposals are being driven by what is considered to be efficient and cost effective rather than what is in the best interests of the child.	(xxxii) Whilst the arrangement will indeed provide a more effective service when a court might not normally be sitting, since it will operate under the authority of the Court, the Department does not see this arrangement as diminishing compliance with the rights of individuals to fair process and representation.
	Northern Ireland Human Rights Commission	The NIHRC noted that remand hearings held under this provision may take place during the weekend or on public holidays when it may be difficult for an individual to seek legal advice relating to bail or to prepare properly for the hearing to enable their effective participation. The NIHRC advised that the Department should be asked to set out what additional provision has been made to ensure that individuals participating in a first remand hearing by way of a live link are able to seek and obtain legal advice and representation to enable their effective participation. In oral evidence the NIHRC stated that it would like to see a safeguard stating that regard should be given to the purpose of the first hearing, the seriousness of the charge and the implications of the particular offence when deciding whether to use a live link or not.	(xxxiii) Along with the NI Courts and Tribunals Service and the Office of the Lord Chief Justice, the Department will undertake to produce guidance for courts, legal representatives and defendants on the new arrangements. (xxxiv) The choice to direct or agree to a live link procedure is a matter for the Court and it will be for judges to ensure that factors such as access to legal advice, the purpose of the first hearing, the seriousness of the

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			charge and the implications of the particular offence are taken into account. The Department is fully confident that they will be considered under the interests of justice provision.
		The NIHRC also noted that with respect to the wording of Clause 45, the court may not grant a live link hearing unless it is satisfied that it is not "*contrary to the interests of justice*" however the Explanatory Memorandum does not contain examples of scenarios where a live link would be considered not to be in the interests of justice.	(xxxv) Comments on the interests of justice test are provided at point (xxiii) above. The Department is content with the Clause as drafted and is content that the interests of justice test as provided in the draft Clause provides for this requirement.
		In addition whilst the court may adjourn a live link hearing when it appears the individual "*is not able to see and hear the court and to be seen and heard by it"* there is no obligation to ensure the individual is able to effectively participate in the proceedings. The Commission therefore recommended that the wording of clause 45 should be amended to ensure that a live link should never be authorised or continue to be authorised where its use undermines the effective participation of an accused in a hearing.	(xxxvi) Comments on how effective participation is ensured are provided, for example, at paragraphs (xvi)-(xxv) above.
		In oral evidence the NIHRC stated that if a person has not had access to a solicitor that might be one of the circumstances in which	(xxxvii) Decisions on the use of a live link will be a matter for the Court and the Department is confident that

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		very careful consideration is given to whether a live link is appropriate.	access to a solicitor would be one such circumstance in the court considering its options and making its direction.
Clause 46 – Live links: proceedings for failure to comply with certain orders or licence conditions **This clause allows for live links to be used in proceedings where a person, already being held in custody, has to be brought before the court for failing to comply with a specified court order or with conditions under which a sexual offender is released on licence.** **The clause includes several safeguards, such as requiring the offender's consent before the court can direct that a live link be used, and the court**	**Children's Law Centre**	CLC's comments at Clause 44 regarding the use of live links and obtaining informed consent also apply to this clause. CLC noted the reference within Clauses 44 and 45 to the court being under a responsibility to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it, if this cannot be immediately corrected. There does not however appear to be any reference to this safeguard within Clause 46 of the Bill which deals with breach proceedings for failing to comply with certain orders or licence conditions. CLC suggested that this safeguard also be added to Clause 46. CLC notes that in all of the proceedings set out in Clause 46 that will now be capable of being undertaken by live links, children and young people may be required to participate to a large degree either personally or through their legal representatives and again questions whether they would be able to effectively participate and understand proceedings if they	(xxxviii) The Department's previous comments regarding informed consent at paragraphs (xxii) to (xxv) also apply to this Clause. (xxxix) The Department accepts this point and will re-consider the construction of Clause 46 in this regard. (xl) The Department's previous comments on ensuring effective participation for example, at paragraphs (xvi)-(xxv) above, also apply to this point. (xli) It is worth recording at this juncture the more general point about interpreter services. Interpreter

must be satisfied that it is not contrary to the interests of justice for the offender to appear in this manner. The clause also includes the procedure for giving or rescinding a live link direction. For example, in the case of a magistrates' court it must state and record its reasons for refusing or rescinding a direction. **The orders covered by these provisions are various community-related sanctions (eg probation) and sanctions for young persons (eg attendance centre orders, supervision orders). The clause also enables the Department, by subordinate legislation, to add breaching other court orders made upon conviction and**		are conducted via video link.	services are a further key aspect of ensuring effective participation. Within the live links process – not solely in relation to young people – full interpreter services are provided when they are required. Interpreters can provide translation services as part of the live link service and adjournments also provided as required.

breaching conditions of other release licences. This would be by the affirmative resolution procedure.			
Clause 49 - Live Links: patients detained in hospital under Mental Health Order **This Clause extends the use of live links in certain court proceedings to include patients detained in hospital under Part 2 of the Mental Health (NI) Order 1986 – patients compulsorily admitted to hospital for psychiatric assessment or treatment. Under existing legislation, only Part 3 psychiatric patients – those compulsorily admitted to hospital via the criminal justice system – are able to appear by live link (the**	**Children's Law Centre**	CLC stated that Part 2 of the 1986 Order relates to persons compulsorily detained in hospital for assessment or treatment of a mental illness. CLC appreciated that the DoJ's rationale behind these proposals may be to avoid disturbance to patients and to assist with the management of risk, however patients who are detained under Part 2 *for the purposes of being assessed* and who have criminal proceedings pending alongside their status under Part 2 should not be required to attend court at all, regardless of whether this is in person or via video link. CLC believes this to be justified given that the assessment period is a maximum of 14 days.	(xlii) Live links for mentally ill patients operate whereby each case is fully considered on an individual basis by way of a case review meeting before a live link decision is taken. Every patient is subject to assessment, including risk assessment, and the option chosen for the patient's court appearance. If a live link were to be chosen as the best option, medical staff can be present in the live link facilities to assist. (xliii) Behind all of that is the fact that in any remand case involving a mentally ill patient, if the person is too ill to participate the hearing in any way, it is possible for the hearing to proceed on the basis of a medical report and the person's legal representative. (xliv) The Department has worked with the DHSSPS – who requested the provisions be created – on the proposals for live links in respect of

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proceedings affected are for accused persons in preliminary hearings, sentencing hearings and related appeals).			Part 2 patients. The proposals will allow a patient detained solely on health grounds with a parallel court appearance for a criminal matter to have that matter dealt with by live link. (xlv) We have also worked closely with the professionals involved in delivering a live link system for Part 3 patients detained on the ground of criminal behaviour. (xlvi) Along with the professionals involved we see this arrangement as an important step forward in the care and protection of vulnerable mentally ill patients. The current alternative is a difficult and unsettling journey to and from court.
		CLC highlighted that the need to ensure that a child can understand and participate in proceedings is more acute whenever that child or young person is being treated for a mental illness and appearing in court via live link could prove to be a confusing and disorientating experience. CLC questioned whether the need for intensive, specialist help in order to understand and participate in criminal proceedings could be readily achieved via live link. CLC also reiterated its concerns regarding the persons consent to appearing	(xlvii) The Department accepts the need to ensure understanding and participation particularly with regard to those who might be young or vulnerable. Where a young person is appearing by live link from the JJC, arrangements are in place for a Care Worker attached to the Centre to be available in the live link room should assistance be required. The Centre sees this as a particularly important area for support. Patients appearing

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		via video link and noted that several of the legislative provisions around preliminary hearings, which Clause 49 will amend to extend them to include Part 2 of the 1986 Order, do not require that the person consents to appearing via video link. CLC outlined that the Department had previously recognised that live link arrangements for young people and patients in psychiatric hospitals will require particular consideration and development and had indicated that arrangements would be made to consult with these groups and the locations where they will be used and guidance notes for practitioners would be produced to ensure that live links are only used in appropriate circumstances. CLC suggested that the Committee should explore the results of such consultation with the Department when scrutinising the Bill and ascertain the status of such guidance which CLC would like to see full public consultation on in line with Section 75 requirements.	before a court by live link from a hospital are always accompanied by a member of the nursing staff. (xlviii) As indicated previously at (xli), interpreter services are also available for all who require them. In more procedural terms, hearings can also be adjourned to allow the young person to consult during the course of proceedings. (xlix) As indicated elsewhere in this response the Department has consulted with staff at the JJC and health care professionals to ensure the appropriateness and viability of these proposals. The Department is content that management practices and guidance exist in the facilities – and within courts – as to live link procedures and facilities.

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		CLC would also welcome the Committee enquiring as to whether the DoJ has considered the potential impact that the proposed Mental Capacity Bill will have in relation to these proposals. It is expected that the Mental Capacity Bill will lead to the repeal of the Mental Health (Northern Ireland) Order 1986 in its entirety for those aged 16 and over. For under 16s, the Mental Health (Northern Ireland) Order 1986 will be retained with some amendments due to the assumption that under 16s may lack capacity due to immaturity.	(l)The Department is currently preparing the criminal justice provisions to be carried in the Mental Capacity Bill part of which will be dealing with the remand of mentally ill defendants. Live links powers and provisions will be considered as part of that process though we see no difficulty in live links continuing to exist within a mental capacity framework.

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PART 7: VIOLENT OFFENCES PREVENTION ORDERS

Part 7 Of the Bill creates a new tool – the Violent Offences Prevention Order (VOPO) – to assist relevant criminal justice agencies in the management of risk from violent offending. The VOPO, as a preventative measure, will benefit offenders in terms of helping to prevent the committal of further offences and will also benefit those affected by crimes by reducing the risk of, and the fear of, crime which could lead to a potential decrease in the number of victims of crime and potential victims of crime.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
General Comments	**Public Prosecution Service**	The PPS stated that, while such Orders fall within the sentencing responsibility of the Judiciary, it welcomes their introduction as a further means of protection for those who might otherwise be at risk from violent offenders and it will work with the other Criminal Justice Agencies to make the most efficient use of this provision.	The Department notes these comments.
	NI Policing Board	The NI Policing Board outlined its support for the introduction of VOPOs, particularly as they may aide the police in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes. It added that it is hopeful that this will allow the PSNI to be more pro-active in situations where the victim is too fearful to apply to court for Non-Molestation Orders as it would not necessitate the victim's cooperation.	The Department notes these comments.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
Clause 50 **This Clause defines a VOPO. It establishes that the Order may contain such prohibitions or requirements as the court making the order considers necessary, in order to protect the public from the risk of serious violent harm caused by the offender.**	**Children's Law Centre**	The Children's Law Centre outlined that proposals for the creation of VOPOs were first consulted upon in 2011 and that VOPOs were at this point referred to as the Violent Offender Order (VOO). It highlighted that this consultation did not specifically address the issue of the age of persons to whom VOPOs would apply but the proposals for VOPOs were based on the VOO in England and Wales, which can only be applied to persons aged 18 and over under the Criminal Justice and Immigration Act 2008, a point which was made in the consultation paper. The Children's Law Centre suggested that it was not proposed in the consultation paper that VOOs should be extended to apply to under 18s. The Children's Law Centre explained that, following this consultation, it was notified by the Department that it intended to make VOPOs available in respect of all eligible offenders, regardless of their age, including under 18s. It added further that the Department had indicated that the key criminal justice agencies had asked for these proposals to more fully replicate provisions	The Department is aware of the continuing concerns that have been raised, by the Children's Law Centre and Include Youth, about the availability of the VOPO to manage risk from offenders under the age of 18. Indeed, the Department outlined these concerns to the Justice Committee at an oral briefing session on the VOPO proposals. The VOPO proposals would allow the order to be available in respect of all eligible offenders, The original consultation did not specifically address the question of age, but at that point the proposal was based on the Violent Offender Order in England and Wales which did have a minimum age of 18. However, following consultation, key stakeholders within the criminal justice agencies, indicated their wish to include qualifying offenders under the age of 18 within the VOPOs legislative framework, similar to the framework for the Sexual Offences Prevention Order, upon which current VOPO

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		made for Sexual Offences Prevention Orders, upon which the VOPO proposals were now being modelled. The Children's Law Centre stated that it is strongly opposed to the proposal that VOPOs should be made available in relation to children and young people and would welcome the Justice Bill being amended to clearly define that a VOPO can only be sought against a person who was aged over 18 at the time that they committed the relevant offence or offences which have led to a VOPO being sought. The Children's Law Centre stated that the imposition of additional conditions through the application of VOPOs to under 18s is unnecessary, as violent young offenders being released from custody should in reality be already subject to conditional release, such as release on licence. The Children's Law Centre also indicated that the Department has provided no evidence that suggests that VOPOs are needed in relation to children and Young people in Northern Ireland and that the Department has	proposals have been modelled. From their experience, they believe that a small number of young offenders can present a risk of serious harm and that they could benefit from such an order, which could be used to prevent them from going on to commit further, and more serious violent crime. It is their view that public protection would be enhanced and the Youth Justice Agency consider it would have a beneficial impact on victims. To ensure clarity on the age-applicability of the proposals, the Department carried out two further targeted consultations, setting out the intention of its proposals to include under-18s in the VOPO's provisions. The VOPO will be a preventative, rather than a punitive measure, aimed at preventing children from further offending - the re-offending rate for young people (48%) is higher than

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		proposed extending VOPOs to under 18s on the basis that they would only be applied for against young offenders in a very few exceptional cases, with data demonstrating that those eligible for a VOPO may be in the region of 7 per year, and that only a proportion of the 7 identified as eligible may have an order applied. It added that such information does not support the extension of VOPOs to children and young people and highlighted that numerous Orders currently exist that can be used by the courts when dealing with children and young people found guilty of violent offences, and which all contain elements of supervision or prohibition of activities e.g. Juvenile Justice Centre Orders, Youth Conference Orders and Probation Orders. It explained that failure to comply with the requirements of these orders can result in the child being returned to court to be dealt with in an alternative manner. The Children's Law Centre also highlighted that various orders can also be made to detain children in custody where they have been found guilty of 'serious' or 'specified'	that for adult offenders (42%). It also has the potential to prevent young people becoming victims of crime - young males aged 16-24 are more likely to become a victim of violent crime that any other category of victim. Based on recent data, we would expect that those eligible for a VOPO may be in the region of 7 per year. This figure is supported by the re-offending pattern of the number of young offenders committed to custody for a violent offence (which would in itself indicate a level of seriousness) and who went on to re-offend, committing a further offence within a year of their release. However, the VOPO is not automatically applied to all eligible offenders. There will be a high threshold adopted by the court which must be fully satisfied, based on the evidence presented to it, that the offender continues to pose a serious

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		offences, which are listed in Schedules 1 and 2 of the Criminal Justice (Northern Ireland) Order 2008, and which relate generally to violent or sexual offences. It explained that before making these orders, the courts are required to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by the child of further 'specified' offences. Children and young people can only be released on license under these orders where the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that they should be confined and licences can be revoked and individuals can be recalled to custody if necessary. It also explained that Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides the courts with an additional option in relation to the punishment of what it describes as certain grave crimes. This again involves releasing the child on license at some point, with the Parole Commissioners again directing release once they are satisfied that it is no longer necessary for the protection of the public from	risk of violent harm and that the risk cannot be managed by other statutory interventions (e.g. licence conditions). The Department considers that the VOPO has the potential to have a positive impact on a young person in the prevention of future, and possibly more serious, offending, which may also lead to a reduction in the number of potential victims of violent crime.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		serious harm that the child should be detained. The Department of Justice has the power to revoke the license and recall the child to custody. The Children's Law Centre expressed the view that, given this menu of legislative disposals already exists, it is challenged as to why VOPOs are considered necessary in relation to children and young people at all. The CLC also highlighted that VOPOs are civil orders, breach of which is a criminal offence with criminal consequences, which will draw young people further into the criminal justice system and are in conflict with the fundamental principles of reintegration and rehabilitation as clearly detailed in international children's rights standards. VOPOs have not been developed with the intention of rehabilitating children who commit violent offences and reintegrating them into society which, in CLC's view, is the best method of protecting the public from future offending. In oral evidence the CLC outlined concerns regarding a potential situation where a young	The Department has already made clear that the court has to satisfy itself that a VOPO would be necessary in light of all other measures which may be in place. The provisions are only brought into play for reasons of public protection, not as a method of rehabilitation. Their use is envisaged only in a very small number of cases where risk is an issue. The systems already have to interact in relation to a SOPO. The number of

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		person is under one set of conditions through their licence and a second set through a VOPO and how those systems can interact. The CLC suggested that where more conditions are imposed this can lead to a lack of understanding of the nature of the conditions and can lead to a breach of the conditions. The CLC suggested that if a VOPO is sought for a young person who has been released on license under the 2008 Order, on the basis that a person continues to pose a risk of serious violent harm to the public, it should be remembered that the Parole Commissioners will not have directed the release of the young person unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that the person should be confined. In circumstances where the Parole Commissioners have determined that the person can be released on license, it would seem incongruous to then apply to the court for a VOPO on the basis that the person continues to pose a risk of serious violent harm to the public.	cases is likely to be very small and at the extreme end of the scale, with consequent levels of intervention. In this case, it is highly unlikely that the court would agree to make such an order.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
	Include Youth	Include Youth indicated that it does not support the use of VOPOs for children and young people and has raised its concerns with the Department of Justice. Include Youth highlighted that the consultation on the proposals for VOPOs did not make reference to a minimum age but through the clearly stated intention to replicate the legislation in England and Wales it was reasonably inferred by consultees that the intention was to apply these orders to adults (over the age of 18) only therefore none of the respondents to the consultation raised the age threshold as an issue. Include Youth stated that it appears that, following the closure of the consultation, stakeholders within the criminal justice system have indicated that they feel there may be children who require a VOPO in exceptional circumstances, akin to the use of the Sexual Offences Prevention Order and this has brought the Department of Justice to the position where it is intended that VOPOs should apply to all people aged 10 and older who meet the “criteria” as provided for in the Bill. In the view of Include Youth this	As above. As above. As above. Specific consultation did take place.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		represents a significant shift in Departmental thinking and the decision has been taken with no explicit consultation with regards to whether and how VOPOs should apply to children. Include Youth noted that VOPOs in England and Wales cannot be applied to under 18s and highlighted that it has consistently asked the Department to provide evidence to support the need for the introduction of VOPOs to children but has not received it. Include Youth outlined that the Department has not elaborated on the definition of 'exceptional cases' nor has it given any information as to how a VOPO should be applied to children given that their maturity, needs and capacity are vastly different to adults. It further noted that in correspondence with the Head of the Criminal Policy Branch in February 2014[1], the Department stated that: *'based on the most recent data, we would expect that those with eligible offences for a VOPO may be less than 10 a year'* and	There are no VOPOs in England and Wales. The Violent Offender Order is different in nature. The VOPO has been modelled on the SOPO which can be used in cases of risk of harm from those under 18. It is not possible to give further detailed elaboration. Criminal justice agencies continue to make a case for orders to be available to the court if there are individual cases which present as requiring additional public protection measures.

[1] Letter from Amanda Patterson, Head of Criminal Policy Branch to Koulla Yiasouma, Director of Include Youth, 26 February 2014.

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		indicated that it would welcome further explanation and a detailed outline of the data used to reach this figure. Include Youth is of the view that the introduction of VOPOs to children and young people is in contravention of the fundamental principles of the United Nations Convention on the Rights of the Child (UNCRC), and in particular Article 40, and is not in keeping with a child's rights compliant youth justice system. Article 40 places an obligation on government to ensure that all children in contact with the juvenile justice system are 'treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'. Include Youth outlined that, in line with the UNCRC and other relevant international standards, reintegration and rehabilitation should be a key aspect of the juvenile justice system. It also highlighted that the Youth	As above. As above.

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		Justice Review Team also made reference to the need to prioritise rehabilitation and reintegration. Include Youth stated that it is therefore disappointing that the current proposals under VOPOs appear to ignore the need to address the rehabilitation and reintegration of children on release from custody. The emphasis of VOPOs appears to be predominantly on the need to restrict the movements of young people and reduce risk. While Include Youth does not dispute the need to address these issues and is completely in agreement with the need to ensure public safety at all times, the reintegration and age-specific treatment of the child is the most effective way of achieving this goal. Include Youth states that before any decision is made to extend VOPOs to children, there must be an examination of the data with regards to children convicted of violent offences to ascertain whether any would have benefited from a VOPO and whether such a move would have afforded more protection to the public or potential victims and would have reduced the child's recidivism. It highlighted that, as stated above, it is recognised	

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		internationally and within domestic legislation and practice that children and young people under the age of 18 must be treated differently from adults if they are to desist from offending. Include Youth does not believe that it is necessary to apply VOPOs to children as there are already a number of custodial orders that can be used for children found guilty of violent offences which have as an integral element, supervision and prohibition of activities on release. It outlined that a Juvenile Justice Centre Order (JJC Order) entails a child to be detained in custody for a period of time, followed by a period of supervision in the community. A JJC Order can be for a minimum of 6 months and a maximum of 2 years, with half of the time spent in custody and the remaining in the community under the supervision of the PBNI. Breach of supervision is treated extremely seriously and may result in the child being returned to detention. It highlighted that there are also mechanisms already in place to deal with children convicted of 'serious' or 'specified' offences,	The Department would refer to the points made in the above response to the Children's Law Centre.

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		which can relate to violent or sexual offences. Children can only be released on supervision on these orders if the court is satisfied that they no longer represent a danger to the public. Include Youth therefore questionS why it is necessary to replicate these protections by allowing the application of VOPOs to children given protections already exist under current procedures and is not convinced that the application of VOPOs to children will give any added value.	
	Women's Aid	In oral evidence Women's Aid indicated that there was a need for something like VOPOs as there is currently a gap in dealing with serial perpetrators of domestic abuse and violence. However, given the current threshold envisaged for VOPOs Women's Aid was concerned that many of the cases would not be covered by them. Women's Aid highlighted the unique element of domestic violence in that it is perpetrated by a family member rather than a stranger and indicated that the elements of control and manipulation also need to be considered as part of the abuse. In its view a range of different types of order or a move tailored	During our consultation the Criminal Justice Agencies indicated that a high sentencing threshold should not apply to the VOPO, so that the order could be used to manage the risk of harm, particularly from domestic violence abusers who commit violent crimes. They highlighted that domestic violence cases can attract a lower level of offence which is dealt with at the magistrates' court. The legislative proposals for the VOPO have been developed with the needs of victims of domestic violence in mind. Specifically, the VOPO has

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		VOPO, such as a Domestic Violence Protection Order, which does not have a threshold that is prohibitive, should be available.	been made offence based and not sentence based and the threshold of qualifying offences was lowered intentionally to include the offence of Assault occasioning Actual Bodily Harm (AOABH) because of concerns raised during and post public consultation around the issue of tackling domestic violence. Under legislative proposals, no sentencing threshold is applied to the VOPO and the list of specified offences applicable to the VOPO is extended to include a broader range of offenders who continue to pose a risk of serious harm to the public. The availability of the VOPO would be extended to the lower level offence of Assault Occasioning Actual Bodily Harm (AOABH) where the offence takes place in domestic or family circumstances. This will make the VOPO a much better risk management tool and will help target domestic violence offenders, thereby better protecting

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			victims of those crimes.
Clause 51	**Attorney General**	The Attorney General highlighted that Clauses 51(4) and 53(3) contain retrospective provisions regarding the making of Violent Offences Prevention Orders (VOPOs) when the offence was committed prior to the commencement of the Bill. The Attorney General outlined that a VOPO is more likely to constitute a public protection measure than a penalty and, in that circumstance, Article 7 of the ECHR is not engaged and the severity of the VOPO prohibitions or requirements can be measured by the sentencing judge to ensure Convention compliance.	The Department notes these comments
Clause 52 **Violent offences prevention order made on application of Chief Constable**		The Children's Law Centre highlighted that under clause 52, the Chief Constable will have the power to apply for a VOPO in relation to persons who have been convicted of specified offences. It outlined that the court must be satisfied that the person's behavior since their conviction makes it necessary to make a VOPO for the purpose of protecting the public from the risk of serious violent harm caused by the person. In deciding whether to make such an order, the court is required to consider whether any other statutory provision or measures are	The VOPO is a civil order of the court. The proceedings are civil proceedings and the standard of proof to be applied by the court is the civil standard of proof. The VOPO is not a punitive sanction which will from part of an offender's sentence. Rather, it is a civil preventative order, which will be used only to mitigate the risk posed from particular violent offenders in the community.

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		operating to protect the public from the risk of harm. The Children's Law Centre suggested that it is not clear from this provision whether such applications will be decided on the civil standard of proof i.e. proof on the balance of probabilities, or the criminal standard of proof i.e. proof beyond reasonable doubt. It highlighted that the Explanatory and Financial Memorandum for the Bill states that VOPOs will be a civil preventative measure, which implies that applications for VOPOs will be decided on the balance of probabilities. The Children's Law Centre outlined that the use of the civil standard of proof in such proceedings would greatly concern CLC, as it believed it would blur the distinction between criminal and civil proceedings, as the VOPO could be granted on the civil standard of proof, but with breach of the VOPO being a criminal offence. It highlighted that Clause 66 of the Bill states that failure to comply with the requirements of a VOPO is an offence, punishable by imprisonment of up to 5 years or a fine, or both.	The order will not apply automatically to all relevant violent offenders. The court will have two high thresholds to cross before an order can be made. First, the court must be satisfied, on the basis of evidence presented to it, that the offender poses a risk of serious violent harm. Secondly, it must be satisfied that it is necessary to make an order for the purpose of protecting the public from the risk of serious violent harm caused by the offender. Part of that determination will be whether the court considers the risk cannot be effectively managed by other statutory interventions. The conditions or requirements of the VOPO would have to be made in proportion to the risk posed.

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Clause 53	**Attorney General**	The Attorney General's comments on Clause 51 at page 14 relate to Clause 53.	
Equality Issues	**Children's Law Centre**	The Children's Law Centre stated that it had serious concerns with regard to the Department's compliance with its statutory equality obligations under section 75 of the Northern Ireland Act 1998 in the development of these proposals. It explained that, since being notified of the Department's intention to extend the use of VOPOs to under 18s, it was concerned to note that there has been no evidence that these proposals have been assessed for their impact on the promotion of equality of opportunity through equality screening and equality impact assessment (EQIA). As outlined previously, proposals for the creation of VOPOs were first consulted upon in 2011 (at this stage they were referred to as VOOs) and an equality screening was conducted at this time. The Children's Law Centre stated that it was not proposed in the consultation paper that VOOs should be extended to apply to under 18s. It outlined the view that, given that this is a new policy proposal, it should have been subject to thorough equality screening and a	The Department considers the proposed VOPO framework provides equality of opportunity for all violent offenders, and victims of violent offences who would be protected by its conditions. The legislative proposals were subject to equality screening and the Department concluded that a full equality impact assessment was not required. The screening indicated that there would be some potential for adverse impact on young males who are statistically more likely to commit crime than any other group in the Northern Ireland offending population. However, the impact will only be on those who offend, not on young males as a whole. It is their offending behaviours that attract the impact and not the result of this policy proposal. The Department therefore concluded that an EQIA is not considered to be necessary in relation to this policy.

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		comprehensive EQIA and direct consultation with children and young people should have been carried out. The Children's Law Centre explained that it had requested that the Department comply with its obligations under section 75 of the Northern Ireland Act 1998 as a matter of urgency by carrying out an urgent screening exercise on its proposals to extend VOPOs to children and young people, and where differential adverse impact or ways to greater promote equality of opportunity are identified as it believes they will be, to carry out a comprehensive EQIA. It stated that this request has not been responded to.	The exercise also indicated that the policy would have a positive impact on victims of violent crime, or potential victims of violent crime, across all the section 75 groupings generally, particularly young males who are at a higher risk of violent crime than those in the other section 75 categories. The order also has the potential to have a positive impact on the offender in terms of preventing him or her from committing further offences.
	Include Youth	Include Youth believes that the Department has not complied with its statutory equality obligations with regard to the current proposals as it is apparent that in the case of the application of VOPOs to children, the Department did not conduct a full consultation and appears to have consulted only with some "other public authorities", crucially doing nothing to consult with those *"directly affected"* or *"voluntary and community*	As above.

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		groups". Include Youth highlighted that, despite raising these concerns with the Department, it is still waiting to be furnished with evidence that consultations have been conducted with those directly affected and with voluntary and community groups specifically on the application of VOPOs to children. Include Youth suggested that it would like the Department to provide any responses they have had to date from stakeholders which indicate a desire to apply VOPOs to children. Include Youth outlined the view that the Department has clearly breached the commitments that were made in their Equality Scheme. Include Youth explained that, as part of the equality consultation on the Justice Bill in May 2013, the Department stated that initial screening had indicated that there would be some potential for adverse impact on young males, given the fact they are statistically more likely to commit such offences than any	

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		other group in the Northern Ireland offending population. Include Youth took issue with the subsequent decision not to conduct an EQIA, and disagreed with the reasoning given to justify this decision. It expressed the view that it was erroneous to decide not to screen the document wholly on the basis that the impact will only be on those young males who offend, rather than young males as a whole and the fact that the policy could potentially impact on young males is reason enough for it to be screened in. Include Youth was of the view that this policy should not have been screened out and a full equality impact assessment should have been conducted.	
Domestic Violence Protection Orders	**NI Human Rights Commission**	The NIHRC highlighted that in 2010 the Criminal Justice Inspectorate recommended the introduction of Domestic Violence Protection Orders (DVPOs).[2] It outlined that DVPOs allow the police to prevent the suspected perpetrator from entering the victim's residence for a set period of time. It stated that, in a follow up review in 2013, the Department indicated they were awaiting the	In developing proposals for the introduction of the Violent Offences Prevention Order (VOPO), and in light of specific comment made by respondents to its consultation exercise, the measures were tailored to provide for better protection for victims of domestic violence.

[2] CJINI 'Domestic Violence and Abuse: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland' December 2010 Recommendation 2

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		outcome of a pilot of DVPOs in England & Wales. The Commission notes that, following a successful pilot, DVPOs are now available throughout England & Wales [3] and similar systems have been found to be successful in many EU states.[4] The NIHRC suggested that the Committee should ask the Department to explain why legislative provision for Domestic Violence Prevention Orders has not been included within this Bill.	Following analysis and a mapping exercise it appears that whilst VOPOs will provide some additional protections for victims of DV, there remains a gap for the immediate protection of victims in the short-term. Further consideration of how best to ensure this protection will form part of a broader consultation on a range of DV initiatives to take place in 2015/16 as part of the implementation of the new Stopping Domestic and Sexual Violence and Abuse Strategy, due to be published by the end of March 2015.
	Women's Aid	Women's Aid's comments on Clause 50 at page 13 relate to Domestic Violence Protection Orders.	See above.

[3] The Rt Hon Theresa May MP Written statement to Parliament 'Domestic violence protection orders and domestic violence disclosure scheme' 25 November 2013
[4] It was first piloted in Austria in 1997. See, European Institute for Gender Equality, 'Review of the implementation of the Beijing Platform for Action in the EU Member States: Violence Against Women - Victim Support: Main findings' EU (2013), para 1.3.3.

PART 8: Miscellaneous

Part 8 contains miscellaneous provisions covering Jury Service; Early Guilty Pleas; Avoiding Delay in Criminal Proceedings; Public Prosecutor's Summons; Court Security Officers; Youth Justice and Supplementary Provisions.

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Clause 72 Removal of maximum age for jury service This clause abolishes the upper age limit for jury service, making everyone over 18 qualified for jury service.	**Commissioner for Older People**	The Commissioner welcomed the proposal in Part 8 of the Bill to abolish the maximum age for jury service. The Commissioner stated that many of those currently precluded from jury service as a result of age have wide ranging and relevant experience that would prove invaluable to any jury panel. The Commissioner noted that the United Nations Principles for Older Persons (1991) indicated that Older People should be able to seek and develop opportunities for service to the community and ensuring that as many older people as possible have the opportunity to participate in jury panels adheres to those aspirations. The proposal also compliments the strategic aims of the "Active Ageing Strategy 2014-20"	The Department notes the Commissioner's support for the proposal to abolish the maximum age for jury service members and agrees older persons' experience may well prove "invaluable" to jury panels. A consultation paper, relating to the upper age limit for jury service (currently 70 years, with automatic excusal between 65 and 70) was published in November 2011. Following consideration of the responses, and after consultation with the Assembly Justice Committee, the Minister decided in July 2012 that his preferred policy was to abolish the upper age limit but allow an automatic excusal for those aged 70 and over.

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Clause 76 Persons excusable as of right from jury service This clause updates the list of persons excusable from jury service as of right: paragraph (2) Replaces "Representatives to the European Parliament" with "Members of the European Parliament"; paragraph (3) replaces "the Secretary and any Director of the Northern Ireland Audit Office" with "The Deputy Comptroller and Auditor General for Northern Ireland and any Assistant	**Commissioner for Older People**	The Commissioner stated that some older people may not wish to avail of the opportunity to sit on a jury for a number of reasons including concerns about the time commitment, family commitments and responsibilities as well as potential impact on health. The Commissioner welcomed the introduction of a right for persons to be excused from jury service over the age of seventy. However, the Commissioner also suggested that a full and comprehensive equality impact review should take place to ensure that older people aged between sixty five and seventy are not disproportionately affected by this amendment. The Commissioner stated that is essential that older people are provided with the opportunity to actively engage and participate in jury panels. Equally, there may be occasions when older people do not wish to sit as jury panel members. The Commissioner suggested that the legislation should adequately provide for those circumstances by including a right to be excused from service and highlighted that there is no indication within the Bill as to why the age of older people being excused from service has been increased from sixty five to seventy years. The Commissioner stated that, as outlined	There was no clear consensus about the age at which the right to excusal should apply. The Minister attaches particular weight to the views expressed by older people's representatives, and he was also conscious of improved health and demographic change since the current automatic excusal age of 65 was introduced in 1975. On this basis he considered that it would be appropriate to raise the automatic excusal age to 70. Statistics provided by NICTS show that, in the last 3 years, the majority (two thirds) of people aged 65 and over were exempted from jury service at the notification stage in the process. Whilst a range of reasons for excusal have been recorded, the most frequently used reason for excusal for the 65 and over category is their age. The next most common reason for excusal in this age category is medical grounds.

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Auditor General for Northern Ireland"; and paragraph (4) replaces "persons aged between 65 and 70 years" with "persons aged over 70 years"		above, this amended change should be subject to a thorough equality impact assessment and there should not be any undue disadvantage placed on older people as a result of new legislation.	It is important to note that under the existing arrangements discretionary excusal is available for those under 65. If the age for automatic excusal is raised to 70, as proposed in the Bill, those aged 65-70 will still be able to avail of discretionary excusal. The Judge can excuse someone if he or she, is satisfied that there is "good reason" to do so. The most common reasons for excusal are: family responsibilities, holiday/travel arrangements, religious grounds, limited access to transport, business/work responsibilities, educational commitments, individuals with a disability and medical reasons. The NICTS will survey a sample of people attending court for jury service in each of the two years following the introduction of the age-related changes; and will publish the results.

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Clause 77: Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity This clause requires a court, in certain circumstances when passing sentence, to indicate the sentence that it would have passed had the defendant entered a guilty plea at the earliest reasonable opportunity. This clause is intended to increase awareness	**Children's Law Centre**	The Children's Law Centre outlined that, in relation to Clauses 77 and 78, it is conscious that the Department intends that these clauses will provide legislative support to a non-legislative scheme being developed to provide a structured early guilty plea scheme in the Magistrates' Courts and Crown Court, as indicated in the Explanatory and Financial Memorandum for the Bill. The Children's Law Centre outlined that it would welcome the Committee exploring the status of this scheme as part of its scrutiny of the Bill, with particular consideration being given to the need for adequate safeguards and protections to ensure that proposals aimed at tackling delay, such as encouraging early guilty pleas, do not interfere with the child's fundamental right to a fair trial under Article 6 of the ECHR as incorporated by the Human Rights Act 1998. The Children's Law Centre referred to a CJINI report on early guilty pleas in February 2013 and expressed the view that there is considerable potential for vulnerable young	The Department notes these comments. The Criminal Justice Board published an Action Plan in May 2013 to respond to recommendations contained in the CJINI report "The use of Early Guilty Pleas in the Justice System". [1] This Action Plan sets out a number of measures towards the development of the non-legislative scheme. In addition, aspects of the scheme form the basis of the Indictable Cases Pilot, which was launched for adult indictable cases in the Division of Ards in January. The Department notes these comments and will be mindful of the issues raised, both in the operationalisation of the clauses

[1] http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/earlier-guilty-pleas-criminal-justice-board-action-plan-for-publication.pdf

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of the availability of sentencing credit for an early plea and add some clarity around the level of credit that may be available in particular circumstances		people to be more susceptible to pleading guilty at the earliest possible opportunity, particularly where they feel pressured or intimidated by court proceedings or wish the case to be over. It stated that it will be extremely important that the particular needs of the child are taken into account when applying these clauses and any non-legislative early guilty plea scheme, in relation to children with learning disabilities, those with additional needs and/or mental health problems and those for whom English is an additional language. It added that these particular needs may result in a lack of understanding of the implications of pleading guilty and may impact on the child's enjoyment of his/her right to a fair trial. The CLC wants measures to be taken proactively to protect and uphold a child's right to a fair trial.	and in the context of the non-legislative scheme. We have since briefed CLC, and other stakeholders, on the Indictable Cases Pilot and undertaken to engage with them further on any proposed new procedures for cases involving young people. A child's right to a fair trial is enshrined in Article 6 of the ECHR, and other international instruments, in particular the UN Convention on the Rights of the Child.
	Public Prosecution Service	The PPS noted that the provisions in Section 77 provide for the sentencing Judge to inform a defendant who is considered not to have pleaded guilty at the earliest reasonable opportunity of the sentence they would have	The Department notes these comments. The clause is, however, only one part of a wider package of measures to encourage earlier guilty pleas.

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		received had they done so. The PPS indicated that informing a defendant at this stage, when they cannot change how they have approached the case to date, on its own will have limited impact on the number of early guilty pleas. The PPS suggested that provision should be made obliging a Judge to enquire of a defendant's Advocate if they have advised the defendant of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 – which contain those provisions around a reduction in sentence for a guilty plea entered at the first reasonable opportunity - **before** they have entered any plea to the charges they face. The Court can then be satisfied that the defendant would be fully informed of the benefits of entering a guilty plea at the earliest reasonable opportunity.	These are mainly non-legislative in nature and are set out in the Action Plan referred to above. The Bill already places a duty on a defendant's solicitor to advise their client of the effect of Article 33(1) and to notify the court that the solicitor has done so. Although the Bill does not stipulate the exact point at which this must be done, magistrates' courts rules will specify this and the rules will provide that this advice is to be given prior to the defendant entering a plea. It is also worth noting that an advocate will not necessarily be instructed in every criminal case.
	Law Society	In oral evidence the Law Society queried the rationale for clause 77 and stated that the court is obliged to give an indication of what sentence the judge would have given had the defendant pleaded guilty at the "earliest reasonable opportunity". The Law Society suggested that the most likely consequence of this would be an	Under current arrangements, the sentencing judge may already indicate the level of sentence that would have been imposed for a plea at the earliest reasonable opportunity. The Department does not agree that the clause, which

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		increase in appeals on sentence, where you may have a defendant saying that he should be given the lesser sentence because he was not appropriately advised at the earliest reasonable opportunity to duly plead. The Law Society also questioned how you determine when is the "earliest reasonable opportunity" to plead because every case is different and that it very much depends on the evidence that the defendant may have been aware of. The Law Society suggested that it would be difficult for a judge to say categorically what sentence he would have given had the person indicated a plea, say, six months ago, because, invariably, the circumstances will have moved on. The defendant may have shown no remorse, in which case it is unlikely that there would be any discount; the defendant may have made reparations; or there may be mitigating factors. In the Society's view it is "an art rather than an exact science" and it would be a very difficult task for a judge to be definitive about	effectively places existing practice on a statutory footing, would necessarily result in increased appeals on sentence. The Department agrees that the 'earliest reasonable opportunity' may be dependent on the circumstances of the case. This is precisely why the determination of the 'earliest reasonable opportunity' should continue to be left to the discretion of the trial judge. In their response to the Department's consultation on early guilty pleas, the Law Society noted "that members of the judiciary routinely set out the level of credit that would have been awarded had a guilty plea been entered". In addition, the Office of the Lord Chief Justice has previously advised the Department that within the exercise of judicial discretion, a sentencing judge may indicate the

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		what sentence he would have given six months ago.	level of credit that would have been given if a plea had been entered at an earlier stage. Accordingly, the Department considers that the effect of clause 77 would not be problematic for the judiciary as it effectively places current practice on a statutory footing.
	NIACRO	NIACRO strongly disagrees with the terminology 'early guilty pleas' and the focus on encouraging them as in its view it creates an expectation that the defendant is guilty. NIACRO recommends that the emphasis is placed on 'efficient case resolution', ensuring justice and thereby better outcomes for victims and defendants. In NIACRO's view this approach would protect the statutory presumption of innocence and encourage greater focus on resolving cases efficiently and effectively. According to NIACRO this change in terminology and approach is also supported by Victim Support NI.	The Department notes these comments. The term 'early guilty plea' is, however, commonly understood from both a legal and lay perspective. The Department agrees that the emphasis of this reform is predicated on the need to achieve more efficient case resolution.
		NIACRO advocates that there needs to be a balance between reducing unnecessary delay and achieving a just outcome. NIACRO is	The Department notes these comments and believes that the proposals strike a balance

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		concerned that the focus on encouraging 'an early guilty plea' to obtain a reduced sentence may put pressure on vulnerable individuals to plead guilty. It believes that the accused should be provided with a clear summary of the case against them at the earliest opportunity before entering a plea and recommends that clarification is provided in regulations and practice guidance regarding the term 'earliest reasonable opportunity'.	between reducing avoidable delay and achieving a just outcome. It should be noted that the EGP clauses are one element of a package of measures which include the provisions on statutory case management (clauses 79 & 80) which would require all persons exercising functions in criminal proceedings to reach a just outcome as swiftly as possible.
		NIACRO does not believe that requiring a court in certain circumstances to indicate the sentence that would have been passed had the defendant entered a guilty plea at the earliest opportunity, as provided for in Clause 77, will effectively address the offending behaviour of the defendant and has very little merit in terms of encouraging other defendants in different circumstances.	The Department also agrees that the accused should be provided with a summary of the case at an early stage. This is a key component of the Indictable Cases Pilot which is currently underway in the Division of Ards.
		NIACRO recommends that there should be greater certainty about credit available and greater transparency in sentencing for the person accused from the outset in order to achieve efficient case resolution. It also recommends that there is a requirement on the police, solicitors, etc. to explain information in a	The Department notes these comments. The EGP clauses are, however, only a small part of a range of procedural reforms which are designed to achieve swifter, just outcomes in criminal cases.

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		format to the person so that they understand the consequences of pleading guilty or not pleading guilty or withholding a plea. NIACRO believes that there should be a restorative justice approach where the victim's journey through the Criminal Justice system is brought alongside that of the accused and in its view Clause 77 will not have any rehabilitative effect on the accused and will have little impact for the victim.	The Department agrees that greater certainty and transparency around sentencing is a positive step. This is the purpose of clauses 77 and 78, although it should be noted that other non-statutory measures, including the promulgation of sentencing guidelines in a range of cases by the Office of the Lord Chief Justice, are already underway or are being planned. The Department notes these comments.
Clause 78: Duty of solicitor to advise client about early guilty pleas. This clause requires	**Law Society**	The Law Society outlined that solicitors are under a professional obligation to provide their clients with the best possible legal advice in line with their circumstances and that this duty encompasses advising the client of the benefits of early guilty pleas in cases where the strength of the prosecution evidence suggests little	The Department notes these comments.

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a defence solicitor to advise a client of the effect of Article 33 of the Criminal Justice (Northern Ireland) Order 1996, which entitles a court (when sentencing an offender who has pleaded guilty) to take into account the stage at which the offender indicated an intention to plead guilty and the circumstances in which the indication was given. The clause also requires the solicitor to explain to the client the likely effect that a guilty plea (or indication of guilt) would have on any		prospect of a successful defence. The Law Society explained that the ability to provide appropriate advice in this context is connected to adequate disclosure by the PPS and can vary in line with different cases. It added that the role of the defence solicitor is to represent clients fairly and impartially and to safeguard the presumption of innocence in the justice system by testing the evidence of the prosecution. It suggested that, as a result, the core area of reform which will produce appropriate guilty pleas at an earlier stage is to ensure greater front-loading of evidence in criminal cases. The Law Society highlighted that in Scotland the procedural reforms to the system of encouraging appropriate early guilty pleas focused on disclosure from the prosecution service. It was accepted in that context that defence solicitors require this information to make a decision over whether it is appropriate to advise a client to enter a guilty plea. In oral evidence the Law Society stated that what is missing from the Clause is any reference to the fundamental principle that a	 The Department recognises the importance of timely and adequate disclosure to the defence. In particular, the Indictable Cases Pilot (which is currently underway in the Division of Ards) is trialling new arrangements for earlier disclosure of evidence, including the provision of a summary of the case to the defence. The Department accepts that early resolution of a case is often contingent upon early disclosure to the defence to enable them properly to advise their client as to a plea. The Department considers that the clause does not derogate from the well-established principle that a

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sentence that might be passed, if the client were to be convicted of the offence.		defendant's plea must always be made voluntarily. The Law Society stated that some balance needs to be added to the Clause to take account of vulnerable witnesses and defendants and to introduce an overriding principle that a defendant's plea always has to be made voluntarily. In relation to disclosure from the PPS the Law Society also stated that it believed that it would be more difficult in Northern Ireland to take evidence that ultimately requires a number of different applications for disclosure being made in the Crown Court. The Society indicated that it does not believe that creating a mandatory duty to advise of the impact of early guilty pleas will increase their frequency, as solicitors already provide this advice at appropriate stages. It suggests that, on the contrary, this clause has the potential to impact on the solicitor-client relationship for little return in terms of efficiencies. The Society expressed strong reservations about creating a perception that defence solicitors are acting as agents for the prosecution. It outlined that the perception that	plea of guilty must always be made voluntarily. The Department notes these comments. Issues around early disclosure of evidence by the prosecution to the defence are being tested through the Indictable Cases Pilot. In its report on the use of early guilty pleas, CJINI commented that it might be advantageous for there to be a duty on legal representatives to advise their client of the existence of early guilty plea schemes and to advise the court that this had been done. The Department does not consider that requiring a defence solicitor, as part of their professional advice to a client, to make the client

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		pressure is being applied to clients by defence solicitors to plead guilty irrespective of the circumstances should be avoided as vulnerable clients who may be innocent could plead guilty, particularly in cases with lesser penalties. Blurring these boundaries does not serve the interests of a fair and efficient justice system. The Law Society recommended that, in order to avoid this perception and to maintain the spirit of our adversarial justice system with independent pillars, the Bill should be amended to place a duty on the PPS to notify the client of the discount scheme for earlier guilty pleas as part of their duties in relation to summonses and charging procedures and disclosure. It suggested that this would ensure that solicitors advise in depth about this when it is appropriate for their clients and would discuss the contents of the PPS letter with their clients. This allows solicitors to put this information into context for their clients and will increase the confidence of defendants in the fairness and transparency of the criminal justice system. The Law Society stated that crucially, no change to the penalty for non-compliance by defence solicitors would be required by this	aware of the existing provision relating to credit for guilty pleas would create the perception that they are acting as agents for the prosecution. The Department notes these comments and is open to the suggestion that more can be done to publicise the existence of existing arrangements for credit for a guilty plea. It would be possible for enhanced arrangements (such as publicising the availability of credit on PPS documentation) to be taken forward through non-legislative means. Measures such as this can be explored through the development of the non-statutory scheme and the Indictable Cases pilot. The Department notes these comments.

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		change so it does not disrupt the intent of the legislation. The Society considered that it would be extremely rare for this penalty to be used in any case. In oral evidence the Law Society indicated that, while in its view it is wrong in principle to put in place a statutory obligation for a solicitor to advise the client in respect of an early guilty plea, it agreed with the PPS that, if such a statutory obligation is made, it should be for the advocate and not just the solicitor.	The Department notes these comments. It would be possible for the duty to apply to an advocate, although it should be noted that an advocate will not necessarily be instructed in each case. In addition, requiring the advice to be given by a solicitor as well as an advocate could arguably make a vulnerable individual feel pressured to enter a plea.
	Public Prosecution Service	The PPS noted that Section 78 places a duty on the Solicitor to advise their client of the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 and the impact that entering a guilty plea at the earliest reasonable opportunity will have on their sentence. The PPS stated that the proposal it has made in relation to Clause 77 would give this duty even more significance and should assist in encouraging early guilty pleas. It suggested,	The Department notes these comments. The Department notes these comments.

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		however, that the duty to advise should sit with the *advocate* whether that advocate is a solicitor advocate or counsel and it is they who will be asked by the judge whether they had advised the defendant as suggested above. In oral evidence the PPS also responded to the Law Society's assertion that there should be a duty on the PPS to notify the client of the discount scheme for earlier guilty pleas. The PPS stated that it was unclear how this would work in practice and that the Law Society would strongly object to the prosecution approaching their clients to suggest that they plead guilty early. The PPS stated that the triggers which apply in terms of advising a client on whether to give evidence could also apply in a similar way to guilty pleas. The PPS also indicated that consideration should be given to a statutory provision providing an additional discount to those who avail of the early guilty plea provisions and suggested that this has been very successful in England and Wales. In oral evidence the PPS highlighted that there is currently statutory provision to require the	The Department notes these comments. It should be noted, however, that as part of the Indictable Cases Pilot, a PPS prosecutor may contact the defence at an early stage to discuss the basis of a plea. The Department sought views on the introduction of a statutory level of credit for an early guilty plea as part of its policy consultation in 2010 but this was not widely supported by consultees who largely felt that the level of credit for a guilty plea should remain at the discretion of the trial judge.

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		court to take into account the stage at which the plea is given but that consideration could be given to a statutory discount that the court must give. The PPS expressed the view during oral evidence that there needs to be a significant driver in the criminal process to concentrate defendants' minds on the question of the benefits of pleading guilty at the earliest possible opportunity. It stated that the latest statistics show that 28% of defendants who pleaded not guilty changed their plea before the trial and that the paperwork and preparatory work triggered by the entry of a no guilty plea are considerable. The PPS also highlighted that there must be provision for legal advice at the point at which the defendant is being asked to make their plea, and those measures which remind them of the consequences of a subsequent guilty plea where they have pleaded not guilty, need to be done in a measured way.	Arrangements in England and Wales are governed by sentencing guidelines issued by the Sentencing Council which set out recommended (but not statutory) levels of credit based on the point at which a plea is entered. The Department is not aware of any arrangements in England and Wales providing additional sentencing credit (or "discount") for defendants who avail of early guilty plea provisions. Article 33 of the Criminal Justice (NI) Order 1996 requires the court to take into account the stage at which a defendant indicated an intention to plead guilty and the circumstances in which the indication had been given. The Department believes, however, that the level of credit should continue to be at the discretion of the trial judge.

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		The PPS stated that there is also a legal aid issue which it has raised with the Department. The PPS explained that there are three types of fee in criminal cases - GP1s, GP2s and trial fees. The PPS stated that if the defendant pleads guilty to all counts, the GP1 is a respectable and modest fee for defence lawyers. The GP2 is a significantly enhanced fee and is paid if there is an entry of a not guilty plea to any offence on the indictment. The trial fees are paid after the first day of the trial. The PPS stated that the GP2 fees are a significant financial incentive to the entry of a not guilty plea and that it might be better managed if the GP2 were not triggered until a later stage in the process where it was clearer to all concerned that this was a serious not guilty plea. The PPS suggested that the Committee should consider this in the context of amended Crown Court rules.	The Department is conscious of the point made by the Director regarding GP2s; in fact this issue was previously raised by CJINI as potentially providing an incentive to hold off pleading guilty at the earliest opportunity. The Department has, therefore, removed the GP2 Fee. Following extensive and robust arguments from the legal profession it was decided to introduce a Trial Preparation Fee for counsel in cases which had been prepared for trial, with significant work having been required from the defence, but which ultimately resulted in a Guilty Plea. In addition, the Department introduced another significant reform to guilty plea remuneration by reducing the amount payable in cases with higher pages of evidence. Previously a minor theft charge with a high number of pages of evidence would have attracted the same fee as a murder charge with a high page count. The Trial

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			Preparation Fee in high page count cases is now based on the basic fee for the class of offence and therefore better reflects the complexity of the case. Finally the Department removed a number of additional fees for Solicitors which were also based on pages of served evidence. All of these reforms significantly reduce any perceived "incentive" to plead not guilty in the first instance. The Department is content that this particular issue has been resolved.
	NI Human Rights Commission	The NIHRC outlined that the ECt.HR has noted: *"that it may be considered as a common feature of European criminal justice systems for an accused to obtain the lessening of charges or receive a reduction of his or her sentence in exchange for a guilty or nolo contendere plea in advance of trial…"* The ECt.HR has further ruled that by pleading guilty a defendant is waiving his/her right to have the criminal case against them examined on the merits, such a decision should only be taken when fully aware of the facts and the	The Department notes these comments.

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		legal consequences and should be entered in a genuinely voluntary manner. The Commission noted that under clause 78 a solicitor is to advise his or her client on the likely effect on any sentence that might be passed on pleading guilty at the earliest reasonable opportunity but the term *"earliest reasonable opportunity"* is not defined in the Bill or in the Explanatory Memorandum and it is unclear if a definition will be included within the required regulations. The Commission advised that the "earliest reasonable opportunity" should occur only when a defendant is fully aware of the facts of the case and the legal consequences of his or her decision. In oral evidence the NIHRC stated that the defence solicitor, who has the duty to advise the defendant, should be fully aware of what the case is against the individual so that any decision made by the defendant is a properly informed one.	Under existing practice (supported by relevant case law) the "earliest reasonable opportunity" is a matter for the sentencing judge to determine in each case, through the exercise of judicial discretion. The Department agrees that early disclosure of the prosecution case to the defence is a primary factor in enabling the defence properly to advise their client as to a plea. See above comment.

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	NI Legal Services Commission	The Legal Services Commission welcomes the introduction of Clause 78 as this could serve to reduce the number of contested cases coming before the courts. The Commission will monitor if the introduction of this section results in a saving for the Legal Aid fund.	The Department notes these comments.
	NIACRO	NIACRO expressed the view that any legal advice given in the course of criminal proceedings needs to be governed by a statutory code of practice and recommends that there should be a statutory code of practice for solicitors in relation to the advice underpinned by a general duty when providing advice to their client about entering a plea.	The Department notes these comments. The creation of a statutory Code of Practice regarding the giving of advice by solicitors would be likely to require the approval of DFP, given that it concerns the regulation of the legal profession.
Clause 79: General duty to progress criminal proceedings This clause confers a power on the Department to bring forward regulations which impose a general duty to reach a "just	**Attorney General**	The Attorney General suggested that, rather than providing a power to make regulations outlining a general duty to progress cases, this duty could be placed onto the face of the Bill (perhaps as an amended Clause 79). The duty might be phrased similarly to Rule 1.1 of the English Criminal Procedure Rules 2013.	The Department has noted these comments and has previously advised the Committee of its intention to bring forward a suitable amendment to give effect to a similar suggestion also made by the Examiner of Statutory Rules.

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outcome" as swiftly as possible. The clause makes clear that this duty will apply to anyone who exercises a function in relation to proceedings in both the Crown Court and the magistrates' court and compels the department, in making these regulations, to take particular account of the need to identify and respect the needs of victims; witnesses (and in particular vulnerable witnesses) and people under 18.			
	Children's Law Centre	The Children's Law Centre is extremely supportive of reducing delay in children's cases in line with Article 40 and 37(d) of the UNCRC, Article 6 of the ECHR and the various CJINI	The Department notes these comments.

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		reports on this issue. The Children's Law Centre stated that the Youth Justice Review highlighted that delay is a serious problem that impacts on virtually every judicial process and practice, from bail and remand to sentencing and rehabilitation. The Youth Justice Review recommended that statutory time limits should be introduced for all youth justice cases, providing for a maximum period from arrest to disposal of 120 days, a recommendation which CLC supports. The Children's Law Centre emphasised that the delay which requires addressing is avoidable delay and in addressing avoidable delay, the child's rights under Article 6 of the ECHR and their UNCRC rights should not be compromised. It noted that clause 79 specifically requires any regulations to take account of the need to identify and respect the needs of persons under the age of 18 and welcomed this aspect of the clause. However it was concerned that no definition is provided within the Bill in relation to reaching a 'just outcome' and believes that this should be further clarified in order to ensure that	The Department has, separately, brought forward proposals regarding the introduction of statutory time limits in youth cases. The Department agrees with these comments. The Department considers that the term "just outcome" will be construed according to its ordinary meaning and does not require to be further defined in the Bill.

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		the duty imposed under clause 79 is implemented consistently. It also suggested that the Committee, as part of its consideration of these clauses, should inquire as to the Department's plans for consulting on the development of any regulations under clauses 79 and 80.	It is intended that the case management regulations will be subject to statutory consultation with the Lord Chief Justice, PPS, Law Society and Bar Council.
	Law Society	The Society stated that it is not opposed in principle to statutory case management provisions and agrees that an efficient justice system will seek to eradicate unnecessary causes of delay and that it is the duty of practitioners, the PPS and the Department to address these issues. The Law Society outlined that there are two broad aspects to a properly functioning justice system – the first is the delivery of robust and fair justice and the second is reasonable promptness of proceedings. The Society outlined that the first of these takes precedence as the interests of justice varies with different circumstances. Whilst justice and swiftness of disposal often work in harmony, in some instances justice requires prolonged proceedings. It therefore suggested that the drafting of any case management duties is of	The Department notes these comments. The Department agrees that the interests of justice principle is paramount and considers that the framing of the general duty recognises this.

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		crucial importance – a strong but flexible duty must be implemented to serve the purposes of the Bill. The Society highlighted that the Bill introduces a broad power to make Regulations in this area and Clause 79 grants the Department the right to impose a general duty on appropriate persons to reach a "just outcome" as swiftly as possible. It stated that the phrase "just outcome" recognises that a duty to expedite proceedings should not be at the expense of the interests of justice. The Society outlined that it preferred the term "serve the interests of justice" as this recognises that participants in the justice system should apply their minds to this at each stage of the process, rather than unduly focusing on arriving at any particular outcome. The Society expressed the view that the Bill should identify the interests of justice as the paramount consideration and that, accordingly, any Regulations made under this provision should prioritise the interests of justice above swiftness of disposal. It suggested that the duty to ensure efficient disposal should then follow	The Department considers that the current construction of "just outcome" achieves the same effect. The Department considers that the framing of the general duty already recognises that the interests of justice principle should be paramount.

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		as a secondary duty to achieve justice in the individual case. It added that such an approach does not impair the duty to manage cases efficiently whilst remembering the fundamental principle that the interests of justice must be served.	
	Public Prosecution Service	The PPS noted the provisions that the Department may, by regulations, impose a general duty on persons exercising functions in relation to criminal proceedings and that these regulations must take into account the needs of victims, witnesses and persons under the age of 18. It outlined that, whilst it has no difficulty in principle with these provisions, it would question whether in light of the efforts it makes on a regular basis to achieve these ends, they are necessary as far as the PPS is concerned.	The Department notes these comments but considers that it is important for all persons exercising functions in relation to a criminal case to carry out their role as expeditiously as possible.
	NI Policing Board	The NI Policing Board broadly welcomed the steps being taken to reduce delay and better manage cases in the criminal justice system given the effect delay can have on the efficiency and effectiveness of the PSNI. The NI Policing Board wishes to see the Department's Regulations before being in a position to endorse them.	The Department notes these comments.

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	Victim Support	Victim Support welcomed the steps to avoid delay in criminal proceedings. It explained that, in addition to the debilitating stress and anxiety caused to victims and witnesses by unnecessary delay in the system, there are often significant financial implications. It also highlighted that delay is also cited as a key contributory factor to rates of attrition and can have an enormously detrimental effect on wider attitudes to the Criminal Justice System. Victim Support welcomed the fact that the Department may, by regulations, impose a general duty on persons exercising functions in relation to criminal proceedings in the Crown Court, or Magistrates Court, to reach a just outcome as swiftly as possible and was pleased to note that the regulations must, in particular, take account of the need to identify and respect the needs of victims and witnesses.	The Department notes these comments.
	NIACRO	NIACRO strongly supports any efforts to reduce unnecessary delay in the Criminal Justice System given the detrimental impacts it has not only on the accused and the victim but on their families, witnesses, prisons, courts and the police as well as public confidence in the system. It indicated that it is aware, based on its	The Department notes these comments.

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		experience of working with people going through the Criminal Justice system who offend and victims of offending behaviour, that they wish to see the process made more efficient however this should not be to the detriment of justice. NIACRO highlighted that research shows that effective responses to reducing offending work when practical support is provided both in custody and the community and, in its experience, long periods on remand or bail are often a dysfunctional period which impacts on a person's ability to access training, employment and education and need to be addressed. NIACRO believes that the general duty provided by Clause 79 will allow sufficient flexibility when dealing with complex cases whilst still ensuring people are held accountable and recommends that: ▪ Steps are taken to reduce unnecessary delay at all stages of the Criminal Justice System ▪ The mechanisms for explaining decisions to the accused and to the victim at all stages of an investigation and trial are enhanced.	The Department notes these comments. Clause 79 is intended to strike a balance between achieving a just outcome whilst dealing with the case as expeditiously as possible. The Bill is part of a wider Faster, Fairer Justice Programme, which contains a number of inter-agency initiatives designed to address the systemic causes of delay in the system, improve the experience of victims and witnesses and provide

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		▪ The Regulations to be brought forward under Clause 79 by the Department to impose a general duty to reach a just outcome should take particular account of the needs of all those individuals who come into contact with the Criminal Justice System regardless of what circumstances preceded that initial contact. ▪ The onus must be placed on the legal profession to increase efficiency in case preparation and the courts system to process cases quickly ▪ Attention must be given to the relationships between the PPS and the PSNI with regard to file accuracy, file preparedness etc. ▪ Statutory Time Limits should be introduced in adult courts as well as youth courts ▪ Time limits should place clear targets on each agency involved at each stage of the process with clear penalties should an agency fail to meet its obligations ▪ Statutory Time Limits should start from the date the offence is reported/detected and end when the case is disposed of and this should be defined in legislation.	better information to all participants in criminal proceedings. The Department notes these comments. The introduction of statutory case management (proposed under clause 80) is intended to enhance the judiciary's case management powers. The Department notes these comments.

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		▪ Training should be given to justice professionals to ensure they recognise vulnerabilities and potential mental capacity issues. ▪ Communication is central to all proceedings and all parties – victim, witness and defendant – must be kept up to date and appropriately informed. ▪ The Department should engage with the voluntary and community sector to scope the needs in relation to literacy issues, mental health difficulties or learning difficulties of those coming into contact with the Criminal Justice System. ▪ Steps should be taken to enhance the mechanisms for explaining decisions to the accused and the victim at all stages of an investigation and trial. ▪ Independent advocacy services should be made available for people with particular difficulties as they move through the Criminal Justice system. ▪ A mechanism should be built into the sentencing process whereby a person is informed of the outcome of their case, the impact it will have on accessing training, education, employment etc., when it will become spent and under	The Department has brought forward separate proposals in relation to statutory time limits. See above comment. See above comment. The Department notes these comments.

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		what circumstances it will be disclosable. ▪ Data should be collated on the numbers and reasons for withdrawn/reduced charges to identify trends and gaps.	The Department notes these comments.
Clause: 80 Case management regulations This clause confers a power on the department to make regulations about the management and conduct of criminal cases that may impose duties on: the court; the prosecution; and the defence. The clause also provides that the regulations may also confer functions on the court in relation to the "active management" of criminal cases and	**Law Society**	The Law Society highlighted that Clause 80 confers a regulation-making power on the Department covering the management and conduct of proceedings within the Crown Court and Magistrates' Courts. The Law Society expressed the view that the Bill should be amended to include the phrase "serve the interests of justice" as it recommended for clause 79. Failing that, the term "just outcome" should at least be included in both clauses for clarity and consistency of purpose. The Law Society stated this would ensure that any Regulations are interpreted as dependent on their contribution to serving the interest of justice highlighting that the swift progression of proceedings often produces a just outcome, but there will be circumstances in which flexibility is required for the judiciary to do justice in particular cases. Legislation and Regulations which reflect this position will allow the stakeholders within the system to deliver on the duties imposed.	The Department believes that the current wording of "just outcome" is sufficiently clear and achieves the same purpose. The Committee are aware that the Department intends to bring forward an amendment at Consideration Stage (which will be discussed in our oral evidence). This amendment will consolidate the regulation-making powers currently contained in clauses 79 and 80 into one power. This amendment is being brought forward as a result of comments from the Statutory Examiner of Statutory Rules, and in effect, will arguably achieve the same result as suggested by the Law Society.

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defines "active management" of cases in terms of the key responsibilities of a presiding judge.		The Society indicated that the regulation-making powers on case management should require an explicit duty to consult with the judiciary and the profession, who will be charged with implementing any changes. The Society stated that these key stakeholders should be included as more than merely general consultees and that including such a duty in the Bill would encourage a collaborative approach to case management informed by practical experience and ensure a wide range of voices within the justice system are heard. In oral evidence the Law Society stated that in relation to Clauses 79 and 80, it seemed incorrect that the clauses provide that the Department make those regulations as in its view this is usurping the judge's judicial function and the Clauses should simply refer to the Lord Chief Justice issuing Practice Directions	The amendment will also require the Department to consult on the regulations with the Lord Chief Justice, PPS, Law Society and Bar Council. The Department considers that it is correct for the regulation making power to be vested in the Department. The new regulations will build on existing practice directions.
	Public Prosecution Service	The PPS welcomed the provisions around Case Management Regulations. It welcomed the introduction of the Protocol for Case Management in the Crown Court by the Lord Chief Justice in his Practice Direction of 2011 and believes the case management regulations	The Department notes these comments.

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		referred to by the Bill have the potential to mirror the positive impact on effective case management in criminal cases that the introduction of the Criminal Procedure Rules has had in England and Wales	
	The Children's Law Centre	The Children's Law Centre noted that Clause 79 specifically requires any regulations to take account of the need to identify and respect the needs of persons under the age of 18 and recommends a similar requirement should be included in Clause 80.	As noted above, the Department intends to consolidate the regulation-making powers in clauses 79 and 80 into one power.
	Victim Support	Victim Support sees considerable merit in the stipulations in respect of active Case Management Regulations and that the regulations may impose duties on the court, prosecution and the defence. It fully supported some of the key components of active case management, as outlined in the Bill, specifically the early identification of the real issues; the early identification of the needs of witnesses; achieving certainty as to what must be done, by whom and when, in particular, by the early setting of a timetable for the progress of the case; monitoring the progress of the case and compliance with directions; ensuring that evidence, whether disputed or	The Department notes these comments. The case management regulations will take particular account of the needs of victims, witnesses and persons under 18.

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		not, is presented in the shortest and clearest way; discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings; encouraging the participants to co-operate in the progression of the case; making use of technology and giving any direction appropriate to the needs of that case as early as possible. Victim Support however cautions that, in encouraging the participants to co-operate in the progression of the case, all due care should be taken throughout the process, to ensure the safety and well-being of the victim and witnesses involved, particularly where they may be vulnerable or subject to intimidation. Victim Support also requested some clarification of what sanctions may be put in place should there be a breach of the regulations and a failure to adhere to the functions of active case management.	No specific sanctions for breach of the regulations are currently proposed. The actions available to the judge in the event of a breach will be those already available to the court (e.g. refusing the request for an adjournment or refusing an unreasonable request to introduce new evidence).
	NIACRO	NIACRO welcomes the placing of case management on a statutory footing and looks forward to considering the proposals when the Department publishes them for consultation. NIACRO recommends that a mechanism is included to address breaches and also	See above comment.

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		recommends the introduction of penalties for legal representatives who repeatedly request adjournments.	
Clause 81 Public prosecutor's summons This clause enables a prosecutor from the Public Prosecution Service to issue a summons to an accused person without first having to get a lay magistrate to sign the summons, provided that a complaint has been made to a lay magistrate.	**Law Society**	The Law Society stated that it remains of the view, as expressed during the consultation process, that the issuing of summonses is most appropriately carried out as a judicial function and outlined that the role of the Lay Magistrate is to act as a measured restraint on the prosecutorial power of the PPS and a safeguard against arbitrariness in decision-making. The Law Society highlighted that under the current procedure, the Lay Magistrate determines at the point of application whether sufficient grounds exist for the granting of a summons and that the removal of this function was not originally envisaged by the CJINI Report on Avoidable Delay. It added that, moreover, the Court of Appeal in Northern Ireland has stated that the determination of whether summonses should be issued is a judicial function which cannot be delegated. The Society noted that the Delay Action Team at the Criminal Justice Board conceded that the input of Lay Magistrates did not add a	The Department notes these comments. Under existing arrangements, proceedings can already be initiated unilaterally by a prosecutor by making a complaint – the summons is simply the mechanism which tells the defendant they must attend court. Before deciding to issue a complaint, a prosecutor will have considered the same range of factors that are considered by a Lay Magistrate regarding the issue of a summons. In addition, the prosecutor must be satisfied that the evidential and public interest tests have been met. The Department confirmed with CJINI during policy development that they envisaged the PPS

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		significant amount of time to the process and indicated that an important safeguard may be removed from the prosecutorial process without any significant improvement in case handling times. The Society outlined its concerns about the concentration of powers given to the PPS without adequate checks and balances built in to the system. It suggested that the approach appears to be to increase the discretion of prosecutors without recognising the role of safeguards in protecting the system against charges of arbitrary decision-making. In its view an efficient justice system is one which is robust against challenge and lay involvement in the judicial system provides an important link between the justice system and the wider community. The Society recommends the removal of this clause and a review of the causes of delay from the PPS prior to applications for summonses to be carried out. The CJINI Report identified issues concerning the compilation and release of files between the PSNI and the PPS as a key factor of delay. While the Law Society appreciates that the PPS is an independent	prosecutor would issue the summons without recourse to a Lay Magistrate. Although the issue of a summons is currently considered to be a judicial act, it is the making of the complaint by the prosecutor that initiates proceedings. Clause 81 would provide statutory authority for the summons to be issued by the prosecutor. The Department notes these comments. It considers, however, that the proposal provides adequate safeguards against arbitrary decision-making. As noted above, a prosecutor can, at present, already initiate unilaterally proceedings by making a

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		body, the Department should take a global view of the causes of delay in partnership with other organisations and added that, as with summons reform, the assumption appears to be that stripping out a layer of process necessarily increases efficiency, without harming the interests of justice. In the view of the Law Society it is the failure to take an overall, long-term approach which produces this assumption. The Society also outlined reservations about section 81(4) which provides that a Public Prosecutor may re-issue summonses which they determine have not been served. It indicated that time limits applied to the PPS are an important aspect of ensuring a disciplined and efficient system of prosecution and it is concerning that power for extension of these limits will reside with the PPS under the Bill. The Society considered that the separation of prosecutorial and judicial functions maintains a system of checks and balances to ensure that each limb of the justice process operates fairly and accountably. This reform has the potential to create new anomalies – e.g. it is not clear from the Bill how Form 1 applications to waive	complaint. Before doing so, however, the prosecutor must consider whether the Evidential and Public Interest Tests have been satisfied. In terms of lay involvement in the judicial system, Lay Magistrates will continue to discharge their court functions in the youth and family courts. This proposal, which has been recommended by CJINI, forms part of a multi-agency approach to address avoidable delay. This includes measures such as the introduction of statutory case management, which will specifically address the timeliness and quality of case preparation and encourage earlier engagement with the defence The Department suggests that the Law Society may have misunderstood the effect of clause 81(4). The clause replicates, for the purposes of a PPS summons, existing arrangements under Article 20(4) of the Magistrates'

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		time limits applying to the prosecution will be processed. The removal of the Magistrate appears to leave this solely as a decision for the PPS giving rise to a potential conflict of interest. The Department should clarify how this is to be resolved in the event of the Bill proceeding in its current form. The Society would be supportive of and would consider any amendments which may remedy these defects.	Courts (NI) Order 1981, to allow a new court date to be set where a summons has been returned un-served and is to be re-issued. It is proposed that the new arrangements would also apply to the making of a "Form 1" complaint (i.e. a complaint made to prevent the prosecution for a summary offence from becoming statute barred). The existing arrangements in the Magistrates' Courts (Northern Ireland) Order 1981 do not differentiate between the making of a complaint and a Form 1 complaint, and we do not see any reason to differentiate between them under the proposed new arrangements.
	Public Prosecution Service	The PPS welcomed this provision which allows a summons to be issued by a public prosecutor. In its view giving prosecutors this power will result in efficiencies in the initiation of criminal proceedings and, as a consequence, will facilitate the electronic submission of complaints to a Court Office without the need for the involvement of a lay magistrate.	The Department notes these comments.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		The PPS noted that the provision contained in Article 81(4) is limited to the power to re-issue those summons issued by a public prosecutor in the first instance and considered there would be merit in extending this power to include those summons originally issued by a lay magistrate.	Clause 81(4) is currently limited in this way to prevent any confusion arising between summonses which have been issued under the current arrangements, and those which would be issued under the proposed arrangements.
Clause 84: Aims of youth justice system This clause inserts new wording in Section 53(3) of the Justice (NI) Act 2002, which compels all those working in the youth justice system to take account of the best interests of the children with whom they are working as a primary consideration.	**Children's Law Centre**	The Children's Law Centre outlined that it has consistently raised concerns about the fact that the current statutory aims of the youth justice system are not in compliance with international standards due to the failure to include the 'best interests' principle within the Justice (Northern Ireland) Act 2002. It stated that this is contained within Article 3(1) of the UNCRC, which states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. According to the Children's Law Centre, the UN Committee on the Rights of the Child, in its 2002 and 2008 Concluding Observations, following an examination of the United Kingdom's compliance with the UNCRC, has recommended that the United Kingdom take all	The proposed clause addresses these concerns and introduces the 'best interests' principle as espoused in Article 3(1) of the UNCRC. The proposed clause has been included as a direct result of the Youth Justice Review recommendation (Rec.28) and amends Section 53 of the 2002 Act to fully reflect the best interests principles.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
		appropriate measures to ensure that the principle of the best interests of the child be adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice. CLC particularly welcomed the recommendation within the Youth Justice Review that section 53 of the 2002 Act should be amended to fully reflect the best interest principle as set out in Article 3 of the UNCRC. The Children's Law Centre welcomes the amendment to the aims of the youth justice system but highlighted that the strength of any legislation is judged by its implementation and operation. It wishes to see the translation of the best interest principle into a meaningful reality for children coming into contact with the youth justice system. All professionals coming into contact with children within the criminal justice system must have comprehensive and ongoing training on how to apply the amended aims of the youth justice system and how to implement these in practice. Effective training must be taken forward as a matter of urgency, given that under clause 91 of the Bill, clause 84 will come into operation on the day that the Act receives Royal Assent.	Each Criminal Justice organisation has been given considerable notice of the proposed amendment and tasked with consideration of the impact of the change for their staff. This will include the identification of potential training needs which can then be met in advance of commencement of the new legislation.

CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
	NI Policing Board	The NI Policing Board supports the incorporation of the UNCRC best interests principle into the 2002 Act and questioned, with regard to the criminal justice system generally, whether there is scope to introduce a similar principle whereby the best interests of vulnerable groups, e.g. older people, would be a primary consideration.	The Department welcomes the Policing Board's comments and would advise that a number of strategies and commitments already exist in respect of old and vulnerable people The Programme for Government includes a commitment to tackle crime against older and vulnerable people; the Community Safety Strategy commits the Department of Justice to reducing the fear of crime amongst older / vulnerable people; Age Sector Platform and Linking Generations NI is funded by the Department to tackle fear of crime amongst older people and build local capacity, through Policing and Community Safety Partnerships to address community safety issues amongst the young and older generations; and, following consultation with the Lord Chief Justice, age and vulnerability of victims are now included as aggravating factors in judicial sentencing guidelines.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
	Include Youth	Include Youth welcomed this clause which compels all those working in the youth justice system to take account of the best interests of the child with whom they are working as a primary consideration and believes that it will help ensure children and young people involved with offending do not offend further.	The Department welcomes these comments
	NI Human Rights Commission	The NIHRC highlighted that on publication of the Youth Justice Review the Commission advised the Minister of Justice that the Justice (NI) Act 2004 should be amended to fully reflect the best interest principles as espoused in Article 3 of the UNCRC. The Commission stated that the amendment at Clause 84 is a positive measure.	The proposed clause addresses this and introduces the 'best interests' principle as espoused in Article 3(1) of the UNCRC. The Department welcomes this comment.
Clause 87 Regulations, orders and directions. This clause provides that regulations and orders made by the	**Law Society**	The Law Society noted that clause 87 of the Bill provides for Regulations made under the Bill's powers other than in the area of notifications to be subject to the negative resolution procedure. The Society indicated that the Assembly should scrutinise and vote on these Regulations, given their importance to the administration of justice. The Society suggested that clause 87 (1) of the	The Examiner of Statutory Rules has previously provided advice on this issue as part of his scrutiny of the delegated powers in the Bill.

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CLAUSE/ SCHEDULE/ SUBJECT AREA	Organisation	Comments	Department of Justice Response
Department may include such additional provisions as the Department considers necessary.		Bill should be amended to make regulations made under clauses 79-80 subject to the affirmative resolution procedure.	

Correspondence from the Department providing information on Part 5 of the Justice Bill – Criminal Records

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
private.office@dojni.x.gsi.gov.uk

Our ref SUB/111/2015

Christine Darrah
Clerk
Committee for Justice
Room 242
Parliament Buildings
Stormont
Belfast
BT4 3XX

29 January 2015

Dear Christine

PART 5 OF THE JUSTICE BILL 2014 – CRIMINAL RECORDS

The Minister has asked me to inform the Committee, prior to its consideration of the clauses set out in Part 5 of the Justice Bill, of a recent development in this area. The development does not affect the content of the clauses or the policy intent behind them, but will result in delay in the commencement of the Update Service.

Clause 40 of the Bill introduces the concept of portable checks. Individuals in Northern Ireland would be able to subscribe to what will be known as the Update Service. This would enable them to make their check "portable" across either the childrens or adults workforces. In turn, a new check would not have to be obtained each time an individual wanted to change jobs, or take on a new role or volunteering opportunity within their chosen sector.

The Update Service is operated by the Disclosure and Barring Service (DBS); it has been implemented in England and Wales since May 2013. Under the Service, once an applicant has subscribed their details are checked frequently by the system against criminal records and police information. Where, for example, a new

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conviction or non-court disposal (e.g., a caution) occurs, it is recorded against their details. If for example the employer or a new employer then checks that individual within the Update Service, they will be advised that the information on the current certificate has changed and they can then ask the individual to apply for a new certificate. If the information has not changed, the employer can be confident the certificate remains accurate and proceed without the need to obtain a new certificate,

As mentioned, it had been agreed that the Update Service could be extended to AccessNI applicants once DBS had implemented a phase of their new IT system designed to significantly modernise their service (known as "R1"). R1 was originally planned to "go live" here in August 2015. From our point of view this was ideal as it was anticipated that the Justice Bill would have also completed its course by this stage. DBS, however, have very recently advised all stakeholders, including AccessNI, that R1 will be delayed to 2016. This means that AccessNI will be unable to offer this service until then. Discussions with senior officials in DBS indicate that R1 may be available in early 2016, but this cannot be confirmed until they have completed their re-planning exercises. We should know the position in a few weeks.

The Minister is extremely disappointed that the Update Service will be delayed and that he has only just been informed of this. He has asked me to keep the Committee abreast of further developments.

Tim Logan

TIM LOGAN
DALO

Building a fair, just and safer community

Correspondence from the Department providing information in advance of the oral evidence sessions on the Bill

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
private.office@dojni.x.gsi.gov.uk

Our ref SUB/120/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

30 January 2015

Dear Christine,

JUSTICE BILL: ORAL EVIDENCE BY DEPARTMENTAL OFFICIALS AND PROPOSED DEPARTMENTAL AMENDMENTS

I wrote to you on 27 January enclosing the Department's responses to evidence presented to the Committee in respect of the Justice Bill, and offering potential groupings of Parts of the Bill, for discussion at the Committee meetings of 4, 11 and 18 February.

In response to our subsequent conversation on the potential groupings, I thought it would be helpful to write to advise you of the details of officials who will be in attendance at the meeting on 4 February, when the Committee will consider the victims and witnesses and live link provisions of the Bill, and these are set out below.

- Maura Campbell (Deputy Director, Criminal Justice Development Division);

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- Veronica Holland (Head of Victims and Witnesses of Crime Branch); and
- Tom Haire (Head of Criminal Law Branch); and
- Graham Walker (Acting Head of Speeding up Justice and Equality Branch).

As you are aware, we have discussed previously the Department's plans to bring forward a number of proposed amendments to the Bill, at Consideration Stage. You indicated that the Committee would welcome sight of the text of the proposed amendments, prior to taking evidence from officials on the areas of the Bill to which they relate.

With that in mind, I am happy to offer the Committee the text of two amendments that the Department proposes to bring forward to Part 4 (Victims and Witnesses) of the Bill.

The amendments, which are attached at **Annexes A and B**, include:

- an enhancement to existing Clause 33 (Victim Statements) arising from stakeholder comments received during consultation on the Victim Charter, to allow a victim or a bereaved family member to include, in a victim statement, the impact a crime has had on other family members (**Annex A**); and

- an amendment to add a new clause to Part 4 and a new Schedule 3A to the Bill to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of Victim Support Services; witness services at court; and access to post-conviction information release schemes (**Annex B**).

I trust that the Committee finds this approach helpful. I will write to you again in advance of the meetings of 11 and 18 February, to confirm the names of officials due

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to appear and to share the text of the proposed amendments relating to the aspects of the Bill that are to be discussed on those dates.

In closing, I wanted to take your mind on how best to manage those amendments that represent new policy additions to the Bill. If, ultimately, the Committee is supportive of the inclusion of these matters in the Bill, I imagine these will probably result in the addition of new clauses to be added to Part 8. With that in mind, would it helpful if we shared these with you in advance of the meeting scheduled for 18 February when the Committee is considering the remainder of Part 8? If you were content, we would co-ordinate the appearance of relevant officials to speak to these additions to the Bill during that session.

I hope this is helpful and look forward to hearing from you in due course.

Tim Logan

TIM LOGAN
DALO

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
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Annex A

Victim statements

Clause 33, Page 23, Line 14

Leave out from 'and the provisions' to end of line 16

Clause 33, Page 23, Line 40

At end insert 'and members of the victim's family'

Clause 33, Page 23, Line 43

At end insert 'and members of the victim's family'

Clause 33, Page 23, Line 43

At end insert—

'(8A) Regulations may provide that, except in prescribed cases or circumstances, paragraphs (c) and (d) of subsection (8) are to have effect with the omission of the words "and members of the victim's family".

(8B) The provisions of the Victim Charter referred to in section 29(6)(a) apply for the purposes of subsections (2) and (8)(c) and (d) as they apply for the purposes of subsection (3) of section 29.'

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Annex B

Victims and witnesses – information sharing

New clause

After clause 35 insert—

'Information sharing

Disclosure for purposes of victim and witness support services and victim information schemes

35A. Schedule 3A (which makes provision for the disclosure of information for the purposes of victim and witness support services and victim information schemes) has effect.'

Clause 91, Page 60, Line 36

At end insert—

'( ) section 35A and Schedule 3A;'

New Schedule

After Schedule 3 insert—

'SCHEDULE 3A

DISCLOSURE OF INFORMATION: VICTIM AND WITNESS SUPPORT SERVICES AND VICTIM INFORMATION SCHEMES

Disclosure by police to body providing support services for victims

1.—(1) A police officer or member of the police support staff may disclose relevant information relating to a victim to a prescribed body for the purpose of enabling that body to advise the victim about support services provided by the body, or offer or provide support services to the victim.

(2) For the purposes of this paragraph—

"relevant information relating to a victim" means—

(a) the name and address of the victim;

(b) any telephone number or e-mail address at which the victim may be contacted; and

(c) such other information relating to the victim or the criminal conduct concerned as it appears to the police officer or member of the police support staff to be appropriate to disclose for the purpose mentioned in sub-paragraph (1);

"support services" means services involving the provision of information, advice, support or any other form of assistance to victims.

Disclosure by Public Prosecution Service to body providing support services for witnesses

2.—(1) Where the Director of Public Prosecutions has the conduct of criminal proceedings, a member of staff of the Public Prosecution Service may disclose relevant information relating to a witness for the prosecution in those proceedings to a prescribed body for the purpose of enabling that body to advise the witness about support services provided by the body, or offer or provide support services to the witness.

(2) For the purposes of this paragraph—

(a) "relevant information relating to a witness" means—

(i) the name and address of the witness;

(ii) the age of the witness;

(iii) any telephone number or e-mail address at which the witness may be contacted; and

(iv) such other information relating to the witness or the proceedings concerned as it appears to the member of the public prosecution service to be appropriate to disclose for the purpose mentioned in sub-paragraph (1).

(3) In this paragraph—

"support services" means services involving the provision of information, advice, support or any other form of assistance to prosecution witnesses in criminal proceedings;

"prosecution witness", in relation to any criminal proceedings, means a person who has been or may be called to give evidence for the prosecution in such proceedings.

Disclosure by police for purposes of victim information schemes

3.—(1) A police officer or member of the police support staff may disclose relevant information relating to a victim to the Department for the purpose of enabling the Department to provide information and advice to the victim in connection with—

(a) a scheme under section 68 of the Justice (Northern Ireland) Act 2002 (prisoner release victim information scheme); or

(b) a scheme under section 69A of the Justice (Northern Ireland) Act 2002 (victims of mentally disordered offenders information scheme).

(2) A police officer or member of the police support staff may disclose relevant information relating to a victim to the Board for the purpose of enabling the Board to provide information and advice to the victim in connection with a scheme under Article 25 of the Criminal Justice (Northern Ireland) Order 2005 (the Probation Board for Northern Ireland victim information scheme).

(3) For the purposes of this paragraph "relevant information relating to a victim" means—

(a) the name and address of the victim;

(b) any telephone number or e-mail address at which the victim may be contacted;

(c) details of the criminal conduct concerned; and

(d) such other information relating to the victim or the criminal conduct concerned as it appears to the police officer or member of the police support staff to be appropriate to disclose for the purpose mentioned in sub-paragraph (1).

Unauthorised disclosure of information

4.—(1) If a person to whom this paragraph applies discloses without lawful authority any information—

(a) acquired in the course of that person's employment,

(b) which is, or is derived from, information provided under this Schedule, and

(c) which relates to a particular person,

that person is guilty of an offence.

(2) This paragraph applies to any person who is—

(a) employed in a body prescribed under paragraph 1 or 2 or in the provision of services to such a body;

(b) employed in the Department or in the provision of services to the Department; or

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(c) employed by the Board or in the provision of services to the Board.

(3) It is not an offence under this paragraph to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this paragraph to show that at the time of the alleged offence—

(a) that person believed that the disclosure in question was made with lawful authority and had no reasonable cause to believe otherwise; or

(b) that person believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(5) A person who is guilty of an offence under this paragraph is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) For the purposes of this paragraph a disclosure of information by a person is to be regarded as made with lawful authority if, and only if, it is made—

(a) in the course of and for the purposes of that person's employment in a prescribed body;

(b) in accordance with that person's official duty as a civil servant or as an employee of the Board;

(c) in accordance with an authorisation given by the Department, the Board or the prescribed body;

(d) in accordance with any statutory provision or order of a court;

(e) for the purposes of any criminal proceedings; or

(f) with the consent of the person to whom the information relates.

(7) In this paragraph "employment"—

(a) includes employment as a volunteer; and

(b) in relation to a particular person, shall be construed in accordance with sub-paragraph (2).

Saving for other powers of disclosure

5. Nothing in this Schedule affects any power to disclose information that exists apart from this Schedule.

Interpretation

6.—(1) In this Schedule—

"the Board" means the Probation Board for Northern Ireland;

"prescribed" means prescribed by regulations made by the Department.

(2) Section 29 (meaning of victim and related terms) applies for the purposes of this Schedule as it applies for the purposes of section 28.

Correspondence from the Department providing information on the Bill and proposed amendments to be discussed at the meeting on 18 February 2015

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90529272

private.office@dojni.x.gsi.gov.uk

Our ref SUB/149/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

5 February 2015

Dear Christine,

JUSTICE BILL: ORAL EVIDENCE BY DEPARTMENTAL OFFICIALS AND PROPOSED DEPARTMENTAL AMENDMENTS

I wrote to you on 30 January to advise you of the details of officials who would attend the Committee meeting on 4 February to give evidence on the victims and witnesses and live link provisions of the Justice Bill and to share the text of proposed Department amendments to those parts of the Bill.

I can now confirm the names of the officials who will be in attendance at the meeting on 11 February, when the Committee is due to consider the prosecutorial fines, criminal records and youth justice provisions of the Bill, and these are set out below.

Prosecutorial Fines

- Maura Campbell (Deputy Director, Criminal Justice Development Division);

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Department of Justice
www.dojni.gov.uk

- Graham Walker (Acting Head of Speeding Up Justice Branch and Justice Bill Manager); and
- Paul Black (Speeding Up Justice Branch).

Criminal Records

- Simon Rogers (Deputy Director, Protection and Organised Crime Division);
- Maura Campbell (Deputy Director, Criminal Justice Development Division);
- Tom Clarke (General Manager AccessNI); and
- Mary Lemon (Protection and Organised Crime Division).

Youth Justice

- Declan McGeown (Chief Executive, Youth Justice Agency);
- Kiera Lloyd (Reducing Offending Policy Unit); and
- Graham Walker (Justice Bill Manager).

I am also happy to offer the Committee the text of five amendments that the Department proposes to bring forward to Part 5 (Criminal Records) of the Bill.

The amendments, which are attached at **Annexes A - E**, include:

- a minor, technical change to existing Clause 39, made at the suggestion of the Attorney General, to make it clear that the Code of Practice provided for in the clause *must* be published (**Annex A**);

- a new clause 39A (and a new Schedule 3B), again at the suggestion of the Attorney General, to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals, such as cautions, from Standard and Enhanced criminal record certificates, which came into operation in Northern Ireland in April 2014 (**Annex B**).

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- an enhancement to existing Clause 40, arising from ongoing stakeholder engagement, to prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home based positions from the Update Service, where third party personal information could potentially be disclosed unintentionally (**Annex C**);

- a new Clause 42A to facilitate the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes (**Annex D**); and

- a minor new provision in the form of a new Clause 42B to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database (**Annex E**).

I hope this is helpful. I will write to you again in advance of the meeting of 18 February to confirm the names of officials due to appear and to share the text of the proposed amendments relating to the aspects of the Bill that are to be discussed during the remaining oral evidence sessions.

Tim Logan

TIM LOGAN
DALO

Enc. Annexes A – E

Annex A

Criminal records – publication of Code of Practice

Clause 39, Page 27

Leave out lines 20 to 22 and insert—

'(4A) The Department may from time to time publish guidance to chief officers as to the exercise of functions under subsection (4); and in exercising functions under that subsection a relevant chief officer must have regard to any guidance for the time being published under this subsection.".'

Annex B

Criminal Records – filtering review mechanism

New clause

After clause 39 insert—

'Review of criminal record certificates

39A.—(1) The Police Act 1997 is amended as follows.

(2) After section 117A (inserted by section 39(5)) insert—

"Review of criminal record certificates

117B. Schedule 8A (which provides for an independent review of certain criminal record certificates) has effect."

(3) After Schedule 8 insert as Schedule 8A the Schedule set out in Schedule 3B to this Act.'

New Schedule

After Schedule 3 insert—

'SCHEDULE 3B

"SCHEDULE INSERTED AS SCHEDULE 8A TO THE POLICE ACT 1997

"SCHEDULE 8A

REVIEW OF CRIMINAL RECORD CERTIFICATES

Interpretation

1. In this Schedule—

"conviction" and "spent conviction" have the same meanings as in the Rehabilitation of Offenders (Northern Ireland) Order 1978;

"the independent reviewer" means the person appointed under paragraph 2;

"other disposal", in relation to a criminal record certificate or enhanced criminal record certificate issued to any person, means any caution, diversionary youth conference or informed warning relating to that person of which details are given in the certificate.

The independent reviewer

2.—(1) There is to be an independent reviewer for the purposes of this Schedule.

(2) The independent reviewer is a person appointed by the Department—

(a) for such period, not exceeding 3 years, as the Department decides; and

(b) on such terms as the Department decides.

(3) A person may be appointed for a further period or periods.

(4) The Department may terminate the appointment of the independent reviewer before the end of the period mentioned in sub-paragraph (2)(a) by giving the independent reviewer notice of the determination not less than 3 months before it is to take effect.

(5) The Department may—

(a) pay such remuneration or allowances to the independent reviewer as it may determine;

(b) make arrangements for the provision of administrative or other assistance to the independent reviewer.

(6) The independent reviewer must, in relation to each financial year and no later than 3 months after the end of that year, make a report to the Department about the exercise of his or her functions under this Schedule in that year.

(7) The independent reviewer may make recommendations to the Department as to—

(a) any guidance issued by the Department under paragraph 3 or which the independent reviewer thinks it would be appropriate for the Department to issue under that paragraph;

(b) any changes to any statutory provision which the independent reviewer thinks may be appropriate.

(8) A person may at the same time hold office as the independent reviewer and as the independent monitor under section 119B.

Guidance

3. The Department may from time to time publish guidance to the independent reviewer as to the exercise of functions under this Schedule; and in exercising functions under this Schedule the independent reviewer must have regard to any guidance for the time being published under this paragraph.

Application for review after issue of certificate

4.—(1) A person who receives a criminal record certificate or an enhanced criminal record certificate may apply in writing to the Department for a review of the inclusion in that certificate of—

(a) the details of any spent conviction; or

(b) the details of any other disposal.

(2) An application under this paragraph must—

(a) be accompanied by such fee (if any) as may be prescribed; and

(b) be made within such period after the issue of the certificate as the Department may specify in a notice accompanying the certificate.

(3) The Department must refer any application under this paragraph to the independent reviewer together with—

(a) any information supplied by the applicant in connection with the application; and

(b) any other information which appears to the Department to be relevant to the application.

Review by independent reviewer after issue of certificate

5.—(1) The independent reviewer, on receiving an application under paragraph 4 in relation to a certificate, must review the inclusion in that certificate of—

(a) the details of any spent conviction; and

(b) the details of any other disposal.

(2) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

(a) the independent reviewer must inform the Department of that fact; and

(b) on being so informed the Department must issue a new certificate.

(3) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(4) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed —

(a) the independent reviewer must inform the Department of that fact; and

(b) the Department must inform the applicant that the application is refused.

(5) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is 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.

Automatic review before issue of certificate for persons under 18

6.—(1) This paragraph applies where—

(a) the Department proposes to issue (otherwise than under sub-paragraph (4)(b) or (6)(b)) a criminal record certificate or an enhanced criminal record certificate relating to any person; and

(b) the certificate would—

(i) contain details of any spent conviction or other disposal which occurred at a time when the person was under the age of 18; but

(ii) not contain details of any conviction (whether spent or not) or other disposal occurring after that time.

(2) The Department must, before issuing the certificate, refer the certificate for review to the independent reviewer together with any information which appears to the Department to be relevant to that review.

(3) The independent reviewer, on receiving a referral under sub-paragraph (2) in relation to a certificate, must review the inclusion in that certificate of—

(a) the details of any spent conviction; and

(b) the details of any other disposal.

(4) If, following that review, the independent reviewer determines that the details of any spent conviction or other disposal included in the certificate should be removed—

(a) the independent reviewer must inform the Department of that fact; and

(b) on being so informed the Department must amend the certificate and issue the amended certificate.

(5) In issuing such a certificate the Department must give effect to the determination of the independent reviewer and must (in the case of an enhanced certificate) again comply with section 113B(4).

(6) If, following that review, the independent reviewer determines that the details of any spent convictions or other disposals included in the certificate should not be removed —

(a) the independent reviewer must inform the Department of that fact; and

(b) the Department must issue the certificate in the form referred to the independent reviewer.

(7) The independent reviewer must not determine that details of a spent conviction or other disposal should be removed from a certificate unless the independent reviewer is 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.

(8) The fact that a review has been carried out under this paragraph before a certificate is issued does not prevent the operation of paragraphs 4 and 5 in relation to the certificate once issued.

Disclosure of information to the independent reviewer

7. The Chief Constable, the Department and the Probation Board of Northern Ireland must provide to the independent reviewer such information as the independent reviewer reasonably requires in connection with the exercise of his or her functions under this Schedule.".

Annex C

Criminal records – third party disclosures

Clause 40, Page 29, Line 44

At end insert—

'(7A) The Department must not grant an application as mentioned in subsection (4)(c) or (5)(c) if—

(a) the certificate in question is an enhanced criminal record certificate; and

(b) the certificate contains (or would contain) information which relates to an individual other than the individual whose certificate it is.'.

Annex D

Criminal records – information exchange between AccessNI and Disclosure and Barring Service

New clause

After clause 42 insert—

'**Disclosures by Department of Justice to Disclosure and Barring Service**

42A. In section 119 of the Police Act 1997 (sources of information) after subsection (4) insert—

"(4A) The Department of Justice may provide to the Disclosure and Barring Service any information it holds for the purposes of this Part in order to enable the Disclosure and Barring Service to determine whether, in relation to any person, paragraphs 1, 2, 3, 5, 7, 8, 9 or 11 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 applies or appears to apply.".

Annex E

Criminal records – recording of cautions on criminal history database

New clause

After clause 42 insert—

'Inclusion of cautions and other diversionary disposals in criminal records

42B. In Article 29 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for paragraph (4) substitute—

"(4) The Department of Justice may by regulations make provision for recording—

(a) convictions for such offences as are specified in the regulations ("recordable offences");

(b) cautions given in respect of recordable offences;

(c) informed warnings given in respect of recordable offences;

(d) diversionary youth conferences in respect of recordable offences.

(5) For the purposes of paragraph (4)—

(a) "caution" means a caution given to a person in respect of an offence which, at the time when the caution is given, the person has admitted;

(b) "diversionary youth conference" has the meaning given by Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998.".'

Correspondence from the Department providing information on the Bill and proposed amendments to be discussed at the meeting on 18 February 2015

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744

private.office@dojni.x.gsi.gov.uk

Our ref SUB/197/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

12 February 2015

Dear Christine,

JUSTICE BILL: ORAL EVIDENCE BY DEPARTMENTAL OFFICIALS AND PROPOSED DEPARTMENTAL AMENDMENTS

Further to my letter of 5 February, I write to advise you of the details of officials who will be in attendance at the meeting on 18 February, when the Committee are due to consider the remaining aspects of the Bill, together with a number of new policy addition amendments. For convenience, and to keep disruption to the table at a minimum, I have brigaded these by relevant policy officials.

Part 1 (Single Jurisdiction); Part 7 (Violent Offences Prevention Orders); Part 8, clauses 72 – 76 (Juries); and clause 82 (Defence access to premises).

- Karen Pearson (Deputy Director, Criminal Justice Policy and Legislation Division);
- Angela Bell (Jurisdictional Redesign Branch);

[redacted]

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- Amanda Patterson (Head of Criminal Justice Policy Branch); and
- Graham Walker (Justice Bill Manager).

Part 2 (Committal for trial); Part 8, clauses 77-78 (early guilty pleas); clauses 79-80 (avoiding delay); clause 81 (Public prosecutor's summons).

- Maura Campbell (Deputy Director, Criminal Justice Development Division); and
- Graham Walker (Acting Head of Speeding up Justice Branch/ Justice Bill Manager).

New policy addition amendments

Lands Tribunal salaries

- Patricia Quinn-Duffy (Courts, Legal and Corporate Branch); and
- Graham Walker (Justice Bill Manager).

PACE(NI) – Fingerprint and DNA retention

- Lorraine Montgomery (Head of Police Powers & HR Policy Branch);
- Gary Dodds (Police Powers & HR Policy Branch); and
- Graham Walker (Justice Bill Manager).

Offence of serious physical harm to a child or vulnerable adult

- Martine McKillop (Head of Crime Reduction Branch, Community Safety Unit); and
- Graham Walker (Justice Bill Manager).

Sex offences with children

- Karen Pearson (Deputy Director, Criminal Justice Policy and Legislation Division);
- Amanda Patterson (Head of Criminal Justice Policy Branch); and
- Graham Walker (Justice Bill Manager).

[redacted]

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You have previously indicated, for some of the new policy amendments, that not all of the officials may be required to give evidence.

I am also happy to offer the Committee the text of the amendments to the Bill that are to be discussed on the 18th.

The amendments, which are attached at **Annexes A – I**, include:

- a series of further consequential amendments for inclusion in Schedule 1 (Single Jurisdiction), primarily to remove references to 'petty sessions district' and 'county court division' in existing legislation (**Annex A**);

- a number of adjustments to Part 7 of the Bill (Violent Offences Prevention Orders) to reflect comments and improvements suggested by the Attorney General to the clauses relating to verification of identity, retention of fingerprints and photographs, and power of search of third party premises (**Annex B**);

- an adjustment to existing clause 78 of the Bill (Early Guilty Pleas) following advice from the Attorney General, to remove a regulatory making power in sub-section (3) of the clause, which the Attorney identified as being of no practical benefit (**Annex C**);

- an adjustment to the regulation making powers in existing Clauses 79 and 80 (Avoiding delay in criminal proceedings) to reflect comments and advice from the Examiner of Statutory Rules, following his scrutiny of the Bill's Delegated Powers Memorandum (**Annex D**);

- an improvement to existing Clause 82 (Defence access to premises) at the suggestion of the Attorney General, to adjust the threshold for an order

allowing access to property to ensure proportionality and greater clarity in the use of the power (**Annex E**);

- a minor new provision to deliver a Justice Committee request to change the affirmative resolution procedure for the annual determination of Lands Tribunal salaries (**Annex F**);

- a number of amendments to the Police and Criminal Evidence (NI) Order 1989 (PACE) relating to the retention of fingerprints and DNA profiles to make provision for the retention of biometric material taken from persons who have accepted a Prosecutorial Fine (created by clauses 17 - 27 of the Bill); and to correct and close gaps in the law that were created by new articles carried in the Criminal Justice Act (NI) 2013, to ensure that provisions relating to retention of material for a different offence; retention of samples that may be disclosable; and powers to take samples where an investigation is discontinued but subsequently resumed, operate as originally intended (**Annex G**);

- an amendment to create an offence of causing or allowing serious physical harm to a child or vulnerable adult, to close a loophole that prevents PPS from being able to prosecute in circumstances where injuries must have been sustained at the hands of a limited number of members of a household, but there is insufficient evidence to point to the particular person responsible (**Annex H**); and

- two amendments to provide for a new offence of communicating with a child for sexual purposes and to make an adjustment to the existing offence of meeting a child following sexual grooming (**Annex I**).

In closing, I would also like to draw the Committee's attention to one further amendment to PACE legislation relating to the retention of fingerprints and DNA

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profiles that the Department intends to bring forward. This is associated with the amendments at **Annex G** and would enable the retention of material, in certain circumstances, from persons convicted of an offence in Great Britain.

This amendment is currently being drafted and the text is not, therefore, available to share with the Committee at this time. The Department will, however, provide the Committee with sight of the text of this amendment at the earliest opportunity.

I trust this is helpful, and please do not hesitate to contact me if you have any queries.

Tim Logan

TIM LOGAN
DALO

Enc: Annexes A – I

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Annex A

Single Jurisdiction

Schedule 1, Page 62

Leave out lines 4 to 28 and insert—

'The Gaming Act (Ireland) 1739 (c. 8)

. In section 16 (bringing of actions) omit the words from "and shall be laid" to the end.

The Forcible Entry Act (Ireland) 1786 (c.24)

. In section 65 (indictments) for "some one or more of the justices of the peace of the county, county of the city or town where such indictment shall be made" substitute "a district judge (magistrates' courts)".

The Parliamentary Representation Act (Ireland) 1800 (c.29)

. In section 7 (writs) for "crown office in Ireland" and "crown office of Ireland" substitute "chief clerk".

The Tolls (Ireland) Act 1817 (c.108)

. In section 7 (schedule of tolls) for "chief clerk for the county court division where such custom, toll, or duty may be claimed," substitute "chief clerk".

The Tithe Rentcharge (Ireland) Act 1838 (c. 109)

. In section 27 (recovery of rent-charge) omit "wherein the lands charged therewith may be situate".

The Defence Act 1842 (c. 94)

. In section 24 (compensation)—

(a) for "two justices of the peace of the county, riding, stewartry, city or place" substitute "a court of summary jurisdiction";

(b) for "such justices" substitute "that court".

The Fisheries (Ireland) Act 1842 (c. 106)

.—(1) In section 92 (byelaws) for the words from "deposited with" to "in each such petty sessions district" substitute "deposited with the clerk of petty sessions who shall publish notice of the lodgement;".

(2) In section 103 omit "in the district where the same shall be seized".

The Companies Clauses Consolidation Act 1845 (c. 16)

.—(1) In section 3 (interpretation) omit "acting for the place where the matter requiring the cognizance of any such justice shall arise and".

(2) In section 161 (deposit of copies of special Act) for the words from "deposit in the office" to "into which the works shall extend" substitute "deposit in the office of the chief clerk".

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The Lands Clauses Consolidation Act 1845 (c. 18)

. In section 150 (deposit of copies of special Act) for the words from "deposit in the office" to "into which the works shall extend" substitute "deposit in the office of the chief clerk".

The Railways Clauses Consolidation Act 1845 (c. 20)

.—(1) In section 7 (correction of plans) for the words from "deposited with" to "shall be situate" substitute "deposited with the chief clerk".

(2) In section 8 (deposit of plans) for the words from "deposited with" to "intended to pass" substitute "deposited with the chief clerk".

(3) In section 11 (limitation of deviation)—

(a) for the words from "two or more justices" to "may be situated" substitute "a court of summary jurisdiction";

(b) omit the words from "Provided also, that" to the end.

(4) In section 59 (consent to level crossing)—

(a) for the words from "any two or more justices" to "is situate, and assembled in petty sessions" substitute "a court of summary jurisdiction";

(b) for "such justices" substitute "that court".

The Ejectment and Distress (Ireland) Act 1846 (c. 111)

. In section 16 for the words from "apply to any one" to "fixed in such summons" substitute "apply to a district judge (magistrates' courts) for the redress of his grievance, whereupon the district judge shall summon the person complained of to appear before a court of summary jurisdiction at a reasonable time to be fixed in the summons.".

The Markets and Fairs Clauses Act 1847 (c. 14)

.—(1) In section 7 (correction of errors) for "the chief clerk for the county court division in which the lands affected thereby shall be situated" substitute "the chief clerk".

(2) In section 50 (annual account) for "the chief clerk for the county court division in which the market or fair is situate" substitute "the chief clerk".

(3) In section 58 (deposit of special Act) for the words from "deposit in" to "is situate" substitute "deposit in the office of the chief clerk".

The Commissioners Clauses Act 1847 (c. 16)

.—(1) In section 95 for "the chief clerk for the county court division where the undertaking is situate" substitute "the chief clerk".

(2) In section 110 (copies of special Act) for the words from "deposit in" to "is situate" substitute "deposit in the office of the chief clerk".

The Harbours, Docks and Piers Clauses Act 1847 (c. 27)

.—(1) In section 7 (correction of plans) for the words from "be deposited in" to "are situate" substitute "be deposited with the chief clerk".

(2) In section 8 (alterations to plans) for the words from "deposited with the said" to "is situate" substitute "deposited with the chief clerk".

(3) In section 50 (annual account) for the words from "charge, to the" to "is situate" substitute "charge, to the chief clerk".

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(4) In section 97 (copies of special Act) for the words from "deposit in" to "is situate" substitute "deposit in the office of the chief clerk".

The Towns Improvement Clauses Act 1847 (c. 34)

.—(1) In section 3 (interpretation)—

(a) in the definition of "justice" for the words from "shall mean" to arises" substitute "shall mean a lay magistrate";

(b) in the definition of "quarter sessions" for the words from "shall mean" to the end substitute "shall mean the county court".

(2) In section 20 (correction of errors) for "the chief clerk for the county court division in which the lands affected thereby shall be situated" substitute "the chief clerk".

(3) In section 214 (copies of special Act) for the words from "deposit in" to "is situated" substitute "deposit in the office of the chief clerk".

The Cemeteries Clauses Act 1847 (c. 65)

.—(1) In section 7 (correction of errors) for the words from "deposited with" to "shall be situated" substitute "deposited with the chief clerk".

(2) In section 60 (annual accounts) for the words from "charge, to the" to "is situated" substitute "charge, to the chief clerk".

(3) In section 66 (copies of special Act) for the words from "deposit in" to "is situated" substitute "deposit in the office of the chief clerk".

The Vagrancy (Ireland) Act 1847 (c. 84)

. In section 8 (interpretation) for the words from "any justice" to "town corporate" substitute "any lay magistrate or district judge (magistrates' courts)".

The Town Police Clauses Act 1847 (c. 89)

. In section 77 (copies of special Act) for the words from "deposit in" to "is situated" substitute "deposit in the office of the chief clerk".

The Railway Act (Ireland) 1851 (c.70)

.—(1) In section 4 (deposit of maps) for the words from "or so much thereof as relates" to the end substitute "with the chief clerk".

(2) In section 8 (notice of appointment of arbitrator) for the words "with the chief clerks for the county court division" substitute "with the chief clerk".

(3) In section 11 (retention of documents) for the words from the beginning to "hereby" substitute "The chief clerk is hereby".

The Fines Act (Ireland) 1851 (c. 90)

.—(1) In section 6 (enforcement) for "two justices of the county" substitute "district judge (magistrates' courts)".

(2) In section 8 (penalties) for "two justices of the county" substitute "district judge (magistrates' courts)".

The Summary Jurisdiction (Ireland) Act 1851 (c. 92)

. In section 1 (jurisdiction of justices) omit—

(a) "within his or their respective jurisdictions"; and

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(b) "(when the case shall be heard in any petty sessions district)".

The Petty Sessions (Ireland) Act 1851 (c. 93)

.—(1) In section 26(3) (execution of warrants) for the words from "at any place" to "adjoining county" substitute "at any place".

(2) In section 28 (backing of warrants) for the words from "are not to be found" to "in any of the places" substitute "are in any of the places".

(3) In section 31 (execution of warrant) for the words from "or peace officers" to the end substitute "to execute the warrant by arrest, committal, or levy, as the case may be, and in the case of a warrant to arrest any person and convey him when arrested before any district judge (magistrates' courts) to be dealt with according to law.".

The Boundary Survey (Ireland) Act 1854 (c. 17)

. In section 12 (alteration of boundary) for the words from "transmitted to" to "way relate" substitute "transmitted to the chief clerk".

The Towns Improvement (Ireland) Act 1854 (c. 103)

. In section 1 (interpretation) omit the definition of "assistant barrister".

The Boundary Survey (Ireland) Act 1859 (c. 8)

. In section 4 (publication of order) for the words from "transmitted to" to "way relate" substitute "transmitted to the chief clerk".

The Ecclesiastical Courts Jurisdiction Act 1860 (c. 32)

. In section 3 (offenders) for the words from "taken before" to the end substitute "taken before a district judge (magistrates' courts) to be dealt with according to law.".

The Tramways (Ireland) Act 1860 (c. 152)

. In section 33 (entry to land)—

(a) for the words from "under the hand" to "not having" substitute "under the hand of district judge (magistrates' courts) who does not have";

(b) for the words from "fixed by" to "same district" substitute "fixed by a district judge (magistrates' courts)".

The Landlord and Tenant Law Amendment Act (Ireland) 1860 (c. 154)

.—(1) In section 35 (restraint of waste)—

(a) for the words from "satisfy" to "of the county" substitute "satisfy a district judge (magistrates' courts)";

(b) for the words from "at the next" to "premises are situate" substitute "at the next petty sessions".

(2) In sections 63 and 69 (deposit of sums due) for "chief clerk for the county court division" substitute "chief clerk".

(3) In section 79 (view of lands) for the words from "lawful for" to "shall be situate and" substitute "lawful for a district judge (magistrates' courts)".

(4) In Schedule (A) (forms) omit "for the county of M," (wherever occurring).

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The Railways Act (Ireland) 1864 (c. 71)

. In section 14 (value of crops) for the words from "determined by" to the end substitute "determined by a district judge (magistrates' courts)'.

The Dockyard Ports Regulation Act 1865 (c. 125)

. Omit section 22 (jurisdiction of justices over vessels).

The Promissory Oaths Act 1871 (c. 48)

. In section 2 (persons who may take oaths) for the words from "or at the" to the end substitute "or at the county court".

The Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1871 (c. 49)

. In section 23 (register books) for the words from "information thereof to" to "solemnized" substitute "information thereof to a district judge (magistrates' courts)".

The Public Health (Ireland) Act 1878 (c. 52)

.—(1) In section 2 (interpretation) omit the definition of "court of quarter sessions".

(2) In section 269 (appeals) for subsection (1) substitute—

"(1) The appeal shall be made to the county court."

The Settled Land Act 1882 (c. 38)

. In section 46(10) (payment into court) for the words from "be exercised by" to the end substitute "be exercised by the county court".

The Married Woman's Property Act 1882 (c. 75)

. In section 17 (summary decision of questions) for the words from "in a summary way" to "and the court" substitute "in a summary way to the High Court or a county court and the court".

The Explosive Substances Act 1883 (c. 3)

. In section 6(1) (inquiry into crimes) omit—

(a) "for the county, borough, or place in which the crime was committed or is suspected to have been committed";

(b) "in the said county, borough, or place".

The Bills of Sale (Ireland) Act (1879) Amendment Act 1883 (c. 7)

. In section 11 (registration) for the words from "transmit" to the end of the first paragraph substitute "transmit an abstract in the prescribed form of the contents of such bill of sale to the chief clerk.".

The Local Government (Ireland) Act 1898 (c. 37)

. In section 69 (boundaries)—

(a) in subsection (3) omit the words from "provided that" to the end;

(b) omit subsections (4) and (5).

The Open Spaces Act 1906 (c. 25)

. In section 4(2) (transfer of open space) omit the words from "of the district" to the end.

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The Summary Jurisdiction (Ireland) Act 1908 (c. 24)

. In sections 1(2) and 2(2) (habitual drunkards) for the words from "anyone holding" to the end substitute "any justice of the peace".'

Schedule 1, Page 66, Line 38

At end insert—

'(2A) In section 18(2) (rules) after "subsection (1) above" insert "(other than paragraph (a))".'

Schedule 1, Page 75, Line 12

Leave out sub-paragraph (1) and insert—

'(1) Omit section 15(3) (interpretation).'

Schedule 1, Page 84

Leave out lines 10 to 12

Schedule 1, Page 86, Line 16

At end insert—

'(1A) In section 125 (variation, renewal and discharge of orders)—

(a) in paragraph (1) for "the appropriate court" substitute "a court of summary jurisdiction"; and

(b) omit subsection (7).'

Schedule 1, Page 90, Line 31

At end insert—

'The Serious Crime Act 2015 (c.)

109. In Schedule 2 in paragraph 11(2)(c) omit "for the petty sessions district in which the lay magistrate was acting when he or she issued the warrant".'

Schedule 6, Page 102, Line 35

Leave out from beginning to end of line 4 on page 103 and insert—

'The Gaming Act (Ireland) 1739 (c. 8)	In section 16 the words from "and shall be laid" to the end.
The Tithe Rentcharge (Ireland) Act 1838 (c. 109)	In section 27 the words "wherein the lands charged therewith may be situate".
The Fisheries (Ireland) Act 1842 (c.106)	In section 103 the words "in the district where the same shall be seized".
The Companies Clauses Consolidation Act 1845 (c. 106)	In section 3 the words "acting for the place where the matter requiring the cognizance of any such justice shall arise and".

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The Railway Clauses Consolidation Act 1845 (c. 20)	In section 11 the words from "Provided also, that" to the end.
The Summary Jurisdiction (Ireland) Act 1851 (c. 92)	In section 1 the words "within his or their respective jurisdictions" and "(when the case shall be heard in any petty sessions district)".
The Towns Improvement (Ireland) Act 1854 (c. 103)	In section 1 the definition of "assistant barrister".
The Landlord and Tenant Law Amendment Act (Ireland) 1860 (c. 154)	In Schedule (A) the words "for the county of M," (wherever occurring).
The Dockyard Ports Regulation Act 1865 (c.125)	Section 22.
The Public Health (Ireland) Act 1878 (c. 52)	In section 2 the definition of "court of quarter sessions".
The Explosive Substances Act 1883 (c. 3)	In section 6(1) the words "for the county, borough, or place in which the crime was committed or is suspected to have been committed" and "in the said county, borough, or place".
The Local Government (Ireland) Act 1898 (c. 37)	In section 69(3) the words from "provided that" to the end. Section 69(4) and (5).'
The Open Spaces Act 1906 (c. 25)	In section 4(2) the words from "of the district" to the end.

Schedule 6, Page 111, column 2

Leave out lines 23 and 24 and insert—

'Section 15(3).'

Schedule 6, Page 117, Line 41, column 2

At beginning insert—

'Section 125(7).'

Schedule 6, Page 121, Line 35

At end insert—

'The Anti-social Behaviour, Crime and Policing Act 2014 (c.12)	In Schedule 11, paragraph 71(5).
The Serious Crime Act 2015 (c.)	In Schedule 2, in paragraph 11(2)(c) the words "for the petty sessions district in which the lay magistrate was acting when he or she issued the warrant".'

[redacted]

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Annex B

Violent offences prevention orders

Clause 65, Page 49

Leave out lines 2 to 4 and insert—

'(4) Fingerprints and photographs taken from an offender under this section—

(a) are to be used for verifying the identity of the offender at any time while the offender is subject to notification requirements; and

(b) may also, subject to the following provisions of this section, be used for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(5) Fingerprints taken from an offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements, unless they are retained under the power conferred by subsection (7).

(6) Subsection (7) applies where—

(a) fingerprints have been taken from a person under any power conferred by the Police and Criminal Evidence (Northern Ireland) Order 1989;

(b) fingerprints have also subsequently been taken from that person under this section; and

(c) the fingerprints taken as mentioned in paragraph (a) do not constitute a complete and up to date set of the person's fingerprints or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(7) Where this subsection applies—

(a) the fingerprints taken as mentioned in subsection (6)(b) may be retained as if taken from the person under the power mentioned in subsection (6)(a); and

(b) the fingerprints taken as mentioned in subsection (6)(a) must be destroyed.

(8) Photographs taken of any part of the offender under this section must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless they are retained by virtue of an order under subsection (9).

(9) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the period for which photographs taken under this section may be retained.

(10) An application for an order under subsection (9) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(11) An order under subsection (9) may extend the period for which photographs may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(12) The following persons may appeal to the county court against an order under subsection (9), or a refusal to make such an order—

(a) the Chief Constable;

(b) the person in relation to whom the order was sought.

(13) In this section—

(a) "photograph" includes any process by means of which an image may be produced; and

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(b) references to the destruction or retention of photographs or fingerprints include references to the destruction or retention of copies of those photographs or fingerprints.'

Clause 68, Page 51, Line 8

After 'may' insert ', subject to subsections (3A) to (3E),'

Clause 68, Page 51, Line 13

At end insert—

'(3A) The information must be destroyed no later than the date on which the offender ceases to be subject to notification requirements unless it is retained by virtue of an order under subsection (3B).

(3B) The Chief Constable may apply to a District Judge (Magistrates' Court) for an order extending the period for which the information may be retained.

(3C) An application for an order under subsection (3B) must be made within the period of 3 months ending on the last day on which the offender will be subject to notification requirements.

(3D) An order under subsection (3B) may extend the period for which the information may be retained by a period of 2 years beginning when the offender ceases to be subject to notification requirements.

(3E) The following persons may appeal to the county court against an order under subsection (3B), or a refusal to make such an order—

(a) the Chief Constable;

(b) the person in relation to whom the order was sought.'

Clause 70, Page 51, Line 3

Leave out 'and' and insert—

'(ca) that, in a case where a person other than the offender resides there, it is proportionate in all the circumstances for a constable to enter and search the premises for that purpose; and'

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Annex C

Early guilty pleas

Clause 78, Page 55, Line 21
Leave out subsection (3)

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Annex D

Avoiding delay in criminal proceedings

Clause 79, Page 55, Line 31

Leave out from 'The Department' to 'on' and insert 'It is the duty of all'

Clause 79, Page 55, Line 34

Leave out subsection (2)

Clause 80, Page 56, Line 23

At end insert—

'(5) The regulations must in particular take account of the need to identify and respect the needs of—

(a) victims,

(b) witnesses, particularly those to whom Article 4(2) of the Criminal Evidence (Northern Ireland) Order 1999 may apply; and

(c) persons under the age of 18.'

Clause 80, Page 56, Line 23

At end insert—

'(6) Before making any regulations under this section the Department must consult—

(a) the Lord Chief Justice;

(b) the Director of Public Prosecutions;

(c) the General Council of the Bar of Northern Ireland; and

(d) the Law Society of Northern Ireland.'

[redacted]

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Annex E

Defence access to premises

Clause 82, Page 57, Line 37,

Leave out from 'in connection' to 'D's appeal' on line 38 and insert 'to ensure compliance with Article 6 of the European Convention on Human Rights'

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Annex F

Lands Tribunal Salaries

New clause

After clause 85 insert—

'Salary of Lands Tribunal members

Salary of Lands Tribunal members

85A.—(1) Section 2 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 is amended as follows.

(2) For subsections (5) and (5A) substitute—

"(5) There shall be paid to the members of the Lands Tribunal appointed under section 1(2) such remuneration as the Department of Justice may determine."

[redacted]

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Annex G

PACE – Fingerprints and DNA

New clause

After clause 76 insert—

'Personal samples, DNA profiles and fingerprints

Power to take further fingerprints or non-intimate samples [j11]

76A.—(1) In Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting)—

(a) in paragraphs (5A) and (5B), for the words after "investigation" in sub-paragraph (b) substitute "but—

(i) paragraph (4A)(a) or (b) applies, or

(ii) paragraph (5C) applies.";

(b) after paragraph (5B) insert—

"(5C) This paragraph applies where—

(a) the investigation was discontinued but subsequently resumed, and

(b) before the resumption of the investigation the fingerprints were destroyed pursuant to Article 63B(2)." .

(2) In Article 63 of that Order (non-intimate samples)—

(a) at the end of paragraph (3ZA)(b) insert ", or

(iii) paragraph (3AA) applies.";

(b) in paragraph (3A)(b) for "insufficient; or" substitute "insufficient, or

(iii) paragraph (3AA) applies; or";

(c) after paragraph (3A) insert—

"(3AA) This paragraph applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation—

(a) any DNA profile derived from the sample was destroyed pursuant to Article 63B(2), and

(b) the sample itself was destroyed pursuant to Article 63P(2), (3) or (10)." .

(3) In Schedule 2A to that Order (fingerprinting and samples: power to require attendance at police station)—

(a) in paragraph 1 (fingerprinting: persons arrested and released)—

(i) in sub-paragraph (2) for "Article 61(5A)(b)" substitute "Article 61(5A)(b)(i)";

(ii) after sub-paragraph (3) insert—

"(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b)(ii) (fingerprints destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed." ;

(b) in paragraph 2 (fingerprinting: persons charged, etc.)—

(i) in sub-paragraph (2)(b) for "Article 61(5B)(b)" substitute "Article 61(5B)(b)(i)";

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(ii) at the end of sub-paragraph (2) insert ", or

"(c) in a case falling within Article 61(5B)(b)(ii) (fingerprints destroyed where investigation interrupted), the day on which the investigation was resumed.";

(c) in paragraph 9 (non-intimate samples: persons arrested and released)—

(i) in sub-paragraph (2) for "within Article 63(3ZA)(b)" substitute "within Article 63(3ZA)(b)(i) or (ii)";

(ii) after sub-paragraph (3) insert—

"(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.";

(d) in paragraph 10 (non-intimate samples: person charged etc)—

(i) in sub-paragraph (3) for "within Article 63(3A)(b)" substitute "within Article 63(3A)(b)(i) or (ii)";

(ii) after sub-paragraph (4) insert—

"(5) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.".

New clause

After clause 76 insert—

'Retention of DNA profiles or fingerprints: persons given a prosecutorial fine

76B. After Article 63K of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

"Retention of Article 63B material: persons given a prosecutorial fine notice

63KA.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a prosecutorial fine notice under section 18 of the Justice Act (Northern Ireland) 2015, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence (or one of the offences) to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.".'

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New clause

After clause 76 insert—

'Power to retain DNA profile or fingerprints in connection with different offence

76C. For Article 63N of the Police and Criminal Evidence (Northern Ireland Order 1989 (Article 63B material obtained for one purpose and used for another) substitute—

"Retention of Article 63B material in connection with different offence

63N.—(1) Paragraph (2) applies if—

(a) Article 63B material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and

(b) the person subsequently—

(i) is arrested for or charged with a different offence,

(ii) is convicted of a different offence,

(iii) is given a penalty notice or a prosecutorial fine notice in respect of a different offence;

(iv) is given a caution in respect of a different offence committed when the person is under the age of 18; or

(v) completes a diversionary youth conference process with respect to a different offence.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken)—

(a) in connection with the investigation of the offence mentioned in paragraph (1)(b),

(b) on the date on which the person was arrested for that offence or, if the person was not arrested, on the date on which the person—

(i) was charged with the offence or given a penalty notice or prosecutorial fine in respect of the offence, or

(ii) was cautioned in respect of the offence; or

(iii) completed the diversionary youth conference process with respect to the offence.

(3) Paragraph (3) of Article 63J applies for the purposes of this Article as it applies for the purposes of Article 63J.".

New clause

After clause 76 insert—

'Retention of personal samples that are or may be disclosable

76D. In Article 63R of the Police and Criminal Evidence (Northern Ireland) Order 1989 (exclusions for other regimes)—

[redacted]

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(a) in paragraph (5) (material that is or may become disclosable to the defence) for "Articles 63B to 63O and 63Q" substitute "Articles 63B to 63Q";

(b) after that paragraph insert—

"(5A) A sample that—

(a) falls within paragraph (5), and

(b) but for that paragraph would be required to be destroyed under Article 63P,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within paragraph (5) but no longer does, and so becomes a sample to which Article 63P applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.".

Schedule 5, Page 102, Line 23

At end insert—

'Part 8: DNA profiles or fingerprints

6A. The amendment made by section 76C applies even where the event referred to in paragraph (1)(b) of the substituted Article 63N of the Police and Criminal Evidence (Northern Ireland) Order 1989 occurs before the day on which that section comes into operation.'

[redacted]

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Annex H

Serious physical harm to a child or vulnerable adult.

New Clause

After clause 83 insert—

'Causing or allowing child or vulnerable adult to suffer serious physical harm

Causing or allowing child or vulnerable adult to suffer serious physical harm

83A.—(1) Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a) after "dies" insert " or suffers serious physical harm ";

(b) in paragraph (d) for "V's death" substitute " the death or serious physical harm ".

(3) In subsection (3)(a) for "V's death" substitute "the death or serious physical harm ".

(4) In subsection (4)(b) for "V's death" substitute " the death or serious physical harm ".

(5) In subsection (7) after "this section" insert "of causing or allowing a person's death".

(6) After that subsection insert—

"(8) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or to both.".

(7) For the cross-heading before section 5 substitute "*Causing or allowing a child or vulnerable adult to die or suffer serious physical harm*".

(8) Schedule 4A (which contains amendments consequential on this section) has effect.

New Schedule

After Schedule 4 insert—

'SCHEDULE 4A

AMENDMENTS: SERIOUS PHYSICAL HARM TO CHILD OR VULNERABLE ADULT

The Law Reform (Year and a Day Rule) Act 1996 (c. 19)

1. In section 2 (restriction on institution of proceedings for fatal offence) in subsection (3)(c) for "(causing or allowing the death of a child or vulnerable adult)" substitute "of causing or allowing the death of a child or vulnerable adult".

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The Sexual Offences Act 2003 (c. 42)

2. In Schedule 5 (offences for purposes of making sexual offences prevention orders) in paragraph 171A for "the death of a child or vulnerable adult" substitute "a child or vulnerable adult to die or suffer serious physical harm".

The Domestic Violence, Crime and Victims Act 2004 (c. 28)

3.—(1) For the heading of section 7 substitute "**Evidence and procedure in cases of death: Northern Ireland**".

(2) In section 7(5) after "section 5" insert "of causing or allowing a person's death".

(3) After section 7 insert—

"Evidence and procedure in cases of serious physical harm: Northern Ireland

7A.—(1) Subsections (3) to (5) apply where a person ("the defendant") is charged in the same proceedings with a relevant offence and with an offence under section 5 in respect of the same harm ("the section 5 offence").

(2) In this section "relevant offence" means—

(a) an offence under section 18 or 20 of the Offences against the Person Act 1861 (grievous bodily harm etc);

(b) an offence under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of attempting to commit murder.

(3) Where by virtue of Article 4(4) of the Criminal Evidence (Northern Ireland) Order 1988 a court or jury is permitted, in relation to the section 5 offence, to draw such inferences as appear proper from the defendant's failure to give evidence or refusal to answer a question, the court or jury may also draw such inferences in determining whether the defendant is guilty of a relevant offence, even if there would otherwise be no case for the defendant to answer in relation to that offence.

(4) Where a magistrates' court is considering under Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 whether to commit the defendant for trial for the relevant offence, if there is sufficient evidence to put the defendant on trial for the section 5 offence there is deemed to be sufficient evidence to put the defendant on trial for the relevant offence.

(5) The power of a judge of the Crown Court under section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 (entry of "No Bill") is not to be exercised in relation to a relevant offence unless it is also exercised in relation to the section 5 offence.

(6) At the defendant's trial the question whether there is a case for the defendant to answer on the charge of the relevant offence is not to be considered before the close of all the evidence (or, if at some earlier time the defendant ceases to be charged with the section 5 offence, before that earlier time)."

The Criminal Justice (Northern Ireland) Order 2008 (NI 1)

4. In Part 1 of Schedule 2 (specified violent offences) in paragraph 30 for "the death of a child or vulnerable adult" substitute "a child or vulnerable adult to die or suffer serious physical harm".'

Schedule 5, Page 102, Line 29

[redacted]

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At end insert—

'Part 8: Serious physical harm to a child or vulnerable adult

9. An amendment made by section 83A or Schedule 4A does not apply in relation to any harm resulting from an act that occurs, or so much of an act as occurs, before the coming into operation of that amendment.'

[redacted]

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Annex I

Sexual offences against children

New clause

After clause 78 insert—

'Sexual offences against children

Meeting a child following sexual grooming etc.

78A. In Article 22(1)(a) of the Sexual Offences (Northern Ireland) Order 2008 (meeting a child following sexual grooming etc.) for "on at least two occasions" substitute "on one or more occasions".'.

New clause

After clause 78 insert—

'Sexual communication with a child

78B.—(1) In the Sexual Offences (Northern Ireland) Order 2008 after Article 22 insert—

"Sexual communication with a child

22A.—(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),

(b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and

(c) B is under 16 and A does not reasonably believe that B is 16 or over.

(2) For the purposes of this Article, a communication is sexual if—

(a) any part of it relates to sexual activity, or

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

and in sub-paragraph (a) "sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(3) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.".

(2) In Article 4 of that Order (meaning of "sexual") after "except" insert "Article 22A (sexual communication with a child) or".

(3) In Article 76(10)(a) of that Order (offences outside the United Kingdom) after "children)" insert "except Article 22A".

[redacted]

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(4) In the Sexual Offences Act 2003 in Schedule 3 (sexual offences for purposes of Part 2 of that Act) after paragraph 92H insert—

"92HA. An offence under Article 22A of that Order (sexual communication with a child).".

(5) In the Criminal Justice (Northern Ireland) Order 2008 in Part 2 of Schedule 2 (specified sexual offences) in paragraph 14A after the entry relating to Article 22 of the Sexual Offences (Northern Ireland) Order 2008 insert—

"Article 22A (sexual communication with child),".'

Clause 91, Page 60, Line 36

At end insert—

'( ) sections 78A and 78B;'

Schedule 5, Page 102, Line 26

At end insert—

'Part 8: Sexual communication with a child

7A. Section 78B does not apply in a case in which person A met or communicated with person B only once before the event mentioned in Article 22(1)(a)(i) to (iii) of the Sexual Offences (Northern Ireland) Order 2008, if that meeting or communication took place before the coming into operation of that section.'.'

Correspondence from the Department providing information on Part 6 – Live Links in Criminal Proceedings

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744

private.office@dojni.x.gsi.gov.uk

Our ref SUB/297/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

26 February 2015

Dear Christine,

JUSTICE BILL: PART 6 – LIVE LINKS IN CRIMINAL PROCEEDINGS

Thank you for your letter of 20 February, in which you sought a written response from the Department to a number of issues that were not raised during oral evidence with officials on 4 February. I am happy to offer the following by way of a reply.

The result of the consultation the Department has undertaken with young people in the Juvenile Justice Centre (JJC) about their experience of live links and the proposed changes.

Departmental officials interviewed both staff and children in the JJC about their experiences of the live links system in the Centre.
Staff were very supportive of the system, as were most of the six children interviewed, all of whom had experience of live links and also personal appearances in court, and who had agreed to participate in the exercise.

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Most of the children interviewed expressed a view that they preferred to use live links compared to going to court and were happy for the use of live links to be extended as proposed.

Reasons for preferring live links included that they were more convenient and private, less intimidating, did not require the child to speak or stand in front of everyone and care workers were there to help. Some children considered that the downside of going to court could be that they might be required to be restrained whilst being driven to court. They also cited issues around journey times and having to wait in cells for prolonged periods for what could amount to a short hearing.

Several of the reasons for preferring court were unrelated to the hearing itself but focused instead on getting out of the Juvenile Justice Centre for a day, with the chance of seeing family and friends.

One child did express the view that they felt there was a better chance of being granted bail when going to court as the judge had an opportunity to see them in person.

All of the children had an understanding of what was going on, whether appearing by live link or in person, had spoken to solicitors in advance of hearings, and received support and information from care workers and solicitors before, during and after proceedings.

Although they generally understood proceedings, several of the children advised that they had experienced "blurry" screens and had occasionally found it difficult to hear due to shuffling papers and microphone levels.

To summarise, there was generally a high level of satisfaction with the operation of live links, with only one child expressing the view that a personal appearance might

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produce a more favourable outcome to the proceedings. The Department will bring the comments about microphone noise and level to the attention of the Head of Court Operations.

Has the Department assessed the delay in court cases that can be attributed to the attendance of expert witnesses and what the reduction in delay is likely to be once arrangements are introduced to make it standard practice for certain categories of expert witness to give evidence by live link rather than attending court?

Provision by the prosecution of expert witnesses at court is a time consuming and expensive matter, and anything that can be done to improve their availability will improve service provision and reduce delay. Expert witnesses may attend court for days at a time, only to give evidence for a very short time, if at all. As the majority of such witnesses are from Forensic Science Northern Ireland (FSNI) and the Police Service of Northern Ireland (PSNI), this would create adverse impacts on the other services they provide, including their availability for court appearances in relation to other proceedings.

Other specialists, from the medical profession for example, may often have diary commitments many months in advance which would prevent them from attending court, so any means to avoid wasting their time or reduce delay in cases is desirable. Whilst difficult to quantify specifically, we believe that making live links the normal means for specified expert witnesses to provide evidence will make a valuable contribution.

Will the guidance to be produced by the Department on the new arrangements for the use of live links at weekends and public holidays be available before the live link provisions are enacted?

The Department will work with the Northern Ireland Courts and Tribunals Service and the Office of the Lord Chief Justice to produce guidance on the new

arrangements before the provisions for the use of live links at weekends and public holidays are commenced.

Would amending the wording of clause 45 to ensure that a live link should never be authorised or continue to be authorised where its use undermines the effective participation of an accused as suggested by the NI Human Rights Commission not provide an additional safeguard?

The Department does not believe that such an amendment to clause 45 is necessary to achieve effective participation, understanding, or access to legal representation. There are statutory requirements that the person must be able to see, hear, be seen and be heard for a live link to take place otherwise the hearing must be adjourned. Interpreter services are also available and can be provided as part of the live link procedure where required.

Officials have also visited the Juvenile Justice Centre, Hydebank and Maghaberry and can confirm the availability of facilities for consultation with legal representatives, either in person, or by telephone or video link, and that the facilities are being used.

Will the extended use of live links as provided for in the Bill result in cost savings and if so, what is the estimated savings expected?

For the use of live links for first remand for weekend and public holidays, figures for weekend court sittings show around five (and up to seven or eight on occasion) locations in use every weekend, resulting in a total of 330 weekend courts in 2012. The proposals would reduce those 330 judicial days to around 52 with the potential for reduced police, prosecutor and court staff costs.

The extended use of live links for expert witnesses will particularly apply to Forensic Science Northern Ireland (FSNI) and Police Service of Northern Ireland (PSNI).

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PSNI estimate that their officers and staff are required to attend court on more than 23,000 occasions in an average year, with the average attendance of about five hours. This means that court attendance requires roughly 115,000 hours of police time in any one year. PSNI assert that of those officers and staff attending court, more than 75% are not actually required to give oral evidence; this equates to around 86,250 hours are being spent in court without giving oral evidence, the equivalent of 10,781 shifts being lost to the frontline. This excludes the cost to PSNI in mileage and expenses claims and time spent preparing to attend court (Figures supplied by Police Service of Northern Ireland (PSNI) *"Managing Criminal Cases: a Department of Justice Consultation" (November 2012)).*

FSNI have advised that since December 2012, when the live link booths became operational, while 100 applications to use live links were submitted and 91 were granted, it has been used on only 6 occasions. FSNI have estimated that – with cases that have been adjourned, guilty pleas entered, evidence agreed in advance and evidence agreed on the day – 246.4 hours have been saved, releasing capacity to the value of £29,321.

FSNI have indicated that the availability of live links has seen an overall reduction in the number of scientists called to give evidence, and have also compiled figures to show potential savings for cases where no live link application has been submitted. For such cases, potential savings of over £500K, or 441 hours, have been estimated.

Does the Department intend to bring forward an amendment to Clause 46 so that the same safeguard that applies in Clauses 44 and 45 and places a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it and this cannot be immediately corrected also applies to Clause 46?

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The Department will be bringing forward an amendment to Clause 46 so that the safeguard that already applies in Clause 44 and 45 will also apply to proceedings for failure to comply with certain orders of licence conditions.

I trust this is helpful, and please do not hesitate to contact me if you have any queries.

D Graham

pp **TIM LOGAN**
DALO

Correspondence from the Department providing information following the oral evidence session on 18 February 2015

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of
Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 9052 8121
private.office@dojni.x.gsi.gov.uk

Our ref: SUB/295/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

26 February 2015

Dear Christine

JUSTICE BILL: FOLLOW-UP INFORMATION FROM MEETING ON 18 FEBRUARY

At the Committee meeting on 18 February, officials undertook to revert to the Committee on a number of discrete issues arising from their evidence on the Bill.

On Part 2 (committal for trial), Mr Maginness queried how many cases proceeding by way of mixed committal and preliminary investigation in 2013 had not proceeded to trial. This information has been sourced from the Northern Ireland Courts and Tribunals Service and is set out below.

Number of cases committed / not returned for trial in 2013

Number of cases committed	Number of cases not returned for trial	Percentage of cases committed that were not returned for trial
1,743	51	2.9%

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Committal type of cases not returned for trial in 2013

Preliminary investigation (PI)	Mixed committal	Preliminary inquiry (PE)	Total
3	5	43	51

On Part 7 of the Bill, the Deputy Chair asked whether a Violent Offences Prevention Order (VOPO) would form part of information disclosed through the Access NI check process.

As the VOPO is a civil order, it would not be routinely disclosed on the Access NI certificate. However, if a person were to breach any of the conditions of their order, the breach, as a criminal offence, would be disclosed.

Where an enhanced check of an individual is required, police could disclose that the individual was the subject of a VOPO. However, safeguards are in place for this higher level check. Before a referral would be made to police, Access NI would have to have a reason to refer the case to the police in the first instance. Where a referral has been made to police, a relevancy test has to be carried out as part of the enhanced check process, where consideration would have to be given to whether they reasonably believe that disclosure is relevant to the work the individual is seeking to do, and whether the information should, in fact, be disclosed.

Finally, the Chair and Deputy Chair queried the purpose and effect of clause 86 in Part 9 of the Bill and officials undertook to take advice and revert to the Committee.

As Members will be aware, a power to make supplementary, incidental, consequential and transitional provision is frequently included in a Bill which deals with complex changes in law in which difficulties which have not been identified in the legislative process may arise. In particular, the power to make supplementary or consequential provision is intended to pick up missed consequentials or resolve issues which have not been anticipated. The power to make transitory or transitional provisions may be

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needed because of the sequence in which clauses of the Bill are commenced or because commencement of particular provisions is unexpectedly delayed.

Clause 86 is, therefore, something of a "safety blanket", in case the operation of the legislative changes throw up some unexpected difficulty or to address necessary consequential changes to legislation which have inadvertently been overlooked during the drafting of the Bill.

We appreciate, however, that Members may have a concern that the ambit of the clause is widely drawn, and we have sought advice from the Departmental Solicitor's Office and from the legislative draftsman. That advice has confirmed that whilst the power is widely drawn to take account of the fact that the precise circumstances in which it will be called upon (if at all) cannot be determined, the purposes for which the power can be used are reasonably exact.

Clause 86 (1) provides that the relevant orders must be used for the purposes of the Act or to make provision in consequence of, or for giving full effect to, the Act. Subsection (2) (which confers the power to amend, repeal, revoke or modify a statutory provision) must, accordingly, be read in that light. In addition, clause 87 (6)(b) provides that any order made under section 86 (1) which contains a provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation will be **subject to the draft affirmative procedure and, therefore, cannot be made without Assembly approval.**

All orders made under clause 86 (1) would, of course, also be **subject to the usual procedures relating to subordinate legislation**, including consultation on the proposals with the Justice Committee and scrutiny by the Examiner of Statutory Rules.

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of
Justice
www.dojni.gov.uk

I hope this is helpful.

D Graham

TIM LOGAN
DALO

[redacted]

Correspondence from the Department providing the final text for the remaining proposed amendments to the Bill that the Department intends to bring forward at Consideration Stage

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744

private.office@dojni.x.gsi.gov.uk

Our ref SUB/328/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

6 March 2015

Dear Christine

JUSTICE BILL: SHARING OF REMAINING DEPARTMENTAL AMENDMENTS

I write to offer the Committee the final text of the remaining proposed amendments to the Bill that the Department intends to bring forward at Consideration Stage.

It may be helpful if I say at the outset that two of these (relating to information sharing powers for victims and witnesses information schemes and the enhancement to the existing offence of sexual grooming) offer minor corrections to clauses already shared with the Committee. It is, however, unfortunate that these issues were not picked up before now, and I apologise for that oversight.

Two of the amendments (committal for trial and retention of fingerprints and DNA profiles) were noted in officials' evidence to the Committee on 18 February. Finally, as mentioned in my letter of 26 February, an amendment is proposed to enhance existing Clause 46 (live links).

[redacted]

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
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The amendments, which are attached at **Annexes A – E**, include:

- the proposed insertion of a new Clause 12A, as a result of evidence to the Committee by the Public Prosecution Service. In their written evidence to the Committee, the PPS indicated that where a person is to be directly committed for trial for a 'specified' offence under Clause 12, it is necessary, in the interests of justice, to allow for the direct committal of any co-defendants (who are charged with an offence which is not a 'specified' offence) so that all defendants can be tried at the same time. New Clause 12A would enable this to occur (**Annex A**);

- a revised version of the amendment already shared with the Committee to create information sharing powers for victims and witnesses information schemes to designate the PPS, rather than the PSNI, as data controllers (the only changes are to para 3(1) and (2) of the new Schedule 3A) (**Annex B**);

- an adjustment to existing Clause 46 (Live links for proceedings for failure to comply with certain orders or licence conditions) to ensure a consistency of approach with respect to safeguarding arrangements provided for in other live link provisions in the Bill (**Annex C**);

- a revised version of the amendment already shared with the Committee to amend the existing offence of meeting a child following sexual grooming to correct a typographical error in the original amendment (**Annex D**); and

- an amendment to Article 63G of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE (NI)), relating to the retention of fingerprints and DNA profiles from persons convicted of an offence in Great Britain, as discussed with the Committee during oral evidence with officials on 18th February. The amendment is inserted into the package of biometric material

[redacted]

FROM THE OFFICE OF THE JUSTICE MINISTER

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already shared with the Committee as a new Clause 76B, with the subsequent clauses renumbered as new clauses 76C – E. The full package of amendments to PACE (NI) is attached for ease of reference (**Annex E**).

I trust this is helpful, and please do not hesitate to contact me if you have any queries.

Tim Logan

TIM LOGAN
DALO

[redacted]

Annex A

Direct committal for trial

New clause

After clause 12 insert—

'Direct committal: offences related to specified offences

12A.—(1) Where—

(a) this Chapter applies in relation to an accused ("A") who—

(i) is charged with an offence ("offence A") which is not a specified offence, and

(ii) is not also charged with a specified offence,

(b) A appears or is brought before the court on the same occasion as another person ("B") charged with a specified offence,

(c) the court commits B for trial for the specified offence under section 12, and

(d) offence A appears to the court to be related to the specified offence for which the court commits B for trial,

the court shall forthwith commit A to the Crown Court for trial for offence A.

(2) Where—

(a) this Chapter applies in relation to an accused ("A") who—

(i) is charged with an offence ("offence A") which is not a specified offence, and

(ii) is not also charged with a specified offence,

(b) on a previous occasion another person ("B") has appeared or been brought before the court charged with a specified offence,

(c) the court has on that occasion committed B for trial for the specified offence under section 12, and

(d) offence A appears to the court to be related to the specified offence for which the court committed B for trial,

the court may forthwith commit A to the Crown Court for trial for offence A if the court considers that it is necessary or appropriate in the interests of justice to do so.

(3) Where the court commits the accused for trial for an offence under this section—

(a) it shall accordingly not conduct committal proceedings in relation to that offence; and

(b) the functions of the court then cease in relation to that offence, except as provided by—

(i) section 13; or

(ii) Article 29(2)(a)of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003.

(4) For the purposes of this section an offence is related to a specified offence if a count charging the offence could be included in the same indictment as a count charging the specified offence.'

Clause 14, Page 8, Line 31

After 'section 12' insert 'or 12A'

Clause 14, Page 9, Line 14

Leave out '(e) or (f)' and insert 'or (e)'

Schedule 3, Page 94, Line 29
After 'section 12' insert 'or 12A'

Schedule 3, Page 94, Line 37
After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 4
After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 12
After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 19
After 'section 12' insert 'or 12A'

Schedule 3, Page 95, Line 27
After 'section 12' insert 'or 12A'

Schedule 3, Page 96, Line 13
After 'section 12' insert 'or 12A'

Annex B

Victims and Witnesses – Information sharing

New clause

After clause 35 insert—

'Information sharing

Disclosure for purposes of victim and witness support services and victim information schemes

35A. Schedule 3A (which makes provision for the disclosure of information for the purposes of victim and witness support services and victim information schemes) has effect.'

Clause 91, Page 60, Line 36

At end insert—

'( ) section 35A and Schedule 3A;'

New Schedule

After Schedule 3 insert—

'SCHEDULE 3A

DISCLOSURE OF INFORMATION: VICTIM AND WITNESS SUPPORT SERVICES AND VICTIM INFORMATION SCHEMES

Disclosure by police to body providing support services for victims

1.—(1) A police officer or member of the police support staff may disclose relevant information relating to a victim to a prescribed body for the purpose of enabling that body to advise the victim about support services provided by the body, or offer or provide support services to the victim.

(2) For the purposes of this paragraph—

"relevant information relating to a victim" means—

(a) the name and address of the victim;

(b) any telephone number or e-mail address at which the victim may be contacted; and

(c) such other information relating to the victim or the criminal conduct concerned as it appears to the police officer or member of the police support staff to be appropriate to disclose for the purpose mentioned in sub-paragraph (1);

"support services" means services involving the provision of information, advice, support or any other form of assistance to victims.

Disclosure by Public Prosecution Service to body providing support services for witnesses

2.—(1) Where the Director of Public Prosecutions has the conduct of criminal proceedings, a member of staff of the Public Prosecution Service may disclose relevant information relating to a witness for the prosecution in those proceedings to a prescribed body for the purpose of enabling that body to advise the witness about support services provided by the body, or offer or provide support services to the witness.

(2) For the purposes of this paragraph—

(a) "relevant information relating to a witness" means—

(i) the name and address of the witness;

(ii) the age of the witness;

(iii) any telephone number or e-mail address at which the witness may be contacted; and

(iv) such other information relating to the witness or the proceedings concerned as it appears to the member of the public prosecution service to be appropriate to disclose for the purpose mentioned in sub-paragraph (1).

(3) In this paragraph—

"support services" means services involving the provision of information, advice, support or any other form of assistance to prosecution witnesses in criminal proceedings;

"prosecution witness", in relation to any criminal proceedings, means a person who has been or may be called to give evidence for the prosecution in such proceedings.

Disclosure by police for purposes of victim information schemes

3.—(1) A member of staff of the Public Prosecution Service may disclose relevant information relating to a victim to the Department for the purpose of enabling the Department to provide information and advice to the victim in connection with—

(a) a scheme under section 68 of the Justice (Northern Ireland) Act 2002 (prisoner release victim information scheme); or

(b) a scheme under section 69A of the Justice (Northern Ireland) Act 2002 (victims of mentally disordered offenders information scheme).

(2) A member of staff of the Public Prosecution Service may disclose relevant information relating to a victim to the Board for the purpose of enabling the Board to provide information and advice to the victim in connection with a scheme under Article 25 of the Criminal Justice (Northern Ireland) Order 2005 (the Probation Board for Northern Ireland victim information scheme).

(3) For the purposes of this paragraph "relevant information relating to a victim" means—

(a) the name and address of the victim;

(b) any telephone number or e-mail address at which the victim may be contacted;

(c) details of the criminal conduct concerned; and

(d) such other information relating to the victim or the criminal conduct concerned as it appears to the police officer or member of the police support staff to be appropriate to disclose for the purpose mentioned in sub-paragraph (1).

Unauthorised disclosure of information

4.—(1) If a person to whom this paragraph applies discloses without lawful authority any information—

(a) acquired in the course of that person's employment,

(b) which is, or is derived from, information provided under this Schedule, and

(c) which relates to a particular person,

that person is guilty of an offence.

(2) This paragraph applies to any person who is—

(a) employed in a body prescribed under paragraph 1 or 2 or in the provision of services to such a body;

(b) employed in the Department or in the provision of services to the Department; or

(c) employed by the Board or in the provision of services to the Board.

(3) It is not an offence under this paragraph to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this paragraph to show that at the time of the alleged offence—

(a) that person believed that the disclosure in question was made with lawful authority and had no reasonable cause to believe otherwise; or

(b) that person believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(5) A person who is guilty of an offence under this paragraph is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) For the purposes of this paragraph a disclosure of information by a person is to be regarded as made with lawful authority if, and only if, it is made—

(a) in the course of and for the purposes of that person's employment in a prescribed body;

(b) in accordance with that person's official duty as a civil servant or as an employee of the Board;

(c) in accordance with an authorisation given by the Department, the Board or the prescribed body;

(d) in accordance with any statutory provision or order of a court;

(e) for the purposes of any criminal proceedings; or

(f) with the consent of the person to whom the information relates.

(7) In this paragraph "employment"—

(a) includes employment as a volunteer; and

(b) in relation to a particular person, shall be construed in accordance with sub-paragraph (2).

Saving for other powers of disclosure

5. Nothing in this Schedule affects any power to disclose information that exists apart from this Schedule.

Interpretation

6.—(1) In this Schedule—

"the Board" means the Probation Board for Northern Ireland;

"prescribed" means prescribed by regulations made by the Department.

(2) Section 29 (meaning of victim and related terms) applies for the purposes of this Schedule as it applies for the purposes of section 28.

Annex C

Live Links

Clause 46, Page 36, Line 7

At end insert—

'(9A) If where the offender is attending proceedings through a live link it appears to the court—

(a) that the offender is not able to see and hear the court and to be seen and heard by it, and

(b) that this cannot be immediately corrected,

the court must adjourn the proceedings.'

Annex D

Sexual offences with children

New clause

After clause 78 insert—

'Sexual offences against children

Meeting a child following sexual grooming etc.

78A. In Article 22(1)(a) of the Sexual Offences (Northern Ireland) Order 2008 (meeting a child following sexual grooming etc.) for "on at least two occasions" substitute "on one or more occasions".'.

New clause

After clause 78 insert—

'Sexual communication with a child

78B.—(1) In the Sexual Offences (Northern Ireland) Order 2008 after Article 22 insert—

"Sexual communication with a child

22A.—(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, A intentionally communicates with another person (B),

(b) the communication is sexual or is intended to encourage B to make (whether to A or to another) a communication that is sexual, and

(c) B is under 16 and A does not reasonably believe that B is 16 or over.

(2) For the purposes of this Article, a communication is sexual if—

(a) any part of it relates to sexual activity, or

(b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual;

and in sub-paragraph (a) "sexual activity" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(3) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.".

(2) In Article 4 of that Order (meaning of "sexual") after "except" insert "Article 22A (sexual communication with a child) or".

(3) In Article 76(10)(a) of that Order (offences outside the United Kingdom) after "children)" insert "except Article 22A".

(4) In the Sexual Offences Act 2003 in Schedule 3 (sexual offences for purposes of Part 2 of that Act) after paragraph 92H insert—

"92HA. An offence under Article 22A of that Order (sexual communication with a child).".

(5) In the Criminal Justice (Northern Ireland) Order 2008 in Part 2 of Schedule 2 (specified sexual offences) in paragraph 14A after the entry relating to Article 22 of the Sexual Offences (Northern Ireland) Order 2008 insert—

"Article 22A (sexual communication with child),".'

Clause 91, Page 60, Line 36

At end insert—

'( ) sections 78A and 78B;'

Schedule 5, Page 102, Line 26

At end insert—

'Part 8: Meeting a child following sexual grooming etc.

7A. Section 78A does not apply in a case in which person A met or communicated with person B only once before the event mentioned in Article 22(1)(a)(i) to (iii) of the Sexual Offences (Northern Ireland) Order 2008, if that meeting or communication took place before the coming into operation of that section.'.'

Annex E

PACE(NI) – Retention of biometric material

New clause

After clause 76 insert—

'Personal samples, DNA profiles and fingerprints

Power to take further fingerprints or non-intimate samples [j11]

76A.—(1) In Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting)—

(a) in paragraphs (5A) and (5B), for the words after "investigation" in sub-paragraph (b) substitute "but—

(i) paragraph (4A)(a) or (b) applies, or

(ii) paragraph (5C) applies.";

(b) after paragraph (5B) insert—

"(5C) This paragraph applies where—

(a) the investigation was discontinued but subsequently resumed, and

(b) before the resumption of the investigation the fingerprints were destroyed pursuant to Article 63B(2)." .

(2) In Article 63 of that Order (non-intimate samples)—

(a) at the end of paragraph (3ZA)(b) insert ", or

(iii) paragraph (3AA) applies.";

(b) in paragraph (3A)(b) for "insufficient; or" substitute "insufficient, or

(iii) paragraph (3AA) applies; or";

(c) after paragraph (3A) insert—

"(3AA) This paragraph applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation—

(a) any DNA profile derived from the sample was destroyed pursuant to Article 63B(2), and

(b) the sample itself was destroyed pursuant to Article 63P(2), (3) or (10)." .

(3) In Schedule 2A to that Order (fingerprinting and samples: power to require attendance at police station)—

(a) in paragraph 1 (fingerprinting: persons arrested and released)—

(i) in sub-paragraph (2) for "Article 61(5A)(b)" substitute "Article 61(5A)(b)(i)";

(ii) after sub-paragraph (3) insert—

"(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b)(ii) (fingerprints destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed." ;

(b) in paragraph 2 (fingerprinting: persons charged, etc.)—

(i) in sub-paragraph (2)(b) for "Article 61(5B)(b)" substitute "Article 61(5B)(b)(i)";

(ii) at the end of sub-paragraph (2) insert ", or

"(c) in a case falling within Article 61(5B)(b)(ii) (fingerprints destroyed where investigation interrupted), the day on which the investigation was resumed.";

(c) in paragraph 9 (non-intimate samples: persons arrested and released)—

(i) in sub-paragraph (2) for "within Article 63(3ZA)(b)" substitute "within Article 63(3ZA)(b)(i) or (ii)";

(ii) after sub-paragraph (3) insert—

"(4) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.";

(d) in paragraph 10 (non-intimate samples: person charged etc)—

(i) in sub-paragraph (3) for "within Article 63(3A)(b)" substitute "within Article 63(3A)(b)(i) or (ii)";

(ii) after sub-paragraph (4) insert—

"(5) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b)(iii) (sample, and any DNA profile, destroyed where investigation interrupted) after the end of the period of six months beginning with the day on which the investigation was resumed.".'

New clause

After clause 76 insert—

'Retention of material: persons convicted of an offence in England and Wales or Scotland

76B. After Article 63G of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

"Retention of material: effect of convictions in England and Wales or Scotland

63GA.—(1) This Article applies to Article 63B material which does not fall within Article 63G (2).

(2) If the material relates to a person who has been convicted under the law in force in England and Wales of a recordable offence within the meaning of section 118(1) of PACE ("an EW recordable offence") Articles 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of an EW recordable offence (and section 65B(1) of PACE (meaning of "convicted") applies for that purpose);

(b) references in Article 63D(14) to a qualifying offence included references to a qualifying offence within the meaning of section 65A of PACE;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a relevant custodial sentence within the meaning of section 63K(6) of PACE.

(3) If the material relates to a person who has been convicted under the law in force in Scotland of an offence which is punishable by imprisonment ("a relevant Scottish offence") Article 63D, 63E, 63H and 63L apply as if—

(a) references in Article 63D(2) and (14), 63E(2) 63H(1)(a)(ii) and (5) and 63L(3)(b) to a person being convicted of a recordable offence included references to a person being convicted of a relevant Scottish offence;

(b) references in Article 63D(14) to a qualifying offence included references to—

(i) a relevant sexual offence and a relevant violent offence within the meaning of section 19A of the Criminal Procedure (Scotland Act) 1995; and

(ii) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;

(c) references in Article 63D(14) and 63H(2) to (4) to a custodial sentence included references to a sentence of imprisonment or detention.

(4) In this Article "PACE" means the Police and Criminal Evidence Act 1984.".'

New clause

After clause 76 insert—

'Retention of DNA profiles or fingerprints: persons given a prosecutorial fine

76C. After Article 63K of the Police and Criminal Evidence (Northern Ireland) Order 1989 insert—

"Retention of Article 63B material: persons given a prosecutorial fine notice

63KA.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a prosecutorial fine notice under section 18 of the Justice Act (Northern Ireland) 2015, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence (or one of the offences) to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.".'

New clause

After clause 76 insert—

'Power to retain DNA profile or fingerprints in connection with different offence

76D. For Article 63N of the Police and Criminal Evidence (Northern Ireland Order 1989 (Article 63B material obtained for one purpose and used for another) substitute—

"Retention of Article 63B material in connection with different offence

63N.—(1) Paragraph (2) applies if—

(a) Article 63B material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and

(b) the person subsequently—

(i) is arrested for or charged with a different offence,

(ii) is convicted of a different offence,

(iii) is given a penalty notice or a prosecutorial fine notice in respect of a different offence;

(iv) is given a caution in respect of a different offence committed when the person is under the age of 18; or

(v) completes a diversionary youth conference process with respect to a different offence.

(2) Articles 63C to 63M and Articles 63O and 63Q have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken)—

(a) in connection with the investigation of the offence mentioned in paragraph (1)(b),

(b) on the date on which the person was arrested for that offence or, if the person was not arrested, on the date on which the person—

(i) was charged with the offence or given a penalty notice or prosecutorial fine in respect of the offence, or

(ii) was cautioned in respect of the offence; or

(iii) completed the diversionary youth conference process with respect to the offence.

(3) Paragraph (3) of Article 63J applies for the purposes of this Article as it applies for the purposes of Article 63J.".'

New clause

After clause 76 insert—

'Retention of personal samples that are or may be disclosable

76E. In Article 63R of the Police and Criminal Evidence (Northern Ireland) Order 1989 (exclusions for other regimes)—

(a) in paragraph (5) (material that is or may become disclosable to the defence) for "Articles 63B to 63O and 63Q" substitute "Articles 63B to 63Q";

(b) after that paragraph insert—

"(5A) A sample that—

(a) falls within paragraph (5), and

(b) but for that paragraph would be required to be destroyed under Article 63P,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within paragraph (5) but no longer does, and so becomes a sample to which Article 63P applies, must be destroyed immediately if the time specified for its destruction under that Article has already passed.".'

Schedule 5, Page 102, Line 23

At end insert—

'Part 8: DNA profiles or fingerprints

6A. The amendment made by section 76D applies even where the event referred to in paragraph (1)(b) of the substituted Article 63N of the Police and Criminal Evidence (Northern Ireland) Order 1989 occurs before the day on which that section comes into operation.'

Correspondence from the Department providing follow-up information from the meeting on 25 February 2015

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744

private.office@dojni.x.gsi.gov.uk

Our ref SUB/347/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

9 March 2015

Dear Christine,

JUSTICE BILL: FOLLOW-UP INFORMATION FROM MEETING ON 25 FEBRUARY

Thank you for your letter of 3 March. At the Committee meeting on 25 February, Committee members agreed to seek information on a number of discrete issues arising from their informal clause by clause consideration of Part 3 (Prosecutorial fines), Part 4 (Victims and witnesses) and Part 5 (Criminal records) of the Bill.

Prosecutorial Fines

On Part 3, the Committee sought additional information on the repeated use of the prosecutorial fine; asked about its use for low level offences such as verbal abuse to health care staff and whether there could be a fast-track system for referral to PPS by Health Trusts; suggested that a more appropriate name for the disposal would be a Prosecutorial Penalty; and sought an update on the fine collection arrangements proposed for inclusion in the Fines and Enforcement Bill.

[redacted]

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of
Justice
www.dojni.gov.uk

Repeated use of prosecutorial fines

The Director of Public Prosecutions intends to issue guidance to prosecutors – on which he would consult – which would deal with this issue. This would include guidance on the circumstances in which a fine can be offered.

As officials noted in their evidence to the Committee, the guidance that was developed by PSNI for the use of the police-issued fixed penalty (broadly similar in concept to prosecutorial fines) provides that an individual should not be offered a fixed penalty more than once in any two year period.

Whilst we anticipate that the Director's guidance would not fetter a prosecutor's discretion in how the power would be exercised in an individual case (as this is an essential part of the role of an independent prosecutor) we would, nevertheless, expect that repeated fines should not be offered, except in the most exceptional and meritorious circumstances.

One example, perhaps, might be where a prosecutor considered that an individual case was suitable to warrant the imposition of a prosecutorial fine, although the individual had received one previous fine many years before for a minor offence that was different in nature. In that instance, the prosecutor could, conceivably, decide to exercise their discretion, if it was felt that the interests of justice were better met by imposing a fine, as an alternative to directing a prosecution.

The Department considers that dealing with this issue by way of PPS guidance, rather than on the face of the Bill, offers a more flexible approach, and is consistent with the principle of prosecutorial independence.

[redacted]

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Potential use of a Prosecutorial Fine for verbal abuse to health care staff

As currently proposed, a prosecutorial fine could be used as a disposal in cases involving offences such as verbal abuse to health care staff. The issue of a prosecutorial fine will, however, be a prosecutorial decision taken by a PPS prosecutor after applying the Test for Prosecution, having regard to all of the circumstances. If the offer of a fine is not accepted the matter would proceed as a criminal prosecution.

Health Trusts have the power to regulate behaviour on their premises as they see fit through a civil regime, but where criminal acts occur they should be reported to police who will submit them to PPS for a decision as to prosecution.
In terms of fast-tracking referrals to PPS directly by Health Trusts, the Department would be concerned that circumventing the role of the police in a criminal investigation may make it more difficult to ensure that evidential matters are properly dealt with, and that an alleged offender's rights are secured. There could also be significant issues raised in asking a health professional to make a judgement in relation to an incident, and to liaise with the PPS during the progress of an individual case.

Prosecutorial Fine: terminology

The Department notes the comments around the use of the term "prosecutorial fine". We consider, however, that notwithstanding the fact that the disposal is not court-imposed, the underpinning arrangements on default mirror those of a court imposed fine. We also consider that the alternative use of the word 'penalty' could lead to confusion with fixed penalties, which do not involve a legal assessment of the evidence.

Fines and Enforcement Bill

[redacted]

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The Fines and Enforcement Bill will contain provisions to allow unpaid financial penalties to be deducted directly from income (be that benefits or wages) and in certain circumstances from bank accounts, as and when appropriate. As indicated in his letter to the Committee of 12 February, the Minister's intention is to seek Executive approval in June to introduce the Bill; for Second Stage to take place quickly thereafter; and, with the Committee's assistance, to have Committee scrutiny begin before the Summer Recess.

Victims and Witnesses

In Part 4, the Committee queried why the term 'victim statement' is used in the Bill rather than victim personal statement. As noted in officials' evidence to the Committee, given that a statement may be made by someone other than the direct victim (for instance, by a parent about the impact on a child victim or by a family member about the impact on a victim), Legislative Counsel was of the view that the term 'victim personal statement' was not an appropriate term for use in the Bill.

At the time, Counsel advised that a statement by a victim can properly be described as personal to the victim. Where the statement is, however, made by the victim's parent or some other relative, then it would be is misleading to describe that statement as "personal" in the same sense.

Criminal Records

Although not reflected in your letter, at the meeting the Committee discussed the types of offences that remain on a person's criminal record, irrespective of the age they were when the offence was committed. Members sought clarification in relation to more serious offences, and asked whether filtering could be automatic on reaching 18, and if a conviction for a sexual offence committed at the age of 15 could be filtered out.

[redacted]

FROM THE OFFICE OF THE JUSTICE MINISTER

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The statutory filtering scheme, introduced following Justice Committee consideration in April 2014, provides that certain convictions and other disposals should not be disclosed, after a period of time, on the standard and enhanced criminal record certificates issued by AccessNI. The filtering scheme specifies, as a safeguarding measure, certain offences which are always disclosed on these certificates.

Regardless of whether an offence was committed by an adult or a young person, a conviction, caution, diversionary youth conference or informed warning for a listed sexual offence would not be removed from a standard or enhanced criminal record certificate at the filtering stage.

However, the amendment proposed by the Department would introduce a review mechanism, as part of the filtering scheme. This would allow individuals, in certain circumstances, to apply for an independent review of their case where a conviction or disposal had not been filtered from their standard or enhanced criminal record certificate. Under the amendment, the case of a young person (under 18) would automatically be referred to an independent reviewer, provided there was no adult offending to be disclosed and it did not relate to unspent convictions. In the case of an adult, he or she may apply for a review.

In both cases, the independent reviewer would consider the matter and might recommend non-disclosure, if satisfied that disclosure would be disproportionate and removal would not undermine the safeguarding or protection of children and vulnerable adults or put the public at risk of harm.

This approach seeks to ensure disclosure in appropriate circumstances while removing offences where the reviewer is persuaded this is the correct course, and gives people who were under 18 when they offended an opportunity for automatic review. A review, of course, does not necessarily mean that offences will be removed from a disclosure.

[redacted]

FROM THE OFFICE OF THE JUSTICE MINISTER

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The detail of how the review mechanism will operate will be set out in guidance and will be subject to Justice Committee consideration, prior to public consultation.

Not discussed at the meeting, but included in your letter, was a request for details of the framework/schedule for the retention of DNA and Fingerprints (perhaps in response to officials' evidence to the Committee on 18 February on proposed amendments to the Bill relating to retention of biometric material).

Those amendments will not change the retention schedule created by the Criminal Justice Act (Northern Ireland) 2013 ('the 2013 Act'). The amendments are being brought forward solely to correct and close gaps in the 2013 Act, to ensure that those provisions operate as intended.

A copy of the retention framework is however attached at Annex 1 for the convenience of Committee members.

Attorney General's proposed amendment for rights of audience powers for his staff

The Department has corresponded with the Committee previously in respect of the Attorney General's proposed amendment. That correspondence noted that the Department recognises the potential benefits of allowing suitably skilled lawyers in the public sector to appear in the higher courts. This will, however, be achieved when the Law Society exercises its power under the Justice (Northern Ireland) Act 2011 to make Regulations authorising solicitors to exercise the same rights of audience in the higher courts as barristers in independent practice. Under the current Bar Code, such rights of audience would also then extend to employed barristers.

The Department remains of the view that bespoke arrangements are unnecessary to achieve the desired outcome and would fragment the accreditation process, detracting from what should be the pre-eminent role of the Bar and Law Society,

[redacted]

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potentially to the detriment of consistency of training and standards of representation.

The Law Society Regulations under the 2011 Act are, of course, key to progressing this matter. The Law Society is preparing an Impact Assessment of the Regulations. We understand that work is at an advanced stage and that the Law Society expects to issue the assessment, for consultation, in the next few weeks.

In the event that the Attorney General's proposed amendment was made, the operation of those arrangements would best be monitored on an administrative basis, with further legislative provision taken as necessary. Legislating on a prospective and contingent basis would be an unusual and unnecessarily complicated approach.

The Department is also mindful that the majority of respondents to the Departmental discussion paper on this issue considered that arguments in favour of conferring specific rights of audience on lawyers in the Attorney General's Office could equally be applied to lawyers elsewhere in the public sector, and that the case for making separate provision for the Office of the Attorney had not sufficiently been made.

I hope this information is helpful for members and assists with their further consideration of the Bill.

Tim Logan

TIM LOGAN
DALO

[redacted]

Annex 1

Criminal Justice Act (NI) 2013 - DNA/Fingerprint Retention Framework: Northern Ireland

Occurrence	Retention period
Adult	
Conviction – All Crimes	Indefinite
Charged but not convicted– Serious Crime	3 years + single 2-year extension on application to court (Indefinite retention will apply if previously convicted)
Arrested but not charged – Serious Crime	Immediate destruction (unless prescribed circumstances apply in which case 3 years on consent of Commissioner + single 2-year extension on application to court) (Indefinite retention will apply if previously convicted)
Non-conviction – Minor Crime	Immediate destruction (Indefinite retention will apply if previously convicted)
Conviction – Serious Crime	Indefinite
Caution	Indefinite
Penalty Notice	2 years
Juvenile	
Conviction – Serious Crime	Indefinite
Conviction – Minor Crime	1st conviction - 5 years (for non-custodial sentence) or length of sentence + 5 years for custodial sentence or indefinite where initial sentence is over 5 years 2nd conviction - Indefinite
Charged but not convicted – Serious Crime	3 Years + single 2-year extension on application to court (Indefinite retention will apply if previously convicted and the conviction is not an exempt conviction)
Arrested but not charged – Serious Crime	Immediate destruction (unless prescribed circumstances apply in which case 3 years on consent of a Commissioner + single 2-year extension on application to court) (Indefinite retention will apply if previously convicted and the conviction is not an exempt conviction)
Non-conviction – Minor Crime	Immediate destruction (unless previously been convicted)
Caution	5 years
Diversionary Youth Conference	5 years
DNA sample	Within six months of sample being taken (unless retained by order of a court for a further 12 months)
Speculative search	Material may be retained until such time as a speculative search is carried out, and may be retained further if of potential evidential value

Correspondence from the Department of Justice providing follow-up information from the meeting on 10 March 2015

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
www.dojni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744

private.office@dojni.x.gsi.gov.uk

Our ref

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

10 March 2015

Dear Christine,

JUSTICE BILL: FOLLOW-UP INFORMATION FROM MEETING ON 10 MARCH

At the Justice Committee meeting today the Committee concluded its informal clause by clause scrutiny on the Justice Bill.

As part of their consideration of clauses 72 – 76 of the Bill, Members agreed to seek information from the Department on the categories of persons who are exempt from jury service.

Schedules 1 – 3 to the Juries (Northern Ireland) Order 1996 set out the categories of person who are currently disqualified, ineligible or excusable from jury service (see attached Annex).

Further information on exemptions from jury service is available on:

FROM THE OFFICE OF THE JUSTICE MINISTER

Department of
Justice
www.dojni.gov.uk

http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/going-to-court/jury-service/exemptions-from-jury-service.htm

I hope this is helpful.

Tim Logan

TIM LOGAN
DALO

Annex

JURIES (NORTHERN IRELAND) ORDER 1996

SCHEDULE 1 - PERSONS DISQUALIFIED FOR JURY SERVICE

1. Any person who has at any time been convicted by a court in the United Kingdom, the Channel Islands or the Isle of Man and sentenced—

(a) to imprisonment for life or for a term of five years or more; or

(b) to be detained during Her Majesty's pleasure or during the pleasure of the Secretary of State or during the pleasure of the Governor of Northern Ireland.

2. Any person who at any time in the last ten years has in the United Kingdom or the Channel Islands or the Isle of Man—

(a) served any part of a sentence of imprisonment or detention; or

(b) been detained in a young offenders centre.

(c) had passed on him or (as the case may be) made in respect of him a suspended sentence of imprisonment or order for detention; or

(d) had made in respect of him a community service order.

3. Any person who at any time in the last five years has, in the United Kingdom or the Channel Islands or the Isle of Man, been placed on probation.

SCHEDULE 2 - PERSONS INELIGIBLE FOR JURY SERVICE

Persons concerned with the administration of justice

Persons holding or who have at any time held any paid, judicial, or other office belonging to any court of justice in Northern Ireland.

Lay magistrate.

Justices of the peace.

The Chairman or President, the Vice-Chairman or Vice-President and the registrar and assistant registrar of any Tribunal.

Barristers at law and solicitors whether or not in actual practice as such.

Solicitors' clerks.

Students of the Inn of Court of Northern Ireland or of the Law Society of Northern Ireland.

The Director of Public Prosecutions for Northern Ireland, the Deputy Director of Public Prosecutions for Northern Ireland and the members of staff of the Public Prosecution Service for Northern Ireland.

The Chief Inspector of Criminal Justice in Northern Ireland and the members of his staff.

Officers of the Northern Ireland Office or of the Lord Chancellor's Department.

Officers of the Department of Justice.

Court security officers.

Governors, chaplains and other officers of, and members of independent monitoring boards for, the following establishments—

(a) a prison within the meaning of the [1953 c. 18 (N.I.)] Prison Act (Northern Ireland) 1953;

(b) a juvenile justice centre or attendance centre within the meaning of the Criminal Justice (Children) (Northern Ireland) Order 1998; or

(c) a remand centre or young offenders centre within the meaning of the [1968 c. 29 (N.I.)] Treatment of Offenders Act (Northern Ireland) 1968.

The warden or a member of the staff of a bail hostel as defined in Article 2(2) of the [1982 NI 10] Probation Board (Northern Ireland) Order 1982.

Members of the Probation Board for Northern Ireland.

Probation officers and persons appointed to assist them.

A person appointed for the purposes of Article 7(6) of the [1976 NI 4] Treatment of Offenders (Northern Ireland) Order 1976.

Police officers and any other person employed in any capacity by virtue of which he has the powers and privileges of a constable.

Members and staff of the Policing Board.

The Police Ombudsman for Northern Ireland and persons employed by him.

Persons in charge of, or employed in, a forensic science laboratory.

Prisoner custody officers within the meaning of section 122(1) of the [1994 c. 33] Criminal Justice and Public Order Act 1994.

Members and employees of the Criminal Cases Review Commission.

Persons who at any time within the past ten years have been persons falling within any of the foregoing descriptions (except the first) of persons concerned with the administration of justice.

The Forces

Persons serving on full pay as members of any of the naval, military or air forces of the Crown raised in the United Kingdom.

Members of the Royal Irish Regiment.

Other persons

Persons suffering from mental disorder within the meaning of the [1986 NI 4] Mental Health (Northern Ireland) Order 1986.

Persons unable to understand the English language.

SCHEDULE 3 - PERSONS EXCUSABLE FROM JURY SERVICE AS OF RIGHT

Parliament

Peers and peeresses entitled to receive writs of summons to attend the House of Lords.

Members of the House of Commons.

Northern Ireland Assembly

Members of the Northern Ireland Assembly.

Officers and servants of the Northern Ireland Assembly.

European Parliament

Representatives to the European Parliament.

Public officials

The Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints.

Persons in the Northern Ireland Civil Service receiving a salary on a scale the maximum of which is not lower than the maximum of the Grade 5 scale.

The Chief Electoral Officer and persons appointed to assist him.

The Comptroller and Auditor General for Northern Ireland.

The Secretary and any Director of the Northern Ireland Audit Office.

Officers employed in any capacity by the Commissioners of Customs and Excise, or Commissioners of Inland Revenue.

Officers in charge of a head office in Northern Ireland of a department of the Government of the United Kingdom.

Inspectors of schools.

Inspectors appointed under section 123 of the [1969 c. 6 (N.I.)] Mines Act (Northern Ireland) 1969.

Clergy, etc.

A person in Holy Orders and a regular minister of any religious denomination.

Vowed members of any religious order living in a monastery, convent or other religious community.

Practising members of a religious society or order the tenets or beliefs of which are incompatible with jury service.

Professions

Professors and members of the teaching staff of a university or institution of further education and full-time teachers in any school.

Masters of vessels, duly licensed pilots and lighthouse keepers.

The following persons, if actually practising their profession and registered (including provisionally or temporarily registered), enrolled or certified under the statutory provisions relating to that profession—

- medical practitioners;
- dentists;
- nurses;
- midwives;
- veterinary surgeons and veterinary practitioners;
- pharmaceutical chemists.

Persons aged between 65 and 70 years

Persons aged between 65 and 70 years.

TSO
information & publishing solutions

Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

Printed in Northern Ireland by The Stationery Office Limited