



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Briefing to Committee for Justice on
Amendments to the 'Justice Bill 07/22-27'**

April 2025

Table of Contents

Summary of Recommendations	3
1.0 Introduction	4
2.0 Biometric Data Retention	4
3.0 Restorative Justice	4
4.0 Rehabilitation of Offenders	4
5.0 Repeal of Vagrancy	8
6.0 Serious Organised Crime	10
7.0 AccessNI Filtering	14
8.0 Live Links (Courts and Tribunals)	14

Summary of Recommendations

- 4.13** The Commission recommends that the Committee give consideration to amending the proposed Clause 28B to provide that the Department of Justice shall make regulations for and in connection with allowing a person on whom a sentence has been imposed in respect of a conviction to apply for an order.
- 5.5** The Commission welcomes the proposals to repeal section 4 of the Vagrancy Act 1824 and section 3 of the Vagrancy (Ireland) Act 1847, with a view to ensuring that homelessness is not criminalised in NI.
- 5.6** The Commission recommends that the Committee for Justice encourages the Department of Justice to ensure that an appropriate balance is struck between tackling anti-social behaviour and ensuring that the alternative legislation that will be relied on following the repeal of section 4 of the Vagrancy Act 1824 and section 3 of the Vagrancy (Ireland) Act 1847 does not unduly infringe on the rights of individuals in NI, including people experiencing homelessness. While acknowledging the public consultation, this requires specifically seeking and giving consideration to the views of people with lived experience of homelessness and their representative organisations at each decision-making stage.
- 6.11** Noting that organised crime groups rely on exploitation to further their goals, the Commission recommends that the Committee explore with the Department of Justice how law enforcement agencies will ensure that those who are exploited or coerced to participate in criminal activity, including children, women, and persons who are trafficked or subjected to modern slavery are not criminalised by the proposed offences.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the Commission), pursuant to sections 69(1), 69(3) and 69(4) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. The Commission is also required, by section 78A(1), 78A(5) and 78A(6) of the Northern Ireland Act 1998, to monitor the implementation of Windsor Framework Article 2. In accordance with these functions, the following additional briefing is submitted to the Committee for Justice to inform its consideration of the Justice Bill.
- 1.2 This additional briefing focuses on the recent amendments to the Justice Bill proposed by the Department of Justice. This additional briefing should be considered by the Committee for Justice along with the Commission's initial briefing and oral evidence that was provided in November 2024.

2.0 Biometric Data Retention

- 2.1 The Commission notes the further proposed amendments relating to biometrics. The Commission has no further substantive comments on the proposed amendments. In its initial submission, the Commission has set out the relevant human rights considerations. The Commission would welcome the opportunity to provide further analysis to the Committee in relation to any regulations enacted under this Part of the Bill.

3.0 Restorative Justice

- 3.1 The Commission notes the amendments relating to Restorative Justice. The Commission has no substantive comments on the proposed amendments.

4.0 Rehabilitation of Offenders

- 4.1 The European Court of Human Rights (ECtHR) affirmed in *Murray v the Netherlands* "that the principle of rehabilitation, that is, the reintegration into society of a convicted person, is reflected in international norms and

has not only been recognised but has over time also gained increasing importance in the Court’s case-law under various provisions of the Convention.”¹

- 4.2 Rehabilitation of offenders is recognised in international human rights law, most notably in Article 10(3) of the International Covenant on Civil and Political Rights (ICCPR), which places an obligation on States to seek the reformation and social rehabilitation of prisoners. The General Comment of the Human Rights Committee on Article 10 further states that “no penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner”.² Moreover, under Article 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, “[t]he purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life”.
- 4.3 A January 2021 consultation on proposals to reform rehabilitation periods in Northern Ireland set out that legislation governing the rehabilitation of offenders should promote rehabilitation and reintegration of former offenders by allowing them to seek employment by putting their past convictions behind them.³
- 4.4 An amendment to the Justice Bill has now been introduced⁴ which proposes to reform the rehabilitation periods under the Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”). The new proposals recognise that, ‘the provisions of the 1978 Order hadn’t kept pace with changes in sentencing practice, with longer sentences being imposed than when rehabilitation periods were first established.’⁵ The Commission agrees with this conclusion.

¹ *Murray v The Netherlands* (2016) ECHR 408, at para 102.

² UN Human Rights Committee, ‘General Comment No. 21 on Article 10 (Human Treatment of Persons Deprived of Their Liberty)’, 10 April 1992.

³ Department of Justice, ‘Rehabilitation of Offenders – A consultation on proposals to reform rehabilitation periods in Northern Ireland’ (January 2021), at para 7.

⁴ Proposed Clause 28A of the Justice Bill

⁵ Department of Justice, Background Information, ‘Reform of Rehabilitation Periods in Northern Ireland Amendments - Appendix A’, at para 5.

- 4.5 The amendments seek to reduce the rehabilitation periods for existing convictions and to allow more convictions to become capable of becoming spent. For example, under the current regime⁶, any conviction over 30 months can never be considered spent and individuals with a conviction in excess of this period face a life-long obligation to declare that conviction in certain circumstances. Convictions between 6 months and 30 months can only be considered spent after a fixed period of 10 years from the date of sentencing. Whilst a fine would take 5 years to be considered spent and a sentence of up to 6 months would require 7 years from the date of sentencing.
- 4.6 By comparison, under the new proposals, fines will be spent after 1 year and sentences of imprisonment up to 1 year are considered spent after the length of sentence imposed plus 1 year. Importantly, sentences between 1 to 4 years will be spent after the length of sentence plus 4 years and any sentence of imprisonment between 4 – 10 years, the sentence imposed plus 7 years. Rehabilitation periods are halved for offenders aged under 18 at date of conviction.
- 4.7 In 2020, the Commission initiated legal action against the Department of Justice to challenge the legality of Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 which sets out the current regime of rehabilitation periods. In 2022, the High Court of Justice in NI declared Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 was incompatible with the applicant’s Article 8 of the ECHR rights by reason of a failure to provide a mechanism by which the applicant could apply to have their criminal convictions considered spent irrespective of the passage of time and their personal circumstances.⁷ In 2023, after an appeal from the Department of Justice, the Court of Appeal in NI reversed the decision of the High Court of Justice in NI and held that Article 6(1) of the 1978 Order is compatible with Article 8 of the ECHR. This decision was then appealed and heard by the UK Supreme Court in October 2024.
- 4.8 In March 2025, the Supreme Court⁸ held that Article 6(1) of the 1978 Order is compatible with Article 8 of the ECHR and dismissed the appeal. In dismissing the appeal, the Supreme Court held that there was a wide

⁶ Article 6(1), The Rehabilitation of Offenders (Northern Ireland) Order 1978

⁷ *In the Matter of an Application by JR123 for Judicial Review* [2022] NIQB 42.

⁸ *In the Matter of an Application for Judicial Review by JR123 (Appellant) (Northern Ireland)* [2025] UKSC 8

margin of appreciation for the legislature in light of a number of relevant factors where there are difficult questions of moral and political judgment,⁹ particularly if the State is required to strike a balance between competing private and public interests or Convention rights,¹⁰ though this margin of a appreciation `is narrowed where legislation is introduced with no consideration of the relevant issues.¹¹

- 4.9 The Court considered the relevant factors for the current scheme to be:
- the gravity of the particular offence in the individual circumstances of the case;
 - acceptability to the public of the degree of rehabilitation to be provided for, having regard to the gravity of the offence;
 - the need for equity (and the perception of equity) as between offenders; and
 - the need for the scheme to be reasonably simple and practical and well understood in its operation.
- 4.10 After the 2021 consultation, the initial proposal for a fixed upper limit up to 10 years for any offence was set out in the options paper as a result of consideration of the specific conviction and re-offending statistics for Northern Ireland, together with consideration of responses to the consultation that called for any reforms to be simple to understand and straightforward to operate.¹² In light of the decision in the UK Supreme Court, the Commission welcomes consideration of the relevant issues raised in the 2021 Consultation but encourages further review of what relevant factors should be addressed in the current landscape.
- 4.11 The new amendments also propose to create an order making power to allow the Department to establish a review mechanism for some additional convictions not captured by the revised arrangements, though further policy development and consultation is required. With respect to this, a new Clause 28B provides a power where the Department of Justice may make regulations allowing for certain terms of sentences exceeding 10 years to become rehabilitated by an order of a specified court or tribunal.

⁹ *Ibid* at para 48 and 49

¹⁰ *Ibid* at para 54

¹¹ *Ibid* at para 58

¹² Department of Justice, 'Consultation on Proposals to Reform Rehabilitation Periods in Northern Ireland: consultation report and summary of responses' (October 2021), at para 148.

4.12 The Commission notes that it is intended that the reforms 'reflect developments in neighbouring jurisdictions – thereby ensuring that ex-offenders in Northern Ireland are not treated less favourably than those in other jurisdictions - and seek to address aspects of court judgments applicable to the regime here, particularly in relation to the absence of any review mechanism.'¹³ In furtherance of this objective, it would be more appropriate for the Department to be placed under a duty to enact the proposed regulations. This would provide certainty and allow interested parties to prepare for the consultation exercise.

4.13 **The Commission recommends that the Committee give consideration to amending the proposed Clause 28B to provide that the Department of Justice shall make regulations for and in connection with allowing a person on whom a sentence has been imposed in respect of a conviction to apply for an order.**

5.0 Repeal of Vagrancy

5.1 An amendment to the Justice Bill has been introduced which proposes to repeal section 4 of the Vagrancy Act 1824 and section 3 of the Vagrancy (Ireland) Act 1847.¹⁴

5.2 The Commission agrees with the Department of Justice's summation that this legislation is outdated and in practice criminalises homelessness, as opposed to acknowledging the complexities involved and approaching the situation from a position of providing much needed support to the individual(s) involved.¹⁵

5.3 Arguably, the 1824 and 1847 Acts constitute blanket bans on homelessness. Such an approach has been confirmed by the ECtHR in *Lacatus v Switzerland* (2021) as a violation of Article 8 of the ECHR.¹⁶ While some time has passed since these pieces of legislation were used in

¹³ Department of Justice 'Rehabilitation of offenders: background information on amendment' (February 2025), at para 14.

¹⁴ Department of Justice, 'Repeal of Vagrancy Amendments' (DoJ, 2025).

¹⁵ Department of Justice, 'Repeal of Vagrancy Amendments: Appendix B' (DoJ, 2025), at paras 3-5.

¹⁶ *Lacatus v Switzerland* (2021) ECHR 37.

practice in NI, retaining them on the statute books poses the risk of a change in approach constituting a violation of the ECHR.

- 5.4 The Department of Justice has indicated that there are no proposals to introduce replacement legislation on repeal to avoid “re-criminalising people in a similar way to the provisions that are to be repealed”.¹⁷ Instead, the Department of Justice considers that “where relevant behaviour reaches the criminal threshold, there are existing harassment, disorderly behaviour and public order offences available that can be used in helping the police to deal with those incidents, regardless of an individual’s personal circumstances”.¹⁸ On this point, the Department of Justice’s ongoing review of anti-social behaviour legislation is relevant.¹⁹ The Commission responded to the public consultation on this matter, advising that an appropriate balance should be struck between tackling anti-social behaviour and ensuring that legislation did not unduly infringe on the rights of individuals in NI, including people experiencing homelessness.²⁰
- 5.5 **The Commission welcomes the proposals to repeal section 4 of the Vagrancy Act 1824 and section 3 of the Vagrancy (Ireland) Act 1847, with a view to ensuring that homelessness is not criminalised in NI.**
- 5.6 **The Commission recommends that the Committee for Justice encourages the Department of Justice to ensure that an appropriate balance is struck between tackling anti-social behaviour and ensuring that the alternative legislation that will be relied on following the repeal of section 4 of the Vagrancy Act 1824 and section 3 of the Vagrancy (Ireland) Act 1847 does not unduly infringe on the rights of individuals in NI, including people experiencing homelessness. While acknowledging the public consultation, this requires specifically seeking and giving consideration to the views of people with lived experience of**

¹⁷ Department of Justice, ‘Repeal of Vagrancy Amendments: Appendix B’ (DoJ, 2025), at para 11.

¹⁸ Department of Justice, ‘Repeal of Vagrancy Amendments: Appendix B’ (DoJ, 2025), at para 11.

¹⁹ The Department, alongside the Department for Communities, proposed to broaden the definition of anti-social behaviour, lower the threshold required for granting an Anti-Social Behaviour Order, change the standard of the burden of proof from the criminal to civil standard, and broaden the range of conditions and restrictions attached to an Anti-Social Behaviour Order. Department of Justice and Department for Communities, ‘A Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (DoJ and DfC, 2023).

²⁰ NI Human Rights Commission, ‘Submission to the Department of Justice and the Department for Communities’ Consultation on Proposals to Amend the Legislation to Help Tackle Anti-Social Behaviour’ (NIHRC, 2024).

homelessness and their representative organisations at each decision-making stage.

6.0 Serious Organised Crime

6.1 Amendments have been proposed that intend to address the issue of involvement in serious organised crime. The clauses define what constitutes an organised crime group and set out what it means to 'participate in the criminal activities of an organised crime group'. It also creates two new offences: participating in the criminal activities of an organised crime group; and directing the criminal activities of an organised crime group.

6.2 The Commission welcomes this proposal. In August 2024, following local disturbances related to racism and anti-immigration sentiment, the UN Committee on the Elimination of Racial Discrimination (UNCERD Committee) recommended that the UK Government and NI Executive:

adopt robust measures to prevent and combat paramilitary racist violence and intimidation against ethnic minorities and migrants in NI, systematically collect information of these acts of intimidation and ensure that cases of paramilitary racist violence and intimidation are promptly and effectively investigated, prosecuted and punished with appropriate sanctions, and that victims have access to effective protection and redress.²¹

6.3 More recently, in March 2025 the UN Committee on Economic, Social and Cultural Rights recommended that the UK Government and NI Executive:

Strengthen measures to prevent and combat intimidation by paramilitary groups against ethnic minorities and migrants in Northern Ireland to ensure their access to adequate housing and to prevent de facto segregation, collect data on such acts and ensure that they are promptly and effectively investigated.²²

²¹ CERD/C/GBR/CO/24-26, 'UN CERD Committee Concluding Observations on the Combined Twenty-fourth to Twenty-sixth Reports of the UK and Great Britain and NI', 23 August 2024, at para 22.

²² E/C.12/GBR/CO/7, 'UN ESCR Committee Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland', 3 March 2025, at para 47(h).

- 6.4 However, the Commission wishes to note the risk that victims could be prosecuted under the proposed legislation. This may be a particular risk for women who are subject to coercive control,²³ children who are criminally exploited, and victims of trafficking and modern slavery.
- 6.5 In 2023, the UN Committee on the Rights of the Child (UN CRC Committee) recommended that the UK Government and NI Executive “strengthen measures to protect children from intimidation, racist attacks and other forms of violence committed by non-State actors, including so-called ‘paramilitary organisations’ in NI, and from recruitment by such actors into violent activities”.²⁴
- 6.6 The UN CRC Committee acknowledged the risk of child criminal exploitation, and recommended that legislation “clearly defines the criminal exploitation of children, [and] protection for children who are victims of violence”.²⁵ It also recommends that the State party “Develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and, wherever possible, the use of non-custodial measures for children, such as probation or community service”.²⁶
- 6.7 In February 2024, the NI Affairs Committee published its inquiry report into the effect of paramilitary activity and organised crime on society in NI.²⁷ It noted the enduring impact of paramilitarism through the physical or psychological harm to victims and survivors of violence, the harm to communities through coercive control and the perpetuation of societal trauma.²⁸

²³ Aisling Swaine, ‘“When You Know What They are Capable Of”: Paramilitary-related Gendered Coercive Control’ (Foyle Family Justice Centre and UCD, 2024).

²⁴ CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 34(b).

²⁵ CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 33(b).

²⁶ CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 53(c).

²⁷ UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024).

²⁸ UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 4; Aisling Swaine, ‘“When You Know What They are Capable Of”: Paramilitary-related Gendered Coercive Control’ (Foyle Family Justice Centre and UCD, 2024).

6.8 The NI Affairs Committee report draws attention to paramilitary activity as child criminal exploitation and modern slavery.²⁹ It notes the importance of language in this context to avoid “romanticising” paramilitarism, stating “it is crucial that public agencies and wider civic society use language rooted in safeguarding and child protection when describing the activities of these criminal gangs which include the abuse and exploitation, often sexual, of children and young people.”³⁰ The report explores ‘child criminal exploitation’ in the context of paramilitarism in NI, citing evidence from one witness that this term should be used instead of ‘recruitment’ by paramilitaries, and also notes how child criminal exploitation in NI can take a different form than elsewhere in the UK due to the presence of paramilitaries.³¹ The Committee states “there should be a sustained focus on better enforcement to ensure child victims who are subjected to force, threats, abduction, coercion, fraud or deception designed to induce them to engage in crime are protected.”³² The report also highlights the lack of recognition of trafficking and modern slavery within Northern Ireland, despite “disturbing evidence that young people were being exploited to traffic drugs through and into Northern Ireland”.³³

6.9 For victims of human trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings includes a non-punishment provision, which states:

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.³⁴

Similarly, the EU Human Trafficking Directive 2011,³⁵ requires at Article 8 that law enforcement authorities be “entitled not to prosecute or impose penalties on victims of human trafficking for their involvement in criminal

²⁹ UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 19.

³⁰ UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 4.

³¹ UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 19–22.

³² UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 20–21.

³³ UK Parliament, ‘House of Commons: NI Affairs Committee - The Effect of Paramilitary Activity and Organised Crime on Society in NI - Second Report of Session 2023–2024’ (HC, 2024), at 24.

³⁴ Council of Europe Convention on Action against Trafficking in Human Beings 2005, article 26.

³⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

activities which they have been compelled to commit as a direct consequence of being subject to any of the acts referred to in Article 2” of the Directive, which lists offences relating to human trafficking. By virtue of Windsor Framework Article 2, rights under Article 8 should not be diminished in NI.

- 6.10 In its most recently published evaluation of the UK’s implementation of the Convention, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) noted that “in Northern Ireland, section 22 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 states that the statutory defence applies to victims (adults and child) who have been compelled to commit certain offences where coercion was attributable to slavery or exploitation”.³⁶ The group goes on to recommended that the UK Government and NI Executive:

ensure that the non-punishment provision is capable of being applied to all offences that victims of trafficking were compelled to commit, by ensuring that victims are promptly identified as such and receive adequate support from their first contact with law enforcement agencies;
[and]
strengthen their efforts to ensure the compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, by further developing the existing guidance and promoting it through training of police staff, prosecutors and judges, including staff working in prisons and immigration detention centres, as well as social workers and all First Responders.³⁷

The Commission notes that the defence provided by section 22 is restricted to offences punishable by a maximum term of less than five years and only extends to more serious offences if they are listed in that section. As such, it appears the defence may only cover the first of the new offences proposed in the present Bill unless section 22 is amended. Caselaw affirms

³⁶ Group of Experts on Action against Trafficking in Human Beings (GRETA), Evaluation Report: United Kingdom, Third Evaluation Round, para 176.

³⁷ Group of Experts on Action against Trafficking in Human Beings (GRETA), Evaluation Report: United Kingdom, Third Evaluation Round, para 177.

the importance of such defences. In *L and others v R*³⁸ the Court of Appeal for England and Wales held:

The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals.

6.11 Noting that organised crime groups rely on exploitation to further their goals, the Commission recommends that the Committee explore with the Department of Justice how law enforcement agencies will ensure that those who are exploited or coerced to participate in criminal activity, including children, women, and persons who are trafficked or subjected to modern slavery are not criminalised by the proposed offences.

7.0 AccessNI Filtering

7.1 The Commission notes the amendments relating to Filtering. The Commission has no substantive comments on the proposed amendments.

8.0 Live Links (Courts and Tribunals)

8.1 The Commission notes the further amendments relating to live links. The Commission has no further substantive comments on the proposed amendments. In its initial submission, the Commission has set out the relevant human rights considerations. The Commission encourages the Committee to continue to monitor the use of live links.

³⁸ *L, HVN, THN and T v R* [2013] EWCA Crim 991, para. 13.

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