



*promoting law reform in Northern Ireland*

Northern Ireland Law Commission

Consultation on Equality Impact Screening

**Reform of bail law and practice in Northern  
Ireland**

**Sept 2010**

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## **INTRODUCTION**

- A.1 Section 75 of the Northern Ireland Act 1998 requires public authorities (in this instance, the Northern Ireland Law Commission) to ensure that they carry out their functions having due regard to the need to promote equality of opportunity between:
- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - between men and women generally;
  - between persons with a disability and persons without; and
  - between persons with dependants and persons without.
- A.2 Without prejudice to the obligations set out above, the Commission is also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- A.3 An initial screening of the provisional views contained in this Consultation Paper has been carried out by the Commission. Consultees are invited to comment on the conclusions drawn from this initial screening.

## **BACKGROUND TO THE PROJECT FOR SCREENING PURPOSES**

- A.4 The duties of the Commission are set out in the Justice (Northern Ireland) Act 2002. Section 51(1) provides that the Commission must keep under review the law of Northern Ireland with a view to its systematic development and reform, including in particular by: (a) codification, (b) the elimination of anomalies, (c) the repeal of legislation which is no longer of practical utility, and (d) the reduction of the number of separate legislative provisions, and generally by simplifying and modernising it.
- A.5 The current project on bail was included within the Commission's First Programme of Law Reform, as approved by the Secretary of State on 17th October 2009 and subsequently laid before the Houses of Parliament and the Northern Ireland Assembly in accordance with sections 52(2) and 52(3) of Act.
- A.6 This Consultation Paper makes proposals concerning the reform of the law and practice of bail in Northern Ireland and invites consultees' views thereon. The key objectives of the bail project are to make recommendations which aim to: (a) simplify the current law and make it more accessible; (b) provide a legal framework that will promote consistency and transparency in bail decision making; (c) enhance public understanding of bail decision making; (d) ensure that the

law on bail conforms with the requirements of the European Convention on Human Rights and maintains a proper balance between the right to liberty of the individual suspect and the interest of society in the prevention of crime and in the effective administration of criminal justice; (e) promote the development of appropriate administrative arrangements that will complement and ensure the effective working of any new or revised statutory scheme.

- A.7 The Commission is seeking the views of consultees regarding the desirability of enacting bail legislation for Northern Ireland that would incorporate a statutory right to bail and statutory grounds for the refusal of bail. Such legislation may also regulate the imposition of bail conditions and breach of bail, information to be provided to victims and the giving of reasons.
- A.8 Specific consideration is also given to the existing remand and bail provisions in respect of children and young persons found in the Criminal Justice (Children) (Northern Ireland) Order 1998. Views are sought concerning the provision of additional safeguards for children and young persons in accordance with relevant international instruments.

#### **POTENTIAL IMPACT OF PROPOSALS**

- A.9 The individuals and organisations that proposals made as a result of this consultation process are most likely to impact upon are as follows:
- (i) suspects, defendants and their families;
  - (ii) victims of crime, potential victims and their families;
  - (iii) investigators, including the police;
  - (iv) lawyers acting in criminal cases;
  - (v) magistrates and judges in criminal cases;
  - (vi) the training and supervisory bodies of lawyers, magistrates and judges;
  - (vii) other statutory and non statutory agencies who work within the criminal justice system;
  - (viii) the public generally, with regards to public confidence in the criminal justice system;
  - (ix) the Northern Ireland Assembly; and
  - (x) Northern Ireland Prison Service.

#### **RESPONSIBILITY FOR DELIVERY**

- A.10 The Commission will send its recommendations, accompanied by draft legislation, in a Final Report to the Department of Justice pursuant to section 52(1) of the Justice (Northern Ireland) Act 2002. The Department of Justice is then responsible for laying a copy of the report before the Northern Ireland Assembly. The Department of Justice would be responsible for the introduction of a Bill to the Northern Ireland Assembly and the passing of legislation would ultimately be a matter for the Assembly. Where the Commission suggests the adoption of

appropriate administrative arrangements to complement the statutory scheme, the possible adoption of such measures would be a matter for the relevant public authorities (including the PSNI, PPS and Probation Service).

#### **LINKAGES TO OTHER NORTHERN IRELAND DEPARTMENTS/NON DEPARTMENTAL PUBLIC BODIES ('NDPB')**

A.11 The Department of Justice has an interest in the policy and communications have been maintained with the Department through a dedicated liaison officer.

#### **DATA AVAILABLE TO FACILITATE SCREENING**

A.12 The Commission has consulted the relevant agencies listed in Appendix 4 of the Equality Commission Practical Guidance on Equality Impact Assessment ('EQIA') and has had regard to data relating to the functioning of the criminal justice system as a whole. The Commission has also liaised with the following with a view to obtaining any statistical information on bail decision making that may facilitate screening from a section 75 perspective:

- Northern Ireland Prison Service;
- Police Service Northern Ireland;
- Northern Ireland Statistics and Research Agency;
- Northern Ireland Court Service;
- Department of Justice.

A.13 There is, however, very limited statistical information available specifically in respect of bail decision making that is reflective of the section 75 demographic. As part of this consultation, consultees are invited to provide the Commission with any further data which they consider to be of relevance to this initial screening exercise and any further screening exercise or full EQIA.

#### **PRELIMINARY VIEWS ON SCREENING**

A.14 It is the Commission's intention that the outcome of the present project will be to simplify the law on bail in Northern Ireland and to make it more accessible. It is envisaged that reform will remove existing anomalies and in doing so modernise the law and practice in respect of bail in this jurisdiction. The Commission has consulted on the use of terminology that will be understood clearly by the public. It is intended that the draft legislation that will accompany the final report will conform to plain language standards and avoid undue technicality. Reform of this area of law will also, it is hoped, serve to enhance the efficiency and effectiveness of its operation within Northern Ireland. It is the Commission's view that the outcome of this project -

in terms of simplification, accessibility, modernisation and improving efficiency and effectiveness – will be to the benefit of all, including persons represented by the section 75 categories.

- A.15 In the course of its work towards the preparation of this Consultation Paper, the Commission held preliminary discussions with a wide range of stakeholders, fully reflective of the section 75 categories: see Chapter 5 and the list of participants in Appendix B. There was widespread support for the objectives of the project.
- A.16 The Commission also envisages that reform of the law on bail in Northern Ireland has the potential to enhance public confidence in the administration of criminal justice. There is statistical evidence for the proposition that fear of crime is a particular concern for the population of Northern Ireland.<sup>1</sup> In preliminary discussions, some concern was voiced about the commission of offences by persons on bail. While no programme of reform could aspire to eradicate offending while on bail, the Commission takes the view that reform of the law, accompanied by the suitable administrative arrangements for bail monitoring and bail support, has the potential to reduce such offending and consequently to allay the concerns associated with it. In addition to that, it is hoped that increased understanding of the law will also have the effect of enhancing public confidence.
- A.17 The Commission is of the view that the proposals contained within this paper will not impact adversely on any of the section 75 categories. It is acknowledged that reform of the law on bail is likely to impact upon young males to a greater extent than other sectors of society. That is attributable to the higher representation of young males within the criminal justice system as a whole and does not, in the Commission's view, raise a difficulty with reference to section 75.

#### **EQIA RECOMMENDATION**

- A.18 The Commission is aware that full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. The impact of the project in relation to social need, effect on people's daily lives, effects on economic, social and human rights and significance of the policy in terms of strategic importance and expenditure has been assessed as follows.

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<sup>1</sup> D Quigley and R Freel, *Perceptions of Crime: Findings from the 2008/09 Northern Ireland Crime Survey* (Northern Ireland Office, 2010).

<b>Prioritisation Factors</b>	Significant impact	Moderate impact	Low impact	No impact
<b>Effect on people's daily lives</b>			√	
<b>Effect on economic, social and Human Rights</b>		√		
<b>Significance of the policy in terms of strategic importance</b>		√		
<b>Significance of the policy in terms of expenditure</b>			√	

A.19 A full screening form can be made available on request to the Commission. The Commission will consider whether a full EQIA is required after the consultation responses have been received and analysed.

### **THE CONSULTATION PROCESS**

A.20 The Commission is continuing to collect data and any other relevant information that may inform further consideration of section 75 obligations. The Consultation Paper represents only the initial views of the Commission in respect of the proposals outlined. The Commission welcomes any additional views expressed by consultees and will have due regard to those views when making its final recommendations.