

Northern Ireland Law Commission

**Consultation on Equality Impact Assessment**

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

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# 1. INTRODUCTION

## 1.1 Background to the Northern Ireland Law Commission

The Northern Ireland Law Commission ('the Commission') was established in 2007 following the recommendations of the Criminal Justice Review Group (2000). Its purpose is to keep the law of Northern Ireland under review and to make recommendations for its systematic development and reform.

The Commission was established under the Justice (Northern Ireland) Act 2002. The Act requires the Commission to consider any proposals for the reform of the law of Northern Ireland that are referred to it. The Commission must also submit to the Department of Justice programmes for the examination of different branches of the law with a view to reform. The Department of Justice must consult with the Attorney General for Northern Ireland before approving any programme submitted by the Commission.

### Membership

The Commission consists of a Chairman, who must hold the office of judge of the High Court, and four Commissioners, one of whom must be a person from outside the legal professions. The Chairman and Commissioners are appointed on a part-time basis. There is also a Chief Executive, who is appointed from the legal professions.

These positions are currently held by:

Chairman:	The Honourable Mr Justice McCloskey
Chief Executive:	Ms Judena Goldring MA, BLegSc, Solicitor
Commissioner:	Professor Sean Doran (Barrister-at-Law)
Commissioner:	Mr Neil Faris (Solicitor)
Commissioner:	Mr Robert Hunniford (Lay Commissioner)
Commissioner:	Dr Venkat Iyer (Legal Academic)

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**The Commissioners in charge of the Bail project are Sean Doran and Robert Hunniford.**

**The legal team for this project are:**

Project Lawyer: Katie Quinn

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## **1.2 Section 75 of the Northern Ireland Act 1998**

Section 75 of the Northern Ireland Act 1998 requires public authorities (in this instance, the 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.

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.

The Commission's Draft Equality Scheme sets out how the Commission fulfils these obligations in carrying out its functions.

## **1.3 Equality Screening Analysis**

The Commission has conducted an Equality Screening Analysis of the proposals outlined in the Consultation Paper: *Bail in Criminal Proceedings* to assess if the policy potentially impacts upon equality of opportunity and/or good relations.

In deciding whether or not it was necessary to carry out an Equality Impact Assessment, the Commission considered the following four screening questions and the revised guidance provided in the Equality Commission's *Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities* (April 2010).

- (i) What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?
- (ii) Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?

- (iii) To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?
- (iv) Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

The Screening Analysis revealed that it was reasonable to give further consideration to the question of whether the proposals for the reform of bail law and practice may potentially impact on equality of opportunity and/or offer opportunities to better promote equality of opportunity for the following section 75 groupings:

- *Gender*: males as suspects, defendants and prisoners; males and females as victims of violent and sexual offences.
- *Age*: children and young adults as suspects, defendants and prisoners; children and young adults as victims of violent and sexual offences.
- *Religion*: Catholic persons as suspects, defendants and prisoners.
- *Marital Status*: single persons as suspects, defendants and prisoners.
- *Disability*: persons with mental health problems and/or learning difficulties as suspects, defendants and prisoners.
- *Racial group*: persons from ethnic minorities as suspects, defendants and prisoners.
- *Dependants*: persons with dependant children as suspects, defendants and prisoners.

Young men and boys were identified as an important multiple identity grouping on whom the proposals for the reform of bail law and practice may potentially have a significant impact.

On the basis of these findings, the Commission has decided to conduct an Equality Impact Assessment on these issues. The full Equality Screening Analysis Form can be viewed on the Commission's website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk) Hard copies can also be made available on request.

## 2. THE AIMS OF THE POLICY

### 2.1 Name and brief description of the policy

Reform of bail law and practice in Northern Ireland

A full discussion of the issues under consideration by the Commission can be found in the Consultation Paper: *Bail in Criminal Proceedings*. It must be emphasised that the issues discussed in the Consultation Paper do not represent the final recommendations of the Commission but rather the full range of reform options under consideration. The issues may be summarised as follows:

- **The legal framework:** the enactment of a single unified Bail Act governing decision making by the police and the courts; a statutory right or presumption in favour of bail and statutory grounds for refusal of bail post charge; different treatment of pre charge and 'street' bail; different rules for different offences or circumstances; statutory criteria for the grant of compassionate bail, bail pending sentence and bail pending appeal; statutory guidance on the factors which should be taken into account when bail decisions are taken.
- **Bail decision making:** the establishment of bail information initiatives.
- **Bail conditions, surety and security:** the abolition of personal recognizances for court bail; the abolition of the power to require a surety; the simplification of the language used to describe the power to require a surety; the extent of the obligation which should be imposed upon sureties; the examination of the suitability of persons to act as a surety; whether a portion of the money promised by a surety should be paid upfront; whether the courts should be obliged to require the surety to pay the promised amount if the accused fails to surrender; restrictions on the attachment of surety and security requirements to bail; the inclusion of a single test of necessity for bail conditions which would apply to the police and the courts; further (possibly statutory) guidance on the scope and appropriateness of bail conditions.
- **Breach of bail:** the retention of the power of arrest for anticipated and actual failures to surrender to custody while on bail post charge; a power of arrest for anticipated and actual failures to surrender to custody while on bail prior to charge; the retention of the offence of failure to surrender to custody; the retention of the power of arrest for anticipated and actual breaches of bail conditions; the creation of an offence of breach of bail conditions.
- **Monitoring and support:** appropriate administrative arrangements for monitoring compliance with bail and providing support for persons on bail and what form those arrangements might take.
- **Victims of crime:** a statutory duty to provide information to victims applying to all victims or limited for example to victims of certain offences, where particular bail conditions are imposed or to victims who request information; alternatively, any amendments to existing policies and mechanisms to ensure compliance.
- **Awareness, transparency and public confidence:** changes to the language and style of bail legislation to make it more accessible and readily understood; a statutory right to reasons for refusing bail, imposing or varying bail conditions, imposing or failing to impose certain conditions only, granting bail or granting bail contrary to prosecution objections; a provision conferring a right to disclosure or a statutory duty to disclose in the context of bail legislation.

- **Considerations concerning children and young persons:** a single test for the remand of children and young persons who have been charged with offences which would be applied by both the police and the courts; a test closely mirroring the grounds for the refusal of bail laid down for adults, subject to appropriate modification to reflect the age of the young person; a statutory prohibition on the remand of young persons solely on the grounds of a lack of accommodation; appropriate administrative arrangements to address the issue of accommodation for young persons on bail; inclusion in legislation of provisions designating where children on remand can be detained; the question of whether young persons should be detained in the young offenders centre; the necessity for secure accommodation for young persons on remand; the role which should be played by responsible adults while a child or young person is on bail; the abolition of personal recognizances for bail in respect of children and young persons; guidance (possibly statutory) on the scope and appropriateness of bail conditions imposed on young persons; a statutory duty upon decision makers to ensure that young persons understand bail decisions and conditions; the expansion of bail support for children and young persons.

The bail project forms part of 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 section 52(2) and 52(3) of the Justice (Northern Ireland) Act 2002.

The Commission is responsible for devising the policy and will send its recommendations, accompanied by draft legislation, in a Final Report to the Department of Justice pursuant to section 52(1) of the Act.

## 2.2 Objectives of the bail project

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.

## 2.3 Implementation and related policies

The Commission has responsibility for devising the policy and sending its recommendations accompanied by draft legislation to the Department of Justice, as outlined above. The Department of Justice is 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. The adoption of any complementary administrative arrangements would be a matter for the relevant public authorities.

Other criminal justice legislation or policy introduced by the Department of Justice could potentially have a bearing on the bail project.

## 2.4 Stakeholders and beneficiaries

The individuals and organisations that the bail proposals are most likely to impact upon are as follows:

- (i) Defendants, prisoners and suspects;
- (ii) Victims of crime;
- (iii) Families of defendants, prisoners and suspects;
- (iv) Families of victims of crime;
- (v) investigators, including the police;
- (vi) lawyers acting in criminal cases;
- (vii) magistrates and judges in criminal cases;
- (viii) the training and supervisory bodies of lawyers, magistrates and judges;
- (ix) other statutory and non statutory agencies who work within the criminal justice system;
- (x) the public generally, with regards to public confidence in the criminal justice system;
- (xi) the Public Prosecution Service;
- (xii) the Northern Ireland Assembly; and
- (xiii) Northern Ireland Prison Service.

It is the Commission's view that the overall outcome of this project – in terms of simplification, accessibility, modernisation and improving efficiency and effectiveness – will have a positive impact on all, including persons represented by the section 75 groupings.



### 3: AVAILABLE DATA AND RESEARCH

#### 3.1 Data relied on for Screening and EQIA

The Commission has consulted the relevant agencies listed in Appendix 4 of the Equality Commission *Practical Guidance on EQIA* (2005) and has liaised with the following agencies with a view to obtaining statistical information on bail decision making that may be relevant and that may facilitate consideration of the potential equality impact of the bail proposals:

Northern Ireland Prison Service;  
Police Service Northern Ireland;  
Northern Ireland Statistics and Research Agency;  
Northern Ireland Courts and Tribunals Service;  
Department of Justice.

There is very limited statistical information available in respect of bail decision making. The Commission was, however, provided with some relevant data in relation to the remand prison population in 2009 from the Department of Justice and initial admissions to the Juvenile Justice Centre in 2009 from the Youth Justice Agency in March 2011. The Northern Ireland Courts and Tribunals Service also provided the Commission with relevant data in relation to the criminal defendant subgroup of the *NICTS Customer Exit Survey* (2009) in February 2011. In the absence of more bail-specific quantitative data, the Commission also draws upon general population and criminal justice statistics and other criminal justice publications of relevance to many of the section 75 groupings, namely:

- Census 2001.
- Mid-year population estimates 2009.
- *Digest of Information on the Northern Ireland Criminal Justice System* (2010).
- *Northern Ireland Courts and Tribunals Service Customer Exit Survey* (2009) - Criminal defendant subgroup, comprising 356 respondents.
- *The Northern Ireland Prison Population in 2009*, Research and Statistical Bulletin 2/2010. Further statistics relating to the average prison population and the average remand population in 2009 were also provided by the Statistics and Research Branch, Department of Justice.
- Youth Justice Agency, Demographic information regarding initial admissions to the Juvenile Justice Centre in 2009
- Probation Board for Northern Ireland, *Equality Update - December 2010* including 'Key statistics from survey of offenders under supervision of PBNI in June 2010.'
- *Experiences of Crime: Findings from the 2009/10 Northern Ireland Crime Survey*, Research and Statistical Bulletin 4/2010.
- *Domestic Abuse Incidents and Crimes*, PSNI Annual Statistical Report, Report No. 2.
- Criminal Justice Inspection Northern Ireland, *Not a Marginal Issue: Mental Health and the criminal justice system in Northern Ireland* (March 2010).
- Criminal Justice Inspection Northern Ireland, *Inspection of Woodlands Juvenile Justice Centre* (May 2008).
- Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007).

In addition to this data, the Commission also relies, for the purposes of this Equality Impact Assessment, on a range of qualitative data gathered during the course of the preparation of the Consultation Paper, during the consultation period and within the responses received. This information was gathered as follows:

- (i) In order to inform policy development, the Commission held individual meetings and group seminars attended by several organisations representing the interests of section 75 groupings during the preliminary discussions which led to the publication of the Consultation Paper, including:

African Cultural Centre  
An Munia Tober  
Children's Law Centre  
Church of Ireland  
Contact Youth Counselling  
Fermanagh Women of the World  
Include Youth  
Lakewood Centre  
Lesbian, Gay and Bisexual Group  
Multi Cultural Resource Centre  
North Belfast Parents Group  
Northern Ireland Commissioner for Children and Young People (NICCY)  
Northern Ireland Council for Ethnic Minorities (NICEM)  
Woodlands Juvenile Justice Centre  
Women's Aid  
Youth Justice Agency

The issues raised in these discussions are summarised in chapter 5 of the Consultation Paper.

- (ii) The Commission considered the treatment of different groups in the comparative analysis of bail law and practice in other jurisdictions and devoted a separate chapter and distinct consultation questions to considerations concerning children and young persons.
- (iii) The Consultation Paper was widely circulated to groups and individuals representative of the interests of section 75 groupings, including those included in the "Guidance on the Distribution of Departmental Publications and Consultation Documents" (OFMDFM). Alongside specific questions relating to the reform of bail law and practice, the Consultation Paper included an initial screening exercise and invited the views of consultees on the preliminary conclusions reached. Consultees were also invited to draw the Commission's attention to any data which may be relevant to any screening or EQIA of this policy. The Commission received several positive comments from consultees in relation to the level of stakeholder involvement in the work which led to the Consultation Paper and some expressed the view that the simplification and modernisation of bail laws would be beneficial to section 75 groupings. Two of the twenty five formal written responses received raised potential equality concerns in relation to the bail proposals. A further consultee commented that, in the absence of data on bail decision-making, it is difficult to assess the equality impact of the proposals and called on the Department of Justice and relevant agencies to monitor the impact of bail on the section 75 groups. The Commission will bring such data gaps to the attention of the relevant department(s)/agencies.
- (iv) During the consultation period four public meetings were conducted in order to promote the Bail consultation and encourage a broad response. Meetings were held in two venues in Belfast, one in Dungannon and one in Derry/Londonderry.

- (v) Acknowledging the potential impact of the proposals on children and young persons the Bail team worked with Participation Network during the consultation period to engage directly with children and young people in relation to the bail proposals. The Commission has consulted the Equality Commission's publication *Let's Talk Let's Listen* which provides guidance for public authorities on consulting with children and young persons. A Children and Young People's version of the Paper was developed in partnership with Participation Network and several meetings were arranged with children and young persons. The Bail team visited Hydebank Young Offenders Centre and Woodlands Juvenile Justice Centre and, with the help of Include Youth, consulted with several young people there. Further meetings with young persons, some of whom had experience of the care system, were carried out in Enniskillen and Derry/Londonderry with the assistance of VOYPIC and Include Youth. Approximately thirty young persons participated in these discussions. VOYPIC also created a questionnaire for young persons from the Children and Young People's version of the Paper and posted it on their website. Twenty four responses to this questionnaire from children and young persons were submitted to the Commission via VOYPIC.

### 3.2 Additional data gathered for EQIA

Finally, during the course of the preparation of the Equality Impact Assessment, the Commission identified a number of information gaps and, following discussions with the Equality Commission, undertook to gather further data on which to consult and base decisions. In particular, it was decided that additional information may be required in relation to the following section 75 groupings:

- (i) Racial group: Ethnic minorities
- (ii) Disability: mental health and/or learning difficulties
- (iii) Multiple identity grouping: young men

The Commission made contact with the following organisations and sought to discuss with them and the persons they represent any potential equality impacts arising from the bail proposals:

Afro-Community Support Organisation NI  
An Munia Tober  
Belfast Hebrew Congregation  
Belfast Islamic Centre  
Chinese Welfare Association  
Indian Community Centre  
Mencap  
Mindwise  
Multi Cultural Resource Centre  
NICRAS  
PBNI

The Commission directly engaged with several members of the section 75 groupings represented by some of these organisations in focus group discussions. Due to the technical nature of the bail proposals, the Commission met the cost of securing the services of an interpreter to facilitate one such focus group discussion with an organisation representing an ethnic minority group. Several of the organisations approached met with the Commission to discuss the potential impact of the proposals on the individuals they represent. Some organisations expressed the view that the bail proposals would not impact upon the persons they represent and others were unable to facilitate meetings with the Commission.

The Commission sought to gather information on the potential impact of the bail proposals on **young men** with the help of PBNI. Young men and boys were identified in the Screening exercise as the largest multiple identity grouping affected by any reform of bail law and practice. PBNI facilitated the Commission in directly engaging with a group of men participating in a general offending programme called *Think First* at the PBNI Programme Delivery Unit in Belfast. Ten men participated in the discussions. Anonymised section 75 data in relation to the men was later supplied to the Commission by PBNI. Four of these men were single, two were married and four were separated. All had dependant children. A further four men cared for a person with mental health difficulties, two cared for an elderly person and two a person with a long term illness. All of the group were white and heterosexual. Eight of the men reported their religion as Catholic and two as Protestant. Six men declared their nationality as Irish and four as British. Four men indicated that they had a Nationalist political opinion and six declared no political opinion.

## 4: ASSESSMENT OF IMPACTS

### 4.1 Approach adopted to assessment of impacts

On the basis of the information outlined above, the Commission considers in this section any differential and/or adverse impact the bail proposals may have on any of the section 75 groupings and any opportunities which may be available to promote equality of opportunity. As the bail proposals are not yet settled, mitigation and/or alternative policies will not be considered separately. Rather the potential impact of all reform options are considered with a view to identifying those proposals which have the least differential impact on section 75 groupings and/or offer the greatest opportunity to promote equality of opportunity. In assessing the impact of the various policy options, the Commission has considered the following questions set out in Section 4 of the Equality Commission's *Practical Guidance on EQIA* (2005):

- How does each option further or hinder equality of opportunity?
- How does each option reinforce or challenge stereotypes which constitute or influence equality of opportunity?
- What are the consequences for the group concerned and for the public authority of not adopting an option more favourable to equality of opportunity?
- How will the relevant representative groups be advised of the new or changed policy or service?
- If an economic appraisal is necessary – What are the costs of implementing each option? Will the social and economic benefits to the relevant group of implementing the option outweigh the costs to the public authority or other groups?
- Does the public authority have international obligations which would be breached by, or could be furthered by, each of the options?

In the Consultation Paper: *Bail in Criminal Proceedings* it is argued that the current law and practice on bail in Northern Ireland is complex, inconsistent and lacking in transparency. The overall aim of the bail project is to devise recommendations for a modern, consistent and fair bail system which enables transparent decision making, is accessible to the community and is worthy of public confidence (see also 'Objectives of the Bail project', para 2.2 above). As indicated above, it is the Commission's view that the outcome of the bail project – in terms of simplification, accessibility, modernisation and improving efficiency and effectiveness – will have a positive impact on all, including persons represented by the section 75 groupings. Further, where particular equality issues are identified, consideration will be given to the development of proposals which may promote equality of opportunity for particular groupings.

As indicated above (see para 2.4), the persons most affected by bail decisions are suspects, defendants and prisoners and victims of alleged crimes.

### 4.2 Gender

#### A. Defendants, suspects and prisoners

Quantitative data gathered for the purposes of the Screening exercise<sup>1</sup> indicates that males are disproportionately represented in the suspect, defendant, offender and prison populations, compared to the general population, and therefore it seems that males are likely to experience the impact of any changes to bail law and practice, including the positive impacts outlined above, in greater numbers

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<sup>1</sup> *Bail Equality of Opportunity Screening Analysis Form*, para 1.11.

than females. Although males are more likely to be the subject of a bail/remand decision, qualitative data revealed little differential impact (in terms of differing needs, experiences or priorities) for males on the basis of their gender. It was, however, suggested in the PBNI focus group discussion that, under the current regime, inadequate account is taken of the dependant responsibilities of males when decisions are taken on the conditions which may be attached to bail. It was asserted that males may share or provide full time child care and that this should be considered when bail conditions are imposed, as it is likely it would be if the bail applicant was female. The Commission invited views in the Consultation Paper on the introduction of detailed guidance for bail decision makers regarding the imposition of bail conditions. The Commission is giving consideration to the inclusion in such guidance of a requirement to ensure that bail conditions do not, as far as practicable, interfere with other legitimate pursuits including care/dependant responsibilities, irrespective of the gender of the applicant. The Commission is of the provisional view that this potential policy option would not have a differential or adverse impact on males and may contribute to promoting equality of opportunity for males.

## **B. Victims**

Some of the proposals for the reform of bail law and practice may also have a significant impact on victims of crime. Although victims are a very diverse group, quantitative data<sup>2</sup> indicates that victims of violent crime are more likely to be male and victims of sexual offences and domestic violence are more likely to be female.

The Commission has identified the following potential issues for male and female victims of crime:

**(i) Limitations on the presumption in favour of bail:** It has been suggested that the provisional view of the Commission not to include in bail legislation different 'offence specific' or 'circumstance specific' rules in relation to the entitlement to bail may impact negatively on women who are victims of domestic violence or sexual offences. If such special rules are not recommended by the Commission, persons accused of domestic violence or sexual offences would be treated, for the purposes of their entitlement to bail, in the same way as persons accused of all other offences. The Commission is of the provisional view that this approach is consistent with section 75 obligations and that there is no justification for treating persons accused of domestic violence or sexual offences differently from other accused persons. Moreover, the Commission finds persuasive arguments that such presumptions against bail and other special rules are arbitrary, complicated and potentially contrary to human rights standards.

**(ii) Keeping victims informed:** The Commission invited views in the Consultation Paper on the creation of a statutory duty to provide information to victims regarding bail decisions. Views were also sought in relation to limiting such a duty to certain offences (such as violent or sexual offences), particular bail conditions or to victims who request information. The Commission is of the provisional view that none of these potential policy options would result in differential impact on any of the section 75 groupings. There may be opportunities to promote equality of opportunity for male and female victims of violent or sexual offences if a requirement to provide information is focussed on those offences.

## **4.3 Age**

### **A. Defendants, suspects and prisoners**

Quantitative data gathered for the purposes of the Screening exercise<sup>3</sup> indicates that **young adults** are disproportionately represented in the defendant, offender and prison populations, compared to the

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<sup>2</sup> See above.

<sup>3</sup> See n 1 above.

general population. Although young adults are likely to experience the impact of any changes to bail law and practice, including the positive impacts outlined above, in greater numbers than older persons, qualitative data revealed no differential impact (in terms of differing needs, experiences or priorities) for young adults on the basis of their age.

Qualitative data<sup>4</sup> indicates, however, that **children and young persons (under 18)**, particularly those from a care background, may have different needs, experiences and priorities in relation to bail and remand. The concerns of persons under 18 years of age were given separate and particular consideration in the development of the bail proposals.

The Commission has identified the following potential issues for children and young persons:

**(i) Particular vulnerability of children and young persons:** It was suggested in preliminary discussions and consultations that young persons are particularly vulnerable in the criminal justice system generally and in relation to bail and remand in particular. The negative impact of remand on children and young persons, in terms of family life, education and mental health, was highlighted. The current system for remanding young persons by the police and the courts has been criticised for failing to adequately protect the rights of children as laid down in the United Nations Convention on the Rights of the Child ('CRC'), especially the failure to consider primarily the best interests of the child and the principle that detention should be used as a measure of last resort and for the shortest appropriate time. The Commission considered these issues in its Consultation Paper and invited views on whether a reformed test for the remand of children and young persons should mirror the adult test, subject to appropriate modification to reflect the age of the young person. The Commission has also had discussions with the Youth Justice Review team regarding the protection of the rights of children and young persons within the youth justice system more broadly. As with adults, the Commission is concerned that bail decision makers consider all relevant matters when deciding on the bail or remand of a child or young person. Views were invited in the Consultation Paper on the desirability of creating statutory guidance on the factors which should be taken into account when bail decisions are made and bail information initiatives which might be adopted to facilitate this decision. The Commission is of the provisional view that none of these potential policy options would adversely impact on children and young persons and indeed represent significant opportunities to promote equality of opportunity for children and young persons. There may also be opportunities to further fulfil international obligations under the CRC within a revised test for bail for children and young persons.

**(ii) Comprehension and participation in the bail process:** It was suggested that many young persons have difficulty understanding the bail process and, in particular, bail conditions which may be imposed upon them. Some young persons also reported that they found it difficult to fully participate in bail proceedings and felt that they had no voice. The Commission considered these issues in its Consultation Paper and invited views on a number of proposals which may address these concerns. Firstly, the Commission's provisional proposals relating to the simplification of both the form and substance of bail law and practice in Northern Ireland will, it is hoped, improve understanding of the process for all persons, including children and young persons. Secondly, the Commission invited views in the Consultation Paper regarding the creation of a statutory duty to provide reasons for bail decisions which would increase transparency and accountability and a requirement that bail decision makers make efforts to ensure that young persons understand bail decisions and conditions. Thirdly, the Commission invited views on the role which may be played by responsible adults during the bail period and the desirability of expanding bail support for young persons. The Commission is of the provisional view that none of these potential policy options would adversely impact on children and young persons and may offer opportunities to promote equality of opportunity for children and young persons. The Commission considers there to be an opportunity to enhance compliance with the European Convention on Human Rights if the proposal to create a statutory duty to provide reasons

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<sup>4</sup> See n 1 above.

for bail decisions is recommended. There may also be opportunities to further fulfil international obligations under the CRC if proposals to enhance the participation of children and young persons in bail proceedings are recommended.

**(iii) Accommodation on bail and remand:** Concerns have been expressed regarding accommodation for young persons on bail and it was suggested that, under the current regime, young persons may be remanded due to the lack of a suitable bail address. It was suggested that this is a particular problem in relation to 'looked after' children. Quantitative data revealed high numbers of PACE(NI) and remand admissions to the Juvenile Justice Centre and many admissions of children and young persons from a care background. The Commission considered these issues in the Bail Consultation Paper and invited views on whether decision makers should be prohibited from remanding young persons solely on the grounds of a lack of accommodation and on how the issue of accommodation for young persons on bail should be addressed. The Commission considers the provision of suitable bail accommodation as central to reform of bail law and practice in relation to children and young persons and is keen that young persons are not unnecessarily drawn into the criminal justice system due to a lack of suitable accommodation. The Commission is giving consideration to a range of potential recommendations (including a prohibition on remand solely for accommodation reasons and the creation of additional accommodation options for young persons) with a view to ensuring that young persons are not remanded for accommodation reasons. It is anticipated that none of these potential policy options would adversely impact on children and young persons and indeed represent significant opportunities to promote equality of opportunity for children and young persons.

There was also some unease expressed about the facilities used to detain young persons denied bail, particularly the use of the Young Offenders Centre for some 15 and 16 year olds. The Commission invited views about the inclusion in legislation of provisions designating where children and young persons could be detained on remand, such as the Juvenile Justice Centre, the Young Offenders Centre and/or secure accommodation. It is anticipated that the policy options under consideration would not adversely impact on children and young persons and may represent significant opportunities to promote equality of opportunity for children and young persons. There may also be opportunities to further fulfil international obligations in relation to the detention of children and young persons.

**(iv) Compliance with bail:** It has been suggested that complex and often inappropriate bail conditions may be imposed upon children and young persons, under the present regime, which frequently result in breaches and ultimately detention. In light of these considerations, the Commission invited views on whether there should be more guidance for decision makers regarding the imposition of conditions on young persons and if so, whether such guidance should be placed on a statutory footing. The Commission has also expressed the provisional view that the power to take a personal recognizance should be abolished in respect of children (and adults). In considering the possible introduction of an offence of breach of bail conditions, the Commission has given thought to the disproportionate impact that such an offence might have on children and young persons as highlighted by the Victorian Law Reform Commission.<sup>5</sup> Finally, the Commission has invited views on the role which may be played by responsible adults during the bail period and the desirability of expanding bail support for young persons, which may assist young persons in complying with their bail. The Commission is of the provisional view that the creation of a breach of bail conditions offence may have an adverse impact on children and young persons and will give close consideration to that possibility in deciding whether to proceed with this policy option. While the availability of bail support and additional guidance on the imposition of bail conditions may mitigate some of the adverse impact of this potential proposal, the Commission will give consideration to recommending an alternative policy of retaining the current system for dealing with breaches of bail conditions. Under the existing

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<sup>5</sup> Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), p 128.



regime persons arrested by the police for breaching post charge bail conditions are brought before a court and may be remanded or released on bail under the same or different conditions, but will not face prosecution for a separate offence. It is anticipated that none of the other potential policy options would adversely impact on children and young persons but rather represent significant opportunities to promote equality of opportunity for children and young persons.

## **B. Victims**

Quantitative data<sup>6</sup> indicates that victims of violent and sexual offences are more likely to be younger than older. The Commission has identified the following potential issues for children and young adults who are victims of violent or sexual crime:

**(i) Limitations on the presumption in favour of bail:** The Commission has considered whether its provisional determination not to include in bail legislation different ‘offence specific’ or ‘circumstance specific’ rules in relation to the entitlement to bail may impact negatively on children and young adults who are victims of violent or sexual offences. As indicated above in relation female victims of domestic violence or sexual offences, the Commission is of the opinion that there are sound arguments for treating persons accused of all types of offences similarly, for the purposes of their entitlement to bail. The Commission is of the provisional view that this policy approach would not adversely impact on children and young adults.

**(ii) Keeping victims informed:** The Commission invited views in the Consultation Paper on the creation of a statutory duty to provide information to victims regarding bail decisions. Views were also sought in relation to limiting such a duty to certain offences (such as violent or sexual offences), particular bail conditions or to victims who request information. The Commission is of the provisional view that none of these potential policy options would result in differential impact on any of the section 75 groupings. There may be opportunities to promote equality of opportunity for children and young adult victims of violent or sexual offences if a requirement to provide information is focussed on those offences.

## **4.4 Religion**

Quantitative data gathered for the purposes of the Screening exercise<sup>7</sup> indicated that there are slightly higher proportions of Catholic persons in the defendant, offender and particularly the prison populations than there are in the general population. Having discussed the bail proposals with a very broad range of organisations and individuals, including the group of men participating in the *Think First* programme (who had among their number both Catholic and Protestant men) the Commission found no evidence of different needs, experiences or priorities for persons in respect of bail and remand on the basis of religion. The Commission is of the provisional view that none of the bail proposals would adversely impact on persons of different religious belief.

## **4.5 Marital status**

Quantitative data<sup>8</sup> indicated that single persons are disproportionately represented in the defendant, offender and prison populations, compared to the general population. Although single persons are likely to experience the impact of any changes to bail law and practice, including the positive impacts outlined above, in greater numbers than other persons, qualitative data revealed no differential impact

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<sup>6</sup> See n 1 above.

<sup>7</sup> See n 1 above.

<sup>8</sup> See n 1 above.

(in terms of differing needs, experiences or priorities) for single persons on the basis of their marital status. It is possible that more defendants, offenders and prisoners are single because more defendants, offenders and prisoners are young, as discussed above. The Commission is of the provisional view that none of the bail proposals would adversely impact on persons of different marital status.

## 4.6 Disability

Quantitative data gathered for the purposes of the Screening exercise<sup>9</sup> indicates that there are high concentrations of mental health and/or learning difficulties among the offender and prison populations. It was also suggested in responses to the Bail consultation that proposals for the reform of bail may raise equality issues for persons with learning disabilities, special educational needs, mental health problems and otherwise vulnerable adults or persons with issues of capacity.

The Commission has identified the following potential issues for persons with mental health and/or learning difficulties:

**(i) Bail information:** The Commission is concerned that bail decision makers are provided with all relevant information, including information regarding the applicant's mental health or learning difficulties if pertinent to the issue of bail, and views were invited in the Bail Consultation Paper on bail information initiatives which might be adopted. The Commission also invited views on the desirability of creating statutory guidance on the factors which should be taken into account when bail decisions are made and noted that provision is made in some other jurisdictions for consideration to be given to the special needs of persons with mental health or learning difficulties when deciding on bail.<sup>10</sup> The Commission is of the provisional view that these proposals would not adversely impact on persons with mental health and/or learning difficulties and may represent significant opportunities to promote equality of opportunity for such persons.

**(ii) Comprehension and participation in the bail process:** It has been suggested that persons with mental health and/or learning difficulties may have difficulty understanding the bail process and, in particular, bail conditions which may be imposed upon them. The Commission's provisional proposals relating to the simplification both the form and substance of bail law and practice in Northern Ireland will, it is hoped, improve understanding of the process for all persons, including persons with mental health and/or learning difficulties. The possible creation a statutory duty to provide reasons for bail decisions may also increase understanding. The Commission is of the provisional view that the bail proposals would not adversely impact on persons with mental health and/or learning difficulties and may offer opportunities to promote equality of opportunity for such persons. The Commission considers there to be an opportunity to enhance compliance with the European Convention on Human Rights if the proposal to create a statutory duty to provide reasons for bail decisions is recommended. (See also 'Compliance with bail' below)

**(iii) Compliance with bail:** Persons who are vulnerable due to their age, mental health and/or learning difficulties receive the support of an appropriate adult while they are in police custody. However, if such persons are released on bail they may not receive any support in complying with their bail conditions and surrendering to custody at the appropriate time and place. It has been suggested that persons who are vulnerable due to mental health and/or learning difficulties may benefit from advocacy support, help with complying with bail conditions, avoiding offending and finding suitable bail accommodation. The Commission invited views in the Consultation Paper

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<sup>9</sup> See n 1 above.

<sup>10</sup> See e.g. Bail Act 1978 (NSW), s 32(1)(b)(v). See also Bail Act 1978 (NSW), s 37(2A) which provides that, when imposing bail conditions on persons with intellectual disabilities, consideration must be given to the capacity of the person to understand or comply with such conditions.

regarding the expansion of bail support (which is currently available only for some children and young persons) to include adults. In considering the possible introduction of an offence of breach of bail conditions, the Commission is mindful of the impact that such an offence might have on persons with mental health and/or learning difficulties as highlighted by the Victorian Law Reform Commission.<sup>11</sup> The Commission is of the provisional view that the creation of a breach of bail conditions offence may have an adverse impact on persons with mental health and/or learning difficulties and will give close consideration to that possibility in deciding whether to proceed with this policy option. While the availability of bail support and additional guidance on the imposition of bail conditions may mitigate some of the adverse impact of this potential proposal, the Commission will give consideration to recommending an alternative policy of retaining the current system for dealing with breaches of bail conditions. Under the present regime persons arrested by the police for breaching post charge bail conditions are brought before a court and may be remanded or released on bail under the same or different conditions, but will not face prosecution for a separate offence. It is anticipated that none of the other potential policy options would adversely impact on persons with mental health and/or learning difficulties but rather may offer opportunities to promote equality of opportunity for such persons.

#### 4.7 Racial group

Although quantitative data<sup>12</sup> indicates that the vast majority of the defendant, offender and prison population can be classified as 'white', preliminary discussions and consultations with ethnic minorities and organisations representing the interests of differing racial groupings indicates that persons from different racial groups may have different needs, experiences and priorities in relation to bail and remand. The Commission considered these issues in the development of the bail proposals and invited views on a range of proposals which may enhance equality of opportunity for many of these groups.

The Commission has identified the following potential issues for persons from differing racial groupings:

**(i) Bail information:** It was suggested to the Commission that, under the current bail regime, foreign nationals may unjustifiably be viewed by the courts as more likely to abscond and therefore refused bail. It was reported that similar assumptions are made in respect of persons from ethnic minority groups even if they were born and have always lived in Northern Ireland. It was suggested to the Commission that a broader analysis of 'community ties' could be adopted, which would allow decision makers to consider issues such as links with community organisations and pending asylum applications as indications of a commitment to stay within the jurisdiction (at least until an application is determined). The Commission is considering these issues and invited views in its Consultation Paper on the desirability of creating statutory guidance on the factors which should be taken into account when bail decisions are made and bail information initiatives which might be adopted to facilitate this decision. The Commission is of the provisional view that these potential proposals would not adversely impact on persons from ethnic minorities and may offer opportunities to promote equality of opportunity for such persons.

**(ii) Comprehension and participation in the bail process:** It was suggested that due to language issues some ethnic minorities may need additional support when making a bail application, understanding the reasons for the decision and any conditions imposed upon them. The Commission's provisional proposals relating to the simplification of both the form and substance of bail law and practice in Northern Ireland will, it is hoped, improve understanding of the process for all

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<sup>11</sup> Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), p 128.

<sup>12</sup> See n 1 above.

persons, including persons from differing racial groupings. The possible creation a statutory duty to provide reasons for bail decisions may also increase understanding. The Commission is of the provisional view that the bail proposals would not adversely impact on persons from ethnic minorities and may offer opportunities to promote equality of opportunity for such persons. The Commission considers there to be an opportunity to enhance compliance with the European Convention on Human Rights if the proposal to create a statutory duty to provide reasons for bail decisions is recommended. (See also 'Bail conditions and compliance with bail' below)

**(iii) Bail accommodation:** Focus group discussions with persons from ethnic minorities and organisations representing their interests indicated that such persons may encounter difficulties accessing appropriate bail accommodation as they may have limited family and friends in this jurisdiction. Persons from outside the EU may, it has been suggested, experience particular problems as hostels may refuse them a bed because of concerns that they will not be paid if the person is not in receipt of state benefits. The Commission invited views in the Consultation Paper regarding the grounds upon which bail may be refused by the police and the courts and is keen that persons should not be remanded for accommodation reasons. In relation to children and young persons, the Commission invited views on whether decision makers should be prohibited from remanding young persons solely on the grounds of a lack of accommodation and on how the issue of accommodation for young persons on bail should be addressed. The Commission will also give consideration to making recommendations to address accommodation issues for other groups if necessary. It is anticipated that these proposals will not adversely impact on persons from ethnic minorities.

**(iv) Bail conditions and compliance:** It was reported that some persons from ethnic minorities may experience problems securing appropriate sureties if they have few family or friends in Northern Ireland and may encounter difficulties obtaining bail as a consequence. It was also suggested that members of the travelling community are treated differently to non-travellers, under the current bail regime, being required to provide cash as security before they are released on bail, a requirement which is rarely demanded of other bail applicants. The Commission invited views on whether there should be more guidance for decision makers regarding the imposition of bail conditions and if so, whether such guidance should be placed on a statutory footing. The Commission also invited views in the Consultation Paper on the expansion of bail support (which is currently available only for some children and young persons) to include adults. It was suggested in focus group discussions carried out for this EQIA that due to language and comprehension issues the introduction of an offence of breach of bail conditions may have an adverse impact upon persons from ethnic minorities. While the availability of bail support and additional guidance on the imposition of bail conditions may mitigate some of the adverse impact of this potential proposal, the Commission will give consideration to recommending an alternative policy of retaining the current system for dealing with breaches of bail conditions. Under the present regime persons arrested by the police for breaching post charge bail conditions are brought before a court and may be remanded or released on bail under the same or different conditions, but will not face prosecution for a separate offence. The Commission is of the provisional view that none of the other potential policy options would adversely impact on persons from ethnic minorities and may offer opportunities to promote equality of opportunity for such persons.

## 4.8 Dependants

Quantitative data gathered for the purposes of the Screening exercise<sup>13</sup> indicates there may be more persons with dependant children in the offender population. As noted above, it has been suggested that inadequate account is presently taken of the dependant responsibilities of males when decisions are taken on the conditions which may be attached to bail. It was asserted that males may share or provide full time child care and that this should be considered when bail conditions are imposed, as it

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<sup>13</sup> See n 1 above.

is likely it would be if the bail applicant was female. The Commission invited views in the Consultation Paper on the introduction of detailed guidance for bail decision makers regarding the imposition of bail conditions. The Commission is giving consideration to the inclusion in such guidance of a requirement to ensure that bail conditions do not, as far as practicable, interfere with other legitimate pursuits including care/dependant responsibilities, irrespective of the gender of the applicant. The Commission is of the provisional view this potential policy option would not adversely impact on persons with dependant children and may offer opportunities to promote equality of opportunity for such persons.

#### **4.9 Sexual orientation**

From the limited data available,<sup>14</sup> the Commission is of the provisional view that the proposals under consideration would not adversely impact on persons on the basis of their sexual orientation.

#### **4.10 Political opinion**

From the limited data available,<sup>15</sup> the Commission is of the provisional view that the proposals under consideration would not adversely impact on persons on the basis of their political opinion.

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<sup>14</sup> See n 1 above.

<sup>15</sup> See n 1 above.

## 5: FORMAL CONSULTATION

### 5.1 Consultation methods

The Commission wishes to consult as widely as possible on the findings included in this EQIA and the provisional conclusions reached and invites all interested parties to respond to this consultation.

Consultees may wish to read this document in conjunction with the Consultation Paper: *Bail in Criminal Proceedings* and the Bail Equality Screening Analysis which are available on the Commission's website and which can be made available in hard copy on request. This document can be made available in an alternative format or language.

This EQIA consultation will be forwarded by email or in hard copy to all interested consultees, including representatives of section 75 stakeholder groups, the Equality Commission and any members of the public who request a copy. A copy of the EQIA will also be made available on the Commission's website.

The Commission has endeavoured to engage with all interested parties and organisations during the preparation of the Bail Consultation Paper, during the consultation period which followed its publication and during the preparation of this EQIA. The Commission will facilitate any further individual consultation meetings requested by representatives of stakeholder groups or other interested parties as a result of this EQIA.

### 5.2 Responding to this consultation

Interested parties are invited to comment on the provisional conclusions reached in this Equality Impact Assessment. The formal consultation period for this Equality Impact Assessment commences on 5<sup>th</sup> July 2011 and the closing date for responses is 11<sup>th</sup> October 2011.

#### Responses should be sent to:

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Email: [info@nilawcommission.gov.uk](mailto:info@nilawcommission.gov.uk)  
Website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk)

### 5.3 Decision making and consultation feedback

The Commission will consider the findings of this EQIA and consultation when finalising policy recommendations in relation to the bail proposals in accordance with schedule 9, para 9(2) of the Northern Ireland Act 1998.

The outcome of this EQIA will be published and made available by email or in hard copy to all interested consultees, including representatives of section 75 stakeholder groups, the Equality Commission and any members of the public who request a copy. A copy will also be made available on the Commission's website.

## **6: MONITORING**

### **6.1 The role of the Commission**

As indicated above (para 2.3), the Commission has responsibility for devising the law reform policy but the decision to implement any recommendations lies with the responsible NI Department.

Where a Department has implemented a recommendation, the Department will monitor the implemented policy/legislation for adverse impact on the promotion of equality of opportunity.