

Northern Ireland Law Commission

Equality of Opportunity Screening Analysis Form

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

Linum Chambers, 8th Floor
2 Bedford Square
Bedford Street
Belfast, BT2 7ES

Part 1. INFORMATION ABOUT THE POLICY

1.1 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* which is available on the Commission's website: www.nilawcommission.gov.uk. Hard copies are available on request. The issues discussed in the Consultation Paper do not represent the final recommendations of the Commission but rather the full range of reform options currently being examined. 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 the 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 and young persons 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.

1.2 Is this an existing, revised or a new policy?

New

1.3 What is it trying to achieve? (intended aims/outcomes)

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.

1.4 Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.

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.

Further, where particular equality issues have been identified, consideration is being given to the development of proposals which may promote equality of opportunity for particular groupings e.g. children and young persons (see Section 1.11, below).

1.5 Who initiated or wrote the policy?

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 Justice (Northern Ireland) Act 2002.

1.6 Who owns and who implements the policy?

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.

1.7 Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision? If yes, are they:

Financial – Government/departmental budgetary constraints may impact upon the implementation of both legislative and administrative proposals.

Legislative – Timetable, legislative process and prioritisation.

1.8 Main stakeholders affected

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.

1.9 Other policies with a bearing on this policy

- **what are they?**

Other criminal justice legislation or policy could potentially have a bearing on the project.

- **who owns them?**

The Department of Justice.

1.10 Available evidence

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy?

The Commission has consulted the relevant agencies listed in Appendix 4 of the Equality Commission Practical Guidance on EQIA and has liaised with the following agencies with a view to obtaining any statistical information on bail decision making that may be relevant and that may facilitate the screening of this policy from a section 75 perspective:

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

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 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 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 screening, 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:

(a) In order to inform policy development, the Commission held individual meetings and group seminars attended by 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

(b) 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.

(c) The Consultation Paper was widely circulated to groups and individuals representative of the interests of section 75 groupings, including those outlined 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.

(d) 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.

(e) 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. 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 young persons. Further meetings with young persons in Enniskillen and Derry/Londonderry were carried out 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 were submitted to the Commission via VOYPIC.

1.11 Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories.

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

GENDER

A. Defendants, suspects and prisoners

Mid-year estimates (2009) indicate that 49% of the 16 and over population of Northern Ireland is male. However the *Digest of Information on the Northern Ireland Criminal Justice System* (2009) indicates that 86% of suspects arrested under PACE (NI) in 2008/09 were male and 87% of all persons prosecuted and convicted in 2006, including juvenile offenders, were male. The PBNI survey of offenders confirmed that 91% of offenders under the supervision of PBNI in June 2010 were male. The NICTS Customer Exit Survey (2009) also indicates that 83% of criminal defendants surveyed were male.¹ Northern Ireland Prison Population (2009) statistics and data provided by the Department of Justice further indicate that 97% of the average prison population² and 95% of the average remand population were male in 2009. Youth Justice Agency data indicates that 86% of initial admissions to the Juvenile Justice Centre in 2009 were male. Although males are disproportionately represented in the suspect, defendant, offender and prison populations, the Commission has found no further evidence of different needs, experiences or priorities for males in respect of bail and remand.

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, there is some indication that certain groupings are more likely to become victims of particular offences which may be relevant to this policy. The Northern Ireland Crime Survey (2009/10)³ indicates that significantly more males (young men in particular: 16-24 years) than females were victims of violent crime. The *Digest of Information on the Northern Ireland Criminal Justice System* (2010) also indicates that most victims of violent offences recorded by the police in 2008/09 were male (60%). However, most victims of sexual offences recorded by the police in 2008/09 were female (86%). Police statistics also indicate that most victims of domestic violence recorded by the police in 2009/10 were female (75%).⁴

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

(i) Presumption against bail for certain offences: It has been suggested that the provisional view of the Commission not to include in bail legislation different 'offence specific' or 'circumstance specific'

¹ NICTS Customer Exit Survey – Criminal defendants (2009) data is predominantly based on persons of 17 and older but includes a small number of persons who are under 17.

² The NI Prison Population statistics are mainly based on persons of 17 and older but include a small number of 15 and 16 year olds. Most persons under 17 years are detained in the Juvenile Justice Centre which is not included in the NI Prison Population statistics.

³ *Experiences of Crime: Findings from the 2009/10 Northern Ireland Crime Survey*, Research and Statistical Bulletin 4/2010.

⁴ *Domestic Abuse Incidents and Crimes*, PSNI Annual Statistical Report, Report No. 2.

rules in relation to the entitlement to bail may impact negatively on women who are victims of domestic violence or sexual offences.

(ii) Keeping victims informed: The Commission acknowledges the importance of victims being kept informed of bail decisions and invited the views of consultees regarding the creation of statutory duty to provide information to victims. Views were also sought in relation to limiting such a duty to certain offences (such as violent or sexual offences), particular bail conditions or where the victim requests information.

AGE

A. Defendants, suspects and prisoners

Mid-year estimates 2009 indicate that 24% of persons of 17 and over in Northern Ireland fall into the 17 to 29 year old age band. By contrast Northern Ireland Prison Population (2009) statistics and data provided by the Department of Justice indicate that 47% of the average prison population and 55% of the average remand population in 2009 were aged 17 to 29. The NICTS Customer Exit Survey (2009) reveals that 45% of criminal defendants surveyed were under 26 and the PBNI survey of offenders confirmed that 64% of offenders under the supervision of PBNI in June 2010 were aged 18 to 34. Although young adults are disproportionately represented in the defendant, offender and prison populations, the Commission has found no further evidence of different needs, experiences or priorities for young adults in respect of bail and remand.

Youth Justice Agency data indicates that 69% of initial admissions to the Juvenile Justice Centre in 2009 were aged 15 and 16. Admissions to the Juvenile Justice Centre in 2009 accounted for 5% of the total admissions to prison and the Juvenile Justice Centre in that year⁵ and 38% of young persons admitted to the Juvenile Justice Centre were from a care background (subject to a care order or voluntarily accommodated). Of particular relevance to this policy, 95% of admissions to the Juvenile Justice Centre were PACE (51%) or remand (44%) admissions. Preliminary discussions and consultations with young persons and organisations representing the interests of children and young persons have indicated that persons under 18 years of age may have many 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 particularly 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. 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

⁵ NI Prison Population (2009) statistics indicate that there were 5892 receptions into prison and Youth Justice Agency data indicates that there were 339 initial admissions to the Juvenile Justice Centre in 2009.

facilitate this decision. Views were also invited regarding the creation of a statutory duty to provide reasons for bail decisions which would increase transparency and accountability.

(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 whether bail decision makers should be required to 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, which may facilitate greater understanding and participation of children and young persons in bail proceedings.

(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. 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 sought views on how the issue of accommodation for young persons on bail should be addressed.

There was also some unease expressed about the remand facilities used to accommodate young persons refused 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.

(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.⁶ 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.

⁶ Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), p 128.

B. Victims

In relation to victims of crime, the Northern Ireland Crime Survey indicates that significantly more young persons (aged 16-24 years, 6%) were victims of violent crimes than older persons. The *Digest of Information on the Northern Ireland Criminal Justice System (2010)* also indicates that half of all victims of sexual offences recorded by the police in 2008/09 were aged under 16 years.

The Commission has identified the following potential issues for children and young persons who are victims of crime:

(i) Presumption against bail for certain offences: As was suggested in relation to female victims of domestic violence, the Commission may need to consider if its provisional determination not to include in bail legislation different 'offence specific' or 'circumstance specific' rules in relation to the entitlement to bail on may impact negatively on children and young persons who are victims of violent or sexual offences.

(ii) Keeping victims informed: The Commission acknowledges the importance of victims being kept informed of bail decisions and invited the views of consultees regarding the creation of a statutory duty to provide information to victims. Views were also sought regarding restricting such a duty to certain offences (such as violent or sexual offences), particular bail conditions or where the victim requests information.

RELIGION

Census (2001) data indicates that 44% of the overall Northern Ireland population and 44% of persons of working age⁷ had a Catholic community background. Northern Ireland Prison Population (2009) statistics and data provided by the Department of Justice indicate that 51% of the average prison population and 55% of the average remand population were Catholic in 2009. Youth Justice Agency data indicates that 58% of initial admissions to the Juvenile Justice Centre in 2009 were Catholic. The NICTS Customer Exit Survey (2009) indicates that 46% of criminal defendants surveyed stated their religion as Catholic⁸ and the PBNI survey of offenders revealed 46% of offenders under the supervision of PBNI in June 2010 stated that they were Catholic. Although there is some indication that Catholic persons are disproportionately represented in the defendant, offender and particularly the prison populations, the Commission has found no further evidence of different needs, experiences or priorities in relation to bail and remand on the basis of religion.

MARITAL STATUS

The Census (2001) indicated that 33% of persons over 16 in Northern Ireland population were single. Northern Ireland Prison Population (2009) statistics and data provided by the Department of Justice indicate that 76% of the average prison population and 80% of the average remand population in 2009 were single. The NICTS Customer Exit Survey (2009) also suggested that 75% of criminal defendants surveyed were single and the PBNI survey of offenders confirmed that 69% of offenders under the supervision of PBNI in June 2010 were single. Although single persons are disproportionately represented in the defendant, offender and prison populations, the Commission has found no further evidence of different needs, experiences or priorities in relation to bail and remand on the basis of marital status.

⁷ 16-64 for men and 16-59 for women.

⁸ 10% of respondents reported that they had no religion and religion was not recorded for 1% of the sample.

DISABILITY

Census (2001) data indicated that 20% of the Northern Ireland population and 17% of persons of working age⁹ had a limiting long-term illness. The NICTS Customer Exit Survey (2009) indicates that 11% of criminal defendants surveyed had a disability within the definition laid down in the Disability Discrimination Act 1995. The PBNI survey of offenders indicated that 37% of offenders under the supervision of PBNI in June 2010 declared that they had a disability. This survey revealed that 7% had a physical disability, 8% had a long term illness and 1% had a sensory disability. A further 6% declared a learning disability and 23% reported a mental health condition.

Criminal Justice Inspection Northern Ireland estimates, that around one in eight persons coming into contact with the criminal justice system in Northern Ireland is likely to have a mental disorder.¹⁰ It is further estimated that 78% of male remand prisoners and 64% of male sentenced prisoners are personality disordered. Approximately 50% of female prisoners are believed to be personality disordered.¹¹ This Inspection also reports that there are high incidences of learning disability and addiction in the prison population and estimates that 7% of prisoners are seriously mentally ill.¹² Criminal Justice Inspection Northern Ireland also points to the particular problems which may arise when remand prisoners are acquitted and released without any support in place in the community.¹³

In relation to children and young persons, an earlier Criminal Justice Inspection report indicated that there are significant concentrations of mental health disorders, special education needs and other vulnerabilities among young persons detained in the Juvenile Justice Centre.¹⁴

It was 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.¹⁵

(ii) Comprehension and participation in the bail process: It was suggested that persons with mental health 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 of both the form and substance of bail law and practice in Northern Ireland

⁹ 16-64 for men and 16-59 for women.

¹⁰ Criminal Justice Inspection Northern Ireland, *Not a Marginal Issue: Mental Health and the criminal justice system in Northern Ireland* (March 2010), p 5.

¹¹ Above, p 3.

¹² Above, p 31.

¹³ Above, p 35.

¹⁴ Criminal Justice Inspection Northern Ireland, *Inspection of Woodlands Juvenile Justice Centre* (May 2008), p 32. This report revealed that of the 30 children detained in the Juvenile Justice Centre on 30 November 2007, 20 had a diagnosed mental health disorder; 17 had a history of self harm; 8 had attempted suicide; 8 were on the child protection register; and 14 had a statement of educational needs.

¹⁵ 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.

will, it is hoped, improve understanding of the process for all persons, including persons with mental health or learning difficulties. The possible creation a statutory duty to provide reasons for bail decisions may also increase understanding. It has been further suggested that vulnerable persons may benefit from advocacy support within the criminal justice system.

(iii) Breach of bail conditions: 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 or learning difficulties as highlighted by the Victorian Law Reform Commission.¹⁶

RACIAL GROUP

In 2001 the Census indicated that 99% of the Northern Ireland population was 'White'. The NICTS Customer Exit Survey (2009) also indicates that 98% of criminal defendants surveyed reported their ethnic group as 'White' and the PBNI survey of offenders indicated that 99% of offenders under the supervision of PBNI in June 2010 were white, of which 1% were Irish travellers. Northern Ireland Prison Population (2009) statistics and data provided by the Department of Justice, however, indicate that 94% of the average prison population and 91% of the average remand population in 2009 were classified as 'white'. A further 5% of the average remand population were classified as 'Chinese', 1% as 'Black', 1% Irish Traveller and 0.2% as 'Mixed ethnic group' and 1% as 'Other ethnic group'.

Although the vast majority of the defendant, offender and prison population are 'white', preliminary discussions and consultations with ethnic minorities and organisations representing the interests of differing racial groupings indicated 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) Statutory grounds for the refusal of bail: It was suggested in preliminary discussions 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. The Commission considered these issues in its Consultation Paper and invited views on the desirability of creating statutory guidance in relation to 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. Views were also invited regarding the creation a statutory duty to provide reasons for bail decisions which would increase transparency and accountability.

(ii) Bail applications: It was suggested that some ethnic minorities may need additional support when making a bail application due to language issues.

(iii) Bail conditions: 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 were 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. Views were also invited regarding the creation a

¹⁶ Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), p 128.

statutory duty to provide reasons for bail decisions which would increase transparency and accountability.

DEPENDANTS

Census (2001) data indicated that 36% of households in Northern have dependant children. Similarly, the NICTS Customer Exit Survey (2009) indicates that 36% of criminal defendants surveyed had dependant children. The PBNI survey of offenders indicated that 48% of offenders under the supervision of PBNI in June 2010 had dependant responsibilities, with most of these (45%) having dependent children. Although there is some evidence that persons with dependant children may be disproportionately represented in the offender population, the Commission found no further evidence of different needs, experiences or priorities in relation to bail and remand on the basis of dependant responsibilities.

SEXUAL ORIENTATION

The PBNI survey of offenders indicated that 94% of offenders under the supervision of PBNI in June 2010 stated that they were heterosexual/straight, 1% gay, 1% bisexual and 4% did not answer. The Commission found no other evidence of different needs, experiences or priorities in relation to bail and remand on the basis of sexual orientation.

POLITICAL OPINION

The PBNI survey of offenders indicated that 50% of offenders under the supervision of PBNI in June 2010 stated that they did not hold a political opinion. 16% stated that they held a Unionist political opinion and 15% stated that they held a Nationalist opinion. 15% of offenders preferred not to say what their political opinion was and 4% stated that they held different political opinions to those listed. The Commission found no other evidence of different needs, experiences or priorities in relation to bail and remand on the basis of political opinion.

Part 2. SCREENING QUESTIONS

In deciding whether or not there is a need 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).

2.1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? Details of policy impact - minor/major/none

GENDER

As males are disproportionately represented in the suspect, defendant and prison populations, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a major impact on equality of opportunity for males.

It is also reasonable to give further consideration to the question of whether some of the proposals may have a minor impact upon male and female victims of violent and sexual offences.

AGE

Due to the over representation of young adults in the suspect, defendant and prison populations and the differing needs, experiences and priorities of children and young persons, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a major impact on equality of opportunity for children and young adults.

It is also reasonable to give further consideration to the question of whether some of the proposals may have a minor impact upon children and young adults who are victims of violent and sexual offences.

RELIGION

As there is some evidence that Catholic persons are over represented in the defendant, offender and prison populations, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a minor impact on equality of opportunity for Catholic persons.

MARITAL STATUS

As there is a higher representation of single persons in the defendant and prison populations, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a minor impact on equality of opportunity for single persons.

DISABILITY

Due to the over representation of persons with mental health problems and learning difficulties in the suspect, defendant and prison populations and the differing needs, experiences and priorities of such persons which have been identified, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a major impact on equality of opportunity for persons with mental health problems or learning difficulties.

RACIAL GROUP

Due to the differing needs, experiences and priorities of persons from ethnic minorities which have been identified, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a major impact on equality of opportunity for persons from ethnic minorities.

DEPENDANTS

As there is a higher representation of persons with dependant children in the offender population, it is reasonable to give further consideration to the question of whether any proposals for the reform of bail law and practice may potentially have a minor impact on equality of opportunity for persons with dependant children.

SEXUAL ORIENTATION

On the basis of the limited available evidence, the Commission is of the view that any proposals for the reform of bail law and practice will have no impact on equality of opportunity for persons of differing sexual orientation.

POLITICAL OPINION

On the basis of the limited available evidence, the Commission is of the view that any proposals for the reform of bail law and practice will have no impact on equality of opportunity for persons of differing political opinion.

2.2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories? Yes/no, provide reasons

GENDER

Given the disproportionate representation of males in the suspect, defendant and prison populations, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for males in a reformed bail system.

Consideration will also be given to the potential to promote equality of opportunity for male and female victims of violent and sexual offences.

AGE

Given the disproportionate representation of young adults in the suspect, defendant and prison populations, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for young adults in a reformed bail system.

On the basis of the differing needs and experiences of children and young persons outlined above, it is reasonable to give further consideration to the potential opportunities to better promote equality of opportunity for children and young persons in a reformed bail system.

Consideration will also be given to the potential to promote equality of opportunity for children and young adults who are victims of violent and sexual offences.

RELIGION

Given the possible over-representation of Catholic persons in the suspect, defendant and prison populations, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for Catholic persons in a reformed bail system.

MARITAL STATUS

Given the over-representation of single persons in the suspect, defendant and prison populations, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for single persons in a reformed bail system.

DISABILITY

Due to the over representation of persons with mental health problems and learning difficulties in the suspect, defendant and prison populations and the differing needs, experiences and priorities of such persons which have been identified, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for persons with mental health problems and learning difficulties in a reformed bail system.

RACIAL GROUP

Due to the differing needs, experiences and priorities of persons from ethnic minorities which have been identified, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for persons from ethnic minorities in a reformed bail system.

DEPENDANTS

Due to the over representation of persons with dependent children in the suspect, defendant and prison populations, it is reasonable to give further consideration to the question of whether there may be potential opportunities to better promote equality of opportunity for persons with dependent children in a reformed bail system.

SEXUAL ORIENTATION

The Commission has not identified any potential opportunities to better promote equality of opportunity for persons of differing sexual orientation in a reformed bail system.

POLITICAL OPINION

The Commission has not identified any potential opportunities to better promote equality of opportunity for persons of differing political opinion in a reformed bail system.

2.3 To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group? Details of policy impact - minor/major/none

RELIGIOUS BELIEF

The Commission is of the provisional view that proposals to reform bail law and practice are not likely to impact on good relations between people of different religious belief.

RACIAL GROUP

The Commission is of the provisional view that proposals to reform bail law and practice are not likely to impact on good relations between people of different racial group.

POLITICAL OPINION

The Commission is of the provisional view that proposals to reform bail law and practice are not likely to impact on good relations between people of different political opinion.

2.4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group? Yes/no, provide reasons

RELIGIOUS BELIEF

The Commission is of the provisional view that proposals to reform bail law and practice do not offer opportunities to better promote good relations between people of different religious belief.

RACIAL GROUP

The Commission is of the provisional view that proposals to reform bail law and practice do not offer opportunities to better promote good relations between people of different racial groups.

POLITICAL OPINION

The Commission is of the provisional view that proposals to reform bail law and practice do not offer opportunities to better promote good relations between people of different political opinion.

2.5 Additional considerations: Multiple identity

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

As indicated above, any proposals for the reform of bail law and practice would seem to have a significant potential impact on young men and boys.

Part 3. SCREENING DECISION

Given the potential impacts of proposals for the reform of bail law and practice for section 75 groupings outlined above (Section 1.11), the Commission has decided to 'screen in' for equality impact assessment.

Timetabling and prioritising

Factors to be considered in timetabling and prioritising policies for equality impact assessment.

If the policy has been 'screened in' for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	3
Social need	2
Effect on people's daily lives	2
Relevance to a public authority's functions	3

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority's Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities? If yes, please provide details.

N/a

Part 4. MONITORING

Public authorities should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.

N/a

Part 5 – APPROVAL AND AUTHORISATION

Screened by:	Position/Job Title	Date
Katie Quinn	Senior Principal Legal Officer	03/05/11
Approved by:		
Judena Goldring	Chief Executive	03/05/11

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on the public authority's website as soon as possible following completion and made available on request.