

Northern Ireland Law Commission

## **Report on Equality Impact Assessment**

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

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## INTRODUCTION

### *(i) Background to the Northern Ireland Law Commission*

1. 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.
2. The Commission was established under the Justice (NI) 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*

3. 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.
4. These positions are currently held by:

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

Project Lawyer: Katie Quinn

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### *(ii) Section 75 of the Northern Ireland Act 1998*

5. 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.

### *(iii) Equality Screening Analysis*

6. The Commission conducted an Equality Screening Analysis (the 'Screening exercise') of the proposals outlined in the Consultation Paper: *Bail in Criminal Proceedings* (the 'consultation paper'). The Screening exercise 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.

7. On the basis of these findings, the Commission decided to conduct an Equality Impact Assessment ('EQIA') 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.

### **AIMS OF THE POLICY**

8. The bail project deals with the 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. Furthermore, a summary of the issues and the objectives of the bail project can be found in the Consultation on Equality Impact Assessment (the 'EQIA consultation'). The EQIA consultation is available on the Commission's website: [www.nilawcommission.gov.uk](http://www.nilawcommission.gov.uk)

### **AVAILABLE DATA AND RESEARCH**

9. A summary of the data and research which was relied on by the Commission when carrying out its Screening exercise and EQIA can also be found in the EQIA consultation.
10. During the course of the preparation of the EQIA, 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.

11. The Commission directly engaged with a range of representative organisations and individuals to discuss the potential impact of the proposals on individuals within these section 75 groupings. 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. The Commission sought to gather information on the potential impact of the bail proposals on young men with the help of the Probation Board for Northern Ireland ('PBNI').
12. The Commission expressed the view in the EQIA consultation that the overall 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.

## **CONSULTATION**

### *(i) The consultation process*

13. The formal consultation period for the EQIA consultation commenced on 5<sup>th</sup> July 2011 with a closing date for responses of 11<sup>th</sup> October 2011. The Commission sought to consult as widely as possible on the findings included in the EQIA consultation and the provisional conclusions reached. The Commission invited all interested parties to respond to the consultation and forwarded a copy of the EQIA consultation by email or in hard copy to all interested consultees, including representatives of section 75 stakeholder groups, the Equality Commission and any interested members of the public. The EQIA consultation was also made available on the Commission's website.
14. Although the Commission endeavoured to engage with all interested parties and organisations during the preparation of the consultation paper, during the consultation period which followed its publication and during the preparation of the EQIA, the Commission also committed to facilitating any further individual consultation meetings requested by representatives of stakeholder groups or other interested parties as a result of the EQIA consultation.

*(ii) Consultation responses*

15. At the close of the consultation period, six responses were received. Consultees welcomed the publication of the Screening exercise and the EQIA consultation and praised their high standard. In particular the Commission was applauded for its direct engagement with children and young persons in relation to the bail proposals and for the production of a Children and Young People's version of the bail consultation paper.<sup>1</sup> One consultee particularly approved of this engagement, given the Commission's statutory obligations under section 75 and the government's obligations under Article 12 of the United Nations Convention on the Rights of the Child (the 'CRC'). Another consultee observed the efforts made by the Commission to consult with a range of ethnic and religious minority groups and to consider any concerns raised.
16. The Commission was praised for its work in gathering additional data for the purposes of the EQIA. It was argued that the collection of data for the purposes of the promotion of equality of opportunity is part of ensuring compliance with section 75. The inclusion of data relating to the multiple identity grouping, young men, was particularly commended.
17. The approach taken by the Commission to the assessment of impacts (see EQIA consultation, para 4.1), focussing both on proposals which have the least differential impact on section 75 groupings and those which offer the greatest opportunity to promote equality of opportunity, was also praised. It was suggested, however, that the Commission should have committed in its EQIA to recommending all policy options which promote equality of opportunity rather than just giving consideration to all such policy options.
18. One consultee asserted that the bail proposals have been thoroughly assessed from the perspectives of section 75 groups. Some consultees expressed general support for the approach of the Commission and agreed that the outcome of the bail project – in terms of simplification, accessibility, modernisation and improving efficiency and effectiveness – should have a positive impact on all, including persons represented by the section 75 groupings. One observed that there do not appear to be any unjustified adverse impacts upon members of section 75 groups.
19. Comments made by consultees in relation to the impact of the bail proposals on particular section 75 groupings are dealt with below, in the context of the findings included in the EQIA consultation and the provisional conclusions reached.

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<sup>1</sup> See [www.nilawcommission.gov.uk/bail\\_consultation\\_paper\\_children\\_and\\_young\\_persons\\_version.pdf](http://www.nilawcommission.gov.uk/bail_consultation_paper_children_and_young_persons_version.pdf)

*(iii) Conclusions*

20. The Commission considered the findings of the EQIA consultation when finalising its policy recommendations in relation to the bail proposals in accordance with schedule 9, para 9(2) of the Northern Ireland Act 1998. The policy decisions taken by the Commission in light of these responses are discussed in full in the Report: *Bail in Criminal Proceedings* ('Bail Report') and are outlined briefly below. The Bail Report is available on the Commission's website and hard copies are available on request.

## **CONSULTATION RESPONSES AND CONCLUSIONS**

*(i) Approach adopted to assessment of impacts*

21. On the basis of the available data and research, the Commission considered in the EQIA consultation<sup>2</sup> 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 were not settled at that time, mitigation and/or alternative policies were not considered separately. Rather the potential impacts of all reform options were considered with a view to identifying those proposals which would have the least differential impact on section 75 groupings and/or would offer the greatest opportunity to promote equality of opportunity.

22. In the following section, the provisional views expressed by the Commission in relation to 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 are considered in light of the responses received to the EQIA consultation. The policy decisions taken by the Commission are outlined in brief.

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

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<sup>2</sup> EQIA consultation, para 4.1.

*(ii) Findings and conclusions*

*Gender*

*(a) Defendants, suspects and prisoners*

24. Quantitative data gathered for the purposes of the Screening exercise<sup>3</sup> indicated 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 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 considered 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 expressed the provisional view in the EQIA consultation 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.
25. Some of those who responded to the EQIA consultation were supportive of the inclusion in guidance on the imposition of bail conditions of a requirement to ensure that bail conditions do not, as far as practicable, interfere with other commitments including care/dependant responsibilities agreeing that this would ensure greater enjoyment of equality of opportunity by young men with dependants. It was argued that such guidance may also result in fewer young men with dependants breaching bail conditions as their particular circumstances and responsibilities will be considered when bail conditions are imposed.
26. In light of the responses to the EQIA and the consultation paper, the Commission has determined that it is appropriate to include in bail legislation guidance on the imposition or variation of bail conditions on accused persons, including a requirement, where relevant, to consider the accused

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<sup>3</sup> Screening exercise, para 1.11.

person's commitments. It is the view of the Commission that as the requirement to consider the family or dependant responsibilities of the person, if relevant, when imposing or varying conditions will apply irrespective of the gender of the person, this approach will not have a differential or adverse impact on males and may contribute to promoting equality of opportunity for males. This policy decision is discussed further at paras 5.84 to 5.87 of the Bail Report.

(b) *Victims*

27. 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>4</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.

28. The Commission identified the following potential issues for victims of crime:

*Limitations on the presumption in favour of bail:* It was suggested in a consultation meeting 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. However, the Commission argued in the EQIA consultation that if such special rules are not recommended, 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 expressed 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 was supportive of arguments that such presumptions against bail and other special rules are arbitrary, complicated and potentially contrary to human rights standards.

29. *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 expressed the provisional view in the EQIA consultation that none of these potential policy options would result in differential impact on any of the section 75 groupings. It was suggested that 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.

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<sup>4</sup> Screening exercise, para 1.11.

30. One EQIA consultee agreed with the Commission's conclusion that 'offence specific' or 'circumstance specific' rules in relation to the entitlement to bail are not appropriate. No other views were expressed on this issue. The EQIA consultation responses have confirmed for the Commission the conclusion that bail legislation should not include different 'offence specific' or 'circumstance specific' rules in relation to the entitlement to bail. Although it has been argued that the absence of such rules may impact negatively on women who are victims of domestic violence or sexual offences, evidence indicates that reverse onus provisions do not necessarily make a grant of bail less likely.<sup>5</sup> The Commission maintains the view expressed in the EQIA consultation that it is consistent with section 75 obligations that 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. Further, the Commission is persuaded that the differential treatment of some accused persons in terms of the entitlement to bail is arbitrary, overly complicated and potentially incompatible with human rights standards. This policy decision is discussed further at paras 5.6 to 5.14 of the Bail Report.

31. In the view of the Commission none of the other bail proposals would adversely impact upon persons on the basis of their gender. The Commission has not identified any further opportunities to promote equality of opportunity for persons on the basis of their gender.

## *Age*

### *(a) Defendants, suspects and prisoners*

32. Quantitative data gathered for the purposes of the Screening exercise<sup>6</sup> indicated that young adults are disproportionately represented in the defendant, offender and prison populations, compared to the 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.

33. Qualitative data<sup>7</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.

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<sup>5</sup> Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), pp 44-5 and 49.

<sup>6</sup> Screening exercise, para 1.11.

<sup>7</sup> Screening exercise, para 1.11.

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

*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 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 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 expressed the provisional view in the EQIA consultation that none of these potential policy options would adversely impact on children and young persons and offer 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.

35. *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.

36. The Commission expressed the provisional view in the EQIA consultation 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 considered there to be an opportunity to enhance compliance with the ECHR if the proposal to create a statutory duty to provide reasons for bail decisions is recommended. It was also suggested that there may 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.
37. *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 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 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 considered 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. The Commission expressed the view in the EQIA consultation that none of these potential policy options are likely to adversely impact on children and young persons and indeed represent significant opportunities to promote equality of opportunity for children and young persons.
38. 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 secure accommodation. The Commission expressed the view in the

EQIA consultation that the policy options under consideration were unlikely to adversely impact on children and young persons and may represent significant opportunities to promote equality of opportunity for children and young persons. It was argued that there may be opportunities to further fulfil international obligations in relation to the detention of children and young persons.

39. *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 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>8</sup> Finally, 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 assist young persons in complying with their bail.
40. The Commission expressed the provisional view in the EQIA consultation that the creation of a breach of bail conditions offence may have an adverse impact on children and young persons. 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 undertook to give consideration to recommending an alternative policy of retaining the current system for dealing with breaches of bail conditions. Under the existing 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 was argued 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.
41. One EQIA consultee agreed that proposals to simplify bail law will be of benefit to children and young persons. Another expressed approval for the creation of a statutory duty to provide

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<sup>8</sup> Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), p 128.

reasons for bail decisions and agreed with the Commission's view that this recommendation will enhance compliance with the ECHR.

42. There was support for a prohibition on remand of young persons solely for accommodation reasons, particularly in relation to 'looked after' children and young persons. Consultees also agreed that recommendations should be made for additional accommodation options for young persons on bail.
43. One consultee argued that the abolition of the power to take a personal recognizance in respect of adults and children will not discriminate against children and young persons. Several consultees agreed with the provisional view of the Commission that the creation of a breach of bail conditions offence may have an adverse impact on children and young persons. It was argued that the existing arrangements for dealing with breaches of bail conditions should remain.
44. It was also argued that bail support should be expanded to include all children and young persons on bail. Bail support, it was suggested, is essential to allowing children and young persons access to a range of services to address their needs and to ensure compliance with bail. Such support services should address accommodation issues and include bail mentoring and bail fostering. It was argued that bail support services would promote equality of opportunity for young persons and young males, in particular.
45. In relation to detention facilities for children and young persons, one consultee pointed out that it is inappropriate to detain not only 15 and 16 year olds but also 17 year olds in the young offenders centre, which is a category C prison. It was argued that the detention of any children, that is those under 18 years of age (CRC, Art 1), at this facility breaches international children's rights standards, particularly the obligation to detain children separately from adults under the CRC, Art 37(c).
46. The Commission has considered closely the impact of the bail proposals on children and young persons.<sup>9</sup> Having considered the views of consultees, the Commission is persuaded that the introduction of a modern and accessible Bail Act, which gives full expression to human rights obligations and appropriate protection for vulnerable groups, will improve understanding of the bail process for all persons, including children and young persons thereby promoting equality of opportunity. This policy decision is discussed further at paras 2.2 to 2.8 of the Bail Report.

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<sup>9</sup> See Bail Report, ch 6.

47. It is considered that recommendations that the police and the courts should provide and record details of bail, grounds and reasons for refusing bail and purposes and reasons for the imposition of bail conditions will further enhance understanding of the bail process thereby promoting equality of opportunity for children and young persons. It is the view of the Commission that recommendations for the provision of explanations to young persons which take account of their age, maturity and understanding will further enhance equality of opportunity. These policy decisions are discussed further at paras 5.93 to 5.105 and 6.79 to 6.83 of the Bail Report.
48. The Commission takes seriously the concerns of consultees regarding the inappropriate use of custodial remand and the potential failure to meet international children's rights standards. The Commission considers that the application of the adult right to bail, subject to the four ECHR grounds for refusal, in addition to further safeguards for children offer the greatest opportunity to promote equality of opportunity. Such further safeguards will require consideration of the age, maturity, needs and understanding of the young person, the best interests of the child as a primary consideration and the principle that detention should be a last resort and for the shortest appropriate period. In order to address the particular issue of welfare detention the Commission recommends the inclusion in legislation of a prohibition on remand solely for accommodation reasons. The Commission also recommends the development of a range of bail accommodation options for children and young persons. These policy decisions are discussed further at paras 6.2 to 6.23 and 6.65 to 6.78 of the Bail Report.
49. In relation to bail conditions, having considered the views of consultees, the Commission maintains the view expressed in the consultation paper that the power to take a personal recognizance from a child should be abolished in respect of police and court bail. This policy decision is discussed further at paras 4.2 to 4.9 of the Bail Report.
50. The views of consultees have also confirmed for the Commission that the creation of a breach of bail conditions offence may have an adverse impact on children and young persons. Therefore the Commission does not recommend the creation of such an offence. This policy decision is discussed further at paras 3.15 to 3.21 of the Bail Report.
51. The Commission is persuaded of the need for adequate bail support for children and young persons, at the earliest opportunity and recommends the expansion of bail support programmes for children and young persons. This policy decision is discussed further at paras 6.65 to 6.78 of the Bail Report.

52. Having considered all the arguments, the Commission is firmly of the view that no under 18 year olds should be detained in Hydebank young offenders centre on remand and recommends the amendment of legislation providing for such remand. This policy decision is discussed further at paras 6.29 to 6.48 of the Bail Report.

*(b) Victims*

53. Quantitative data<sup>10</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:

*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 expressed the provisional view in the EQIA consultation that this policy approach would not adversely impact on children and young adults.

54. *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 expressed the provisional view in the EQIA consultation that none of these potential policy options would result in differential impact on any of the section 75 groupings. It was argued that 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.

55. One consultee agreed with the Commission that policy options regarding keeping victims informed of bail decisions would not result in differential impact on any of the section 75 groupings and that 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.

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<sup>10</sup> Screening exercise, para 1.11.

56. Having considered the views of consultees, the Commission considers that information regarding bail decisions should be offered to all victims, allowing the victim to decide if they wish to receive information. The Commission does not consider that this policy would have any adverse impact on children and young persons. This policy decision is discussed further at paras 7.26 to 7.46 of the Bail Report.

57. In the view of the Commission none of the other bail proposals would adversely impact on children and young persons. The Commission has not identified any further opportunities to promote equality of opportunity for children and young persons.

### *Religion*

58. Quantitative data gathered for the purposes of the Screening exercise<sup>11</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. The Commission found no evidence, however, of different needs, experiences or priorities for persons in respect of bail and remand on the basis of religion. The Commission expressed the provisional view in the EQIA consultation that none of the bail proposals would adversely impact on persons of different religious belief.

59. One consultee agreed with the provisional view of the Commission that none of the bail proposals would adversely impact on persons of different religious belief. No other views were expressed by consultees on this issue. The responses to the EQIA consultation have confirmed for the Commission the provisional view that none of the bail proposals would adversely impact on persons of different religious belief. Further, the Commission has not identified any opportunities to promote equality of opportunity for persons of different religious belief.

### *Marital status*

60. Quantitative data<sup>12</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 (in terms of differing needs, experiences or priorities) for single persons on the basis of their marital status. It was suggested in the EQIA consultation that more defendants, offenders and prisoners are single because more defendants, offenders and prisoners are young,

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<sup>11</sup> Screening exercise, para 1.11.

<sup>12</sup> Screening exercise, para 1.11.

as discussed above. The Commission expressed the provisional view in the EQIA consultation that none of the bail proposals would adversely impact on persons of different marital status.

61. One consultee agreed with the provisional view of the Commission that none of the bail proposals would adversely impact on persons of different marital status. No other views were expressed by consultees on this issue. The responses to the EQIA consultation have confirmed for the Commission the provisional view that none of the bail proposals would adversely impact on persons of different marital status. Further, the Commission has not identified any opportunities to promote equality of opportunity for persons of different marital status.

### *Disability*

62. Quantitative data gathered for the purposes of the Screening exercise<sup>13</sup> indicated 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.

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

*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 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>14</sup> The Commission expressed the provisional view in the EQIA consultation 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.

64. *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

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<sup>13</sup> Screening exercise, para 1.11.

<sup>14</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.

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 will, it was argued, 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 expressed the provisional view in the EQIA consultation 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 argued that there may be an opportunity to enhance compliance with the ECHR if the proposal to create a statutory duty to provide reasons for bail decisions is recommended. (See also 'Compliance with bail' below.)

65. *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 regarding the expansion of bail support (which is currently available only for some children and young persons) to include adults.
66. 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>15</sup> The Commission expressed the provisional view in the EQIA consultation that the creation of a breach of bail conditions offence may have an adverse impact on persons with mental health and/or learning difficulties. 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 committed to considering 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 was argued that none of the other potential policy options would adversely impact on

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<sup>15</sup> Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (Aug 2007), p 128.

persons with mental health and/or learning difficulties but rather may offer opportunities to promote equality of opportunity for such persons.

67. One consultee agreed with the provisional view of the Commission that the creation of a breach of bail conditions offence may have an adverse impact on persons with mental health and/or learning difficulties. This consultee was also supportive of the provision of bail support services for persons with mental health and/or learning difficulties.
68. The views of consultees have confirmed the view of the Commission that the creation of a breach of bail conditions offence may have an adverse impact on persons with mental health and/or learning difficulties. Therefore the Commission does not recommend the creation of such an offence. This policy decision is discussed further at paras 3.15 to 3.21 of the Bail Report.
69. The Commission is persuaded of the merits of providing bail support to some adults on bail, including persons with mental health and/or learning difficulties, and recommends the development of bail support programmes for adults. This policy decision is discussed further at paras 7.12 to 7.25 of the Bail Report.
70. In the view of the Commission none of the other bail proposals would adversely impact on persons with mental health and/or learning difficulties. The Commission has not identified any opportunities to promote equality of opportunity for persons with mental health and/or learning difficulties.

#### *Racial group*

71. Although quantitative data<sup>16</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.

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<sup>16</sup> Screening exercise, para 1.11.

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

*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 be 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 considered 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 expressed the provisional view in the EQIA consultation 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.

73. *Comprehension and participation in the bail process:* It was suggested that due to language issues some person from 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 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 persons from differing racial groupings. The possible creation of a statutory duty to provide reasons for bail decisions may also increase understanding. The Commission expressed the provisional view in the EQIA consultation 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 considered there to be an opportunity to enhance compliance with the ECHR 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.)

74. *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 also undertook to consider making recommendations to address accommodation issues for other groups if necessary. It was argued that these proposals will not adversely impact on persons from ethnic minorities.

75. *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 may be 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.

76. 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 undertook to consider 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 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 expressed the provisional view in the EQIA consultation 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.

77. One consultee expressed approval for the conclusions of the Commission in relation to the impact of the bail proposals on persons from different racial groups. This consultee was particularly supportive of consideration of the accommodation needs of persons from different racial groups. Another consultee expressed slight concern that consideration was not given to persons from

ethnic and religious minorities as potential victims of hate crime. It was argued that a possible reason for low reporting of hate crime may be fear of retribution, including from alleged perpetrators on bail.

78. As indicated above, the Commission has decided against the creation of a breach of bail conditions offence. Such an offence may, in the view of the Commission, have an adverse impact upon persons from ethnic minorities. This policy decision is discussed further at paras 3.15 to 3.21 of the Bail Report.

79. The Commission is persuaded of the merits of providing bail support to some adults on bail, including where necessary persons from ethnic minorities, and recommends the development of bail support programmes for adults. It is recommended that such support may address accommodation issues. This policy decision is discussed further at paras 7.12 to 7.25 of the Bail Report.

80. In the view of the Commission none of the other bail proposals would adversely impact on persons from ethnic minorities. The Commission has not identified any further opportunities to promote equality of opportunity for persons from ethnic minorities.

#### *Dependants*

81. Quantitative data gathered for the purposes of the Screening exercise<sup>17</sup> indicated 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. 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 considered 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. The Commission expressed the provisional view in the EQIA consultation that 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.

82. There was support among consultees for the inclusion in guidance on the imposition of bail conditions of a requirement to ensure that bail conditions do not, as far as practicable, interfere

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<sup>17</sup> Screening exercise, para 1.11.

with other commitments including care/dependant responsibilities. As indicated above, the Commission considers that bail legislation should include guidance on the imposition of bail conditions on accused persons, including a requirement, where relevant, to consider the accused person's family or dependant responsibilities. This policy decision is discussed further at paras 5.84 to 5.87 of the Bail Report.

83. In the view of the Commission none of the other bail proposals would adversely impact on persons with dependants. The Commission has not identified any further opportunities to promote equality of opportunity for persons with dependants.

#### *Sexual orientation*

84. From the limited data available,<sup>18</sup> the Commission expressed the provisional view in the EQIA consultation that the proposals under consideration would not adversely impact on persons on the basis of their sexual orientation. One consultee agreed with this conclusion and no other views were expressed by consultees on this issue. The responses to the EQIA consultation have confirmed for the Commission the provisional view that none of the bail proposals would adversely impact on persons on the basis of their sexual orientation. Further, the Commission has not identified any opportunities to promote equality of opportunity for persons on the basis of their sexual orientation.

#### *Political opinion*

85. From the limited data available,<sup>19</sup> the Commission expressed the provisional view in the EQIA consultation that the proposals under consideration would not adversely impact on persons on the basis of their political opinion. One consultee agreed with the Commission and no other views were expressed. The responses to the EQIA consultation have confirmed for the Commission the provisional view that none of the bail proposals would adversely impact on persons on the basis of their political opinion. Further, the Commission has not identified any opportunities to promote equality of opportunity for persons on the basis of their political opinion.

### **MONITORING**

86. Although the Commission has responsibility for devising this policy the decision to implement any recommendations lies with the responsible NI Department. Where a Department has implemented a recommendation, the duty to monitor the implemented policy/legislation for adverse impact on the promotion of equality of opportunity will lie with that Department.

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<sup>18</sup> Screening exercise, para 1.11.

<sup>19</sup> Screening exercise, para 1.11.