

Written submission to the Assembly Justice
Committee on the Justice Bill 2014

September 2014

The NSPCC welcome the opportunity to present written evidence on the content of the Justice Bill 2014 and proposed Ministers amendments to the Committee; and acknowledge that the safeguarding and protection of children and young people must be a paramount component in the operation of the justice system.

NSPCC is the lead child protection voluntary organisation in Northern Ireland delivering a range of pioneering evidence-based therapeutic and protection services directly to children and families. We have statutory child protection powers by virtue of the Children (NI) Order 1995; we are also a core member of the Safeguarding Board for Northern Ireland (SBNI) and are a member of the Strategic Management Board of Public Protection Arrangements Northern Ireland (PPANI) as provided for by article 49 and 50 of the Criminal Justice (NI) Order 2008.

NSPCC has a range of services and functions that have significant interface with the justice system, our Young Witness Service continue to work closely with the Department of Justice to improve young victim and witness experiences in the criminal justice system and our services work extensively with victims of abuse in a range of setting. From a policy perspective, we have worked considerably in the development of vetting, barring and disclosure arrangements in Westminster and the NI Assembly; provided evidence to the Protection of Freedoms Bill Select Committee as well as contributing to Sunita Mason's two consultations on criminal records and disclosure arrangements.

In our response to the Committee we have provided commentary on a number of specific provisions and where relevant made a number of suggestions.

Part V CRIMINAL RECORDS

Clause 36 amends The Police Act 1997 so that the current practice of sending both a certificate to a Registered Body (RB) and to the applicant ceases, this is in line with practice in England and Wales. Instead one certificate is issued to the applicant subject to a number of caveats as set out in Clause 120AC around informing the person that the certificate has been issued; and/or

where it is at the enhanced level that it has been issued and contains no relevant matter recorded in central record or suitability information i.e. the person is barred from work with children or vulnerable adults.

NSPCC understand the reasoning for the introduction of one certificate, however there are a number of practice outworking of this which we believe have been particularly problematic in England, not least around having to chase certificates for employees and registered bodies; and the additional administration required by many voluntary associations which we fear could encourage employers to take shortcuts in employment decisions.

In essence, it is very important for employers to have physical sight of an AccessNI certificate or to be electronically advised that there is no conviction data recorded to inform employment decisions in the context of a job, not just satisfy themselves that an individual is not barred. Employment decisions need to be based on range of considerations including criminal record information that falls short of barring and many convictions may be material for particular roles.

REGISTERED PERSONS: COPIES OF CERTIFICATES IN CERTAIN CIRCUMSTANCES

We have no difficulty with the new clause 120AD as drafted but offer some commentary on the concept of portability which we have supported in the Protection of Freedoms Act 2012.

While the operation of a continuous updated service has attractions in practice it has been operationally more difficult. We have supported portability of certificates as a concept and for a small number of people who work across a range of roles and organisations. For most roles in the voluntary sector we have suggested that it is easier for employers to seek a period new certificate on a three yearly basis.

We have also cautioned about the over reliance on what is in a certificate in that there may be a considerable period of time for material to be updated on CRO. The Home office Noticeable Occupations Scheme (NOS) which is in PSNI force orders provides a further safeguard to more immediate situations when an employer will be advised of allegations by the police in certain circumstances. **The Committee may find it helpful to look at the interface between NOS and continuous updating scheme in particular how long it will be before information on individual**

around i] relevant non conviction data and ii] conviction information would appear on a certificate.

Our advice to employers is always to have sight of the original certificate to satisfy themselves of any criminal record content or other relevant commentary. Individual employers and roles have different thresholds for what is acceptable and where an individual is relying on updating this should be standard good practice. **It would be useful if the Committee would endorse this as part of their debate on this clause.**

We suggest that a further sub section be introduced in the Clause requiring the Department to issue statutory guidance on this process and to promote good employment practice in relation to certificates.

MINIMUM AGE FOR CERTIFICATES

We are supportive of 16 being the threshold for eligibility for checks, bar situations where a check is needed for a household in situations such as fostering, adoption and child-minding where children over 10 will be subject to a check at the enhanced level. We see this is proportionate and reasonable.

ADDITIONAL GROUNDS FOR REFUSING AND APPLICIAION TO BE REGISTERED

There are important responsibilities on those Registered Bodies and Umbrella Bodies. We are supportive of this clause for breaches of the Departmental Code of Practice.

SHARING VICTIM AND WITNESS INFORMATION

We welcome this proposal as it will help agree the provision of timely victim information and allow our Young Witness Scheme to deliver a more responsive service to victims and witnesses. As it is we have had significant difficulty because of the Data Protection Act in obtaining information from statutory agencies in particular:

- The Investigating officer's name;
- Actual charge;
- Level of court;
- Whether victim and witness;
- Updates on case progression; and
- Appeals.

At the time of our submission we have not seen the detail of the proposed clause but suggest that **it would be helpful for us to agree the information that is needed with the Department of Justice and to collectively develop a template for this.**

PUBLICATION OF A CODE OF PRACTICE

We are happy with this proposal as it will ensure a consistent and open approach to disclosure decisions by the police. **We would however wish that the Department consult on the provisions in such a code.**

EXCHANGE OF INFORMATION BETWEEN ACCESS NI AND THE DISCLOSURE AND BARRING SERVICE (DBS)

It is very important that the DBS and AccessNI are able to share information and intelligence. The DBS carries out a barring function for Northern Ireland and there is an interface in the legislation between barring, disclosure and unsuitable people seeking work. For example, certain autobars on the foot of a criminal conviction will only commence if an individual seeks to work in regulated activity. Conversely in considering barring an unsuitable person it is material to know if that person has ever worked in regulated activity and been subject to an Access NI check. This Clause ensures NI has parity with barring processes that apply in England and Wales and is probably also material for those from this jurisdiction who seek work in E&W. It is very important that UK legislation on vetting and barring while in separate provisions provides consistency across the UK in operation.

REVIEW OF CRIMINAL RECORD CERTIFICATES

We are content that a scheme is established to deal with disputes around criminal record information that is not filtered. Filtering of convictions for the purposes of disclosure is a finely balanced issue and we will look forward to further discussion with the Department on the guidance. It is important to recognise as a safeguard that Chief Officers in the Police should always have discretion to disclosure a conviction however minor under Part V of the Police Act 1997 in the context of other relevant information.

Colin Reid

Policy and Public Affairs Manager NSPCC Northern Ireland

creid@nspcc.org.uk