



**A consultation on proposals to update
and reform the AccessNI List of
Specified Offences:
Consultation Summary Report**

**Department of Justice
December 2023**



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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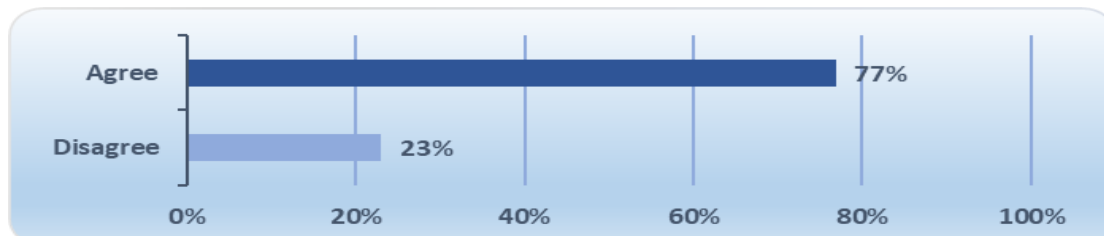
1 Introduction

- 1.1 On 3 July 2023 the Department of Justice launched a 12-week public consultation on proposals that were emerging from a review of the List of Specified Offences [the List]. This List is legislated for in section 113A(6D) of the Police Act 1997 and forms a key part of the AccessNI Filtering Scheme, which is essentially the removal of old and minor convictions and cautions from AccessNI Standard and Enhanced checks before the disclosure certificate issues.
- 1.2 The offences included on the List are considered sufficiently serious and/ or relevant from a safeguarding perspective that they should not be filtered from AccessNI checks and should always be disclosed.
- 1.3 The review noted that the List has only changed marginally since 2014 and, as such, sought to bring forward proposals to:-
 - a) update the content of the List to reflect new (and appropriate) offences that have been introduced in the intervening period;
 - b) remove offences no longer considered appropriate for inclusion on the List; and
 - c) review the List to reflect learning and operational application over the past number of years.
- 1.4 The consultation incorporated 8 questions seeking views on the Department's proposals arising from the review. The consultation closed on 25 September, by which time 13 responses had been received. Most responses were received via the online survey tool, with 2 responses received on paper. The Department is grateful for the valuable contribution made and would like to thank all the individuals and organisations who took the time to respond.
- 1.5 Overall, the responses are broadly supportive of the Department's proposals. This document outlines the nature of responses received and sets out the next steps in taking each proposal forward. The analysis does not aim to capture every point raised by respondents but presents recurring themes and issues noted in the submitted responses.

2 Analysis of Responses to the Consultation Questions

Question 1:

Do you agree that the List of Specified Offences as published on the NIDirect website should be renamed 'List of Non-filterable Offences'?



- 2.1 The majority of respondents (77%) were in favour of the proposal to amend the name of the List of Specified Offences to the List of Non-filterable Offences.
- 2.2 Those agreeing with the proposed name change commented as follows:-

“... this is a very practical step as the previous name is confusing. This new name is much clearer and makes the list more accessible to people who do not have a legal or criminal record check background, e.g. HR staff and safeguarding leads in schools, charities, faith organisations, community groups, people who may have a criminal record and want to know if they are eligible for filtering etc.”

“The term 'specified offence' is used in the Criminal Justice (NI) Order 2008 and refers to offences listed within Schedule 2 of that Order. While all of the offences contained within Schedule 2 of the Order are all defined as 'relevant matters' under section 113A (6D) of the Police Act 1997, section 113A also includes a large number of other offences that are not listed in Schedule 2. Using the term 'specified offence' in reference to two different lists of offences may lead to confusion for service users who are not familiar with the filtering process. It is my view that renaming the list will avoid potential confusion for service users.”

“The renaming of the List of Specified Offences to the 'List of Non-Filterable Offences' seems appropriate for the reasons outlined in the consultation paper, namely that it prevents conflation with 'specified offences' identified in other legislative instruments and makes the purpose of the list more readily apparent.”

“... are content with this change, as it simplifies the system of AccessNI checks, clarifying that there is a list of less serious offences which will be filtered after a certain

period, and a separate list of the serious offences that are non-filterable and will always appear on AccessNI checks.”

2.3 Those not in favour of the name change along the lines proposed commented that:-

“A member of the public won't understand that 'list of non-filterable offences' either. A suggested wording 'list of disclosable offences'. This makes it clearer that these offences will always remain on a record.”

“... the terminology “non-filterable” could be misleading, as in our experience there are occasions when specified offences have been filtered after making effective representation to AccessNI.”

“... we know of instances whereby people with specified offences have been able to have their offence filtered. Therefore, the term specified seems clearer and fairer than non-filterable.”

Departmental Response

2.4 The Department welcomes that the majority of respondents were supportive of this proposed name change, and notes that others shared concerns that the change would not have the desired effect, ie to reduce confusion and re-label with the name of the List to one that more clearly describes its purpose. The Department notes the suggestion to rename the List as the *List of Disclosable offences*. However, the Department considers that all offences are disclosable at least until the point of the ‘filterable’ date (for example 11 years after the date of conviction for adults or 5½ after date of conviction for u18s). The Department therefore concludes that this alternative suggested name cannot be taken forward.

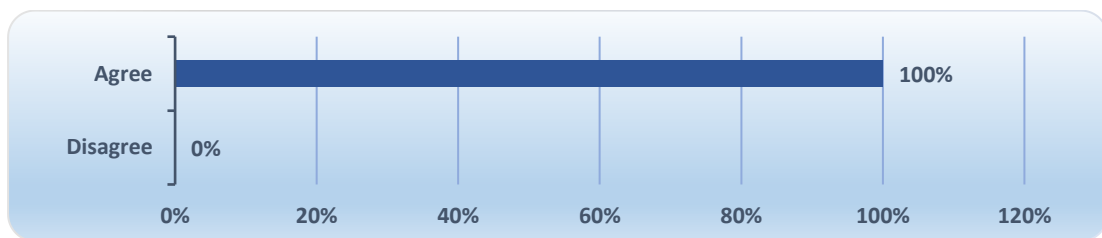
2.5 The Department also notes comments that favour the continued use of the term List of Specified Offences, arguing that it is now in common use. However, and as indicated in the Consultation Paper, the term Specified Offences can be confusing as it is in frequent use for other purposes in other legislative instruments, including Schedule 2 of the Criminal Justice (NI) Order 2008 and Schedule 18 of the Sentencing Act 2020. The Department continues to hold the view that it is appropriate to change the name to reduce the potential for confusion.

2.6 The Department also acknowledges that non-filterable offences can be removed from Standard and Enhanced checks should the Independent Reviewer of Criminal Record Certificates consider it appropriate and proportionate to do so, upon receipt of an appeal from an applicant.

- 2.7 Having reflected on the responses to this proposal, the Department’s position remains that amending the name to the **List of non-filterable offences** improves this aspect of the filtering scheme and better reflects the purpose for which the List was designed.
- 2.8 In progressing and communicating this change, the Department will ensure that published literature will provide further clarity on the filtering scheme including, in particular, the manner in which non-filterable offences are treated and how, despite the new name of the List, convictions for offences on the List can be removed from Standard or Enhanced checks, subject to consideration (on appeal) to the Independent Reviewer.

Question 2 :

Do you agree that s113A(6D) of the Police Act 1997 should be amended in its entirety to read “The offences referred to in paragraphs (a)(i) and (iv) and (c) of the definition of “relevant matter” in subsection (6), as it has effect in Northern Ireland, are the offences on the list of non-filterable offences as maintained and published by the Department of Justice”?



2.9 The Department welcomes that all respondents to the consultation support this proposal which seeks to simplify the manner in which the List is managed and maintained.

2.10 On the whole, those supporting this proposal have commented:-

“... this amendment seems appropriate for the reasons outlined in the consultation paper, namely that the amendment will enhance clarity and facilitate a more streamlined and accessible published list of offences that has the additional benefit of allowing more straightforward and timely administration and maintenance of the List.”

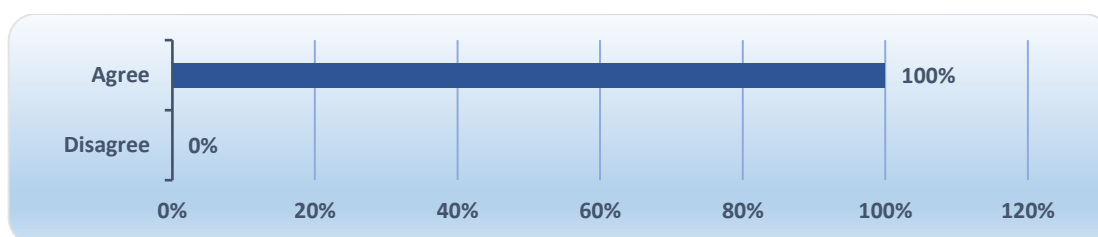
2.11 Some respondents repeated concerns noted in Q1 regarding the proposed new name for the List. There were no comments suggesting they were not supportive of the proposed legislative change to section 113A(6D) of the Police Act 1997.

Departmental Response

- 2.12 The Department will seek the views of an incoming Justice Minister on this proposed legislative change. If the change is progressed it will be via the affirmative resolution route, requiring the matter to be debated in the NI Assembly with a yes / no vote on the passing of the Order.

Question 3 :

Do you agree that the wording of Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 should be amended to read “In paragraph 2(a) “listed offence” means an offence on the list of non-filterable offences as maintained and published by the Department of Justice in accordance with s113A(6D) of the Police Act 1997”.



- 2.13 As would have been expected, the responses to this question in the consultation are similar to those for Q2 as the proposed legislative changes complement each other in addressing the specific issues identified in the Consultation paper. As such, all respondents support the proposed amendment to Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 in order to simplify the manner in which the List of Non-filterable offences can be managed and maintained.

- 2.14 In general terms, respondents comments are much along the lines of the following:-

“Again, this new wording is much clearer and easier for a wider cohort of people to understand.”

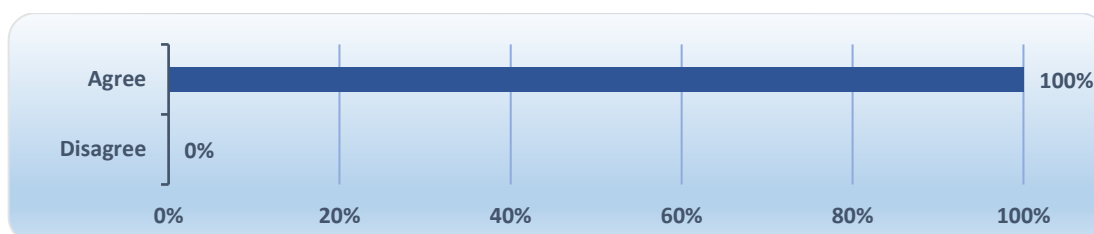
“... this amendment seems appropriate for the reasons outlined in the consultation paper, namely that the amendment will enhance clarity and facilitate a more streamlined and accessible published list of offences that has the additional benefit of allowing more straightforward and timely administration and maintenance of the List.”

Departmental Response

- 2.15 The Department will seek the views of an incoming Justice Minister on this proposed legislative change. If the change is progressed it will be via the affirmative resolution route, requiring the matter to be debated in the NI Assembly with a yes / no vote on the passing of the Order.

Question 4(i):

Do you agree that a new committee should be established (The Non-filterable List Committee) to consider future amendments to the List of non-filterable offences?"



- 2.16 All respondents to the consultation agreed with the Department's proposal to create a new Non-Filterable List Committee to consider future amendments to the List of Non-filterable offences.

- 2.17 Comments received from respondents in respect of this proposal included:-

"...this is an excellent idea. Having a committee with this specific focus means that when the Assembly is not sitting (as has happened a lot over the last few years), the list of Non-filterable offences can be kept up to date and therefore fit for purpose."

"A committee on which all relevant safeguarding agencies are represented, would ensure that any new criminal offences created in NI are considered fully and added to the list in a timely manner. It will also remove the risk that law makers overlook the requirement to add new offences to section 113A(6D) at the time new offences are created."

"Yes, the establishment of a Non-filterable List Committee to consider future amendments to the List of non-filterable offences seems especially appropriate. Biannual meetings of the Committee will ensure that any new offences are added to

the List in a timely fashion and that the list is kept consistently under review. Considering that, until recently, the List had not been reviewed since 2014, this recommendation is welcomed.”

“... welcome the suggestion to establish a Non-Filterable List Committee, to monitor legislation relevant to the list, ensuring that it can be adjusted as needed instead of being left for long periods before being reviewed. This will ensure that The List and AccessNI checks are kept up-to-date and are therefore, as effective as possible to protect vulnerable people.”

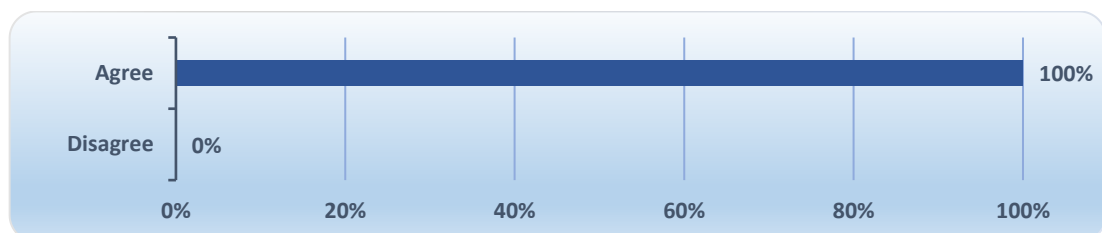
“... A committee could quickly rectify these oversights without the need for a legislative fix which can be a lengthy process.”

Departmental Response

- 2.18 The Department welcomes the unanimous support from respondents to this proposal. The progression of this proposal is subject to the views of an incoming Justice Minister. The Terms of Reference for the Committee will be established and agreed with the Committee members.

Question 4(ii):

Do you agree that a new Non-filterable List Committee should comprise Independent Reviewer of Criminal Record Certificates and representatives from Child Protection Branch (DoH), Protective Disclosure Unit (PSNI) and AccessNI?”.



- 2.19 Similarly to Q4(i), all respondents to the consultation agreed that the proposed Non-filterable List Committee should comprise The Independent Reviewer of Criminal Record Certificates and representatives from Child Protection Branch (DoH), Protective Disclosure Unit (PSNI) and AccessNI.
- 2.20 Comments received from respondents in respect of this proposal included:-

“I wonder is there a need for there to be at least a couple of people from a non-statutory agency involved for an outside opinion.”

“The committee should comprise members of all relevant agencies to ensure that the widest knowledge and experience base is brought to the committee.”

“... agree with the proposed committee membership. Should DBS also be considered as part of this committee? As an experienced organisation providing advice to people in relation to disclosure, we would be well positioned to provide relevant input if this was helpful from time to time as appropriate.”

“Yes, it may also be useful to include representation or input from other government Departments/Bodies who have significant involvement with regulated activity such as Education.”

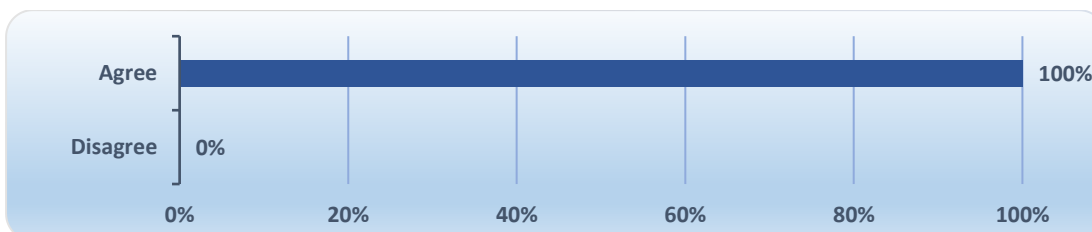
“It is also welcome that representatives from the PSNI are included as well as AccessNI, the Independent Reviewer of Criminal Record Certificates, and the Department of Health Child Protection Unit.”

Departmental Response

- 2.21 The Department welcomes the wide support both for the establishment of this new Committee and for the proposed representation on the Committee. As indicated at Q4(i) progression of this proposal is subject to the views of an incoming Justice Minister. The Department would further envisage that the secretariat function for this Committee is undertaken by AccessNI.
- 2.22 The Department notes the comments suggesting wider representation on the Committee and will undertake to bring these proposals to the Committee (once it is functioning) to consider extending membership to a wider cohort. It is envisaged that the Committee could invite individuals to attend meetings in circumstances where their specific input might aid decision making, for example Departmental officials involved in creation of new laws and offences.

Question 5:

Do you agree that the offences set out in Annex A of the consultation paper should be added to the List of Non-filterable offences?”



2.23 All respondents agreed that the offences noted in Annex A of the consultation paper should be added to the List. These are offences that have been created since 2014 and for which officials from relevant NI Departments have submitted for consideration for inclusion on the List.

2.24 Comments received from respondents in respect of this proposal included:-

“We broadly agree, however the amendments to the Abuse of Position of Trust legislation Justice (Sexual Offences and Trafficking Victims) Bill 2022, has been left off the offences set out in Annex A, we would like to see this amendment included please.”

“Yes we agree with the offences set out in Annex A being added to the list of specified offences.”

“Yes, the offences set out in Annex A are appropriate for inclusion in the List of Non-Filterable Offences as they are suitably serious offences relating to violence, sexual violence, terrorism, abuse and other forms of criminality. However, I would query as to why other offences don’t appear to be included in this list. Namely, the offences created under the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 which concern up-skirting, down-blousing and cyber-flashing etc. and The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021. These offences are particularly relevant to safeguarding and child protection. It may reasonably be assumed the exclusion of these offences from the list at Annex A is a result of the offences having not yet commenced. However, the inclusion of these offences in the List of Non-Filterable Offences should be actioned in a timely fashion.”

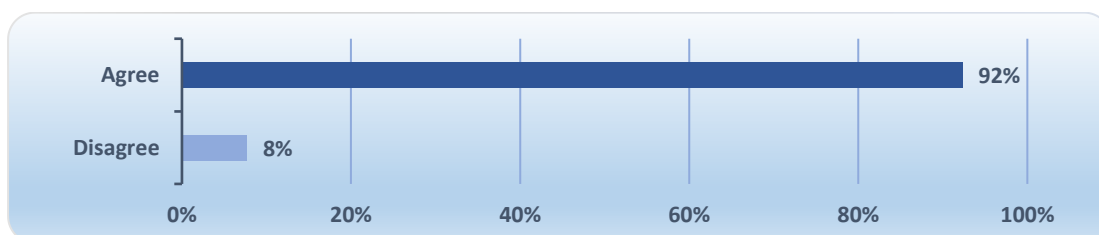
“In relation to Proposal number five, it is of note that none of the new domestic abuse and sexual offences legislated for by the Assembly in the last mandate are included, such as coercive control, up skirting, downblousing and stalking, some clarification is needed around the exclusion of these or whether they are already covered in some way.”

Departmental Response

- 2.25 The Department is grateful for the supportive responses to this proposal and will submit the offences noted in Annex A of the Consultation paper to the new Non-filterable List Committee at the earliest opportunity for consideration.
- 2.26 The Department notes comments referencing the absence from the List of recently created offences including ‘up-skirting’ and ‘down-blousing’. The Department would comment that these offences were commenced in the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 on 27 November 2023. As these offences have been added to Schedule 2 of the Criminal Justice (NI) Order 2008, they will be automatically added to the List of Specified Offences, by virtue of section 113A(6D)(ccc) of the Police Act 1997. This means that the offences are now included on the revised published List of Specified Offences and can be seen on the List under Article 71 of the Sexual Offences (NI) Order 2008.

Question 6:

Do you agree with the Department’s proposal to amalgamate multiple lines of entries on the List (that relate to the same article / section of an Act or Order) into a single entry on the list, using generic offence descriptors, thereby reducing the size and complexity of the List?”.



- 2.27 A significant majority of respondents (92%) were in favour of amalgamating multiple lines of entry on the List (that relate to the same article / section of a legislative instrument) into a single entry on the List, using generic offence descriptors.
- 2.28 Respondents recognised the benefits in making the List shorter and easier to use and interpret and that the proposed approach would bring the NI List closer to the approaches in other jurisdictions in the UK. Those in support of this approach commented:-

“This seems very sensible and probably should have been done years ago.”

“Yes, this makes the system more user friendly and brings it in line with DBS and PVG systems in England and Scotland.”

“There are offences which many juveniles commit that should not be on the specified list such as simple possession of drugs which could be a tiny amount of drug which has been pushed onto them and assaulting police which could be simple pushing past a police officer. Young people should have more opportunity to move on with their lives and not have something stupid they did be a life sentence.”

“Yes, this would make the list more user friendly and avoid any ambiguity for service users. For example, the current list specifies a number of prohibited drugs offences, these drug offences are all prosecuted under one offence code depending on the classification of the drug, i.e class A, B or C. By listing a large number of illegal substances by name, might suggest that a drug of a particular name not specifically appearing on the list is not a specified offence. Using the general classification would provide more clarity. “

“The approach of using a single entry would also be consistent with other neighbouring jurisdictions.”

“... the proposed changes would involve consolidation and make it simpler to search and has the potential to cut down on size. The document is a functional document and it’s important that it is user friendly. As with previous reviews whilst amalgamating the multiple lines will consolidate, the offence field may have to be substantially larger to provide descriptor information. A searchable list would be helpful with an explainer page at the beginning of the document.”

“Yes, this is an appropriate measure and will have the added benefit of bringing the Northern Ireland List of Non-Filterable Offences into line with other comparable lists of offences used for vetting purposes in other jurisdictions.”

- 2.29 Those respondents (8%) unsupportive of this proposal did not provide comments to clarify concerns or issues.

Departmental Response

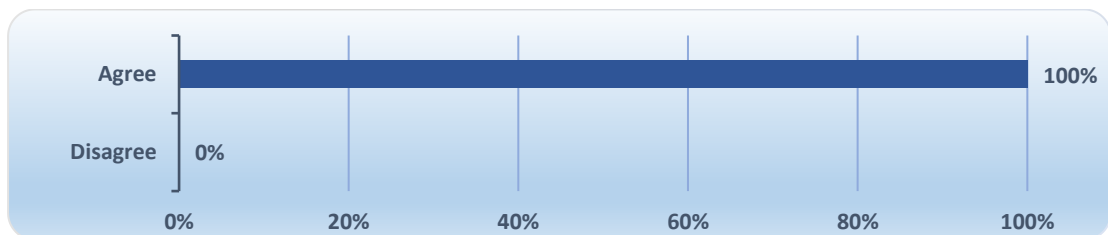
- 2.30 The Department notes that a significant proportion of consultation responses to this question are in support for the change being proposed. As such, the Department will work to amalgamate the lines on the List as identified in Annex B of the Consultation paper. The Department will then present the amalgamated List to the new Non-filterable List Committee for final approval. In the same way, any future offences

(presented for inclusion on the List) will be brought before the Committee for consideration of amalgamation with other offences as appropriate.

- 2.31 The Department also notes respondent queries regarding offences currently on the List (possession of drugs, assaulting police, etc) and undertakes to bring these to the attention of the Non-filterable List Committee for consideration of removal.
- 2.32 The Department recognises that the current published List is presented in pdf format. Whilst this is a searchable format, the Department will consider what other presentation options exist that might improve ease of use of the List and how it might be searched.

Question 7:

Do you agree with the Department’s proposal to include the current legislative provision at s113A(6D)(III) and (mmm) as a list at the bottom of the new List of Non-filterable offences?”



- 2.33 All respondents were fully in support of the proposal to include the wording in s113A(6D)(III) and (mmm) of the Police Act 1997 at the bottom of the new List of Non-filterable offences. Comments received from respondents in respect of this proposal include:-

“Yes, we fully agree with this proposal.”

“Yes, in the descriptor of each offence there could be reference to footnote containing these terms.”

“Yes, this is an appropriate measure and will have the added benefit of bringing the Northern Ireland List of Non-Filterable Offences into line with other comparable lists of offences used for vetting purposes in other jurisdictions. This adapted language also provides a suitable catch-all for comparable offences in other jurisdictions without the

requirement for an overly cumbersome List of Non-Filterable Offences that would prove difficult to administer and maintain.”

“This should sufficiently cover offences which fall under these statements, rather than a lengthy list of individual offences and appears to be a reasonable suggestion.”

Departmental Response

2.34 The Department notes the unanimous support from respondents for this proposal. In developing and publishing the new List of Non Filterable Offences, for consideration by the new Committee, the Department will include the following statements at the bottom of the List:-

- a) Any offence of attempting, or conspiring to commit, any offences listed above.
- b) Any offence of inciting, or aiding, abetting, counselling or procuring the commission of any offence listed above.
- c) Any offence under the law of England and Wales or Scotland, or any country or territory outside the United Kingdom, which corresponds to any offence listed above.

3 Conclusion and next steps

3.1 The Department of Justice would again like to thank all those who took the time to respond to this consultation on the Review of the List of Specified Offences. This is an important aspect of the AccessNI filtering scheme which supports the fair and proportionate disclosure of criminal history information in Northern Ireland.

3.2 The responses received have been extremely helpful in informing the future direction of this review. The next steps in taking forward this Review are subject to the views of an incoming Justice Minister.