



Department of
Justice

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**DRAFT GUIDANCE FOR THE OPERATION OF THE
CRIMINAL RECORDS FILTERING REVIEW MECHANISM**

Consultation Document

18 June 2015

**DRAFT GUIDANCE FOR THE OPERATION OF THE
CRIMINAL RECORDS FILTERING REVIEW MECHANISM**

This consultation document seeks views on the Department of Justice's proposals for statutory guidance on the operation of the criminal records filtering review mechanism (regarding information that has not been filtered from standard and enhanced criminal record certificates issued by AccessNI).

This consultation is available to view in the consultation section of the
Department of Justice website (www.dojni.gov.uk)

Responses should be emailed to:

FilteringReviewMechanism@dojni.x.gsi.gov.uk

or posted to the following address:

POCD Divisional Support Unit
Department of Justice
Room 4.17 Block B
Castle Buildings
Stormont Estate
Belfast
BT4 3SG

Telephone: 028 9052 2643

Textphone: 028 9052 7668

The closing date for this consultation is:

24 September 2015

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PURPOSE OF THE CONSULTATION DOCUMENT

Summary

1. At present AccessNI can, in certain circumstances, filter information off an enhanced or standard criminal record disclosure certificate. The Department of Justice is introducing a mechanism which will enable applicants for such certificates to seek a review (again, in certain circumstances) where a conviction or disposal has not been filtered. The review will be conducted by someone independent of AccessNI and the government. The reviewer will use statutory guidance and this document sets out what will be in that guidance. If you have an interest in this issue then we would welcome your views on the draft.

Detail

2. The Justice Bill makes provision for amendments to the Police Act 1997 (the 1997 Act) to allow for an independent review in relation to information disclosed on standard and enhanced criminal record certificates issued by AccessNI¹ after the filtering process has been applied. The review mechanism will enable an individual, in certain circumstances, to seek a review of his or her case where a conviction or disposal has not been filtered from their standard or enhanced criminal record certificate. Filtering is provided for by section 113A (6) of the 1997 Act.

2. Under the provisions of the Bill, the Department of Justice will be able to appoint an independent reviewer to undertake the review process. Under paragraph 3 of Schedule 8A of the 1997 Act, as amended, the Department may publish guidance to the independent reviewer as to the exercise of his or her functions. In exercising his or her functions, the independent reviewer must have regard to this guidance.

3. The guidance is to be ready for use on commencement of the relevant provisions of the Justice Bill – in other words, once the Bill has completed all of its stages, and received Royal Assent, which is likely to be the end of 2015. In anticipation of this, the Department has prepared draft guidance which provides

¹ (Northern Ireland's criminal history disclosure service)

information to a range of audiences on the detail of how the review mechanism will operate, including information on its scope and the processes involved, as well as the role of the independent reviewer and others involved in the process. An additional step by step information leaflet for applicants will be prepared, in consultation with stakeholders, once the guidance has been finalised.

5. We are now consulting on this draft guidance, which is attached at Appendix A.

THE PROPOSALS

6. The review mechanism represents a significant development in the disclosure arrangements in Northern Ireland and the Department of Justice has been engaging with other government agencies and stakeholders on its operation and implications. The Department recognises that the early stages of the review's operation will present opportunities for learning and intends to ensure that the guidance is kept under review and updated versions will be issued as necessary. The guidance will, of course, be published. For the purposes of this consultation, the Department is interested in your views on any aspect of the guidance. You may find it useful, however, to consider the following questions:

Question 1	Is the guidance clear?
Question 2	Does the guidance help you to understand how the review process will operate?
Question 3	Is the guidance clear about what information is eligible for review?
Question 4	Is there clarity around the factors that will be considered by the independent reviewer when reviewing information?
Question 5	What measures could the Department put in place to help support young people and those with additional needs who wish to seek a review?

Question 6	Would it be helpful if a template were to be provided for the representations referred to at paragraph 5.3 of the guidance?
Question 7	Does the guidance sufficiently explain the roles and responsibilities of the individuals and organisations involved in the review process?
Question 8	Do you have any other comments?

HUMAN RIGHTS

7. The Department believes that the guidance is compatible with the Human Rights Act 1998. In particular, the review mechanism represents a further measure to enhance the safeguards put in place to implement the judgment (on 29 April 2013) of the European Court of Human Rights in respect of *MM v United Kingdom*.²

EQUALITY

8. As a public authority under the terms of section 75 of the Northern Ireland Act 1998, the Department of Justice is required to have due regard to the need to promote equality of opportunity. The legislation also requires public authorities to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact; and whether such an impact is justified. These obligations are designed to ensure that equality and good relations considerations are made central to government policy development.

9. The Department has carried out screening for equality impact and believes that the proposals set out in this consultation paper would be beneficial and would have no discriminatory or negative differential impact on any of the section 75 groups. The Department believes that the implementation of the review mechanism will promote equality of opportunity by giving individuals seeking employment in

² [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114517#{"itemid":\["001-114517"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114517#{)

certain circumstances, the opportunity to have information removed from their standard or enhanced criminal record certificate that may have a disproportionate effect on their employment opportunities. In addition, the review mechanism gives special consideration (through the availability of an automatic referral process) to the disclosure of information about children and young people. A copy of the screening form can be viewed on the Department's website:

www.dojni.gov.uk

Comments on our screening assessment and equality conclusions are welcome.

REGULATORY IMPACT ASSESSMENT

10. The Department has not conducted a Regulatory Impact Assessment as the proposed guidance does not give rise to any associated costs or savings to business, charities, social economy enterprises or the voluntary sector.

THE FREEDOM OF INFORMATION ACT 2000 – confidentiality of consultations

11. The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may also be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances.

Before you submit your response, please read Appendix B on the confidentiality of consultations. It gives guidance on the legal position about any information given by you in response to this consultation.

ALTERNATIVE FORMAT

12. This document can be made available in alternative formats - please contact us on 028 9052 2643 to discuss your requirements. Printed copies can be posted on request.

CONSULTATION

13. Responses should be received by 24 September 2015 at the address below:

**POCD Divisional Support Unit
Department of Justice
Room 4.17 Block B
Castle Buildings
Stormont Estate
Belfast
BT4 3SG**

or by e-mail to:

FilteringReviewMechanism@dojni.x.gsi.gov.uk

If you have any queries in relation to the proposals, please contact:

**Mary Lemon
mary.lemon@dojni.x.gsi.gov.uk
Tel: 028 9052 8254**

If you have any questions concerning the documentation or the consultation process, you should contact the Department's consultation co-ordinator at the following address:

**Peter Grant
Department of Justice
Central Management Unit
Block A, Level 4
Castle Buildings
BELFAST
BT4 3SG**

**Telephone: 028 9076 5138
Textphone: 028 9052 7668**

Alternatively, you may wish to email:

peter.grant@dojni.x.gsi.gov.co.uk

The Freedom of Information Act 2000 – confidentiality of consultations

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Ministry of Justice's Code of Practice on the Freedom of Information Act provides that:
 - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;

 - the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and

 - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk>).

CONSULTEES

This consultation has been made publicly available on the DOJ website. In addition, we have identified a number of key stakeholders who we believe will have a direct interest in the proposals set out in this paper and have invited their comments. The list of key stakeholders is set out below:

MLAs

Northern Ireland MPs

Northern Ireland MEPs

Northern Ireland political parties

Northern Ireland Government Departments

Councils

Health and Social Care Trusts

Northern Ireland Courts and Tribunals Service

Churches

Civil society organisations

Cultural organisations

Equality Commission Northern Ireland

Police Service of Northern Ireland

Police Ombudsman

Northern Ireland Policing Board

Probation Board for Northern Ireland

The Youth Justice Agency

Public Prosecution Service for Northern Ireland

Criminal Justice Inspection Northern Ireland

NIACRO

Northern Ireland Audit Office

Northern Ireland Human Rights Commission

Northern Ireland Commissioner for Children and Young People

The Children's Law Centre

Include Youth

The National Society for the Protection of Children

Women's Aid

Northern Ireland Prison Service

Community groups, including those representing the needs of children and young people

Lord Chief Justice

Attorney General

Law Society

Bar Council

AccessNI Stakeholder Forum members

AccessNI Advisory board members