

## Consultation on Draft Guidance for the operation of the Criminal Records Filtering Review Mechanism

### Summary of responses to consultation

#### General comment on the review mechanism and the draft guidance for its operation

Organisation/ Individual	Comments
<b>Action on Elder Abuse NI</b>	<ul style="list-style-type: none"> <li>• AEA Northern Ireland is of the view that a proportionate and balanced approach is required in the release of disclosure information and that individuals with an offending history should be given the opportunity for rehabilitation and engagement in the workforce through paid or voluntary work. However we are clear that at no time should those opportunities present any risk to public protection in particular to those who are vulnerable or where any risk factors are present which would deem them unable to fully safeguard themselves.</li> <li>• AEA Northern Ireland are supportive of the broad intention and scope of this consultation exercise and with small adjustments believe the guidance document will provide a helpful resource and aide to those involved in the determination of review.</li> </ul>
<b>Autism NI</b>	<ul style="list-style-type: none"> <li>• The process of filtering has been particularly useful for individuals on the autism spectrum. Autism NI has experience of representing a family in this situation and has seen first-hand the stress and anxiety that can impact the family and the filtering scheme was very beneficial and provided much needed guidance and support in this situation. Therefore the additional review procedure would be an appropriate extra resource for advocates and families of individuals with autism who may not fully comprehend the implications and consequences of criminal records for their future.</li> </ul>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• CLC welcomes the creation of the review mechanism and the current consultation being carried out by the DoJ on the statutory guidance that will be employed by the reviewer in exercising their functions, but raises a range of concerns about the review, and about wider issues relating to criminal records disclosure.</li> <li>• CLC has a number of concerns about the filtering arrangements which are currently in operation to deal with the disclosure of criminal records. CLC does not believe that the current system is compliant with children's rights standards, and is in conflict with Recommendation 21 of the Youth Justice Review. One of our main issues of concern is the now routine disclosure of diversionary disposals for at least a period of time and, for specified offences, possibly for life. This is in direct conflict with Recommendation 21 of the Youth Justice Review.</li> <li>• In developing guidance for the operation of a criminal records filtering review mechanism, the Department of</li> </ul>

	Justice (DoJ) must give consideration to international children and human rights standards, in particular the European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998 and the UNCRC.
<b>Fermanagh and Omagh District Council</b>	<ul style="list-style-type: none"> <li>• Council supports the proposal to develop an increasingly proportionate system of filtering and disclosure....and agrees with the Department in that there should be a “filtering out process for old and minor offences”.</li> <li>• The Council also agrees that, in the interests of public safety and protection, certain information on serious offences will always be required to be disclosed.</li> <li>• Council believes that all Criminal Records Filtering should be fair not only to the individual but also to any potential employer.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• We acknowledge that the Independent Review mechanism is an important development in allowing people the opportunity to seek a review in certain circumstances, where a conviction or disposal has not been filtered from their record. We particularly welcome the fact that children and young people will be given special consideration in the review process.</li> <li>• While we understand that this consultation is specifically concerned with the newly established filtering review mechanism, we feel it is important to firstly reiterate our general position on the impact of criminal records on children and young people, within the context of the findings and recommendations of the youth justice review. These concerns are compounded by the fact that children can be criminalised at the age 10.</li> <li>• While this review is welcome and will go some way to improving the situation for children and young people, we still regard the overall operation with regard to criminal records disclosure to be in contravention of children and young people’s rights to reintegrate fully and to avail of rehabilitation opportunities.</li> <li>• However, we will support the young people we work with to engage with the review process where appropriate, and will continue to provide the Department with the necessary support in the development of the mechanism.</li> </ul>
<b>ICO</b>	<ul style="list-style-type: none"> <li>• Following the commencement of the filtering process in 2014 in Northern Ireland, the ICO welcomes this further provision of a review process (and the appointment of an Independent Reviewer) with respect to certain information that may be relevant for removal in certain circumstances from an Access NI certificate. As this will be sensitive personal data as defined within the DPA, it will be especially important to ensure compliance with it.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• We welcome the introduction of an Independent Review mechanism and recognise that it is a significant development in the criminal records regime in Northern Ireland. In particular, we welcome that people with criminal records relating to when they were aged under18 will have their record automatically referred to the Independent Reviewer (IR).</li> <li>• We also welcome several other elements of the mechanism, most notably: the ability for applicants to make representations to the IR; that specified offences and custodial sentences of up to 30 months are eligible for review; that non-conviction disposals can be reviewed immediately; and that more than one conviction will not bar someone from being considered by the IR. We believe these measures will go some way to addressing the lasting</li> </ul>

	<p>impacts of old and minor offences, particularly in relation to accessing employment, education and training.</p> <ul style="list-style-type: none"> <li>• We recommend that this guidance is kept under continuous review to ensure it is fit for purpose and responsive to learnings identified during the implementation of this process. We recommend this continuous review takes account of the experience of applicants and other stakeholders.</li> <li>• The consultation response highlights elements of the guidance where we believe clarification or consideration is needed, including aspects where perhaps the mechanism could be developed.</li> </ul>
<b>NICCY</b>	<ul style="list-style-type: none"> <li>• NICCY has concerns about the current disclosure arrangements and their compliance with international human rights standards. As such, NICCY has been supportive of the commencement of a filtering review mechanism in an attempt to bring the current regime closer to the UK's international obligations following recent case law in both the European and domestic courts.</li> <li>• NICCY remain concerned by the current disclosure regime which subjects children and young people to the continuing threat of disclosure.</li> <li>• NICCY have been concerned by the filtering regime particularly in respect of the disclosure time periods for those who were under 18 at the time of the offence, the information which will always be subject to disclosure, the disclosure of non-conviction information and the volume of offences categorised as "specified." NICCY consider that a regime more akin to Recommendation 21 of the Youth Justice Review would be compliant with international human rights standards.</li> </ul>
<b>NSPCC</b>	<ul style="list-style-type: none"> <li>• The proposed role of the Independent Reviewer (IR) relating to non-filtered entries on an enhanced certificate needs to be set in the context of the filtering provisions themselves. In that regard we are satisfied that provisions exist to treat sexual offences against children as not being suitable for filtering.</li> </ul>
<b>PBNI</b>	<ul style="list-style-type: none"> <li>• PBNI welcomes the proposal as a step towards redressing the balance between public protection and the protection of human rights.</li> <li>• Employment is recognised as an important factor in reducing the likelihood of reoffending. PBNI in its daily practice focuses on the importance of employment in promoting desistance from criminal behaviour and supports a proportionate system of disclosure that prevents unnecessary barriers to employment for individuals with a criminal record.</li> </ul>
<b>Unlock</b>	<ul style="list-style-type: none"> <li>• We welcome the proposal to provide an opportunity for an individual, in certain circumstances, to be able to seek a review of his or her case where a conviction or other disposal has not been filtered from their standard or enhanced criminal record certificate. However, there are operational considerations in implementing such a review mechanism, and a need for the system to go further.</li> <li>• As this is a new process, it is important to keep it under review. It will be important to involve people who have used the review process in this. It will also, over time, become possible to provide statistical information about the types of decisions being made. Transparency in the types of decisions will help to add value to the guidance.</li> </ul>

## DOJ Response

- The Department agrees that it is important to have a system of criminal record disclosure that balances the need for effective public protection and the need to support the effective resettlement of those who have offended. The filtering review mechanism is designed to help achieve a more proportionate disclosure regime that ensures information is disclosed only when it is appropriate and necessary to do so.
- A particular emphasis has been placed on the treatment of children and young people.
- There is clearly a strong view amongst a number of those who responded to the consultation that, whilst the introduction of the review mechanism is a welcome development, they would like to see more far-reaching changes to the criminal record disclosure regime, particularly as it applies to children and young people. These issues of wider reform go beyond the scope of this consultation. The comments made by respondents are recorded as part of this summary and, where appropriate, will be fed into the wider work of the Department.
- The Department recognises that the early stages of the review's operation will present opportunities for learning, and we are committed to liaising with applicants and stakeholders about their experience of the process
- The guidance will be kept under review to ensure it is fit for purpose and responsive to any learning that emerges in the course of the implementation of the review process.
- We will be keen to liaise with applicants and other stakeholders about their experience of the process.

<b>The process - clarity of the guidance</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Action on Elder Abuse NI</b>	<ul style="list-style-type: none"> <li>• While the guidance is helpful it is a dense and heavy document with language that members of the general public may find difficult to navigate. The references to legislation are cumbersome and rely on experience or expertise in legislation for understanding. While appreciating the guidance is aimed at a professional audience the implications of the review mechanism requires a more appropriate document to inform those with criminal history information who may wish to benefit from a review of their information.</li> <li>• Annex B is useful and with tailoring could serve as helpful aide memoire for organisations that are recruiting staff/volunteers and seeking disclosure information. It would inform the organisation on the nature of conviction information they are entitled to request.</li> <li>• Section 5 of the guidance provides a clear overview of the review process and the step by step summary of the process contained in Annexes D and E are particularly helpful. These could potentially be transferred to a flowchart diagram which would be helpful for applicants.</li> <li>• The guidance document provides clarity and detail on the processes undertaken by and relationship between each individual and/or organisation. Further consideration might be given to more detail on each specific individual/organisation and their specific roles and responsibilities in order to be clear and transparent.</li> </ul>
<b>Fermanagh and Omagh District Council</b>	<ul style="list-style-type: none"> <li>• Council would recommend that the timeframe for the application of a review could be reduced to 30 days in order to significantly speed up the entire process.</li> <li>• Currently the Council risk assesses each individual (employee and volunteer) whom may interact with children, or adults, considered to be vulnerable. Any updates to the filtering process should be done so fairly to the individual and the perspective employers, enhancing (rather than eradicating) any current systems/checks.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• As the whole issue of criminal records and disclosure generally is a confusing topic for many young people, the group discussions we held with young people as part of the consultation exercise were taken up largely by trying to explain general information on criminal records, and giving clarity on, for example, what disposals attract a criminal record. The young people had varying degrees of knowledge on the topic.</li> <li>• Young people were aware of the need to share information and with prospective employers, and the importance of doing that, and were knowledgeable about which types of employers would be most interested in this type of information. However, many of the young people were not aware that diversionary disposals would be included on a criminal record, and some of the young people thought that a criminal record would be 'cleared' when they</li> </ul>

	<p>turned 18 years old - although others thought it depended on whether they had committed a further offence.</p> <ul style="list-style-type: none"> <li>• Some of the young people had heard of Access NI and had experience of filling out the forms out.</li> <li>• The young people found it hard to fully comprehend how the review process would operate. Given the complexity of the criminal records process in general and the need for each case to be looked at on an individual basis, it is hardly surprising that the intricacies and the steps involved in the process were difficult for the young people to grasp and comment on.</li> <li>• While the young people were unsure of how to respond to the consultation, they were very sure of the negative impact having a criminal record can have on their future choices and opportunities.</li> </ul>
<b>ICO</b>	<ul style="list-style-type: none"> <li>• The review mechanism should also take into account any information access issues with respect to the process. It may be the case that both subject access requests as well as requests for information under the FOIA are received by the Department (or respective bodies). This should be assessed ahead of implementation to ensure appropriate regimes are in place.</li> <li>• Where relevant, records management controls and access need to be clearly defined.</li> <li>• In addition, any necessary retention and disposal schedules should be agreed. This may need further consideration if the IR also holds the office of Independent Monitor (IM) as highlighted in section 3.3 of the guidance. As the IR/IM will likely be a data controller as defined within the DPA, registration with the ICO seems likely to be a requirement from commencement.</li> <li>• We would remind the Department of the need to ensure that the review process is secure, as any potential breach of this personal data could lead to severe detriment to any potential applicant.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• It is unclear from the process outlined in Annex D how and when an applicant can make representation. We recommend this is clarified to ensure applicants do not miss their opportunity to submit evidence.</li> <li>• It is also unclear when the PSNI can decide what information to disclose; we recommend that this is clarified so that there is no ambiguity about the process for all those involved.</li> <li>• We welcome that an information leaflet will be provided to applicants, outlining the step-by-step process of the review. We recommend this document is easy to read and accessible; it may also be beneficial to include example case studies. This leaflet should make no assumptions about its readers and be cognisant of potential literacy and numeracy issues. It should outline what the review process is; the roles of both the IR and the IM; how to request a review and how to make representations; and where to access support.</li> <li>• NIACRO has already been engaged with Northern Ireland residents who have been invited to make representation to police forces in England under the disclosure scheme there. Our learning from these experiences is that often people who are invited to make representation will require support and guidance from third parties or organisations. We therefore recommend that information regarding what is admissible as representation and guidelines for what information to include should be widely available for both individuals and organisations, and that provision is made for those applicants with literacy and numeracy needs.</li> </ul>

	<ul style="list-style-type: none"> <li>• While it is pertinent that the entire process moves relatively quickly to ensure job offers, course admission offers etc. are not rescinded due to delay and that there are no unnecessary delays, the guidelines for the process must be cognisant that applicants with learning, literacy and/or numeracy needs may require extra support and time to make representation, and this should be facilitated wherever possible.</li> <li>• As representations can only be made in writing, we strongly recommend that voluntary and community organisations are enabled to provide practical support to people who wish to make representation. We support Unlock’s recommendation that funding for voluntary organisations, such as NIACRO, should be available to provide independent advice to those who may be struggling or apprehensive about writing their statement.</li> <li>• We note that representations can be made by a third party in the case of an automatic referral; we recommend this provision is extended to all applicants.</li> <li>• There is a need to raise awareness about this mechanism and how to access it. We therefore recommend that professionals in the legal, statutory and voluntary sectors working with young people and adults in the justice system should be trained in its implementation to ensure it is used appropriately. Receiving information about the mechanism, perhaps even at the point of conviction, could give a person hope and contribute to desistance.</li> <li>• We are concerned about references to information being ‘removed’ from a criminal record. This suggests the decision to remove information is permanent, when in fact it relates only to that disclosure certificate in that employment scenario; it is vital that this is made clear to all applicants.</li> <li>• How a decision is stored and what impact it has on future decisions should also be clarified and explained to stakeholders; we recommend that where information is removed and the IR cannot foresee an instance where it should be disclosed, measures should be in place to allow a more permanent removal.</li> </ul>
<b>NICCY</b>	<ul style="list-style-type: none"> <li>• NICCY feels that the guidance is somewhat confusing as the legislative basis for criminal record disclosures is so disjointed. By necessity the guidance is littered with references to legislation however no legislative provisions are included. The guidance would be much improved if all relevant and fully amended legislation were annexed.</li> <li>• NICCY note with concern that prior to issuing an amended certificate, Access NI will not re-check the individual’s criminal record. This is of particular concern given that paragraph 5.4 allows for 90 days plus 28 calendar days between the date the original certificate is issued to the determination of the Independent Reviewer. NICCY considers this to be a potential gap in safeguarding and would ask for more information as to how such a gap will be addressed.</li> </ul>
<b>PBNI</b>	<ul style="list-style-type: none"> <li>• The guidance is clear. PBNI would add that it would be helpful going forward to have age and literacy appropriate information materials developed to summarise and effectively disseminate key points about the Criminal Records Filtering Review Mechanism.</li> </ul>

<b>QUB</b>	<ul style="list-style-type: none"> <li>• The Guidance has been drafted with almost an exclusive emphasis on Enhanced Disclosure Checks, and, while the University recognises that this constitutes the majority of certificates issued by AccessNI, this emphasis can be at a minimum confusing and may even be misleading. For example, the reference to legislation at 4.3 suggests that disclosures in relation to standard checks will be reviewed in terms of safeguarding or protection of children and vulnerable adults. The University would suggest that the Guidance should be clearer as to the distinction between the purposes of standard and enhanced checks and how they will be reviewed, or that there should be separate sections dealing with each.</li> <li>• The document contains lots of legal language and legal references which are confusing for some readers. The University notes that further information will be prepared for applicants and would suggest that this should be much less technical in nature. There is some concern that applicants may contact counter signatories for advice as to whether they should seek a review and that this would expose signatories to allegations of influencing applicants to share their certificates prior to any such review.</li> <li>• The University would suggest that the advice for applicants and all other individuals is simpler and clearer and ensures that applicants and counter signatories are aware that the counter signatory should not advise on the review process or have access to the certificate before any potential review is completed.</li> <li>• It is not clear what will happen when/if the applicant requests subsequent checks. Is the review relevant to that one specific application or will future applications/checks be influenced by the review?</li> <li>• The University makes a number of drafting suggestions to clarify the guidance.</li> </ul>
<b>South Eastern Health and Social Care Trust</b>	<ul style="list-style-type: none"> <li>• The guidance is clear and the review process, roles and responsibilities are clearly outlined.</li> </ul>

<b>Unlock</b>	<ul style="list-style-type: none"> <li>• It is important (as acknowledged in the consultation) to produce user-friendly guidance. This should mean producing information in an 'easy-read' format, as well as using graphics to help to illustrate the process.</li> <li>• The consultation recognises how the guidance may change over time. Consideration should be given to impact that this may have on individuals who may make important life decisions based on the guidance that is issued.</li> <li>• It is important to continue to emphasise the fact that 'removed' in this context will mean that the information remains on police records (and so explain how this might impact on individuals).</li> <li>• You should consider the use of case studies.</li> <li>• It was unclear whether you could apply for a review to consider the removal of convictions that may be 'spent' even if the applicant still has unspent convictions which would remain subject to disclosure.</li> <li>• It is important to ensure that there is good awareness of the review process. We believe it is important there is information available online through the Access NI website. Also, for any certificates issued with information disclosed, information should be provided alongside which explains the ability to apply for a review.</li> <li>• It is unclear from the guidance, however we understand that each time a person applies for a new certificate, they would have to go through the review process each time. The review process should enable the Independent Reviewer to make a decision at the point of first review as to whether the removal can apply to all types of future disclosure (if the merits of the case are such) or whether, in more difficult cases, whether the decision to remove is specific to that particular application. That would enable more obvious cases for removal to provide the individual concerned with certainty about the future, as well as helping to reduce the level of bureaucracy in the system.</li> </ul>
<b>Volunteer Now</b>	<ul style="list-style-type: none"> <li>• Guidance is clear and non-legalistic, setting out who the guidance is relevant to and why.</li> <li>• The inclusion of the legislative basis gives a framework and better understanding of the need for the review mechanism.</li> <li>• Eligibility is clear, particularly in relation to young people, and it is useful to have the two fundamental principles stated at the beginning of the section on eligibility.</li> <li>• Roles and responsibilities are explained clearly, as is the role of the Independent Reviewer.</li> </ul>

## DOJ Response

- The Department recognises that this guidance endeavours to capture a significant amount of sometimes complex information, as well as the detail of the processes involved in delivering an effective review mechanism.
- We believe that it is important that the guidance sets out fully the legislative and wider context of the review mechanism.
- Respondents have, helpfully, highlighted a number of other areas where the document could be clearer, and made suggestions about how this could be achieved. We have taken a good deal of this on board in amending the guidance.
- We are also committed to developing additional appropriately tailored materials designed to meet the needs of a range of audiences and users, including children and young people. We welcome the assistance that has been offered by a number of respondents to do so. We will undertake this work prior to commencement of the review mechanism.
- Materials will include a step by step guide to the review process for applicants, including how and when representations can be made to the Independent Reviewer. The guidance has been amended to clarify that an applicant can make representations through a third party in all circumstances, not just in the case of an automatic referral.
- We will also provide guidance on the wider criminal record disclosure regime, including clear information in respect of what attracts a criminal record, and what can and cannot be disclosed in criminal record certificates.
- On implementation we will keep all documents under review, and will liaise with stakeholders and users to ensure their needs are being met.
- With regard to the proposed timelines, we would anticipate that applicants who wish to seek a review are likely to do so as soon as possible after they receive their certificate. This should result in cases being cleared relatively quickly. However, the 90 day period reflects the Department's desire to allow sufficient time for those individuals who may need longer to come to a decision on whether or not they wish to seek a review.
- Some respondents suggested that there may be a need for relevant organisations to provide practical support to applicants. It is intended that the review mechanism should be kept as simple as possible - it is not an adversarial process, and the Independent Reviewer will be able to access information from a range of sources. However, any information that is provided for applicants can

include sign-posting to those organisations in a position to offer advice and guidance on this issue. We will also work in partnership with relevant organisations to promote awareness of the review mechanism, and its benefits. There is, however, no additional funding available for this work.

- AccessNI will re-check the criminal record before re-issuing the certificate if more than 14 days have passed since the initial search.
- The revised guidance document makes it clear that any subsequent application for a criminal record certificate would be treated afresh, and any information eligible for disclosure would be subject to a new review process. The Independent Reviewer would not be able to make a decision at the point of first review as to whether the removal of information could apply to all types of future disclosure as each application may be for a different position. However, on a case by case basis, AccessNI will be able to inform the Independent Reviewer whether or not he has previously removed information from an individual's certificate.
- The Department recognises the importance of looking after data in an appropriate way, and of ensuring that personal and sensitive data is kept secure. Both the Department and the Independent Reviewer are subject to the Data Protection Act and the Freedom of Information Act, and will fully comply with these in respect of the review mechanism.

<b>The Independent Reviewer</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• We welcome the commitment to independent review. CLC considers it crucial that in order to ensure that the review process is effective, avoids delay and is in compliance with Article 6 of the ECHR, the right to a fair trial, the review mechanism must be totally independent.</li> <li>• In that regard, CLC is concerned that the DoJ is proposing that it will provide administrative assistance to the independent reviewer in carrying out his/her role. We believe that this compromises the integrity of the "independence" of the review and could render it in breach of Article 6 ECHR.</li> <li>• We believe that it is vital, in order to ensure Article 6 ECHR compliance and to ensure public confidence in the independence of the process and in the role of the independent reviewer, that the independent review mechanism is entirely separate of Government and is perceived to be so.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• We note that there has been some discussion about the intention to merge the roles of the Independent Reviewer and Independent Monitor. We are concerned that this could result in some confusion regarding roles and responsibilities.</li> <li>• Given the context of the political conflict here and in particular how that impacts on patterns of youth offending, it is vital that the Independent Monitor is familiar with the Northern Ireland context.</li> <li>• Young people were confused about the role of the Independent Reviewer and were unclear about how the review process would benefit them. It would be beneficial to provide young people with more information about the role of the Independent Reviewer, what type of person will do the job and on what criteria they will be selected to fulfil the role.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• We strongly believe that the IR should have a sound knowledge of the Northern Ireland context, given the profile of offending behaviour can be quite unique in comparison to other parts of the UK, particularly in relation to youth offending.</li> <li>• We question whether it is appropriate for the IR to be the same person as the Independent Monitor (IM). We believe this could lead to some confusion between responsibilities and lines of authority, and there may be benefits to these positions being independent of each other.</li> </ul>
<b>NSPCC</b>	<ul style="list-style-type: none"> <li>• In terms of process the guidance puts a lot of responsibility on the skills and knowledge of the IR. It may be helpful to add a bullet to the list of considerations at 5.5 such as: <i>the Reviewer may seek advice, if necessary, from an appropriately qualified safeguarding expert to help inform their decision.</i></li> </ul>
<b>Unlock</b>	<ul style="list-style-type: none"> <li>• We believe that the roles of Independent Monitor and Independent Reviewer should be clearly separate and undertaken by different individuals.</li> </ul>

## DOJ Response

- The review process will be independent.
- AccessNI will provide administrative assistance only – processing applications, collating and forwarding information about a case to the reviewer, and seeking any additional information required by him.
- This will significantly reduce the amount of time required to turn around an application for review, as AccessNI already have systems in place to provide the relevant information efficiently and effectively. It will also reduce costs.
- All decisions about whether or not information should be disclosed will rest with the Independent Reviewer.
- In relation to the roles of Independent Monitor and Independent Reviewer being undertaken by the same person, we believe that this will help to streamline the process and make it quicker for the applicant to get a decision on their case. It will also help to ensure a consistency of approach in relation to disclosure.

Scope/eligibility	
Organisation/ Individual	Comments
<b>Action on Elder Abuse NI</b>	<ul style="list-style-type: none"> <li>The guidance clearly sets out the eligibility for the operation of the review mechanism in section 4.2 with the rationale that these offences will always appear on basic disclosure certificates and therefore should be carried through for inclusion in standard and enhanced. AEA Northern Ireland would support the view that such offences would not be appropriate to be included in the review of information for potential removal.</li> </ul>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>CLC welcomes the proposal that the review process will allow for the review of all spent offences, including 'specified' offences, which cannot currently be removed under the filtering process.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>Include Youth are concerned by the large number of offences which are deemed as '<u>specified offences</u>'. They say that this is an extensive list and includes many offences in respect of which young people are commonly charged.</li> <li>Include Youth believe that children and young people are unclear about what is included in the list of specified offence and, in particular, are not aware of those less serious offences which are included, and for which young people are commonly charged. They ask that some attempt be made within the guidance to expand further on specified offences and what sort of offences are included, particularly those that are most commonly associated with young people.</li> <li>Include Youth welcome the fact that individuals with more than one conviction will be able to apply for a review.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>We recommend clarification is given to the status of specified offences. Section 4.3 (page 7) of the draft guidance indicates that spent specified offences are eligible for review, yet in section 5.5 (page 10) it states that the IR will consider whether or not the offence is specified as a factor in the review. We recommend that this is clarified: as specified offences are eligible for review, then their status as specified offences should not be a factor for consideration for the IR.</li> </ul>
<b>NSPCC</b>	<ul style="list-style-type: none"> <li>It is helpful that guidance sets out those eligible offences for review only be removed if the IR is satisfied they would not undermine the safeguarding of children.</li> </ul>
<b>PBNI</b>	<ul style="list-style-type: none"> <li>The guidance is clear about eligibility.</li> </ul>

<b>Unlock</b>	<ul style="list-style-type: none"><li>• Specified offences – rather than referring to the legislation, common examples of specified offences (and non-specified offences) should be provided.</li><li>• Custodial sentences and other disposals – again, rather than referring to the legislation, information about the statutory periods should be provided.</li><li>• There should be no reason in principle why a currently unspent conviction (or one that will never become spent) couldn't be considered under this scheme. There may be a presumption against a decision to remove, but in principle, given that some individuals can have a conviction that remains unspent for many years, and sometimes forever, the need for proportionality remains in these cases.</li></ul>
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### DOJ Response

- The guidance has been clarified in relation to specified offences.
- With regard to the range of offences set out in the specified list, the Department will be including this in a review of the current filtering scheme, due to commence in early 2016. Views received in the course of this consultation will be fed into that review.
- Information about the statutory periods set out in the Rehabilitation of Offenders (Northern Ireland) Order 1978 has now been added to the guidance.
- As explained in the guidance, convictions which are never spent are included on a basic certificate, and other convictions appear on such certificates until they become spent. We continue to believe that it would not, therefore, be sensible or appropriate to allow these to be removed on review from a standard or enhanced certificate.

<b>The consideration process</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Action on Elder Abuse NI</b>	<ul style="list-style-type: none"> <li>• The inclusion of maximum timescales for the operation of the process is helpful. Applicants having 90 days from issue of certificate in which to seek a review is a considerable time period. The commitment for the IR to review and inform AccessNI of a determination with 28 calendar days is also helpful to both applicants wishing to take up posts and to employers seeking to confirm conditional offers of appointment.</li> <li>• As the IR will have all available information at his/her disposal the factors for consideration as outlined in 5.5 appear clear and proportionate and seeming to take a common sense approach.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• We note the fact that the independent reviewer will take into account the human rights of the individual under Article 8 of the Convention. We recommend that reference is also made to relevant children right's standards with regard to disclosure of information and reintegration and rehabilitation.</li> </ul>
<b>ICO</b>	<ul style="list-style-type: none"> <li>• The DPA requires that personal information is relevant, adequate, not excessive and accurate. With this in mind, the guidance should include provisions to address this. It will be necessary to ensure that any information relevant for review takes account of proportionality. In this respect, we particularly welcome the provisions relating to information pertaining to a young person or a conviction/disposal that occurred before the age of 18.</li> <li>• Personal information must be processed fairly and lawfully. As well as the proportionality aspects of this as highlighted above, provision should also be made to the <i>fairness</i> of the process and any respective decisions by the Independent Reviewer (IR). In this context, we welcome the commitment in the guidance to provide fair processing information. We would stress the importance of this and urge the Department to ensure effective and appropriate notices are developed and communicated. It must be the case that the process is clearly understood. Timescales and communication channels being defined is helpful, however clarity on the decision process will be essential, particularly with respect to any public protection concerns. We would therefore welcome an opportunity to be involved in the development of fair processing information.</li> </ul>
<b>Fermanagh and Omagh District Council</b>	<ul style="list-style-type: none"> <li>• The Filtering Mechanisms with regards to criminal records should always be assessed on an individual case by case basis with proper consideration given to: <ul style="list-style-type: none"> <li>○ the severity of the offence(s);</li> <li>○ the risk of re-offending;</li> <li>○ any mitigating factors.</li> </ul> </li> </ul>

<b>NIACRO</b>	<ul style="list-style-type: none"> <li>We welcome the commitment to a timely review process, as evidenced in the guidance. We recommend that there is also a reasonable timeline implemented for AccessNI in the intervening period to ensure a timely resolution. This time limit should not be overly long, but we also recognise that it must not be so short that it is prohibitive; it is important that the time allocated for AccessNI to gather relevant information is sufficient to gather all materials effectively.</li> </ul>
<b>PBNI</b>	<ul style="list-style-type: none"> <li>The guidance is clear around the factors that will be considered by the independent reviewer when reviewing information.</li> </ul>
<b>QUB</b>	<ul style="list-style-type: none"> <li>Advice should be sought where there is any doubt as to the nature of the activity the individual will be undertaking. It would be preferable for this advice to be sought from the Registered Body, but it is noted that this would alert the Registered Body to the fact that there is information on a certificate which is subject to review.</li> <li>The individual should be asked to provide a copy of the job description and Professional Code of Practice/Professional Standards, under which they will work, on either headed paper or in a format that contains the relevant logo to enable the Independent Reviewer to make a more informed decision.</li> <li>For example, the Nursing and Midwifery Council's Code requires nurses to act with honesty and integrity in any financial dealings with those whom they have a professional relationship with. Without the Code or job description, would the Independent Reviewer automatically consider financial information and the disclosure of theft relevant to the position?</li> </ul>
<b>South Eastern Health and Social Care Trust</b>	<p>Will the IR have sufficient detail regarding the position that the applicant has applied for?</p>
<b>Unlock</b>	<ul style="list-style-type: none"> <li>Although it is accepted that each case is different, it would help if you could provide case studies which, although not suggesting that a similar case would be dealt with in the same way, for illustrative purposes provide an indication of the types of cases that may be subject to removal.</li> <li>A framework should be established which seeks to give stronger indications about the chances of success. For example, the Security Industry Authority have detailed guidance about how they are likely to treat applications. A similar model should be considered for this review process, where applications are likely to fall into certain categories – for example, “likely to be removed” and “likely to remain”.</li> </ul>
<b>Volunteer Now</b>	<ul style="list-style-type: none"> <li>Processes and timescales are clear.</li> <li>Good to see that consideration will be given to an individual's human rights and that decision-making is proportionate and measured.</li> <li>Clear guidelines should be given to the IR about how to ensure that removal does not undermine safeguarding or pose a risk to the public - it needs to be emphasised more strongly that removal of information must never present a risk to children, young people or adults at risk.</li> </ul>

- Clear parameters must be given to the Independent Reviewer (IR) so that decisions are consistently applied.

### **DOJ Response**

- References to the importance of compliance with human rights standards, including those specific to children, have now been strengthened throughout the guidance document.
- The guidance has been revised to provide greater clarity on the decision-making process.
- As referenced earlier, the additional materials being developed will include a step by step guide to the review process for applicants.
- With regard to a reasonable timeline for AccessNI – AccessNI will facilitate the process to help ensure a timely resolution, and will keep applicants informed of the progress on their case.
- The Independent Reviewer will document the rationale for his decision in every case.
- Where there is any doubt as to the nature of the activity the individual will be undertaking, AccessNI will seek clarification from the Registered Body.
- As the review process beds in, there will be information available, for illustrative purposes, with regard to decisions made by the Independent Reviewer. In addition, we anticipate that the Independent Reviewer would provide such information in his annual report.

<b>Disclosure of information about young people</b>	
<b>Automatic referral</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Action on Elder Abuse NI</b>	<ul style="list-style-type: none"> <li>• AEA Northern Ireland particularly welcome the intention of the Department to implement automatic referral to the IR in cases of disclosure of information about young people and it is our view that the process is appropriate and balanced in the circumstances defined.</li> </ul>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• CLC has been a vocal advocate for the need for automatic referral in the case of children and young people. It welcomes that the draft guidance recognises the need for 'special consideration' in relation to the disclosure of information about young people, including the automatic referral of cases to the independent review process where the information to be disclosed relates only to the period when the applicant was under 18 and there is no unspent conviction information.</li> <li>• CLC supports the proposal that Access NI will provide the independent reviewer with available, relevant information upon the automatic referral of the case. CLC believes that, in addition to the requirement on the Chief Constable, the DoJ and the Probation Board, the Youth Justice Agency should also be required to provide relevant information in relation to children and young people where required.</li> </ul>
<b>Fermanagh and Omagh District Council</b>	<ul style="list-style-type: none"> <li>• Council supports the proposal that the time period for filtering should be different for those who committed offences when young, especially given the various arguments around the age of criminal responsibility.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• Include Youth welcome the fact that cases relating to convictions and disposals received before 18 years of age will be referred automatically to the independent reviewer. We would like to seek some clarity as to whether this refers to the individual being under 18 at the time of the conviction or at the award of the disposal OR at the time of the offence.</li> </ul>
<b>ICO</b>	<ul style="list-style-type: none"> <li>• It will be necessary to ensure that any information relevant for review takes account of proportionality. In this respect, we particularly welcome the provisions relating to information pertaining to a young person or a conviction/disposal that occurred before the age of 18.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• We welcome the automatic referral to the IR where offences relate to when the applicant was aged under 18. We recommend that what 'under 18' actually means is clarified: in Annex E of the draft guidance, it states under 18</li> </ul>

	<p>means “at the time of the conviction or award of the disposal”, whereas on page 10 (section 5.5) of the guidance, it states that a factor to be considered by the IR is “the age of the applicant at the time of the offence(s)”. In light of recognised delays in the current system, we recommend that the age of the applicant at the time of the offence(s) – not the age at conviction - is used to decide whether or not a record is automatically referred to the IR. This would avoid confusion regarding whether or not to make an automatic referral in those instances when a conviction does not occur until after a person has turned 18, despite the offence taking place when they were a child.</p>
<b>NSPCC</b>	<ul style="list-style-type: none"> <li>• We are supportive of special arrangements for children and young people as set out in 4.6. It might be helpful to clarify that this will not apply to cases which under the Rehabilitation of Offenders Order which are regarded as never being spent.</li> </ul>
<b>QUB</b>	<ul style="list-style-type: none"> <li>• In the case of automatic referral to the Independent Reviewer (IR), if the IR does not remove the information then the applicant can make representations. Paragraph 5.4 states that ANI will advise the individual within 5 working days of being informed of the decision by the IR and the applicant will have 10 days to seek representations. The University is concerned that any delays will have an impact on student admissions to e.g. undergraduate medical courses where checks are not requested until after A-level results etc. are published.</li> <li>•</li> </ul>
<b>DOJ Response</b>	
<ul style="list-style-type: none"> <li>• It was the intention that the Youth Justice Agency would be asked, where relevant, to provide information to the Independent Reviewer in relation to children and young people, and the guidance is now clear on this.</li> <li>• The guidance has also been revised to make it clear that in order <u>to be eligible for automatic referral</u> an individual must have been under 18 at the time of the conviction or the award of the disposal (and that any convictions must be spent). However, when information comes before him for review, the Independent Reviewer will take account of the age a person was when they committed the offence, when considering whether or not to disclose it.</li> <li>• We understand the concerns about the impact of the timelines proposed, but we believe that what is proposed is reasonable in order to allow an individual to have their case given independent consideration. The Independent Reviewer will make every effort to ensure that there are no undue delays.</li> </ul>	

<b>Supporting young people (and those with additional needs)</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Action on Elder Abuse NI</b>	<ul style="list-style-type: none"> <li>• Provision of information on the intention of the review and steps to be taken for those wishing to seek a review should be made available in a variety of formats and trained personnel available to discuss the process with those with additional needs.</li> </ul>
<b>Autism NI</b>	<ul style="list-style-type: none"> <li>• In some circumstances, we would prescribe that parental, carer or autism-trained appropriate adult support is always available and that an individual with ASD must be supported and given all practicable help. A range of appropriate strategies to facilitate all of the above should be considered, e.g. Autism friendly information and appropriate augmentative communication adaptations.</li> <li>• A template for applicants would be helpful to guide the applicant in making representations. This would prompt the applicant to give required detail and further support the IR and AccessNI by having all available and relevant information in a standard format.</li> </ul>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• CLC believes that in the case of young people who wish to make representation for consideration by the independent reviewer it will be necessary to provide them with adequate support to enable them to do so and it is vital that this process be accessible and child and young person friendly. The support required to enable children to make representations could include child-friendly information, advice and advocacy services, particularly given the profile of young people who are likely to come into contact with the criminal justice system.</li> <li>• We also believe, given the impact of non-removal of information on the child's life, that Article 8 ECHR will be engaged in certain circumstances; therefore to guarantee their Article 8 rights and to guarantee the child's Article 6 ECHR rights in this process, legal aid should be available to those challenging the refusal to remove information for the young person's certificate. We believe that this would be a vital element to this process for children with additional needs or who require additional support such as children with mental health problems, a learning disability, special educational needs, literacy or communication problems or looked after children, all of whom are significantly over represented in the criminal justice system.</li> <li>• CLC would submit that the Guidance for the operation of the Criminal Records Filtering Review Mechanism must take full cognisance of the profile of the children and young people who are likely to be impacted upon by Criminal Records Filtering and the proposed review mechanism; and build into the Review Mechanism protections appropriate to the needs of this particularly vulnerable group of children and young people.</li> </ul>
<b>Fermanagh</b>	<ul style="list-style-type: none"> <li>• Council strongly recommends that the Department should proactively communicate the impact of the criminal</li> </ul>

<b>and Omagh District Council</b>	<p>records filtering mechanism. The information contained within this draft guidance may not be easily digested by young people so every effort should be made to break the information contained in it down and to distribute it in easily understood plain English.</p> <ul style="list-style-type: none"> <li>• The methodology for distributing the information should take the form of visual (leaflets, online i.e website/webpages) and verbal communication (visual and interactive presentations). This should be promoted to relevant groups and delivered in joint partnership working with other relevant agencies such as NIACRO, Youth Justice Agency, Northern Ireland Probation Board, PCSPs amongst others.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• It is essential that young people and those working with them understand the possibilities that the review process may offer them and this in turn could contribute to giving them hope for the future.</li> <li>• Some young people thought that the review process may give them a better chance of getting a job if they were charged with minor offences.</li> <li>• Include Youth believe that young people will require considerable support to fully understand how to navigate the review process. Any information which is sent to young people should be fully accessible and should clearly indicate where they can seek advice and support.</li> <li>• Some of the young people consulted with were put off by the fact that they would have to write to the Independent Reviewer to provide further information, and would prefer to speak to someone face to face.</li> <li>• Given the fact that young people have only 10 days to provide any further information should the Independent reviewer decide to disclose information, it is especially important that young people are able to seek practical help in completing their written response.</li> <li>• Young people will most likely need to seek help from voluntary organisations or agencies that they are familiar with. It is therefore important that voluntary organisations and community groups working with young people are provided with the necessary materials to guide the young people through the process. It is essential that young people are able to access independent advice.</li> <li>• Practitioners would welcome training in the implementation of the review process so that they can give the young people they work with the best possible support and advice.</li> <li>• Include Youth welcome the fact that representations can be made by a third party in cases of automatic referral.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• Those who are subject to an automatic referral must also be informed of where to access support when they are given the opportunity to make representations, particularly given the relatively short timeframe of just 10 days to submit representation.</li> </ul>

<b>NICCY</b>	<ul style="list-style-type: none"> <li>• NICCY notes the Department's proposal to produce an information leaflet for applicants and considers this to be essential. The disclosure regime and the review mechanism can be confusing for most and will be particularly so for young people and those with mental health issues. NICCY urges the Department to produce a child friendly version of the information leaflet and would be happy to advise the Department regarding the production of same.</li> <li>• NICCY recommend that details of organisations and professionals who can assist individuals and in particular children and young people, with the review process are detailed in, or annexed to, the guidance.</li> <li>• Regarding paragraph 4.6 'Disclosure in relation to Young People', NICCY considers that this could be simplified for young people and their parents / carers who may consult the guidance for information regarding a review. The information leaflet should also be referenced in this section with a link to it or details as to where it can be found. It should also be clearly stated in this section that even if information were filtered or removed following a review, it may still be disclosed by PSNI under "other information". Young people and their parents / carers should be advised of where they can obtain further information regarding an appeal to the Independent Monitor.</li> <li>• Regarding representations to the Independent Reviewer, as detailed in paragraph 5.3, NICCY consider that a template is essential for young people or their parents/carers so that they may fully participate in the process and realise their rights as protected by Article 8 ECHR and Articles 3, 12 and 40 UNCRC. NICCY would be willing to assist the Department in the development of a template for children and young people. Further, as recommended above details of organisations who may be able to assist young people, their parents or carers should be provided.</li> </ul>
<b>PBNI</b>	<ul style="list-style-type: none"> <li>• This would have significant resource implications but it would be helpful to offer young people/those with additional needs a meeting where the review process is explained. This meeting offer could be applied in exceptional circumstances and where significant vulnerabilities exist for the individual and they will be allowed to have someone accompany them to the meeting.</li> <li>• In view also of literacy difficulties and learning difficulties amongst other issues could consideration be given for a review outside the 90 days if a young person does not respond within that timeframe?</li> <li>• An element of signposting to useful services such as the Children's Law Centre would be helpful within the Review process.</li> <li>• A template for the purpose of making representations would be helpful.</li> </ul>
<b>QUB</b>	<ul style="list-style-type: none"> <li>• Information could be provided in alternative formats e.g. Braille.</li> <li>• Young people and those with additional needs could be given contact details for a person/organisation/group who can provide a further explanation as to what the terminology means, the University would suggest NIACRO would be the most suitable point of contact.</li> <li>• A template would be useful in all cases where individuals would seek to make representations, regardless of their age.</li> </ul>
<b>South Eastern</b>	<ul style="list-style-type: none"> <li>• There may be a need for a support/guidance officer role to support young people and those with additional needs.</li> </ul>

<b>Health and Social Care Trust</b>	<ul style="list-style-type: none"> <li>• The guidance is very user-friendly, however a flow chart for each of the scenarios outlined would be useful and provide quick and easy to follow guidance.</li> </ul>
<b>Unlock</b>	<ul style="list-style-type: none"> <li>• Allow for reviews to be made electronically (i.e. by email)</li> <li>• Provide funding/support to an NGO (such as NIACRO) to provide advice and support to those who might otherwise struggle to apply for a review in writing, and to provide general independent advice/guidance. This would be focused on increasing awareness and access to the process (rather than support in assisting with the merits of the case)</li> <li>• Ensure that all people that are convicted or receive any other disposal are provided with information about the criminal record disclosure scheme and the review process in particular.</li> <li>• It would be helpful if a template were to be provided.</li> </ul>
<b>Volunteer Now</b>	<ul style="list-style-type: none"> <li>• Young people and those with additional needs require robust support.</li> <li>• A dedicated mentor could support and guide the applicant through the process.</li> <li>• Also having materials in alternative formats (e.g. to assist those with literacy/additional needs) would be useful.</li> <li>• It would be helpful to have a template for making representations, and to put the timelines at paragraph 5.4 in grid form.</li> </ul>

## DOJ Response

- It is worth highlighting the fact that the initial filtering process already removes a lot of information in relation to convictions or other disposals awarded to young people, and that the likelihood is that this group will make up only a very small proportion of the certificates forwarded to the Independent Reviewer.
- The Department recognises that those working with young people would benefit from having appropriate information and materials to help guide them through the process. As acknowledged earlier, a number of organisations representing young people offered their help in developing child/young person-friendly materials – we are grateful for those offers, and will follow up on this with the relevant organisations.
- Documents will include a template for use by children/young people or their parents/carers if they wish to make representations to the Independent Reviewer.
- We will also work in partnership with them to promote awareness of the review mechanism, and its benefits. There is, however, no additional funding available for this work.
- Respondents also recommended that an element of signposting would be helpful within the guidance. One suggested including details of organisations and professionals who can assist individuals, and in particular children and young people (and their parents or carers) with the review process. We agree that this would be helpful, and are seeking permission from relevant organisations to add their contact details to the guidance.
- The guidance has been revised to provide details of how young people or their representatives can obtain further information about the process for having police information reviewed by the Independent Monitor.
- In respect of permitting a review outside of the 90 day time frame, this would only be possible once a fresh application had been made.

## Principles and human rights standards to be applied to the review process in respect of young people

Organisation/ Individual	Comments
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"><li>• In developing guidance for the operation of a criminal records filtering review mechanism, the Department of Justice (DoJ) must give consideration to international children and human rights standards, in particular the European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998 and the UNCRC.</li><li>• CLC welcomes the inclusion of the 'best interests' principle as a primary consideration in cases where the applicant is under 18. It should also be noted that section 98 of the Justice Act (Northern Ireland) 2015 has amended the aims of the youth justice system under section 53 of the Justice (Northern Ireland) Act 2002 to require that all persons and bodies exercising functions in relation to the youth justice system must have the best interests of children as a primary consideration. We would suggest that this is referred to within the Guidance.</li><li>• We wish to see the translation of the best interest principle into a meaningful reality for children coming into contact with the youth justice system. All professionals coming into contact with children within the criminal justice system must have comprehensive and ongoing training on how to apply the amended aims of the youth justice system and how to implement these in practice, including the Independent Reviewer. Effective training for the Independent Reviewer on applying the best interest principle to cases coming before them must be taken forward as a matter of urgency.</li><li>• In the case of diversionary disposals received by a child, CLC believes that there should be a clear presumption in favour of non-disclosure, except in exceptional cases, where the offence is sufficiently serious <u>and</u> where there is concern for the safety of the public if the disposal were not to be disclosed.</li></ul>

<p><b>NICCY</b></p>	<ul style="list-style-type: none"> <li>• NICCY considers that the draft guidance should include an explicit reference to the aims of the youth justice system under s.53 of the Justice (Northern Ireland) Act 2002 (as revised by s.98 of the Justice Act (NI) 2015), as set out above, in order to ensure that this guidance, and those acting within its remit, are compliant.</li> <li>• In paragraph 5.5 ‘Factors to be considered by the Independent Reviewer’, NICCY recommend that in addition to the reference to Article 8 ECHR, explicit reference is made to the UNCRC. Further, the fleeting reference to the best interests of the child as a primary consideration should reflect the statutory obligation placed upon persons and bodies exercising functions in relation to the youth justice system through specific reference to s.53 of the Justice (NI) Act 2002 (as amended) to reflect the best interests of the child principle.</li> <li>• With respect to diversionary disposals administered to a person when they were under the age of 18, NICCY considers that that the draft guidance should emphasise a starting point of non-disclosure. NICCY considers that diversionary disposals should not be disclosed unless necessary for safeguarding purposes. In those circumstances, disclosure should be conducted in a transparent, proportionate, rights respecting and sensitive manner.</li> </ul>
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**DOJ Response**

- References to the need for compliance with human rights standards, including those specific to children, have been strengthened throughout the guidance document.
- The guidance has also been amended to include explicit reference to the need for compliance with the aims of the youth justice system under section 53 of the Justice (Northern Ireland) Act 2002, which requires that all persons and bodies exercising functions in relation to the youth justice system must have the best interests of children as a primary consideration.
- In respect of a clear presumption in favour of non-disclosure of diversionary disposals, except in exceptional cases - whilst the guidance does not prescribe a presumption of non-disclosure in such cases, the review mechanism is designed to provide for a close scrutiny of individual cases. The Independent Reviewer will be able to consider all of the circumstances of an individual case and come to an informed decision as to whether or not the disclosure of the information would be proportionate. The seriousness of the offence and the risk to the public are both factors that will be taken into account.

Police information	
Organisation/ Individual	Comments
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• While we welcome the review process with regard to children and young people we are still concerned about the potential of the police to override the independent reviewer's decision to filter information.</li> <li>• We acknowledge that some information regarding the role of the police is included in page 14 of the young person's draft guidance and page 10 of the general guidance, but we would recommend further clarity on the matter.</li> <li>• Young people will be keen to know what influence police information may have on the decision of the independent reviewer and these processes must be made fully accountable and transparent, if young people are to trust the review process.</li> <li>• We would welcome further detail on when the police can decide what information to disclose and how this impacts on the review process and the subsequent decision of the independent reviewer. For example, would the police ever disclose information relating to non-conviction cases?</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• It is unclear from the guidance how and when the PSNI can disclose information on the certificate. While we are aware of the statutory guidance currently being developed for Chief Officers, it is important that this process is fully integrated and that one process does not undermine the other. This review process must be clear and streamlined so that the applicant is not faced with uncertainty.</li> <li>• We recommend that the police cannot override the decision of the IR and include information the IR has already removed.</li> </ul>
<b>NSPCC</b>	<ul style="list-style-type: none"> <li>• It is helpful that a safety net provision exists in relation to the capacity of the police to disclose the information under their powers in section 113(B) (4) of the Police Act 1996.</li> </ul>
<b>QUB</b>	<ul style="list-style-type: none"> <li>• Paragraph 5.7 – The University would suggest that the police may have a greater understanding of the behaviours, circumstances, or events that led to convictions or cautions, and the corresponding implications for safeguarding, and would suggest the second sentence is re-worded to provide more freedom for Chief Officers of Police to include information. It is suggested that the sentence in this paragraph is reworded as: <ul style="list-style-type: none"> <li>○ “Where the IR has concluded that information should be removed from an enhanced criminal record certificate, the police should take that into account, and should not normally consider including that information, <i>unless it is reasonable to do so.</i>”</li> </ul> </li> <li>• Annex D – The applicant should be advised that they can also review the information provided by the police with the Independent Monitor.</li> </ul>

<b>Unlock</b>	<ul style="list-style-type: none"><li>• It was unclear how the 'Police information' element integrated into the process. It is important that any consideration to disclose by the Police is taken after a decision by the Independent Reviewer, but before any notice is given to the individual, to ensure that the individual can have certainty about a decision not to disclose.</li></ul>
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## DOJ Response

- The guidance makes it clear that if the Independent Reviewer concludes that information should be removed from an enhanced certificate, he/she must inform the police so that they can assess whether or not they reasonably believe that it ought to be included in the certificate, using the powers available to them under the 1997 Act. Where the IR has concluded that information should be removed from an enhanced criminal record certificate, the police should not normally consider including that information, unless there is a very specific purpose for doing so.
- A statutory code of practice for the police was published on 2 November 2015. This will assist police when providing information from local police records for inclusion in enhanced criminal record certificates.
- Police must also have regard to the Quality Assurance Framework (QAF) which is a set of processes and more detailed guidance covering the disclosure of local police information under the Act.
- In the context of children/young people's prior offending especially, proportionality considerations often play a major part in PSNI's decision regarding whether or not non-conviction information is disclosed; and it is an additional step that already exists to ensure that children's/young people's circumstances (and those of other applicants) are taken into account when a disclosure decision is made.
- The guidance has been amended to make it clear that an applicant can also ask the Independent Monitor to review the information provided by the police.

<b>Employers</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• Include Youth recommend that employers are provided with advice and guidance in relation to understanding criminal records. It is vital that employers are able to access independent and practical advice in relation to criminal record checks. This is particularly relevant given the tendency for some employers to be risk averse when it comes to employing someone with a criminal record.</li> <li>• Access NI procedures can be abused or misunderstood by employers and we call for full accountability in Access NI's operation.</li> <li>• Employers and trainers in FE and HE sectors may be reluctant to engage with a young person who has declared a conviction. There can also be lack of awareness on behalf of the employer in understanding the implications or seriousness of the disclosed offence or record.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• Given that this process relies on the applicant making a request for a review, it is imperative that single issue is introduced well in advance of this process being implemented. Even with single issue, we are concerned that the information displayed to a registered body on the online tracker may create suspicions and speculation, which could result in the rescinding of an employment offer.</li> <li>• Furthermore, we recommend that employers are provided with training in how to understand criminal records and implement fair recruitment policies. In 2014-15, NIACRO again experienced an increase in demand for such training from employers. Following the loss of funding for NIACRO to provide this training service, it is essential that employers continue to have access to impartial and practical advice and guidance in relation to criminal record checks, understanding disclosure certificates and fair recruitment.</li> </ul>
<b>Unlock</b>	<ul style="list-style-type: none"> <li>• In the system that the DBS operates, although the certificate that is issued is sent only to the application, there is notification that information is contained on a certificate provided to the Registered Body, which may then pass this on to the employer. It is important in the introduction of this review process that no indication is provided to the employer about whether any information is contained on the certificate, to enable the individual to review.</li> </ul>

## DOJ Response

- The Department agrees that it is important that employers are provided with advice and guidance in relation to understanding the criminal record disclosure process, and information, targeted specifically at employers will be made available.
- We are clear that disclosure should, first and foremost, be informative, not prohibitive, and agree that it is important that employers are provided with appropriate advice and guidance. AccessNI already provide training sessions which are open to all counter-signatories in Registered Bodies, and further information will be made available to employers about the new legislative provisions in respect of disclosure, including the review mechanism.
- As of 2 November 2015, through changes in the Justice Act (NI) 2015, AccessNI will issue a certificate to the applicant only.
- The case tracking system will enable employers to see if an individual's certificate contains no information, and this may help to reduce delay in making an appointment. The overwhelming majority of AccessNI checks contain no information (approximately 95%). This provision is, therefore, designed to ensure that employers do not have to wait in every circumstance for the applicant to provide their AccessNI check before making an offer of employment. It would be disproportionate to do so.
- Where information is included on a certificate, the applicant has the option of deciding whether or not to proceed and provide the certificate to the employer, or to seek a review of the information.

<b>Equality screening/Section 75</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• CLC does not agree with the Department's conclusion that the guidance should be 'screened out'. We wish to see an EQIA being carried out as a matter of urgency on these policy proposals.</li> <li>• We are challenged as to how the screening exercise can conclude that these proposals will have no impact on the promotion of equality of opportunity. There is no evidential basis for this assertion. The DoJ instead suggests that all section 75 categories may benefit from the introduction of the review process as, subject to certain underpinning principles, information may be removed from certificates and not disclosed to employers or others, promoting equality of opportunity.</li> <li>• While CLC have no doubt that it is the intention of the DoJ that the impact of the proposals is positive overall and that there is no intention to cause an adverse impact to any of the nine section 75 groups as a result of the proposals,.....it is ....not sufficient to conclude that if a designated public authority believes that the impact of a policy proposal on the enjoyment of opportunity is likely to be beneficial that this negates the need for an EQIA to be carried out.</li> <li>• There is clear potential for differential adverse impact on children and young people as a result of these policy proposals.....it is the view of the CLC that one of the most important elements of the EQIA process is the consideration of measures which might mitigate any adverse impact and the development of alternative policies which might better achieve the promotion of equality of opportunity.</li> </ul>
<b>Volunteer Now</b>	<ul style="list-style-type: none"> <li>• Useful to see that the proposals set out appear to have no discriminatory or negative impact on any of the section 75 groups.</li> </ul>

## DOJ Response

- The Department has re-visited its screening exercise and remains of the view that a full equality impact assessment is not required.
- The guidance, which is the subject of this consultation exercise, concerns the new statutory duty to provide for a filtering review mechanism, as agreed by the NI Assembly and set out in the Justice Act (NI) 2015. In bringing forward that policy, it was agreed that an equality impact assessment was not required. The guidance relates to the detail of how the review mechanism will operate in practice; it does not contain any new policy beyond that which has already been agreed.
- The Department stands by its view that all section 75 categories may benefit from the introduction of the review, and believes that, where appropriate, it will help to promote equality of opportunity between those who have a criminal record and those who do not.
- Although disclosure of criminal record information has the potential to impact on all section 75 categories, including children/young people, the review mechanism is designed to help mitigate any adverse impact in respect of equality of opportunity.
- Particular consideration has been given to the needs of children/young people. A conviction will be eligible for review after the period set out in the Rehabilitation of Offenders (Northern Ireland) Order 1978 (the ROO) has expired. This principle provides helps to mitigate the impact of disclosure on young people, as the periods in the ROO are shorter for those under 18 years of age.
- In addition, in those cases where the information to be disclosed relates only to the period when the applicant was under 18 at the time of conviction/award of disposal, and there is no unspent conviction information, there will be an automatic referral to the independent reviewer.

<b>The consultation process</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• These proposals will directly affect children and young people and so children and young people must be directly consulted with in relation to them.....We would be grateful if you would provide us with details of how you have or intend to consult directly with children and young people as part of this consultation process.</li> <li>• We understand from meeting with Departmental officials that the Department was keen to consult with children and young people as part of this consultation process. Whilst we understand that a separate version of the consultation document was then produced in order to facilitate consultation with children and young people, we are unaware of the extent to which direct consultation with children and young people subsequently took place.</li> <li>• Whilst CLC acknowledges and appreciates the intention of the DoJ in terms of consulting with children and young people in relation to these proposals, we are concerned that a young person's version of the consultation document approximately 9 weeks after the consultation process had already begun. Whilst the consultation period was then extended to 9 October in order to facilitate consultation with children and young people, this would still only provide children and young people with 7 weeks to respond. In CLC's view, the DoJ is in breach of its Equality Scheme by not providing children and young people with equal time to respond.</li> </ul>

## DOJ Response

- A number of organisations representing young people, including CLC, have shown a particular interest in the development of the review mechanism. In recognition of that, the Department pre-consulted on an early draft of the guidance with CLC, NIACRO, Include Youth, NICCY, NSPCC, and the Youth Justice Agency, prior to launching the full consultation.
- The full consultation exercise commenced on 18 June, with a return date of 25 September - this allowed 14 weeks, rather than the usual 12 weeks, in order to take account of the summer season. It was circulated to a wide range of organisations and individuals, including those above, as well as others who also advocate on behalf of young people. In preparing their responses to the consultation, these organisations have clearly reflected the views of the young people they represent.
- In order to further target the views of young people, the Department then also liaised with three young people's organisations to inform the development of a more accessible version of the consultation document, and to ask if they would facilitate direct consultation with children and young people.
- Include Youth, helpfully, agreed to engage on the issue with young people from its Give and Take programme, and the Department's response to the consultation has benefited from this.
- We believe that this direct engagement, together with the considered views of those organisations that work closely day to day with young people has provided a good gauge of their views about the operation of the review mechanism. The responses received to the consultation would bear this out.
- In all, a total of 16 weeks was allowed for the consultation, although, in practice, a number of late responses were also accommodated.
- In addition, in responding to the consultation, a number of organisations representing young people offered us their assistance in the development of guidance tailored to meet the specific needs of young people. We have already said that we welcome this opportunity to work with them to ensure that young people are provided with appropriate and accessible information on the review process.

<b>Wider issues beyond the scope of the consultation</b>	
<b>General concerns about the wider disclosure process, and its impact on young people</b>	
<b>Organisation/ Individual</b>	<b>Comments</b>
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• CLC has a number of concerns about the filtering arrangements which are currently in operation to deal with the disclosure of criminal records. CLC does not believe that the current system is compliant with children's rights standards, and is in conflict with Recommendation 21 of the Youth Justice Review. One of our main issues of concern is the now routine disclosure of diversionary disposals for at least a period of time and, for specified offences, possibly for life. This is in direct conflict with Recommendation 21.</li> <li>• CLC considers the current filtering arrangements to be rigid and incapable of taking into account the particular circumstances of a child's case, or the genuine risk which exists to the public from the young person, on a case by case basis.</li> <li>• CLC believes it to be contrary to the intention of diversion if young people who are given diversionary disposals are subject to the consequences of the formal criminal justice system.</li> </ul>
<b>Include Youth</b>	<ul style="list-style-type: none"> <li>• While we understand that this consultation is specifically concerned with the newly established filtering review mechanism, we feel it is important to firstly reiterate our general position on the impact of criminal records on children and young people, within the context of the findings and recommendations of the youth justice review.</li> <li>• We welcome the review process and in particular it's approach to the particular vulnerabilities to children and young people, but our general and more wider concerns remain about the current operation of criminal records disclosure for children and young people. Include Youth has a number of concerns regarding the impact of disclosure of criminal records on young people. These concerns are compounded by the fact that children can be criminalised at the age 10.</li> <li>• We believe that the system of disclosure as it currently stands fails to recognise the damaging impact having a criminal record can have on a young person. It can affect a young person's ability to secure education, training and employment. Shackling young people with a criminal record for a seemingly unending period of time, and all that that entails, runs counter to the argument that we need to get young people who have been in contact with the criminal justice system into jobs and education, if they are stand a chance of keeping out of the justice system.</li> <li>• While we welcome the fact that the timescales for <u>filtering</u> are considerably shorter for under 18 year olds than over 18 year olds, we do still feel that young people should not have to wait so long before they can ask for an independent review. We recommend that young people should be able to seek a review earlier than proposed.</li> </ul>

	<ul style="list-style-type: none"> <li>• We believe that special consideration should be given to the disclosure of young people’s criminal records for employment purposes, and that these should only be released where there is a proven risk of harm.</li> <li>• We believe that non convictions should be ‘spent’ immediately and should only be subject to disclosure in limited circumstances.</li> <li>• It is concerning that Informed Warnings for under 18s should be disclosed for any period of time and we recommend that such disposals should always be filtered out from record checks.</li> <li>• We support the recommendations made by the Youth Justice Review on this matter, and remain disappointed that Recommendation 21 is the only recommendation to not be accepted by the Minister for Justice.</li> </ul>
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>• While we welcome the principle of this mechanism, we believe there is scope for this guidance to go further to ensure better outcomes for children who offend. We note that “the earliest that a conviction will be reviewed will be after the period set out in the 1978 Order has passed” (section 4.2, page 7). Particularly in the case of young people, timing is relative and waiting for a rehabilitation period to pass for what could be a minor offence could be a powerful barrier to accessing education, employment or training at a critical stage. Delaying engagement with such opportunities could actually increase the risk of reoffending.</li> <li>• We therefore recommend that young people should be allowed to apply for a review earlier to encourage desistance and promote access to employment, education and training. This reflects the principles outlined in the Youth Justice Review (2011), particularly Recommendation 21.</li> <li>• As stated in Recommendation 21, we recommend that diversionary disposals should not be subject to disclosure, regardless of the time elapsed.</li> </ul>
<b>Proposal for <u>immediate</u> automatic referral in respect of young people</b>	
<b>Children’s Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>• We remain concerned that young people could be denied access to opportunities due to delays in reaching determinations or considering representations made by young people.</li> <li>• CLC recognises the DoJ’s reluctance to return to a system of non-disclosure of all diversionary disposals due to the use of diversion for some serious offences. Whilst we believe that diversionary disposals should not be disclosed, we believe that there would be considerable merit in immediate, automatic referral to the independent reviewer for all under 18s who receive a diversionary disposal, with a clear presumption in favour of non-disclosure except in exceptional cases.</li> <li>• CLC had also previously suggested that it may be helpful if a recommendation is made on a child’s case as a result of multi-agency decision taken in the course of the Youth Engagement Clinic or when developing a youth conference plan, with regard to whether the offence merits being disclosed on a child’s record for the purpose of enhanced disclosures.</li> <li>• Where a multi-agency recommendation is that the diversionary disposal should not be disclosed, CLC sees the</li> </ul>

	<p>role of the independent reviewer as being one of oversight only ensuring the consistency of decision making.</p> <ul style="list-style-type: none"> <li>As most cases where children receive diversionary disposals will then not need to be considered by the independent reviewer, this should reduce delay and missed vital opportunities for children and young people, save resources and allow for detailed consideration of those cases where there are competing children's rights with regard to disclosure of the criminal record of a young person. CLC urges the Department to give further consideration to these suggestions as they believe it would result in a process for criminal record review more in line with Recommendation 21 of the Youth Justice Review.</li> </ul>
<b>Access to legal advice for children coming into contact with police and the criminal justice system</b>	
<b>Children's Law Centre (CLC)</b>	<ul style="list-style-type: none"> <li>A serious concern of CLC's is that many children coming into contact with police and the criminal justice system do not access legal advice. Most children attending Youth Engagement Clinics will not have had a legal representative or legal advice.</li> <li>CLC understands that the non-attendance of solicitors at Youth Engagement Clinics continues to be a serious issue.</li> <li>CLC believes that children and young people must always be aware that accepting diversionary measures can lead to a criminal record and that they can be disclosed later in life when a child or young person is seeking education, employment or training.</li> </ul>
<b>Other general issues</b>	
<b>NIACRO</b>	<ul style="list-style-type: none"> <li>As recommended by Unlock, we support the ability for people to apply in advance of an employment offer, so they may be aware of what is likely to be disclosed to an employer in a certain profession or industry.</li> <li>Whilst we recognise the important development that this review mechanism represents, we wish to highlight again how the impact of criminal records – including old and minor childhood convictions – is evidenced in areas of life other than employment, as noted in NIACRO's <i>Off The Record</i> policy messages. Examples of this include purchasing insurance (and the impact restrictions on this has on family/household members), or gaining visas for travel.</li> </ul>

<b>Unlock</b>	<ul style="list-style-type: none"> <li>• Consideration should be given towards a presumption of removal after an automatic time period. This could be based on the currently filtering time periods (e.g. 11 years for an adult) recognising that in individual cases this may not apply.</li> <li>• The introduction of this process will produce a significant amount of uncertainty as to what will be disclosed on standard/enhanced checks. Applications should be able to apply in advance of applying for jobs, providing an indication of the type of job they are applying for, so that the process could consider their application. This would ensure that individuals are clear at the point of applying for a particular job as to whether they need to disclose certain conviction or other information.</li> <li>• The fact that basic disclosures operate on an automatic basis without a review period suggests that a similar review process to the one being consulted on here should also apply to basic disclosures.</li> </ul>
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**DOJ Response**

- When deciding on the introduction of filtering, and the routine disclosure of non-conviction information in August 2013, the Justice Minister considered carefully the Youth Justice Review (YJR) recommendations, as well as those resulting from Sunita Mason's 2011 review of the Criminal Records Regime in Northern Ireland.
- The filtering scheme, introduced, following Justice Committee approval in April 2014, represented a first step in achieving a more balanced approach, by ensuring that certain convictions and disposals are not disclosed after a period of time. It also incorporates a graduated approach for younger people, with significantly shorter time frames applying to the disclosure of information relating to those under 18.
- The filtering review mechanism will now allow individuals, in certain circumstances, to seek an independent review of their case where a conviction or disposal has not been filtered from their standard or enhanced criminal record certificate.
- The Department believes that the filtering scheme, together with the review mechanism (including the automatic referral facility in relation to children/young people) creates a proportionate system of disclosure for safe-guarding purposes in NI, whilst not undermining public protection.
- The comments made by respondents in relation to issues beyond the legislative provisions governing the review mechanism have been noted and, where appropriate, will be fed into the wider work of the Department.