

**DEPARTMENT OF JUSTICE
SUMMARY OF CONSULTATION
RESPONSES**

**STATUTORY GUIDANCE FOR CHIEF
OFFICERS IN RELATION TO THE
DISCLOSURE OF INFORMATION ON
ENHANCED CRIMINAL RECORD
CERTIFICATES ISSUED BY ACCESSNI**

30 OCTOBER 2015

Introduction

This document summarises the responses made to a consultation issued by the Department of Justice in relation to the publication of statutory guidance for chief officers of police, sets out the consideration given to those responses and decisions made by the Minister of justice in relation to the guidance.

2. The requirement for such guidance arises from section 40(2) of the Justice Act 2015 which amends section 113B(4) of Part V of the Police Act 1997, which states;

New sub-section 4(A)

“The Department may from time to time publish guidance to chief officers as to the exercise of functions under subsection (4), and in exercising functions under that sub-section a relevant chief officer must have regard to any guidance for the time being published under that subsection”.

3. The requirement for such a document arose from a recommendation in Sunita Mason’s report on the criminal records regime in Northern Ireland in 2011. Mrs Mason believed that this would improve the consistency of police decision making across England, Wales and Northern Ireland (she made an identical recommendation in her England and Wales report on the criminal records regime there).

4. A draft guidance document was prepared by the Department. This was based on similar guidance already in place in England and Wales and used by police forces there. The draft document took the form of a set of principles that chief officers’ should consider when determining whether information should or should not be disclosed on an enhanced criminal record check. The decision to draft a document that closely resembled that in England and Wales, with suitable Northern Ireland amendments, was to ensure that in line with Mrs Mason’s recommendations, that consistency about decisions made by police would be similar in both jurisdictions.

The consultation

5. The Minister of Justice and the Justice Committee agreed that the draft guidance should be the subject of a consultation exercise. However, they

considered the consultation should be a targeted rather than a full public consultation. This was due to;

- the technical nature of the consultation;
- consideration that greater benefit would be derived by consulting those with specific interests in the subject; and
- it followed the process successfully used by the Home Office when introducing the England and Wales version of the consultation

6. The Department took forward this consultation on a two-phased approach. A pre-consultation event was held on 23 June 2015. A total of 23 organisations were invited (**Annex A**). These included Registered Bodies who sit on AccessNI's Stakeholder Forum and organisations that we believed would have a specific interest in the subject including victim's organisations, those that work primarily with young people in contact with the criminal justice system, or had responded to the Justice's Committee's call for evidence about the criminal records provisions in the Bill.

7. A total of 15 organisations attended the event. A representative of the Disclosure and Barring Service attended to provide detail about the Quality Assurance Framework (QAF) process. QAF is a document that sets out the operational step by step process that is applied by chief officers when considering the information they have available on any individual. PSNI also gave a presentation about how they considered information for disclosure and how it might be used or discarded.

8. The draft consultation document was then issued to the 23 organisations for formal response. It was also sent to PSNI, (who had already been consulted about the content of the guidance as part of the drafting process), the lead Assistant Chief Constable for the disclosure portfolio in the National Policing Chief's Council (NPCC), Police Scotland and the Independent Monitor. Those consulted were asked to consider 6 questions and to comment generally on the guidance. The closing date for consultation responses was 28 August 2015.

Responses received

9. A total of 8 organisations responded by 28 August. Late responses were received from two organisations. Of the 10 responses, 4 were from Registered bodies, 4 from organisations with a specific interest in the subject, the Independent Monitor and, as noted, the NPCC. PSNI confirmed they did not wish to add to the comments they had previously made at the pre-consultation stage. A list of those organisations that responded to the consultation is at **Annex B**.

Summary of responses

10. In relation to the six questions asked in the guidance;

- no organisation indicated that **using a set of principles** to provide guidance to chief officers was inappropriate;
- no organisation believed that the **principles set out** were incorrect. The Independent Monitor, however, suggested that additional advice dealing with mental health issues should be included to take account of updated Home Office guidance published on 10 August 2015;
- there was general agreement that the **principles were clear and understandable**. However some organisations felt that more specific guidelines should be provided in respect of the application of the principles or worked examples should be provided;
- All organisations agreed that **sufficient weight** had been given to the “ought to be disclosed” part of the guidance, although one believed that some consideration should be given to potential public reaction to information being disclosed. Most organisations felt that sufficient weight had also been given to the “relevancy” part of the guidance, but a number raised specific issues about this..
- **In terms on whether sufficient protections had been given to those under 18** at the time of the offence, there was a divergence of opinion. In general the Registered Bodies believed that the protections were adequate or, indeed, went too far. Those representing young people that came into contact with the criminal justice system, however, wanted to see these protections set out more clearly or to be more binding on police. One

organisation, believed the guidance did not afford sufficient protections for those under 18. Two organisations wanted to see the principles established by recommendation 21 of the Youth Justice Review reflected in the guidance and one of these organisations also wanted a reference to section 98 of the Justice Act ('best interests of children') and the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC) to be reflected in the guidance.; and

- In terms of **improvements to the guidance**, there were few comments. Some Registered Bodies wanted Principle 6 (decisions to be made in a timely manner) to be more strongly emphasised or where police decided not to disclose information for this to be documented clearly. Those representing children's interests wanted reference to be made to the aims of the youth justice system in the guidance (as mentioned above), or that the guidance should embrace the principles set out in Recommendation 21 of the Youth Justice Review about disclosure of criminal record information on children and young people.

11. In addition to these comments one organisation;

- criticised the Department's equality screening exercise and, in particular, the conclusion that the guidance should be screened out. Their submission stated that they believed the Department had not complied with section 75 of the Northern Ireland Act 1998.
- criticised the decision to make this a targeted consultation, the decision to have a period of nine weeks for the consultation and the fact that young people were not specifically consulted

Department of Justice Response to issues raised in the consultation.

12. The Department agreed with the Independent Monitor's view that the **guidance should include further paragraphs in relation to mental health issues** set out in an update to the Home Office guidance, published on 15 August 2015. These amendments have now been included in the guidance (paragraphs 41-45), though specific reference has been made to the relevant Northern Ireland legislation.

13. The Department also agreed with the view of some organisations that where police were considering **information about an applicant that referred to a time when they were under 18, additional guidance should be provided to chief officers**. The following amendments have therefore been made to the guidance;

- Paragraph 27 of the guidance now requires chief officers to be aware that disclosure of information about a time when the person was under 18 could have a detrimental effect on that individual's private life. In addition chief officers will wish to consider whether disclosure is in the best interests of the child (in line with section 98 of the Justice Act (NI) 2015, while balancing this against public protection issues;
- Paragraph 31 of the guidance make it clearer that consideration of whether the applicant had an opportunity to answer an allegation is a particular factor where the information relates to a time when the person was under 18; and
- Paragraph 39 of the guidance dealing with delegation of the chief officer role now includes a specific reference to one of the factors to be considered should be whether the information relates to a person aged under 18,

14. The Department considered that making any further amendment to the guidance in respect of the consideration of available information at a time when the applicant was under 18 would effectively fetter chief officer's discretion to disclose information where he/she considered it appropriate to do so. The Department also rejected any assertion that the function of the issue of applying for and issuing enhanced criminal record certificated was a "function of the youth justice system". In addition, given that the Minister had previously not accepted recommendation 21 of the Youth Justice Review, the Department could not reflect this in the statutory guidance document.

15. The Department also considered that many of the specific issues raised, particularly by registered bodies were already covered within the Quality Assurance Framework (QAF). Given this, the Department did not make any further amendment to the guidance.

16. Nor did the Department agree with the assertion that the guidance would prevent police from disclosing information on enhanced criminal record certificates. Chief officers' continue to have a statutory duty to disclose information on enhanced

criminal record certificates for public protection purposes. However this must be weighed against the individual's right to privacy as contained within the European Convention on Human Rights.

17. The Department rejected the view that it had not complied with section 75 of the Northern Ireland Act 1998. The screening exercise was re-visited but the Department continues to hold the view that a full equality impact assessment is not required. This guidance concerns how the police should go about their statutory duty. It does not create a new policy as such. In addition it impacts only on those on whom the police have information. We acknowledge the disclosure to an employer etc may lead to an individual being turned down for work/ a volunteer position. That applies to all on whom information is disclosed no matter what their section 75 category or categories. So while disclosure may have an impact on a young person, it should not be differential. In addition, the guidance (and other protections, such as filtering of old and minor conviction and the role of the Independent Monitor), seeks to provide added consideration for young people.

18. The Department also rejected criticism of the consultation methodology. The consultation, due to its very specific nature, was not subject to a full public consultation, but rather one that was targeted at interested parties. The Department went to lengths to ensure that interested parties were informed about the current approach at a pre-consultation event. Nine weeks were set aside for responses and a number of late returns were accepted.

Way forward

19. The Minister of Justice accepted the changes the statutory guidance document set out above. At their meeting on 24 September 2015, the Justice Committee agreed with the Minister's proposals and that the statutory guidance document, as amended, could be published..

20. The statutory guidance document will be published on 2 November 2015.

Department of Justice

30 October 2015

Annex A

STAKEHOLDER FORUM MEMBER	INTERESTED PARTY
Driver and Vehicle Agency	Northern Ireland Association for the Care and Resettlement of Offenders
Association for Real Change	Children's Commissioner
Southern Regional College	Children's Law Centre
Four Seasons Healthcare	Women's Aid
Queen's University Belfast	Victim Support NI
Child Evangelism Fellowship	National Society for the Prevention of Cruelty to Children
Manpower Recruitment	Information Commissioner's Office
Premier Recruitment	
Ulster GAA	
Belfast Health and Social Care Trust	
Presbyterian Church in Ireland	
Catholic Church	
Youthnet	
HSC Business Services	
Belfast Education and Library Board	
Department of Finance and Personnel	

List of those organisations who formally responded to the consultation;

Independent Monitor of Police Information
Association for Real change (Registered Body)
Queen's University Belfast (Registered Body)
Information Commissioner's Office (interested party)
Ulster GAA (Registered Body)
Northern Ireland Commissioner for Children and Young People (interested party)
Northern Ireland Association for the Care and Resettlement of Offenders (Interested party)
NI Vetting (Registered Body)
Children's Law Centre (Interested party)
National Policing Chief's Council.
PSNI