

Criminal Records Filtering Review

Consultation response - DOJNI

About Unlock

We are an independent award-winning charity, providing trusted information, advice and advocacy for people with criminal convictions. Our staff and volunteers combine professional training with personal experience to help others overcome the long-term problems that having a conviction can cause. Our expertise, knowledge and insight helps us work with government, employers and others to change policies and practices so that together we can create a fairer and more inclusive society.

About this document

Unlock principally operates in England & Wales. However, given our interest in criminal records and disclosure, we felt it was important to respond to the consultation issued by the Department of Justice Northern Ireland, as it has important implications for people with a criminal record in England & Wales.

Summary

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, as we explain in this response, there are two main areas that we wish to focus on:

1. Operational considerations in implementing such a review mechanism
2. The need for the system to go further

Response to questions

Question 1 - Is the guidance clear?

- 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.
- 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.
- 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).
- You should consider the use of case studies.

Question 2 - Does the guidance help you to understand how the review process will operate?

- Generally, yes, although see Q1 above.
- 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

Question 3 - Is the guidance clear about what information is eligible for review?

- Specified offences – rather than referring to the legislation, common examples of specified offences (and non-specified offences) should be provided.
- Custodial sentences and other disposals – again, rather than referring to the legislation, information about the statutory periods should be provided.

Question 4 - Is there clarity around the factors that will be considered by the independent reviewer when reviewing information?

- No. 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.
- 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”.

Question 5 - What measures could the Department put in place to help support young people and those with additional needs who wish to seek a review?

- Allow for reviews to be made electronically (i.e. by email)
- 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)
- 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.

Question 6 - Would it be helpful if a template were to be provided for the representations referred to at paragraph 5.3 of the guidance?

- In short, yes. Also, see points in Q5 above.

Question 7 - Does the guidance sufficiently explain the roles and responsibilities of the individuals and organisations involved in the review process?

- See point in Q2 above in relation to police information, and how that interacts with the decision of the Independent Reviewer.
- We believe that the roles of Independent Monitor and Independent Reviewer should be clearly separate and undertaken by different individuals.

Question 8 - Do you have any other comments?

- 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.
- 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.

- 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.
- 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.
- 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 Will the review process be flagged up when receiving original certificate?
- It is important to ensure that there is good awareness of the review process. In addition to the points made in Q5, 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.
- 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. 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.
- 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 that has been drafted.

More information

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