

# Consultation on a proposal to allow the Public Prosecution Service to issue summonses

Summary of responses and proposed way forward

*serving the community through the administration of justice*

## Document Details

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## Section 1: Introduction

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1.1 On 1 March 2010, the Northern Ireland Courts and Tribunals Service (NICTS) issued the consultation paper “*Proposal to allow the Public Prosecution Service to issue summonses*”, for a period of 8 weeks. Following representations by some stakeholders, the consultation period was extended until 28 May to facilitate their responses.

1.2 At present, under the Magistrates’ Courts (Northern Ireland) Order 1981, where a prosecutor makes a complaint to a Lay Magistrate that a person has, or is suspected of having committed an offence, the Lay Magistrate may issue a summons requiring the defendant to appear before a magistrates’ court to answer the complaint.

1.3 In its report “Avoidable Delay” (2006), the Criminal Justice Inspectorate of Northern Ireland (“CJINI”) considered the current arrangements for the issue of a summons to a defendant, and recommended that alternative arrangements should be implemented. The Criminal Justice Board accepted this and recommended that legislation should be introduced “**giving the prosecutor power to issue the summons on the strength of his or her signature so long as a complaint has been laid before the court.**”

1.4 The consultation paper proposed that it should be possible for a Public Prosecution Service (“PPS”) prosecutor to issue a summons to a defendant without recourse to a Lay Magistrate. It is estimated that the proposal would save up to two days in the process from decision to prosecute to the issue of a summons.

1.5 Full details of the original consultation documentation are available at [www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/p\\_pc\\_ProposaltoallowthePublicProsecutionServiceitoissuesummonses.pdf.htm](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/p_pc_ProposaltoallowthePublicProsecutionServiceitoissuesummonses.pdf.htm).

1.6 Further copies of this report and the consultation paper can be obtained by contacting:

Consultation Co-ordinator  
Proposal to allow PPS to issue summonses  
Northern Ireland Courts and Tribunals Service  
Communications Group  
Laganside House  
23-27 Oxford Street  
BELFAST BT1 3LA

**Phone:** 028 9041 2386

**Textphone:** 028 9041 2920

**Fax:** 028 9072 8942

1.7 We received a total of 25 responses to the consultation paper from individuals and organisations. Meetings were, in addition, held with some consultees.

1.8 We also sought the views of the judiciary (including the Lay Magistracy.) The judiciary do not comment on policy but will generally comment if a proposal raises operational issues that affect the running of the courts. The Office of the Lord Chief Justice has raised no issues in relation to this proposal.

1.9 Eight respondents indicated that they had no specific comment to make or that the proposal did not directly impact upon them. 17 responses commented specifically on the proposal. Of those responses, 11 consultees were in favour and 6 consultees were opposed.

1.10 Comments in the summary of responses have not been attributed to any individual or organisation. A list of those who responded is, however, provided at **Appendix 1**.

1.11 The proposal has been equality-screened in accordance with our obligations under the Northern Ireland Act 1998. The screening indicated that the policy has no adverse effect on any of the section 75 categories.

1.12 The proposal has, however, been included as part of the document published by the Department of Justice entitled "Equality Impact Assessment for a Proposed Justice Bill (NI) 2010", which is available at [www.dojni.gov.uk/index/public-consultations/current-consultations/justice\\_bill\\_eqia.pdf](http://www.dojni.gov.uk/index/public-consultations/current-consultations/justice_bill_eqia.pdf).

## Section 2: Summary of views expressed by consultees

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**Q.1 Do you agree that a PPS prosecutor should be able to commence proceedings without having to ask a Lay Magistrate to authorise the issue of a summons?**

**17 commented**

### Views expressed

2.1 The majority of respondents (eleven) agreed that a PPS prosecutor should be able to issue a summons without recourse to a Lay Magistrate. Ten respondents in favour of the proposal indicated that they considered that the key benefits, such as reducing delay and costs/resource savings, would be achieved. They also found that the proposed safeguards were sufficient.

2.2 In particular, one respondent considered that whilst historically, judicial intervention in the summoning process was necessary because the police were at the same time complainants and investigators, this requirement was no longer necessary. Another respondent explained that they felt that the safeguards were sufficient because the decision to prosecute is subject to an assessment by a qualified prosecutor.

2.3 One respondent, whilst supportive of efforts to reduce delay, expressed some concern at the proposed removal of the Lay Magistrate. They suggested that, should the proposal go ahead, there were a number of safeguards which could be put in place, for example, that the PPS should only initiate a prosecution where satisfied that evidence can be adduced in court which is sufficient to provide reasonable prospect for conviction and where such a conviction is in the public interest; and that decisions to prosecute be taken in accordance with obligations set in the European Convention on Human Rights.

2.4 Six respondents did not agree with the proposal.

2.5 Of these, five respondents considered that the role of the Lay Magistrate in the issue of a summons constitutes an important independent level of scrutiny of the process. One respondent added that this check was of benefit to the PPS as it protected them from allegations of bias or unreasonableness.

2.6 Five respondents considered that whilst CJINI recommended that alternative arrangements for the signing of summonses be introduced, the report fell short of recommending the removal of lay magistrates from the process. Two respondents considered that the original CJINI recommendation envisaged the use of an electronic signature which would be added by a Lay Magistrate and authorised by a public prosecutor.

2.7 Two respondents added that the proposal was contrary to the Criminal Justice Review (“CJR”) which had highlighted the importance of lay involvement in the criminal justice system. One respondent indicated their view that this involvement was vital, as it created a connection between the system and the community it serves.

2.8 Four respondents raised issues around perceptions of PPS transparency and accountability. They suggested that the proposal moved the balance of power too far in favour of the PPS and that it had the potential to damage overall confidence in the criminal justice system.

2.9 Four respondents also remarked that the consultation paper had identified a trend towards prosecutors issuing their own summonses in England and Wales – these respondents felt that as the criminal justice systems in the two jurisdictions operate differently, comparisons between the two should be treated with caution. Four respondents indicated their view that the case for change had not been made out and that no evidence of the extent of delay caused by the existing arrangements had been provided. Two respondents also remarked that the views of Lay Magistrates on the proposal were not set out in the paper.

**Q.2 Do you agree that the safeguards outlined in the proposal are sufficient?**

**10 commented**

2.10 Of the eleven consultees who agreed with Question 1, only four commented specifically on Question 2. Those who did comment thought that the proposed safeguards were sufficient. In particular, they noted that the application of the Test for Prosecution (the Evidential Test and Public Interest Test) and the PPS Code for Prosecutors, which includes a Code of Ethics, provides sufficient certainty around the integrity of the decision-making process.

2.11 Of the six respondents who did not agree with Question 1, all commented on Question 2. All six considered that the proposed safeguards were not sufficient. Five respondents re-iterated their concerns that the proposal removes an important element of independent oversight and scrutiny. These respondents felt that the proposal has the potential to undermine the accountability and transparency of the criminal justice system. One respondent noted the safeguards such as the Test for Prosecution, but remarked that there was no requirement to inform victims of decisions, nor the process by which decisions are reached.

2.12 Two respondents also remarked that the Code for Prosecutors and the Code of Ethics do not have legal force and could be subject to change at any time.

## Section 3: NICTS response to views expressed

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3.1 The Northern Ireland Courts and Tribunals Service is very grateful to all those who responded to the consultation and for the comments expressed by the Justice Committee.

3.2 A number of key themes emerged in the analysis of responses and these are reflected in the comments in the preceding section. These themes can be summarised as: the importance of judicial scrutiny in the summons issuing process; concern that the proposal had misinterpreted the original CJINI recommendation; concern that the proposal dilutes lay involvement in the judicial process; and issues around the role and operation of the PPS.

3.3 Our conclusions on each of these themes are set out below.

### **Judicial scrutiny**

3.4 We believe that there are sufficient safeguards to take account of the removal of the Lay Magistrate from the signatory process. Under the PPS Code for Prosecutors, a prosecutor would continue, as at present, to apply the Test for Prosecution before deciding to make the complaint. This also requires the prosecutor to consider the same range of factors that a Lay Magistrate is currently required to apply before issuing a summons. In addition, the complaint would be before a District Judge (Magistrates' Court) at first hearing.

### **Interpreting the original CJINI recommendation**

3.5 In relation to the thinking behind the original CJINI recommendation, CJINI has confirmed that this proposal accurately represents what had been envisaged. Accordingly, we are content that the recommendation has not been misinterpreted.

### **The nature of lay involvement**

3.6 We consider that the criminal justice landscape has changed sufficiently since the CJR to address any concern that the proposal dilutes lay involvement in the justice system. The CJR recommendations were framed in the context that most prosecutions in the magistrates' courts were, at that stage, investigated and prosecuted by the police. The establishment of the PPS arguably means that there is less need for judicial intervention in relation to summonses for offences prosecuted by them. Lay Magistrates would continue to hear complaints for the issue of summonses in non-PPS cases and for the issue of arrest warrants.

## **Public Prosecution Service**

3.7 Regarding remarks around the role and operation of the PPS, there are a number of safeguards already in place. As mentioned above, the Code for Prosecutors (which includes a Code of Ethics) gives guidance on principles to be applied in determining whether proceedings should be initiated (or discontinued), and defines the standards of conduct and practice expected of prosecutors.

3.8 The Code is established by statute, is published, and is framed in accordance with Guidelines on the Role of Prosecutors adopted by the UN Congress on the Prevention of Crime and Treatment of Offenders. In addition, the PPS is subject to independent scrutiny and inspection by CJINI. In their follow up inspection into the PPS in June 2009, CJINI found that 93% of all decisions taken by prosecutors were taken in accordance with the Code for Prosecutors.

## **Miscellaneous issues**

3.9 One respondent remarked that it was not clear how the scheme would operate, in particular how the PPS prosecutor would know that the electronic complaint had been received by the court, or what would happen if there was a technological problem.

3.10 Where the prosecutor is satisfied that the Test for Prosecution is met, he would lay a complaint before the court. This would be done by the prosecutor sending the complaint details electronically to the court through Causeway (a joint information sharing system between the criminal justice agencies).

3.11 Once received by the court (and in accordance with case-law) this would be the point at which the complaint would be considered to be laid and proceedings instigated. An electronic 'receipt' for the complaint would be returned to the PPS (confirming that the complaint had been received along with the date and time of receipt) and enabling the prosecutor to prepare, sign and issue a summons to the defendant.

3.12 The electronic receipt details would appear on the printed summons thus verifying the date on which the relevant complaint was laid. It would also be possible to extract the original complaint details from ICOS (the Court Service 'Integrated Court Operating System') if there was any dispute over the date.

3.13 Prior to the introduction of the Causeway solution, contingency plans were agreed between all CJOs and Causeway and each CJO is able to operate its own line of business system in the event of the Causeway messaging solution being unavailable. In addition, it would be open to the PPS to revert to the traditional method of having a Lay Magistrate sign a summons for any period in which the Causeway system was unavailable.

3.14 Finally, two respondents sought clarification as to whether the proposed new arrangements would also apply to the making of an application for a protective “Form 1” complaint (i.e. a complaint made to allow the indefinite extension of the statutory time limit so that an offence cannot become statute barred.) The existing arrangements in the Magistrates’ Courts (Northern Ireland) Order 1981 do not differentiate between the making of an ‘ordinary’ complaint and a ‘protective’ complaint, and we do not see any reason to differentiate between them under the proposed new arrangements.

3.15 The proposed process would also, therefore, apply in relation to the making of a “Form 1” complaint. The complaint details would be sent electronically to the court and an electronic receipt would be issued to PPS. The date of the making of the complaint would appear on the face of the printed summons, when produced.

## Section 4: Conclusion and proposed way forward

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4.1 As outlined in the consultation paper, the purpose of the policy is to streamline processes and help address avoidable delay in the processing of criminal cases. We have considered closely all the comments received from consultees and note that the majority of responses are broadly in favour of the proposal. It is, however, recognised that some consultees have concerns in relation to the policy.

4.2 As part of its on-going work, the Criminal Justice Board has established four new project groups to reinvigorate the work to speed up justice. Working on an inter-agency basis, these groups have developed a programme of work, and a range of initiatives are being progressed which are expected to have a positive effect in helping to address avoidable delay within the criminal justice system.

4.3 We wish to monitor and evaluate the cumulative effect of these new initiatives before determining what other measures are most appropriate. It has, therefore, been agreed that this proposal will not be introduced at this time. We will, however, keep the matter under review, and the proposal will be re-examined in the wider context of any future recommendations for case initiation reform which might arise from the work of the project groups.

4.4 A copy of this report will be sent to all those who have responded to the consultation and it will be placed on the NICTS website at [www.courtsni.gov.uk](http://www.courtsni.gov.uk).

## Appendix 1

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Responses were received from the following:

AMEN

NIPSA

Ards Borough Council

Omagh District Council

Belfast City Council

Probation Board for NI

British/ Irish Rights Watch

SANDS NI

Children's Law Centre

Sinn Fein

Mr Colin Pidgeon

Victim Support

Committee on the Administration of Justice

Women's Aid (NI)

Department of Agriculture and Rural Development

Disability Action

Down District Council

Homestart

Law Society of Northern Ireland

Lisburn City Council

Lord Chief Justice's Office

Mindwise

Newry and Mourne District Council

NIACRO

NI Human Rights Commission

Northern Ireland Courts and Tribunals Service  
Laganside House  
23-27 Oxford Street  
Belfast  
BT1 3LA

[www.courtsni.gov.uk](http://www.courtsni.gov.uk)

