



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Justice Bill: Equality Impact Assessment

11 January 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Paul Givan
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Tom Haire)
Mr Gareth Johnston) Department of Justice
Ms Janice Smiley)

The Chairperson (Lord Morrow):

We will now receive a briefing on the Justice Bill equality impact assessment (EQIA). I understand that the officials will now outline the key points and issues regarding. The relevant paper is included in members' packs.

Mr Gareth Johnston (Department of Justice):

Chairman, it says here that I should wish the Committee a very happy new year and say how pleased I am to be back before it today; I am sure that that is true. *[Laughter.]*

We are presenting our analysis of the equality impacts of the Justice Bill, of our consultation exercise and of its outcome. As the Chairperson said, members have a summary paper that has been prepared for the Committee alongside the full report on the responses, which the Minister is preparing for publication. With me today are Tom Haire and Janice Smiley, with whom the Committee will be familiar. Tom is Bill manager, and Janice is policy lead for much of the offender-based provisions in the Bill. They will contribute as we answer questions.

The paper provides an overview of the responses received and our response to the points made. It does that in two ways: first, by identifying the overarching points made by a number of respondents; and, secondly, by taking a more detailed look at the comments on individual parts of the provisions. It covers all of the matters that were being considered for inclusion in the Bill as the EQIA was being prepared, including those that in the end did not make it into the draft Bill for various reasons. It comments on the proposals for a single jurisdiction, which we hope to bring back and on the proposals for case initiation reform and Public Prosecution Service (PPS) summonses, which were not included because of concerns about competence. It also covers solicitor rights of audience, court funds, and sex offender improvements, which were also included, and, as you know, we are making efforts to get those into the Bill by amendment.

As the paper indicates, a number of respondents took the opportunity to comment on more general policy matters as well as on the specific equality aspects. For the purposes of completing this, the report on responses deals with all the policy and equality points that were raised. However, given that the policy points were considered in our various presentations to the Committee before Christmas, I will focus on the equality side in this short introduction.

The equality consultation began on 12 August and was to run up to 4 November, which was the date when the Bill moved in to its Committee Stage. However, that was extended to 24 November to accommodate some later returns. The consultation, therefore, ran for 15 weeks in

total.

The consultation was built on nine major policy consultations that preceded the equality exercise, and which laid the groundwork for the Bill. We had 14 responses to the equality consultation from statutory bodies, the voluntary sector, and one or two at council and DPP level.

Some welcomed the appraisal, agreed with the analysis and commended the Department for the overall aims of the Bill. Some recognised the planned benefits of the Bill to the justice system and for those who came into contact with it, be they victims, witnesses or defendants, and there was recognition of the intention of ensuring that moneys available were spent wisely.

However, others raised issues, and, as the paper indicates, four broad themes emerged: the assessment process, timing issues, our assessment conclusions — how we approached mitigation — and, finally, around data availability. I will deal with each of those in turn.

Comments on the assessment process included concern that our regard for section 75 of the Northern Ireland Act 1998 had not been adequate. There were also concerns about a previous challenge to the Northern Ireland Office's anti-social behaviour order (ASBO) legislation. There were comments about screening versus full impact assessment, and about the Department's overall equality scheme.

We believe that we have had regard for section 75 requirements, and that lessons were learnt from the previous challenge to the NIO's ASBO legislation. Although that challenge was struck down, the ASBO legislation is very much still law. However, we consulted fully on our policy proposals, screened those proposals and consulted on each of the screenings. We briefed the Committee on the proposals, and obtained Executive approval. We published all our reports on responses, and, as a belt-and-braces exercise, we re-consulted on the Bill as a whole.

One criticism of the ASBO exercise was the short, perhaps six-week, policy consultation. For this Bill, most of the policy proposals have been consulted on twice, a total in most cases of up to 24 weeks, and in some cases, six months. That was across those two consultation periods. So, in process terms, and that is where most of the points under that heading came from, we believe that

we had full regard to the section 75 duties.

There were comments about the equality scheme. There were queries about whether we were operating under the previous NIO's equality scheme or the Department of Justice's scheme. As a new Department, we are creating our own equality scheme, and that is part of a wider exercise. The Equality Commission issued its revised guidance on section 75 in May 2010. As part of that, all Northern Ireland Civil Service Departments were asked to follow a process to develop a new equality scheme by May 2011.

We in the Department of Justice have our draft scheme ready for consultation. We are doing an audit of existing practices, developing an action plan, and we intend to consult on the scheme very shortly. It is expected that it will be brought to the Committee before the consultation process is launched in February.

The revised scheme is being developed in line with the model scheme template, which was issued by the Equality Commission in November. So, that is where we are on the new Department's equality scheme, but I assure the Committee that all our policy screenings were completed in accordance with the Equality Commission guidance.

Concerns about timing included that the consultation was closing on the equality impacts after the Bill had been introduced, and about whether that meant that our policies had been settled. There were also concerns about the parallel consultations that were under way, which suggested that perhaps the Bill needed to be delayed pending the outcome of those exercises. On the introduction of the Bill and policy settlement, we contend that the policies are not settled until the Committee and the Assembly conclude on them, so this stage of sharing and discussing proposals with the Committee, including the consideration of equality issues, is still crucial to the policy development stage.

I think the parallel consultations that the consultee was referring to were the likes of consultations on offender management and the review of youth justice, both of which are getting under way. The Department's view is that the current proposals have significance for our justice system in service delivery and should therefore be proceeded with. The parallel consultations

would not conflict with nor would they be compromised by the policy areas that are addressed in the Bill. Therefore, we feel that we are justified in moving on with what is in the Bill, while recognising that there are more proposals out for consultation that will come to the Committee further down the line.

I will move to the area of assessment, conclusions and mitigation. There were comments on the impact of criminal law on young males. There were concerns about our use of a term in the equality impact assessment, when we said that offenders were “self-selecting”. The claim was made that we implied they were not entitled to equality and human rights protections, which I do not think was the case, but there was concern around that and the apparent absence of mitigating measures or alternative policies.

Much of criminal law ends up affecting young males more than other groups, because they are the group in which most offending takes place. We recognise that, and a great deal of effort is put in across the system in addressing that through crime prevention, diversion, reintegration and rehabilitation. We will be taking that further in future, particularly through a new focus on reducing offending, which is, at its core, about addressing the causative factors around offending. We will come back to the Committee with a discussion document on a reducing offending strategy next month, with the aim of starting consultation in March.

The Bill includes moves to take a more proportionate response to offending. Fixed penalties, for example, will mean that many who offend for a first time or non-habitually do not end up with the restrictions of a criminal record. In retrospect, the term “self-selecting” that we used was probably sloppy drafting. We recognise the complexities of individuals’ backgrounds and how they impact on offending. That does not mean that it is unjustified to take account of the different degrees of choice that are involved when people offend, but I hope that we can continue to demonstrate to the Committee that these issues are recognised and are getting more attention than ever.

Finally, there were concerns about limited availability of data on the justice system and also a couple of comments on children and the Bill. There were concerns that we should have included more data on children and that we did not produce a child-accessible document. Where data are

available, we have used it in our assessments. We published the data that we used, which included survey material, research reports, data that we routinely collect from police, prisons, and so on.

We are making progress on a specific issue, which is on equity monitoring in police custody suites. That has begun, and the challenge is to get sufficient coverage of what can only be a voluntary system to draw statistically reliable conclusions and police are taking a range of measures to that end.

We can stress that we produced a child-friendly consultation document for the EQIA, but, that having been said, very little of this Bill will apply to children. Indeed, a number of the offender-based provisions were specifically excluded from under 18s.

That deals with the four broad heading under which responses came, but the Committee will rightly ask what we have done in response to the consultation comments made, whether on the equality issues or more generally on policy. Therefore, for the Committee, the key aspect of our report may be our undertakings in response to the contributions that were made, and they are in section 20 of the response document.

I stress that, before we published that document, equality considerations had already influenced the Bill in various ways. They influenced how the proposals applied to children and young people; the rate of the offender levy and how it would be deducted from prison earnings; and the remission of that levy in certain circumstances. They had also influenced making specific reference to sectarian chanting, which we aim to do through an amendment. Equality considerations affected other issues in the Bill as well as leading to a bigger emphasis being put on training in the use of fixed penalties.

In the report on responses, we give a series of short-, medium- and longer-term undertakings in light of comments made and the checks and balances required, which, as I said, are summed up in section 20. Those involve commitments to consultation on various rules, regulations, codes of practice and published guidance, including regulations in respect of the enforcement of the offender levy, a code of practice on policing and community safety partnerships (PCSPs),

guidance on the use of fixed penalty notices, a code of practice on conditional cautions and rules about eligibility for free legal aid. Alongside that, we are committed to continuing to develop our data systems and to monitoring the Bill's impact on implementations. We hope that Criminal Justice Inspection will play a continuing and important role in the long term.

In conclusion, the consultation exercise responses challenged some of our thinking and ensured that we took stock of our proposals. The Minister has been firmly committed to ensuring that the Bill's provisions comply with section 75. We are now presenting to and keen to work with the Committee to satisfy its members of our equality assessments, and, where adjustments are required, the Minister is keen to assist wherever possible.

The Chairperson:

Thank you, Mr Johnston. Your report states that there were a total of 14 respondents. Is that figure not meagre? How many were consulted?

Mr Johnston:

Yes. About 300 would have been e-mailed. It needs to be seen in the context that we had consulted individually on each of the policy areas and there had been good responses across the board. The consultation input that we have had to the Bill as a whole satisfies me that we have had a good and comprehensive range of inputs. Yes, I might have expected more responses to the EQIA, but we have worked with the responses that we got.

The Chairperson:

That sometimes makes me wonder about the resources that are poured into this type of consultation to get 14 out of 300 responses. I suspect all those consultees were sent papers directly. We are past the stage of general advertisements being placed inviting anyone to respond. We now go directly to them, don't we?

Mr Johnston:

The process is that we e-mail people to let them know that a papers is available on the website, and there is a link there to allow people to access it, or, on request, we will send them a hard copy.

The Chairperson:

So, the other 286 consultees had nothing to say?

Mr Johnston:

I like to think that the other 286 were completely satisfied with what we proposed, but I am sure that that is wishful thinking. However, as I said, there were many other opportunities for people to express views during the genesis of the Bill.

The Chairperson:

In these austere times, when we are all being told that it is time that we did things differently and were more effective, efficient and prudent, we might want to look at this area. I am not advocating that we throw away consultation, but there is a clear message that it needs to be done differently.

Mr Johnston:

I would welcome that for two reasons. First, we are starting a piece of work to provide guidance to criminal justice organisations on good practice in consultation. That was a recommendation from the Criminal Justice Inspection that we are taking up. If the Committee wants to contribute to that process, I would welcome that very much. The second reason is that we have taken steps towards different sorts of consultation. The traditional consultation paper was probably right in the current circumstances. However, look at what we have done in some of the policy proposals, such as alternatives to prosecution, where there was an opportunity for a workshop on the women's strategy to look, among other things, at how the proposals would impact on women offenders. We have taken steps to look at different, and maybe more effective, ways of consulting. I would welcome the Committee's contribution to that thinking.

Ms Ní Chuilín:

Gareth, you have answered some of the questions I was going to ask, particularly with your comments about self-selecting. That phrase jumped out at me, and it probably jumped out at the people who responded.

Mr Johnston:

We will not use that phrase again.

Ms Ní Chuilín:

It almost read as though people make their own decisions and, therefore, are not entitled to any rights; that was almost the shorthand translation. Your explanation was reassuring.

You raised the whole issue of parallel consultations, which I think may have contributed to the poor response. There were parallel consultations alongside the full EQIA, and it is almost like death by consultation. People may pick the areas they want to respond to but do not have the opportunity to respond en bloc. Whatever was introduced first, whether it was the Bill or the EQIA, that did not happen. We have that on record anyway. How many consultations do you envisage the Department being involved in by May? You will consult on the Department's equality scheme. What else did you say will be out for consultation?

Mr Johnston:

The discussion document on reducing offending will be out for consultation. There will also be consultation on making community sentences more effective, which we are due to brief the Committee on in a couple of weeks.

Ms Ní Chuilín:

Youth justice?

Mr Johnston:

Yes; the youth justice review and the community safety strategy. I mention these without having a list in front of me. If it would be helpful for us to —

The Chairperson:

Prison review; you can put that one in.

Mr Johnston:

The prison review is clearly ongoing. There is a lot happening.

The Chairperson:

The review of access to justice; you can put that one in too.

Mr Johnston:

Access to justice is another; thanks to the Committee Clerk for that one.

If there are better ways of consulting overall and pulling different themes together, I am sure that we, as a Department, will be happy to think about those. It is a busy time in the Department. Obviously, the Minister has come into a new Department with a big agenda. We have done a lot of preparatory work over the past eight months, and it is starting to hit the streets in the form of consultation documents.

Ms Ní Chuilín:

It is an issue regardless of where people sit and differences in their approaches to justice. We had the NIO, which, by and large, was invisible and had no public face. Now, we have the Department of Justice and a growing list of consultation documents. I believe in consultation, but a gap has arisen in the way in which people feed into it; the EQIA is an example of that. There has been more talk about the equality impact assessment than there have been people responding to it. Therefore, maybe you want to take a leaf out of our book and hold a Long Gallery event and invite people and do themes, because I thought the Long Gallery event was helpful. Even though people were up and down like a fiddler's elbow, there were still opportunities to feed into the consultation. There is significant work involved and fundamental views. I am concerned that we will not get the best out of these opportunities if things are not done differently. Consultation will happen, but it could be done differently, not excluding costs.

Mr Johnston:

I am happy to consider that and to see how we could bring some of the themes together and use other methods alongside the traditional ones to help people to express their views. From the Department's perspective, I agree that the Long Gallery event was helpful and useful. In a short time, we got through a lot of people who were heard by the Committee and the Department.

The Chairperson:

It should be remembered that only one person felt restrained at the event.

Ms Ní Chuilín:

I would not like to see him if he did not feel restrained. He was the one who was up and down like a fiddler's elbow.

The Chairperson:

I do not want to comment on every individual, but he said that he felt restrained.

Ms Ní Chuilín:

He did not look it.

Mr McNarry:

I have a brief question on solicitor advocates. You outlined the reason why the proposal was not included in the draft Bill that was presented to the Assembly. You are now saying that the Department is continuing to work on revising the provisions to address competence issues and to preserve the policy. You say that, subject to the competence issues being resolved, the intention is to introduce the provisions in the Bill by way of an amendment. When can the Committee expect to see that amendment?

Mr Johnston:

As soon as possible. There has been intensive work going on, particularly over the past couple of days, and it is all still in discussion. The aim is still to bring an amendment that will address those competence issues but will still allow for solicitor advocacy in the higher courts to the Committee in time for it to be considered properly.

Mr McNarry:

I am grateful to hear that because I am sure that other members will have picked up from other sources the potential for a legal challenge, because that was changed. Are you suggesting to me that that potential has now evaporated?

Mr Johnston:

The Department always had doubts about the reasons for the legal challenge that the Law Society has had to bring.

The Chairperson:

In what respect?

Mr Johnston:

It has doubts about the necessity of it, because we are taking steps to try to ensure that something can be brought on solicitor advocacy. The Law Society has decided to pursue that, but the work on trying to formulate a clause that can be brought to the Committee is continuing intensively.

Mr McNarry:

The Law Society is reputed to have spent a substantial amount of money on this matter, and it might not be too pleased to hear that it may not have been necessary. It must have thought that it was necessary, otherwise it would not have spent the money on getting an opposing legal view.

Mr Johnston:

The Department and the Minister have been in contact with the society through all this, and we are continuing to liaise with it.

Mr McNarry:

I am sorry to press you, but I am not satisfied with the words "as soon as possible". Will it be next week or the week after? I am worried about the passage of the Bill.

Mr Johnston:

We have discussed with the Clerk when amendments need to be signalled to the Committee. The aim is to adhere to that timetable, but there are still issues to be resolved. When I checked this morning, solicitor advocates were still being discussed, so I cannot commit to a date. However, we will let the Committee know as soon as we can.

Mr McNarry:

I will ask you the next time that I see you then.

The Chairperson:

That seems to be it. Thank you and your team for coming here today and briefing us.