Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Justice Bill: Informal Clause-by-Clause Consideration

13 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 Thomas Buchanan
Sir Reg Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:
Mr Tom Haire) Department of Justice
Mr Gareth Johnston)
Mr Chris Matthews)
Ms Janice Smiley)

The Chairperson (Lord Morrow):

We now begin informal clause-by-clause scrutiny of the Justice Bill. I remind members that this part of the meeting will be recorded by Hansard. I advise members that a summary paper covering the evidence received on Parts 1 and 2 of the Bill has been provided to assist the

Committee. It was circulated yesterday, and further copies are available if any member needs one. Members' Bill folders already contain all of the relevant documents, and, as agreed at the meeting of Tuesday 11 January, departmental officials will be at the table to provide further information if that is required. I welcome back the team, which has been with us virtually all day. They will comment or clarify if a member wishes them to do so.

We will start with clause 1, and I am ready to invite views and comments from members. If members wish the officials to comment, we will bring them in as appropriate. We have been working towards this for a long time, and we knew that this day would come. It is open to anyone who wishes to comment on it to do so. Is there anything in clause 1 that members feel anything about, strongly or otherwise? I can see some members nodding that they are reasonably content with the clause, but that may not be the consensus view.

Mr O'Dowd:

I do not know whether it would speed matters up, but we would like to return to the clauses to give a definitive position. That does not mean that we should not discuss each of the clauses today, but, at this stage, our silence does not mean agreement.

The Chairperson:

I suspect that that might be the case around the table. Members may feel that they are going into a trap and that there is no way out because they are committing to a position. If it is any comfort, I can tell you that you are not doing that today, because we are taking general comments, suggestions and views, but we are not asking members to take a definitive position. If members were to say that, in general, they were reasonably happy with clause 1, that would not prevent them from saying at a later date that they had put it through the scrutiny net again and that the position was not what it was previously. That might help members to relax.

Sir Reg Empey:

We do not want to simply get into another debate. At what point will we be signing off on the clauses? That debate is different from a debate on the clause in principle. I am not quite sure whether that is what John was saying. Was he happy to talk about it in principle? Are there other clauses that he or others are happy to sign off on today, or are we all in the same boat? I am not

quite clear about that.

The Chairperson:

That is a fair enough point. I will let members speak for themselves. If they feel that there are issues on which they want to sign off, that is all right. You know the final date for completion of our scrutiny of the Bill, and, therefore, everything must happen between now and then.

Sir Reg Empey:

I was not criticising; I was just looking for clarification.

The Chairperson:

I understand that. Sir Reg, I do not know whether, as a member of the Committee, you want to sign off on clause 1 and move on. That would not stop you from coming back at a later date and saying, "Hold on a minute; I signed off on clause 1 in general, but, having looked at it again, I now recognise that I cannot sign off on a certain issue."

Sir Reg Empey:

All that I will say is that perhaps I would be happy to finish clause 1 today. However, equally, there might be other clauses that I would not be happy to finish. I am not trying to be restrictive; I am just trying to get clarification on when we will go live on taking decisions on clauses as opposed to simply teasing them out further. I seek only that clarification. I am not trying to restrict anyone's room for manoeuvre, because we would be in the same boat on some clauses.

The Chairperson:

Mr O'Dowd, do you wish to revisit your comments? We have heard what you have said —

Mr O'Dowd:

I did not take umbrage at what Reg said. We are not in a position to sign off on any clauses today. Further discussion is required internally with the party. Obviously, we have to complete that by the time that the Committee needs to complete its services. All of that will be in hand.

The Chairperson:

But nothing in clause 1 jumps out at you as something that your party feels strongly against at this particular time?

Mr O'Dowd:

There is nothing on which I want to comment.

Mr A Maginness:

If there is an issue with any of those clauses, we should raise it now. That is really what the process is about. If there are no issues, we should remain silent and get on with business.

The Chairperson:

Yes. That is why officials are here. They may be able to assist us on matters of clarification or provide further explanation or detail.

Mr A Maginness:

That is fair enough.

The Chairperson:

Let us move on. I do not hear anyone shouting at me about clause 1. I understand the way in which that is coming at me. It is not being signed off in detail by any means.

We will move on. Does anyone want to raise an issue? Members have a paper that contains views from written submissions and oral evidence, the departmental response and options. We will move on to page 3. Does any member want to raise an issue, comment or ask officials for further explanation on anything on that page? If not, we will move on to page 4.

Mr McCartney:

Have officials told us that there is no additional cost for the administration of levies?

Mr Johnston:

Implementation of the levy system would involve capital costs for changes to computers, for

which we have budgeted £100,000 as a one-off cost. We believe that ongoing costs can be assimilated into ordinary administration. When the system is set up and someone is fined, the fine money will go in one direction and the levy money will go in the other. That should happen automatically as part of the process.

The Chairperson:

Does that clarify the issue?

Mr McCartney:

Yes.

The Chairperson:

Clause 1 takes us right from page 1 to page 7 of the paper. If I do not hear anyone call, I will move on without assuming anything. Perhaps that is a better way to do it. Is that all right?

That takes us to clause 2, which deals with the enforcement and treatment of the offender levy that has been imposed by a court. Does any member have a question or require clarification on clause 2?

Sir Reg Empey:

The only issue is the general concern about ability to pay, particularly for women, and that was raised previously by Professor McWilliams and during evidence from the Women's Support Network and others. Chairman, you may recall that that theme seemed to run through some of the submissions. That issue seems to be of concern, particularly with regard to female offenders.

The Chairperson:

Mr Johnston, in its response, the Department said that:

"The Department will be carefully considering the timetable for the introduction of the remaining 5% of eligible disposals".

Can you be more precise about that or tell us anything more about that issue?

Mr Johnston:

We feel that taking a phased approach to implementation is sensible, rather than trying to bring

everything in at once. Implementing the levy for fines and prison earnings is reasonably straightforward. However, we want to implement the levy for community sentences at a second stage as there is currently no arrangement for any money to change hands and, therefore, one would need to be put in place.

I will turn to Janice, who can perhaps give you a sense of when in the programme that may happen.

Ms Janice Smiley (Department of Justice):

We are looking to programme that in with other work that is currently ongoing on fine default more generally and to ameliorate the impacts of fine default. That work is looking at issues such as extending the supervised activity order and the deduction of benefits or attachment of earnings. Those provisions will dovetail, and the implementation of the provisions with those measures will mean that we then have an alternative to default to custody in relation to those particular areas and for fines more generally, as well as the ability to collect the levy at the same time.

The Chairperson:

We are moving to clause 3, "Deduction of offender levy imposed by court from prisoner's earnings". Do members have any questions on that? We heard something about this earlier, and perhaps members are content with the information that they have and feel that, when they come to make a definitive decision on the clause, they will be able to do so.

Clause 4 is entitled "Offender levy imposed by court: other supplementary provisions". Do members have any queries on clause 4?

The Department's response states that:

"The provision which prevents the court from setting a default period of imprisonment for non-payment of the levy was considered appropriate in recognition that it is not part of the sentence of the offence, but a separate levy based on the disposal, which acknowledges the impact of offending behaviour on victims."

Do you think that there is now a possibility that there will be confusion that that is, in fact, part of the sentence?

Mr Johnston:

In parallel with implementation of the levy there would be a lot of publicity about its introduction, which would explain to the public at large, as well as to people who may offend, that it is being introduced, what it is about and what it is going to do. As discussed, we have dealt with the fact that something might be said in court about a fine being imposed and, in addition, a levy being imposed. Therefore, efforts will be made to make sure that people understand what the levy is about and what its nature is.

Ms Smiley:

A levy will be imposed and announced by a judge formally. A sentence will be given for the offence, and the judge will then say that a levy is being imposed at the appropriate level as set out in legislation. It will be quite clear in court. Prosecutors will be aware of the levy, and awareness will be raised among defence counsel and the judiciary as this is introduced. There should be fairly wide awareness quite early on, as fines are a common disposal and will be introduced first. That will become the common understanding.

Ms Ní Chuilín:

So, in the event of fine default, the levy will be imposed first. If someone did not pay their fine and went to jail, they would pay the levy first and then be sentenced for default of a fine. That seems as though it is two terms in jail for one thing.

Ms Smiley:

The fine will be imposed if that is the disposal of the court, and, because a court fine has been set, the levy will be set at a level of £15. If someone starts to make payment by part-payment, any money that is received goes first towards discharging the levy and whatever else is paid then goes towards discharging the fine. If someone were to stop paying or were not to pay at all, the person would be in default of the fine, and the court would have to take action and decide whether it would treat the default as a default to custody or a default to a supervised activity order. If the final conclusion of the court were that the person should be committed to custody, the levy would be discharged, because that is the ultimate outcome of non-payment of a financial order. Nothing further can be done in that regard, so it would be discharged at that point if it has not already been paid through part-payments.

Ms Ní Chuilín:

Does discharged mean that there is an acceptance that the levy cannot be paid?

Ms Smiley:

Yes, in the same way as the court accepts that the fine cannot be paid.

The Chairperson:

Does that come first?

Ms Smiley:

The levy comes from any moneys received. It is common in the courts that any money that is received from individuals for fines and compensation orders that are imposed goes to compensation orders first in a payment priority order. It will go to direct victim compensation, then to the levy, the fine itself and any court costs that there may be for a departmental prosecution. There is a tiered effect to how it is distributed.

The Chairperson:

What if the person cannot pay?

Ms Smiley:

If an individual could not pay for any of those issues, there would be a default for fines, which is a warrant to custody. They would not be defaulted to custody for not paying the levy; they would be defaulted because of the fine that had been imposed.

Mr Johnston:

In other words, you end up in prison only once if you do not pay and if nothing else works.

The Chairperson:

Clause 5 is entitled "Offender levy on certain penalties". Do members have any queries or points of clarification on that issue? Are members content? When I say content, I mean that you simply understand. I do not hear anything from anyone.

Clause 6 deals with the amount of the offender levy. No members have indicated that they require clarification on any issues.

Clause 7 is entitled "Eligibility for special measures: age of child witnesses". Do members have any issues that they wish to to raise? Again, no member wishes to raise an issue.

Mr Johnston, concern was expressed about 18-year-olds who have a lower mental age. We keep talking about mental health in prisons and in courts, and the issue seems to come up quite often. Your paper states:

"It was considered that processes should be put in place to support adults with hidden communication difficulties."

How do you identify those hidden communication difficulties if they are so obscure?

Mr Matthews:

It is a challenge for the court to identify when someone may need extra support to communicate. We touched on autism, which could be one hidden difficulty, and dyslexia is another. It comes down to an assessment being made of the witness in an individual case and to the judge examining whether the person's evidence would be compromised by whatever problem they may have. That may be down to submissions put forward by whoever is representing the witness and to any assessment that the court makes of the person's ability to give evidence. It is a very tricky area to assess, and it is one that really requires assessment on a case-by-case basis.

Ms Ní Chuilín:

Are you saying that the judge makes the assessment rather than an expert?

Mr Matthews:

No; the judge makes the decision about whether special measures are warranted. That will be done on the basis of the advice that the judge requires to make that decision. The way that the 1999 Order and the provisions are worded gives them quite wide latitude, because the issue comes down to whether or not witnesses can answer questions and give evidence rather than to specifying disabilities.

The Chairperson:

We are continually told, and I have little doubt that it is true, that there are people in prison who should really be in a hospital because of their mental capacity. Prison is not the right place for them, and it is not where they should be. Will this provision address that sort of issue?

Mr Matthews:

No, it will not.

Mr Johnston:

There is already provision for people who have mental health difficulties that cannot be catered for in prison to be transferred to hospital. The Department regularly issues warrants to transfer people. Obviously, there are still lots of people in prison who have extensive mental health needs, and we recognise that. However, we have fairly regular movement between prison and hospital for those who have been convicted.

Mr Matthews:

It is also probably worth pointing out that the whole area of competence to plead is being examined by the Department of Justice and the Department of Health, Social Services and Public Safety with a view to bringing forward provisions sometime this year or possibly next year.

The Chairperson:

Clause 8 is entitled "Special measures directions for child witnesses". Do members have any points that they want clarified or any questions for officials? Is it all clear enough?

Mr O'Dowd:

With these clauses, I take it that, in making assessments, the judge will seek access to expert witnesses.

Mr Matthews:

Yes. Healthcare professionals will give them whatever assessment they require to determine whether support is needed. In this case, the clause is giving more agency back to young witnesses so that they do not have to necessarily follow what we call the primary rule, which

funnels them into giving evidence via a video link. That is subject to certain safeguards, such as the judge making an assessment based on expert advice on whether or not the person is capable of making a decision. So, the protection of the witness is still in there, but it also gives older young witnesses, if I can put it that way, a bit more say in the process so that they can give evidence directly if they want to.

Mr O'Dowd:

I take it that that is for witnesses for both the defence and the prosecution.

Mr Johnston:

Yes.

The Chairperson:

Clause 10 is entitled "Evidence by live link: presence of supporter". Does anyone want clarification on any issues?

Clause 11 is entitled "Video-recorded evidence in chief: supplementary testimony". Are there any issues that members want further clarification on today?

Mr O'Dowd:

Can a defence counsel challenge the introduction of such evidence?

Mr Johnston:

The introduction of any evidence can be challenged under the usual arrangements on evidence.

Mr Matthews:

The judge would probably hear submissions from either side on whether it should be admitted, but there is no specific mechanism in this clause to challenge the admission of such evidence.

Mr O'Dowd:

And there is no specific mechanism to bar a challenge.

Mr Johnston:

Exactly; they would have to rely on the ordinary mechanisms available in court.

The Chairperson:

We are moving on to clause 12, which deals with the examination of the accused through an intermediary. I draw members' attention to the following line in their paper:

"The Law Society considers that the Justice Committee may wish to make a similar recommendation".

Members can read what the society is saying there about issuing guidance. It is entirely up to the Committee to decide whether to take direction from the Law Society. However, that is one issue that members will want to be up for one way or another when we come back to make a decision. That is all that I am saying; I am not trying to tell members what they should decide. However, I am saying that they should take a long hard look at the issue.

Mr McDevitt:

If memory serves me right, during the oral evidence session, some concern was expressed by professionals who act as intermediaries at other stages in the criminal justice system that the qualifications of such an individual were pretty vague in the Bill. Has the Department given that further consideration?

Mr Matthews:

We wrote to the Committee a couple of times about the general support outside the courtroom and about our plans for training intermediaries. There is an existing training course that we propose to fund. That training is of a very high standard. In fact, it is probably of a higher standard than that which is available elsewhere. For example, the appropriate adult scheme probably has a higher threshold. Essentially, intermediaries are akin to an interpreter. In taking on that role, intermediaries also take on certain responsibilities of the court, and if they are found guilty of breaching those responsibilities, they are liable for a custodial sentence. Therefore, an intermediary is actually a very serious position, and it is not one with which we are comfortable without people being properly trained.

Mr McDevitt:

A further issue arose about continuity. If someone has been identified as needing an appropriate

adult and that adult has been with the person from the time that they were first brought into custody, would it be right or wrong for that adult to continue with that person? If it is right, should the Bill make specific provision for that? If it is wrong, why is that?

Mr Matthews:

We looked into the appropriate adult scheme, the legislative basis for which is courtesy of the Police and Criminal Evidence Act 1984 (PACE). Essentially, when someone aged under 17 is in custody and is being interviewed by the police, the scheme kicks in automatically and that individual gets an appropriate adult. That is also the case for someone with mental health issues. In fact, it is even the case for individuals suspected of being under 17. There is no agency involved; it just happens, and the individual concerned gets an appropriate adult. In those circumstances, the appropriate adult is meant to advocate for the individual, as a solicitor would do, and to help them to get through the process and to understand its consequences. When MindWise gave its evidence, it mentioned similar points about the idea of advocacy right across the criminal justice system and continuity of care.

As I said, an intermediary is meant to be a neutral observer and an interlocutor between the court and the individual. There would be an issue, however, if there had been any sort of history, because that would leave the adult open to accusations of bias from either side, as it could be argued that they had advocated for the individual up to that point. For example, the adult may be aware of things that were said under privilege and at interviews. That could then put them in a very difficult position, because, if the individual says something during questioning in court that the adult, from previous experience, knows or suspects not to be true, they have to flag that up. Therefore, the adult is put in a very difficult position, whereas someone who is completely neutral will just faithfully report back to the court what they have been told. The advocacy side of things makes sense. However, given those particular circumstances, neutrality in the courtroom is probably safer for both parties in the interests of justice.

The Chairperson:

Mr Matthews, on that particular point, when this was discussed previously, a Committee member expressed the view that there was some disconnect, as everyone who had an appropriate adult with them in a police station was not automatically eligible to have an intermediary when their

case came to court. Rather, it was for the judge to make a decision based on the interests of justice.

Mr Matthews:

That is right. The appropriate adult scheme kicks in automatically if someone is under the age of 17 or if the police even suspect that someone has mental health issues. As to whether an intermediary is required, the question is about whether or not the person is capable of giving evidence themselves. It could be that someone is under 17 years old, but quite capable of understanding the questions put to them by a judge. Therefore, that person would not necessarily need an intermediary, but would have automatically got an appropriate adult.

The Chairperson:

I could take you to a man in my town, and, every time that you met him, you would suspect that he is drunk. He is not; that is just the way he is because of a stroke or something. Everybody who meets that man thinks that he is drunk. I know that he is not, because I have known him for 30 years. He is anything but drunk; he is quite sane and sensible and sober. However, I guarantee that, if you meet him, you will say that that man is drunk.

Mr Johnston:

If that impacted on his communication ability, he may well be the sort of person who a court would feel qualified for an intermediary. However, the point that we want to make is that that is different, and very specific, from the appropriate adult scheme that is extended to everybody who is under a certain age or who may, it seems in the police station, have a mental health issue.

Mr McDevitt:

Both are important points. However, my questions are on the previous point about continuity. Did you look at experience in other jurisdictions? Is there precedent for continuity? Is there precedent for clear separation at the point at which someone walks into a courtroom?

Mr Matthews:

We are not aware of any other jurisdiction that has advocacy. However, we are aware that that is under discussion with certain voluntary bodies here. At the minute, we do not have any funding.

I guess that, because Northern Ireland has single justice agencies, it is perhaps easier to do that sort of thing here than it would be anywhere else.

The Chairperson:

We will move on to clause 13, which is about the age of child complainants.

Sir Reg Empey:

There seems to be a lot of confusion about age limits. A young person can be sent into war to kill and be killed, we have the age of sexual consent and the age of criminal responsibility. People can get married at a certain age, and we are looking at perhaps lowering the voting age and various other things. There seems to be a lot of confusion around age and the definition of a child. Therefore, I wonder what the precise rationale for this clause is.

Mr Matthews:

Essentially, it mirrors clause 7, which raises the age limit for accessibility to special measures. We did that with both those clauses because that matches the European Convention on the Rights of the Child, which says that anyone under the age of 18 is a child. That is why we have done this. As to the wider societal issues, that is —

Sir Reg Empey:

I am just making a point. I am right in saying that that does not apply to soldiers.

Mr Johnston:

I think that people can join the army before the age of 18.

It depends on the particular considerations. This is about protections for young people who are giving evidence in court. The considerations for that may be different from those involved in voting, employment or the military.

Sir Reg Empey:

I would regard sending somebody into battle as being further up the scale than going into court, but that is just a personal opinion. However, it does seem that we have not quite got our heads

around the issue of age. I am not making a big issue of it, Chairman. I am just flagging up that we appear, as a society, to have some contradictions.

Mr Johnston:

We may well do. For our purposes, we looked at the UN Convention as our best guide on criminal proceedings.

The Chairperson:

OK. We will move on Part 2 of the Bill, which is on live links. Clause 14 deals with live links for patients who are detained in hospital. Does anyone have any comment or observation to make or question to ask on that issue? Clause 15 deals with live links for preliminary hearings in the High Court. No specific views have been raised since the last time that we visited that issue. I do not hear anything different today. Clause 16 deals with live links at preliminary hearings on appeals to the County Court.

Mr O'Dowd:

I want to raise the concern that was highlighted by the Human Rights Commission about the right of an appellant to appear or give written consent for a live link. What is the Department's view on that?

Mr Tom Haire (Department of Justice):

The position is that consent is built into any appeals or sentencing matters. The issue here is the preliminary hearing that leads to a sentencing. It is correct to say that there is no consent in the text of the Bill. However, it provides the opportunity for parties to make representations.

Mr O'Dowd:

Are you, therefore, suggesting that, under the legislation that is before us, the appellant does have a right to appear?

Mr Haire:

When an appeal makes its way to the County Court, there is a substantive requirement for consent for that appeal. If there will be a live link, there must be consent for it.

Mr O'Dowd:

OK. I will return to that issue.

The Chairperson:

Clause 17 deals with live links in sentencing hearings on appeals to the County Court. Clause 18 deals with live links in the Court of Appeal. Clause 19 deals with live link direction for vulnerable accused. Include Youth had something to say on that.

Mr McDevitt:

It suggested a pilot.

The Chairperson:

Mr Johnston, do you or your team want to comment on the recommendation that that be piloted in order to assess its effectiveness? Have you views on that, gentlemen?

Mr Johnston:

We do not have the advantage of the papers that you have. Perhaps, you could just remind me —

Mr McDevitt:

I do not mind passing it over to you, Mr Johnston. I will get into trouble with the Committee Clerk for passing over a Committee paper.

The Chairperson:

Whose side are you on?

Include Youth suggests that there be a pilot to test and assess the effectiveness of that.

Mr Haire:

I know that live links and special measures are monitored by the Courts and Tribunals Service. Clause 19, effectively, maps physical disability and disorder into the vulnerable accused and expands to allow for physical problems in court.

Mr Matthews:

To a certain extent, paragraph 12 of the Criminal Evidence (Northern Ireland) Order 1999 already covers some of what Include Youth suggests. However, we want to check that and get back to you with specific details.

The Chairperson:

That is fair enough. Perhaps, we are at a slight advantage in that respect. As we will not sign off clauses today, it must be reasonable for you to be able to come back with your views on that.

Mr Johnston:

We can go back and check that.

Mr McDevitt:

They did return the papers, Mr Chairman. *[Laughter.]*

The Chairperson:

You keep those papers to yourself, Mr McDevitt.

That was not so quick, members. The only downside to it is that we have not made any decisions, and we recognise that. Looking at this whole thing from a timetabling perspective, I am doubtful whether we can go past next week without coming to decisions. There is a considerable amount of things to be done. We could propose amendments to any of the clauses if we decide to, but it would be much better if we tell the Minister that it is our view to do that and why. It would be better if he agrees with us and does it, because the expertise is all there. However, if we feel strongly about it and he feels strongly in the opposite direction, obviously we will go our separate ways and fight that battle elsewhere. However, if the Committee agrees on amendments, we should pass them on to the Department and the Minister, and ask him to incorporate them into the Bill. Are members clear on that?

Looking at the timing of the whole thing, I see that there is a fair volume of work to be done by officials. I am talking about Committee officials; the Department is very capable of looking

after itself. We need to give them a heads-up, but I cannot see it going past next Thursday's meeting at the latest. Indeed, Tuesday's would be preferable, but certainly by Thursday's meeting we should come in and make decisions. That will give every group around the table an opportunity to go back to discuss it with their colleagues, put it through the grinder and see what it comes out like at the other end.

Sir Reg Empey:

Just to get clarification on that: we pleaded the O'Dowd protocol here — *[Laughter.]*

The Chairperson:

Well, we did not adopt it, but go ahead.

Sir Reg Empey:

We have had a run through Parts 1 and 2, so, basically, that has been done on a without-prejudice basis. Are you saying that we will come back to those two Parts next week with the objective of signing off on them, or are you saying that we will move on to everything else in sign-off mode?

The Chairperson:

No. Again, if the Committee feels strongly about it, we can do otherwise, but we have had this dummy run, so we should come back and do the work for real on what we have done here, and the Committee can sign off on that. The only thing that you have to decide is whether to do that on Tuesday or Thursday. That is the bit of latitude that you can have.

Mr McDevitt:

I would have thought that we could have a stab at that on Tuesday. I do not sense that there is a huge debate on these two Parts. There is other stuff that we will want to debate at some length.

The Chairperson:

I am inclined to agree with you, but I cannot look into the souls or minds of people and know what they are really thinking.

Sir Reg Empey:

Why not?

The Chairperson:

Well, I do not claim those powers. *[Laughter.]* Members must come out and say where they stand.

Mr McCartney:

This is on a general principle, but there is a particular point. We are getting clear evidence that taking the levy from sentenced prisoners may be in contravention of the European Charter. How do we satisfy ourselves that we are not in breach of that, so that in two or three years' time we do not find ourselves losing a case in the European Court of Human Rights (ECHR) because we were not duly diligent?

Mr Johnston:

Obviously, the Bill has been through our own lawyers and through the Attorney General, and they have provided that assurance in that respect. I take considerable assurance from what the Human Rights Commission representatives were saying earlier about it being important that the European prison rules are taken into account. As I said, we have very carefully taken those into account, so that gives me confidence in respect of any prisoner standing a challenge.

Mr McCartney:

I understand that, but if a case goes to the European Court of Human Rights, somewhere along the line, people will give that same advice. This is without prejudice, but looking at the right to vote, I am sure that, in every part of the legislation, from the prison rules to the Supreme Court in Britain, they would say that prisoners do not have the right —

Ms Smiley:

The measure is in place other jurisdictions in Europe and across the world, and we are not aware of any challenges it through the ECHR. Although these provisions are for our own jurisdiction, they are fairly similar to those elsewhere, which have not been subject to challenge. In the

international research that we did, we did not find evidence of any particular challenge in regard to prisoners.

The Chairperson:

The Committee can take legal advice on that, but asking to have it back for next Tuesday might be pushing it. We could probably have it back for next Thursday.

Mr McCartney:

One of the reasons why I asked is that, in response to issues about the deductions from prisoners' earnings, the comparison was drawn with the £1 deducted for the television. However that is a voluntary process that a prisoner enters into; it is not compulsory for a prisoner to have a television, so they do not have to pay £1 if they do not want to. You could end up with a scenario in which the money is wrongly taken off a certain prisoner. For example, it could be a week until his or her release. I am trying to satisfy myself that we are not doing something for which we will be found to be in breach of something in two or three years' time.

Mr Johnston:

We have looked at what happens in other jurisdictions, but the amount that we are proposing to take out is just £1 a week. Prison earnings vary from between £6 and £20, so we are talking about only a small proportion of what is earned in any week being taken out compulsorily.

The Chairperson:

There is another distinct advantage of having the Minister making these changes. If we propose an amendment, it is probable, or at least possible, that consequential amendments would have to be proposed. Therefore, it would be better for the Department and the Minister to apply themselves to that, because then they could propose the necessary consequential amendments that would result from our activities. We are talking about next Thursday.

Sir Reg Empey:

To clarify: will delegations be expected to come here next Thursday to sign off on Parts 1 and 2?

The Chairperson:

Yes, that is basically it.

Mr Givan:

Today is the dummy run, but I take it that we will not move to formal clause-by-clause scrutiny when we move to Parts 3 and 4. I take it that we will have a chance to come back to those Parts?

The Chairperson:

After what we have discussed this afternoon, we will be putting them to bed next week. We cannot go through this exercise on this section again, because time is not on our side

Ms Ní Chuilín:

Are we going to try to do the same thing for the other sections?

The Chairperson:

Yes, we will try to.

Ms Ní Chuilín:

So, we will be having preliminary discussions one week and going into clause-by-clause scrutiny the following week?

The Committee Clerk:

The normal process is for the Committee to work through the clauses and reach a decision. Sometimes, the Committee may want to hold a clause back because it is waiting for a draft amendment or some further information. In such cases, the Committee will work through the Bill and try to agree a position on each clause. At the end of that process is the formal clause-by-clause scrutiny, which is when the formal question is put on each clause. The formal question put will be based on the decisions that were made previously. The formal clause-by-clause scrutiny is your final sign-off, but the question that will be put will be based on the decisions that were made earlier. The formal clause-by-clause scrutiny usually happens fairly rapidly; you just work through each clause and put the question that was agreed, which will either be that the Committee is content with the clause or that the Committee has agreed to amend the clause. So, there would

be that final stage before the end of the process. Before that, the Committee should reach a position on each clause. We will set out the position on each clause in a paper as we work through the Bill so that the Committee is very clear on what it agreed previously. The question is about whether you want to start the process on the clauses on Tuesday or Thursday.

The Chairperson:

I think it should be done on Thursday. Is that agreed?

Members indicated assent.

Mr McCartney:

On Tuesday we will just continue with the first read of the next Parts of the Bill?

The Committee Clerk:

If that is what the Committee is content with. We will issue the papers as soon as we can pull them together.

The Chairperson:

Yes. I thank the officials again for their time.