



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

**Justice Bill: Formal Clause-by-Clause
Scrutiny**

3 February 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
Lord Empey
Mr Paul Givan
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

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

Mr Robert Crawford) Northern Ireland Courts and Tribunals Service
Ms Geraldine Fee)

The Chairperson (Lord Morrow):

We will continue with the formal clause-by-clause consideration of the Justice Bill. Today, we will focus on Parts 5 to 9 and schedules 4 to 7 and the proposed amendments and clauses. I remind members that, at the meetings on Thursday 27 January and Tuesday 1 February, the Committee informally considered the evidence received in relation to Parts 5 to 9 and schedules 4 to 7. We also received further information and clarification at that time from departmental

officials and agreed to formally consider these clauses at this meeting. Copies of the summary papers have been provided, as have the Department's briefing papers on the amendments and additional information about the relevant clauses. I intend to work through each Part of the Bill in turn, starting with Part 5, which is about treatment of offenders.

We welcome back Gareth Johnston, head of justice strategy division; Tom Haire, Justice Bill manager; and Janice Smiley, head of the criminal policy unit.

Starting with Part 5, clauses 56 to 63, which are on the treatment of offenders, I invite members to indicate whether they are content with the clauses as drafted or whether they have issues with them and wish to discuss them further. On any clause on which there is an issue, once any member who wishes to speak to the clause has done so, I will seek the views of the Committee as to what it wishes to do at that stage.

I remind members that no issues were raised by members or amendments suggested on clauses 56 to 63. Unless there are new issues today, I propose to take those as one block.

Ms Ní Chuilín:

Can I just ask for clarification on clause 58, please?

The Chairperson:

You can. Does that mean, then, that clauses 56 and 57 are OK?

Ms Ní Chuilín:

They are grand.

The Chairperson:

There is a question around clause 58. Would the member like to put the question?

Ms Ní Chuilín:

Yes. Sorry; my colleague John wants to talk about clause 57, but can I ask about clause 58? I asked first.

The Chairperson:

We will take them in order. We were going to do them in one block, but that is not going to work.

Clause 56 agreed to.

Clause 57 (Penalty for certain knife offences)

The Chairperson:

Mr O'Dowd wants to ask a question about clause 57.

Mr O'Dowd:

I raised the concern with officials before that we are imposing penalties, which are designed for adults, on children and young offenders. Can you assure me that the penalties under clause 57 are commensurate with other youth offences?

Mr Gareth Johnston (Department of Justice):

I can give you that assurance. The clause brings the penalties for this particular knife offence up to the same levels as those that were brought in for other knife offences under the Criminal Justice (Northern Ireland) Order 2008. Any of those other knife offences could be committed by persons under 18 if they had a knife in a public place. Indeed, this offence could be committed by anyone, for example, if a teacher or a visitor to school had a knife, they could also be charged with that offence. We are not fundamentally changing the way that those under 18 are treated; we are simply bringing one offence, which was, in all honesty, missed out last time round, into consonance with the other offences.

Mr O'Dowd:

Thank you.

Question, That the Committee is content with the clause, put and agreed to.

Clause 57 agreed to.

Clause 58 (Extension of maximum period of deferment of sentence)

The Chairperson:

You had a query, Ms Ní Chuilín.

Ms Ní Chuilín:

During discussions on a different part of the legislation, proposals were made about hijacking. If, for example, someone hijacked a car and was charged with that and with dangerous driving, would the more serious charge or any of the charges be deferred as a result of clause 58?

Mr Johnston:

It would be at the discretion of the court whether to defer one charge and deal with the other, or to defer the whole case and deal with the offences together. It would very much depend on the circumstances of the case.

Mr Tom Haire (Department of Justice):

It can apply to any sentencing option.

Ms Ní Chuilín:

So, it is for any sentencing option?

Mr Haire:

Yes, any sentence could be deferred for 12 months.

Ms Ní Chuilín:

OK. If sentences are deferred, particularly for more serious charges, that will not assist victims of crime. That has not been mentioned.

Mr Johnston:

It would just be a deferment of the sentence. A decision as to whether someone was guilty would be reached, which may be of some help to victims. The provision is intended to encourage offenders to rehabilitate and to address their offending behaviour, with the chance that, if they do, it may have an effect on the eventual sentence. Although I take your point and your balancing of

interests, I hope that victims might take some comfort from the fact that the provision is about trying to stop people reoffending and others becoming victims.

Ms Ní Chuilín:

Will that apply to any charge and any sentence?

Mr Haire:

It is available to the court to defer sentence. As Gareth said, that could allow for offenders to make reparation or to undertake a programme, for example, to convince the court that the right sentence should be imposed. It is a general power on the deferral of sentences.

Ms Ní Chuilín:

Does that power already exist?

Mr Johnston:

It does, but it applies only to sentences of up six months. The provision will extend that period to 12 months, on the basis that the programmes that you might want an offender to engage in, such as those that allow them to address addiction or alcoholism, could take more than six months.

Question, That the Committee is content with the clause, put and agreed to.

Clause 58 agreed to.

Clauses 59 to 63 agreed to.

Clause 64 (Penalty offences and penalties)

The Chairperson:

Are members agreed on clause 64?

Mr McCartney:

At the previous session, we raised the issue of community service as an alternative to fines. Officials gave us an answer, and we are now reflecting on that. We will not obstruct the work of the Committee, but we will abstain on all the clauses that relate to the penalty notices.

Question put, That the Committee is content with clauses 64 to 75.

The Committee divided: Ayes 4; Noes 0.

AYES

Mr Givan, Mr Buchanan, Lord Browne, Lord Empey.

Clauses accordingly agreed to.

Clauses 64 to 75 agreed to.

The Chairperson:

Do those who abstained want it recorded in the minutes that you abstained?

Mr McCartney:

Yes. We may come back with an amendment, but it will not be done through the Committee.

Ms Ní Chuilín:

We will not obstruct you — not today anyway. *[Laughter.]*

Clause 76 (Conditional cautions)

The Chairperson:

We will take clauses 76 to 84. Does anyone want to comment?

Ms Ní Chuilín:

We have a problem with this.

The Chairperson:

Is it with a specific clause or is it a general problem?

Mr McCartney:

Is it clause 79?

Ms Ní Chuilín:

Yes; clause 79.

The Chairperson:

Let us hear what the member has to say about clause 79.

Ms Ní Chuilín:

It is about the Department issuing guidance about issuing penalty notices, particularly in the exercise of giving discretion to police officers. Is there guidance on that?

Ms Janice Smiley (Department of Justice):

Clause 79?

Ms Ní Chuilín:

Yes.

Mr Johnston:

Conditional cautions generally.

Ms Smiley:

The code of practice is a statutory code that will come before the Assembly in the affirmative resolution order. That will be prepared and agreed with the Attorney General and will be consulted on before it comes to the Assembly.

Lord Empey:

I am having difficulty hearing Janice.

Ms Smiley:

The code of practice will be prepared and agreed with the Attorney General. It will then be circulated and consulted upon. It will come back to the Assembly. There is an affirmative resolution order power to bring it back to the Assembly before it is introduced. So, there will be full consultation opportunities in regard to what will be contained in the code.

Question, That the Committee is content with the clauses, put and agreed to.

Clauses 76 to 84 agreed to.

The Chairperson:

We will move to Part 7, which covers clauses 85 to 91. It is about legal aid. I welcome Robert Crawford and Geraldine Fee back to the table.

Clause 85 (Eligibility for criminal legal aid)

The Chairperson:

I refer members to their tabled papers. I remind members that, on Tuesday, they requested an amendment to be drafted to ensure that a fixed means test for legal aid would be enacted by affirmative resolution. The Department has written proposing an amendment to clause 85 that would provide for affirmative resolution when, and if, the means test is enacted for the first time, but not for subsequent amendments to the means test.

Mr Robert Crawford (Northern Ireland Courts and Tribunals Service):

As we mentioned on Tuesday, one way to address the Committee's concerns may be to provide for affirmative resolution procedure the first time that a criminal legal aid means test is set so that the Committee and the Assembly could give fully scrutinise how that was being handled and arranged. We remain of the view that enacting every change to the regulations by affirmative resolution could be onerous. It could mean that the Committee and the Assembly has to carry out the affirmative resolution procedure where, for example, we change the eligibility rates based on inflation or changes in benefits. We felt that that is perhaps not the Committee's intention.

To show the Committee what an affirmative resolution clause based on first instance only would look like, we tabled it for the Committee's consideration. You may want to take time to consider it. That is how it would operate if we were to adopt that approach.

The Chairperson:

Members, you are aware that the Department and the Committee went their separate ways on this clause at the last meeting. The Committee decided that it would draw up its own amendment. We can let you see that or perhaps you are entirely happy with what Mr Crawford said. Does any

member wish to comment? Would you like to see the one that was prepared earlier?

Mr McCartney:

Yes, I am happy to look at it. I would not want to let all that good work go to waste.

The Chairperson:

Members, you have the Committee's draft amendment in front of you. You have also heard what Mr Crawford said. What do you want to do?

Mr McCartney:

Have the officials seen it?

The Chairperson:

No. The Committee Clerk will explain the subtle difference.

The Committee Clerk:

The draft amendment that has just been circulated to members is based on the discussion that took place on Tuesday. Under that draft amendment, all changes to that clause and any regulations had to be enacted by affirmative resolution. Every time a regulation was brought, it would have to be enacted by affirmative resolution. What the Department proposes with its amendment is that the first time that it brings the regulations, it will be enacted by affirmative resolution and, after that, it will be enacted by negative resolution.

In its letter, the Department outlined the reasons why it takes that stance at the present time. The Minister has said that he will review the legal aid controls and, in recognition of the Committee's concerns, come back to the Committee following that review. The hope is that such a review will be brought to the Committee and that it will be completed before any substantive proposals emerged to amend clauses 85 and 89 by what would be negative procedure. So, I think what the Minister is suggesting is that, the first time they enact the means test, it will come through by affirmative resolution. He is giving an undertaking that the review looking at the legal aid control will be concluded before any further substantial proposals emerge relating to those rules. The draft in front of you was based on the Committee's discussions on Tuesday, and

would mean that every regulation would automatically go through by affirmative resolution.

The Chairperson:

Do members have any comments? If there are no comments, I will formally put it to the Committee. Will you go with the amended clause as suggested by Mr Crawford, or will you go with the amended clause as suggested by the Committee and outlined by the Committee Clerk?

Mr O'Dowd:

Do we have to take the decision today? Can we leave it until Tuesday? There are two amendments in front of us here, and some parts are quite similar. It is one of those things that we may want to ponder on a bit further.

The Chairperson:

I suspect we can take it on Tuesday, but that would be the day of reckoning. If members want to give it that last consideration, I think we can do that. So, yours is still in the frame too, Mr Crawford.

Mr Crawford:

I want to say a few brief words about the review that the Minister mentioned in the letter. We are trying to pick up on the points raised by the Committee that there are some areas across legal aid in general that would be appropriate for affirmative resolution. However, we would need to do quite a bit of work to separate that. We have in mind that, when the access to justice review reports — the Minister will see an interim report in early March — we might be in a position to establish in what new areas there might be radical change in legal aid. Some of those will certainly be areas where affirmative resolution would be appropriate. That is the kind of thinking that underlies that point.

Ms Ní Chuilín:

The Committee's amendment will not prevent you from doing that anyway.

Mr Crawford:

The Committee's amendment would require affirmative resolution in all cases, so any subsequent

general regulation, which would normally operate by negative resolution — such as changing rates or changing the levels of income that apply — would have to be taken by affirmative resolution. What we are saying is that we would make it affirmative resolution in the first instance and, before making any further regulations on that, the review will have been completed. So, there would be affirmative resolution the first time but no further changes before the review is completed. That would allow the Committee the opportunity to determine whether it wished to operate affirmative resolution on this, or some variant that the review would produce.

Mr Johnston:

We just feel that, if we went with the amendment that the Committee staff have helpfully had prepared, it would mean that we could end up troubling the Assembly for an affirmative resolution when upping rates according to inflation or when the name of jobseeker's allowance changes — basically, for reasons that do not really justify getting the whole Floor of the Assembly involved.

The Chairperson:

Those comments are helpful. We will take it away and the Committee will give it due consideration between now and Tuesday, then we will come to a definitive decision. Is that agreed?

Clause 85 referred for further consideration.

Clauses 86 to 88 agreed to.

Clause 89 (Financial eligibility for grant of right to representation)

The Chairperson:

The issues raised by members about this clause are the same as those raised for clause 85. The Department's letter also referred to that. Is that right, Mr Crawford?

Mr Crawford:

It is indeed. The point about not making a change to clause 89 is that we anticipate that any first exercise of the new power would be under or be an amendment under the 1981 Order, because

the Access to Justice (Northern Ireland) Order 2003, to which clause 89 applies, is not yet in force for the most part. Before the 2003 Order comes in to force, we will have made the regulations for the first time, or would have brought forward the review that we mentioned. What I am saying is that we did not feel the need for it to be done for the first time twice. If we had made the same amendment to the 2003 Order, a possibly minor change would have had to have been considered by affirmative resolution. That will, in effect, be overtaken in the review in the meantime.

The Chairperson:

That sounds logical. Therefore, as this one is similar to clause 85, I would be minded also to park that clause until Tuesday, and make the decision on clauses 85 and 89 together.

Clause 89 referred for future consideration.

The Chairperson:

We move then to clauses 90 and 91. Again, there were no issues raised by members on those clauses.

Clauses 90 and 91 agreed to.

The Chairperson:

We move to Part 8, which covers clauses 92 to 101. No issues were raised by members about clauses 92 to 94 and no amendments were suggested.

Clauses 92 to 94 agreed to.

Clause 95 (Publication of material relating to legal proceedings)

The Chairperson:

I draw members' attention to correspondence from the Department, copies of which are in the packs. The correspondence is in response to issues raised by the Committee on the scrutiny of court rules by the Assembly. The Department agrees that the Committee's suggestion would be preferable; however, it notes that it has implications for rules dealing with excepted matters, of

which the Lord Chancellor continues to exercise responsibility. Therefore, it is unlikely that the necessary provision can be included in this Bill, but the changes will be brought forward in the next available Bill. Are members content with the Minister's proposals as outlined?

Question, That the Committee is content with the clause, put and agreed to.

Clause 95 agreed to.

Clause 96 (Membership of Crown Court Rules Committee)

The Chairperson:

We move to clauses 96 and 97. Again, I remind members that the Department has provided the Committee with proposed amendments to those clauses in response to issues raised by the Committee relating to the Attorney General's nominee on the Crown Court and Court of Judicature Rules Committee.

Question, That the Committee is content with the clauses, subject to the Department's proposed amendments, put and agreed to.

Clauses 96 and 97 agreed to.

The Chairperson:

No issues were raised by members about clauses 98 to 101, nor were there any suggested amendments.

Clauses 98 to 101 agreed to.

The Chairperson:

We move then to Part 9, which covers clauses 102 to 108 on supplementary provisions. The Department proposed an amendment to clause 103 in relation to Ulster Rugby. However, given that the Committee decided to reject the related clause 43, that is no longer an issue, for the Committee anyway. No other issues were raised or amendments suggested on clauses 102 to 108 during informal consideration.

Clauses 102 to 108 agreed to.

The Chairperson:

We will move to schedules 4, 5, 6 and 7. I remind the Committee that no issues were raised or amendments suggested by members during informal consideration on paragraphs 4 to 6 of schedule 5. Are members content with paragraphs 4 to 6 of schedule 5?

Members indicated assent.

Schedule 6 (Minor and consequential amendments)

The Chairperson:

Correspondence from the Department providing information requested by the Committee on paragraph 6 of schedule 6, which amends the Criminal Evidence (Northern Ireland) Order 1999, points out that the amendment to that Order allows for witnesses, subject to special measures, to give video-recorded evidence. No issues were raised by members about schedule 6, nor were amendments suggested.

Schedule 6 agreed to.

Schedule 7 agreed to.

Mr Crawford:

Chairperson, your approval of clause 103, which states that regulations made under the Act will be subject to negative resolution, would be subject to your consideration of clause 85 because you may decide to do affirmative resolution. I apologise for the interruption.

The Chairperson:

Thank you very much for your attendance. We now welcome from the Department Amanda Patterson and Billy Stevenson.

Clause 14 (Live links for patients detained in hospital)

The Chairperson:

Clause 14 was parked by the Committee because further clarification was sought. The Department has provided clarification on an issue raised by the Committee about clause 14.

Mr Johnston:

The letter before the Committee is our response to the suggestion that the Bill would make provision for advocates for those who are detained in hospital and are giving evidence by live link. What I can say is twofold.

First, in practice, basic support will be available for people giving evidence by live link. People providing support in the live link room will not be able to talk to or in any sense coach or advise the person. It is just about being there for someone. As the letter states, arrangements are in place for mental health nurses to be involved. The registered medical officer, the patient's consultant, will be close at hand. Shannon Clinic already has a programme of advocates for people in its care.

We can say that the basic support will be available. If people have additional needs, such as those that would be addressed by an intermediary, for which there is provision in clause 12, the court can order that an intermediary be made available. That would happen if the person has a mental disorder, if he or she is unable to participate effectively in the hearing without an intermediary and if it is necessary for a fair trial.

Between what is already provided and what is in the Bill, there will be two levels of support available for those who are detained in hospital.

Mr O'Dowd:

According to the Department's letter, whether a mental health advocate is in the room with a patient when they are going through this procedure is still down to discretion of a judge rather than being a statutory duty. It has to be asked why somebody in a mental health unit would be going through a judicial procedure in the first place, but there are always exceptions. That question was raised as well. I am concerned that the decision is down to discretion. You could get a judge on the wrong day who, without any interference from anyone, will ask the advocates to leave the room. In such cases, there is no legal protection to keep them there.

Mr Johnston:

It is also down to discretion in other cases. Clause 10, where you are dealing with someone who

is vulnerable or intimidated or a young person who is giving evidence, provides that a direction may provide for the presence of a supporter. That is a bit of a safeguard. In practice, that is already done. Whether it is parents or representatives of Victim Support or the NSPCC, advocates are already regularly in the live link room to support people. We are saying that we would leave the arrangements that are already available.

If it would help for the Department to issue a letter of guidance to registered medical officers on that, we would be happy to undertake to do that to strengthen the provision. I can certainly make that offer.

Mr O'Dowd:

That would offer more reassurance.

The Chairperson:

That goes some way to answering your concerns, does it not?

Mr O'Dowd:

Yes, it does.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 34 (Duty on public bodies to consider community safety implications in exercising duties)

The Chairperson:

Clause 34 and the Department's proposed amendments to it were parked. The Department has provided further information on clause 34, confirming that it intends to bring forward further proposals for the Committee's meeting on 8 February. Since this is a further amendment, the departmental officials might want to say something on it.

Mr Johnston:

No, there will be an opportunity for the Department to comment on Tuesday.

The Chairperson:

If no member wishes to ask anything, we will park it until Tuesday.

Clause 34 referred for further consideration.

The Chairperson:

I advise members that the Department of Justice has written to the Committee again about paragraph 10 of schedule 1 relating to the chair and vice-chair of the PCSPs. A copy of that letter is in members' packs.

I remind members that last Thursday they agreed to a proposal by Mr Givan to ensure that an elected member would be the chairman of the PSCP. The Department has responded to the Committee's suggested amendment, indicating that the Minister is not minded to pursue that proposal. His reason is that he does not believe that the statutory exclusion of independent members would be acceptable to the public at large or to the many current independent members of the DPPs. That is the Minister's take on it. We now have to decide whether to agree the clause as drafted or propose an amendment to it.

Mr Givan:

That is fine. It is the Minister's prerogative to choose not to do that. However, I ask that the Committee drafts an amendment based on what I proposed, if the Committee is willing to do that.

The Chairperson:

If the Committee agrees, we will draft the amendment and bring it to the Committee. You will then get sight of it and at that stage we will make a definitive decision. Is that agreed?

Members indicated assent.

New clause

The Chairperson:

The Department has provided the Committee with two proposed amendments. The first concerns sex offender notification. The Minister signalled that he will bring a new amendment to the

Committee to meet the Supreme Court ruling that the indefinite notification requirements attached to sex offenders who had been sentenced to 30 months' or more imprisonment are incompatible with article 6 of the European Convention on Human Rights.

Mr Givan:

I have a number of questions. Is 30 months stipulated in the European Convention on Human Rights?

Ms Amanda Patterson (Department of Justice):

A 30-month sentence has an indefinite period of notification attached. Only those offenders sentenced to 30 months or more in prison would be required to notify for an indefinite period.

Mr Givan:

That deals with my other questions.

The Chairperson:

So, at least you are now content, Mr Givan. Does the Committee generally support the new clause?

Members indicated assent.

Mr Givan:

I agree to its inclusion although I probably do not support it. However, we have no choice given the ruling that was made.

The Chairperson:

It is Hobson's choice.

Ms Ní Chuilín:

Just because it is in our report does not mean that we like it.

The Chairperson:

We hear what you say but we also hear you agree. Maybe that sounds like a contradiction.

New clause

The Chairperson:

The next amendment concerns assets recovery law. The Department proposes to table an amendment to give it the power, with the consent of the Department of Finance and Personnel, to allocate the proceeds of criminal assets remitted to the Northern Ireland Consolidated Fund by the Northern Ireland courts to prevent crime, reduce the fear of crime and support the recovery of criminal assets. The Minister and the Department are seeking the Committee's views on the amendment. Do the departmental officials want to say anything at this stage? No? It has all been said. Are members agreed to support the amendment?

Members indicated assent.

The Chairperson:

I think that that is the officials finished. I am sure that they are glad to hear that. I thank them for their attendance.