



Northern Ireland  
Assembly

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COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Sex Offender Notification**

28 February 2011

# NORTHERN IRELAND ASSEMBLY

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### Sex Offender Notification

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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

Mr Paul Givan

Mr Conall McDevitt

Mr David McNarry

Ms Carál Ní Chuilín

Mr John O'Dowd

**The Chairperson (Lord Morrow):**

Members, you have heard what was said last week about sex offender notification, and you have heard what was said today in private session. I do not know whether that assists members to do anything, but I am in your hands. If any member wishes to comment, please feel at liberty to do so.

**Mr McNarry:**

How far can we go with this? What is actually being asked of us? I am asking you for guidance because of the concerns that I now have about an issue that, at the end of the day, may rest entirely with the Attorney General. We do not have a baldy what that might be.

**The Chairperson:**

At Consideration Stage, we gave an undertaking or intimation — whichever word you wish to use — that we would give this matter further consideration in Committee and then intimate our position to the Minister. If the Committee is of a mind to take a position on it, whatever that position may be, it can do that. If the Committee is also of a mind to take a position that is contrary to what the Bill is saying, we would have to come to the Assembly with an amendment at next week's Further Consideration Stage. We would have to table that amendment by 9.30 am on Thursday morning. Members, I am being reminded that there is nothing in the Bill at the moment.

**Ms Ní Chuilín:**

This adds a new clause?

**The Chairperson:**

Yes, that is right. This will add a new clause.

**Mr McNarry:**

So we can only respond once a new clause is tabled.

**The Chairperson:**

We could, or the Committee could, I think, come with its own recommendations. Clerk, am I right in that?

**The Committee Clerk:**

At Consideration Stage, it was intimated that the Committee would look at the proposed clause. At that stage, the Minister did not move it on the understanding that the Committee would look at the clause again and come back to the Minister with a view on whether it found it acceptable and that, if the Committee did not find it acceptable, it would suggest changes. It would then be up to the Minister to decide on what to table as an amendment at Further Consideration Stage, or, if the Committee feels very strongly about its position, it could ask for amendments to be drafted so that the Committee could table them.

**Mr McNarry:**

But a clause must be moved?

**The Committee Clerk:**

No. It is up to anyone to have a view as to whether or not they want to table anything. The Minister will no doubt reach his position before Thursday, as will the Committee. The Minister gave a commitment and did not move that particular clause at Consideration Stage to provide a bit more time for the Committee to look at it. However, it will be up to the Minister to decide. If he wishes to do so, he could table the clause as an amendment at Further Consideration Stage or he could table a different version or he may make a decision not to table anything. It is the Minister's decision.

**Mr McNarry:**

Does protocol allow a Minister to be advised that it is unsafe for the Committee to be motivated in any direction and that, in a sense, he needs to make the first move?

**The Chairperson:**

I suspect that, if the Committee were to make any decision — for the sake of argument, let us say that it is a majority decision — the Minister would reflect on that decision, how it was made and the pattern of the decision and so on. If we take a particular position on this matter, as with any part of the Bill, we can write to the Minister, as a Committee, stating our position on it. If we do not take a position, we will simply write to the Minister and tell him that. We are under some obligation to declare what our position is, even if that position is to do nothing. We would outline why we have taken that decision.

**Mr McDevitt:**

My understanding of events in the House last week is that the Minister agreed not to move this proposed new clause on the understanding that, at Further Consideration Stage, he would move either the proposed new clause or such a proposed new clause as the Committee would be able to support or be in agreement with.

Although we in the SDLP feel that this is a clause that no one particularly wants to have to

come to terms with, given the legal advice that we have received over the past 10 days, we believe that it is important that we legislate for the issue. If we are legislating for it, we think that, although it is quite appropriate that the Chief Constable be the first arbiter of any proposed reviews, individuals should have their rights under article 6 of the European Convention on Human Rights available to them. For that reason, we support the right to direct access to the court being made explicit in the legislation. That is how we see it. Of course, if colleagues have different views and there is the potential to reach agreement at Committee, we would be happy to hear those views to consider what we could do.

**Mr Givan:**

The legal adviser who was here earlier has made me a little more concerned about the issues that I have. The Attorney General will be unable to carry out his role in scrutinising this matter because of the way in which the amendments have been tabled. Therefore, if we were minded to make any amendments, we would not know whether they were within the competence of the Assembly because the Attorney General is unable to give a view until they are passed in the House. Ultimately, then, if we were to amend something, it could be ruled out. There are issues about the time that we have left to consider the matter, the full scrutiny that can be given to it and the role of the Attorney General.

The legal adviser also did not address the issue of whether it is necessary to have the right to refer the Chief Constable's decision to another court and to challenge it. He could not give a view on whether that was necessary, and that creates a difficulty for me in coming to my own view on the issue. That may not move us on any further, but those are the key issues.

**Lord Browne:**

The Supreme Court made a ruling, and it is obvious that we will eventually have to legislate in that area. I am not so sure whether that should happen during this or the next mandate. There are lots of unclear questions, particularly as regards the opinion of the Attorney General. I accept that legislation is necessary. Perhaps we should show a willingness to legislate, but just not at this moment in time.

**The Chairperson:**

Does any other Committee member wish to comment before the Committee either takes a position or does not take a position? We will move on one way or the other. If there are no proposals, I propose to move on.

**Mr O'Dowd:**

Are you proposing that the Committee does not take a position?

**The Chairperson:**

I am not proposing not to take a position, but I think that the Committee is saying that we should not take a position. However, that does not need a proposal. Right, let us move on to the next item of business.