



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice Bill: DOJ Briefing

8 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alex Easton
Mr Tom Elliott
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone

Witnesses:

Mr Gareth Johnston	Department of Justice
Ms Amanda Patterson	Department of Justice
Ms Debbie Pritchard	Department of Justice
Mr Simon Rogers	Department of Justice

The Deputy Chairperson: The departmental officials are in their place and at the ready. Gareth and Amanda, thank you very much for coming. You will be relieved to know that you do not have to make a presentation. If issues arise as we go through the clauses, we will ask you to comment. That was the procedure when we considered the previous Bill, and it worked well. We will use the clause-by-clause table, and I will highlight some issues raised by various contributors. Members may comment at that stage. If they do not wish to comment, we will move on.

The Policing Board suggested that the Bill be amended to include a statutory duty on public bodies to have regard to the likely effect of crime and antisocial behaviour when exercising their functions and to do all that they reasonably can to enhance community safety. This is similar to the proposed clause 34 in the previous Justice Bill, which the Committee rejected at the time. In response, the Department states that the management of risk from sexual offending is already a multi-agency function under the Criminal Justice Order 2008. Have members any views or comments? When no member indicates that they wish to comment, I will move on.

The Policing Board also questions why a provision for violent offender orders is not included in the Bill. The Department advises that draft legislation for violent offender orders will be introduced in the Faster, Fairer Justice Bill and will be presented for consideration by the Committee next month.

The Probation Board raises two issues in its submission, although these are not specifically related to clauses. The first relates to the requirement for an offender to notify the PSNI if they reside in a household in which a child is under the age of 18. The second issue is the requirement for an offender to notify their whereabouts to the PSNI weekly if they have no fixed abode. The Department

has advised that both matters will be dealt with through the introduction of subordinate legislation, which the Committee will have the opportunity to scrutinise. Are we content with that approach?

Ms McCorley: Yes

The Deputy Chairperson: OK, we will move on to clause 1 and schedule 1. Disability Action raises a number of issues related to applications for the review of indefinite notification requirements. It particularly refers to the stipulation that such applications must be in writing and recommends that other forms of communication be accepted. It also highlights that the form of communication by statutory criminal justice organisations such as the PSNI is not prescribed in the Bill. The Department is of the view that an application in another form would prove difficult in practice and highlights that the application need not be made by the applicant. However, it envisages the involvement of a third party should disability prevent an applicant making a written application. The Department intends to cover that issue in guidance. Are members happy with that? I invite the officials to tell us how they will put that into the guidance.

Ms Amanda Patterson (Department of Justice): We have been consulting all the major stakeholders on what needs to be in the guidance. Under the proposed legislation, guidance is a statutory requirement. The issue of people who have difficulty, for whatever reason, making an application will be dealt with so that it is made quite clear that a third party can do that on their behalf.

The Deputy Chairperson: OK. Obviously, it will be assessed whether that guidance complies with disability legislation as well.

Ms Patterson: Yes.

The Deputy Chairperson: Thank you. Are we content with that approach?

Disability Action also raises an issue with the inclusion of the undefined term "disability" as grounds for the Chief Constable when considering an application. It requests that paragraph 3(2)(a)(iii) of proposed new schedule 3A to the Sexual Offences Act 2003 be removed. The Department's explanation is that Disability Action has misunderstood the provision. It states that the Chief Constable must take account of the seriousness of the offence of which the person was convicted or, if not convicted, was found to be under a disability and "to have done the act charged" that led to notification. The Department said that the term "disability" is included as a notification attached by the Sexual Offences Act 2003, whether the person was convicted, found to be insane or found to be under a disability and to have done the act charged. May we have some more clarification of that?

Ms Patterson: An example might make it clearer. The case that everyone probably knows about is that of the brothers in Donagh who were found to have done the act charged but to be under a disability. However, the notification requirements of the Sexual Offences Act applied in that case anyway, so it is to cover situations such as that.

Mr Dickson: May I ask a question about the process? It has nothing to do with this particular instance. Has the Department's comment that Disability Action's concerns were based on a misunderstanding been relayed to that organisation?

Ms Patterson: No, because this document is a response to the Committee, whereas the comments were responding to the consultation —

Mr Dickson: I do not mean to be rude, but how can we check the veracity of that? How can we know that Disability Action is or would be satisfied with the Department's comments?

The Deputy Chairperson: That may be something that —

Mr Dickson: The Committee Clerk will explain.

The Deputy Chairperson: Of course she will.

The Committee Clerk: If the Committee wishes, we can send the Department's response to Disability Action.

Mr Dickson: I am not picking on that in particular; it is just that I think that this is likely to arise on quite a number of occasions.

The Committee Clerk: We will reflect that in our report on the Bill. In the meantime, we can send on the Department's comments.

Mr Dickson: Yes. If doing so clears that up and Disability Action says that it did misunderstand and now sees where the Department is coming from, that would be one less thing to worry about, would it not? Alternatively, Disability Action may continue to be of the view that we or the Department have misunderstood.

The Committee Clerk: Yes, we can do that.

Mr Dickson: Thank you.

The Deputy Chairperson: The National Society for the Prevention of Cruelty to Children (NSPCC) suggest the inclusion in the legislation or guidance of a number of further matters for the Chief Constable to consider when arriving at a determination to de-register an individual. The Department indicates that they will be provided for in guidance. Are members content with that approach?

The NSPCC's view is that the differences in the notification requirements for adults and children, and the possibility of varying a notification direction for young offenders under the Sexual Offences Act 2003, do not go far enough in recognising and attempting to meet the rights, needs and vulnerabilities that are specific to children. It also suggests a review of the effectiveness, proportionality and impact of the current and proposed notification requirements on young offenders.

The Department is of the view that this comment pertains to a more fundamental issue in relation to the operation of the legislation as a whole and cannot be addressed in the context of the changes proposed in the Bill.

Do you intend to undertake a separate review?

Ms Patterson: There are no plans to do so at present.

The Deputy Chairperson: Do members have any issues? Might we wish to return to that?

OK, let us move on. The Human Rights Commission seeks further information on how the periods that must elapse before a review is permitted have been determined and what evidential basis informed that decision. It also seeks information on what assistance will be available to an individual when preparing his or her application and what forms of evidence the Chief Constable or Crown Court would require.

The Department's response outlines its thinking behind the review periods. It also highlights that the preparation of an application is the responsibility of the offender and that the Bill states that offenders may give such information as they wish to be taken into account. Do we need any clarification or are members happy with that approach?

Ms McCorley: May we have a wee bit more clarification?

The Deputy Chairperson: From the officials?

Ms Patterson: The initial review period is similar to that in England, Wales and Scotland so that the period is the same throughout the United Kingdom. It was set on the basis that the highest fixed period for which an offender must notify is 10 years. Therefore, it has to be for a period over and above 10 years because someone who has a fixed period of 10 years obviously must remain subject to notification for those 10 years. On that basis, it seemed reasonable and appropriate that the next point on the scale, which links the seriousness of offence to the length of time for which a person should have to notify before review, would be 15 years. That is the period that all jurisdictions came up with.

The Deputy Chairperson: Thank you. Returning to the point that Stewart made, I assume that the Human Rights Commission and other bodies will read the Hansard report and may ask us to seek further clarification.

We will move on. The Policing Board raised an issue with the resource implications for the PSNI as a result of the review of indefinite notifications. The Department estimates that the PSNI would have to make determinations on an average of 20 applications a year. The PSNI did not raise that issue of resources in its written or oral evidence. Are there any issues with that?

Mr Dickson: Again, it is difficult to contextualise this. The Department estimates that the number of determinations will peak at an average of 20 a year. How many does the PSNI make currently? Where does the figure of 20 sit on the scale of things? Is it more or less?

Ms Patterson: The PSNI does not make any determinations at the moment.

Mr Dickson: It makes none and is being asked to make 20.

Ms Patterson: It would work out at roughly 20 a year. The police themselves, as the major player in making those decisions, are —

Mr Dickson: Is that the PSNI's estimate?

Ms Patterson: Yes, the figure came from the PSNI.

The Deputy Chairperson: I will just restate that we will return to this at Further Consideration Stage. Are there any views or comments on clause 1 or schedule 1?

Clause 2 deals with ending notification requirements for acts that are no longer offences. Only one issue was raised. In the PSNI's oral evidence, which members can read in the Hansard report, it said that, from an efficiency and bureaucracy point of view, it would be easier for the police automatically to remove notification requirements for acts that are no longer offences rather than the relevant offender having to apply. Do you have any comments?

Mr Gareth Johnston (Department of Justice): With the automatic approach, the issue might arise of circumstances in which someone honestly believed that a person was below the prescribed age when the notification requirement was cancelled. That needs an amount of discretion. The Department would perhaps need to look at the papers or transcripts from the trial and reach a judgement based on that. It cannot always be a tick-box exercise.

Ms Patterson: It is just a change to the existing application arrangements, because there already is an ability to apply for removal. It is just the offences that change as a result of this legislation.

Mr Johnston: We do not anticipate a very big number of cases.

The Deputy Chairperson: Are you guided by positions in other jurisdictions?

Ms Patterson: These are the same arrangements that apply throughout the UK.

The Deputy Chairperson: Are there any comments or views on clause 2? No. Again, we will return to this.

Clause 3 deals with offences committed in a European Economic Area (EEA) state other than the United Kingdom. I want to bring to members' attention the fact that the Executive did not support the provision in clause 3 that places a statutory notification requirement on offenders with convictions from another state who come to the North for a period of more than seven days. The limitation to EEA states was included in the provision on the advice of the Attorney General. His view was that the Bill would not be compliant with human rights obligations. The Department has looked at a number of options to deal with the concerns of the Executive and the Attorney General. I now invite the officials to say which options the Department is considering.

Ms Patterson: There were a number of options, but the Attorney General advised that, one way or another, they still had implications for rights under the European Convention. As suggested by the Executive, we had further discussions with the Attorney General, and we have come up with an approach that may solve this issue. It is a twin approach, and it will apply in the same way to offenders with a conviction for a sexual offence, which would be an offence if it occurred in Northern Ireland, who come to Northern Ireland from any other jurisdiction outside the UK. That would address the concerns that someone may be made amenable for a criminal offence on the basis of, for example, a conviction that is not sound in a state in which there are perhaps poor human rights standards.

After discussions with the Attorney General, we propose that it be a defence against any charge of a failure to comply with the notification requirements if someone is able to prove that the original conviction, which is the basis for the notification, has fallen so short of the convention standards that the court cannot be satisfied that the person committed the offence.

The other approach is to allow the person a right of application to the High Court for the removal of any notification — the removal of that requirement — if they can prove to the court that the original conviction fell short of convention standards. In effect, that means that someone can choose either way. Someone required to notify may say that they will not do so because their conviction was for a trumped-up offence. If there is sufficient proof that the person has the conviction, the police can press charges and the Public Prosecution Service (PPS) can prosecute. The person can then defend on the basis that the conviction was not sound, and it is for the court to decide on that basis. Alternatively, the person can, if told that they have to comply with notification, simply agree to it, give their details to the police and make an application to the High Court for the removal of that requirement to notify. So it is a twin approach, either of which could be followed. We think that that might solve the problem.

The Deputy Chairperson: Do you have any indication of when the wording of the proposed amendment will be ready for us to look at?

Ms Patterson: Not at the moment, but I can certainly keep you up to date.

The Deputy Chairperson: That is grand.

Mr Lynch: Is one of the options that you outlined similar to a retrial for the person concerned? If a person said that there had been a miscarriage of justice in another jurisdiction, are you talking about their having a retrial here?

Ms Patterson: No, the court would look at the circumstances, processes and procedures surrounding their conviction.

The Deputy Chairperson: Will the proposed amendment come before the Committee before we finish our deliberations, or will it just be tabled at Further Consideration Stage on the Floor?

Ms Patterson: Would the Committee like to see the wording?

The Deputy Chairperson: That might be better so that the Committee can take a view on it. Otherwise, it could be the subject of debate, and people may say that we did not get enough time to scrutinise it. Members, we will come back to this, so we will have an opportunity to consider whatever amendment is proposed.

I will highlight a number of relevant points. The Policing Board questions how a failure to notify the police within three days will be identified and enforced and how relevant persons from EEA countries will be made aware of their obligation to notify the police. The Department advises that other police services may share information with the PSNI if they know that an offender is travelling. However, there can be no guaranteed way of ensuring that the police will be alerted when a sex offender comes here.

The PSNI is working with the Garda Síochána to ensure that offenders from Ireland will be informed of their obligation in advance of coming North. If the police become aware of their presence, they can immediately be informed, and offenders will have to notify straightaway or risk arrest and prosecution. The PSNI did not raise that as a particular issue in its evidence. Do members have any questions?

The Public Prosecution Service highlighted a drafting error, which the Department advises has been rectified. I am actually now seeking agreement of members. We have gone through clause 3, but there is the wording of an amendment to come before us, so I am going to park that until further consideration.

Clause 4 deals with sexual offences prevention orders (SOPOs). The Policing Board highlighted the fact that any positive obligation imposed on a person subject to a SOPO must be lawful, proportionate and necessary. That is something that the police must bear in mind if suggesting conditions on application to the court for a SOPO. The Department has highlighted in its response the fact that the court makes decisions on what is lawful, proportionate and necessary in accordance with existing legislation. Are there any views or comments on clause 4? Again, that is something that we will refer to. I advise members that the Department intends to include an additional sex offender notification provision in the Bill by way of an amendment at Consideration Stage. I refer members to annex B of the Department's briefing paper, paragraphs 6 to 23, which are relevant. I ask the officials to outline the proposed new provision.

Ms Patterson: It is an amendment that has its origins with the PSNI, which saw a gap in the current legislation concerning details and information provided to it by offenders who may travel within the UK. At the moment, there are quite strict arrangements for offenders who wish to travel outside the UK, in that they have to notify the police in advance of where they are going and how long for, where they intend to travel and date of return, etc. There is also a requirement for offenders to notify the police if they intend to stay at another address for longer than seven days in any 12-month period, so that the police have a list of their major address and any other addresses that they are inclined to stay at. However, they are not required to provide information to the police about plans to travel within the UK. For example, if they go travelling and use bed and breakfast establishments or whatever, and do not stay at any one of them for any longer than seven days, they can do that for basically as long as they want and the police do not have any idea where they are.

That was brought to our attention by the police in relation to a particular case where somebody had a touring caravan and was out of this jurisdiction, but within the UK, for some time and they did not know where that person was. It did not lead to reoffending behaviour, but it could do that. They asked us to provide legislation to cover that option, so this is the outcome of that. The proposal is that anyone should have to notify the police if they intend to be away from their home address for longer than three days and that they should tell the police where they intend to be, what their method of travel is and where they are going to stay for the period of time. We also recognise that that might be over-burdensome and disproportionate on individuals who may have to travel a lot, perhaps in connection with family or work. We want to make sure that there is something in the proposals to allow for such individuals to make a multiple notification so that they do not have to do it every single time. The proposal will also cover travel within Ireland as well as in the UK, which will make no difference to the current arrangements, because travel to Ireland still has to be more than three days. This will cover the same ground.

The Deputy Chairperson: Thank you. Again, I will ask the broad question: will your amendment be ready for the Committee for the —

Ms Patterson: We will do the same.

The Deputy Chairperson: OK.

Mr Dickson: How will that be reciprocated, or are there any plans to invite reciprocation from the other United Kingdom jurisdictions with regard to that? It sounds as if we are going to be doing something more than they are.

Ms Patterson: We are doing something that is slightly more than is currently available in England, Wales and Scotland. I know that Scotland has shown some interest, but it has not been brought to the attention of the authorities in England and Wales by the police services there. An interest may be sparked when they see what is planned for Northern Ireland. However, at present, we are one step further.

Mr Dickson: If, for the sake of argument, the person goes to England for three days to visit a relative is there a requirement to notify the police there that they are present?

Mr Johnston: Not on the person —

Mr Dickson: Sorry, on the PSNI.

Mr Johnston: If the PSNI was concerned or had any doubts, you would expect that it would get in touch with the relevant police force.

Mr Dickson: So, it is a management issue for the PSNI, rather than a statutory obligation. That is fine; that explains it. Thank you.

The Deputy Chairperson: As no other members have any questions, I want to thank Gareth. I think that you practically had a non-speaking role today. That is unusual for you.

Mr Johnston: It had to happen once.

The Deputy Chairperson: Amanda, I think you are staying to discuss the human trafficking parts of the Bill. I invite Simon Rogers, the deputy director of the protection and organised crime division and Debbie Pritchard from that division to come forward. I know that Simon and Debbie were present earlier. We are just going to do this in the same format and invite you for comment when appropriate.

We will deal with clauses 5 and 6 of the Bill. Aspects of both clauses are closely linked, so we will maybe do this around headings rather than just line by line. The headings are in the appropriate appendix.

I will begin by making a number of general observations from the evidence. CARE said that the proposals in the Criminal Justice Bill seek to copy England and Wales in the substance of the changes to be introduced, but it achieves it through a different means, with the outcome that there will be more trafficking offences applicable here than in England and Wales, and is unclear about the rationale for this complexity.

The Department advised that the clauses, although drafted in a different style, cover the same range of criminal activities as in England and Wales and mirror the additional provisions in Scotland, which provide for extra-territorial jurisdiction over persons habitually resident here at the time of committing the offence outside the United Kingdom and companies incorporated under the law of a part of the UK.

Are members content with the response from the Department, or do they have any queries?

OK, I am going to move on.

CARE's view is that the proposals in the Bill reflect a very minimalist approach to implementing the European directive. That view was also expressed by a range of organisations and individuals in response to the Department's consultation on the human trafficking clauses.

The Department does not agree that the Executive are taking a minimalist approach or simply mirroring the changes in England and Wales. It has suggested that the mandatory changes will be implemented as they will be in England and Wales, but that the Criminal Justice Bill will also implement the discretionary changes in that the offence will extend to habitual residents and bodies incorporated under the law of a part of the United Kingdom.

The Department went on to outline the areas here where the Bill will be more stringent, such as the maximum term of imprisonment and the minimum recovery and reflection period.

The Committee wrote to the Minister of Justice on 5 July, and advised him that members wish to see the strongest possible legislation introduced in relation to human trafficking, and that it would give further consideration to that when considering the Bill. The Committee will wish to bear that in mind when assessing the issues that have been raised in that part of the Bill.

I invite members to make comments at this stage.

The Human Rights Commission noted that the legislative framework that outlines offences concerning the trafficking of human beings is particularly complex here and already involves reference to

provisions in a number of other pieces of legislation. It highlights that the provisions are set to be accompanied by the Criminal Justice Bill and a potential Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. The commission advises that consideration should be given to the introduction of a trafficking human beings legislative guide or a single comprehensive piece of legislation to increase the accessibility and awareness of crime.

NICEM also raised concerns about a piecemeal approach to legislative reform. The Department has consulted on the matter with the relevant law enforcement agencies, and none advised that the current framework is causing difficulties. The Department may, however, consider a consolidation exercise when other pressing areas of work have been completed. The Department has advised that the PPS policy on prosecuting cases of human trafficking, which is to be published in early 2013, contains a legislative guide. Are members content with the Department's response?

Members indicated assent.

The Deputy Chairperson: The Council for Ethnic Minorities (NICEM) highlights the need for a three-pronged approach to human trafficking: prosecution, protection and prevention. It believes that provisions to deal with protection and prevention are missing. The Department advises that robust measures to support victims and activity to prevent trafficking are in place, and that consideration is being given to whether secondary legislation is required in relation to support.

Are there any considerations around support measures, which will be provided for in secondary legislation?

Mr Simon Rogers (Department of Justice): Yes. Support, obviously, is a cross-cutting issue. In other words, it does not affect just the Department of Justice; it will impact on Health, Education and others. The Minister is going to write to Executive colleagues to seek their agreement to legislate through the designation order route in secondary legislation providing for assistance and support. We need to go through the arrangements with ministerial colleagues first.

Ms Debbie Pritchard (Department of Justice): When we hear from ministerial colleagues, we will write to the Committee to seek its support. We hope, with the Committee's support, to bring subordinate legislation to coincide with the timing of the European directive in April 2013.

The Deputy Chairperson: Is there any particular reason why secondary legislation is more appropriate than primary legislation?

Ms Pritchard: Other than it is normally quicker, no.

Mr Simon Rogers: There is no grand reason other than that it is possible to do it through secondary legislation under the designation order.

The Deputy Chairperson: OK. Does anybody have any queries?

I am now going to deal with the European directive 2011/36/EU. The Human Rights Commission and CARE raised concerns about the extent of compliance with the EU directive. The Department has provided a table that sets out clearly that we will be compliant with the EU directive by April 2013. I invite you to run through the table to explain how it sets out how we are compliant.

Mr Simon Rogers: In effect, we have provided an article-by-article analysis of the directive. Some of the issues fall beyond the Department of Justice; we have set out how we think the Executive meet the requirements. Obviously, clauses 5 and 6 deal with the gap that was seen in this jurisdiction and others. We were not compliant in that respect. However, in other respects, as the table sets out, we are compliant. We have set out that we are doing further work in a few areas. One of those is the secondary legislation that we have just discussed on support for victims. Other areas are whether, responding to the Committee's concerns, trafficking offences should be indictable only, rather than triable either way. We are also looking at a number of administrative areas under the directive.

The Deputy Chairperson: Everybody has seen the table. People should satisfy themselves with the table and the range of issues that we are compliant with before I ask people to move on. We can return to this issue at a later stage. If people want a bit of time to examine that, we can return to it.

I will move on now to the scope of the Bill. CARE and the Children's Commissioner raised an issue about the scope of the Bill and suggested that further provision could be added. The Department has advised that it is considering secondary legislation to strengthen the support for victims. Can you outline the idea that you will use secondary legislation to strengthen support for victims?

Mr Simon Rogers: That is the issue that David Ford will be writing to Executive colleagues about under this designation order. It will be secondary legislation setting out that government Departments should provide assistance and support for victims of human trafficking.

The Deputy Chairperson: At this stage, the Minister is not considering any further clauses to the Bill? He is satisfied with the scope of the Bill?

Mr Simon Rogers: Some of these things overlap between this Bill, the directive and Lord Morrow's Bill, but the other area is whether the offence should be indictable only, rather than triable either way. We are consulting on that because we do not want to produce unintended consequences when making that change. On the one hand, the aim is to reflect the serious concern of the Committee when we were last before you about that issue, but on the other hand, when the legislation was first introduced, consideration was given to whether it should be triable either way. The Minister at Westminster said that one reason for possibly having it triable in the Magistrates' Court was in case of that exceptional case where someone was on the periphery of human trafficking and ended up in the Crown Court rather than Magistrates' Court. That is another area that we are looking at. There is also a need to legislate to put the new offences under clauses 5 and 6 into those provisions that may be referable by the Director of Public Prosecutions to the Court of Appeal if he thinks that they are unduly lenient. Again, that is a secondary legislation provision that we will come back to the Committee on in due course.

Ms Pritchard: In relation to the possible change of making the offences indictable only, when we have concluded the consultation that Simon referred to, if the Minister decides that he wants to make that amendment, it is likely that it will be tabled at Consideration Stage of the Criminal Justice Bill. I do not think that we will have that work completed in time for the Committee concluding its work on the Bill, but it will hopefully be taken forward in the Criminal Justice Bill if the Minister decides to do that.

The Deputy Chairperson: I will now move on to language and terminology. NICEM raised a concern about the use of the words "arranges or facilitates" in the new section 58A and suggests alternative wording. The Department advises that that is the terminology used in England, Scotland and Wales and that there have been no reported cases highlighting any problem with the interpretation of "arranges and facilitates" dealing with prosecutions under the relevant legislation. Are people happy with that approach?

NICEM also raises an issue about the extension of the offence of trafficking people for sexual exploitation to people who may incite, aid, abet or attempt to commit the offence. The Department advises that the law here is in a similar manner to equivalent legislation in England, Scotland and Wales and contains statutory provisions that apply to all criminal offences, and this covers aiding, abetting, etc.

NICEM raises another issue about sanctions for legal persons. That is, the Bill does not set out penalties for legal persons, just for persons. The Department advises that, under the Interpretation Act 1978, which extends to the North:

"Person" includes a body of persons corporate or unincorporate."

The Criminal Justice Bill is consequently compliant with the legal persons definition in clauses 5 and 6. Are members content with that approach?

The PSNI recommends that there is consistency in the Bill in referring to "human trafficking", rather than, at times, "trafficking people". The PSNI believes that this consistency would ensure that the Bill reflects accepted terminology in this area and avoid confusion with separate offences of people smuggling. The Department notes that human trafficking is now a well-understood terminology or description and believes that the proposed PSNI approach could result in something less succinct in draftsmanship and will not necessarily improve upon the existing use of the readily understandable generic description of human trafficking. Do the officials have any comment to make on that observation by the PSNI?

Mr Simon Rogers: This is dangerous territory for officials, because, obviously, we were guided by the draftsman on this. We would not want to suggest that his draftsmanship was in any way short of the mark. We do think that the term "human trafficking" is well recognised and is entirely appropriate.

Mr Elliott: I do not think that the PSNI is questioning the issue of clarity on human trafficking. It is asking about the inconsistent approach of the officials or draftsmen around the use of the words "trafficking people". I do not think that that has been dealt with in the explanation. It would be useful if we could get a further explanation, whether that is from officials or the draftsmen. I see the point that it may provide some inconsistency. If there is an explanation, that is fine.

The Deputy Chairperson: How do we progress that? Is it through the Department?

Ms Pritchard: We will come back to the Committee Clerk.

The Deputy Chairperson: Next is the definition of "exploitation". Disability Action and CARE both requested that the definition of exploitation be extended to include forced begging. The Department has advised that forced begging constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. NICEM recommends that "exploitation" should be defined in the Bill. The Department considers that there is a risk in being overly prescriptive as this can limit flexibility in dealing with individual cases, make it more difficult to respond quickly to changes in criminal behaviour and possibly provide criminals with a means to work around the legislation.

From a prosecutorial perspective, the PPS is not supportive of the inclusion of a definition as the offence may be limited, and it may not be able to prosecute the offence if there is no evidence of the means contained in the definition. NICEM also highlights the fact that a definition of "habitual residence" is not included. The Department advises that the term "habitual residence" occurs in a number of conventions and directives and is not defined in them. It is the Department's view that case law is clear and that it should be given its ordinary and natural meaning having regard to the facts of each case. Are we happy enough, or do people think this is something that we wish to return to? Again, I restate that people can come to this.

I move on to extension of jurisdiction. The Policing Board questions whether it is within the Assembly's legislative remit to create an offence in respect of all British citizens, subjects and overseas territories citizens, particularly where they have no connection with the North and no element of the unlawful act takes place in the North. The Department advises that the new offence involves trafficking outside the United Kingdom committed in whole or in part in the North. Any issues?

The Policing Board details a scenario and raises an issue around the likelihood of a trafficker being prosecuted twice in the UK in different legal jurisdictions for the same unlawful act. The board also questions whether the new offences should be limited to applying to all persons who, at the time of the offence, are habitually resident here; to bodies incorporated under the law of a part of the United Kingdom with a registered office address here; or to situations where part of the chain of events amounting to the offence take place here, for example, an e-mail making arrangements being sent from the North. The Department advises that the Bill makes provision for jurisdiction in respect of offenders who are habitually resident in the North in accordance with the EU directive. Are there any issues on which you feel that you can provide clarification, or are you happy enough with the commentary we have provided?

Mr Simon Rogers: I do not think that we see an issue there, but it is worth reflecting on a case in which an offence was detected in Northern Ireland but involved offenders from Scotland. The two prosecution services were able to co-operate to enable the prosecution to take place in Scotland. So, there are arrangements between the different prosecuting authorities to manage cases of that nature.

Mr Elliott: Is that arrangement built into legislation or is it an arrangement between the two jurisdictions?

Mr Simon Rogers: It is an arrangement.

Mr Elliott: So there is no legislative basis for it.

Mr Simon Rogers: No.

The Deputy Chairperson: The Human Rights Commission raises an issue around the requirement in article 10 of the EU directive for the UK to establish jurisdiction over offences concerning trafficking human beings where the offence is committed in part within the United Kingdom. The commission notes that sections 109 and 110 of the Protection of Freedoms Act 2012, which extends to England and Wales, contain a provision that a non-UK national will be culpable for the offence of trafficking for sexual, labour and other exploitation under the legislation if any part of the arranging or facilitation takes place within the United Kingdom. Can the Department outline its position on that?

Mr Simon Rogers: We feel that we have covered the situation. It is quite complex legislation, and a lot of these questions are about things that we think are covered by it. Obviously, they are trying to establish whether that is so. Our approach to that is the same as that in England, Wales and Scotland.

The Deputy Chairperson: CARE highlights that if provision for training and the availability of investigative tools are not contained in the Bill, there is a risk that those services will be subject to cuts. The Department does not consider that that needs to be on a statutory basis and points out that training and investigative tools are already available. Disability Action states that the training and investigative tools for police and prosecutors need to be improved. In its response, the Department details the training that has been carried out and the training that is due to be carried out. The Department has also advised that a mapping exercise will be undertaken on human trafficking-related training.

Are members content with the Department's position not to provide for training and investigative tools in the Bill?

I move now to convictions, disposals and sentencing. I refer members to the Department's covering letter, which covers the issue. I ask officials to outline the Department's position.

Mr Simon Rogers: In the letter, we highlight a couple of things, one of which relates to the sentencing options in the Magistrates' Court. The letter highlights that, at the previous session, we were under the impression that the sentence was 12 months in England and Wales, compared with six months here. We have since established that it is six months in England, Wales, Northern Ireland and Scotland.

Another couple of issues were raised, one of which related to minimum sentences. We addressed that in the covering letter. I think the other significant factor is around the determination of the Committee that we would apply a strict standard to human trafficking, given the nature of the offence. I have already mentioned that the Minister has asked us to look at whether the offence should be indictable only, rather than triable either way. I think that they are the headlines on the sentencing and offence front.

The Deputy Chairperson: Are members content that an offence for human trafficking should not carry a minimum sentence, or is it something that you wish to return to? We will come back to it.

I ask officials to work through the individual issues raised by respondents and the Department's responses in the order listed in the table under the heading "Prosecution".

Mr Simon Rogers: CARE in Northern Ireland raised the issue that a prosecution should not be dependent on the report or accusation of the victim. Our response sets out that that is not necessary. Obviously the prospect of conviction is much greater if the victim is co-operating or giving evidence, but that is not essential in taking forward a prosecution.

Ms Pritchard: A related issue was raised by NICEM, which thought that it would be necessary to amend the legal framework as the EU directive calls for the non-prosecution of victims. NICEM thought that that would not be possible due to the Justice (Northern Ireland) Act 2002. That is not the case in Northern Ireland. When the Public Prosecution Service is considering a case, it will take into consideration the extent to which the victim has been coerced to commit an offence. It will consider whether it is in the public interest to go ahead with the prosecution. So, the stance NICEM has taken is not quite accurate.

Mr Simon Rogers: The final comment under this heading is from the NSPCC, which highlights that non-governmental organisations will often have greater experience of victims, etc. Our response points to the recently announced engagement group, which David Ford has set up to engage with non-governmental organisations on a formal basis to discuss issues like awareness, training and support for victims.

The Deputy Chairperson: Do members have any questions or queries about the Department's approach?

I am going to move on to protection, assistance and support for victims. I ask officials to respond to the comments of CARE and Disability Action.

Ms Pritchard: The first issue raised by CARE relates to the special measures that are available to witnesses under the Criminal Evidence (Northern Ireland) Order 1999. We say that there already is provision under the order for witnesses, where they are involved in trafficking cases involving sexual exploitation, to be automatically considered to qualify for special measures. The background to that automatic eligibility provision is that, in cases of a sexual nature, people may be required to talk about matters of an intimate detail. That is why they automatically qualify. Victims of labour exploitation cases will also be considered for special measures. It is the same for those who are witnesses in sexual exploitation cases. At the end of the day, the provision of special measures in any particular case is a matter for the judge, depending on the nature of the case.

The Deputy Chairperson: Thank you. Does anybody have any queries?

Ms Pritchard: Sorry, it might be helpful if I just add that the Department is considering putting in place further measures when it amends its guidance on achieving best evidence in criminal proceedings. It will specify that victims of human trafficking should be regarded as falling within the definition of an intimidated witness. We plan to include a specific section on human trafficking victims in guidance on working with intimidated witnesses.

The Deputy Chairperson: Thank you.

Mr Elliott: Chair, I have one issue. I notice that the Department's response states:

"The Department considers that it is not appropriate to create a hierarchy of victims and offences and that eligibility should be based on an individual assessment of each case."

To be fair, I thought that that was what CARE was saying — that it should be based on individual aspects. I think it is a bit unfortunate that that terminology was used there, because my understanding is that it should be on a case-by-case basis. I thought that was what CARE was saying, as opposed to the Department's inference that it is almost creating sections of victims.

Ms Pritchard: Our understanding of the CARE position is that it was looking for human trafficking victims to automatically qualify as special witnesses, rather than each case being treated on a case-by-case basis.

Mr Elliott: On that point, then, are the control mechanisms within the Department reasonable? Do they give enough protection to people on a case-by-case basis?

Mr Simon Rogers: We think the current provision does do that, because an application can be made, but the decision then rests with the judge. On labour exploitation, say, the judge could give special measures and determine that video evidence, etc, could be given, but it is down to the judge. Our point about the hierarchy was simply that if we pick out labour exploitation, why are we not suggesting that there should be automatic cover for certain other types of offence as well? Our view was that, rather than pick off different areas in a piecemeal way, we might be better leaving it to the judge.

Mr Elliott: Provided that is working — that is my point. Obviously, CARE has highlighted something that it thinks is not working. Provided that is working, that is fine, but if it is not, I think that it will need to be revisited.

The Deputy Chairperson: This is the first reading of the paper, but we will return to it, so you will have an opportunity to raise that issue again.

I will move on to the issue of trafficking children. A number of issues raised by the Children's Commissioner, CARE and the NSPCC fall within the responsibility of health trusts, as recovered child victims of trafficking and those suspected of trafficking are deemed to be "children in need". The Department has referred the relevant papers to the Department of Health, Social Services and Public Safety (DHSSPS). Will you update us on that?

Ms Pritchard: We have had no response back yet from the Health Department. We are assuming — I will check this for the Committee and come back to the Committee Clerk — that DHSSPS will engage directly with the Children's Commissioner and the NSPCC.

The Deputy Chairperson: Will they report back to you as well?

Ms Pritchard: No; responsibility for dealing with child victims is entirely a DHSSPS matter, but it has been liaising with us on the EU directive and Lord Morrow's Bill. As regards the detail of how children are looked after, responsibility falls to it and not the Department of Justice. If the Committee would find it helpful, I am happy to take that up with the Health Department to check what action it is taking on the issues that have been raised.

The Deputy Chairperson: OK, thank you.

The NSPCC highlights awareness-raising as an issue in relation to the trafficking of children. The Department advises that awareness of human trafficking was highlighted by the Blue Blindfold campaign, which relaunched last year, and further work on awareness-raising will be considered by the human trafficking engagement group. The Department also refers to a multilingual leaflet and poster developed by the Organised Crime Task Force and targeted at potential victims. Has the Department any view about the processes in place for awareness-raising?

Mr Simon Rogers: A large part of that falls into the training category, where the emphasis is on first responders, as they are called, such as the police, health workers, etc, to try to ensure that if they come across victims, they will recognise them. However, we are always conscious that there is more to be done on awareness-raising, and that is precisely one of the issues that we want to put into the engagement group involving the non-governmental organisations, because they are putting a lot of energy into trying to raise awareness on the ground. There are a lot of conferences, which a number of people here have been to. In a way, we are trying to harness that energy and use it to increase awareness in particular areas, and we are conscious that there are always new aspects to look at. It may be awareness among taxi drivers or hauliers, etc. There are always new groups coming up with which we want to look at additional awareness-raising. Awareness-raising is a constant theme, if you like, at the back of human trafficking. Certainly, training and the engagement group are two significant parts of that.

The Deputy Chairperson: Is there anything specific with regard to children, or is that a part of the broad general campaign around human trafficking?

Ms Pritchard: Work done recently by the PSNI and Barnardo's was, I think, partly funded by the Department. If it would be helpful, we will write to the Committee with details of that.

The Deputy Chairperson: Thank you. Are there any queries or are members content with the approach?

I move on to the question of the rapporteur. CARE calls for the provision of a national rapporteur or an equivalent mechanism that is independent of government and reports publicly. The Department highlights that the EU directive does not require a national rapporteur or equivalent mechanism to be independent of government. It advises that the interdepartmental ministerial group (IDMG) fulfils this function for the United Kingdom and published its first annual report on human trafficking in October 2012. The Department goes on to detail the scrutiny of the response to human trafficking here and the outcomes of various reports. It highlights one recommendation made in the Group of Experts on Action against Trafficking in Human Beings (GRETA) report that is relevant to here. This calls on the PPS to promptly issue guidance on trafficking offences. It is hoped that the guidance will be published before the end of the year.

Are you satisfied that the current provision is as strong and robust as one that is independent of governmental structures?

Ms Pritchard: I think that the Minister has indicated that he would like to see how the IDMG functions and performs the role. It has only just published its first annual report in October, which contained quite a lot of detail about what is going on in relation to human trafficking. From our point of view as well, there is quite a lot of independent scrutiny in the human trafficking area through GRETA itself, the US trafficking in persons reports and the Anti-Trafficking Monitoring Group, which reports every year. Of course, there is scrutiny from the Justice Committee and the Assembly all-party group on human trafficking. I understand that a British-Irish Parliamentary Assembly Committee is also carrying out scrutiny of human trafficking, and the Minister is giving evidence to it on Monday. So, there is quite a range of work outside government, and a lot of scrutiny going on. I understand that the PPS guidance will be available early in the New Year.

The Deputy Chairperson: Thank you. The issue of a rapporteur is something that we will return to. We are content with the approach to date, but there is that reservation.

I turn to public protection arrangements. The Association for the Care and Resettlement of Offenders (NIACRO) seeks clarification as to whether consideration has been given to the impact of the new offences on the public protection arrangements. The Department advises that clause 5(3)(a) and clause 5(3)(b) of the Criminal Justice Bill add a new offence of trafficking outside the UK for sexual exploitation to schedules 1 and 2 to the Criminal Justice Order 2008. Can you explain what impact that will have on new offences and how that is addressed by the order?

Mr Simon Rogers: I am smiling because that is quite a complicated question for someone who is not an expert. What it means in effect is that the judge can consider, when looking at these cases, the issue of dangerousness. If he determines that the defendant falls into that category, that can trigger an indeterminate sentence or an extended custodial sentence, with future release determined by the Parole Commissioners. So, in effect, what it means is that, instead of 14 years being the maximum sentence available in these particular cases, the maximum can now exceed that. It is almost like an aggravating feature; it can make the offence more serious if the judge feels that the defendant falls into that category. In both cases that we have had to date, the Pis and Chen cases, judges looked at that issue and determined that they did not fall into that more serious category and, therefore, dealt with them using the 14-year maximum sentence. However, that provision does what NIACRO asks about. It brings them into the new public protection arrangements for sexual offences.

The Deputy Chairperson: OK. Are members content with that approach?

Mr Elliott: It is a reasonable explanation for someone who is not an expert. *[Laughter.]*

Mr Simon Rogers: Thank you.

The Deputy Chairperson: I turn now to the duty on public bodies, and the Policing Board's view on that. In the previous Justice Bill, the Committee and, indeed, the Assembly, did not go for the statutory duty. Again, I think that we will return to that. Is everybody content that we move on?

On hybrid offences, the Public Prosecution Service highlights that the new offence created in clause 5 of trafficking outside the UK for sexual exploitation is a hybrid offence and needs to be added to the list of hybrid offences that the Director of Public Prosecutions may refer to the Court of Appeal if he considers that a sentence is unduly lenient. The Department advises that the Minister intends, with the Committee's agreement, to bring forward secondary legislation to add trafficking for non-sexual purposes to the schedule of offences that are referable to the Court of Appeal on the grounds of unduly lenient sentences and to make a new offence of trafficking for sexual exploitation fully referable. It highlights that trafficking for current sexual exploitation offences is already covered. Are members content with that approach?

We will move on to data collection. Disability Action raises a number of issues on data collection and urges the Committee to call for better statistics and information on the extent of the problem of trafficking of disabled people. The Department recognises data collection as an issue. It advises that both it and the Organised Crime Task Force's immigration and human trafficking subgroup will work with the Home Office and the UK Human Trafficking Centre on improving data collection. Are members content with that?

Ms Pritchard: I would just add that there was a meeting in the Home Office last week. It has been agreed that a specific group will be set up to look at data collection. It will be chaired by the Home Office but led by the UK Human Trafficking Centre, which is the centre responsible for compiling the statistics. I represent Northern Ireland on that group. When I was at the meeting, I raised the concerns that were raised by Disability Action. We will look at that. We will also be looking at it on a Northern Ireland level through our own human trafficking subgroup.

The Deputy Chairperson: OK. Thank you very much. Before we thank the officials, does anyone have any broad questions that they want to ask? If not, I thank Simon, Amanda and Debbie for their presentation this afternoon.

We covered a fair bit of ground this afternoon. At this stage, if people have any first or general impressions about other issues that they might wish to revisit, we could take some time to do that. I advise members that, next week, we will continue clause-by-clause deliberations on the DNA and fingerprinting clauses of the Bill. So, if there are any general views or issues that somebody wants to come back to or re-examine, we can do so. We certainly cannot do that today. Perhaps we should table that for the beginning of next week's meeting in order to assist the Committee staff.