



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice Bill:
Issues for Further Consideration

4 December 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alex Easton
Mr Tom Elliott
Mr Alban Maginness
Ms Rosaleen McCorley

The Chairperson: We had meetings on 8, 15 and 22 November, at which members indicated a range of areas for further consideration and deliberation in relation to the Criminal Justice Bill, and they were all pencilled in to be discussed at this afternoon's meeting. Following today's further discussion, the formal clause-by-clause consideration of the Bill is scheduled to take place at the meeting on Thursday. That will allow the Committee report on the Bill to be drafted and approved by the Committee at our meeting on 14 December.

First, we will go through the sex offender provisions. Clause 3 covers offences committed in a European Economic Area (EEA) state other than the United Kingdom. The Committee agreed to consider the wording of a draft amendment that the Department intends to make to clause 3 in relation to the provision that places a statutory notification requirement on offenders with convictions from another European Economic Area state who come to Northern Ireland 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. The Executive, however, are not supporting clause 3 as drafted. The Department discussed the Executive's concerns with the Attorney General and believes that it has come up with an approach that should address the concerns of the Attorney General and the Executive. A copy of the relevant extract from the Department's briefing paper and the wording of the draft amendment are included in members' meeting folders.

Members, I seek your views on whether you are content with the approach that is now being proposed by the Department, which provides for a statutory notification period for offenders in Northern Ireland with convictions from countries outside the UK with a number of safeguards built in, and the proposed amendment to clause 3.

The Committee had agreed to consider the wording of this draft amendment that the Department intends to make to clause 3 to address a drafting error in the Bill that was highlighted by the Public Prosecution Service (PPS). That error relates to inserting a new section 96A into Part 2 of the Sexual Offences Act 2003 relating to offences committed in an EEA state other than the UK. The PPS has indicated that section 96A already exists in the Sexual Offences Act 2003, although it applies only to Scotland, referring to powers of entry and examination of home address, which was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006. The Department has confirmed that

this drafting error has not yet been corrected in the amendment that has been provided to the Committee. It is a matter of changing the number of the section from 96A, and it will be corrected. Members should note the intention to correct the drafting error.

Are members content with those two areas that I have touched on?

Members indicated assent.

The Chairperson: The Committee agreed to consider the wording of an additional sex offender notification provision that the Department intends to introduce at Consideration Stage. The amendment is to address a gap in current legislation concerning details and information to be provided to the police by offenders who travel within the UK. The amendment will mean that an offender must notify the police if they intend to be away from their home address for longer than three days and provide relevant details. A copy of the relevant extract from the Department's briefing paper and the wording of the draft amendment are included in members' meeting folders.

Are members content with the proposal for the additional provision?

Members indicated assent.

The Chairperson: Next are the human trafficking provisions, starting with the issue of language and terminology. The Committee agreed to consider the PSNI recommendation that there is consistency in the Bill in referring to "human trafficking" rather than, at times, "trafficking people" when further information was provided by the Department on this issue. A copy of the evidence from the police, the Department's initial response and further information has been provided in members' meeting folders.

So, members, we have further information that the Department has provided. Unless members have any proposal on actioning any of those issues or making any changes, we can agree things as they stand. Are members content?

Members indicated assent.

The Chairperson: Next on human trafficking are convictions, disposals and sentencing. The Department has indicated that it is considering the implications of making offences triable on indictment only — in other words, only in the Crown Court — to address the concerns raised by the Committee. Work on this may not be completed before the end of the Committee Stage of the Bill. If the Minister decides that he wishes to make such an amendment, it is likely to be tabled at Consideration Stage. The Committee also indicated that it wished to discuss further the possibility of having a provision to introduce a minimum term of imprisonment for human trafficking offences. The relevant extract from the Department's briefing paper is in the meeting folder.

If members want an amendment to make the offences triable on indictment only, we will need to agree to that and then ask for a proposed amendment to be drafted.

Mr A Maginness: Chair, could you remind the Committee why we were so minded to have those offences tried in the Crown Court only?

The Chairperson: The Minister has indicated that he would not support that approach. Christine, can you give us a bit of history?

The Committee Clerk: Yes. Members raised issues about the provision that the cases could be tried either under summary or in the Crown Court, and there were issues with the sentence of six months. Some members mooted the suggestion that a minimum sentence could perhaps be put into the legislation. The Minister looked at the issues that were discussed in Committee and came back with a response, which is stated in the paper that members have:

"The Minister agrees fully with the strongly held view that Northern Ireland should be seen as a hostile place for traffickers and notes that sentencing is one of the tools".

That was the point that members made, and they were concerned that there was a possibility of people being found guilty of human trafficking offences and perhaps getting a fine or a minimum

sentence. That concern led to the suggestion of possibly having a minimum level of sentence. The Minister came back to say that he had:

"asked officials to consider the implications of making such offences triable on indictment only (in other words only in the Crown Court)."

At the last evidence session, the officials indicated that the Minister had asked them to look at that but that it was unlikely that they would be able to come back before the end of the Committee Stage to confirm whether the Minister would take it forward.

So, the Committee has to try to decide today whether it thinks, given its concerns about possible levels of sentencing, that that is a possible solution that the Committee wants to see. You could indicate that you would support that approach, and if the Minister comes back to say that he does not intend to table that amendment, the Committee could table it. You could adopt that approach if you wish. Otherwise, you can decide to note that the Minister is looking at the issue but not form any view on it, in which case, if he does not table the amendment, nothing in the Committee report will indicate that you intend to do that. It is really about whether the Committee wants provision to make offences triable on indictment only put into legislation, and, if so, you could indicate that that is your position. If the Minister tables the amendment, the Committee will, obviously, support that. If the Minister indicates after Committee Stage that he does not intend to table that amendment, the indication would be that the Committee would table the amendment itself.

Mr A Maginness: Chair, I think that we should wait until the Minister comes back. If he and the officials complete their work, we can then consider that because we could introduce an amendment at any stage, could we not?

The Committee Clerk: You could. The issue is about what you want to reflect in the Committee report, which will have to be signed off next week. It is really about whether, as a Committee, you think that that is the position that you would like to see, in which case we can indicate that you intend to wait. However, the issue is that if you want to see that and the Minister comes back and says that he will not do it, does the Committee intend to do that itself? It is about what position you want to take so that we are clear about what we need to put into the report for you.

Mr A Maginness: I would have thought that if there was an option to have a summary trial or a Crown Court trial, it would be up to the PPS to determine that issue, and the PPS would say that it is a serious offence. Human trafficking would almost always be regarded as a serious offence, and it would be up to the PPS to determine whether it should be tried at Magistrates' Court level or, alternatively, at Crown Court level. I would be content with that, but I would have thought that if the Minister comes back and says that he will rearrange things and treat all these offences as triable at Crown Court level, that would have a much greater effect on authority.

The Chairperson: I suppose that it is about whether we would want to put it into law that it is Crown Court only. The question is this: is that necessary in curtailing the PPS?

Mr A Maginness: I do not think that it is necessary. The PPS judges what is the correct forum to put these offences into.

Ms McCorley: Is there an example of a different kind of offence that might enlighten us, where it might be the case that it would always be viewed as serious and, therefore, always indictable?

The Chairperson: Yes, is there any other area where the trial for a criminal act that has been committed is in the Crown Court only?

The Committee Clerk: When the Committee was discussing it, Mr Dickson raised the issue around the six months and the differences. At that stage, the Committee was veering more towards whether there should be a minimum sentence, but I do not think that the response from officials was necessarily that they thought that the Minister would want to go down that road. Maybe that is why they are looking at this other mechanism. At that stage, the Committee raised some views about whether the way to do it was to look at a minimum sentence, but, obviously, that has implications as well.

The Chairperson: The problem is that there have not been that many convictions and people taken through the courts, so we do not know whether it would be necessary to put forward that type of approach that it would be only an indictable trial. I am happy for us to have it recorded in the report that this is an area of concern for the Committee, and it is something that we will come back to if we do not believe that it is being dealt with properly in respect of the seriousness that should be attributable to this type of offence. That is something that we can review. There is another justice Bill coming forward, and there is always an opportunity for us to bring forward an amendment at some point if we feel that that is necessary.

Mr A Maginness: I could live with that, Chair.

The Chairperson: If members are happy, we will make some commentary around that in the report. We will review it and may come back to it to take the approach to make it indictable, but, at this stage, we will reserve our position on it.

The Committee Clerk: We can also indicate in the report that the Committee will consider any further information provided when the Minister comes to us before Consideration Stage.

The Chairperson: OK.

We will move on to protection, assistance and support for victims. Members indicated that they wished to discuss further the issue of whether human trafficking victims should automatically qualify for special measures available to witnesses. A copy of the evidence received on this matter and the Department's response is in the meeting folder. This issue is covered in clause 12 of Lord Morrow's draft private Member's Bill on human trafficking. The Committee may wish to indicate that, as agreed at our meeting on 22 November in relation to other issues included in Lord Morrow's Bill, we will consider this issue further in that context. If members are content, we will take that approach.

Members indicated assent.

The Chairperson: In relation to trafficking children, the Department agreed to update the Committee on the action being taken by the Department of Health, Social Services and Public Safety with regard to child victims of human trafficking and to provide details of the work carried out in relation to awareness raising by the PSNI and Barnardo's. A copy of the further information provided by the Department is in the meeting folder. Do members have any further comments in addition to the information that has been provided by the Department? Otherwise, we will note that. Are members content?

Members indicated assent.

The Chairperson: OK. Members indicated that they wished to discuss further the proposed approach to a national rapporteur. We have a copy of the evidence that was received on the matter, and the Department's response is available for members' information in the meeting folder. Members may wish to take action in the context of the Bill. We will note it as drafted, unless members —

Ms McCorley: I feel fairly strongly that there is a requirement for a national rapporteur or some method of independence from government. The Minister's view is that the inter-ministerial group covers that function. There has been commentary from other sources that questions the independence.

The Chairperson: Christine, if we wanted to do something on that, how would we take it forward?

The Committee Clerk: We could highlight in the report that that is a view, unless you particularly want to put in legislation that there is a requirement for one. We can highlight that the view is that there should be an independent rapporteur and that members raised that as an issue. We can take it forward with the Department on that basis in the meantime, unless you particularly want to make a proposal that it is put in the legislation that there should be an independent rapporteur.

Ms McCorley: I would be happy to listen to other members' views. I am conscious that there have been so few cases here so far. I am guided by the commentary, but I am happy to —

The Chairperson: I am content for us to put in the report that it is an area that the Committee would have a concern around, and we could ask the Department what it is doing to address that. I am not sure that, at this point, from our perspective, we want to legislate on it, but I am certainly content for us to put in the report the concerns that you have raised and a request for the Department to address those.

Mr McCartney: At Further Consideration Stage, you could table your own amendment if required.

The Chairperson: Yes.

The Committee Clerk: There will also be opportunities if the private Member's Bill on human trafficking comes forward, if you are still having discussions with the Department on that. That Bill might provide an opportunity as well because, obviously, it is going to cover those sorts of areas.

The Chairperson: We move to the DNA/fingerprint retention provisions. In the meeting folder, we have a table that sets out evidence that was received and the Department's response in relation to DNA/fingerprint retention provisions. There is also a copy of the Hansard report of the Committee's deliberations on 15 November, and a briefing paper from the Department that provides further commentary on the retention framework relating to juveniles, prescribed circumstances, the biometric commissioner, the retention of material until the conclusion of an investigation and three other proposed amendments. In addition, there is the wording of the draft new clauses and amendments that the Minister proposes to move at Consideration Stage.

First, we will deal with the provisions as they relate to children and juveniles. Members indicated that they wished to discuss that area. The Department's position is that, in the cases of juveniles who have been convicted of serious or repeat offending, it considers that indefinite retention is appropriate. It also points out that the Bill provides that young people who are convicted of a first minor offence will have their data retained for an individually tailored period of between five and 10 years only. In cases in which there has been no conviction, the Department indicates that research does not support a shorter DNA retention period for juveniles than for adults, given that the future offending risks for juveniles are higher than they are for adults. Relevant information can be found in the papers.

Members, what are your views on this? I know that, from the DUP's perspective, we are content with what the Department is proposing, and that will be our approach on Thursday. Do other members want to indicate?

Mr McCartney: We have previously highlighted issues around the caution, obviously the penalty notices and, in the wider context, the presumption of innocence. During the clause-by-clause scrutiny, we will bring that to that as well.

The Chairperson: OK. So, on Thursday, when we come to the formal clause-by-clause scrutiny, will it be a proposed amendment or do you plan to abstain from that and then at Further Consideration Stage —

Mr McCartney: The possibility is that we will abstain on Thursday and seek appropriate amendments at Further Consideration Stage.

The Chairperson: Have any other members anything to say on this?

Mr A Maginness: The caution is the difficult one. The value of the caution is that it is not really a conviction, but it is really treated as a conviction.

The Chairperson: For the purposes of retaining DNA.

Mr A Maginness: Yes, that is the thing. Do you devalue a caution by doing that? Do you affect it in some way? Is there a negative impact on the use of a caution? That is the problem as I see it.

Mr Elliott: Why, Alban? Sorry, through the Chair, I am wondering what the rationale is for your thinking?

Mr A Maginness: To my mind, a caution is not a conviction, although when you are cautioned and you accept a caution, you have to say that you are guilty. If you get a caution for careless driving, you have to say that you were careless, but it is not really a conviction in the real sense. However, when you caution a young person in particular, it is to try to redirect them and keep them away from reoffending. In the situation where retention is then mandatory as a result of a caution, which it would be under this, it seems to me in some way to affect the purpose of a caution. If it damages the use of cautions, then —

Mr Elliott: I cannot see how it would.

Mr A Maginness: That is the point. The argument is this: does it, in any way? I think that it does, but I cannot articulate that properly.

Mr Easton: I cannot quite see where you are coming from. It would not be held against you if you were arrested later. If you did commit an offence, it would just signify that you did it, but it cannot be used against you. So I do not see how —

Mr A Maginness: No, it cannot, but there is a further implication of a criminal offence. That is just my feeling about it, and I am uncomfortable with that.

The Chairperson: I can appreciate that. I am satisfied that because it is never disclosed and it cannot be equated with a criminal record and it is not on the same standard, then, on the ideal of prevention and detection of crime, on balance, we are content with —

Mr A Maginness: There is no doubt that there is a public good. If you are preventing crime or if you are detecting crime in the future, that is a public good. You have retained those fingerprints or DNA or whatever, and that helps to identify the perpetrator. I am not against that.

Mr Elliott: Chairman, I see where Alban is coming from, but I do not necessarily agree with his point. I can understand his logic in thinking that, but I just do not agree with it.

Mr A Maginness: You might be right. I do not have a fixed view on it.

The Chairperson: It is where some people seem to equate the retention of DNA as being the same as getting a conviction, and then that it is part of a criminal record. I do not take that view at all on the retention of DNA, and that is how I have been able to rationalise my approach to it.

Mr A Maginness: Well, you could argue that everyone's DNA should be retained. I think that the public would react in a fairly hostile way to that.

The Chairperson: Everyone's DNA being retained? Even I would probably not like that. We know where we are for —

Mr A Maginness: As far as the SDLP is concerned, I will join with the Sinn Féin position on that when we come to Thursday's session.

The Chairperson: OK. With regard to the minimum age of responsibility, members had indicated that they wished to discuss the application of the provisions within the context of the current age of criminal responsibility of 10. Again, the relevant pages are 14 to 16 of the table at tab 8 and pages 3 and 4 of the Hansard report at tab 9. Have members any issues that they wish to raise? Again, from the DUP's perspective, whatever the age of criminal responsibility is, that is the age to which we think it should be applicable. If that was 12, then it should be 12. If 14, it should be 14. That just deals with the practical reality that it is currently 10. Do members want to raise anything else?

Mr McCartney: We will decide on Thursday.

The Chairperson: OK. With regard to schedule 2, article 63B, "Destruction of fingerprints and DNA profiles: basic rule", members indicated that they wished to discuss article 63B(2), by which material can be retained in circumstances when an arrest is unlawful or the taking of material is deemed to be unlawful. The relevant information can be found at page 19 of the table at tab 8 and page 4 of the

Hansard report at tab 9. Do members have anything that they want to propose at this stage in respect of that? If not, I assume that, on Thursday, people will vote accordingly on what is before us.

Schedule 2, article 63C, deals with the retention of article 63B material pending investigation or proceedings. The Committee agreed to consider the wording of a draft amendment that the Department has agreed to make to article 63C to clarify the provision by linking retention to the perceived utility of the material, rather than to the conclusion of the investigation. The wording of the draft amendment can be found at tab 11. The relevant information is found on page 19 of the table at tab 8, pages 4 and 5 of the Hansard report at tab 9 and the briefing paper from the Department at tab 10. Again, do members wish to express their views on that proposed amendment? If they want to propose anything contrary to it, we will deal with it formally on Thursday.

Schedule 2, article 63D deals with the retention of article 63B material from persons arrested for or charged with, but not convicted of, a qualifying offence. Members indicated that they wished to discuss articles 63D as it applies to a person who is arrested for or charged with a qualifying offence, but is not convicted of that offence, and issues of proportionality and the presumption of innocence. The relevant information is found at pages 20 to 30 of the table at tab 8 and page 5 of the Hansard report at tab 9. Unless members want to propose anything that is contrary to what is before us from the Department at today's meeting, we will decide on it formally on Thursday.

Mr McCartney: Again, it is around the presumption of innocence.

The Chairperson: The Committee agreed to consider the wording of a draft amendment the Department has agreed to make to article 63D to set out on the face of the Bill the prescribed circumstances, and in response to issues that were raised by the Assembly Examiner of Statutory Rules in his report on the delegated powers that are contained in the Bill, which the Committee referred to the Department for consideration and comments in written evidence. The Department intends to move an amendment to set out the prescribed circumstances that relate to the circumstances in which an individual has been arrested in connection with a serious, violent or sexual offence where there is insufficient evidence to bring charges. The wording of that draft amendment can be found at tab 11. Relevant information is on pages 20-30 of the table at tab 8 and pages 5 and 6 of the Hansard report at tab 9, and also in the briefing paper from the Department at tab 10. It is whether members are content with the proposed amendment that is provided by the Department that will set out the prescribed circumstances in the Bill.

Members indicated assent.

The Chairperson: Members indicated that they wished to discuss the issue of a biometric commissioner. The Department has explored with the police and the courts the possibility of the proposed role of the biometric commissioner being undertaken by the courts. Without a clear idea of the likely volume and the associated resource implications, the courts are reluctant to take on that role. The Department has, therefore, concluded that a biometric commissioner is the preferred option for the time being and intends to proceed on that basis. However, it has given an undertaking to keep the matter under review. Are members content with what the Department has indicated?

Members indicated assent.

The Chairperson: In schedule 2, article 63E concerns the retention of article 63B material for persons arrested for or charged with a minor offence, and article 63F concerns the retention of article 63B material for persons convicted of a recordable offence. Members indicated that they wished to discuss the issue of necessity, proportionality and the scope of recordable offences in relation to the provisions to retain material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. The relevant information is on pages 30-40 of the table at tab 8 and pages 6 and 7 of the Hansard report at tab 9. Do members wish to propose anything at today's meeting in respect of this? If not, we will formally decide on Thursday, based on what has been proposed. OK?

Members indicated assent.

The Chairperson: In schedule 2, article 63H concerns the retention of article 63B material exception for persons under 18 convicted of their first minor offence. Members indicated that they wished to discuss the issue of the retention of children and young people's fingerprints/DNA in relation to

cautions. That was touched on earlier. We can note that in anticipation of you, Raymond, making some comment around that on Thursday.

Mr McCartney: Yes.

The Chairperson: In schedule 3, article 53B(1) concerns persons convicted of an offence. Members indicated that they wished to discuss the issue that a caution is treated as being equivalent to a conviction for the purposes of the retention framework. The relevant information is on pages 44-48 of the table at tab 8 and page 9 of the Hansard report at tab 9. I think that that is the same issue from earlier.

Mr McCartney: Yes.

The Chairperson: There is a proposed amendment to permit limited retention on award of a penalty notice. The Committee agreed to consider the wording of a draft amendment that the Department proposes to introduce to make provision permitting limited retention — two years — in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. The wording of the draft amendment can be found at tab 11; relevant information can be found at pages 9 and 10 of the Hansard report at tab 9 and the briefing paper at tab 10. It is whether members are content with the proposal from the Department to provide for limited retention in cases where a penalty notice has been issued, and with the wording of the amendment. Raymond, you touched on that penalty notice earlier.

Mr McCartney: It is the same principle as the caution. It is interesting that the period is less, so they are even making a distinction between a caution and a fixed penalty. It is something that we will come to on Thursday.

Mr A Maginness: The question is: when would that ever arise? I suppose that we are extending penalty notices. A penalty notice could be for disorderly behaviour and that sort of thing.

Mr McCartney: A first offence for someone under 18, such as shoplifting. It was said last time that people may not necessarily be fingerprinted or have their DNA taken.

Mr A Maginness: That is the point that I am making. Normally, you would not fingerprint or take the DNA of people with a penalty notice.

The Chairperson: A penalty notice is to avoid criminalisation, and the argument, from my perspective, will be —

Mr A Maginness: Are you devaluing that?

The Chairperson: Yes, but I do not regard the retention of DNA as a criminal to be equivalent to it. Therefore, we are relaxed about that.

The Committee agreed to consider the wording of a draft amendment that the Department proposes to introduce to bring completion of a diversionary youth conference into the framework on the same basis as a caution. The Department indicated that both diversionary youth conferences and cautions require acceptance of guilt on the part of the offender, and so are treated as convictions for the purposes of the retention framework. The wording of the draft amendment can be found at tab 11, and the relevant information is on pages 9 and 10 of the Hansard report at tab 9 and in the briefing paper at tab 10. It is up to members to indicate whether they are content with the proposal that the Department is to bring completion of a diversionary youth conference into the retention framework on the same basis as a caution, and with the wording of the amendment that is before us. Certainly, from our perspective, we are content. Is that something that —

Mr McCartney: We will come back to you.

The Chairperson: The Committee agreed to consider the wording of a draft amendment that the Department intends to introduce to correct a drafting error in paragraph 6 of schedule 3 to change "18(8)(b)" to "18(8)(c)". The wording of that amendment is in the papers, and members should note that.

The Committee agreed to give further consideration to a draft amendment to abolish the offence of scandalising the court following circulation of information relating to a consultation undertaken in England and Wales on that issue. The Committee also agreed to write to the Attorney General seeking his views on the proposal. Relevant papers, including the consultation information, the wording of the draft amendment and the Hansard report of the Bill session, when the Bill Clerk briefed the Committee on the proposed amendment, is at tab 12 of the meeting folder. The response of the Attorney General will be circulated on receipt.

The response from the Attorney General in relation to the proposed amendment has been tabled for members. He is of the view that public confidence in the administration of justice, for example in the impartiality of judges, is far too important to be left to the personal inclination of an individual judge to seek a private law remedy. He believes that the law of scandalising contempt in its present form is neither particularly accessible nor widely understood and indicates that the statutory provision in that area would remove any current uncertainties and promote awareness of rights and responsibilities in relation to criticism of judges. He suggests that the Criminal Justice Bill may provide an opportunity to recast scandalising contempt in a statutory form. That is available for members' consideration.

Mr McCartney: We need to await the outcome of whether that is competent for this Bill or whether it goes into the Faster, Fairer Justice Bill before you can make up your mind.

The Chairperson: Are members content that we go forward with the amendment that was drafted, and the Speaker will then rule on whether it is admissible? That can allow us to proceed, or not.

Mr McCartney: Yes.

The Chairperson: That concludes the deliberations on the clauses and schedules of the Criminal Justice Bill, unless members want to discuss any other issues that are relevant to it. Stewart got in in time for his tick.

Mr McCartney: He was standing outside the door.

Mr Dickson: I was in the other place.

The Chairperson: Quite right. As the Speaker says, that should be the primary objective of Members and should take precedence over Committees. The formal clause-by-clause consideration will begin at the Committee on Thursday, when we will go through each clause and schedule to determine whether they will stand part.