



**Northern Ireland  
Assembly**

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**COMMITTEE FOR JUSTICE**

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**OFFICIAL REPORT  
(Hansard)**

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**Briefing on Special Measures  
Consultation**

20 May 2010

**NORTHERN IRELAND ASSEMBLY**

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**Members present for all or part of the proceedings:**

Lord Morrow (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Jonathan Bell  
Mr Jeffrey Donaldson  
Mr Tom Elliott  
Mrs Dolores Kelly  
Mr Alban Maginness  
Mr David McNarry  
Ms Carál Ní Chuilín  
Mr Alastair Ross

**Witnesses:**

Ms Norma Dempster	)	Department of Justice
Mr Tom Haire	)	
Mr Gareth Johnston	)	
Mr Brendan O'Mahony	)	

**The Chairperson (Lord Morrow):**

Mr Haire and Mr Johnston, who attended the previous session, will remain with us for this

session. Brendan O'Mahony and Norma Dempster from the delivery improvement unit of the justice strategy division have joined us. The briefing is on the policy consultation on special measures to be included in the proposed justice Bill to provide extra services for vulnerable witnesses and defendants. Members have been issued with briefing papers, which they may find useful. I remind everyone that the meeting is being recorded by Hansard.

**Mr Brendan O'Mahony (Department of Justice):**

I joined the NIO in 1992, where I worked in the private office and personal services division until 1996. From 1996 to 1998, I was the deputy talks administrator for the multiparty talks in Castle Buildings. Following the signing of the Belfast Agreement, I moved to the newly formed victims liaison unit, which dealt with victims of the Troubles, and, while I was there, the Northern Ireland Memorial Fund for victims was established. I moved to criminal justice in 2001 to work on sexual offences policy. Since then, I have served in a number of posts across criminal justice, including director of finance, and in policy areas that cover business planning, confidence, delay and victims. I currently head the delivery improvement unit, which is part of the justice development division and which has responsibility for working with our statutory and voluntary partners to implement Bridging the Gap, our five-year strategy aimed at improving services to victims and witnesses to crime.

**Ms Norma Dempster (Department of Justice):**

I joined the Police Authority in 1987, and I transferred to the Prison Service in 1998. In 2000, I transferred to the Northern Ireland Office. I worked with the firearms and explosives branch until last year, when I joined the delivery improvement unit.

**Mr O'Mahony:**

I shall provide a short overview of the victims' strategy to put special measures into that context, together with an overview of the special measures that we are proposing and some details on the consultation.

In 2007, a five-year strategy entitled Bridging the Gap was launched with the aim of improving criminal justice services to victims and to witnesses to crime in Northern Ireland across five key areas. Those areas are: the improvement of access to information for victims and witnesses to crime; the introduction of better means of keeping victims and witnesses informed as their cases progress through the criminal justice system; working together and in partnership with

relevant voluntary organisations to improve services across all agencies; recognising and being responsive to the needs of victims and witnesses; providing support before, during and after court proceedings; and listening to victims and witnesses so that their views can contribute to those policies that impact on them directly.

The Bridging the Gap strategy is now in its fourth year and is being delivered by the victim and witness task force, which is a subgroup of the Criminal Justice Board and is chaired by the Department of Justice. The victim and witness task force is a multi-agency group that is made up of members of the key criminal justice organisations as well as representatives of Victim Support Northern Ireland and the National Society for the Prevention of Cruelty to Children (NSPCC).

The Bridging the Gap strategy gave a commitment to formally evaluate the effectiveness of special measures provisions. Special measures are statutory provisions to assist vulnerable and intimidated witnesses to give their best possible evidence in proceedings. Special measures provisions are legislated for in the Criminal Evidence (Northern Ireland) Order 1999.

It will be helpful to highlight the special measures provisions that are currently available. When giving evidence in court, vulnerable and intimidated witnesses can be screened so that they cannot see defendants. Vulnerable and intimidated witnesses can give their evidence by live link so that they do not have to be in the same room as defendants. Vulnerable and intimidated witnesses who are involved in proceedings relating to a sexual offence can give their evidence in private. Persons connected with the case, such as the defendant, legal representatives, interpreters or one nominated member of the press can remain in the courtroom.

In the court, wigs, gowns and other items may be removed to make proceedings appear less intimidating to a vulnerable or intimidated witness. In addition, vulnerable and intimidated witnesses can have their evidence-in-chief to the police video recorded. It will then be played at court, which means that the witness does not have to give evidence in person. A special measure permits a vulnerable or intimidated witness's cross-examination or re-examination to be video recorded. That would then be played at court, which means that the witness does not have to give evidence in person. However, that provision has not yet been commenced.

Another special measure allows an intermediary to help a vulnerable witness to understand questions that are being put to them and to help the court to understand the meaning of answers

given by the witness. An intermediary can also assist when the police are taking the witness's evidence-in-chief. Again, that provision has not yet been commenced.

Finally, there are aids to communication, such as symbol books and alphabet boards, which are permitted to help vulnerable witnesses to understand and respond to questions in court and when giving the police their statement.

It has long been recognised that individuals have different experiences and needs and that some require more support than others. For many victims and witnesses, their experience of crime is difficult and often traumatic, so we wish to ensure that engaging with the criminal justice system does not unnecessarily add to their distress. We are acutely conscious that victims and witnesses have a vital role to play in bringing perpetrators to justice. Without their active participation, especially in giving evidence confidently and effectively in court, justice simply cannot be done. Giving evidence can be a daunting experience for many, but we need to ensure that appropriate special measures are put in place to help the most vulnerable, especially children and young people.

To commence the review of special measures, in February 2009, the special measures pre-policy consultation process was launched. The consultation posed a number of questions on which views were sought to establish how special measures were working in practice. In June 2009, a focus group meeting, to which all organisations that responded to the consultation were invited, was held. Attendees explored further the questions that were posed in the consultation document, and they had a useful exchange of ideas on how potential improvements to special measures provisions might be made. The pre-policy consultation showed that, in general, the special measures legislation had been a significant step forward in helping to obtain best evidence and that it does not require fundamental change. However, suggestions were made about how it could be improved in some ways, and some issues were raised about practical matters and about how the legislation was being implemented.

We have proposed a number of amendments to the special measures provisions for young people. The age at which persons are considered to be young witnesses should be lowered to 18, bringing it in line with the upper age limit in youth courts. In addition, research suggests that 17-year-old witnesses experience anxiety similar to that of younger witnesses, so the proposed change would be a positive step forward.

We also plan to ensure that the views of young witnesses are taken into account when special measures applications are made. Unlike the situation with other vulnerable and intimidated witnesses, as the legislation is currently written, there is no requirement for the views of young witnesses to be taken into account on a special measures application. The primary rule requires all young witnesses to give video-recorded evidence-in-chief and further evidence by live link. However, research shows that young witnesses, especially in the upper age range, like to have a say in how they give evidence. We consider that to be reasonable, so reasonable safeguards need to be written. In other words, witnesses must understand the consequences of not giving video-recorded evidence-in-chief and further evidence by live link; it may mean that they have to give evidence in front of the defendant.

We also plan to remove the special category of child witnesses who are in need of special protection, thereby placing all child witnesses on the same footing. A young witness in need of special protection is one who is involved in proceedings relating to a sexual offence or an offence of violence, assault or false imprisonment, for example.

Legislation currently states that young witnesses in sexual offence proceedings must give video evidence-in chief and further evidence by live link. The court does not have any discretion in that matter. Sexual offences against children can sometimes be video recorded by the perpetrator, and some young victims can naturally feel uncomfortable about giving their evidence in that way. Therefore, the main factor for consideration in respect of special measures should be the needs of the child not the nature of the defence.

We are also seeking views on the proposal that witnesses in proceedings relating to offences involving firearms, knives and offence weapons should be automatically eligible for special measures assistance. We hope that our initiative to tackle knife crime will encourage more witnesses to come forward and give evidence. We are aware that there should not be a hierarchy of offences. That is one of the proposals on which there is some degree of disagreement. However, a court will still have to determine if any special measures would, in fact, improve the quality of the evidence given.

We also propose that the adult complainants of sexual offences be automatically entitled to give video-recorded evidence-in-chief. Adult complainants of sexual offences are already

automatically eligible for special measures. However, there is no entitlement to admit automatically their video-recorded evidence-in-chief as there is with young witnesses and victims. As part of our commitment to reduce the rate of victim withdrawal of sexual offences complaints in particular, we wish to provide adult complainants in rape and serious sexual offences cases with the ability to give evidence by video-recorded statement-in-chief.

We also want provision to be made to formalise the presence of a supporter in the live-link room where a witness is giving evidence. The supporter's role is primarily to provide emotional support and to help reduce a witness's anxiety and stress when he or she is giving evidence. The supporter can be anyone known to the witness who is not a party to the proceedings. We are also proposing to relax the restriction on a witness giving additional evidence-in-chief after a video recorded statement has been admitted. That would remove the prohibition on asking a witness questions about matters that the court considers to have been covered adequately in the recorded statement. As a result, the witness could be asked additional questions by prosecution counsel about matters covered in the recorded statement as well as those not already covered in the statement prior to cross-examination by the defence counsel. We are also proposing that the intermediary provision be made available to vulnerable defendants.

Defendants are excluded from special measures provisions under the 1999 Order. Article 82 of the Criminal Justice Order (Northern Ireland) 2008, which deals with evidence of vulnerable accused, provides for the use of live links for the evidence of certain accused persons whose ability to participate effectively in the proceedings is compromised by their level of intellectual ability or social functioning. It is considered that a live link would help them to participate effectively. However, we also consider that there is merit in extending the intermediary special measure provision to vulnerable defendants with any communication difficulties who might benefit from the provision of an intermediary to assist them when giving evidence in court to ensure that they receive a fair trial.

As part of the consultation, we are also asking for views on the following proposals: that article 16 of the 1999 Order, which deals with video-recorded cross-examination or re-examination, be commenced; that work to enable article 17 of the Order, which deals with intermediary provision, to be commenced should be a high priority for the Department; that a multi-agency working group should be established to address issues concerning the operational effectiveness of special measures; and whether a review by the Criminal Justice Inspection

Northern Ireland on the operation of special measures would be a good way of assessing operational effectiveness and performance.

In a similar vein, we are also proposing to expand the use of live-link facilities in courts. We propose to allow physical disability to be a basis for the use of live-link facilities as it is not currently covered. We also propose to allow the use of live links between courts and psychiatric units for defendants who have a psychiatric illness.

The current public consultation, which closes today, sets out how we propose to proceed, based on the views that were expressed during the pre-policy consultation and in the focus group in respect of the legislation and how to ensure that practical issues are addressed. An initial look at the responses received to date, mainly in the past few days, suggests that there is broad support for the proposed measures. However, there are some issues of clarity and process that we will need to examine in more detail once the consultation has closed and all the responses have been properly considered.

**The Chairperson:**

Thank you for your presentation, Mr O'Mahony. You talked about witnesses under the age of 18 rather than those under the age of 17. Were you referring to witnesses appearing on behalf of the defendant or to witnesses full stop?

**Mr O'Mahony:**

I was talking about witnesses who appear on behalf of the prosecution.

**The Chairperson:**

What about witnesses who appear on behalf of the defendant?

**Mr O'Mahony:**

There is no provision under the 1999 Order for defence witnesses to receive automatic eligibility for special measures.

**Mr McCartney:**

Your submission to the Committee indicates that the courts can allow a supporter to accompany a witness when he or she is giving evidence in a live-link room. Will that be universal or at the

discretion of the court?

**Ms Dempster:**

The court would have to give permission for a supporter to accompany a witness into a live-link room.

**Mr McCartney:**

On what basis would that decision be made?

**Ms Dempster:**

The court would take into account the emotional needs of the witness.

**Mr McCartney:**

All other proposals will offer automatic eligibility. Why is that not the case with this proposal? You may end up with a situation in which one witness is allowed to have a supporter and another is not, which could form the basis of an appeal.

**Ms Dempster:**

Currently in Northern Ireland, a lot of young witnesses are accompanied into live-link rooms by representatives from the NSPCC's young witness service. The Department proposes to formalise that procedure through the Bill.

**Mr McCartney:**

Your submission also indicates that, in exceptional circumstances, young people would be allowed to give evidence in court if they wish to do so and if it is in the interests of justice. A young person may want to give evidence in court for emotional reasons, but the court may feel that that is not in the best interests of justice. Who will make that decision; the young person or the court?

**Ms Dempster:**

The court would make that decision, but consideration would be given to the views of the young person, their age and maturity, and whether they understand what the special measures mean in practice.

**The Chairperson:**

I understand that the consultation process for the special measures proposals finishes today.

**Mr O'Mahony:**

That is correct.

**The Chairperson:**

Is it possible for the Committee to have a summary of the consultation responses?

**Mr O'Mahony:**

We can certainly provide that. We hope to produce a summary in the next few weeks, as soon as we have studied the responses. We will be more than happy to provide that to the Committee.

**The Chairperson:**

Can you give the Committee any indication of the type of responses that have been received?

**Mr O'Mahony:**

The Department has not had a chance to study the responses as yet. As you may know, responses to public consultations are quite often not received until the last few days of the consultation. Those that have been received have arrived only in the past week or so, and the Department has not had a chance to study them in detail. However, there was broad agreement on the main proposals. Some respondents raised concerns about practicalities and how things will be managed and implemented, and the Department will need to address those concerns. At this stage, I cannot say that no one objected to specific measures, but, from what we have seen so far, there is broad support for the proposals.

**The Chairperson:**

Was the public consultation carried out in a direct manner? Sometimes consultations can be announced by placing a very obscure government-type advertisement in an obscure place in some or other periodical. On one occasion, an organisation in Northern Ireland sought responses on issues that related to Northern Ireland, and it believed that the best place to put the advertisement was in the 'The London Gazette.' I found that quite strange. However, I did not find it strange that that organisation received only two responses. In fact, I was surprised that it received that many. I could never understand why the organisation advertised in London for a consultation on

something that was happening here. I could name the body, but I will not do that. You are not doing something similar, are you?

**Mr O'Mahony:**

No, we are not doing that. I will pass over to Norma, who will elaborate on the consultation process.

**Ms Dempster:**

We announced the commencement of the consultation in a press notice. We also emailed everyone on our extensive consultee list to advise them of the consultation and where they could view it.

**Mr O'Mahony:**

It is also available on the website, which we pointed people towards in the consultation.

**The Chairperson:**

There are no other questions. I thank you for your attendance and your presentation. I am sure that we will meet again.