



**Northern Ireland  
Assembly**

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**COMMITTEE FOR JUSTICE**

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**OFFICIAL REPORT**  
**(Hansard)**

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**Overview Briefing on Proposed Justice  
Bill**

20 May 2010

**NORTHERN IRELAND ASSEMBLY**

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**Overview Briefing on Proposed Justice Bill**

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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 John O'Dowd  
Mr Alastair Ross

**Witnesses:**

Mr Tom Haire	)	Department of Justice
Mr Gareth Johnston	)	
Ms Geraldine Fee	)	Northern Ireland Courts and Tribunals Service
Mr Graham Walker	)	

**The Chairperson (Lord Morrow):**

With us today are Gareth Johnston, deputy director of the Department of Justice's justice strategy division; Geraldine Fee, deputy director of the criminal policy division in the Northern Ireland Courts and Tribunal Service; Tom Haire, the Department's Bill manager; and Graham Walker

from the Northern Ireland Courts and Tribunal Service's criminal policy division. You are all very welcome. As you are probably aware, the meeting is being reported by Hansard. I ask you, Gareth, to introduce your team to the Committee, give a brief background and then move to the presentation.

**Mr Gareth Johnston (Northern Ireland Courts and Tribunals Service):**

Thank you very much for the opportunity to provide the Committee with an overview of the proposals for the Justice Bill to be brought before the Assembly in September. Our Minister very much recognises the importance of the Justice Committee at this stage in helping him to mould the final content of the Bill. We are pleased to present our proposals and take on board the Committee's comments. We hope that the Committee can help us through this early stage of the Bill's life.

Before we do that, we will introduce ourselves. I am head of the justice strategy division in the Department of Justice. As I said a couple of weeks ago, my career has been divided roughly equally between justice and other areas of government, including health and human resources. In recent years, I was director of law reform in the Department of Finance and Personnel and deputy director of personnel for the Civil Service. More recently, I headed the criminal justice policy division in the Northern Ireland Office (NIO).

My role in relation to the justice Bill is to provide strategic oversight and advice to the Minister and to ensure that the Bill fits in with our departmental strategy and the draft Programme for Government. I also provide the co-ordinating link across the justice agencies through the Criminal Justice Board. I work closely with, for example, my colleague Geraldine Fee from the Courts and Tribunals Service, who manages the courts-related aspects of the Bill. It is very much a combined initiative.

**Ms Geraldine Fee (Northern Ireland Courts and Tribunals Service):**

I am head of the criminal policy and legislation division in the Northern Ireland Courts and Tribunals Service. I have been head of division since 2004, having joined the service in 1993. As Gareth indicated, I am responsible for co-ordinating the courts service aspects of the Bill.

**Mr Tom Haire (Department of Justice):**

I am head of the criminal law branch and Bill manager in the Department of Justice. I work

directly with Gareth and each of the policy leads to deliver their legislative requirements. My role is to try to see the Bill through from policy proposals to statute. I have worked in the area of developing criminal justice law for 10 years or so. I worked on the Criminal Justice (Northern Ireland) Order 2008, which created the public protection sentencing arrangements and the removal of 50% remission.

Prior to that, I worked on our hate crime laws and the tariff system for life sentence cases. Many years ago, I began my working life in the Department of Finance and Personnel as a professional statistician, which I did for a number of years. I have also worked in the probation service, the Court Service and the Prison Service. As regards work on the Bill, I have regular, often daily, contact with Graham, who acts as my working link with colleagues in the Courts and Tribunals Service.

**Mr Graham Walker (Northern Ireland Courts and Tribunals Service):**

I am a deputy principal officer in the criminal policy and legislation division of the Courts and Tribunals Service. I joined the Court Service in 1996 and have held a number of operational posts in the Enforcement of Judgments Office and Belfast Magistrate's Court. Latterly, I have held policy development posts in judicial appointments, legal aid and now criminal policy. As Tom said, I act as a conduit for the various Courts and Tribunals Service elements proposed for inclusion in the Bill.

**Mr Johnston:**

If the Committee is content, I will move on to say a few words about the overall purpose of the Bill, to outline the key themes that it addresses and to provide a brief synopsis of a number of policy issues that the core Department is bringing forward. I will then hand over to Geraldine, who will say a few words about the Courts and Tribunals Service aspects.

The purpose of the justice Bill proposals that are before the Committee today sits squarely within a number of the overall aims of the justice system. It is about providing better services for victims and witnesses and about improving community safety, our business systems and efficiency, and access to justice.

I will highlight the main aspects that fall under the first of those themes, namely victims and witnesses. There are proposals to create an offender levy to resource a victims' fund that would

be used exclusively for funding services for victims of crime. There is also a proposal to extend a number of special measures for the giving of evidence by vulnerable and intimidated witnesses in court and an extension to provisions for live video links in courts.

The second theme is community safety. The Bill would take up any legislative implications following on from the recent consultation on crime reduction partnerships. The Committee will be briefed on those separately, and it will no doubt want to express its views. There are proposals for new sports laws to create offences of pitch invasion and racist or sectarian chanting; to control alcohol consumption to, from and at sports events; and to create football banning orders. Under that theme, we also plan to introduce a number of improvements to sex offender law. They include proposals to improve notification arrangements for offenders who are convicted outside the jurisdiction, largely in the Republic of Ireland, and to improve laws on bringing offenders who breach a requirement of their licence back to court.

The third theme is system effectiveness and efficiency, which also covers access to justice. Under that theme, there are proposals for new and additional alternatives to prosecution including an expanded fixed penalty notice scheme; use of conditional cautions; and the introduction of a prosecutorial fine.

There are a number of court-related reforms, which Geraldine will deal with shortly. They include a review of court boundaries for County Courts and Magistrate's Courts in Northern Ireland and changes to bail proceedings to free up High Court time. There are also key financial reforms on legal aid; for example, to allow the introduction of means testing and greater powers to recover costs from convicted defendants, and to remove restrictions on the Northern Ireland Legal Services Commission around litigation funding agreements. The Committee will receive a separate presentation on legal aid following this session on the Justice Bill.

Therefore, those three themes cover victims and witnesses, community safety and the effectiveness and efficiency of the system. Then there is a miscellaneous theme, which covers a number of useful improvements to the law, including specific sentencing amendments. The current penalty for common assault would be reviewed as would the power to defer sentences and to provide solicitor advocates with rights of audience in the higher courts.

As I said, it is very much a Bill that deals with courts and wider justice. It might be

appropriate now for Geraldine to comment on areas for which she is responsible.

**Ms Fee:**

As Gareth has said, the Bill will contain a number of provisions that are designed to produce a range of benefits that would improve system efficiency and effectiveness and increase confidence and access to justice.

Key Northern Ireland Courts and Tribunals Service aspects of the proposed provisions relate to a range of legal aid reforms that are specifically designed to better target legal aid: taking a power that would allow for the introduction of means testing for criminal legal aid; taking another power that would allow a court to order a legal-aided convicted defendant to pay all or a proportion of his defence costs when he has the means; and removing the restriction on the Northern Ireland Legal Services Commission's establishing or funding services under a litigation funding agreement. Those reforms will be dealt with in more detail in the next presentation. Therefore, subject to the Committee's views, I propose not to say any more on those aspects at present.

It is also proposed that the Bill will contain provisions for the reform of court boundaries. As Gareth said, they will specifically create a single County Court and Magistrate's Court division for all of Northern Ireland. That would remove current limitations on our ability to manage the distribution of court business. It would help us to ensure that we make the most efficient use of court resources and judicial time. That proposal is currently out for public consultation, which is due to close on 20 May 2010. As the Committee is aware, a separate session is scheduled for that consultation discussion next week. However, I am happy to try to assist members with any questions that they may have on that this afternoon.

The Bill also proposes to give effect to a recommendation of the Criminal Justice Board for Northern Ireland that was part of its strategy to address avoidable delay in the criminal justice system in Northern Ireland. The proposal would allow a Public Prosecution Service prosecutor to issue a summons on his own authority to require a defendant to appear before a Magistrate's Court to answer a complaint. That proposal had its origins in a recommendation of the Criminal Justice Inspection Northern Ireland. It is the subject of a public consultation exercise, which, again, is due to close on 20 May 2010. As with the proposals on court boundaries, it is intended that that proposal will be the subject of a separate presentation to the Committee next week.

Again, I am happy to assist the Committee this afternoon.

We also propose to make some limited changes to bail arrangements that aim to allow High Court resources to be used more effectively. The first proposal is to allow a Magistrate's Court to deal with requests for compassionate bail. At present, such applications can be dealt with in only the Crown Court or the High Court. The second proposal is to allow the Crown Court to deal with repeat bail applications; that is cases in which bail has previously been refused by a Magistrate's Court and the applicant's circumstances have not changed. At present, such applications can only be dealt with by the High Court under its inherent jurisdiction.

The Lord Chief Justice has requested those provisions as allowing such applications to be dealt with at other court tiers would help to save High Court time. The estimate is that it would free up one High Court judge's time. It is important to note that the jurisdiction of the High Court and Crown Court to deal with such matters would remain and that the Lord Chief Justice would intend to issue guidance to practitioners as to the appropriate court tier to which such applications should be brought.

We have consulted with the Northern Ireland Human Rights Commission and the Law Society, which are both content. A response is yet to be received from the Bar Council. We consider that, for reasons of system efficiency and effectiveness, there is merit in proceeding with those limited bail reforms now, pending any more fundamental consideration of bail law and procedure that might result from the Law Commission's review, which is due to issue for consultation later this year.

As the Committee will see from the papers, a range of stand-alone or miscellaneous provisions is being brought forward. I am happy to answer questions on any of those, but I will highlight a couple of them now for the Committee.

We propose to bring forward a provision to allow solicitor advocates extended rights of audience in the higher courts in Northern Ireland; the High Court and the Court of Appeal. At present, solicitors enjoy unlimited rights of audience in the Magistrate's Courts, County Courts and Crown Courts but have restricted rights in the higher courts. The proposal, which would allow solicitor advocates the same rights of audience as barristers, would give effect to one of the main recommendations of the Bain report on the regulation of legal services in Northern Ireland.

We also intend to provide the Law Society with a power to make regulations to regulate the qualification of solicitor advocates. We have consulted with the Human Rights Commission, the Law Society and the Bar Council. The Law Society, although supportive of the proposals in principle, is keen to ensure that the remuneration of solicitor advocates is on the same basis as counsel in specific cases. Colleagues in our legal aid division are currently considering that. In its response, the Bar Council emphasised the need for quality control measures that the Law Society would need to put in place, and it has asked for additional provision to be made to ensure that solicitors advise their clients of alternatives to in-house solicitor advocates. We are currently exploring what is possible in those measures.

Finally, I want to highlight a provision that we intend to make in the Bill to allow rules of court to be made to specify the circumstances in which disclosure of information relating to family proceedings concerning children can be made. At present, there are wide restrictions on the publication of information on any child involved in family proceedings. Those restrictions go well beyond constraining the media from disclosing the identity of a child in a sensitive case. In particular, it can be a criminal offence to publish any information that might identify a child, and it is also, potentially, a contempt of court. That has created difficulties in disclosing details to a professional adviser who is not involved in the case and has been known to create difficulties for MPs and MLAs when someone involved in the case wants to discuss the details with a view to bringing a complaint. It has also caused difficulties for police, prosecution and social services.

Following a high-profile case in England and Wales, provision was taken in primary legislation that allowed rules to be brought forward to specify the circumstances in which it would be appropriate to make disclosure. We intend to have a full consultation before exercising any similar power in Northern Ireland to ensure that such a power would be exercised in the best interests of children in Northern Ireland. Targeted consultation has taken place with the Commissioner for Children and Young People, the Human Rights Commission, the Chief Justice and the legal profession, all of whom are supportive. We very much welcome the views of the Committee on those proposals or any other proposals.

**Mr Johnston:**

Chairperson, as you can see, the package of proposals is big and the Bill is, potentially, very significant.

I want to briefly mention four aspects: consultations, equality, costs and timetable. Public consultation has been an important feature of most of the proposals in the Bill, and a number of those consultations are current and in the process of closing. Some other matters, such as the more technical adjustments, have not yet been subject to public consultation. Others have been subject to what we refer to as targeted consultation. So as to be absolutely transparent, we propose to give details of all those consultations in the equality impact assessment (EQIA) of the Bill, which is now being prepared and which will itself be referred to the Committee and published for consultation.

Each of the consultations that has taken place will be presented to the Committee separately, both today and over the coming weeks. Today, we are dealing with the special measures for victims and witnesses, legal aid and the consultation on sex offender law. We propose that next week, on 28 May, we will make presentations on the Courts and Tribunals Service consultations; for example, the consultations on court boundaries, on Public Prosecution Service (PPS) summonses and on alternatives to prosecution. On the following Thursday, 3 June, we will make presentations on the consultations on the offender levy, which would create the victims' fund, the reform of community safety partnerships (CSPs) and district policing partnerships (DPPs), future arrangements for local partnership working, and, finally, sports law.

At this stage, based on the responses that we have received so far, I would say that there is considerable support for much of the package. However, we are, obviously, keen to hear the Committee's views to allow us to meet our key milestones for the delivery of the Bill.

All the Bill's proposals have been subject to equality and human rights screening. In the criminal justice system, it is frequently the case that initial screening exercises indicate a potential impact on young males. As we state in our papers, it is also important to consider the impact of the proposals on offenders and, more generally, on the benefits society as a whole. For example, the alternatives to prosecution package seeks to ensure that many offenders are diverted away from the court conviction process. On the other side, proposals to improve community safety partnerships and behaviour at our larger sporting events together with changes to sex offender notification law are designed to enhance safety and public protection in society as a whole. That said, even though the majority of individual policy proposals were screened out, a full EQIA will be produced and published for consultation. Our intention is to hold that consultation from June

to September, after we have given the Committee the opportunity to see the draft EQIA. That will ensure that the consultation responses are available to the Committee when it scrutinises the Bill.

In broad terms, we see the Bill's proposals as delivering important efficiency gains by combining the creation of more efficient and effective processes, building on facilities and systems that are already in place and making key reforms to, for example, the legal aid system. We see the Bill as providing a more cost-effective system. Through its proposals for new and alternative ways for cases to be prosecuted and diverted from the courts, the Bill will free up more police time for front line policing.

An analysis of costs has been carried out for each of the consultations, and some will involve an initial outlay. For example, the alternatives to prosecution package would see one-off capital costs of £200,000 for IT set up but would deliver significant efficiency gains and would mean that more police officers are available to work on the front line. The offender levy would cost £100,000 to set up but could realise up to £500,000 a year for victims' services. Community safety partnerships spend £1.15 million of a £3.3 million budget on administration, while DPPs use £3.5 million of a £4.1 million budget. The arrangements could see a reduction in those overhead costs, which, again, would allow more to be targeted at front line delivery. The intention of the Bill is to ensure that the moneys that are available to the justice system are spent wisely.

Our overall aim is to put the final proposals for a justice Bill to the Executive for approval in July. We hope to have the Bill ready for approval to introduce in September. That is a very tight timetable, and we see the Committee Stage as vital in helping us to conclude the content. What we are presenting today is the package of proposals that the Minister would like to see legislated for, but other factors will determine the final content. The Committee's views will be very important, for example, as will the time that is available for drafting. The draftsmen will need to take a view on complexity and deliverability.

A number of the proposals are still fairly developmental and may not make it into the final package. For example, we have listed potential changes to committal procedures as a possibility. However, we are coming to the view that it might be better to consider those in a wider and more fundamental review of the committal stage of the trial process rather than to tinker at the edges at

this stage. Having heard the Committee's view over the coming weeks, we will return to you to clarify the final package of proposals with a view to getting Executive approval. Our intention is to introduce a Bill when the Assembly returns after the summer. We hope that the Committee can help us through the stages that will lead to that.

The Bill is a specific commitment in the Hillsborough agreement, and it will contribute across a wide range of the agreement's undertakings. It will improve our diversionary alternatives to prosecution; improve our services to victims and witnesses; provide for more efficient justice systems; and improve and better target our legal-aid provision. It will have strategic significance and operational importance for the justice system in Northern Ireland. Our Minister very much sees the importance of the Committee at this stage in helping him to mould the final content of the Bill. We are pleased to present our proposals today and to take on board the Committee's comments.

**The Chairperson:**

Thank you, Mr Johnston. We apologise for the excessive noise outside. However, it is outside our control, and we cannot do anything about it.

How much of the Bill is based on what has already been introduced in other regions of the United Kingdom? What elements, if any, are specific to the peculiarities of Northern Ireland?

**Mr Johnston:**

We scan the horizon to see what is happening in other jurisdictions, particularly England, Scotland, Wales and the Republic of Ireland, which is preparing a pretty significant White Paper on crime. A number of the proposals reflect changes that have happened elsewhere. The changes to sports law, for example, were made in England and Wales some time ago.

The proposals will bring our law up to date with best practice elsewhere, but it is a matter of learning from experiences elsewhere and making adjustments accordingly. The alternatives to prosecution that we are proposing, through the fixed penalty notices, for example, have been used in England and Wales. However, they have been used for quite a large number of offences, and there has been concern recently that the net has been cast too wide. We are looking at the particular situation for Northern Ireland. We are looking at high-volume offences that could be dealt with through those sorts of provisions.

We are structuring a package of measures relating to offences that will be different from what has been done elsewhere and that will reflect both our needs and the experience elsewhere. We are learning from what has happened in other jurisdictions, but we are trying to do so in consultation with the local criminal justice agencies in a way that will work for Northern Ireland.

**The Chairperson:**

Is the greatest thrust and content of the Bill based on legislation that already exists in other regions of the United Kingdom? Is it correct to say that there is nothing new in it and that it is just a remake with very little changes? Have I misrepresented you or have I represented you accurately?

**Mr Johnston:**

The new Justice Minister has a new set of priorities, which will be addressed partly through the Bill and partly through the next Programme for Government. For example, the Minister is very focused on the rehabilitation of offenders and addressing the root-causes of offending, and, as part of that, there will be a new offender-management strategy that is specific to Northern Ireland. He is also very concerned that justice should play its full part in securing a shared future in Northern Ireland, and other proposals will be shaped by that. Therefore, there will be new and specific aspects. Those may not necessarily be contained in the Bill, but they will be in the programme of work, which will lead to new developments and future legislation.

**The Chairperson:**

You mentioned victims earlier, but you did not mention them just now. I hope that they will also feature in that work.

**Mr Johnston:**

Very much so.

**Mr Bell:**

You partially answered the question that I was going to ask. Do you aim to have this to the Executive by July 2010?

**Mr Johnston:**

The Department aims to have the package of policy proposals with the Executive by July and the draft Bill in September.

**Mr Bell:**

I welcome the thrust of the Bill, particularly the measures to bring children under 18 into witness protection arrangements and provide them with adequate facilities. I also welcome the proposed sex-offenders notification measure. Until that is made law, will the current good practice be maintained across Departments when examining sex offenders, particularly those who would exploit the land border with the Irish Republic?

**Mr Johnston:**

A protocol is in place in that area between the PSNI and the Garda Síochána, which endeavours to ensure that that happens. Later today, my colleague Amanda Patterson will brief the Committee on those specific points.

**Mr A Maginness:**

Thank you very much for your presentation. The proposals are a mixed bag. I will be in Brussels next week, so I want examine one aspect that may not be as germane today as it will be next week. I find the proposal to establish a single geographic jurisdiction for County Courts and Magistrate's Courts curious. Will that mean that the historic and traditional divisions will be absorbed into one large jurisdiction for the whole of Northern Ireland?

**Ms Fee:**

At a very high level, that will be the case. The creation of a single jurisdiction will mean that the statutory boundaries will go, but those will be replaced by an administrative framework, which will be broadly modelled to reflect either the new boundaries coming out of the review of public administration or the County Court divisions. The new system will provide people with a degree of certainty as to where their business will be listed and a degree of flexibility in the listing of business.

The new administrative framework will be created with the agreement of the Lord Chief Justice and the Minister, and will contain a guiding principle, which will set out where business should be listed. That will broadly reflect the current statutory provision, but it will outline circumstances in which it may be possible to depart from that guiding principle.

The Department, the Lord Chief Justice and other relevant agencies will agree a step-by-step protocol to be followed if the Lord Chief Justice or other judicial office holders considered a departure from the normal listing arrangements. Therefore, there will be a degree of certainty and flexibility, and we will always try to give effect to the principle of local justice. It simply provides flexibility that can be used when necessary. However, whether to list an item outside the normal area, what we now style a County Court division, will always be a judicial decision.

**Mr A Maginness:**

I am not sure why that is necessary, although I am sure that there will be an explanation. Have the judiciary and those involved in the various County Courts and Magistrate's Courts, including the trade unions, been consulted specifically, and, if so, how did they react?

**Ms Fee:**

I am not sure whether the trade unions have responded, but we have consulted the judiciary. It specified that a protocol should underpin administrative directions and that consideration should be given to giving the power to make directions to the Lord Chief Justice in consultation with the Minister, as opposed to the Minister consulting with the Lord Chief Justice. Overall, the judiciary is also concerned to ensure that everyone has a degree of certainty about how the process will work. The status quo will largely continue.

The proposals would provide the flexibility to maximise our resources and make the best use of judicial time. For example, if there is a particular reason for listing a case in another venue, the judicial office holder will give consideration to doing so. Consideration will also be given to the needs of victims and witnesses in respect of reasons and the appropriateness of facilities. In addition, we will give consideration to the possibility of allowing those affected by a case to make representation. It is about achieving a balance between introducing a bit more flexibility and ensuring some certainty. I can follow up on responses from the Northern Ireland Public Service Alliance (NIPSA) and others, and let the Committee know.

**Mr A Maginness:**

I am not sure whether flexibility is necessary.

The changes to bail laws here are fairly confined. You adverted to the fact that the Law

Commission is conducting an intensive examination of the bail laws. Is it not a bit premature of you to bring about changes now rather than waiting for the Law Commission's final report?

**Ms Fee:**

We were mindful of the Law Commission's role, and we consulted it. Our changes are limited and aimed at increasing system efficiency and effectiveness. They are at the specific request of the Lord Chief Justice, and their value will be in freeing up the equivalent of one High Court judge's time, which could then be redeployed in either High Court or Crown Court cases. Therefore, it is worth pursuing that now. As I understand it, the timetable for the Law Commission's report will see it go out to consultation in the autumn, so it is reasonable to assume that the bail legislation will not be enacted before 2012.

**Ms Ní Chuilín:**

Even without carrying out detailed scrutiny, from what Gareth said, the proposals seem to be a direct lift from legislation in other jurisdictions. Geraldine spoke about the principle of local justice, which is crucial. Other members can speak for themselves, but we are not here just to regulate on the basis of what exists elsewhere. We want to ensure that the people we represent and the communities that we come from are represented in the Bill.

When the legislation has been voted through, how will you go back to the aspects of the Programme for Government that you raised, such as the shared future and the causes of crime?

Gareth spoke about alternatives to prosecution. What are your views on restorative justice, which does not appear to have been mentioned? I know that it is envisaged that the alternatives to prosecution will be fines, but I am keen to hear how lessons could be learned from good practice that takes place in communities, which not only prevent people from going through the criminal justice system but offer some sort of reparation to people who have been offended against or who are victims.

**Mr Johnston:**

I am conscious that the justice Bill will be the first staging post in a bigger programme. It will contain measures that are specific to Northern Ireland. The consultation on community safety partnerships and district policing partnerships is an example of that. I hope that, next month, we will bring the Committee a draft of the Department's addendum to the Programme for

Government, which we were asked to produce as a result of the Hillsborough agreement. All the issues that have been mentioned will be reflected in our addendum to the Programme for Government, including the issue of restorative justice. There are examples of the police considering options for local diversion and for dealing locally with issues that involve the victim and the offender and which seek to achieve satisfactory resolutions that move people forward. We will return to those themes over the next few weeks.

**Mr Elliott:**

Thank you for your presentation, and I am thankful that we no longer have competition from the noise outside. The proposed Bill is wide-ranging, and there is much in it to consider in our limited timescale. Do you believe that it is practical and feasible to get it through by the end of this Assembly mandate? Secondly, given that there is so much in the proposed Bill, what is its primary focus? Is it about efficiency savings or about a better deal for victims, or does it place more emphasis on the criminal? Does it have a primary focus?

**Mr Johnston:**

I hinted that some measures at the margins may need to be dropped for reasons of feasibility and practicality as we work through it. We need to take —

**Mr Elliott:**

Do you accept that some of the greater detail may need to be dropped?

**Mr Johnston:**

That may be the case, and it depends on our discussions with the Committee and the practical advice that we get from the draftsman. Having said that, we will look to the Committee to see whether the package of proposals seems reasonable. We are keen to present to the Assembly a meaningful and substantial piece of legislation as the first justice Bill of which it will have carriage.

You asked whether the proposed Bill had a primary focus. It has three focuses: effectiveness and efficiency; victims; and safety in the community. We are taking the legislation forward under those three headings. The Hillsborough agreement described it as a miscellaneous provisions Bill. That language can be a bit pejorative and make the proposed Bill sound less than it is. The proposed provisions are substantial, but the fact that it was referred to as a miscellaneous

provisions Bill reflects the fact that the legislation has a number of focuses.

**Mrs D Kelly:**

A cynic might say that, because a number of provisions in the proposed justice Bill read across from Britain to the North, it was intended to allow the devolution of policing and justice to seem to have hit the ground running.

**The Chairperson:**

As there are no cynics here, please continue.

**Mrs D Kelly:**

Of course there are not. The submission refers more than once to some of the finer detail to tackle sectarianism and build a shared future. Will the legislation contain provisions to look at the display of flags and emblems, particularly along carriageways, motorways and in town centres?

What consultation, if any, did the Office of the First Minister and deputy First Minister (OFMDFM) and the Bill draftsman carry out with the Department of Justice on the public assemblies and parades legislation that OFMDFM sent out for consultation? Will there be read across from that legislation to the justice Bill?

Some of my young constituents recently graduated as nurses, but they cannot start their jobs because of lengthy delays at AccessNI. I hope that the Committee will get a report on what is happening there. It would be useful for elected representatives to have some contact details for people in that organisation.

Under the section on criminal record checks, your submission deals with the proposal to extend section 93 of the Policing and Crime Act 2009 to Northern Ireland. I am not clear about what that means. If an employer applies for a criminal record check and other employers are mentioned, does that mean that there will be a widening out of who the disclosures go to?

**Mr Johnston:**

You mentioned flags and emblems and parades. The Minister is interested in flags and emblems with respect to the Department's input on a shared future. He is also interested in peace walls and

whether something can do done co-operatively with communities in areas in which there are peace walls. We will provide more thoughts on that in the next few weeks within the context of the Programme for Government.

There is no direct read across from the parades legislation to the proposed justice Bill. However, the criminal justice organisations and, notably, the police have been closely following discussions in other Committees and forums about the future of the parades legislation and about whom the regulation of parades would impact on in practice. If you have specific questions or concerns about that, I would be happy to follow those up with the relevant area in the Department.

**Mrs D Kelly:**

There is substantial public interest, particularly among the trade union movement, about protests and assemblies. How will crimes in respect of protests and assemblies be dealt with? Will it be through the courts, a fine or a fixed-penalty notice?

**Mr Johnston:**

I will need to take some advice on that and will arrange for a letter to be sent to the Committee. The Department's concerns will major on the justice elements of parading and on what to do when an offence is committed. The bigger decisions on the overall arrangements will be taken elsewhere, albeit with input from the whole Executive. However, I will make some inquiries about that and will arrange for a letter to be sent to the Committee.

I will also arrange for a report to be sent to the Committee on the state of AccessNI. The initial issues about delays were addressed, so I am concerned to hear that delays are being experienced now. We will come back to the Committee with a report from the Department on the current situation and with contact details of the relevant officials.

**Mrs D Kelly:**

I also asked about the extension of section 93. It says that, although disclosures were issued in the past to the applicant only, they will now be sent to other employers. What does that mean in practice?

**Mr Haire:**

At the moment, anyone who is seeking employment needs a standard or enhanced criminal record check, and the applicant and the employer get the certificate at the same time. In circumstances in which only a basic certificate is required, the employer does not get the certificate at the same time as the applicant. The employer must, therefore, rely on the applicant getting that and making it available to him so that he can take his view on it. The proposal will bring them all under the same regime. That will mean that the basic checks can be performed as quickly as the others and there will be no delay in the employer receiving certificates.

**The Chairperson:**

There is a relevant point in what the Member said. There have been cases in which people, who have been anxious to get into employment, have been delayed in doing so. In fairness, it has got better, but there is still an issue that must be addressed with some degree of urgency.

**Mr Johnston:**

I will arrange for the Committee to be given the latest performance figures.

**Mrs D Kelly:**

It would be better if those figures were improved, rather than the Department sending the Committee a report.

**Ms Ní Chuilín:**

Some weeks ago, when I asked about the all-island approach to child protection and what the arrangements were for that, I was told that the procedures and arrangements were robust on this side of the border, but not consistent in the Twenty-six Counties. I assume that the Minister of Justice will be meeting his counterpart in the South, because that issue must be discussed. The border provides an opportunity for people who wish to commit crime, and I want more detail on how that issue will be advanced over the coming months.

Dolores raised the point on AccessNI. Young people are leaving college and trying to get some practical work experience working with children and young people over the summer. The issue is primarily one of employment for those who have graduated, but there is also a practical issue for people in north Belfast, for example, who work in interface areas. I do not want the time and effort that is put in by those volunteers to divert children from crime to be held back by

bureaucracy. I appreciate that child protection is paramount and that bureaucracy is needed, but I would appreciate it if it could be sped up.

**Mr Johnston:**

I will arrange for a briefing paper to be sent to the Committee, and if there are any further questions or concerns, I am sure that colleagues from AccessNI would be happy to appear before the Committee and to answer questions.

During her presentation, Amanda Patterson will pick up the point on the North/South arrangements for sex offenders.

**The Chairperson:**

I remind members that today's session is designed to give the Committee an overview of what will be in the Bill. The Committee will have an opportunity to examine the detailed issues at a later date.

**Mr McNarry:**

My question is along the lines that Dolores took. Parades and assemblies were mentioned. A consultation document that was circulated by OFMDFM refers to sectarian harassment. Does the Department of Justice have a definition of what that is? Are you able to say how the law will be applied or how the police will be directed to prosecute those who have been accused of it? Given the inability of other sources to define sectarian harassment, it would be very useful if you could provide a definition.

**Mr Johnston:**

The Department will have a definition in the context of the sports law provision, in which offensive chanting would cover sectarian chanting.

**Mr Haire:**

The Department is working with the draftsman to define sectarian harassment. There is no specific definition in law at the moment, but the Department's intention is to be consistent with the section 75 categories of religion, race, sexuality disability, and so on. The Department will attempt to encapsulate those aspects and will consider the wording for the definition with the draftsman.

**Mr McNarry:**

I do not want to labour the point, but I take Tom's point about there being no definition of sectarian harassment yet. If that is the case, it seems extraordinary that the term would be referred to quite heavily in a consultation document produced by OFMDFM without any clue being given as to what it might mean. I fully appreciate the comments about sporting activity and sectarian chanting. Does that answer suggest that that type of sectarian chanting is accompanied in the terms in which the parading and assemblies consultation document is produced?

**Mr Johnston:**

My focus extends only to the current Bill and the sports laws provisions that are part of that. Parading legislation matters probably need to be taken up with OFMDFM. All I would say is that terms that we use quite regularly in everyday life are often difficult to translate into a solid definition for legislation.

**Mr McNarry:**

Perhaps it is a matter of when your Minister has something to do or say in response to flags and emblems. Your response to Dolores on flags and emblems was narrowed down to peace walls. I did not find any attachment to flags and emblems beyond peace walls. Does your incursion into flags and emblems have a wider view relating to people who allegedly engage in sectarian harassment, whatever that may be? Will the law give direction to the police on whether the flying of a flag or displaying of emblem can be construed as the practising of sectarian harassment?

**The Chairperson:**

That sounds more like a question than a supplementary, Mr McNarry.

**Mr McNarry:**

I thank you for the leeway that you have given me. I apologise for being late, but I did not take up anyone's time earlier.

**The Chairperson:**

You are now over the line.

**Mr McNarry:**

You are the Chairman.

**The Chairperson:**

Mr Johnston's reply can be as brief as he wishes.

**Mr Johnston:**

Powers are already available to the police in respect of those sorts of offensive behaviours.

**Mr Haire:**

The powers on incitement to hatred and hate crime that we have created provide direction for the police more generally.

**Mr McCartney:**

We will return to the detail of the issue as we go through it, but I have a question about fixed penalties, which are being proposed as an alternative to prosecution, and the nine certain prescribed offences that are mentioned in your paper. The prosecutorial penalty is to be offered for any minor offence. Will there be a list of those, or is that open to discretion?

**Mr Johnston:**

The Public Prosecution Service will issue guidance. However, the intention was to be reasonably flexible so that a prosecutorial fine would be appropriate in a wide range of situations in which someone had admitted an offence. We did not try to narrow that down.

**Mr McCartney:**

When will the first phase of the fixed penalty provisions kick in? Will it be when a person is arrested, or will it come as an offer one or two months later?

**Mr Johnston:**

I will use the example of Friday night misbehaviour, which is one of the areas that those provisions are designed to tackle. A person engaging in that misbehaviour would be stopped by police and their behaviour would be addressed immediately. Most likely, an arrangement would then be made for that person to come to the station the next day and to bring identification, which is important. The fixed penalty would be issued at that stage, but it needs to be done pretty quickly. It is about responding promptly to offending behaviour.

**Mr McCartney:**

Will it be offered to all first-time offenders who have engaged in one of the nine prescribed offences?

**Mr Johnston:**

Police will need to take account of the particular circumstances. Criminal damage is one of the nine prescribed offences, but criminal damage to a public object in the street is rather different to criminal damage whereby an individual suffers loss. In the latter case, one might go down the route of a prosecutorial fine to give an option for compensation for that loss.

**Mr McCartney:**

How would general scrutiny of that operate?

**Mr Johnston:**

Generally speaking, it is about first-time or non-recurrent offenders.

**Mr McCartney:**

One person may be given a fixed penalty and another person may go through the courts. Where does a victim ask for an explanation as to why those people were treated differently?

**Mr Johnston:**

We expect the guidance on fixed penalties to cover taking account of the views of any victim, particularly in areas such as criminal damage.

**The Chairperson:**

Thank you for your attendance and your presentation. I have no doubt that we will meet again at the detailed stages of evidence-taking. I thank the team.