Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Departmental Briefing on the Principles of the Justice Bill

21 October 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)
Lord Browne
Mr Tom Elliott
Mr Paul Givan
Mr Conall McDevitt
Mr Alban Maginness
Mr John O'Dowd

Witnesses:

Mr Gareth Johnston	)	Department of Justice
Mr Tom Haire	)	
Mr John Halliday	)	Northern Ireland Courts and Tribunals Service
Ms Laurene McAlpine	)	

The Chairperson (Lord Morrow):

I welcome to the Committee Gareth Johnston, the deputy director of the justice strategy division; Tom Haire, head of criminal law branch and Bill manager for the Justice Bill; John Halliday, a criminal legal aid policy adviser; and Laurene McAlpine, head of civil policy and legislative division. Mr Johnston will brief the Committee, and that will be followed by members' questions.

Mr Gareth Johnston (Department of Justice):

Thank you for the opportunity to provide the Committee with an overview of the Justice Bill as introduced to the Assembly. Having received approval from the Executive on 7 October to introduce the Bill, the Speaker's Office confirmed the legislative competence of the Assembly to deal with the Bill and approved it for introduction. The Bill was formally introduced on Monday of this week by David Ford.

Given Mr Ford's strong wish to see the Bill enacted within the current Assembly mandate and the tight timescale that that brings with it, I am particularly grateful that the Committee is providing us with this early opportunity to brief it on the Bill as introduced. My team has been working closely with the Committee Clerk and the staff of the Committee office in developing a work programme for the Bill. I thank Christine Darrah for the excellent support that she has been providing in that regard. I understand that the Committee took the positive step yesterday of advertising and calling for evidence on the Bill ahead of Second Stage. We are grateful that the Committee has acted so quickly in that area. In turn, we are committing to do all that we can to facilitate your programme.

Before I present on the Bill, I will mention the team. Many of you will know who most of us are from previous presentations to the Committee, but I am conscious that there have been changes in Committee membership. I head the justice strategy division in the Department of Justice, which is responsible for justice policy and legislation. Tom Haire is the head of my criminal law branch and manager for the Bill process. My other two colleagues, Laurene McAlpine and John Halliday, are from the Northern Ireland Courts and Tribunals Service. Laurene deals with civil policy and legislation, and John deals with criminal legal aid. Although I will present the Bill as a collective piece, I know that colleagues will want to contribute in their respective areas, and Tom will keep us all right. If there are any elements that we cannot deal with today, we will be very willing, as usual, to come back to the Committee in writing.

From the negotiations on the devolution of policing and justice powers, Committee members will be well aware that the delivery of a justice Bill emerged as a key goal for the new Department of Justice. It was mentioned specifically in the Hillsborough Castle Agreement and has been reflected in the addendum to the Programme for Government, which was debated and approved by the Assembly in the past couple of weeks. The Minister of Justice sees legislative

reform as an important part of devolution of justice and of his overall reform programme for the justice system, which is not, by any means, limited to legislative reform. The bigger picture about it is in the Programme for Government, but legislation will continue to form an important part.

Consultation has been a key part of the Justice Bill. We have an equality impact assessment out for consultation, and that will close at the time that the Committee for Justice begins formally to scrutinise the Bill. Therefore, it is important that the results of that consultation will be available to the Committee as it begins that scrutiny. The Committee has been an important contributor to the development of the Bill, helping to finalise some of our policy proposals. I will give a couple of specific examples. We increased the maximum amount of the offender levy to £50 in recognition of the Committee's concern that those convicted of serious offences that cause the greatest harm to victims should pay substantially more than minor offenders. We also allowed for the widening of the circumstances in which a fixed penalty notice for shoplifting could be issued to allow for a shopkeeper to be recompensed for goods that could not be re-sellable. We did that on the basis of a point that the Committee made. Based on helpful comments that were raised in Committee and at follow-up meetings, we agreed to look again at items such as how sectarianism might be accommodated or defined in our sports law proposals. We will come back to that point when we present in more detail on that part of the Bill.

Second Stage is coming up, when the broad principles of the Bill will be debated in the Assembly. It might be worth my setting the Bill in that context and looking at the overall terms of what it is intended to do. The Bill has a rather lengthy long title that reflects its various themes and purposes, but, to sum up, it developed from several needs to make changes to Northern Ireland's justice system: first, a desire in the justice system to do its business better; secondly, to deliver better and enhanced services to victims and witnesses; thirdly, the need to improve public safety and build stronger and safer communities; fourthly, a desire to reduce costs, particularly the costs of the legal aid system; and, fifthly, a desire to improve access to justice.

With all that as background, the Bill has three main themes: improving services and facilities for victims and witnesses, which Part 1 of the Bill covers; improving community safety arrangements and tackling some specific problem areas, such as sports law; and allowing the system to do its business better through improving the justice system and reducing costs. It also deals with a range of miscellaneous improvements and adjustments. Committee members will be

aware that the Bill now has nine major Parts, 108 clauses and seven schedules. I am told that it may be the largest Bill that the Assembly has yet considered.

I will now move on to the detail under those three headings, the first of which deals with victims and witnesses. The headline for the Bill is the introduction of the offender levy, which is intended to make offenders more accountable for the harm that they cause by requiring them to make a financial contribution to support services for victims of crime. The levy will be imposed on adult offenders across a range of court disposals and non-court penalties. It will be set at a range of tiered rates of between £5 and £50, propionate to the disposal or penalty given, with the rate of £5 being added to a fixed penalty and £50 for those who receive longer sentences in the Crown Court. The levy will be used to fund directly a victims of crime fund, and, in full operation, it could realise £500,000 a year. The allocation of the fund will be prioritised by the victim and witness task force.

Alongside those provisions are new provisions for vulnerable and intimidated witnesses. Those provisions will assist witnesses through special measures to enable them to give their best possible evidence in criminal proceedings. The concept of special measures is well established and a series of them have been in place for the past 10 years. However, the Bill, amongst other things, will raise the upper age limit under which a young witness is automatically eligible for special measures from 17 years old to 18 years old; provide automatic entitlement for adult complainants of sexual offences to give video-recorded evidence in chief; and allow intermediaries to be made available to vulnerable defendants with communication difficulties to allow them to tell their story and give their evidence in court.

The definition of vulnerable accused persons who are able to avail themselves of video links to give evidence will be extended in the Bill to include those with physical disabilities and disorders. The Bill will also allow live-link connections between courts and psychiatric hospitals, which will reduce the need to move offenders around, some of whom may be quite dangerous.

Under the heading of community safety, the Bill will introduce provisions for new policing and community safety partnership arrangements that will provide a more joined-up approach with better local deliverability and accountability that is targeted on real issues of local concern. The Bill will also integrate the roles of the community safety partnerships (CSPs) and the district policing partnerships (DPPs) to create a single partnership for each council area. Those

partnerships will comprise councillors, independent members and representatives of the voluntary and statutory organisations that are designated in legislation. We hope that that restructuring will allow us to make better use of the resources that are available for partnership working and, therefore, direct more of the funding to projects and initiatives on the ground, rather than to the administrative costs of two separate classes of partnerships.

Also in that area, the new sports law provisions in the Bill are aimed at promoting good behaviour amongst sports fans in Northern Ireland. They will apply variously to association football, Gaelic games and rugby union, but not all in the same way, and the aim is to focus on areas where the need arises — either on the grounds of safety or to deter disorder. New offences of offensive chanting, missile throwing and unauthorised pitch incursions will be created in the Bill, together with offences for possessing alcohol or drinks containers, possessing fireworks or flares and of being drunk at a match. Finally, under the sports law heading, ticket-touting bans will be imposed for certain association football matches, and courts will have the power to impose football banning orders for certain association football matches in Northern Ireland to prevent violence and disorder.

A range of existing sentencing powers are also being adjusted to address problems caused by gaps or inconsistencies in the existing law. In particular, there will an increase in the maximum penalty for common assault from three months' imprisonment to six months' imprisonment. When increasing that tariff, we were particularly mindful of the assaults that we see on healthcare personnel, and of the need to provide Magistrates' Courts with stiffer penalties that can be used even if an assault is relatively minor. We are also increasing the maximum penalty for the offence of possessing a weapon — a knife on school premises, for example. The maximum penalty will be increased to four years' imprisonment, which reflects the seriousness with which knife crime is being taken. There is also an enhancement of powers aimed at sex offenders living outside the jurisdiction who breach their licence conditions.

We have provisions around victims and community safety. The final category is around the efficiency and effectiveness of the justice system, particularly in respect of new alternatives to prosecution powers with new diversionary disposals, wider fixed penalty notice powers and new conditional cautions. The fixed penalty notices available for first-time or non-habitual offenders can be applied by the police without direction from the Public Prosecution Service (PPS). They would be a means of discharging liability for the offence by paying a fixed penalty within 28

days. The penalty will be fixed at either £40 or £80 and will depend on the offence. The eligible offences, which are listed in the Bill, are simple drunk; breach of the peace; disorderly behaviour; obstructing police; indecent behaviour, in the sense of urination in the street, not sexual indecency; and criminal damage up to £200 pounds. There will be guidance around that. There will also be guidance around petty shoplifting, which will limit it to first-time offences up to £100 in value. It is intended that that will be a means of dealing with petty shoplifting, without stores having to produce people to attend court and the associated expenses.

Conditional cautions are the other element of alternatives to prosecution. They are cautions in which prosecutors attach rehabilitative or reparative conditions with which the offender must comply. If they do not, they could face reconsideration of the prosecution and the case can proceed to court.

There are legal-aid adjustments. I know that the Committee has been briefed on the policy behind those. They aim to improve legal aid legislation so that those who can afford to pay for their own defence do so. They also fill small gaps in existing laws. The major introduction would be a rule-making power for a means test for the granting of criminal legal aid. That means that we could, in the future, bring in rules on means-testing and on recovering costs for legal-aided defendants who are convicted.

There is also the power to remove the restriction on the Northern Ireland Legal Services Commission from establishing or funding services under litigation funding agreements. That is in civil law. If the Committee wants us to say something more about that, we can do so.

I have spoken about what is included in the Bill. I should, perhaps, say something about a few areas that we previously discussed with the Committee but that have not found their way into the Bill. I recognise that you will be interested in those and in a few other areas that have been adjusted since last we briefed you. At the start of our proposals, we said that we were presenting something of a menu of proposals and that it might well be that it would not be possible to legislate on all of them this time around. That has proved to be the case in a few instances, partly because of time constraints, partly because of the scope of an already very large Bill, and also partly because of some issues about legislative competence that have arisen as we considered the detail of the provisions.

We indicated at an early stage that it would be unlikely to prove possible to bring forward powers to reform court boundaries, and I think that our analysis on that has proved correct. The sheer scale of the drafting of those provisions could have resulted in a Bill in their own right. It is still our intention to consider a reform of court boundaries at a later date. There would be advantages there, but we had to prioritise other things for the current Bill.

We have not brought forward our proposals for public prosecutors to be able to issue summonses or for a new public prosecutor fine. In the case of the former, we are looking at it again in the context of a wider Criminal Justice Board-led case initiation reform programme to improve the speed of justice. So, we have not lost sight of the issue. For the latter — the public prosecutor fines and alternatives to prosecution — given the time available, we have had to prioritise the fixed penalty notices and the conditional cautions. That is not to say that we would not come back to prosecutorial fines in the next piece of legislation.

We have also removed our previous proposals for court funds powers and the conferring of rights of audience on solicitor advocates in the higher courts. We are continuing to work with the Attorney General to address some concerns he has around Assembly competence in those areas. If we can address those, we would propose to bring provisions back as amendments at Consideration Stage. We will flag that to the Committee as soon as we can.

We had also discussed with the Committee cross-border powers around sex offenders, but there has been a recent Supreme Court of the United Kingdom judgement, I think it was, or the House of Lords, as it used to be, which has impacted on the proposals that we hope to bring. We are pursuing that with the other jurisdictions to see how we can do something about cross-border sex offender powers that is in keeping with that new House of Lords judgement.

There are also a few smaller issues. Largely for technical reasons, we have removed our proposals on the Upper Tribunal for judicial review, on the power of inspection of property in criminal cases and the proposal for certain judicial salaries to be charged to the Consolidated Fund.

I will talk now about where we have changed proposals. As I mentioned about the offender levy, we have created the two-tier rate on immediate custody sentences. That was in response to concerns from the Committee. In response to issues that were raised at consultation about

remission of the levy in certain circumstances, when, for example, a person was going to have genuine difficulty in affording it and its imposition would create more problems, we have introduced a power to remit the levy in limited circumstances.

On treatment of offenders, we have extended our public protection sentence powers, the extended custodial sentences and the indeterminate custodial sentence to cover hijacking, so that someone who was convicted of hijacking could receive one of those public protection sentences.

We have removed a couple of offences from the original list for fixed penalty notices that we covered with the Committee. It still includes all those that I mentioned earlier, but we have removed selling alcohol to a minor and buying alcohol for a minor. The reason for that is that the Department for Social Development (DSD) has got a wider strategy around alcohol sales that will be coming in the Licensing and Registration of Clubs (Amendment) Bill, and we did not want to create something that went against the intentions and purposes of that Bill. In any event, our proposals would have covered only a handful of cases each year.

We have been conscious of points that were raised during the consultation and by the Committee on sports law provisions. We have removed the alcohol restrictions on private viewing facilities as we were told they would adversely impact on the sports concerned. We have also removed a provision that would have allowed football banning orders to apply retrospectively, on the grounds that that would have been contrary to constitutional law, and a provision that would have applied football banning orders to matches outside Northern Ireland. We have also removed the civil procedure route through which a football banning order could be imposed without a criminal conviction. There were various views on that. However, they can still be imposed by courts after a football-related criminal conviction, and we had always expected that those would be the majority of cases.

Members will note clause 34. It places a duty on public bodies to consider the crime, antisocial behaviour and community safety implications of exercising their duties and to have regard to any guidance issued by the Department of Justice.

As a result of the Bill, the Department will have a statutory obligation to consult the other Northern Ireland Departments in the preparation of that guidance. It is important to underpin the new policing and community safety partnerships with that statutory basis for co-operation. The

Executive agreed to the inclusion of that clause but with the caveat that the position would be brought back to them after the Committee's consideration. They wanted to give it further consideration and ensure that any consequences of having that statutory duty were fully justified. Therefore, we will particularly welcome the Committee's views on clause 34 as it scrutinises the Bill.

I mentioned that there are a number of amendments that we envisage that we may wish to bring to Consideration Stage and to the Committee's attention. As always with a large Bill, there are aspects that are not quite finally settled when it is published, and Consideration Stage provides the opportunity to introduce those, which I will flag. First are the provisions on solicitor advocates and court funds, on which we will try to secure some amendments that deal with the concerns about legislative competence. Second are the sex offender powers that I mentioned and which would require registered offenders from other jurisdictions to report to the PSNI.

Third is the element that we removed from the sports law provisions, which was about football banning orders for fans travelling to matches outside Northern Ireland. We think that there is a reason for having it, but drafting it in a way that met legislative competence requirements was a bit difficult. We are continuing to explore that, and we hope to bring back a provision as an amendment. There is also the possibility that we may come back with an amendment extending the use of live video links, and the Committee will have noted what I have said about clause 34 and further Executive consideration. We will give the Committee as early notice as possible if there are any proposals for amendments.

I am sorry that I have spoken at even greater length than I normally do in front of the Committee, but this is a substantial Bill, and I wanted to ensure that we summed it up accurately. We are very pleased, and the Minister is particularly pleased, to be in a position to present the Bill to the Committee six months after devolution of justice. We are conscious of the specific commitment in the Hillsborough Castle Agreement, and we believe that the Bill contributes across a wide range of the agreement's undertakings.

It improves our diversionary alternatives to prosecution, and it improves our services to victims and witnesses. It provides for more efficient justice systems and improves and targets our legal aid provision. It should have both strategic significance and operational importance for the justice system in Northern Ireland. It may not resolve all of the issues that the justice system is

facing, and it does not try to, but we hope that it is a significant step in the right direction. The Minister is very aware of the important role that the Committee will play in the Bill, and we are pleased to present it for your consideration.

The Chairperson:

Thank you, Mr Johnston.

Why did it take so long to discover that there was a lack of competency in relation to the issues that you talked about?

Mr Johnston:

We would have taken our own legal advice on those issues, but, on issues of competence, it is the Attorney General who has the final responsibility to provide advice to the Minister. The Attorney General's office has raised a number of issues. I do not think that they are all insuperable issues, but it will take a little more time to work through some of those with the Attorney General's office.

The Chairperson:

Do you accept that the Bill lacks ambition?

Mr Johnston:

With respect, I do not accept that, because it needs to be seen in the bigger context of what the Department is doing, including the various areas that are highlighted in the Programme for Government.

Since devolution, the Minister has implemented a number of fundamental reforms, including the review of public legal services, the review of prisons and the review of youth justice, which is just being launched. We are taking a fundamental look again at mental health and mental capacity provisions through the new legislation that we are working on with the Department of Health, Social Services and Public Safety. We will also be briefing the Committee shortly on our new focus on reducing offending and tackling its root causes.

Legislative reform can only play a part in that bigger programme. We hope that we are setting off on the right foot, and we are already starting to look at the next piece of justice legislation. I

realise that the current Bill has its limitations, but I hope that it is a step in the right direction. I also hope that, when seen in the context of the wider work that is going on, it will demonstrate that there has been a fairly fundamental shift in the reform of the justice system since devolution.

The Chairperson:

The whole Bill lacks quality. It is a rushed step to get something done, and, at the end of the day, the greater part of the Bill has been lifted straight from legislation in England and Wales. It lacks a local touch.

Mr Johnston:

There are certainly provisions in the Bill that have been used elsewhere, and we have been able to learn from the experience elsewhere. For example, it is fair to say that England and Wales went far too far in their use of fixed penalties. They started to use them in a lot of cases in which it was not suitable to use them, for example, in more serious crimes. We decided that fixed penalty powers are a good idea but that we will start by using them for a relatively small number of minor offences. If they work, and we are confident that they will, we can always return to them and increase the number of offences that they can be used for.

There are other provisions, for example, those on policing and community safety partnerships, that have very much been formed in the context of Northern Ireland, and the current proposals in that area have been very much shaped by local consultation. For example, Paul Goggins had originally proposed setting up crime reduction partnerships based on his experiences in England. However, there was a widespread feeling that that proposal was not suitable for Northern Ireland and that it did not pay sufficient respect to the important role that the district policing partnerships play here.

I do not deny that we looked for inspiration elsewhere, and we will continue to look at best practice elsewhere. I hope that there is some indication that we have shaped the Bill to the specific needs of Northern Ireland. That is one of the Minister's commitments as we move forward.

The Chairperson:

You talk continually about the next Bill, which tells me that you are more focused on what will be in that Bill and less focused on what is in this Bill. It tells me that the current Bill was a

rushed piece of work that was done just to get something done; it did not matter what was in it, as long as you had something to throw out to the public to say, "Look, here is what we have done". You missed all the big issues.

Mr Johnston:

There are important provisions in the Bill that will make a real impact on the justice system. For example, the fixed penalty notice powers are something that the Chief Constable called for vociferously. They will save the bureaucracy involved in producing prosecution files in a couple of thousand of cases each year and are very much aimed at getting police officers back into contact with communities on the front line. There is a proposal to create a victims of crime fund, which could realise £500,000 a year and could be used to fund important moves forward such as the introduction of independent sexual violence advisers who can travel through the justice system with those who have been victims of rape or serious sexual offences. Those are the proposals under the headings of victims and community safety.

Again, for a very long time, there have been calls for Northern Ireland to have good sports law provisions, and there has been a sense that we are very behind the times in that regard. The provisions are important and will add value. I am not saying that they are the final answer, but I would encourage the Committee to see that significant steps forward have been made in what we are putting forward today.

The Chairperson:

There was a clear indication that the issue of solicitor advocacy would be included in the Bill. We are now told that it will not be, and you have told us the reasons for that, yet you still hold out hope that it could, in fact, be included at Consideration Stage. How hopeful are you about that? Is a carrot being dangled in front of us? Is it a case of "Live, horse, and you will get grass"?

Ms Laurene McAlpine (Northern Ireland Courts and Tribunals Service):

Perhaps I can help the Committee on that point. We had a draft provision to confer rights of audience in the High Court and the Court of Appeal on solicitors who have been authorised by the Law Society. There was a concern, however, that the clause did not sufficiently guard against potential conflicts of interest. For example, if a solicitor is also a solicitor advocate or works in the same firm as a solicitor advocate, it would not necessarily be in his interest to advise a client about alternative counsel. We are working to develop that clause, and we are optimistic that it

will be possible to put in place sufficient safeguards that will allow the provision to be within the competence of the Assembly and not in any way in conflict with the European directive on the provision of services.

The Chairperson:

I suspect that the answer that we will eventually get will be no, the issue cannot be dealt with in the current Bill, but there is a possibility that it could be included in the new Bill, which may be the real Bill, whenever it comes. That Bill may arrive four years or one year into the new mandate, but it will be in the new mandate. It has to be said that there is considerable disappointment that that issue was not flagged up long before the Bill got to this stage.

Mr McDevitt:

I will pick up where the Chairperson left off. What does article 25 of the EU services directive say? I do not mean literally; I mean in general terms.

Ms McAlpine:

Article 25 of the directive requires member states to ensure that there is no conflict of interest in the way multidisciplinary partnerships provide services. As I explained, the potential conflict of interest is that, if a solicitor is also a solicitor advocate or works with other solicitor advocates, naturally it is not in that solicitor's interests to point to the alternative availability of counsel for advocacy services. We need to guard against that. The clause that we originally drafted was not considered sufficiently robust in that regard, but we think that it will be possible to devise a mechanism to overcome any concerns about conflict of interest and to propose a clause during the passage of the Bill.

Mr McDevitt:

Solicitor advocates operate in other parts of these islands. What is the statutory basis for their role? What law allows them to perform that role?

Ms McAlpine:

As you rightly say, solicitors in, for example, the Republic of Ireland have rights of audience in courts during proceedings. Solicitors in England and Wales who have a higher court qualification have rights of audience in the higher courts, and there are similar arrangements for solicitor advocates in Scotland. We might want to talk to our colleagues in those jurisdictions about

whether they have encountered similar concerns over this conflict of interest.

Mr McDevitt:

I am not aware of any challenges under article 25 of the EU services directive. I wonder whether any of the officials are aware of any such challenges to existing law elsewhere on these islands.

Ms McAlpine:

No, I am not aware of any. We will want to talk to colleagues in other jurisdictions to see if they have some sort of refinement or nicety around their procedures that might assist us, but it is not my impression that there have been any.

Mr McDevitt:

It would be reasonable to assume that there is probably ample precedent in law elsewhere that could be drawn on and which could inform the drafting of a suitably competent clause for this Bill. We could then be shown the clause at further stages.

Ms McAlpine:

Yes; I am optimistic that we will be in a position to propose a clause during the Bill's passage that will confer rights of audience on solicitor advocates.

Mr McDevitt:

Is that a commitment, Ms McAlpine?

Ms McAlpine:

The matter is not in my gift. It is matter for the Minister, and he will want to take into account any advice given by the Attorney General on the issue.

Mr McCartney:

My point is on the general principle under discussion. I assume that, if the Attorney General were to suggest that any clause is in breach of EU law, it would be taken out of the Bill. How is that process resolved generally? How do we test that?

Mr Johnston:

The Department and the Attorney General's office are certainly having a discussion on those

issues, and that discussion is informed by our lawyers in the Departmental Solicitor's Office (DSO), who have looked at the competence issues and prepared an initial brief. It is not the case that we propose a provision and it comes back to us with a note to say that it is not competent and must be taken out of the Bill. There is an ongoing process; an iterative process, if you like.

Mr McCartney:

How long would that process take for this particular issue and in general? How long does it take to determine whether something is or is not in breach of European law?

Mr Johnston:

It is a difficult question to answer because, in a sense, it takes as long as it takes. We have been communicating with the Attorney General's office on some of the issues in this case for a month and a half, and we will continue that communication.

Mr McDevitt:

You mentioned that you were hopeful that we would be able to see a new draft of a clause that would allow us to extend the scope of banning orders to outside Northern Ireland. What was the specific obstacle that you encountered?

Mr Johnston:

It was about territoriality, which is not easy to say without your teeth in. There was a concern that we were creating provisions that would, in effect, have application outside the jurisdiction. Again, we are looking to see whether there are ways to phrase that to get round those problems of territoriality.

Mr McDevitt:

There would be other precedents in criminal law.

Mr Johnston:

Yes, the Scots certainly have similar legislation, and we will be in communication with them to see whether any similar issues arose.

The Chairperson:

Do England, Scotland and Wales not have similar provisions?

Mr Johnston:

Yes, they have similar provisions. We have some information on those provisions, and, as I said, we are in communication with the Attorney General's office to see whether we can arrive at something that would be passable.

Mr McDevitt:

The Chairman covered this point well — he certainly speaks for me, and I presume for all of us — when he said that a lot of the Bill involves transferring stuff that has gone on elsewhere to our statute books. However, the one bit of our sporting mix that is unique is sectarianism, which, tragically, is occasionally present. You said that you are hopeful that you can bring forward some proposals during the passage of the Bill.

Mr Johnston:

I said that I recognised that it was an issue that the Committee wanted to explore again. The last time we talked to the Committee about sports law, Mr McNarry asked how we could make sure that sectarianism was covered in, for example, offensive chanting. Tom might want to say something more about that. At the minute, we are looking at a range of section 75 categories and expressing it in that way because of concerns about whether the word "sectarianism" could be defined if it were included in the Bill. That is, if you like, our way of defining sectarianism. However, we are very willing to have a discussion with the Committee about that.

Mr Tom Haire (Department of Justice):

The definition in the Bill covers the section 75 groups. The issue was whether it actually mentions or addresses sectarianism, and our view is that the definition does catch it. We have agreed to look at it again with the Committee to see if there is some way of strengthening it by referring to "sectarianism", for example, if that is possible.

Mr McDevitt:

Mr McNarry raised that issue, and, from memory, Mr O'Dowd and I expressed opinions on it for two reasons. First, we wanted to make the Bill a local Bill that recognises our local uniqueness. Secondly, there are undoubtedly contexts, scenarios and occasions when you would probably only be able to define an incident, event or utterance as sectarian. Those may not technically fall within the scope of section 75, but, within our social norms, they would obviously and evidently

be sectarian. Not to include that in the legislation would be a significant missed opportunity and would mean that we are selling ourselves quite short.

Mr A Maginness:

I welcome the provisions for fixed penalty notices in the Bill. That is a good development, which I support. If a person were to receive a fixed penalty notice, would that be regarded as a criminal conviction? That is important, because having a criminal conviction, even for a fixed penalty notice, affects people adversely. I would like clarity on that issue, but I underline my view that fixed penalty notices are a good step forward.

I want clarification on one aspect on the Bill, although I really should know this as it has been touched on before. One of the provisions in Part 7 of the Bill, which deals with legal aid, will remove the restriction on the Northern Ireland Legal Services Commission establishing or funding services under litigation funding agreements. My understanding is that the purpose of that provision is to free up the commission to develop alternative forms of funding for legal aid.

Mr John Halliday (Department of Justice):

Yes, that is correct.

Mr A Maginness:

In what way will that provision do that? What is the general effect of it?

Mr Halliday:

There was some discussion as to whether the prohibition in the Access to Justice (Northern Ireland) Order 2003 was actually an impediment. Certain people thought that it was not an impediment and did not need to be removed. However, the Legal Services Commission asked for it to be removed, and, on that basis, we inserted the clause to do so.

Mr A Maginness:

Is the commission happy with that?

Mr Halliday:

It is.

Mr A Maginness:

Is the Law Society also happy with that?

Mr Halliday:

Yes; as far as I know. That should enable a fund to be established — *[Inaudible due to technical difficulties.]* As you know, most civil cases are successful, and the idea is that a small payment will be made into the fund from each successful case so that other cases can be funded.

Mr A Maginness:

So, it is a much more flexible approach to legal aid funding.

Mr Halliday:

It is, and it will remove the cost to the public purse.

Mr Johnston:

In answer to the first part of Mr Maginness's question; it is not proposed that fixed penalty notices will form part of an individual's criminal record, but an administrative record of them will be kept. They are intended for use against first-time, non-habitual offenders, and, hopefully, if someone misbehaves and receives one, it will serve as a warning to them and give them a direct short, sharp shock. It will also give the police an opportunity to engage with them on what happened. If the penalty does not have that effect, the next time around, the police will have ready access to the information that that person received a fixed penalty notice in the past and will be able to consider other disposals.

Mr McCartney:

Thank you for the presentation. We welcome the fact that we are at this point, and we look forward to taking the Bill through its Committee Stage. We will seek clarity on a number of issues, but we will do that as we proceed with scrutiny of the Bill rather than ask you about them today.

Mr O'Dowd:

I have previously raised concerns about the sports regulations and whether this is law for law's sake. Clause 42 goes into a lot of detail about what constitutes a drinks container; I think it covers everything. Clause 41 is entitled "Being drunk at a regulated match". Is there a legal

definition of being drunk? Who decides whether someone is drunk?

Mr Johnston:

It falls under the same procedure used to assess whether someone is guilty of the offence of being drunk and disorderly or simple drunk; it is based on the evidence of any witnesses and any police officer who was involved in the arrest. It is similar to the law elsewhere.

Mr Haire:

That is very much the case; it is down to the police's interpretation.

The Chairperson:

I thank Mr Johnston and his team for coming here today. The Bill has started its long journey, and I suspect that we will see the team again before it reaches its destination. I suspect there will be a few meetings between now and January or February.