



Northern Ireland  
Assembly

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COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Justice Bill: Informal Clause-by-Clause  
Consideration**

25 January 2011

**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 Thomas Buchanan  
Mr Paul Givan  
Mr Alban Maginness  
Mr Conall McDevitt  
Ms Carál Ní Chuilín  
Mr John O'Dowd

**Witnesses:**

Mr Tom Haire                    )        Department of Justice  
Mr Gareth Johnston         )

**The Chairperson (Lord Morrow):**

We will now continue with our informal clause-by-clause consideration of the Justice Bill, focusing on Part 4, which is on sport, and schedule 3. I have been asked whether members will be asked to make any definitive decision on this today. The answer is no; that will come next week. We will go through the relevant Part clause by clause, and members can ask questions. We are joined by the departmental officials Mr Johnston and Mr Haire. You are very welcome. I am sure they will give their expertise and opinion, as usual, if and when it is required.

Members have copies of relevant papers. I remind you that the Committee has written to the Committee for Culture, Arts and Leisure seeking its views on this Part of the Bill, and it provided a detailed response. Its comments are included under the relevant clauses in the summary document for consideration, which members have before them. Pages 1 to 6 of the summary document highlight general comments that account should be taken of when considering individual clauses.

We will start with clause 36. I invite any comments or views and ask members whether they have any questions by way of clarification. Mr Johnston, do you or Mr Haire wish to provide anything additional at this stage about clause 36? Feel free to say so.

**Mr Gareth Johnston (Department of Justice):**

We are proposing one amendment to clause 36(2)(a). We propose that, instead of being applicable for two hours before the start of the match and one hour after the end of the match, the regulated period during which the provisions in the sports law section would apply would be for one hour before and half an hour after the match.

I am conscious that the Committee has a fair amount of concern and that there are enduring concerns among sports bodies about the sports law Part of the Bill. The amendments that we will propose today follow a series of meetings and correspondence with sports groups over the past few weeks. Indeed, each group has met either the Minister of Justice or the Minister of Culture, Arts and Leisure.

We still feel that the overall concept of legislating and regulating in that area is right; it complements the safety of sports ground legislation. A range of amendments that we will suggest to the Committee include dropping the Bill's proposals regarding ticket touting; reducing the periods before and after the match, which I mentioned; amending the provisions on alcohol to remove the specific offence of being drunk on a vehicle; and other changes to accommodate the Committee's concern, which we will come to as we go through the Bill. Therefore, my general preamble is that there is a range of things that we want to propose.

**The Chairperson:**

We will deal with each as it comes up in the round. We are now dealing with clause 36. The Committee for Culture, Arts and Leisure recommends:

“clarification of the definition of ‘regulated matches’ and ‘designated ground’.”

Have the officials anything to say in response to that?

**Mr Johnston:**

The GAA was concerned about designated grounds, which will also come up separately when we get into discussing schedules and so on.

**The Chairperson:**

We will pick up on that when we discuss schedule 3.

**Mr Johnston:**

Right, OK.

**Mr O’Dowd:**

Clause 36 is one of those that we will have to return to after the officials outline their proposed changes to the Bill further on, because they are connected.

**The Chairperson:**

If no one else wishes to comment at present, we should discuss the time period. I think that Mr Johnston has already dealt with this issue, but Councillor Ken Robinson MLA said:

“that the time period for regulated matches of ‘two hours before and ending one hour after’ is perhaps too long”.

I think that you, Mr Johnston, said —

**Mr Johnston:**

Yes, we propose to change that to one hour before and half an hour after.

**The Chairperson:**

Do any members wish to comment or are they in general agreement with that?

**Mr McCartney:**

We may have to come back to that in some of our discussions later, but in principle it is OK.

**The Chairperson:**

Therefore, that deals with call by the Irish Football Association (IFA) and the Amalgamation of Northern Ireland Supporters Clubs for a relaxation in those time constraints. We have also dealt with the other point in members' paper on the Bill, which was that:

“The CAL Committee echoed the point raised by the IFA regarding the time factor before and after matches”.

During an oral evidence session, the Department highlighted that there is the opportunity in the legislation to substitute the periods of time, which Mr Johnston has hinted strongly will be done.

We will move on to consider schedule 3 on “regulated matches” as it pertains to clause 36. Does any member or official wish to comment on schedule 3 at this stage?

**Mr Johnston:**

Paragraphs 6 and 8 of schedule 3 refer to grounds that are designated as requiring a safety certificate and to stands that are separately designated as requiring a safety certificate. That point was raised by the GAA. It is happy with the designation of grounds but feels that the designation of stands would take things too far and would mean that the legislation applied to some quite small grounds at relatively minor games. We consulted colleagues in the Department of Culture, Arts and Leisure (DCAL) about that and are prepared to remove the reference to “stands” in paragraphs 6 and 8 by taking out paragraph 6(b) and 8(b)(ii).

**The Chairperson:**

Does any member wish to comment on what Mr Johnston said? Members are not officially signing off on this now, but is there general agreement about it?

*Members indicated assent.*

**The Chairperson:**

The officials undertook to discuss the issue with the draftsman to ensure that the Ulster GAA is completely covered in schedule 3.

**Mr Johnston:**

The advice from the draftsman is that it is and that if we were to include a specific reference to the “Ulster Gaelic Athletic Association”, it could bring into the legislation some of the other games that the GAA promotes, which we are not intending to cover here. The advice from the draftsman is that the formulation that we have got is the best one. There was a recent meeting between the Minister and the GAA, and the point about including the name was not raised at that stage.

**The Chairperson:**

The Department also said that the issue had only recently come up and that there were certainly points that it would look at and come back to the Committee on. That has been dealt with. Our paper says that Ulster GAA believes:

“the inclusion of paragraph 6(b) in the definition of regulated games ... is superfluous”.

That has also been dealt with.

Our paper points out that the Public Prosecution Service (PPS) said:

“If this is the intended impact of the provision, the PPS recommends that it be expressly stated in the body of the legislation that certain offences are extraterritorial.”

**Mr Johnston:**

Is the extraterritorial element in relation to football banning orders? We will be dealing with those orders a little later.

**The Chairperson:**

I will read the whole paragraph aloud so that you get the drift, Mr Johnston.

Our paper says that the PPS stated:

“an important issue arises in relation to the provisions of Schedule 3, which appear to extend jurisdiction for prosecution of offences committed at certain gaelic games and rugby matches taking place extraterritorially, ie anywhere outside Northern Ireland, where one of the teams is representing Northern Ireland, as provided for by Schedule 3.”

**Mr Johnston:**

If a match takes place outside Northern Ireland, none of the provisions about throwing missiles, chanting and those sorts of offences would apply. Tom will keep me right about the provisions on travelling to matches.

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

Those will operate only in Northern Ireland.

**Mr Johnston:**

What would happen if someone committed an offence while travelling in Northern Ireland to a match outside the jurisdiction?

**Mr Haire:**

The law would apply in that case. There is a general point about how convictions that are secured outside the jurisdiction would have a bearing on this. My view is that it would be like any other area of criminal law, in that if someone were prosecuted in a Northern Ireland court, their criminal record would be available across Europe. Given that we are moving to look at EU convictions being available to the courts here, those extraterritorial convictions would have a bearing on the courts' consideration of a case.

**Mr McDevitt:**

My reading of schedule 3 is that it lists the regulated matches to define those where someone could be found guilty of, for example, drinking on a bus. It means that, if you are going down to a sporting event, a rugby game for argument's sake, involving Ireland and are leaving from the

North, as long as you are in Northern Ireland and are drinking on the bus, you are potentially committing a crime. The same applies if you are going to a GAA game, as long as it involves a Northern Ireland county. So, if you are going down to Croke Park or over to Clones to watch any of the northern counties, as long as you are on a bus in Northern Ireland, you will be committing a crime if you are drinking. That was my understanding. Is that how the officials see it?

**Mr Haire:**

Very much so. We have not seen or heard the PPS's response to that. As Gareth said, I suspect that that is connected to the football banning regime and whether or not a conviction secured outside Northern Ireland could have a bearing on the imposition of a football banning order.

**The Chairperson:**

That was in the written submission that you should have received. Maybe you did not get it, but the Committee Clerk can provide you with it.

You talk about travelling on a bus. If the Ulster rugby team is playing in Italy, it is most likely that supporters will go to the match by plane. They could also go by boat.

**Mr McDevitt:**

That would be a long trip.

**The Chairperson:**

Would the provision apply in a case like that?

**Mr Haire:**

It applies only to motor vehicles.

**The Chairperson:**

So, if you are in the air or on the sea you are all right. *[Laughter.]*

**Mr Johnston:**

The specific offence would not apply. There are other restrictions on behaviour on aeroplanes,



which would kick in.

**The Chairperson:**

What about a motorcycle? *[Laughter.]*

**Mr Johnston:**

I would like to see you trying to drink on a motorcycle. *[Laughter.]*

**Lord Browne:**

What if you were on a supporters' train that had been booked? Obviously, the relevant public transport company would have rules, but if you were on a public train for supporters, what would happen?

**Mr Haire:**

Laws are in place for trains that ban alcohol altogether. So, the Bill does not need to address trains, because the possession of alcohol is barred on them.

**Mr A Maginness:**

The other examples were jocular, but Lord Browne raised a reasonable point. When people are travelling by train, alcohol is normally available.

**The Chairperson:**

That is dealt with in other clauses. Lord Browne, we will be able to satisfy you on that issue.

**Lord Browne:**

If you are going first class, you might be all right. *[Laughter.]*

**Mr A Maginness:**

I suppose that Lords do go by first class.

**Lord Browne:**

No, economy. *[Laughter.]*

**The Chairperson:**

We will move on to clause 37, which deals with the throwing of missiles. Does anyone want to comment on that? Councillor Ken Robinson MLA has questioned the blanket use of that clause and the scale of the fine. He suggests that a person throwing chewing gum or a paper aeroplane, although being guilty of littering, is surely not engaged in the same spectrum of missile throwing as someone who hurls a bottle or coin on to a pitch. That sounds like a fair point, does it not?

**Mr Johnston:**

It is not the intention of this clause, as it is not the intention of criminal law generally, to deal with trifles. That is always the maxim: the law does not deal with trifles. That applies to very minor infractions such as the ones that you mentioned. What the clause does do, and the police referred to this when they were giving evidence, is give a means of dealing with behaviour that is dangerous and is not currently covered in the law. As we have said in previous evidence sessions, to be tackled and prosecuted for throwing something at present, you would need to show that you were trying to hit someone or had been reckless about who you had hit. The message that we are getting across in clause 37 is, “you do not throw things in sports grounds.”

A reasonableness test applies to all criminal law. An assault can be committed by simply tapping someone on the shoulder, but no one will ever be prosecuted for that. Likewise, if you threw a piece of chewing gum, technically, that could come under the scope of the clause. However, in practice, no one will be interested in prosecuting you for that. It is the same sort of situation that obtains right across criminal law. What we are trying to tackle is dangerous behaviour.

**Mr Haire:**

The use of the word “missiles” in the title of the clause is indicative. The clause relates to the throwing of missiles and not litter.

**Mr Johnston:**

It comes with the rider of:

“without lawful authority or lawful excuse”.

**Mr O’Dowd:**

It goes back to whether or not the legislation is needed. Clause 37(1) states:

“to throw anything at or towards -  
(a) the playing area”.

It does not give a proviso. Technically, you could be arrested for throwing your scarf, either in jubilation or disgust, at the end of the match.

**Mr Johnston:**

Technically, you could be. However, technically I could be arrested if I poked Tom like so. Technically, I have committed assault and battery. That is an issue right across criminal law.

**Mr O’Dowd:**

You have not committed assault, because there was no intent to cause injury or harm.  
*[Laughter.]*

**Mr Johnston:**

Interestingly, it is common assault regardless of whether there is a permanent injury.

**Ms Ní Chuilín:**

The last officials only had shoes thrown at them. *[Laughter.]*

**Mr Johnston:**

I will explain why this provision is useful using the example of me throwing that bottle. Under the ordinary law, if I simply throw the bottle and it lands in the middle of the floor, I have not committed an offence. I did not intend to injure anyone. I was not reckless about injuring anyone, because I was not aiming at anyone. However, you do not want people to do that sort of thing in a sports ground, because the bottle may well hit someone. It may shatter and cause a problem. Clause 37 is designed to get around the hole in the ordinary law whereby, if you throw things and do not intend to hurt someone and are not reckless about hurting someone, it is very difficult to find grounds on which to deal with you and prosecute you. This clause means that

you do not throw things inside a sports ground for one hour beforehand and half an hour afterwards.

**The Chairperson:**

It brings us back to the question that was asked at a previous meeting: is it necessary?

**Mr Johnston:**

My contention is that it is necessary because it fills the gap in the current law. All the usual protections about whether prosecution is in the public interest will still apply.

**Lord Browne:**

Is there not legislation currently that allows for a spectator who throws a bottle onto the pitch, which hits the goalkeeper and hurts him, to be charged and prosecuted?

**Mr Johnston:**

If you were able to show that that person intended to hurt the goalkeeper, or was reckless about hurting the goalkeeper, that person could be prosecuted. However, that person could not be prosecuted if they simply decided to throw a bottle and not for it to have any consequences. That is the gap in the law.

**Mr A Maginness:**

I understand the argument; it is not an unreasonable one. If it will afford extra protection to spectators, players or officials in a stadium, we have to look at it very seriously. There seems to be a gap in the law. However, why is the clause entitled “Throwing of missiles” when there is no mention of missiles in the text?

**Mr Johnston:**

We would then need to define a missile.

**Mr A Maginness:**

Could the court not interpret what a missile is? I could throw my scarf, cap or whatever, but that is clearly not a missile. Is it not up to the court to take a common-sense view of what a missile

is? The text of the clause is strangely silent on the definition of a missile, although we could interpret what that is because the clause is titled “Throwing of missiles”. The word “missile” is not used in the text of the clause. Would its inclusion not strengthen the clause?

**The Chairperson:**

Clause 37(1) says:

“It is an offence for a person at any time during the period of a regulated match to throw anything”.

That could mean a scarf or a cap.

**Mr A Maginness:**

Yes, but the title of the clause is “Throwing of missiles”. The purpose of the clause is to sanction those who throw missiles, yet “missile” is not mentioned in the text.

**The Chairperson:**

It talks about throwing “anything”.

**Mr A Maginness:**

There is the chewing gum argument. However, the use of the word “missile” might clear up the issue. We could just leave it up to a court to take a common-sense view of what a missile is.

**Mr Johnston:**

We could explore that issue with the draftsman over the next couple of days. It might help to narrow the clause so that it is directed at the more dangerous situations.

**The Chairperson:**

OK. We will move on to clause 38. The Committee for Culture, Arts and Leisure recommends the inclusion of the word “sectarian”, with a clear definition of that word, and clarification on the definition of chanting. That was discussed in our meetings, too. The word “sectarian” had not been defined.

**Mr Johnston:**

The Minister proposes to bring an amendment to include sectarian chanting in the Bill. That would mean that, at clause 38(3)(a), “is of an indecent nature” would be replaced by, “is of a sectarian or indecent nature”.

What we are proposing for the definition of the word “sectarian” is:

“if it consists or includes matter which is threatening, abusive or insulting to a person by reason of political opinion or religious belief”.

That would be how sectarianism is defined for the purposes of this section of the Act. There is a definition of chanting in clause 38(2), which is:

“the repeated uttering of any words or sounds (whether alone or in concert with one or more others).”

There was a query during the consultation about what was meant by “sounds”. The clause would encompass a situation, for example, in which a spectator made monkey sounds, even though such sounds are not actually words.

We are content to include the aforementioned definition of the word “sectarian” in the Bill.

**Mr McDevitt:**

I welcome the intent to define sectarianism. Your definition includes the words:

“by reason of political opinion or religious belief”.

How did you come to that definition? Are you drawing on something from elsewhere? What is your rationale for choosing that specific form of words?

**Mr Haire:**

There were two things, Mr McDevitt. First, the form of words mirrors that which was in the draft public processions Bill, as Mr McNarry had said.

**Mr McDevitt:**

The failed parades Bill.

**Mr Haire:**

That was the definition that the draftsman had come up with at that stage. Secondly, the alternative was to simply slot the phrase “political opinion” into the list in clause 38(2)(b), which would have achieved the same effect. However, we thought it worth proactively bringing that out and including the definition of sectarianism.

**Mr McDevitt:**

May I ask a very innocent question? Where will you define it in the Bill? Will it be in the schedule to the Bill? How does that happen?

**Mr Haire:**

It will be in clause 38. It will also be in clause 49, where a similar issue arises.

**Mr McDevitt:**

So, it will be in clause 38(5) or something like that.

**Mr Haire:**

Yes. The construction will be something like, “Chanting falls within this subsection if it is indecent in nature or sectarian in nature.”

**The Chairperson:**

The Committee would like to see the wording of the amendment. You may say that that is simple enough to do, but there is a time factor. We would need it for next Tuesday. Are you happy enough with that?

**Mr Johnston:**

We want to take the views of the Committee, but I would hope to be able to share the amendments that we have already drafted and are proposing if not tomorrow, then certainly on Thursday.

**Mr O’Dowd:**

Did you have further discussions with the Human Rights Commission about defining the term “sectarian”?

**Mr Johnston:**

The Human Rights Commission offered to have discussions with us if we thought that that would be helpful. However, given that we are taking the definition from the processions Bill, we feel that we are leaning on good advice from a range of sources.

**Mr O’Dowd:**

I need to declare an interest: I sat on the drafting of the processions Bill. *[Laughter.]*

**Mr McCartney:**

It might not be that good.

**The Chairperson:**

The Committee paper states that the Human Rights Commission:

“also highlights that whilst the provisions against discriminatory chanting can be consistent with human rights duties the present criminalisation of ‘indecent’ chanting in clause 38(3)(a) may be incompatible with the ECHR”.

**Mr Haire:**

We looked at that, and we are confident with what we have come up with in the Bill in terms of human rights compliance and competences. It has gone through the Attorney General’s office, the Speaker’s counsel and our own lawyers. So, we are content with the construction as is.

**The Chairperson:**

We move now to clause 39, and clarification of authorised pitch incursions. The paper states that:

“The CAL Committee recommends the inclusion of the phrase ‘controlled celebratory occasions’, as pitch invasions are acceptable in some sports. The CAL Committee was concerned that ‘which shall be for that person to prove’, places too much onus on the individual and recommends that this phrase is removed from the clause. The CAL Committee also recommends clarification of the phrase ‘lawful excuse’ and in particular questions if this covers emergency evacuation procedures.”



**Mr Johnston:**

On the latter point, yes, it does. An authorised pitch incursion is one authorised by the match organisers. We recognise that, in some sports, there is a tradition of good-humoured pitch invasion at the end of certain matches. It would be open to the match organisers to authorise that. Having said that, the GAA, in particular, is increasingly concerned about the practice. A referee was recently injured during a pitch incursion. The GAA will, no doubt, want to have further discussions about that within the sport. However, if something is authorised by the match organisers, it would not be caught by this clause.

**Mr O'Dowd:**

Again, it goes back to the question that has plagued us throughout this chapter: is it necessary? DCAL and others gave reasons for a celebratory pitch invasion. Is it such a problem that we need to criminalise it? When the IFA appeared before the Committee, one guy — I think he may have been involved in a Coleraine club — gave the example of three guys who went onto a pitch during a match that the club was hosting. As a result, they were barred from the club for life under the rules of the game. Why do we need to criminalise that?

**Mr Johnston:**

It goes alongside the provisions for safety at sports grounds, which have meant that the fences and railings around a lot of the pitches have been taken away. It is now very easy to get onto the pitch. Therefore, if there is a Hillsborough-type emergency, people can get onto the pitch and will not be crushed. However, the criminal law is designed to set a clear standard that, unless authorised to do so, people should not go onto the pitch. It was very much part and parcel of the safety at sports grounds proposals that, when the protection of the barriers is removed, something else needs to be put in its place.

**Mr Haire:**

Each of the sports authorities said to us that there are occasions when there is a humorous or celebratory intent behind going onto the pitch, but that can sometimes hide what is really going on. It is about protecting referees and players and preventing civil claims and damage to pitches. Each of the sports authorities was content that the issue needed to be addressed in an appropriate way.

**Mr McDevitt:**

I know that this is a big debate, particularly in the GAA, following the events in Croke Park last summer. If I arrive at a game of any code, how do I know whether it is OK to go onto the pitch? How will I be informed about “lawful authority”? Will it be in the programme or will there be tannoy announcements? How will you be able to measure that to determine whether it is OK or whether it is an unlawful act?

**Mr Johnston:**

We expect that, where there has been a tradition of allowing people onto the pitch and match organisers want to change that, they will make it very clear in the programmes that you cannot go onto the pitch.

**Mr McDevitt:**

OK. People will now arrive at a GAA ground — I guess the GAA is the best example to use — and be told that it is not OK to go onto the pitch and that, if they do, they will be committing an offence.

**Mr Johnston:**

That would have to be done, because there has been that tradition.

**Mr McCartney:**

It is announced at some soccer games.

**Mr McDevitt:**

I am aware of that.

**Mr Haire:**

There could be signage.

**Lord Browne:**

There could be notices around grounds stating that invasion of the pitch will lead to prosecution.

**The Chairperson:**

If 300 supporters rush onto the pitch after their team has won the cup, are they all going to be prosecuted? Say that, after an announcement has been made that there will be no pitch invasion, a B division club hammers a Premier League team 1-0 and wins the cup. If those 300 fans are so exuberant that they cannot contain themselves in the stand and have to get out onto the pitch, will all 300 fans be sallied off to appear in the courts?

**Mr Johnston:**

It is going to be very difficult to prosecute in those circumstances.

**The Chairperson:**

That is the point that we are all trying to make; it is not enforceable.

**Mr Johnston:**

The fact that it will be difficult to prosecute 300 individuals in that sort of situation does not mean that you cannot enforce the provision. If you are aware that there is likely to be a problem, an announcement can be made that the police will be enforcing that part of the legislation. It gives the match organisers the potential to explain to people that it is a criminal offence. That, in itself, has weight and effect, even if 300 people rushed onto the pitch and you could not identify them all.

**Lord Browne:**

I am sorry to go back to this again, but if I run onto the pitch and commit an offence, surely the current legislation would be such that I could be prosecuted? If I run onto the pitch and assault the goalkeeper or damage the pitch, the marshals would report me, eject me from the ground and possibly report me to the police, who could take action.

**Mr Johnston:**

You could be prosecuted if you ran onto the pitch and committed an assault or caused criminal damage or something like that. However, the evidence that we have been getting from the sports is that just the practice of people running onto the pitch is liable to create or exacerbate a

situation. People get very excited and, in a crowd, they start to do things that they may not do ordinarily. You would want to tell them that they must not go onto the pitch in the first place rather than tell them that, if they do go onto the pitch, they should not hit anybody. Once people are on the pitch, there could be a lot of excitement and perhaps a certain amount of drink taken.

**Lord Browne:**

The club could have a notice on the gate saying that invasion of the pitch could lead to prosecution. Would that be a sufficient deterrent?

**Mr Johnston:**

Yes.

**Mr McCartney:**

In earlier evidence, Sport NI suggested a good way to come at this issue. It said:

“the intention of the legislation was not to catch people doing wrong but to incentivise people to change their behaviours”. Pitch incursion is not a big issue as such. There may be certain occasions when it happens. I would be a regular enough attendee at Derry City games at the Brandywell. The league imposes a fine if there is a pitch incursion, so the club takes steps to ensure that nobody goes onto the pitch at the end of a game. It does not become an issue. The clauses have been lifted from England, where there was a particular problem at a particular time. There were large crowds, and, perhaps after a team lost a game, there were pitch incursions, with one group of fans rushing towards the other group. Are we trying to bring in something that is not wholly necessary?

**Mr Johnston:**

The provision was introduced in England and Wales, but we have discussed it locally. For example, the GAA supported the idea of having the provision here. If the organisation wanted to, it could authorise incursion and that would be fine, but, if it wanted to take steps to prevent it, the provision would give it a bit more weight.

**Mr McCartney:**

I understand that, but a fine can be automatically issued. If a match official representing the FAI, for example, attends games, certain things have to happen at the ground. If they do not, a report

is made and there is a graduation of fines. By your own admission, 1,000 people could invade a pitch tonight and nothing would be done, because it would be problematic to charge 1,000 people or to isolate one person and charge them. We could instead work in conjunction with the associations to change behaviour, and we could suggest to them that it would be a good idea to state in the match regulations that an incursion will result in a fine of £500 or €500 or whatever. That gives everybody a collective interest. If some young lad is about to climb over a fence in the Brandywell, it will be other fans who pull him back. They will tell him that he cannot do that because he will get the club a £500 fine — a fine that it can ill afford.

So, if the intention is to change behaviour rather than to criminalise people, this is not the way to do it. PSNI representatives appeared before the Committee, and they told us that many of the clauses were nice to have but that they may never use them.

**Mr Johnston:**

But they still made the point that they felt that they were valuable because the law was normative and was setting standards.

**Mr McCartney:**

They said that no police force in the world would refuse any piece of legislation. That is not the way that legislation should be framed. Of course the police would say that; why would they not want it? However, if something is going to be done, there has to be a purpose. The purpose should not just be that the powers might be used somewhere in the distant mists. That reason is not sufficient. If we are out to change behaviour, we should work with the associations to do that rather than create some law that will not change behaviour.

**Mr Johnston:**

That assumes that fining clubs would be sufficient to change behaviour. If someone knows that their club could be fined if they do something, that may impact on them. If someone is a member of an opposing club, it might or might not. However, if we are trying to discourage people from pitch incursion, telling them that they are committing a criminal offence if they go onto the pitch sends a very clear message.

**Mr Haire:**

Each of the three sporting associations was in favour of the provision.

**The Chairperson:**

The paper states that the Amalgamation of Northern Ireland Supporters' Clubs:

“welcomes the proposals to create offences that will cover unauthorised pitch incursion. However would like reassurance that the ‘lawful authority or lawful excuse’ for entering the playing area prior to a match will include the ability of football fans to erect banners and supporters’ flags prior to matches.”

I suspect that it is talking about club colours and stuff like that.

**Mr Haire:**

It will be for the match organisers to say whether fans are permitted to do that.

**Mr Johnston:**

If the club is happy with it, that is fine. The clause will not capture that.

**The Chairperson:**

We move to clause 40, and the Committee for Culture, Arts and Leisure’s recommendation to include laser pens. I refer to oral evidence from Sport Northern Ireland. Representatives mentioned that it would be worth considering whether laser pens should be included in the clause. Have you any comments on that?

**Mr Johnston:**

We are exploring that matter with the draftsmen. If we can get a definition of laser pen drafted, the Minister will propose an amendment to include them. That might prove too difficult in the available time. If we cannot do that, we will certainly look at it at another time.

**The Chairperson:**

We move to clause 41, which deals with being drunk at a regulated match. On self-regulation, the Committee for Culture, Arts and Leisure questioned the need for this clause on the basis of existing legislation and regulation by sports governing bodies, which may address the issues outlined in the clause. Do you wish to comment on that?

**Mr Johnston:**

The ordinary law covers being drunk in a public place. Part of the thinking behind the clause is to get around legal questions or arguments about whether a football or sports stadium is a public place.

**Lord Browne:**

What about being under the influence of drugs?

**Mr Johnston:**

That is an offence whether it is in public or private.

**The Chairperson:**

Yes — whether it is at a football match or not. Therefore, the present legislation is adequate in respect of drugs.

**Mr O’Dowd:**

Are the officials proposing an amendment to the clause? Sorry; I may have misheard them.

**Mr Johnston:**

We are not proposing an amendment to that clause. We are proposing an amendment on being drunk on transportation, which we will come to.

**The Chairperson:**

We have not reached that clause yet, but we will get there. We are still at the match at this stage.

The summary of responses states:

“However, it is the view of Ulster GAA that this is best done under the general application of the safety certificate provided by the local authority and within the responsibility of the event controller in the organising of the games and under its ground regulations.”

Is everyone happy with that?

**Mr O’Dowd:**

I know that I sound like a broken record, but it goes back to whether we need new legislation. If

it is private property, the authority of that property can deal with someone who is drunk. Is that not the case? On private property, the organiser of an event can tell someone that they have to leave the premises because they are drunk. That person would have to leave. Is that right?

**Mr Johnston:**

Yes, but it raises issues about how to get those people out and whether the use of reasonable force is allowed, and so on.

**Mr O’Dowd:**

You can push them with your finger. *[Laughter.]* How is this law going to be enforced? I assume that a steward would notice that someone was drunk and would bring that to the attention of a police officer, if one was present at the ground. If a police officer was not present, the steward would have to make some form of report to the police.

**The Chairperson:**

The sporting organisations that gave evidence said that, when a person who was under the influence came to their ground, that person would be prohibited from entry by stewards and officials of the club. They said that such people would not get in. That goes back to Mr O’Dowd’s point about whether the provision is necessary, because there are already voluntary arrangements in place to deal with it. Frankly, I suspect that the last person on earth who any club wants in its ground, whatever the sport, is someone who will make a proper nuisance of themselves and spoil the game for everyone else. They are not going to let that sort of an individual through their gates. If they do, I suspect that they will let him through only once. Walking up to him and saying, “You are drunk; we don’t need you here” will not be enough to remove him. He will say, “I got in without you, and, now that I am here, I am going to stay.”

**Mr Haire:**

You might call that part of the package in chapter 2 of Part 4, “Conduct at regulated matches.” We are trying to put a series of powers in place so that organisers and stewards have criminal law behind them and can tackle a number of issues at matches, such as missile throwing, chanting and unlawful entry to the pitch. You would actually be committing a criminal offence by trying to enter the ground drunk. As Gareth said, as much as anything, this is a declaratory package.



**Mr Johnston:**

It means that, if somebody digs in their heels, instead of officials telling that person that they are breaking club rules and asking them to leave, the officials will be able to say, “You are committing an offence, and you are going to have to leave. If you do not go, we will call the police.” Ultimately, if someone refuses to go and is causing a nuisance, the police could be called to arrest them, because an offence would have been committed.

**Mr McCartney:**

The assumption is that a police officer would be present at the ground.

**Mr Johnston:**

Not necessarily.

**Mr McCartney:**

In England and Wales, the crowds in most of the grounds that we are talking about would be sufficient to justify having police officers present. They are present at most big games in England and Wales. However, that is not the case here. I could understand how the provision would work for matches at which a police officer is present, because clubs confront situations in which they do not know what to do with fans who arrive drunk. Ejecting them to the vicinity of the ground can cause more problems than allowing them in, isolating them until the end of the game and then packing them on their way. However, in most of the matches here that we are talking about, there is no police presence. Therefore, when someone who is obviously drunk comes to the turnstile, match officials must be guaranteed that, when they phone the PSNI, they will arrive. I assume that, if you phone on a Friday night to say that you have a drunk man at the turnstile, the police might have other priorities and tell you just to give him a shake.

One of the weaknesses of the proposal is that it is sound only when you are talking about grounds containing 25,000 people, because then there will be multiple offenders for any given offence. On most Saturdays in England, you can see how it might be enforced. I have not come across evidence from any of the sports that people arriving drunk to games is a big issue that causes clubs headaches. The clubs are not knocking at the door asking for something to sort that

problem out.

**Mr Johnston:**

Certainly, none of the sports is raising a specific objection to the provision. The GAA told the Committee that there is very good liaison with the police in advance of matches. I think that we heard that from the police, too. On the back of that, the police will be aware that a match is happening, and one would hope that, if there is a need for the police to deal with a situation, they will be able to come and will prioritise it. Short of that, it will give clubs the chance, which they do not have at the minute, to say that it is not just that they want you to leave, but that if you do not leave, you are committing an offence and they will call the police. Being able to say that would give clubs something more to deal with those situations than they have at the minute.

**Mr McCartney:**

I understand what you are saying, but, technically speaking, it is already an offence to drink on the street. People go to lots of games without causing offence. If a bar is overcrowded and 10 or 12 people are standing drinking in the street, the police will rightly say that that is about discretion. If a game is on a Saturday and the same group of people are still standing in the street on a Sunday, that might cause offence. Situations change. You have to legislate for problems that exist, not for problems that might exist. I could see the provision working if you said that there would be a PSNI officer at every regulated game to ensure that, if a drunk person tries to get into a ground, he or she would be arrested and charged. If that were so, we would be in the business, but we are not in the business at the moment. That is just my instinct.

**The Chairperson:**

We move on to clause 42, "Possession of drink containers, etc." The Committee's paper summarising the responses states that:

"Sport NI considers however that some guidance is required to clarify the term 'article capable of causing injury' and whether it refers to plastic bottles with/without the cap removed and plastic receptacles such as cartons."

Do you remember that we had a debate about when the cap was on the bottle and when it was off? That is what we are dealing with now.

**Mr Johnston:**

There were queries along the way about what exactly a drinks container is. We propose to issue

guidance to help clubs in that regard.

**Mr O’Dowd:**

I do not know how much more guidance you could issue. Never in my life have I seen a piece of legislation go into so much detail in trying to describe an object. People who have their wits about them and who wish to smuggle something into a sports ground can use a veterinary medicines container or a medical container. Just like at airports, we will have people on the turnstiles asking us, “Could you take a drink out of that, please? We want to make sure that it is not harmful.”

It is a crazy piece of legislation, especially given that the staff working for clubs can now, quite rightly, say to people at the turnstiles and ticket areas who have a bottle, plastic or otherwise, “No, I am sorry, you are not bringing that in with you. We sell drink inside.” It seems as if the draftsman has too much time on their hands.

**Mr Haire:**

The detail was to try to help people to understand what the law covers. We looked at the need for formal guidance, but the Bill is quite detailed about what is and is not covered.

**Mr Johnston:**

The guidance was to cover situations such as coming to a ground with a plastic bottle and the top being taken off it. That would be acceptable.

One of the issues with going through the provisions clause by clause is that we maybe miss the whole. The purpose of the provisions in chapter 2 as a whole is to stop us getting into the sorts of situations where there could be widespread trouble and injury, where drinks containers end up getting used inappropriately, where drunkenness contributes to trouble and where people end up running onto the playing area. We need to look at all the clauses individually, but there is something about the combination of them that is important in trying to deal with how to keep things calm and how to stop the escalation of issues that can — although thankfully rarely — result in some of the very bad situations that we have occasionally seen.

**The Chairperson:**

But the whole purpose of this exercise is clause-by-clause consideration.

**Mr Johnston:**

Yes.

**The Chairperson:**

It is to draw out that there is a reason behind the clause.

**Mr Johnston:**

Yes. I am just making the point that, although there is a reason behind this clause — to address the damage and injury that drinks containers can do — there is also the aspect of all the provisions working together to stop bad situations arising.

**Mr McCartney:**

But drinks are then sold inside the ground.

**Mr Johnston:**

Yes. We are not saying that this clause bans all drinks containers, but it aims to ban the dangerous ones.

**Mr McCartney:**

You are saying that it is an offence to take a can of Coke into a ground but not to have a can of Coke inside the ground.

**Mr Johnston:**

It would not be sold in a can in the ground if there was going to be a problem with it.

**Mr McCartney:**

A shop inside a football ground will sell cans of Coke. A lot of people think that it is ridiculous that the Odyssey sells bottles of water and does not give people the tops. However, it sells bars of chocolate and bags of sweets, which could cause as much damage as a bottle of water being

thrown —

**The Chairperson:**

Removing the cap could just be to help the person.

**Mr McCartney:**

People have suspicions. When someone goes to the Odyssey — I am not singling out the Odyssey; it also happens in some picture houses — they are told that they cannot take in their own bottle of lemonade, etc. Most people suspect that that happens because the same bottle at the counter costs three times as much as it does in the corner shop.

**Mr Johnston:**

Tom will keep me right, but there is nothing in the legislation that would stop someone bringing in a bottle of Coke if the top was taken off as they came in. There is nothing that would stop them bringing in a plastic glass with Coke in it, so the clause should not help people to breach the competition laws. It is simply about safety and the fact that a 500 ml bottle of water weighs half a kilo, which can do a fair amount of damage.

**Mr McCartney:**

So would a bag of wine gums. *[Laughter.]*

**Lord Browne:**

To enforce the legislation, well trained marshals and stewards would be required to search people going into the ground. Surely a responsible club will be doing that anyway without the necessary legislation. Everyone who goes through the turnstiles will now be frisked to see what is in their pockets, and, if they have a bottle, officials will have to decide whether the legislation applies to the container and whether to take it off the person. A responsible club would already have rules and regulations to deal with that.

**The Chairperson:**

Our paper says that the Committee for Culture, Arts and Leisure stated that it:

“recommends that Clauses 42 and 43 should be read together and questions the need for both clauses. The Committee believes that the issues pertaining to these clauses could be achieved through regulation by sports governing bodies. With regard to Clause 42, the CAL Committee is concerned that this clause limits any sort of containers being brought to a ground. Members recommend that further consideration is given to addressing the needs of families; children’s and baby’s bottles.”

**Mr Johnston:**

I draw attention to clause 42(2), which states:

“This subsection applies to any article capable of causing injury to a person struck by it”.

It is not about banning people from taking drinks into grounds or having drinks in grounds; it is simply about how people get drinks in and how they are distributed in the grounds. A plastic bottle without a top is fine, but a plastic bottle with a top, which could cause injury, would be banned.

**The Chairperson:**

Clause 42(2)(a) refers to a “bottle”. The Committee for Culture, Arts and Leisure highlighted the issue of a baby’s bottle.

**Mr Haire:**

Clause 42(2)(a)(ii) refers to:

“normally discarded or returned to, or left to be recovered by, the supplier”.

It is really about disposable cans and bottles that people would bring to grounds. If people bring something that they own, they would not throw it on to the pitch.

**Mr McCartney:**

Does that allow someone to bring in a flask?

**The Chairperson:**

A hip flask?

**Mr Haire:**

My interpretation is that would not be something that is normally discarded, returned or left to be

recovered by the supplier.

**Mr Johnston:**

It is up to the clubs to decide whether they want to let people bring in flasks.

**Mr McCartney:**

Clause 42(2)(a) refers to a:

“portable container (including such an article when crushed or broken)”.

Allowing a flask in nearly defeats what you are trying to do. A person will do as much damage with a flask full of water as they will do with a small bottle of water.

**Mr Johnston:**

As Tom said, it is based on the assumption that, if someone brings a flask, they are probably not going to be throwing it about because they have paid money for it.

**Lord Browne:**

The person intent on causing trouble could bring a flask in.

**Mr O’Dowd:**

That is the loophole in the law. We will see flasks flying all over the place.

**The Chairperson:**

Are you prepared to look at that provision again, too? There are some potential anomalies. A hip flask could be easily concealed, could it not?

**Mr Johnston:**

A hip flask would probably come under that exception in clause 42(2)(a)(ii), because it is not disposable or normally returned to the supplier. Again, are people likely to throw their hip flasks?

**The Chairperson:**

It would make a handy missile, whether full or empty, would it not?

**Mr Johnston:**

It would, but, if you have a solid silver hip flask, you may not want to throw it about the place.

**The Chairperson:**

Maybe if you were drunk, you would forget about that and just let fly.

**Mr Buchanan:**

You could have a hip flask, or any flask, with alcohol in it rather than water.

**Mr Johnston:**

We are just about to come on to alcohol. *[Laughter.]*

**Ms Ní Chuilín:**

I think we are all just about to go on alcohol at this stage. *[Laughter.]*

**The Chairperson:**

Does any member have any blue sky thinking on the issue?

**Mr O'Dowd:**

Scrub it.

**The Chairperson:**

Will you come back to us on that one, Mr Johnston?

**Mr Johnston:**

We will certainly look at it again. We have looked at it a number of times and we were hopeful that we could offer further guidance to clubs making things very clear about what they should allow in and what they should not. That would be helpful, but we will take it back and think about it again.



**The Chairperson:**

Now we are at clause 43, which deals with the possession of alcohol. We are told that the Committee for Culture, Arts and Leisure recommends:

“that Clauses 42 and 43 should be read together and questions the need for both clauses. The Committee believes that the issues pertaining to these clauses could be achieved through regulation by sports governing bodies.”

**Mr Johnston:**

We have been in consultation with the three governing bodies since we last gave substantive evidence on this provision. There was a particular concern on the part of rugby as to how it would impact on the nature and feel of rugby matches. The Minister met the representatives and offered to make a provision so that a commencement Order under the clause would need to be by affirmative resolution. That means that there would need to be full consultation, including with the sports governing bodies and this Committee, before we would commence that clause. So, we are proposing to bring an amendment that states that commencement would have to be by affirmative resolution.

The sense that we have heard from the governing body of rugby is that, although that may not be its number one preference, it would address its concerns. There have not been objections to that part from the IFA or the GAA. The GAA made the point that it may not be needed for GAA, but is content that it is there in law.

**The Chairperson:**

If there are no comments, we will move on. According to our paper, Ken Robinson states:

“this clause provides major concern for him as the Minister of Justice has already indicated he is minded to implement the legislation in an unequal manner across the three sports. This raises equality impact issues. Mr Robinson proposes that this clause should be expanded to include the Odyssey Arena when ice hockey is played and also other sporting occasions held at venues with large numbers such as racecourses if this clause is not to be expanded then the Department should provide a valid reason for those exemptions.”

According to the paper:

“Sport NI considers that care should be exercised in the implementation of this clause”.

It continues:

“Sport NI therefore considers it to be appropriate for this Section to be implemented at ‘designated’ venues where soccer is played.”

In addition:

“Sport NI considers that it would not be appropriate to implement this Section in relation to the ‘designated’ venue where rugby is played unless there were to be deterioration in alcohol related spectator behaviour.”

Finally:

“Again, Sport NI considers that it would be inappropriate to implement this Section in relation to the ‘designated’ venues where Gaelic sport is played unless there were to be deterioration in alcohol related spectator behaviour.”

The paper states that the Department said that it:

“proposed to take the powers relating to alcohol, but not to commence them without further consultation with the Committee and the sports bodies. That was the case for all three sports.”

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The paper says that Ulster Rugby states that it:

“ is strongly opposed to the inclusion of matches played at Ravenhill in Clause 43 and is concerned about relying solely on a commencement order to create an exemption. Ulster rugby urges the Committee to remove it completely from Clause 43 for the following reasons.”

It goes on at length about those reasons, under the headings “Inconsistency with legislation elsewhere in the UK/Ireland”, “No History of Disorder” and “Financial Implications and Obligations to Tournament Sponsors”.

The paper continues:

“In correspondence of 30 November from the Minister of Justice to Ulster Rugby, the Minister advised that the current text of the Bill provided flexibility in implementing Clause 43 and that a sport-by-sport approach, could be taken to commencing the clause.”

I think that that is the matter that Mr Robinson was referring to in his comments.

It adds:

“The Minister undertook to re-examine how the Bill deals with these mechanisms with a view to strengthening the commitment to consult before commencing clause 43. The Minister confirmed that his officials were engaging with the legislative draftsman about this and he would write to Ulster Rugby and the Justice Committee with his further thoughts as soon as possible.”

There is a fair wee bit there, folks, but it is important to say that because it covers the spectrum.

**Mr Johnston:**

There are a fair number of points there. On Mr Robinson’s point about unequal treatment between sports, what we will be trying to do in commencing this is to deal with where there were issues, and to deal with only where there issues. It might be said that that was unequal. I would say that it was about targeting the implementation and commencement of the legislation where it is needed.

On wider sports, for example, ice hockey, the legislation is really linking to the safety of sports grounds legislation, which has been focusing on football, rugby and GAA. Certainly, we would keep that under review with DCAL. If the need comes for wider coverage, we can consider amendments at a later stage. At this stage, the conception of the legislation was in the safety of sports grounds provisions.

You read some lines from Ulster Rugby. I am not sure when those were submitted to the Committee. However, at the latest meeting we had at ministerial level with them, we proposed that there would be a requirement in the Bill for consultation before section 43 is commenced. You get that requirement through an affirmative resolution requirement on the commencement Order. Although that is maybe not their first preference, the sense from that meeting was that they were prepared to live with that compromise.

This clause would not apply to registered clubs in grounds outside the site of the pitch. Some

grounds would have a registered club, a licensed club, for example, underneath the stand. They will still be able to operate as they do at the moment.

**The Chairperson:**

I did not say that the paper also states:

“The Ulster Rugby Supporters Club also wants common sense to prevail and that the Committee will see fit to exclude Ravenhill from this section of the Bill.”

We were all there the day that they were here. If my memory serves me right, Mr Johnston, you and your officials intimated that you worked closely in tandem with all the sporting organisations on this issue. It was asked at that time whether they requested this. I distinctly remember everyone moving their heads — behind your back, by the way — to intimate that they did not ask for it. Ulster Rugby specifically says that it is strongly opposed to the inclusion.

**Mr Johnston:**

As I said, at the latest meeting, its representatives did not request it, but they were prepared to live with the compromise.

**The Chairperson:**

The organisation that was most prepared to live with it — and was perhaps the one that was most targeted — was, you will all remember, the IFA. The IFA said that it did not think it was necessary, but it could live with it, whereas there was emphatic opposition from Ulster Rugby in particular.

**Mr Johnston:**

I think that the IFA went further and supported the clause.

**The Chairperson:**

Yes, it said that it could live very well without it, but it would support it. Some of us were a bit surprised that it took such a relaxed approach to it, but that was the approach it took. We are not here to put words in the mouth of IFA, or take them out of it either.

**Mr A Maginness:**

Of course, Ulster Rugby has said that, in a situation in which it feels that the clause is going to go through, as a sort of backstop, it would be satisfied to accept the staggering of the commencement Order. It is not its first preference, and that should be emphasised. Ulster Rugby was very strong about that in its submission. I think that it is compromising because it feels that it has to compromise; it is important to remember that.

In any event, I am not so certain that you can get away with staggering a commencement Order, because, on the face of it, it is discriminatory against certain sports. What would happen if someone involved in football went to the High Court to seek a judicial review of the commencement Order and the judge agreed that it seemed to be discriminatory? People involved in football could say that it seems to be aimed against them, as it is not done in rugby or GAA. I know that you come to the Committee in good faith and put forward that argument, but I am not so certain that it is the right argument. In fact, there could be problems with the course of action that the Minister is putting forward. We will have to be satisfied as to whether you can do that. I think you have problems there.

The other thing is that we do not want to destroy any of those sports. Ulster Rugby in particular is very strong about that, and, it has to be said, rugby spectators are mostly well behaved — I cannot remember any incidents at rugby games. Do we want to create a situation in which rugby is undermined as a sport? It is a wonderful sport. Do we want to undermine the source of income that maintains that sport? We have to take that point.

**The Chairperson:**

The point is even stronger, bearing in mind that Ulster Rugby did not request it.

**Mr O'Dowd:**

What we have to remember when going through each of the clauses is that we are talking about regulating sporting fixtures to which thousands of people — and, during the summer, tens of thousands — travel every weekend and there is never an incident. Here we are bringing forward various clauses that will create a raft of criminal offences.

This clause deals with a matter on which clubs are able to regulate themselves. Certainly in GAA matches in some of the bigger grounds you can purchase alcohol, but you are not allowed anywhere near the seating or stand area with it. The stewards would stop you and would not let you down with it. It is well managed in the bigger soccer grounds as well. There is alcohol being served but you are not allowed down, and the stewards are perfectly placed so that you cannot go any further. In rugby, they allow you down to your seat with alcohol.

Again, however, there is no record of public disorder at any of those events. So, I just do not see the need for us to be bringing in legislation to create a criminal offence around an event for which we have no evidence base to show that it is causing a difficulty at any of our sports grounds or disruption to any of our sporting events. So, I return to my own question with regard to a lot of the clauses: why do we need it?

**Mr Johnston:**

Taking the legislative power now allows us to respond. We propose to move ahead with consultation to apply that to football. We need to think and consult a bit more about GAA and rugby. My current feeling is that we would not be in any rush to apply it to either of those sports.

We are looking at the evidence and in what incidents drink was a factor — we shared details of various incidents with the Committee — to respond to that and target our response according to that evidence. That is how we get around concerns about unequal treatment. You can treat different groups differently if there is a reason. The reason would be the evidence of the risks in each sport, which is potentially greater for football than the other two sports.

However, rugby assured us of the good behaviour of its spectators. Interestingly, at Ravenhill, they do not allow you to take drink onto the stand, which is because health and safety issues around the steps and the height of the stand, and so on. If it started to become an issue and maybe the law needed to be engaged, the law could be engaged. The fact that there is that sword of Damocles is maybe an extra encouragement to the supporters to maintain their good behaviour. So, we still support taking the powers in primary legislation, with the assurance that any commencement would be subject to full consultation.

**The Chairperson:**

I know that Mr McDevitt wants to say something, but I want to look at comments about the redevelopment of Ravenhill stadium. The document states:

“In 2009 Ulster Rugby submitted a business case to the Department of Culture Arts and Leisure (DCAL) regarding the redevelopment of the Ravenhill Grounds. These plans, produced in conjunction with Sport NI and with prior consultation with DCAL rely heavily on the provision of better food and beverage facilities within the ground, easy access to and from these facilities and, in keeping with practice in our sport elsewhere in the UK and Ireland, the supply of food and beverage to people in their seats.”

**Mr Johnston:**

All those points were made to us. That is why we are proposing full consultation before we move to commence.

**The Chairperson:**

According to our paper, Ulster Rugby also said:

“It is our view that the inclusion of Ulster Rugby in the legislation in relation to clause 43 is at odds to what we are working to achieve for the stadium development, in conjunction with another government department.”

You understand what is being said, which is that this clause will hinder what it is trying to achieve and trying to do with another Department.

**Mr Johnston:**

I do not see how it should hinder them if we are not commencing the legislation.

**The Chairperson:**

But, you have the legislation, Mr Johnston. The threat is there, is it not?

**Mr Johnston:**

Yes, the threat is there but that should, hopefully, encourage supporters to be well behaved so that we do not need to commence the legislation in the case of rugby.

**The Chairperson:**

But, rugby would say that it is already self-regulatory. Rugby actually encourages the Committee to take evidence from the PSNI to see what its records say about problems at Ravenhill.

**Mr McDevitt:**

Mr Johnston, you talked about differential commencement. How will you provide for that in clause 43?

**Mr Johnston:**

It is provided for by virtue of the provisions on commencement Orders.

**Mr McDevitt:**

The Bill will still say that it is illegal to drink at any regulated match. In your schedule of regulated matches, the list will include the Football Association of Ireland (FAI), the IFA, the GAA and the Irish Rugby Football Union (IRFU), according to the criteria that we debated earlier.

Let us think about Ulster Rugby. This past weekend, they made it through to the quarter-finals of the Heineken Cup for the first time since 1998. We could debate the merits of alcohol sponsorship of sport, on which we might have our private opinions or even party policies, but the Heineken Cup is what it is. Let us say that Ulster beat Northampton and there is the prospect of a semi-final of the Heineken Cup here in Northern Ireland. If this piece of legislation were on the statute book, Heineken could take the head stagers and decide not to put its sponsorship or money into the region because the legislation is directly at odds with what it perceives to be a positive involvement in sport in a responsible and sensible way. Before we know it, the game could be played down at the new Aviva/Lansdowne Road Stadium, in which case we would have lost the revenue from the game and lost the opportunity to be able to celebrate a regional sporting success here locally.

If you are saying that clause 43 will be amended to break up three codes and allow for differential commencement, it would be one argument. However, it would open up another argument, which Lord Browne was saying to me privately: it would appear highly discriminatory



against one code.

**Ms Ní Chuilín:**

It is not private now. *[Laughter.]* Say nothing to Conall.

**Mr McDevitt:**

I was having a conversation with Ms Ní Chuilín last week — *[Laughter.]*

That would open up a whole separate debate about discrimination. No matter which way you come at the problem, the solution that you propose — although it is reasonable, and I accept it as common sense from a drafting point of view — opens up all sorts of other unintended consequences and other messy scenarios that you or the Minister particularly want to bring us to.

**The Chairperson:**

It is a valid point that you make about, for instance, an organisation that enters into an agreement with a sponsor. The sponsor could go to its solicitor with the terms of the deal, and the solicitor could ask whether the sponsor is aware that a Bill is waiting and that it will not be fit to carry on. What solicitor would tell the sponsor that it would be better to just ignore that? I suspect that he will flag it up in very big print and say that it is on the sponsor's head if it is signed. The solicitor could advise the sponsor not to touch that sort of agreement because it could potentially be in big trouble a month or a few months down the road.

Members, I have been passed a note that says that a vote will be coming up in the House very shortly as the Minister is making his winding-up speech. I do not say that as a threat or anything. *[Laughter.]* It is just to keep you informed.

**Mr McCartney:**

My point is back to the intention. Ulster Rugby pointed that England has the Football (Offences) Act 1991, which bans alcohol inside football grounds. However, alcohol will be allowed in the same ground for a rugby game. Three different associations — the GAA, the FAI and the IRFU — used Croke Park, and there were different restrictions for each of the games. I am not saying that any of the sports have a particular problem about anything, but the idea that we bring in

legislation to cover everyone instead of dealing with whatever the particular problem is will not deal with the issues properly.

**Mr Johnston:**

The differential commencement would let us arrive at that kind of situation. It is two different ways of arriving at the same thing.

**The Chairperson:**

Members, does anyone wish to add anything? Mr Johnston, you heard what was said around the table. Do you wish to come back on anything?

**Mr Johnston:**

Again, we will think further. As I said, we have thought further about that provision at various stages of the consideration.

**The Chairperson:**

We shall move on, because the rest of it has been dealt with. We are now at chapter 3, “Alcohol on Vehicles Travelling to Regulated Match”.

**Mr Johnston:**

We have two amendments to propose. There is a divergence of views between the sports on alcohol on vehicles. In football, the IFA and the Association of Official Northern Ireland Supporters’ Clubs gave the Minister a joint paper that suggested that the offence of having alcohol on vehicles going to and from a match should be dropped. However, the GAA indicated that it would welcome the offence for people travelling to matches and that it would be a useful part of the armoury. So, we are trying to reconcile different views.

To address some of the scenarios raised by the Committee, we propose that we omit the words “or from” from clause 44(1)(b), which would mean that alcohol would be restricted on buses travelling to a match but that there would be no restrictions on the way home. We feel that that would balance the safety issues that arise when people turn up tanked up. Whether or not they are allowed into the ground, there can still be safety issues at the turnstiles and outside the

ground. The Bill would state that when you are going home, it is up to you whether you drink.

The other proposed amendment is that, in clause 44(5), the offence of being drunk in a vehicle, to which the Committee previously drew particular attention, will be dropped. There are already provisions on drinking on public transport, particularly on trains, and we accept that subsection (5) is not a necessary part of the overall scheme of the legislation.

**The Chairperson:**

Are members content with that? Do you wish to comment?

**Mr O'Dowd:**

On the way home, there might not be anybody on the bus, because they will all have been arrested for the other offences that they have committed. So, the bus will be empty anyway.

*[Laughter.]*

**The Chairperson:**

We have to assume that the bus is full.

**Mr Johnston:**

And so are the occupants. *[Laughter.]*

**Mr McDevitt:**

It would be only fair to acknowledge that those were the two issues that I raised. I mentioned the scenario of going to the pub for a few pints after the match and, in a very responsible fashion, getting on the bus to be driven home. Dropping subsection (5) would deal with that. The other issue that I raised was about coming from a match.

**The Chairperson:**

The one consolation for the Committee is that members will not be making a decision on this today. However, we will next week, so, in the meantime, having heard what the officials had to say, members can turn the matter over in their minds.

Ken Robinson suggested that, although Translink has its own by-laws covering alcohol on trains, perhaps it would be helpful to expand clause 44 to cover trains as well.

Turning to the Public Prosecution Service (PPS), the summary paper states that:

“The PPS cites the proposed offence in Clause 44 as a further example of difficulty in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt.”

The Ulster GAA also had something to say. The paper states that:

“A cross-jurisdictional partnership with the relevant authorities is important and clarity was sought on the operational function of any cross jurisdictional co-operation on the policing of such matters.”

Members, you will be thinking those things through between now and next week, which is when you will make the actual decision. We have heard the officials’ thinking on those issues today.

**Mr McCartney:**

The observation made by the PPS has to be considered.

**The Chairperson:**

It is quite telling.

**Mr McCartney:**

If the PPS is telling you that it has reservations, I cannot see how this matter is going to be processed.

**Mr Johnston:**

We are unsighted on the PPS point. We will check up on that for next time.

**The Chairperson:**

We will move on to chapter four, which deals with ticket touts at regulated matches. The Committee paper states that:

“The CAL Committee questions the need for this clause which is not relevant to local conditions. However, the pressure on capacity caused by health and safety regulations may require greater flexibility.”

The paper goes on to say that the Amalgamation of Official Northern Ireland Supporters’

Clubs:

“supports the introduction of laws to tackle ticket touting. However, it believes that any legislation should be extended to include Rugby, GAA or indeed all sports.”

We also have some more comments from Mr Ken Robinson.

**Mr Johnston:**

The need for clause 45 has been subject to particular questioning. We and DCAL have had further discussions with the IFA and the Amalgamation of Official Northern Ireland Supporters’ Clubs, which have got together to discuss the matter. The Minister has had a joint communication from them, which states:

“The IFA believe that controls on the sale of tickets and segregation of rival fans can be addressed adequately by initiatives developed by the IFA, in conjunction with Member Clubs. The IFA will make a commitment to reviewing the way tickets are distributed and sold for domestic games, with a view to implementing new regulations for the start of the 2011/12 season. The purpose of these regulations will be to ensure that clubs can control and account for any tickets sold on their behalf.”

In light of the commitment that is being made to a new system of self-regulation, and in light of the various other comments made in Committee, the Minister proposes to remove clause 45.

**The Chairperson:**

I am sure that we can agree with that.

We will move on to clause 46 and chapter 5, which deals with banning orders in relation to regulated matches. The Committee for Culture, Arts and Leisure agreed that banning orders should be extended to include all categories of matches, not just regulated matches, and to other jurisdictions. Does any member wish to comment on that? Do any of the officials?

**Mr Johnston:**

We would have liked to have extended the banning orders so that people would be banned from attending external fixtures outside the jurisdiction, but we came up against the problem of competence because extraterritorial aspects were involved. It is a point that the IFA and the amalgamation raised in their joint response. We have been exploring it with the draftsmen and the lawyers, but I am afraid we have not been able to come up with a way of doing it that would satisfy those competence concerns in the time available. However, we are certainly happy to keep the matter under review to see if that extraterritorial provision can be included in future

legislation.

**The Chairperson:**

Do banning orders in Scotland and England not apply here?

**Mr Johnston:**

My understanding is that they do.

**The Chairperson:**

Why can we not do it then?

**Mr Johnston:**

As I said, we are going on the advice that we are receiving from lawyers locally.

**The Chairperson:**

And they are quite explicit about that, is that right?

**Mr Johnston:**

Certainly, we have had fairly firm advice. It is not that there may not be a way of doing it, but the advice was that the way in which it was being done in earlier proposals could fall foul of the Assembly's competence.

**Mr O'Dowd:**

I want to know about the mechanics of this. If somebody is brought before a court and found guilty of a serious assault or an offence of a violent nature, would that court also deal with the banning order or would the individual be brought before another court?

**Mr Haire:**

It would be dealt with at the same time.

**Mr O'Dowd:**

It would be up to the prosecution to apply for a banning order. Would there be a charge?

**Mr Haire:**

I think that there would be an application, although that is not the terminology for it. We would only be creating banning orders to be used in conjunction with a criminal conviction.

**Mr O'Dowd:**

So, the individual would be convicted and the prosecution would then apply for a banning order to be placed on that individual.

**The Chairperson:**

Does anyone else wish to comment? Are we aware of any challenges in England and Scotland?

**Mr Johnston:**

If you mean challenges to the extraterritorial aspect; no, we are not aware of any challenges, although I am not sure whether it has been used very much in Scotland to cover matches outside the jurisdiction.

**The Chairperson:**

OK. Let us move on then. Clause 47 is entitled, "Banning orders: content". Does anyone wish to comment on anything? If not, we will move on to clause 55.

**Mr Johnston:**

It is only a technical point; on clause 49, a consequential amendment is needed to clarify that "disorder" can include sectarianism, and that comes from the reference to sectarianism. I should also say that clause 49(3) is a mistake, which will be removed. It is just a carry-over from an earlier draft.

**The Chairperson:**

Some members were insinuating that other clauses are a mistake, too.

We move to clause 55, which deals with powers of enforcement. The summary paper states:

"The CAL Committee was content with the clause, subject to due consideration of the concerns raised by stakeholders in written and oral submissions to the Committee for Justice. In addition to PSNI Constable the Committee recommend the

inclusion of an authorised person to cover circumstances when there is no visible PSNI presence.”

Therefore, if the policeman cannot go himself, he can send his wife.

**Mr Johnston:**

Giving authorised persons the powers to search in the same way as a police constable would be quite a big step.

**The Chairperson:**

I draw members’ attention to what the PPS said, which is included in the paper. This is a significant sentence:

“The PPS stated that confidence in the administration of justice is liable to be undermined where difficulties of proof lead to under-usage of the offence or a disproportionate number of acquittals. Specific points raised by the PPS are included under the relevant clause.”

It said other things as well, which you can see for yourselves, but I just wanted to draw your attention to that. Mr Johnston or Mr Haire, do you wish to comment?

**Mr Johnston:**

I do not see why there would be a disproportionate number of acquittals as a result of the legislation. It is like anything else; you gather evidence and then decide whether the test for prosecution has been satisfied. In fact, the PPS has a very good strike rate when it comes to getting convictions.

**The Chairperson:**

Members have heard what the officials said. Does anyone want to comment?

**Mr O’Dowd:**

Do you have a rough estimate of how often the legislation has been used in England or Scotland?

**Mr Haire:**

I have some figures. At any one time, around 3,000 banning orders are in place in England and Wales. In Scotland, there are upwards of 100.



**Mr O’Dowd:**

Banning orders?

**The Chairperson:**

There are 3,000?

**Mr Haire:**

Those are the figures that we have for English football banning orders.

**The Chairperson:**

Last but by no means least, schedule 5, “Transitional and saving provisions”. There were no specific comments about this schedule last time. Paragraph 3 of the schedule states that:

“A banning order may not be made under section 46 where the offence mentioned in subsection (1) of that section was committed before the commencement of that section.”

**Mr Johnston:**

Those are the normal restrictions on the retrospectivity of criminal law. It is, effectively, a European Convention on Human Rights point.

**The Chairperson:**

Does any member wish to comment? If not, we will end there. Thank you, Mr Johnston and Mr Haire, for your attendance, advice and explanations. We do appreciate it.