Committee for Justice

Report on the Justice Bill (NIA 1/10) – Volume 2

Written Submissions and Other Memoranda and Papers

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Session 2010/2011

First Report

Membership and Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 46.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant subordinate legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquires and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of Justice.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 13 April 2010 has been as follows:

- Lord Morrow (Chairman)
- Mr Raymond McCartney (Deputy Chairman)
- Lord Browne3
- Mr Thomas Buchanan4
- Lord Empey5
- Mr Paul Givan2
- Mr Alban Maginness
- Mr Conall McDevitt1
- Mr David McNarry

- Ms Carál Ní Chuilín
- Mr John O'Dowd

1. With effect from 24 May 2010 Mr Conall McDevitt replaced Mrs Dolores Kelly.
With effect from 11th June 2010 the Rt. Hon Jeffrey Donaldson resigned as an MLA and hence ceased to be a Member of the Committee

2. With effect from 28th June 2010 Mr Paul Givan replaced the Rt. Hon Jeffrey Donaldson as a Member of the Committee.
With effect from 25th June 2010 Mr Alastair Ross resigned as a Member of the Committee.
With effect from 21st July 2010 Mr Jonathan Bell resigned as a Member of the Committee.

3. With effect from 13th September 2010 Lord Browne was appointed as a Member of the Committee.

4. With effect from 13th September 2010 Mr Thomas Buchanan was appointed as a Member of the Committee.

5. With effect from 8th November 2010 Lord Empey replaced Mr Tom Elliott.

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List of abbreviations and acronyms used in the report

ALB	Arm's length body
AONISC	Amalgamation of Official Northern Ireland Supporters Clubs
BIRW	British Irish Rights Watch
CAL Committee	Assembly Committee for Culture, Arts and Leisure
CDRP	Crime and Disorder Reduction Partnership
CFO	Court Funds Office
CJINI	Criminal Justice Inspection Northern Ireland
Cllr.	Councillor
CPLC	Community and Police Liaison Committee
CSP	Community Safety Partnership
DCAL	Department of Culture, Arts and Leisure
DFP	Department of Finance and Personnel
DoJ	Department of Justice
DPCSP	District Policing and Community Safety Partnership
DPP	District Policing Partnership
ECHR	European Convention on Human Rights or European Court of Human Rights
EU	European Union
FPN	Fixed Penalty Notice
GAA	Gaelic Athletic Association
HMT	Her Majesty's Treasury
IDeA	Improvement and Development Agency for Local Government
IFA	Irish Football Association
IRFU	Irish Rugby Football Union
LFA	Litigation Funding Agreement
MLA	Member of the Legislative Assembly
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICF	Northern Ireland Consolidated Fund
NICTS	Northern Ireland Courts and Tribunals Service
NIHRC	Northern Ireland Human Rights Commission
NILGA	Northern Ireland Local Government Association
PACE	Police and Criminal Evidence Act 1984
PACT	Police Partners and Community Together
PBNI	Probation Board for Northern Ireland
PCSP	Policing and Community Safety Partnership
PND	Penalty Notice for Disorder

PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
RDCO	Recovery of Defence Costs Order
RMO	Responsible/Resident Medical Officer
SOLACE	Society of Local Authority Chief Executives
WSN	Women's Support Network

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Amalgamation of Official Northern Ireland Supporters Clubs

Lord Morrow MLA
Chair
Committee for Justice
Room 242
Parliament Buildings
Stormont
Belfast
BT4 3XX 27th October 2010

Dear Lord Morrow

Proposed Justice Bill: New sports law and spectator controls

Under the forthcoming Justice Bill, it is the intention of the Department of Justice to include provisions relating to spectators at designated Football, GAA and Rugby matches. The Amalgamation of Official Northern Ireland Supporters Clubs (AONISC) broadly welcomes the proposals by the Minister for Justice to introduce specific legislation on spectator controls to Northern Ireland. The AONISC believes that it is important that the legislation covering spectating at sports events in Northern Ireland is line with the rest of the UK. The AONISC believe that the proposed legislation could act as an effective deterrent and encourage people to behave in a responsible fashion, which can only promote a safe and welcoming atmosphere for those attending all sports, but football matches in particular.

However, the AONISC remains concerned with fundamental aspects of the proposals and feels that the Department of Justice has not taken on board the concerns of the football fans and clubs in Northern Ireland. In particular, we are concerned that elements of the proposals are unnecessary, superfluous and could have severe ramifications for the future of football socials clubs and viewing lounges. I have attached a copy of the AONISC response to the initial consultation, which outlines the broad concerns of football fans in Northern Ireland.

We are keen to ensure that legislation is put in place that would be to the benefit of the fans of all the sports concerned. The AONISC strongly support this viewpoint. However, football in Northern Ireland require controls that are tailored to the local game, not offences that are taken by and large from pieces of English and Welsh legislation, designed to combat endemic, large scale hooliganism.

As the Bill moves to Committee Stage, the AONISC would welcome an opportunity to discuss these proposals with your fellow members.

Yours sincerely,

Gary McAllister

Chairman
Amalgamation of Official Northern Ireland Supporters Clubs

c/o 21 Enfield Parade
Woodvale Road
BELFAST

BT13 3DX

Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
BELFAST
BT4 3SX 30th November 2009

Dear Sir/Madam,

Sports Law and Spectator Controls – Public Consultation

Please find attached at Annex A, a response to the Northern Ireland Office public consultation on proposals for new sports laws and spectator controls from the Amalgamation of Official Northern Ireland Supporters' Clubs (AONISC).

I would be grateful if you could acknowledge receipt of this consultation response, either in writing to the address above or by return email: wgmacwoodvalepostoffice@yahoo.co.uk

Yours sincerely,

Gary McAllister

Press Officer for the AONISC

Annex A

Introduction

1.1 This response to the Northern Ireland Office (NIO) consultation on proposals for sports law and spectator controls ("the consultation") is submitted for and on behalf of the Amalgamation of Official Northern Ireland Supporters Clubs ("the AONISC").

1.2 The AONISC is an umbrella organisation made up of over 60 clubs, which in turn represents some 2,000 supporters of the Northern Ireland international football team. The AONISC is recognised as the official voice of the Northern Ireland supporters by the Irish Football Association (IFA). The AONISC regularly liaises with the IFA, wider football governing bodies, Government, public authorities and other fan groups to articulate the views of fans.

1.3 The AONISC has been at the forefront of improving the supporter experience for Northern Ireland fans attending international matches at both home and abroad. All member clubs adhere to and promote the IFA's Football for All campaign, which endeavours to provide an environment which values and enables the full involvement of all people, in all aspects and at every level of

Northern Ireland football, regardless of perceived cultural identity, political affiliation or religious beliefs.

1.4 Whilst the AONISC does not claim to collectively represent the fans of individual domestic football clubs across Northern Ireland, this response will cover all proposals in the consultation relating to domestic league and cup games as well as international football matches.

1.5 To the extent that the AONISC has not addressed all issues raised in the consultation, or all initial proposals put forward by the NIO, the AONISC is not to be taken as agreeing with, or accepting any issues or initial conclusions which it has not directly addressed.

1.6 The AONISC would be happy to meet with the NIO to discuss any aspect of this response or any other issues that may affect the AONISC and members arising out of the consultation and/or any future action by the NIO in relation to the introduction of sports law and spectator controls.

Overarching Views

2.1 The AONISC broadly welcomes the proposal by the NIO to introduce specific legislation on spectator controls to Northern Ireland. The AONISC believes that it is important that the legislation covering spectating at sports events in Northern Ireland is line with the rest of the UK. The AONISC believe that the proposed legislation could act as an effective deterrent and encourage people to behave in a responsible fashion, which can only promote a safe and welcoming atmosphere for those attending all sports, but football matches in particular.

2.2 The AONISC appreciates the fact that the consultation acknowledges that incidents of crowd trouble at sporting events in Northern Ireland are rare. The AONISC would like to reinforce the fact that disorder at football matches in Northern Ireland, or where Northern Ireland football fans are involved is an exceptional occurrence.

2.3 The AONISC believes that the sport should be referred to as 'football' or 'association football'. This is would reflect the wording used in similar legislation in other parts of the UK, in particular the Football Spectators Act 1989, Football (Offences) Act 1991 and Football (Offences and Disorder) Act 1999.

2.4 Given that the legislation and new offences proposed by the NIO are applicable to Rugby, GAA and football, the AONISC is concerned that the majority of the consultation appears to focus largely on football. The AONISC would strongly contend this and the fact that many of the offences outlined in the proposals are not exclusive to football and may also be relevant to Rugby and GAA.

2.5 There is a responsibility upon Government to help increase public confidence in the sport of football, to encourage people to participate within the sport as a player, coach, official or spectator. Drafting legislation in such a way as would portray football as the only sport with problems serves only to undermine those who work hard to facilitate and promote football in Northern Ireland.

Offences of Offensive Chanting, Missile Throwing and Unauthorised Pitch Incursion

3.1 The AONISC welcomes the proposals to create offences that will cover offensive chanting, missile throwing and unauthorised pitch incursion.

3.2 In paragraph 4.8 of the consultation, the document refers to an independent football fans survey carried out in 2004 by the Department of Culture Arts and Leisure (DCAL), which "identified strong evidence of...sectarianism and racism at both International and Irish League matches." The AONISC would contend that, in partnership with the IFA, the Football for All campaign has essentially eradicated sectarianism and racism at International football matches; incidents of sectarianism and racism are very isolated. Indeed, if you analyse the 2004 DCAL survey, you will note that the majority of respondents saw evidence of 'little' or 'no' sectarianism at international or Irish league matches. The AONISC was involved in the commissioning of this report and would point out that this was a 'perception' of sectarianism rather than sectarianism actually occurring.

3.3 Under the Football Offences Act 1991, it is an offence for anyone at a football match to go on to the playing area or any adjacent area to which they have lawful authority or excuse for a period of two hours before kick off and until one hour after the match has ended. If similar legislation is introduced in Northern Ireland, the AONISC would like reassurance that the "lawful authority or 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.

Offences Relating to Alcohol Being Drunk, Having Bottles and Flares at Sporting Events and in Transport to and From Matches

4.1 The AONISC believes that in order for any potential legislation to be clear and workable, the definition of the word 'drunk' needs to be explicit, given that there are ranges of drunkenness i.e. mildly to disorderly/out-of-control. It is possible to be over the legal limit for driving yet behave totally responsibly at a football match; unacceptable behaviour is the crime, not the amount of alcohol one has consumed.

4.2 The AONISC has concerns about alcohol being banned on buses travelling to designated football matches, especially international matches involving the Northern Ireland national team. These matches tend not to be contentious in any shape or form, plus the period of time spent travelling is quite often relatively short, given the compact geography of Northern Ireland. Therefore, football fans in Northern Ireland would not have the scope to drink for long periods of time on any form of transport in the same way football fans travelling across England or Wales would have.

4.3 Furthermore, banning the consumption of alcohol on transport to football games will not eliminate the potential for drunken behaviour in or around football matches. The introduction of a ban on drinking alcohol on any transport to a football match will not stop individual fans from drinking for prolonged periods in bars or public houses in the vicinity of the football ground. Indeed, there is the distinct possibility that fans drinking in bars close to any sporting venue have a greater potential to become drunk than any fan arriving by some form of transport. The AONISC would urge the NIO to re-consider this area and introduce provisions that are commensurate to the nature of Northern Ireland.

4.4 In addition, the AONISC has concerns about introducing a ban on selling alcohol at licensed premises within the stadium at designated sporting events. These facilities are vital income generators for many football teams across Northern Ireland. In many cases the sale of alcohol before, during and after the match is a major element of match day revenue. Can the assumption be made that opening times within existing licensing conditions for clubs in football grounds will still be relevant?

4.5 The AONISC notes that different criteria exist for 'private' lounges at grounds. As the definition of what constitutes "private" is not clear, the AONISC will assume that this stipulation

will mean that viewing lounges and social clubs within football grounds across Northern Ireland will be prohibited from serving alcohol during matches. This will undoubtedly have a detrimental effect on the future of viewing lounges, social clubs and corporate areas.

4.6 The AONISC would strongly urge the NIO to exempt football viewing lounges and social clubs from any proposed legislation.

Offence of Ticket Touting

5.1 The AONISC supports the introduction of laws to tackle ticket touting. However, we believe that any legislation this should be extended to include Rugby, GAA or indeed all sports. The AONISC welcomes the proposals in general terms as a means of deterring criminality and promoting public confidence.

Football Banning Orders

6.1 The AONISC supports the introduction of banning orders for football supporters but only in certain circumstances. For example, the AONISC would support the introduction of banning orders where individuals have been engaged in a violent act.

6.2 The AONISC would appreciate clarification if offences committed in other jurisdictions outside of the UK could be used as grounds to enforce a banning order. The AONISC concerns emanate from the experience of fans who attended an away match in Latvia during the last European Championship qualifiers, where a sizeable number of fans experienced hostile and unjust treatment from local police.

6.3 The AONISC supports the NIO assertion that making individuals who intend to travel abroad to a football fixture, surrender their passports would be ineffective in Northern Ireland, given that all citizens have the potential to hold dual nationality with the Republic of Ireland. The AONISC favour the method advocated of making the individual having to present themselves to a police station at the time of the match, rather than surrendering their passport.

6.4 The AONISC also feels that banning orders should not be restricted to football, as a ban on attendance at a particular sporting event is achievable by the local authorities.

Equality and Regulatory Impact

7.1 The independent football fans survey commissioned by DCAL in 2004 found that 85% of fans attending Northern Ireland international matches and 78% of fans attending Irish League matches were male and protestant. Given that the overwhelming focus of the NIO proposals affect domestic and international football matches, the AONISC would assert that it is essential that an Equality Impact Assessment is completed to ensure that this section of the community is not unfairly discriminated against by any new legislation.

Erratums

8.1 The definition of some of the football outlined in section 8 of the consultation competitions is incorrect. For example, there is no Premier League; it is now the IFA Premiership. In a similar vein, there is no First Division; it is now titled IFA Championship 1.

8.2 The reference in the table in Section 8 to "transport from Northern Ireland to matches played outside Northern Ireland involving teams listed above" does not appear to make sense

since no teams are listed in the section above. The AONISC believes that there should be a clearer definition of the list of events and it should also be made clear if this involves those travelling to English and Scottish football matches.

8.3 The list of sporting events listed in Section 8 does not include any domestic football cup competitions. This would appear to be an oversight, given that domestic league matches are covered.

Conclusion

9.1 The AONISC believes that the introduction of legislation which takes account of the concerns articulated in this consultation response, will only serve to enhance the spectator experience at Northern Ireland sporting events.

9.2 However, the AONISC assert that any proposals will not be workable unless there is adequate stewarding at sporting events, especially football. We argue that stewards at sporting events and football matches in particular must be given the same powers as exist in the rest of the UK i.e. their instructions must be obeyed, and they should have the proper support from the Police Service of Northern Ireland. We do presently believe that the level of stewarding at Northern Ireland matches is inadequate.

9.3 The AONISC believes that the banning of alcohol whilst travelling to matches is unreasonable in a Northern Ireland context.

9.4 The AONISC does not accept the premise that unacceptable behaviour at football matches is a direct result of alcohol being available in social clubs/Viewing lounges. Clarification is needed on the term 'private' clubs. Clarification is also needed on the definition of the word 'drunk'.

Antrim Borough Council, District Policing Partnership and Community Safety Partnership

Christine Darrah
Clerk to the Committee for Justice
Room 242, Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

17 November 2010

Dear Ms Darrah

Response to Justice (NI) Bill 2010 Consultation

Antrim Borough Council, Antrim District Policing Partnership and Antrim Community Safety Partnership have agreed the following response to the consultation on the Justice (NI) Bill 2010 from all members. This response will deal solely with Part 3 of the Bill and its provisions in relation to the introduction of Policing and Community Safety Partnerships (PCSPs)

As stated in the response to the consultation on Local Partnership Working on Policing and Community, members welcome the principle of a single integrated partnership. However, members are concerned that the Bill does not go far enough in creating a truly cohesive single partnership with shared responsibility for safer communities.

Oversight and Accountability

Members recognise the need for a structured reporting mechanism between the PCSP, Council and the Joint Committee regarding the exercising of its functions as indicated in clauses 24 and 27 of the bill. However, members do not believe it is necessary to have a separate line of accountability directly from the Policing Committee to the Northern Ireland Policing Board as indicated in clauses 30, 33 and 35 and question the added value of this.

Members recognise the need for the Policing Committee to carry out particular functions legislated for in relation to monitoring the police, however they believe that these functions should be reported through the Joint Committee which will have representation from both the NI Policing Board and the Department of Justice.

Members do not feel that it is acceptable that Councils have statutory responsibility for delivering the functions of the PCSP and in particular the restricted functions of the Policing Committee, but that the Policing Committee appears to by-pass Council in its accountability and reporting mechanism.

Members feel that having separate lines of accountability for different functions within the new PCSP will compound the current separation of the functions and will foster a 'them and us' attitude within the PCSP.

Finance

Members are concerned with the lack of clarity in the Bill on the financial arrangements for the new PCSP's.

Schedule 1 Paragraph 17 states that "the department and the Policing Board may for each financial year make to the council a grant towards the expenses incurred by the council in that year in connection with the establishment of, or the exercise of functions by, PCSPs.

However, the Police (NI) Act 2000 Schedule 3 Paragraph 11 under which DPPs were established states "The Board shall for each financial year make to the council a grant equal to three-quarters of the expenses reasonably incurred by the council in that year in connection with the establishment of, or the exercise of functions by, a DPP.

Members feel that as Councils have the statutory responsibility to deliver on the arrangements for the PCSPs, there should be legal clarity on the financial support available for them to do this. Members feel that in the current economic climate, it is not acceptable that the financial arrangements for the new PCSPs are unclear. Members believe there needs to be absolute clarify to ensure confidence in the new PCSPs and to attract a high calibre of people.

Duty on Public Bodies

Members welcome the inclusion of the duty on public bodies to consider community safety implications in exercising their duties as provided for in clause 34 and believe this duty is absolutely essential if the PCSP is to have the capacity to deliver local solutions to local problems. At present, the participation of statutory organisations in CSPs is very much dependent on the individual officers' willingness and capacity to participate rather than an organisational directive. Therefore, members believe it is essential for the ethos of this clause to be negotiated at the highest ministerial level between departments, to establish a strategic commitment to considering crime and community safety implications in the exercising of the functions of statutory organisations.

Designated Organisations

Members are concerned with the arrangements for the appointment of designated organisations, in that under Schedule 1 paragraph 7 of the Bill it will actually be the 'policing committee' which will be appointing the designated organisations as the PCSP as a whole will not exist at that point. Members feel that as Council has statutory responsibility for the delivery of the functions of the PCSP, it should be responsible for providing representation on the PCSP from designated organisations. This would provide for a more co-ordinated way of complying with the legislation and would allow for a closer alignment of the aims and objectives of Council and the PCSP with a view to moving seamlessly into a Community Planning Framework.

Allowances

Members appreciate the economic sensitivities in the current climate surrounding the significant amount of money paid to current DPP members in the form of allowances. Members also agree strongly that the highest portion of funding should be available for the delivery of front line services to make communities safer.

However, members feel that a 'one size fits all' approach to members' allowances does not reflect the different circumstances of each individual/organisation that would be represented on the new PCSP. Some members of the PCSP will be there representing statutory or voluntary organisations and therefore may already be receiving payment for their participation. However, other members of the PCSP will be there in their capacity as individuals representing their communities and will not be receiving payment for their participation.

Members note that the payment of allowances to members of the Northern Ireland Policing Board by virtue of Schedule 1 paragraph 12 of the Police 2000 Act has not been repealed and that this raises issues of equality between members of the Northern Ireland Policing Board and members of District Policing Partnerships and consequently the PCSPs.

Members also note that Schedule 1 paragraph 4(12) provides for the payment of expenses to independent members of the PCSP however there appears to be no similar provision for the payment of expenses to political members under paragraph 3 and indeed representatives from designated organisations who may not be receiving payment for their participation.

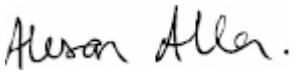
Equality

Members are concerned about how the PCSP will carry out its equality duties as a public body in its own right. Schedule 1 paragraph 4(2) provides that the NI Policing Board shall appoint independent members to be representative of the community in the PCSP's police district. This would indicate that the Policing Board shall have responsibility for fulfilling the equality duties of the 'Policing Committee' in relation to membership. However, the 'Policing Committee' on its own is not a designated public body and as such does not have any legal equality duties. The PCSP as

a whole will be the designated public body and will have to report annually to the Equality Commission on how it has carried out its duties in relation to Section 75. Members feel that it is important to clarify who has responsibility for legislative compliance with regard to equality, as it is not possible for both the Policing Committee and the main PCSP to apply an equality duty to their individual memberships separately and without reference to the other.

Antrim Borough Council, Antrim District Policing Partnership and Antrim Community Safety Partnership remain fully committed to the concept of a single integrated partnership to replace the existing functions of the DPP and CSP. Members welcome the introduction of the Justice (NI) Bill 2010 to the Assembly and in particular Part 3 in relation to Policing and Community Safety Partnership. However, members would question whether provisions within the Bill will actually foster the spirit of true partnership working between what would be the old DPP and CSP. Members also question whether the Bill has got the right balance between monitoring the police and actually being able to deliver front line services. Members assert very strongly that any PCSP as established within the legislation must be fit for purpose at a local level and questions whether it would appropriate to conduct an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new PCSPs.

Yours sincerely



Alison Allen

Partnership Manager
On behalf of Antrim Borough Council, Antrim DPP and Antrim CSP

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Ards Community Safety Partnership

The Committee Clerk
Room 242
Parliament Buildings
Stormont
Belfast
BT4 3XX 17th November 2010

Dear Sir/Madam

At a meeting of Ards Community Safety Partnership held on 17th November 2010 the Justice (NI) Bill was discussed.

It was agreed that the following response be submitted in response to the request for comments to the Bill.

Clause 20 (1)

Concern is expressed that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

Clause 21 (1)

Overall the functions are too similar to the Police Act and therefore are very police originated. Ards Community Safety Partnership is concerned that community safety has not been legislated for outside of the policing arena. In addition, multi-agency working has been neglected within these proposed functions. The role of the police may also be perceived as being monitored rather than working in partnership. Finally, the PCSP is unbalanced in terms of delivery to the community.

Clause 21 (2)

The Partnership would query how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (2c) should not be restricted to the policing committee but rather to the whole partnership.

Clause 23 (3)

Many of the proposed provisions refer to practices which are currently taking place within the DPP model under the Police Act. However, no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation.

In addition, this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to.

It is recommended that the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24

Accountability remains with three bodies, namely the Joint Committee, Northern Ireland Policing Board and the Council, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may lead to conflicting targets and requests.

Clause 24 (5)

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation the area commander.

Clause 30

The Partnership has concern that the policing committee can operate independently from the overall partnership with no legislative requirement to report back to the partnership.

Clause 33

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the committee should be able to establish any body.

In addition, there is a fear that the establishment of bodies may be a duplication of the role of community development department of Council.

Clause 34

Although this function is welcome, given the extremely positive response from the recent consultation, it is recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

Clause 35

As previously outlined, this clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Schedule 1

Paragraph 4 (2)

The Partnership would query why the Policing Board is responsible for the election of independent members and, given it is in the region of £24,000 (totalling at least £600,000 across Northern Ireland), cost savings could be enhanced by the local Council being responsible for this recruitment.

Paragraph 4 (3)

It should be queried if the demographics of all partners being taken into account would be appropriate and that this item should say that 'In appointing independent members the Council shall so far as is practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

Paragraph 4 (12)

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

Paragraph 6 (3)

Clarification is required on which organisation the equality responsibility applies to.

Paragraph 7

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

Paragraph 13 (5)

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

Paragraph 17

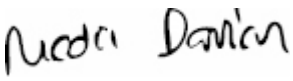
This paragraph needs to be amended to reflect that the two bodes 'should' (or shall) rather than 'may' provide a grant.

Other issues to consider:

There is no mention of the community and voluntary sector in this legislation, which currently contributes to the Community Safety Partnership.

The Council should be responsible for the decision on the make-up of the PCSP. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Yours faithfully



Nicola Dorrian

Community Safety Manager

Ballymena Borough Council

Development, Leisure and Cultural Services

Justice (Northern Ireland) Bill
Consultation Response

Following consideration of the above Bill Ballymena Borough Council considers that the following issues should be clarified/re-examined before the final reading of the Bill.

Part 3 Policing & Community Safety Partnership

- Three parties (Council, Policing Board & Joint Committee) are listed in the Bill as reporting lines for the PCSP Section 24, 27 & 30. Council considers it would be more appropriate to have one primary reporting line for all the functions of the proposed partnership.
- Section 34 of the Bill, places a statutory duty on all Public Bodies to exercise their functions with due regard to a number of issues in relation to Community Safety. This Clause must remain and indeed should be strengthened to enable the PCSP to be fit for purpose.
- Schedule 1, paragraph 4 (12) provides for the payment of expenses which the Council may make to independent members of the PCSP however there is no similar provision under paragraph 3 that relates to political members. Accordingly it is suggested that the Bill should include similar provision in respect of expenses from any grant provided under paragraph 17 as at present Special Responsibility Allowances paid to members do not extend to PCSP's.
- No set allowance from Central Government is being agreed whereas the current financial arrangements have a 75/25 split. This would cause members concern, who would not wish the Council to add additional demand on ratepayers to fund third party organisations previously funded by central government.
- There will be a Joint Committee of The Department of Justice and the Policing Board to set strategic directions, channel funding, issue Codes of Practice and act as an accountability forum. While councils are being asked to be a major funder they will have no role on the Joint Committee. The Justice Committee must re-examine the structure of the Joint Committee.
- Clarity is sought regarding the arrangements for the dissolution of DPP's and CSP's and the formation of the new body (PCSP), during 'the transition period' defined under Schedule 1, paragraph (4).
- 'District Policing and Community Safety Partnerships' (DPCSPs) are to be established in Belfast. As the Bill allows two or more Councils (by agreement) to establish a single PCSP, will such areas where agreements are established be able to be set up, as part of a collaborative approach.
- The role of local Councils has not been clearly articulated. Will this be set in local government legislation and what exactly is the role of Councils within the proposed structure?
- Clarification is sought as to the level of accountability and oversight that will rest with Council and as to whether the Chief Executive would act as the Accounting Officer for the PCSP.

Part 4 Sport – Chapter 1

- Clause 20 Regulated Matches will reduce the potential for the clubs to generate income and thereby affects the long-term development and sustainability of clubs. The legislation fails to take into consideration the design and structure of individual facilities nor the existing safety record and procedures in place at different venues.

- Clause 42 Possession of Drink Containers adds a further layer of legislation in addition to the recent introduction of the Stadia Safety Certificate. The legislation stops short of defining how these issues will be managed, how they will be enforced and who will be accountable. Again this will impact on the long-term development and sustainability of local clubs and does not take account of local circumstances.

Council would seek clarification on the above matters and ask the committee to review the proposals in light of the issues raised. It is of significant concern to Council that the proposed legislation allows limited input form Council however places substantive responsibilities on local government.

Aidan Donnelly
Assistant Director
Development, Leisure and Cultural Services Department

24 November 2010

Ballymena Community Safety Partnership

Justice (Northern Ireland) Bill
Part 3 Policing and Community Safety Partnerships

The following comments are being provided on behalf of all Ballymena Community Safety Partnership

Clause 20 (1) – page 16

There is concern that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

Recommendation: That the Justice Committee re-examine the proposed title

Clause 21 (1) – page 17

Overall the functions are too similar to the Police Act and therefore are very police orientated. There is concern that community safety hasn't been legislated for outside of the policing arena. In addition, multi-agency working has been neglected within these proposed functions. The role of the police may also be perceived as being monitored rather than working in partnership. Finally the PCSP is unbalanced in terms of not enough emphasis on delivery to the community.

Recommendation: That the Justice Committee re-examine the proposed functions

Clause 21 (2) – page 17 & 18

There is a query as to how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (2c) should not be restricted to the policing committee but rather to the whole partnership.

Clause 21 (3) (page 18) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

Recommendation: That the Justice Committee re-examine the proposed functions

Clause 23 (3) – page 19

Many of the proposed provisions refer to practices, which are currently taking place within the DPP model under the Police Act. However no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation.

In addition, this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices, to which the overall partnership will have to adhere.

Recommendation: That the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24 – page 20

Accountability remains to 3 bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests.

Recommendation: That the Justice Committee re-examine the lines of accountability so that they are simplified

Clause 24 (5) – page 20

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

Recommendation: That item 24 (5) be removed

Clause 30 – page 22

There is concern that the policing committee can operate independently from the overall partnership with no legislative requirement to report back to the partnership.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the committee should be able to establish any body.

In addition, there is a fear that the establishment of bodies may be a duplication of the role of community development department of Council.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Clause 34 – page 24

Although this function is welcome, given the extremely positive response from the recent consultation, it would be recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

Recommendation: That the Justice Committee look to strengthen this aspect of the Justice Bill so that the partnership is 'fit for purpose'

Clause 35 – page 25

As previously outlined, this clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Schedule 1

Paragraph 4 (2) – page 64

There is a query as to why the Policing Board is responsible for the election of independent members and, given it is in the region of £24,000 (totalling at least £600,000 across N.Ireland), cost savings could be enhanced by the local Council being responsible for this recruitment.

Recommendation: That the Justice Committee examine the potential cost savings of getting Council to recruit the independent members

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

Recommendation: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

Recommendation: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or PCSP?

Recommendation: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

Recommendation: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership.

Recommendation: That the Justice Committee re-examine the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodies 'should' rather than 'may' provide a grant.

Recommendation: That the Justice Committee amend paragraph 17 to the above wording

Other Issues to Consider:

There is no mention of community and voluntary in this legislation, organisations which currently make a significant contribution to CSPs.

The Council should be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Furthermore, CSMs assert very strongly that any PCSP as established within the legislation must be fit for purpose at a local level and questions whether it would appropriate to conduct an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new PCSPs.

Ballymena District Policing Partnership

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Ballymena
District Policing Partnership
Local people shaping local policing

Our Ref: DPP/PG/MM
Date: 15 November 2010

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST BT4 3XX

Dear Ms Darrah

Re: Justice (Northern Ireland) Bill

Ballymena District Policing Partnership considers that the following issues should be clarified before the final reading of the Bill:

- It is of concern that Section 22 (1-4) of the Police (Northern Ireland) Act 2000 is not included in the proposed Justice Bill, without which there is no requirement for the commander of each policing district to issue a 'local policing plan', and therefore the monitoring function of the 'policing committee' could be undermined.

- Three parties (Council, Policing Board & Joint Committee) are listed in the Bill as reporting lines for the PCSP/policing committee Section 24, 27 & 30, it would be more appropriate to have one primary reporting line for all the functions of the proposed partnership

- Section 34 of the Bill, which imposes a duty on public bodies to have 'regard' for community safety when exercising duties, this Section is not strong enough to ensure that relevant parties will meet this obligation and work in partnership with the PCSP to address community safety concerns.

- Schedule 1, paragraph 4(12) provides for the payment of expenses, which the Council may make to independent members of the PCSP however there is no similar provision under paragraph 3 that relates to political members. Accordingly it is suggested that the Bill should include similar provisions in paragraph 3, as in paragraph 4(12), in respect of expenses incurred by political members and thus allow the Council to recoup such expenses from any grant provided under paragraph 17.

- It is noted that there is no indication of the level of resources to be made available to Council under paragraph 17 in Schedule 1, whereas the current financial arrangements for DPPs specifies 75% or three quarters from the Policing Board. This would concern Elected Members, who would not wish the Council to add additional demands on ratepayers in order to fund something that previously was resourced centrally.

- In relation to Paragraph 17 in Schedule 1, it is noted that this will result in the cessation of allowances currently made to members of the DPPs. It is the view of members that the rationale for the payment of the current allowances under the 2000 Act have not changed under the Justice Bill, indeed it would appear that there will be additional demands. Members have made it clear that it would be unreasonable to expect this level of commitment without an allowance.

- Clarity is sought regarding the arrangements for the dissolution of DPPs and CSPs and the formation of the new body (PCSP), during 'the transition period' defined under Schedule 1, paragraph 1(4). Can we assume that prior to the constitution of the PCSP, the DPPs will continue to function as outlined in the District Policing Partnerships (Northern Ireland) Order 2005.

- Given that the Bill will impact on existing legislation referred to in the previous sections, clarification is required as to what amendments are likely to occur to relevant Acts or Orders as a result of this proposed legislation.

Ballymena District Policing Partnership looks forward to your response to the issues raised in this letter.

Yours sincerely

Peter Greenshields
DPP Manager

CC. Councillor James Currie, Chairman of Ballymena DPP
Mrs Delia Close, Vice Chair of Ballymena DPP

Ballymoney Community Safety Partnership

Response to the Justice (Northern Ireland) Bill: Part 3 Policing & Community Safety Partnerships

PART 3 Clause 20 (1) Name

The proposed name presents the wrong kind of image for the partnership, suggesting that the PSNI are the main partner. This is not representative of the other organisations which may make up the partnership and does not reflect the wider remit of the whole partnership.

Over half of the responses to the NIO Local Partnership Working in Policing & Community Safety consultation document suggested 'Safer XXXX' as a preferred title. Only 8 stakeholders (within 5 responses) suggested using 'Community and Policing Partnership' as the name. Therefore it is queried as to why 'Policing and Community Safety Partnership' was selected as the name.

Recommendation: The Justice Committee re-examine the proposed title.

Part 3, Clause 21 Functions of PCSP

Overall the functions reflect that in the current Police Act and do not highlight the work carried out by the CSPs. In addition, multi-agency working has been neglected within these proposed functions. The functions are unbalanced in terms of monitoring, consultation and delivery.

Recommendation: The Justice Committee re-examine the proposed functions.

Part 3. Clause 21 (2) Functions of PCSP

Ballymoney CSP would query how a partnership can be formed when there are functions which only pertain to one part of the model. We believe that this contradicts the spirit of true partnership working. In particular we query why Clause 21 (1c) is to be restricted to the policing committee and is not a function of the whole partnership.

Part 3. Clause 21 (3) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

Recommendation: The Justice Committee re-examine the proposed functions.

Part 3. Clauses 24, 27 & 30 Reporting

Requirement to report to 3 separate bodies (Council, Joint Committee and Policing Board). We feel that the new partnership should only be accountable to the Joint Committee and the Council and thereby only report to these bodies.

Recommendation: That the Justice Committee re-examine the lines of accountability so that they are streamlined.

Part 3. Clause 24 (5) Annual Reports

The practice of the policing committee consulting with the district commander prior to any report being submitted to Council seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

Recommendation: That the Justice Committee remove this part of the proposed bill.

Part 3. Clause 30 – Policing Committee Reports

Ballymoney Community Safety Partnership has concerns that the policing committee can operate independently, with no legislative requirement to report back to the overall partnership.

Recommendation: That the Justice Committee re-examine the role of the policing committee to make them accountable to the overall partnership.

Part 3. Clause 33 Other Community Policing Arrangements

This clause contradicts and undermines the spirit of the single partnership. Ballymoney CSP believes that consultation requirements should be wider than that of policing to reflect the multi faceted role of community safety. We believe that the policing committee should not be able to establish any bodies as this should be a function of the overall partnership.

Recommendation: That the Justice Committee re-examine the role of the policing committee to make them accountable to the overall partnership.

Part 3, Clause 34. (1) Statutory Obligation

Ballymoney CSP welcomes this function, given the extremely positive response from the recent NIO Local Partnership Working in Policing & Community Safety consultation. We feel that this clause should be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the proposed bill and must be included to enable the partnership to be 'fit for purpose'.

Recommendation: That the Justice Committee re-examine this clause to make it stronger to ensure that the new partnership is 'fit for purpose'.

Part 3. Clause 35 Functions of joint committee and Policing Board

As previously outlined, this clause is a demonstration of the dual lines of accountability which may led to conflicting targets, monitoring and outcomes.

Recommendation: That the Justice Committee re-examine the lines of accountability so that they are simplified.

Schedule 1. Paragraph 4 (2)

Ballymoney CSP queries why the Policing Board, through external consultants, is responsible for the election of independent members instead of the local Council. Given that this can amount to in the region of £24,000 per Council (totaling at least £600,000 across N. Ireland), cost savings could be achieved by the local Council being responsible for this recruitment.

Recommendation: The Justice Committee re-examine this part of the proposed bill in the light of potential cost savings.

Schedule 1. Paragraph 4 (12)

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

Recommendation: That the Justice Committee undertakes a cost appraisal to identify potential savings through the payment of expenses.

Schedule 1, 7. (1)Designated Organisations

There is a risk that the partnership working currently enjoyed by the CSP with a wide range of public, voluntary and community organisations may be lost or diluted. This will loss/dilute the collaborative and innovative approaches currently enjoyed through partnership working.

Ballymoney CSP queries what powers the PCSP will have to ensure the designated organisation attends the partnership and contribute towards the work of the PCSP?

Recommendation: That the Justice Committee re-examine this part of the proposed bill in order to place an obligation on designated organisations to contribute to the PCSP.

Schedule 1. Paragraph 10 Chair and Vice Chair

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership.

Recommendation: That the Justice Committee re-examine the condition that the position of Chair and Vice Chair can only be held by Elected or Independent members.

Schedule 1. Paragraph 13 (5) Policing Committee

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

Recommendation: That the Justice Committee re-examine the role of the policing committee to make them accountable to the overall partnership.

Schedule 1, 17 Finance

This paragraph needs to be amended to reflect that the two bodes 'shall' rather than 'may' provide a grant.

Community Safety Partnerships are currently funded 100% whilst DPP's receive 75% funding with local councils making up the additional 25%. We believe that the current level of funding should be protected as a minimum for the PCSPs.

We also believe that local Councils should only be responsible for 25% funding for the police monitoring function (as it currently stands) and not the overall PCSP budget. PCSP should not be an additional burden on local ratepayers.

Recommendation: That the Justice Committee re-examine this part of the proposed bill so that adequate resource is given to the PCSPs.

General Comments:

- No economic appraisal has been undertaken to demonstrate the potential costs savings of merging the CSP and DPP into a joint partnership.
- Ballymoney CSP assert very strongly that any PCSP as established within the legislation must be fit for purpose at a local level and questions whether it would appropriate to

conduct an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new PCSPs.

- There is no mention of community and voluntary organizations in this proposed bill who currently contribute fully to CSPs.
- The Council shall be responsible for the decision on the makeup of the partnership. Currently the proposed justice bill allows limited input from Council however it would appear that all liabilities will lie with Council.

Ballymoney District Policing Partnership

Jonny Donaghy,

District Policing Partnership Manager

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Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX 15 November 2010

Dear Ms Darrah

Re: Justice (Northern Ireland) Bill

Thank you for the opportunity to comment on the contents of the Justice (Northern Ireland) Bill 2010.

Ballymoney District Policing Partnership submits the following observations and comments for consideration:

In relation to the proposed model there are concerns that whereas a Council is required to establish a body to be known as a policing and community safety partnership, it has a restricted accountability function, i.e. in relation to the 'restricted functions' of a PCSP as defined in Section

21(1) (a), (b) and (c). It is considered that, as there is nothing of a confidential nature in relation to the 'restricted functions,' the reporting of these should be no different from other accountability processes.

The duty on public bodies to consider community safety implications in exercising duties (Section 34) is welcomed. However it is considered that this requirement should be couched in stronger terms.

In relation to the provisions contained in Schedule 1:

Clarity is sought regarding the arrangements for the dissolution of DPPs and CSPs and the formation of the new body (PCSP), given that 'the transition period' as defined under Paragraph 1(4) will not apply to any period between dissolution of the DPP/CSP and the formation of the PCSP.

Paragraph 4(12) provides for the payment of expenses which the Council may make to independent members of the PCSP however there is no similar provision under paragraph 3 which relates to political members. Accordingly it is suggested that the bill should include similar provisions in paragraph 3, as in paragraph 4(12), in respect of expenses incurred by political members and thus allow the Council to recoup such expenses from any grant provided under paragraph 17.

Paragraph 7 provides for the representation of designated organisations on a PCSP.

However in effect this will mean that it will be the 'policing committee', (of the not yet formed PCSP), that designates such organisations. It is considered that, for completeness and co-ordination of effort, such designation should be made by the Council, having regard to other functions which are delivered through partnership arrangements with statutory and community bodies such as Good Relations, Neighbourhood Renewal and Peace 111. This would allow for a more 'joined up'/corporate approach to achieving the aims of the legislation and associated Council objectives.

It would be helpful to members if the intentions of the department in relation to Paragraph 10 (4) could be more fully explained.

In relation to PCSP finance (paragraph 17) it is noted that there is no similar provision for payment of members allowances in the Bill as outlined in schedule 3 10 'Allowances' of the Police (NI) Act 2000, this will result in the cessation of allowances currently made to members of the DPP. It is the view of members that the rationale for paying the current allowance, under the Police (NI) Act 2000, has not changed under the Justice Bill; indeed, it would appear that there would be additional demands. Members have made it clear that it would be unreasonable to expect this level of commitment without an allowance.

Members also note that provisions for the payment of allowances to members of the Northern Ireland Policing Board by virtue of Schedule 1 paragraph 12 of the Police 2000 Act have not been repealed. Accordingly members strongly feel this raises questions of equality.

It is noted that no indication of the level of resources to be made available to council under paragraph 17 have been included in the proposed policy document furnished by the departments in relation to the PCSP. Members request clarification on this issue. Members have also raised concern that the provision of a grant from the Department and the Policing Board appears to be optional. Current DPP members would not wish the Council to add additional demands on ratepayers in order to fund something that previously was resourced centrally.

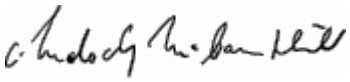
In relation to Schedule 6 paragraphs 3 and 8, members consider that the PCSP could be included in the provisions of Council policies relating to equality, disability awareness and freedom of information. This would contribute to greater efficiency and avoid duplication of effort.

General Comments:

- Members observed that the Bill does not include a section on consultation with Area Commanders regarding Local Policing Plans.
- There is a duplication of reporting lines. Ballymoney District Policing Partnership feels that there should be one body at a Northern Ireland level to be responsible for Policing and Community Safety issues. A single stream will help avoid funding and other confusions that arise when there are multiple organisations with a vested interest in the one area of work.
- Commitment of members – Members feel there will be a future lack of commitment on the PCSP due to the removal of allowances and there being no requirement for members to attend meetings.

Ballymoney District Policing Partnership would like to thank you again for giving us the opportunity to be consulted on the Justice Bill.

Yours sincerely



Cllr Malachy McCamphill

Ballymoney DPP Chairman

Banbridge District Council, District Policing Partnership and Community Safety Partnership

Ref : Joint response from Banbridge District Council, Banbridge District Policing Partnership and Banbridge District Community Safety Partnership on the draft Justice (Northern Ireland) Bill 2010

Set out below are the general concerns raised by the Banbridge District Council, Banbridge DPP and CSP on the draft Justice Bill.

General Issues

- The requirements for each District Council to form a PCSP (20.1) does not appear to give scope for two or more councils to join together in establishing PCSPs, or to carry out monitoring arrangements on a wider scale e.g. across 'E' District, or on a north and south 'E' District basis. This may prove problematic if RPA does go ahead and also for smaller council areas, where such conjoined working would lead to enhanced effectiveness in terms of resource management.
- The model as currently proposed will create a body that is separate from Council. This would not be the preferred model but we would propose a model that created the new

body as a Committee of Council which will improve governance arrangements and democratic accountability. Clarity would need to given on the role of the Chief Executive in relation to the new Body in terms of accountability.

- The functions of the PCSP reflect the current functions of the DPP (21.1. a-e) and the current functions of the CSP (21.1. f-h), with allowance made for any future additional statutory functions. The draft legislation does not reflect the fact that the current DPP Meetings in Public do not function effectively as a mechanism by which to monitor police performance, and are undertaken as a legislative requirement rather than a meaningful dissemination of information and exchange of views about local policing performance. In combining the core functions of DPP and CSP, there is a clear need to build on existing best practice and lessons learned and to have greater flexibility to link with local arrangements. It is important that partnerships have the flexibility to explore new innovative ways of working and to complement locally based services and existing fora where possible, only in this way can it be responsive to local need.
- The removal of allowances has not been welcomed by the members of the DPP as they are concerned that it will have a negative impact on those coming forward as Independent members, and those taking on the role of Chair and Vice-Chair of the Policing Committee given the time commitment required for these roles.

The Code of Practice for PCSPs (23):

Comment

The proposed Code largely reflects the current Code of Practice for DPPs. This is a document that needs to be revised to make it accessible both to PCSP Members and to the general public. As stated previously, there needs to be enough flexibility within the new code of practice to build upon local arrangements for holding of meetings etc. If this process is viewed as inflexible and overly bureaucratic, there may be a greater loss of public confidence. There is also extensive monitoring of the police under the proposed new arrangements, but little or no accountability for potential other partners of the PCSP (assuming the PCSP chooses to have the police as a partner).

The requirement to produce an annual report (24):

This is the same requirement which is currently placed on DPPs. It's essential that the new single partnership is not designated as a public body in its own right which for the current DPPs, simply serves to duplicate the functions which are already undertaken by Council. Reports required by the PCSP to joint committee (27) and by the Policing Committee to the Policing Board (30) could usefully be listed with submission dates in a reporting schedule which is furnished to PCSPs prior to the start of the financial year.

It would appear that the intention is to retain the highly administrative processes which currently exist. There are concerns that the approach will be high level and bureaucratic at the cost of practical delivery to benefit local people.

Other community policing arrangements (33):

Clarification needs to be provided on how the proposed function of the policing committee of a PCSP to make arrangements to facilitate consultation by the police with any local community (33) differs from the function listed at 21.1. d which in practice should be a two way consultation process between the local community and the local police. Consultation could usefully be joined up with other organisations in light of the potential future of community planning and it would be

helpful if there was this degree of commitment from other community, voluntary and statutory bodies built into the legislation at this point.

The point at 33 (4) about "reasonable expenses" that may be defrayed by the Policing Board relating to local police/community consultation is unclear and could open to interpretation.

Duty on public bodies to consider community safety implications in exercising duties (34):

This section of the draft Bill reflects Section 17 of the Crime and Disorder Act (England & Wales) 1998 where experience/good practice showed that those who may be involved in a statutory partnership needed information sessions on what it means and its implications for service delivery, e.g. how will this be enacted; what are the consequences of not considering community safety implications?

The terms "due regard" and "reasonably can" these could usefully be strengthened as community safety issues do require a joined up and committed approach from local partners. The emphasis on community safety is minimal, and there is little to no guidance on the remit for involvement of the community and voluntary sector. This section of the draft Bill could usefully be strengthened to try and ensure the support of all Public Sector Bodies at all levels. Many crimes, incidents of antisocial behaviour and the fear of crime can be tackled more effectively if partner delivery agencies have due regard to the impact of their actions on the safety (both real and perceived) of geographic and the thematic communities.

Within the guidance it suggests a minimum of 4 representatives of delivery organisations, appointed by PCSP, from community, voluntary or statutory agencies, but these do not necessarily include key statutory agencies and there are concerns that there is no onus on these to attend or to contribute in a meaningful way. It's critical that the representatives of the delivery agencies are empowered and have sufficient delegated authority to make decisions on behalf of their respective agencies rather than delay and bog down initiatives and projects by referrals back to their senior managers.

Central and local information and awareness-raising sessions are also essential to ensure that the partners subscribe to a common definition of community safety, and understand how their own agency performance indicators and targets will be met by pro-actively supporting multi-agency initiatives and projects as part of the PCSP.

It would be helpful to look at a system which more fully embraces partnerships and the sharing of scare resources between agencies, potentially as a forerunner and pilot for community planning processes.

Belfast City Council

Proposed Draft Response on behalf of Belfast City Council to the Draft Justice Bill (NI) 2010
19th November 2010

Belfast City Council would like to thank the Justice Committee for inviting it to submit written evidence on the Draft Justice Bill (NI) 2010. This submission was considered by the Strategic Policy and Resources Committee on 19th November 2010 subsequent to a briefing session for all Council Members, at which officials from DOJ were in attendance.

It should be noted that both Belfast Community Safety Partnership and District Policing Partnership shall submit independent responses.

Overview
At present the Council plays a leading role in administering both the District Policing Partnership (DPP) and the Community Safety Partnership (CSP). Since their establishment (in 2003 and 2004 respectively) each has had considerable achievements such as the installation of over 200 alleygates throughout the city, the provision of a city-wide wardens service, and the establishment of over 80 Neighbourhood Watch schemes across the city. Through this work there has been significant progress in supporting communities to engage with service providers, and in particular the PSNI, in their efforts to tackle crime and antisocial behaviour.

It has, however, become very apparent that there is increasing overlap and potential for duplication between the work of the CSP and DPP. Moreover, the distinction between CSPs and DPPs is not understood by the public and the administrative burden of sustaining two separate structures potentially reduces the Council's ability to focus on delivery of high quality, front line services. Therefore Belfast City Council welcomes the opportunity to shape the discussion regarding the establishment of a more integrated form of working that should ultimately result in an improved quality of life of the people who live in the city.

Therefore, in broad terms, the Council welcomes the move to bring the two structures together and to align the governance arrangements through the development of a Joint Committee.

However, having considered the proposals contained within Part 3 and Schedules 1 & 2 of the proposed legislation, Belfast City Council would have a number of concerns that it wishes to highlight to the Committee. In addition Belfast City Council wishes to seek clarity on a number of proposals in the draft legislation. The following sections therefore represent a summary of the key areas on which we would wish to comment.

Key Issues
Having considered Part 3, and Schedules 1 & 2, of the Justice Bill (NI) 2010 Belfast City Council wishes to highlight a number of areas for consideration by the Committee:

1. **The complexity of the Belfast structure** – Belfast City Council has played a fundamental role in leading and supporting both the CSP and DPP since their establishment in 2003 and 2004 respectively. As such

it is keenly aware of the potential overlap and duplication of these structures' work and also the considerable resource required to support the delivery of each. Therefore, **Belfast City Council welcomes the intention of the Minister to support better integration of the DPP and CSP** by the establishment of a PCSP.

However, Belfast City Council has significant concerns that the proposals (as currently set out) to establish 1 PCSP and 4 DPCSPs in the Belfast area will in practice increase the administrative burden (currently experienced in particular in respect of the DPP) and in so doing reduce our ability to deliver front line services in communities. It will also place a considerable burden on Elected Members who will sit both on the PCSP and DPCSPs. Therefore, **the Council would have grave concerns that the proposals, as currently formulated, will not bring the intended rationalisation or integration of current structures and service delivery; and will in fact add to the level of administration required at present.** We would therefore be keen to have further discussion with the Department regarding the specific proposals for Belfast.

2. **Integration with other structures** – It is also essential that the proposed structure acknowledges the role and potential links with other existing partnership structures within the city. The Council therefore believes that the Department should give **greater consideration of how the PCSP and DPCSPs will integrate with other existing structures; such as the West Belfast Community Safety Forum, PACT, area partnership boards, and neighbourhood structures**. Again, Council would welcome the opportunity to discuss this further with the Department.

3. **Ensuring local needs are at the heart of any changes** – **Belfast City Council believes that it is imperative that any resulting structural change should ultimately lead to improved community safety and policing across the city**. It is therefore essential that the Justice Bill enables the establishment of structures that support responsive and effective service delivery at a local level. Belfast City Council would therefore encourage the Committee to ensure that the changes proposed focus on making a difference in local areas. It would also suggest the input of representative community organisations into the development of this Bill to ensure the proposed changes contribute to this overall aim.

4. **Legal Status of the new partnership** – While Belfast City Council recognises the need for the PCSP to be a multi-agency structure **there remains a lack of clarity and concern around the legal status of the PCSP**. The proposal, for example, to establish the PCSP as a statutory body in its own right will carry a considerable administrative burden as a result of administering independent FOI, Equality and Disability schemes, etc. Moreover, Clause 21 of the Bill provides that the functions of the PCSPs will include providing of financial or other support to persons involved in crime reduction and community safety projects. However, unlike district councils, the PCSPs will not be constituted as 'bodies corporate', which would allow them to enter into, contractual arrangements such as funding agreements. While a district council might agree to undertake a funding agreement on the

PCSP's behalf, how would the matter be addressed if the proposed agreement was outside the council's statutory powers, or was in support of a project that the relevant council itself did not support politically? If it is envisaged that the Council, as is the case with the CSP, should undertake to do this on behalf of the PCSP then it is recommended that this should be made explicit in the legislation.

5. **Relationship to Council** – in light of the above **Belfast City Council would wish to seek greater clarity on the relationship between the PCSP and Council**. The legislation for example notes the intention for the PCSP to report into Council; however there is no clarity as to whether Council would assume any degree of accountability for the running and performance of the PCSP. The lack of clarity in respect of this issue has been experienced in relation to the current DPP arrangements and Belfast City Council would be keen to avoid this confusion in the future.

6. **Accountability** – Belfast City Council welcomes the intention in the proposals to streamline reporting and accountability through the establishment of a Joint Committee. It is noted however that there remains a direct line of reporting from the Policing Committee to the Northern Ireland Policing Board. **Belfast City Council, therefore, is concerned that the proposed model and processes will not, in practice, lead to a more streamlined process of reporting or accountability**. Moreover, greater clarity is sought regarding the relationship between Belfast City Council and the proposed Joint Committee.

7. **Financial support** – Belfast City Council welcomes the proposal to provide financial assistance to Council towards the running of the PCSP. The new legislation also places no specific requirement for match funding from the Council or any other organisation. Belfast City Council undertook to support the establishment of the both the DPP and CSP in good faith on the understanding that there would be sustained financial commitment from Central government. Therefore, **Belfast City Council would advocate that the wording places a greater commitment to continued financial assistance** (Schedule 1, Paragraph 17 should read 'shall' rather than 'may') and that this should be comparable with current arrangements. **Belfast City Council would also raise concerns that any inability to pay allowances, in particular to independent members, will result in a reduced uptake and therefore input of such representatives**. Lastly, Belfast City Council would wish to advocate that sufficient resource is made available to support the development and training of the new partnership when it is put in place.

8. **Statutory Duty – Belfast City Council welcomes the proposal (Clause 34) to place a statutory duty on other public bodies to have due regard to, and enhance, community safety**. Some clarity is likely to be needed on which public bodies need to take this into consideration, as there may be some agencies for which this duty may not be relevant (i.e. have no role in, or influence on, community safety) and hence this duty could place an unnecessary administrative burden on them with no beneficial outcome. However the Council considers this to be a crucial element of ensuring commitment of the **relevant**

government departments and agencies and as such it **needs to remain a key component of the legislation.**

9. **Number of DPCSPs** – While Belfast City Council has expressed its concern with regard to the overly complex nature of the proposed structure in Belfast it is aware that the new partnership should ensure connectivity to local, area-based structures. **Belfast City Council would therefore seek clarity in respect of Clause 20, 2 of the draft Bill which requires the establishment of DPCSPs in each Police District.** The DOJ has currently advised that this requires 4DPSCPs. However, it is the Council's understanding that there are two police districts (A & B) in Belfast and therefore the Council would seek clarity from the Committee in this regard.

10. **Appointment of Independent Members** – Belfast City Council welcomes the continued role of independent members in the future partnership structure; though it reiterates its concerns regarding the withdrawal of allowances. During consultation, however, **concerns have been raised with regard to ensuring that independent members are independent and representative of the community.** Belfast City Council therefore would like reassurance that cognisance is taken of this in the appointment of independent members and that specifically individuals who hold public office would be excluded from these appointments.

Other

Belfast City Council would also wish to raise a number of further queries with the Committee:

1. In Schedule 1, paragraph 10 (4) the legislation makes reference to the election of the Chair and vice-chair in accordance with arrangements made by the Department. Belfast City Council wishes to seek clarification as to the Department's potential role in this process as it would advocate that this should be a process that is undertaken locally and this is allowed for in the development of the Code of Practice.
2. Clause 33 (1) makes provision that the PCSP or DPCSP "may" make arrangements to facilitate consultation by the police with any local community. While Clause 33 (2) goes on to state that the Policing Board may make arrangements for this to take place if it is not satisfied that satisfactory arrangements have been put in place. Belfast City Council believes that these statements are contradictory and there should be greater clarity on where there is the opportunity for genuine local determination.

If you have any queries in relation to this paper please contact:
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Appendix

Draft Response from Belfast City Council in Respect of Part 4 of the Draft Justice Bill

Part 4 of the draft Bill contains proposals for new offences and penalties in Northern Ireland based on those which have been operating very effectively in Great Britain for some time. They include new powers around offensive chanting at games, missile throwing and pitch incursion; powers to tackle alcohol-related problems around sporting events; powers to tackle ticket touting; and proposals for a soccer banning order regime that would prevent trouble-makers from attending matches. The package of new powers is proposed in relation to key sporting events across football, GAA and rugby.

These proposals are considered to complement and enhance the objectives of the Safety of Sports Grounds Order in securing the reasonable safety of spectators at designated sports grounds and in regulated stands across Northern Ireland. As an authority responsible for issuing safety certificates and enforcing the terms of this Order, Belfast City Council welcomes the additional controls as proposed in part 4 of the draft Justice Bill (NI) 2010.

Belfast Community Safety Partnership

Response on behalf of Belfast Community Safety Partnership to the Draft Justice Bill (NI) 2010

23rd November 2010

Belfast Community Safety Partnership would like to thank the Justice Committee for inviting it to submit written evidence on the Draft Justice Bill (NI) 2010.

This submission was discussed by the Strategic Tier of Belfast Community Safety Partnership on 22nd November and member feedback has been incorporated accordingly.

It should be noted that the CSP response largely reflects the response submitted by Belfast City Council; though a number of issues received greater emphasis.

Overview

Belfast Community Safety Partnership was formally established in 2004 and has played a key role in identifying community safety priorities in Belfast, and developing partnership initiatives to address these. Belfast City Council leads the partnership and is responsible for the administration of the partnership. Core funding has been received from the Northern Ireland Office, now the Department for Justice, with significant match funding received from Belfast City Council and a variety of partners and funders.

It has become very apparent that there is increasing overlap and potential for duplication between the work of the CSP and DPP. Moreover, the distinction between CSPs and DPPs is not understood by the public and the administrative burden of sustaining two separate structures potentially reduces the ability to focus on delivery of high quality, front line services. Therefore Belfast Community Safety Partnership welcomes the opportunity to shape the discussion regarding the establishment of a more integrated form of working that should ultimately result in an improved quality of life of the people who live in the city

Therefore, in broad terms, Belfast Community Safety Partnership welcomes the move to bring the two structures together and to align the governance arrangements through the development of a Joint Committee and is of the view that the fundamental need for this review should lead to better service delivery.

However, having considered the proposals contained within Part 3 and Schedules 1 & 2 of the proposed legislation, Belfast Community Safety Partnership would have a number of concerns that it wishes to highlight to the Committee. In addition Belfast Community Safety Partnership echoes Belfast City Council's call for clarity on a number of proposals in the draft legislation. The following sections therefore represent a summary of the key areas on which we would wish to comment.

Key Issues

Having considered Part 3, and Schedules 1 & 2, of the Justice Bill (NI) 2010 Belfast Community Safety Partnership wishes to highlight a number of areas for consideration by the Committee:

1. The complexity of the Belfast structure – Belfast Community Safety Partnership welcomes the intention of the Minister to support better integration of the DPP and CSP by the establishment of a PCSP. However, Belfast Community Safety Partnership has significant concerns that the proposals to establish 1 PCSP and 4 DPCSPs, each with corresponding Policing Committees, will in practice increase the administrative burden and in so doing reduce our ability to delivery front line services in communities. It will also place a considerable burden on elected and independent members who will sit both on the PCSP, DPCSPs and policing committees. Therefore, the Partnership would have grave concerns that the proposals will not bring the intended rationalisation or integration of current structures and service delivery; and will in fact add to the level of administration required at present. We would therefore be keen to have further discussion with the Department regarding the proposals for Belfast. In addition to this a number of our partner organisations expressed considerable concern that they will not be in a position to attend or resource and support 5 separate structures and the subsequent meeting input that

would be required. Lastly, many members reflected on the experience of the DPP and the difficulty in clearly defining the role of the principal partnership and sub-groups and felt the proposed model represented a step backwards.

2. Integration with other structures – It is also essential that the proposed structure acknowledges the role and potential links with other existing partnership structures within the city. Belfast Community Safety Partnership therefore believes that the Department should give greater consideration of how the PCSP and DPCSPs will integrate with other existing structures; such as the West Belfast Community Safety Forum, PACT, area partnership boards, and neighbourhood structures. This is particularly in light of current proposals by a consortium of community organisations to establish area-based community safety partnerships in the north of the city. Belfast Community Safety Partnership would therefore welcome the opportunity to discuss this further with the Department.

3. Ensuring local needs are at the heart of any changes – Belfast Community Safety Partnership believes that it is imperative that any resulting structural change should ultimately lead to improved community safety and policing across the city. Moreover, it is also important that the public can relate to, and engage with, the new partnership. Belfast Community Safety Partnership however feels that the proposed model for Belfast will hinder this. Belfast Community Safety Partnership would therefore encourage the Committee to ensure that the changes proposed focus on making a difference in local areas. It would also seek the input of representative community organisations into the development of this Bill to ensure the proposed changes contribute to this overall aim.

4. Legal Status of the new partnership – While Belfast Community Safety Partnership recognises the need for the PCSP to be a multi-agency structure there remains a lack of clarity and concern around the legal status of the PCSP. The proposal, for example, to establish the PCSP as a statutory body in its own right will carry a considerable administrative burden. Moreover, unlike district councils, the PCSPs will not be constituted as 'bodies corporate', which would allow them to enter into, contractual arrangements such as funding agreements. If it is envisaged that the Council, as is the case with the CSP, should undertake to do this on behalf of the PCSP then it is recommended that this should be made explicit in the legislation.

5. Relationship to Council – in light of the above Belfast Community Safety Partnership would wish to seek greater clarity on the relationship between the PCSP and Council. The legislation for example notes the intention for the PCSP to report into Council; however there is no clarity as to whether Council would assume any degree of accountability for the running and performance of the PCSP.

6. Accountability – Belfast Community Safety Partnership welcomes the proposals to streamline reporting and accountability through the establishment of a Joint Committee. It is noted however that there remains a direct line of reporting from the Policing Committee to the Northern Ireland Policing Board. Belfast Community Safety Partnership, therefore, is concerned that the proposed model will not, in practice, lead to a more streamlined process of reporting or accountability.

7. Financial support – Belfast Community Safety Partnership welcomes the stated intention to continue to provide financial assistance to Belfast City Council for administration of the Partnership and for project delivery and frontline services. The new legislation places no requirement for match funding from the Council or any other organisation. Belfast Community Safety Partnership though would advocate that the wording places a greater commitment to continued financial assistance (Schedule 1, Paragraph 17 should read 'shall' rather than 'may') and that this should be at least comparable with current arrangements. Belfast Community Safety Partnership would wish to advocate that sufficient resource is made available to support the development and training of the new partnership when it is put in place. Lastly, Belfast

Community Safety Partnership's view is that financial support should be confirmed prior to the establishment of any new structure.

8. Members' allowances – a range of views were expressed by the CSP during these discussions. However, Belfast Community Safety Partnership would echo the Council's view that the withdrawal of allowances to independent members will result in a reduced uptake and therefore input of the community sector. Consideration should be given to covering expenses of independent members. Also while some members felt that it was appropriate that elected members should not receive an allowance some were of the view that consideration should be given to the personal circumstances of elected members.

9. Statutory Duty – Belfast Community Safety Partnership welcomes the proposal (Clause 34) to place a statutory duty on other public bodies to have due regard to community safety. Some clarity is likely to be needed on which public bodies need to take this into consideration, as there may be some agencies for which this duty may not be relevant (i.e. have no role in, or influence on, community safety) and hence this duty could place an unnecessary administrative burden on them with no beneficial outcome. However the CSP considers this to be a vital element of ensuring commitment of the relevant government departments and agencies and as such it is a vital element of the legislation.

10. Number of DPCSPs – While Belfast Community Safety Partnership has expressed its concern with regard to the overly complex nature of the proposed structure in Belfast it is aware that the new partnership should ensure connectivity to local, area-based structures. Belfast City Council would therefore seek clarity in respect of Clause 20, 2 of the draft Bill which requires the establishment of DPCSPs in each Police District. The DOJ has currently advised that this requires 4 DPSCPs. However, the CSP understands that there are two police districts (A & B) in Belfast and therefore would seek clarity from the Committee in this regard.

11. Appointment of independent Members – Belfast Community Safety Partnership welcomes the continued role of independent members in the future partnership structure; though it reiterates its concerns regarding the withdrawal of allowances. During consultation, however, concerns have been raised with regard to ensuring that independent members are those who are not perceived to have either formal or informal links with political parties. Belfast Community Safety Partnership therefore would like reassurance that cognisance is taken of this in the appointment of independent members. In addition some members of Belfast Community Safety Partnership have expressed concerns that the level of community and voluntary representation may be diminished through the proposed membership arrangements.

Other

Belfast Community Safety Partnership would also wish to raise a number of further queries with the Committee:

1. In Schedule 1, paragraph 10 (4) the legislation makes reference to the election of the Chair and vice-chair in accordance with arrangements made by the Department. Belfast Community Safety Partnership wishes to seek clarification as to the potential role in this process as it would advocate that this should be a process that is undertaken locally and is informed in the development of the Code of Practice.

2. Clause 33 (1) makes provision that the PCSP or DPCSP "may" make arrangements to facilitate consultation by the police with any local community. While Clause 33 (2) goes onto state that the Policing Board may make arrangements for this to take place if it is not satisfied that satisfactory arrangements have been put in place. Belfast Community Safety Partnership believes

that these statements are contradictory and there should be greater clarity on where there is the opportunity for genuine local determination.

3. Length of consultation: feedback from members was that the consultation period was not sufficient to give due consideration to the proposals and their implications for all organisations involved in current partnership arrangements.

Belfast District Policing Partnership

Belfast
District Policing
Partnership
Local people shaping local policing

8th December, 2010

The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

To The Committee Clerk,

Belfast DPP's Response to the Draft Justice Bill (Northern Ireland) 2010

Belfast District Policing Partnership (DPP) would like to thank the Justice Committee for inviting it to submit written evidence on the Draft Justice Bill (NI) 2010. This submission was considered by the Principal Partnership at its meeting 24th November subsequent to a briefing session for all Partnership Members, at which officials from the Department of Justice were in attendance.

Overview
Since the establishment of Belfast DPP in 2003 the Partnership has made significant progress in supporting communities to engage with service providers, and in particular the PSNI, in their efforts to tackle crime and antisocial behaviour.

It has, however, become very apparent that there is increasing overlap and potential for duplication between the work of the Community Safety Partnership (CSP) and DPP. Moreover, the distinction between CSPs and DPPs is not understood by the public and the administrative burden of sustaining two separate structures potentially reduces the ability to focus on delivery of high quality, front line services. Therefore we welcome the opportunity to shape the discussion regarding the establishment of a more integrated form of working that should ultimately result in an improved quality of life of the people who live in the city.

Therefore, in broad terms, the DPP welcomes the move to bring the two structures together and to align the governance arrangements through the development of a Joint Committee.

However, having considered the proposals contained within Part 3 and Schedules 1 & 2 of the proposed legislation, the DPP has a number of concerns that it wishes to highlight to the Committee.

Miss Lorna Somers
MANAGER

BELFAST DISTRICT POLICING PARTNERSHIP
Belfast City Council, City Hall, Belfast BT1 5GS
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Key Issues
Having considered Part 3, and Schedules 1 & 2, of the Justice Bill (NI) 2010 Belfast DPP wishes to highlight a number of areas for consideration by the Committee:

1. **The complexity of the Belfast structure** – Belfast DPP is keenly aware of the potential overlap and duplication of these structures' work and also the considerable resource required to support the delivery of each. Therefore, **Belfast District Policing Partnership welcomes the intention of the Minister to support better integration of the DPP and CSP** by the establishment of a PCSP.

   However, Belfast City Council has significant concerns that the proposals (as currently set out) to establish 1 PCSP and 4 DPCSPs in the Belfast area will in practice increase the administrative burden (currently experienced in particular in respect of the DPP) and in so doing reduce our ability to deliver front line services in communities. It will also place a considerable burden on Elected and Independent Members who will sit both on the PCSP/Policing Committee and DPCSPs/Policing Committees. Therefore, **the DPP would have grave concerns that the proposals, as currently formulated, will not bring the intended rationalisation or integration of current structures and service delivery; and will in fact add to the level of general administration, financial reporting and progress reporting required at present.**

   Furthermore, it is essential that the proposed amalgamation does not weaken the monitoring functions of current DPPs and that the new structures not only retain accountability to the Northern Ireland Policing Board but also take into consideration any future Community Planning structures.

2. **Integration with other structures** – It is also essential that the proposed structure acknowledges the role and potential links with other existing partnership structures within the city. The DPP therefore believes that the Department should give **greater consideration of how the PCSP and DPCSPs will integrate with other existing structures; such as the West Belfast Community Safety Forum, Partners and Communities Together (PACT), area partnership boards, and neighbourhood structures.**

3. **Ensuring local needs are at the heart of any changes – Belfast DPP believes that it is imperative that any resulting structural change should ultimately lead to improved community safety and policing across the city.** It is therefore essential that the Justice Bill enables the establishment of structures that support responsive and effective service delivery at a local level. We would therefore encourage the Committee to ensure that the changes proposed focus on making a difference in local areas. It would also suggest the input of representative community, voluntary and business organisations into the development of this Bill to ensure the proposed changes contribute to this overall aim.

   Furthermore, the DPP recognises that the Independent Members on the PCSPs and DPCSPs when (taken together) are representative of the community in the district, however, the DPP would request that greater efforts are made to ensure that the membership includes representatives from community, voluntary and business sectors through a targeted, proactive recruitment campaign.

4. **Legal Status of the new partnership** – While the DPP recognises the need for the PCSP to be a multi-agency structure **there remains a lack of clarity and concern around the legal status of the PCSP.** The proposal, for

example, to establish the PCSP as a statutory body in its own right will carry a considerable administrative burden as a result of administering independent FOI, Equality and Disability schemes, etc. Moreover, Clause 21 of the Bill provides that the functions of the PCSPs will include providing of financial or other support to persons involved in crime reduction and community safety projects. However, unlike district councils, the PCSPs will not be constituted as 'bodies corporate', which would allow them to enter into contractual arrangements such as funding agreements.

5. Relationship to Council – In light of the above **Belfast DPP would wish to seek greater clarity on the relationship between the PCSP and Council.** The legislation for example notes the intention for the PCSP to report into Council; however there is no clarity as to whether Council would assume any degree of accountability for the running and performance of the PCSP. The lack of clarity in respect of this issue has been experienced in relation to the current DPP arrangements and we would be keen to avoid this confusion in the future.

6. Role of Principal DPP – While Belfast DPP recognises the need for a Principal Partnership as part of the Belfast structure to ensure monitoring of the Belfast Sub-Groups it would welcome further consideration regarding the development of this Partnership's monitoring role in relation to police delivery mechanisms on a cross-city basis.

7. **Financial support** – Belfast DPP welcomes the proposal to provide financial assistance to Council towards the running of the PCSP. The new legislation also places no specific requirement for match funding from the Council or any other organisation. Belfast City Council undertook to support the establishment of the both the DPP and CSP in good faith on the understanding that there would be sustained financial commitment from Central government. Therefore, **we would advocate that the wording places a greater commitment to continued financial assistance** (Schedule 1, Paragraph 17 should read 'shall' rather than 'may') and that this should be comparable with current arrangements.

8. Statutory Duty – **Belfast DPP welcomes the proposal (Clause 34) to place a statutory duty on other public bodies to have due regard to community safety**. Some clarity is likely to be needed on which public bodies need to take this into consideration. However the Council considers this to be a crucial element of ensuring commitment of the relevant government departments and agencies and as such **it needs to remain a key component of the legislation**.

9. Number of DPCSPs – While we have expressed our concern with regard to the overly complex nature of the proposed structure in Belfast we are aware that the new partnership should ensure connectivity to local, area-based structures. **Belfast DPP would therefore seek clarity in respect of Clause 20, 2 of the draft Bill which requires the establishment of DPCSPs in each Police District**. The DOJ has currently advised that this requires 4DPCSPs. However, it is our understanding that there are two police districts (A & B) in Belfast and therefore we would appreciate clarity on this matter.
Belfast DPP is of the opinion that the amalgamation of the areas to create two DPCSPs to mirror the current Police Districts would dilute the ethos of the local structures of accountability.

10. Allowances – The DOJ has stated that the amalgamation of DPPs and CSPs "is not a cost cutting exercise", however, currently it is the Minister's intention

not to pay allowances. **Belfast DPP would have concerns that the withdrawal of allowances for Elected and Independent Members will result in a reduced uptake and, therefore, input of such representatives.** Members are concerned that whilst the proposed structures will require a significant greater time commitment no allowances will be provided to reflect this. Belfast DPP believes that on the basis of equality that any decision to provide or not provide allowances must be applied consistently to both Elected and Independent Members. Furthermore, Belfast DPP is of the opinion that if allowances are paid that they are based on Members attendance.

Belfast DPP would welcome the opportunity to discuss with the Minister the complexity of the proposed structures for Belfast and, furthermore, would request that the Minister gives consideration to providing Belfast DPP with the opportunity to give oral evidence to the Committee.

Please do not hesitate to contact me if you have any queries regarding the content of this response.

Yours faithfully,

Lorna Somers
Belfast District Policing Partnership Manager

British Irish
RIGHTS WATCH

A CHARITY REGISTERED IN ENGLAND NO. 1048335

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Christine Darrah
Clerk to the Committee for Justice
Room 242
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Ballymiscaw
Stormont
Belfast BT4 3XX

8th November 2010

Dear Ms Darrah,

Re: Justice (Northern Ireland) Bill

Thank for your invitation to respond to the publication of the Justice (Northern Ireland) Bill.

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.

It appears to BIRW somewhat anomalous to annouce a consultation exercise in a letter dated 21 October 2010 when the Bill was introduced to the Assembly on 18th October and debated by the Assembly on 1st and 2nd November 2010. In addition, we note the reltaively tight timescale for response to a Bill containing

108 Clauses and 7 schedules. The political debate at Stormont will, in our opinion, overshadow the comments of stakeholders in the justice sector.

We nevertheless comment on the following provisions:

1)The Offender Levy Clauses 1 - 6

In accordance with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)[1], we agree that offenders should pay compensation to victims and that government should endeavor to establish, strengthen and expand available national funds. We agree that any statutory priority payment order should safeguard the allocation of payments to victims and, in principle, the victims of crime fund prior to a fine or court fees. Our opposition to the proposed offender levy is founded on the fact that it imposes a financial sanction in addition to a penal sanction. We welcome alternatives sanctions to prosecution and imprisonment but not the imposition of a financial sanction in addition to a penal sanction, which contravenes Rule 57 of the United Nations Standard Minimum Rules for the Treatment of Prisoners[2]: "Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation." and Rule 2 of the European Prison Rules 2006[3]: "Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody." In other works, the deprivation of liberty is the punishment for a crime and that punishment should not be exacerbated by any further deprivation.

If the proposed offender levy is accepted, we would be opposed to the proposal that offender levy deductions could be taken from a prisoner's earnings. This proposal contradicts European Prison Rule 26.10 which provides for an "equitable system of remuneration." The domestic prison rules make no reference to payment and we are of the opinion that despite the importance of compensating victims, the imposition of a levy upon an offender deducted out of prison wages is invidious. To work without payment offends Article 4 of the European Convention on Human Rights in addition to undermining the rehabilitative nature of gainful employment whilst in custody. Further, there is no proposal for a means test or consideration of the financial status of juvenile offenders.

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1 Available at http://www2.ohchr.org/english/law/victims.htm
2 Available at http://www2.ohchr.org/english/law/treatmentprisoners.htm
3 Available at https://wcd.coe.int/ViewDoc.jsp?id=955747

2) Vulnerable and Intimidated Witnesses Clauses 7 - 12

BIRW welcomes the Special Measures provisions of the Bill as they are designed to enhance delivery of justice within the criminal justice system. A vital component of this incorporates the need for victims or witnesses to give the best evidence possible. In recognising that the experience of giving evidence in court may be particularly intimidating for most witnesses, it is acknowledged that vulnerable and intimidated witnesses may require additional assistance to enable them to give their best evidence and to ensure that their evidence is not lacking in quality due to their vulnerable or intimidated status.

We agree with the proposal to bring the Criminal Evidence (Northern Ireland) Order 1999 in line with other aspects of the national law which acknowledge that a 'child' includes all young people under the age of 18. The United Nations Convention on the Rights of the Child (CRC) (Article 1) defines the 'child' as a person below the age of 18 and recalls the Declaration of the Rights of the Child which states that 'by reason of his physical and mental immaturity' the child requires 'special safeguards and care, including appropriate legal protection.' By extending the Special Measures provisions to apply all witnesses under the age of 18, Northern Ireland will concur with international standards.

We also agree with the proposal to permit young people to have a say in how they give evidence and in whether they want to avail of special measures. Children have been identified as needing particular protection when giving evidence in criminal proceedings due to their inherent vulnerable characteristics.[4]

BIRW welcome the proposal at Clause 10 to amend the Criminal Evidence (Northern Ireland) Order 1999 (Article 12) in order to enable a supporter to accompany a witness (and, we note, any witness availing themselves of special measures) when giving evidence via live link room.[5]

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4 See the UN Guidelines of Justice in Matters involving Child Victims and Witnesses of Crime. These acknowledge that children are 'vulnerable and require special protection appropriate to their age, level of maturity and individual special needs'. Available at: http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf

5 The right of the child to be treated with dignity and compassion throughout criminal proceedings is outlined under the UN Guidelines (Article V) and determines that throughout the criminal justice process, taking into account their personal situation, age, level of maturity, child witnesses should be

Clause 12 of the Bill is the proposal that on the application of the defendant, examination can be undertaken by an intermediary ("an interpreter or other person approved by the court"). BIRW are concerned that no further definition of an intermediary has been provided for in the legislation.

Policing and Community Safety Partnerships Clauses 20 – 35

BIRW welcomes the placement on a streamlined statutory footing for policing and community safety partnerships. As the Minister for Justice commented: "Community policing, developing partnerships at a local level to turn people away from crime and make people feel safer in their homes, is at the heart of achieving that objective."[6] This objective is reflected in Clauses 21(3), 22(3) and 34(3) of the Bill: "References in this Clause to enhancing community safety in a police district are to making the police district one in which it is, and is perceived to be, safer to live and work, in particular by the reduction of actual and perceived levels of crime and other anti-social behaviour."

Within the proposed structure we note the establishment of a joint committee of representatives from the Policing Board and the Department of Justice which will assist the Department and the Policing Board to work more closely together in setting high level strategic objectives providing coherent, cohesive strategic direction to the Partnership. As long as this joint committee is a mechanism to hold the PSNI to account, and the rationale of the community policing policy is the achievement of greater police accountability and confidence in policing in Northern Ireland, then this is a welcome move. The functions of both the Police and Community Safety Partnership and the District Police and Community Partnership legislated for at Clauses 22(3), 23(3) and Clause 34(3) seems to provide some level of enhanced accountability but BIRW is not convinced this goes far enough. For example both bodies are "to provide views to a relevant district commander and to the Policing Board on any matter concerning the policing of the district". The provision of views cannot be considered an effective mechanism of accountability for a police service and we fear the potential for the PSNI to avoid scrutiny, shielded by the weakness of the proposed model. Further, at Clause 33(5) the Chief Constable of the PSNI shall be consulted by a policing committee or the Policing Board on alternative community policing

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treated in a caring and sensitive manner. The UN Guidelines (Article IX) suggest that child witnesses should be provided with assistance to enable them to partake effectively at all stages of the justice process.

See http://www.dojni.gov.uk/index/media-centre/lord_praises_community_policing_commitment.htm

arrangements. Obviously, consultation between public bodies is important but it should not serve to undermine an objective accountability mechanism.

Alternatives to Prosecution Clauses 64 – 75 and 76 – 84

BIRW has strongly advocated the introduction of alternatives to prosecution. Prosecution resulting in custody is in many cases of limited effect and leads to recidivism as opposed to rehabilitation. Alternatives to prosecution lead to more effective policing as it frees up more officers to police communities as opposed to being in court and it frees up the courts to deal effectively with serious offences. It is also a cost-effective measure. The Bill proposes two alternatives to prosecution: first, the use of penalty notices; second, the use of conditional cautions. There is a need for a safeguard for individual civil liberties in both proposals in the form of a mechanism to challenge the validity of either the penalty notice or the conditional caution as these both enhance the discretionary powers of the police officer. Clause 73 provides a challenge to the penalty notice. Clause 77 of the Bill provides five requirements in order to validate a conditional caution. Clause 77(2) (a) and (b) ensures that the Public Prosecutor authorises the issuing of the caution. Clause 82 legislates for the Department of Justice to issue a Code of Practice in relation to conditional cautions. It is important that if these proposals are implemented both their effectiveness and integrity of application are regularly assessed and monitored.

Legal Aid Clauses 85 – 91

The provisions in relation to the reform of criminal legal aid at Clause 85 imply that defendants who are financially able to contribute to their defence costs should be required to do so. BIRW does not support this proposal. We oppose it on principle because defendants have no control over whether or not they face prosecution. It is the state that decides to prosecute and it should therefore be the state that bears the cost of prosecution. This is particularly so where a defendant is acquitted, as they should not be expected to pay for the privilege of being prosecuted for a crime of which they are innocent in the eyes of the law.

If it is decided to pursue these proposals, then the following safeguards are required.

It is vital that the mechanism devised for means testing does not result in the infringement of the defendant's human rights. Article 6 of the European Convention states that everyone has the right to a fair trial and specifically provides that 'everyone charged with a criminal offence has the rights to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests

of justice so require' (Article 6.3). There is the potential that an innocent defendant would chose to represent him or herself although not adequately able to do so, thus risking their right to a fair trial, rather than incur the expense of contributing towards the cost of his or her defence.

We accept that the government has a responsibility to spend tax payers' money wisely, however, it is important to bear in mind that having a fixed financial eligibility limit raises the concern that, despite having an income above a certain amount, an individual's financial circumstances may nonetheless require legal aid. When making the decision as to whether someone is financially eligible for legal aid, significant consideration would need to be given the monthly expenditure of the defendant.

Consideration needs to be given to the major negative financial implications on the defendant's dependents which the requirement of eligible defendants to contribute to legal costs may have.

The suggested amendment to Article 31 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 in order to limit the resolution of doubt to the interests of justice test (as to whether to grant a person legal aid) has been drafted in the following terms in the Bill at Clause 85(2) "If on a question of granting a person free legal aid under Article 28, 28A, 29 or 30 there is a doubt whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid." If this amendment is adopted it is important that the prescribed financial eligibility limit is not too strict and can be applied with discretion.

Bail Clauses 92 and 93

We support the provisions in the Bill in relation to bail.

Yours sincerely,

Christopher Stanley

Christopher Stanley,
Research and Casework Manager.

Coleraine Borough Council

Justice (Northern Ireland) Bill Response

The following response has been prepared by Coleraine Borough Council in relation the Justice Bill.

Part 3 Policing & Community Safety Partnerships Functions of PCSP

Part 3, Paragraph 21 Sub section 1 – page 17

Coleraine Borough Council have concerns over the proposed functions of the Partnership. The main focus within the functions of the Bill in relation to Policing and Community Safety appears to remain weighted towards priorities which are current DPP functions, with and less emphasis on outcome based actions as is currently the approach of Community Safety Partnerships.

Paragraph 21 Sub section (2) – pages 17 & 18

The "restricted functions" highlighted poses questions over how can the 'PCSP' act as a single partnership when a number of functions are only referring to one partner. This comment is specifically in relation to subsection (1)(c) which should not be restricted to the policing committee as it applies to the whole partnership. Paragraph 21 Subsection 3 (page 18) illustrates why this subsection in particular should not be restricted to the policing committee. It would be our recommendation that the Justice Committee re-examine this proposed function and consider accountability throughout the proposed structures.

Annual reports by PCSP to Council, Joint Committee and Policing Board

Paragraphs 24, 27 and 30 Accountability remains with three accounting bodies with potential reporting requests may prove bureaucratic. It is recommended that the Justice Committee re-examine how the lines of accountability can be simplified.

Schedules

Appointments

Schedule 1, Paragraph 4 Subsection 12 – Page 65

Expenses provided should not affect overall frontline delivery services. This has in effect a potential for disparity between councils of what they may deem as reasonable. There is no provision stated within the Bill that Council must pay allowances as is presently the case. This may in effect have an impact on the ability of independent members to participate in the same way as those who may be representing organizations as part of their professional role, and in effect paid.

Finance

Schedule 1, Paragraph 17 It is unclear if the partnership will be adequately resourced as the terminology 'may' reflects an uncertainty of what financial provision will be made available and what proportion of overall costs for example: There is no indication if the current 75%/25% (DPP) and 100% (CSP) funding arrangements will continue. Wording should be amended to confirm actual commitment to fund and clarify the level of contribution

The Bill states 'There is no provision in the Bill for political members and Statutory Organisation members to be paid expenses and in any case the burden of expenses falls totally and at the

discretion of the Council'. There does not appear to be any provision for elected or statutory members to be paid expenses, although Council may wish to incur such expenses, effectively an additional financial responsibility for Council with uncertainty as to the level of overall financial support provided to operate the functions of the partnership.

Reports by Policing Committee to Policing Board

Paragraph 30 subsection (1) – Page 22 The Policing Committee appears to be able to operate independently with no reference or requirement to report back to the overall partnership which does not reflect true partnership working therefore we would recommend that the Justice Committee would re-examine this role. The function of the local community appears to be diluted in the approach and needs addressed.

Part 4: Sport

Chapter 2, Paragraph 43, - page 28 - the issue relating to the possession of alcohol should take into account and clarify the position on sale and provision of alcohol by sporting clubs and event organisers at such events in a manner as to not prove detrimental to the sustainability of such groups.

Coleraine Community Safety Partnership

Justice (Northern Ireland) Bill Response: Part 3 Policing & Community Safety Partnerships

The following response has been prepared by Coleraine Community Safety Partnership in relation to the clauses posed in Part 3 Policing and Community Safety Partnerships Justice Bill.

Establishment of PCSP's

Part 3 Paragraph 20 Sub Section 1 - Page 16

The proposed name of policing and community safety partnership strongly suggests that the PSNI are the main and dominant partner. This is not representative of the other organisations which may make up the partnership and does not reflect the wider remit of the partnership.

The question of why the title Policing and Community Safety Partnerships was selected when the NIO Local Partnership Working in Policing & Community Safety consultation conducted in June 2010 remains when of all responses , none suggested 'Policing and Community Safety Partnership' however 8 stakeholders (within 5 responses) suggested 'Community safety and Policing Partnership' and just under half of respondents suggested 'Safer Communities Partnership (27 stakeholders suggested within 16 responses) therefore we would recommend that the proposed title is re-examined.

Functions of PCSP

Part 3, Paragraph 21 Sub section 1 – page 17

Coleraine Community Safety Partnership have concerns over the proposed functions of the 'PSCP' as many of these are very similar to the Police Act and are inherited from the current DPP

function at the expense of frontline community safety delivery which appears to be diluted. Overall multi-agency working appears to be strongly neglected within the proposed functions and we would recommend these functions are re-examined.

Paragraph 21 Sub section (2) – pages 17 & 18

The "restricted functions" highlighted poses questions over how can the 'PCSP' act as a single partnership when a number of functions are only referring to one partner this comment is specifically in relation to subsection (1)(c) which should not be restricted to the policing committee as it applies to the whole partnership. Paragraph 21 Subsection 3 (page 18) illustrates why this subsection in particular should not be restricted to the policing committee. It would be our recommendation that the Justice Committee re-examine this proposed function.

Code of Practice for PCSP's

Paragraph 23 Sub section (3)(b) – Page 19

The subsections refer to practices which are currently within the DPP functions in line with the Police Act such as holding public meetings however the effectiveness of these have not been examined. It would be beneficial for an evaluation of these to be carried out in order to establish if they would provide value and are merited to be included in this current legislation.

Annual reports by PCSP to Council, Joint Committee and Policing Board

Paragraphs 24, 27 and 30 Accountability remains with three accounting bodies (Council, Joint Committee and Policing Board) with potential reporting requests from the Department of Justice which is unnecessary bureaucratic and a duplication. It is unclear if each would require the same report or if different information would be required from each accounting body which would increase the bureaucracy associated with the partnership this is particularly concerning as the initial process was highlighted as a means of simplifying lines of accountability. However the current legislation outlined may lead to conflicting targets and requested therefore it would be recommended that the Justice Committee re-examine how the lines of accountability can be simplified.

Paragraph 24 Subsection 5 – page 20

It is unclear why the practice of providing an annual report to the policing committee in order to consult with the district commander appears inappropriate when the area commander would presumably be a member of the overall partnership. Therefore it would be more appropriate for the police representative on the partnership to carry out the consultation with the district commander.

Reports by Policing Committee to Policing Board

Paragraph 30 subsection (1) – Page 22 The Policing Committee appears to be able to operate independently with no reference or requirement to report back to the overall partnership which does not reflect true partnership working therefore we would recommend that the Justice Committee would re-examine this role.

Other community policing arrangements

Paragraph 33 – Page 24 Consultation requirements should reflect more than policing alone and should encompass all aspects of community safety which would reflect the spirit of a single partnership and would avoid consultation duplication. Additionally the establishment of bodies could potentially duplicate various roles within Council including community development.

Duty on public bodies to consider community safety implications in exercising duties

Paragraph 34 – Page 24 We strongly support and welcome the requirement on public bodies to consider community safety implications in exercising duties and believe the partnership would not be 'fit for purpose' without this clause however questions arise regarding how it will be implemented and monitored it would be recommend that this clause would be strengthened to be similar to that of the Crime Disorder Act in England and Wales.

Functions of Joint Committee and Policing Board

Paragraph 35 – Page 25 The separate functions and dual lines of accountability illustrated pose the possibility of separate targets and associated conflicts.

Schedules

Appointments

Schedule 1, Paragraph 4 subsection (2) Page 64 The process of appointing independent members through the Policing Board has provided to be costly to date (In the region of £600,000 of the current DPP budget across N.Ireland) therefore it would be beneficial for the Justice Committee to examine the potential cost savings of the local council being responsible for this recruitment.

Schedule 1, Paragraph 4 Subsection 12 – Page 65

Expenses provided should not affect overall frontline delivery services.

Representative of Designated Organisations

Schedule 1, Paragraph 7. Subsection (1) Page 66 There is a risk that the partnership working currently enjoyed by the CSP with a wide range of public and voluntary and community organisations may be lost or diluted. Given the multi-agency nature of the partnership it would be recommended that named agencies should be included within the legislation similar to the Crime and Disorder Act in England and Wales placing an obligation on the names agencies to reduce crime and disorder.

Schedule 1, Paragraph 10. Page 67

The reference to Chair and Vice Chair positions, and that these can only be held by elected or Independents respectively could potentially devalue the role of the other agencies on the partnership and limit their perceived role.

Schedule 1 Paragraph 13 – Page 69

The appointment of subcommittees should be a not just be a role of the policing committee but should be agreed by the whole partnership in order to prevent any duplication or associated confusion.

Finance

Schedule 1, Paragraph 17 It is unclear if the partnership will be adequately resourced as the terminology 'may' reflects an uncertainty of what financial provision will be made available and what proportion of overall costs for example: There is no indication if the current 75%/25% (DPP) and 100% (CSP) funding arrangements will continue.

There exists no indication if there will be one funding system or two and therefore it is unclear if two financial accounting systems would have to be put in place.

Additional General Comments:

- There has been no economic appraisal to demonstrate the potential costs savings of merging the CSP and DPP into a joint partnership as requested in responses to the NIO Local Partnership Working in Policing & Community Safety consultation document.
- It is essential that the model is 'fit for purpose' in the event of RPA and Community Planning.
- There currently of no mention of community and voluntary in this legislation who currently contribute fully to CSP

Yours faithfully

Cllr David Barbour

Coleraine Community Safety Partnership Chairman

Coleraine District Policing Partnership

Coleraine

District Policing Partnership

Local people shaping local policing

15th November 2010

Committee for Justice
The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Sir or Madam

Re: Justice (Northern Ireland) Bill

I am writing on behalf of Coleraine District Policing Partnership about the above Bill and specifically Part 3 and Schedule 1, both of which refer to the Policing and Community Safety Partnerships.

Schedule 1, Paragraph 17 refers to the financial arrangements and specifically the grant for the Council to establish and administer a new partnership. DPP members are concerned about the wording of the paragraph and specifically the use of the word 'may' rather than 'shall' (as is the case in the Police (Northern Ireland) Act 2000). In light of the current economic climate and the financial pressure that Councils are under, it would be short-sighted if the Department and the Board do not make a commitment through the legislation to meet the full expense or at least a percentage of the cost for running the partnerships. Otherwise, members are concerned that the partnerships may only be operated as a token gesture because of the legislative requirement on Councils rather than as a fully functioning, proactive and effective partnership.

Schedule 1, Paragraph 4, Sub-Paragraph 12 refers to the payment of expenses to independent members. The legislation states that "council may pay to independent members such expenses as the council may determine". There does not appear to be any such inclusion for elected members on the partnerships which means that Councils would have to meet those costs separately and would not be able to recoup them from the central grant. The members of the DPP therefore believe that the expenses should be set at a central level through the Code of Practice (as was the case for the DPPs) to ensure equality throughout all Council areas and amongst members of the partnership and to allow Councils to recoup all potential costs.

The members also believe that independent members should receive a nominal allowance for a number of reasons:

- The calibre of people needed for such an appointment and the level and amount of input that independent members can make to a partnership,
- There is a likelihood that there will be less people interested in applying to be a member of the partnership if there is no incentive to take part,
- It could be linked to attendance,
- The commitment that a public appointment and joining such a partnership requires, for example, in the early days of the DPPs, members' security in some areas was targeted by Dissident groups. In addition, members spend large amounts of time preparing and attending scheduled meetings as well as the outreach meetings with groups in their areas and this requirement is not likely to reduce.

In terms of equality, members also questioned if the payment of allowances to members of the Northern Ireland Policing Board by virtue of Schedule 1 paragraph 12 of the Police (Northern Ireland) Act 2000 will be repealed.

There doesn't appear to be a section in the legislation that would replicate Paragraph 22 of the Police (Northern Ireland) Act 2000 in relation to the district commander consulting with the new partnership on the priorities and the local policing plan. Members would be grateful if this apparent oversight could be clarified.

Members also request that there be some clarification on the level of resources to be made available to Councils for the new Partnerships and the expected efficiencies generated by the amalgamation of the DPPs and CSPs to the Northern Ireland Policing Board and the Department of Justice.

Coleraine DPP would also like to reiterate their point from the original consultation about the new partnership being included in the provisions of Council policies relating to equality, disability awareness and freedom of information to reduce administrative pressures on the partnership.

I trust that these comments will be useful to the committee. Please do not hesitate to contact me if you require any further information or clarification from Coleraine District Policing Partnership.

Yours sincerely

Councillor Robert McPherson
Coleraine District Policing Partnership
Chair

Coleraine District Policing Partnership Independent Members

Coleraine DPP Independent Members
c/o Coleraine DPP Manager
Coleraine Borough Council
66 Portstewart Road
COLERAINE
BT52 1EY

16th November 2010

Committee for Justice
The Committee Clerk
Room 242
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Stormont
BELFAST
BT4 3XX

Dear Sir or Madam

Re: Justice (Northern Ireland) Bill

The Justice (NI) Bill appears to make no provision to pay allowances to Independent Members other than expenses. This is a disparity as Councillors may be paid and statutory organisation members will be paid within the remit of their respective agencies. We do not believe that the right quality, diverse experience and knowledge can be encouraged without some form of incentive being made to independent members.

Independent Members have worked tirelessly and have given their experience, skills and dedication to make a difference to our society and are willing to continue to do so in order to progress improvements where possible. Many Independent members have commitments in respect of their own jobs and businesses yet still make the effort and give of their time for the betterment of the community.

With the proposed changes it is anticipated that the PCSP's will hold their meetings during the working day and as such this will necessitate taking time off work or away from business to attend. Proposed and current legislation does not cater for loss of earnings, only re-imbursements of actual expenses incurred. If appointment is only on a voluntary basis, priority may not be given to attendance at meetings and it is

possible that outreach, a vitally important part of community engagement, will suffer as a consequence or fall to the wayside.

Current expected commitment of DPP members is 2 days per Month; it is hard to comprehend how people would be reasonably expected to give up their time and incur loss of earnings especially in the current economic climate. Member training and briefing sessions may also be difficult to attend if there is no monetary recompense.

Concern has also been expressed that the proposed legislation makes provision for Councils to determine which expenses are to be paid to Independent members. This could lead to a disparity of what expenses and the amount that would be paid, bearing in mind that the control lies with each individual council and that Councillors expenses (paid by Council) could be different. The Department or the Board proposes no checks or audit measures to ensure equality and fairness.

At the recent DPP conference the Justice Minister alluded to the removal of allowances being solely due to the current economic situation, however it is hard to justify the loss of key people and the potential loss of a tried and proven system which has already made a difference to Policing within our society.

Independent members are curious to know if independent members of the Policing Board will be treated in the same way, i.e. expected to sit on the Policing Board on a purely voluntary basis with no allowances paid, as it is regarded as a similar appointment.

At current running costs the Allowance Bill is estimated to be around £1.4 million. As it is part of a previous review into Councillor's allowances, a flat rate is to be paid rather than attendance allowance. The Allowance paid to DPP Members will be reduced from an estimated £750,000 to a figure of approximately £650,000 or 54%. This is a saving (remove in real terms) far in excess of what Government departments are being asked to achieve. In fact the allowances paid to DPPs have decreased in real terms and the date of last increase was April 2006.

The Bill proposes that each PCSP will comprise a combination of councillors and independent members - 8, 9 or 10 councillors and 7, 8 or 9 Independent Members. In essence, this does not vary greatly from existing arrangements.

It is also proposed that a Policing Committee will sit on each PSCP Partnership and that this will perform the monitoring functions inherited from DPPs. The exercise would therefore appear to be one of 'name change' from DPP to Policing Committee but without remuneration. The title of Policing Committee may infer that the committee is linked to and comprises member of the PSNI and therefore may create ambiguity and confusion for the public.

The main functions of the Partnerships are similar to those already performed by DPPs with a Partnership Plan and Delivery of Community Safety Outcomes as the end products.

While it is recognised that collaboration with councils' community safety partnerships and other key agencies is of benefit particularly in the delivery of joint projects and initiatives, the underpinning principles remain broadly the same as existing arrangements. Any new arrangements should also include processes for gaining the co-operation of the public as attendance at meetings in public held by the DPP has been lower than expected.

It would appear therefore that the changes relate to names and titles and reduced funding and not to the delivery of a high quality, effective policing service and the delivery of community safety.

Sent on behalf of Coleraine District Policing Partnership Independent Members

Committee for Culture Arts and Leisure

Committee for Culture, Arts and Leisure
Room 424
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From: Lucia Wilson
Committee Clerk

Date: 17 December 2010

To: Christine Darrah
Clerk to the Justice for Committee

Subject: Justice Bill (Northern Ireland) –Clauses relating to sport

At the meetings of 02 December 2010, 09 December 2010 and the 16 December 2010, the Committee for Culture, Arts and Leisure considered the contents of part 4 of the Justice Bill (Northern Ireland) and Schedule 3. The Committee agreed the following:

Clause 36 Regulated matches

The Committee for Culture, Arts and Leisure recommends clarification of the definition of "regulated matches" and "designated grounds".

Members echoed the point raised by the IFA regarding the time factor before and after matches and recommend a reduction in the time of a regulated match.

Clause 37 Throwing of missiles

The Committee for Culture, Arts and Leisure is content with the clause subject to the inclusion of a definition of the word "missile".

Members also expect that sufficient Court discretion is exercised in determining fines in a proportionate manner which would differentiate, for example, between someone throwing a coin with malicious intent and someone throwing a snowball.

Clause 38 Chanting

The Committee recommends the inclusion of the word "sectarian" with a clear definition of the word and clarification on the definition of "chanting."

Clause 39 Going on to the playing area

The Committee recommends the inclusion of the phrase "controlled celebratory occasions", as pitch invasions are acceptable in some sports.

The 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 Committee also recommends clarification of the phrase "lawful excuse" and in particular questions if this covers emergency evacuation procedures.

The Committee is also concerned that this (and other clauses) replicates what is already in place within the Safety at Sports Grounds legislation.

Clause 40 Possession of fireworks, flares, etc.

The Committee recommends the inclusion of laser pens in this clause.

Clause 41 Being drunk at a regulated match

The Committee questions the need for this clause on the basis of existing legislation and regulation by sports governing bodies, which may address the issues outlined in this clause.

Clause 42 and 43 - Possession of drink containers, etc and Possession of alcohol.

The Committee recommends that Clause 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 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.

Clause 44 Offences in connection with alcohol on vehicles

The 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 and further clarification on the treatment of cross border events.

The Committee also noted that this clause does not include trains.

Clause 45 Sale of tickets by unauthorised persons

The 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.

Clause 46 Banning orders made on conviction

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 also to other jurisdictions.

Clause 47 Banning orders: content

See clause 46.

Clause 48 Banning orders: supplementary

See clause 46.

Clause 49 Banning orders: "violence" and "disorder"

See clause 46.

Clause 50 Banning orders: duration

See clause 46.

Clause 51 Banning orders: additional requirements

See clause 46.

Clause 52 Termination of orders

See clause 46.

Clause 53 Information about banning orders

See clause 46.

Clause 54 Failure to comply with banning orders

See clause 46.

Clause 55 Powers of enforcement

The 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.

Schedule 3 Regulated matches

The Committee was content with the clause subject to further clarification on jurisdiction issues. The Committee also noted that GAA wish to be recognised as the Gaelic Athletic Association.

EQIA

The Committee recommend that the requirement of an Equality Impact Assessment to be revisited. They agreed to forward the attached Assembly Research paper entitled "Sports Law and Spectator Controls in the Justice Bill (NI)" to provide a background to this issue.

Community Safety Managers

Justice (Northern Ireland) Bill
Part 3 Policing and Community Safety Partnerships

The following comments are being provided on behalf of all Community Safety Managers (excluding Fermanagh and Castlereagh CSM):

Clause 20 (1) – page 16

The CSMs are concerned that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

Recommendation: That the Justice Committee re-examine the proposed title

Clause 21 (1) – page 17

Overall the functions are too similar to the Police Act and therefore are very police orientated. The CSMs would be concerned that community safety hasn't been legislated for outside of the policing arena. In addition, multi-agency working, which is the core of the community safety function, has been neglected within these proposed functions. The role of the police may also be perceived as being monitored rather than working in partnership. Finally the PCSP is unbalanced in terms of delivery to the community.

Recommendation: That the Justice Committee re-examine the proposed functions

Clause 21 (2a) – page 17 & 18

The CSMs would query how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (1c) should not be restricted to the policing committee but rather to the whole partnership.

Clause 21 (3) (page 18) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

Recommendation: That the Justice Committee re-examine the proposed functions

Clause 23 (3) – page 19

Many of the proposed provisions refer to practices which are currently taking place within the DPP model under the Police Act. However no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation.

In addition, this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to.

Recommendation: That the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24 – page 20

Accountability remains to 3 bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests. This comment also applied to Clause 27 and 30.

Recommendation: That the Justice Committee re-examine the lines of accountability so that they are simplified

Clause 24 (5) – page 20

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

Recommendation: That item 24 (5) be removed

Clause 30 – page 22

The CSMs would have concern that the policing committee can operate independently from the overall partnership with no legislative requirement to report back to the partnership.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the committee should be able to establish any body.

In addition, there is a fear that the establishment of bodies may be a duplication of the role of community development department of Council.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Clause 34 – page 24

Although this function is welcome, given the extremely positive response from the recent consultation, it would be recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

Recommendation: That the Justice Committee look to strengthen this aspect of the Justice Bill so that the partnership is 'fit for purpose'

Clause 35 – page 25

As previously outlined, this clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Recommendation: That the Justice Committee re-examine the lines of accountability so that they are simplified

Schedule 1

Paragraph 4 (2) – page 64

The CSMs would query why the Policing Board, through external consultants, is responsible for the elected of independent members instead of the local Council and, given it is in the region of £24,000 per Council (totalling at least £600,000 across N.Ireland), cost savings could be achieved by the local Council being responsible for this recruitment.

Recommendation: That the Justice Committee examine the potential cost savings of getting Council to recruit the independent members

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

Recommendation: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

Recommendation: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or PCSP?

Recommendation: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

Recommendation: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership.

Recommendation: That the Justice Committee re-examine the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodes 'shall' rather than 'may' provide a grant.

Recommendation: That the Justice Committee amend paragraph 17 to the above wording

Other Issues to Consider:

There is no mention of community and voluntary organisations in this legislation who currently contribute fully to CSPs.

The Council shall be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Furthermore, CSMs assert very strongly that any PCSP as established within the legislation must be fit for purpose at a local level and questions whether it would appropriate to conduct an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new PCSPs.

Cookstown District Council and District Policing Partnership

Ms Christine Darrah
Clerk to the Committee for Justice
NI Assembly
Room 242
Parliament Buildings
Stormont
BELFAST BT4 3XX 11 November 2010

Dear Ms Darrah

Re Justice (Northern Ireland) Bill

I refer to your letter dated 21 October seeking comment on the contents of the above and respond on behalf of Cookstown District Council and District Policing Partnership.

This submission is laid out and addresses specific clauses within Part 3 and Schedule 1.

20 (7) We believe Local Government should be represented on the proposed Joint Committee given that Councils will be responsible for setting up and administering Policing & Community Safety Partnerships (PCSPs).

20 (5) We believe that reference should be made somewhere within Part 3 that the District Commander delegate operational responsibility to an officer of Chief Inspector rank or above for each existing Council district to ensure continuity and levels of contact are maintained with each locality.

21 (1) (c) + (f) These functions if taken in isolation of each other could result in an approach where police are involved in undertaking initiatives and another where all the other agencies of the PCSP are involved. They should be amalgamated to read "To prepare plans that obtain the co-operation of the public with police and other agencies to prevent crime and enhance community safety of the district".

24 (5) This currently features in the Police (NI) Act but it does bring into question the independence of the proposed PCSP Policing Committee. Requirement to "...shall consult..." the district commander on the annual report should be replaced with a requirement to provide them with a copy.

34 (1) to (5) This refers to a duty being placed on public bodies to give due regard to crime, anti-social behaviour and enhancement of community safety when exercising its functions in relation to any community. 34 (2) refers to department guidance. We believe district councils should also be consulted.

We believe legislation and subsequent guidance should go further and legislate that any Department which channels money towards communities to deal with crime, anti-social behaviour and community safety in a PCSP area should be done so through the PCSP for spending as part of its district plan.

34 (4) (b) This refers to Sch. 2 of the Commissioner for Complaints (NI) Order 1996 which sets out those organisations listed as public bodies. DPPs are currently listed as a public body. This Bill does not appear to repeal this and it may be the case that PCSP's naturally become listed as separate public bodies. If this is the case we believe PCSPs should not be listed as public authorities but fall within the domain of district councils.

35 (1) + (2) This proposes that the joint committee and the Policing Board separately assess the effectiveness of different aspects of the PCSP. The joint committee should undertake all of this through a common framework.

Sch.1 (4) (12) The Bill should state whether or not expenses are to be paid to independent members to ensure continuity across areas and not be left to Council discretion. There appears to be no reference in Sch. 1 to Political Members being eligible for expenses.

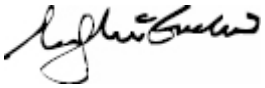
Sch.1 (7) This refers to the PCSP designating at least 4 organisations to be represented on the PCSP. We believe the Council should designate the organisations, on advice from the Chief Executive, to reflect the organisations needed to implement the PCSP plan.

Sch. 1 (10) It is not clear from this if Political Members will always be the Chair of the PCSP though it states that this must be the case for the period 12 months after commencement. We believe PCSP should always be chaired by a Political Member to give it democratic legitimacy within the district.

Sch. 1 (17) This states that the "...Department and Policing Board may for each financial year make to the Council a grant towards the expenses incurred by the council..". We believe that 'may' should be replaced with 'will'.

I trust the views of Council and the DPP will assist the Committee on its deliberation of the proposed Justice (NI) Bill.

Yours sincerely



MJ McGuckin

Clerk & Chief Executive

Craigavon District Policing Partnership

Justice (Northern Ireland) Bill 2010
Response From Craigavon District Policing Partnership - November 2010

The Craigavon District Policing Partnership (DPP) wish to thank the Committee for Justice for the opportunity to provide views and recommendations on the proposed Justice (Northern Ireland) Bill 2010. The DPP has only responded to the relevant section of the Bill regarding Policing and Community Safety Partnerships (PCSPs).

Part 3: Policing & Community Safety Partnerships

Clause 20 (1) Establishment of PCSPS and DPCSPS:

The proposed name may project an inaccurate image of the partnership in that the police may be perceived as the principle and dominant partner. We would also refer to our response to the name proposed within the consultation document and would reiterate our position on this item:

'We believe that this is not an appropriate name for the partnership (Crime Reduction Partnership) as it has a negative connotation and communities will perceive it as a policing structure, which only deals with crime rather than general community safety.

A suitable name, which we would propose for any future partnership would be 'Safer Communities Partnership' as this is a more holistic and positive title which would comfortably

encompass all elements of community safety and policing matters. Furthermore, this would be in keeping with similar titles used elsewhere in the UK. It is also important to note that this title fits better with the Community Planning model in which Community Safety is one element of.'

Recommendation: That the proposed title of the partnership takes into account the written submissions of the consultation and change the title to 'SAFER COMMUNITIES PARTNERSHIP'.

Clause 21 (1) Functions of PCSP:

Reference to clause 21(1h) which mentions 'ventures' should be queried in terms of the use of wording (the perception of 'ventures' would be non-evidence ad-hoc based approaches) and the general commitment to potentially provide financial support or additional support to these.

It is proposed that the Partnership should be making strategic decisions regarding the matter of funding particular 'ventures' and indeed can build on the already extensive knowledge from current partnerships. Furthermore, the Partnership should be acting in a leadership capacity regarding community safety matters and therefore it is more likely that delivery of activities will be implemented by partners on the Partnership or within any sub-group which the Partnership may establish.

Finally, it should be mentioned that it is anticipated that this partnership will play a vital role within the community planning structure and therefore as the functions are currently outlined in this legislation, this would not 'fit' within this proposed future structure. Therefore it should be queried whether this proposed partnership is 'fit for purpose' within a more long term timeframe.

Craigavon DPP would also like to reiterate the following points previously made in our consultation response:

'The issue of monitoring and also working in partnership with an individual partner must be resolved prior to the implementation of such an integrated partnership. In addition, the accountability structures at a regional level must be refined to reflect moves at a local level for closer integration. The proposed model also calls into question the independence of, and potential dilution of, the police accountability function.'

'Craigavon DPP and CSP currently operate very successfully in a cohesive fashion which is complementary yet still enables each partnership to carry out its distinctive roles. This is achieved by a joint Chairperson, the same elected member representation on the two partnerships, shared office space and shared administration resource. The partnerships carry out joint initiatives, as and when these are beneficial to both bodies, and share relevant information on an ongoing basis.

We believe that the Craigavon model should be considered for replication throughout N.Ireland given that in Craigavon there is no duplication of roles, there is effective usage of resources and there is a well developed relationship between the two partnerships.

Furthermore, it is imperative that a scoping and benchmarking exercise needs to be undertaken throughout N.Ireland to assess current effectiveness of existing arrangements and identification of areas for improvement and alignment prior to any proposed amalgamation.'

Recommendation: That the Justice Committee re-examine the functions so that they are more proportionately focused on the safety of communities and the functions are 'fit for purpose' in terms of future community planning structures.

Clause 23 (3) Code of Practice for Pscps and Dpcsps:

The legislation provides a generic outline of the proposed guidance regarding exercise of functions. This is broadly reflective of the previous Code of Practice issued for DPPs. Further attention needs to be given to the finer detail of this to ensure that all functions of the new partnership are given due consideration and priority.

Recommendation: That the Justice Committee ensure that all functions of the new partnership are given due consideration and priority

Clause 24 (5) Annual Report by Pcsp To Council:

The legislation states that the Policing Committee shall consult the District Commander before submitting the Annual Report to Council (24.5). The DPP would question the rationale and the need behind this being included in the legislation. There is currently no requirement on DPPs within the current Police (NI) Act to carry out this function. The DPP would request that clarity is sought by the Committee on this issue.

Recommendation: That the Committee seek further clarification on this matter

Clause 33 (1) Other Community Policing Arrangements:

The legislation contained within Sections 33.1 – 33.5 would appear to be quite vague and open to interpretation. Due to the number of agencies and organisations already involved in delivering aspects of community policing, there is an urgent need for much more clarity and guidance regarding these sections in order to avoid confusion and duplication.

The DPP would strongly recommend that consultation is the responsibility of the entire PCSP and not just the Policing Committee in order to effectively reflect the policing and community safety functions of the partnership.

Recommendation: That the Committee urgently seek clarity regarding these issues

Clause 34 (1) Duty on Public Bodies to Consider Community Safety Implications in Excercising Duties:

The legislation states that the notions of 'due regard' and 'regard' must be complied with in relation to the responsibilities of public bodies vis a vis the impact of their work on crime, anti-social behaviour and community safety. This would appear to be a dilution of the 'Crime & Disorder Act (England & Wales) 1998, which the DPP feel would weaken and have a potential negative impact on the partnership's ability to ensure that other statutory partners fulfil their required responsibilities regarding community safety.

Craigavon DPP would like to reiterate the following point previously made in our consultation response:

'We believe that it is essential that new legislation is developed at the earliest opportunity to underpin any new partnership and enable statutory responsibility from the outset. This will assist the implementation of community planning and the partnerships role within this process. Furthermore, the legislation will ensure all bodies involved in the partnership will take appropriate and full responsibility for delivery of the overall partnership plan.'

Recommendation: That the legislation be strengthened to reflect the requirements of the partnership.

Schedule 1

Paragraph 4 (12) – page 65

All members of the DPP currently receive an allowance in addition to being able to claim travel expenses. The proposed legislation permits the payment of expenses but does not allow for Member's allowances as they are currently paid. This issue has been the subject of much debate, and the members of the DPP feel that there should be some method of being recompensed that is equitable and proportionate to the time and effort that Members commit to the workings of the partnership. The DPP also wish to reiterate that all Members of the partnership should be treated in a fair and equitable manner regarding expenses.

Recommendation: That the Justice Committee ensure that the legislation enables fair and equitable remuneration for Members

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or PCSP?

Recommendation: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

Craigavon DPP would reiterate comments provided during the consultation:

'We believe that it is essential that new legislation is developed at the earliest opportunity to underpin any new partnership and enable statutory responsibility from the outset. This will assist the implementation of community planning and the partnerships role within this process. Furthermore, the legislation will ensure all bodies involved in the partnership will take appropriate and full responsibility for delivery of the overall partnership plan.'

Recommendation: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 17 – page 70

Currently the Policing Board provide DPPs with a 75% grant which is matched by the Council providing the remaining 25%. Further clarity is required regarding whether there will be a similar expectation regarding match funding or if the intention is to provide a 100% grant.

Craigavon DPP would like to reiterate the following point previously made in our consultation response:

'Craigavon Borough Council and the two partnerships would like to request evidence based justification of the proposed models including cost implications and savings (as referred to within the document). In addition, it is requested that a programme of future expenditure is outlined and forwarded to Council, CSP and DPP.'

Recommendation: That the Justice Committee seek clarification regarding the financial allocations and expectations that may be placed on local Councils

Other Issues to Consider:

The Council should be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Furthermore, Craigavon DPP would strongly advise that any PCSP as established within the legislation must be fit for purpose at a local level and questions whether it would appropriate to conduct an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new PCSPs.

Craigavon Community Safety Partnership

Justice (Northern Ireland) Bill 2010
Response from Craigavon Community Safety Partnership - November 2010

The Craigavon Community Safety Partnership (CCSP) wish to thank the Committee for Justice for the opportunity to provide views and recommendations on the proposed Justice (Northern Ireland) Bill 2010. The CCSP has only responded to the relevant section of the Bill regarding Policing and Community Safety Partnerships (PCSPs).

Part 3: Policing & Community Safety Partnerships

Clause 20 (1) Establishment of Pcsps and DPCSPS:

The proposed name may project an inaccurate image of the partnership in that the police may be perceived as the principle and dominant partner. We would also refer to our response to the name proposed within the consultation document and would reiterate our position on this item:

'We believe that this is not an appropriate name for the partnership (Crime Reduction Partnership) as it has a negative connotation and communities will perceive it as a policing structure, which only deals with crime rather than general community safety.

A suitable name, which we would propose for any future partnership would be 'Safer Communities Partnership' as this is a more holistic and positive title which would comfortably encompass all elements of community safety and policing matters. Furthermore, this would be in keeping with similar titles used elsewhere in the UK. It is also important to note that this title fits better with the Community Planning model in which Community Safety is one element of.'

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety

Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this was selected as the most suitable title?

Recommendation: That the proposed title of the partnership takes into account the written submissions of the consultation and change the title to 'SAFER COMMUNITIES PARTNERSHIP'.

Clause 21 (1) Functions of PCSP:

Given that the policing committee is only one element of the wider partnership, the functions, as outlined in this clause cause concern in that increasing the safety of communities appears to be less important and relevant than the bureaucratic processes such as 'monitoring performance of the police'. It would appear that the Justice Bill will have little and no impact on making communities safer, if the functions are prioritised and communicated in this manner.

Furthermore, reference to clause 21(1)(h) which mentions 'ventures' should be queried in terms of the use of wording (the perception of 'ventures' would be non-evidence ad-hoc based approaches) and the general commitment to potentially provide financial support or additional support to these. Due to the current economic climate, it is particularly important that any financial support is provided based on evidence and sustainability.

It is proposed that the Partnership should be making strategic decisions regarding the matter of funding particular 'ventures' and indeed can build on the already extensive knowledge from current CSPs. Furthermore, the Partnership should be acting in a leadership capacity regarding community safety matters and therefore it is more likely that deliver of activities will be implemented by partners on the Partnership or within any sub-group which the Partnership may establish.

Finally, it should be mentioned that it is anticipated that this partnership will play a vital role within the community planning structure and therefore as the functions are currently outlined in this legislation, this would not 'fit' within this proposed future structure. Therefore it should be queried whether this proposed partnership is 'fit for purpose' within a more long term timeframe.

Craigavon CSP would also like to reiterate the following points previously made in our consultation response:

'The issue of monitoring and also working in partnership with an individual partner must be resolved prior to the implementation of such an integrated partnership. In addition, the accountability structures at a regional level must be refined to reflect moves at a local level for closer integration. The proposed model also calls into question the independence of, and potential dilution of, the police accountability function.'

'Craigavon DPP and CSP currently operate very successfully in a cohesive fashion which is complementary yet still enables each partnership to carry out its distinctive roles. This is achieved by a joint Chairperson, the same elected member representation on the two partnerships, shared office space and shared administration resource. The partnerships carry out joint initiatives, as and when these are beneficial to both bodies, and share relevant information on an ongoing basis.

We believe that the Craigavon model should be considered for replication throughout N.Ireland given that in Craigavon there is no duplication of roles, there is effective usage of resources and there is a well developed relationship between the two partnerships.

Furthermore, it is imperative that a scoping and benchmarking exercise needs to be undertaken throughout N.Ireland to assess current effectiveness of existing arrangements and identification of areas for improvement and alignment prior to any proposed amalgamation.'

Recommendation: That the Justice Committee re-examine the functions as a matter of urgency so that they are more heavily focused on the safety of communities and the functions are 'fit for purpose' in terms of future community planning structures.

Clause 23 (3) Code of Practice for Pscps and DPCSPS:

Many of the proposed provisions, as outlined in the section regarding the code of practice refer to practices which are currently taking place within the DPP model. However no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation.

In addition, this clause provides clear insight into the role of the policing committee while little is mentioned in relation to the practices which the overall partnership will have to adhere to.

Recommendation: That the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24 (5) Annual Report by PCSP to Council:

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

Recommendation: That item 24 (5) be removed.

Clause 30 (1) Reports by Policing Committees to Policing Board:

The practice of a committee of the overall partnership providing information directly to an accountability body causes concern in that the committee would be able to operate independently and may conflict with the work and responses of the wider partnership. In addition to providing information, it would appear in Clause 30 (2)(b) that agreements may be made between the policing committee and Policing Board which could also lead to confusion within the partnership structure. Furthermore, there is a lack of clarity in terms of responsibility of the overall partnership.

Craigavon CSP would like to reiterate the following point previously made in our consultation response:

'It is imperative that the CSU (within DoJ) and Northern Ireland Policing Board integrate at a regional level to mirror any proposed integration at a local level and this should only take place once the accountability issue has been resolved, both locally and regionally. It is key that integration must take place at a regional level in order for the partnerships to be fully efficient

and effective. This will provide a further cost saving opportunity which can be reinvested into delivery on the ground.'

Recommendation: That all information being passed to an accountability body is sent from the overall partnership and no agreements should be made between any committee and any other body unless ratified and processed by the overall partnership.

Clause 33 (1) Other Community Policing Arrangements:

This clause indicates that the policing committee can arrange/facilitate consultation, with Policing Board approval. This causes concern and would query that any consultation should be approved by the overall partnership rather than by the Policing Board. It would be further suggested that this could lead to further confusion by partnership members and the wider community as it would appear that this committee was operating independently, supported by the Policing Board. This would undermine the very thrust of this amalgamation. In addition, we would propose that any consultation should be undertaken by the overall partnership so that all policing and community safety matters could be consulted.

Furthermore, accountability still appears to be 3 bodies, the Policing Board, the joint committee and the Council, therefore providing no simplification of the present model (CSP and DPP) and may lead to conflicting targets and processes. These measures require review.

Clause 33 (3) also outlines that the policing committee can establish bodies to meet the requirements of Clause 33 (1). This defeats the purpose of the integration of the two bodies if a committee can act independently, report directly to an accountability body and establish groups. This needs to be addressed as a matter of urgency.

Craigavon CSP would like to reiterate the following points previously made in our consultation response:

'It is imperative that the CSU (within DoJ) and Northern Ireland Policing Board integrate at a regional level to mirror any proposed integration at a local level and this should only take place once the accountability issue, as outlined earlier in this document, has been resolved, both locally and regionally. It is key that integration must take place at a regional level in order for the partnerships to be fully efficient and effective. This will provide a further cost saving opportunity which can be reinvested into delivery on the ground.'

'The delivery performance of any future partnership, measured against the one partnership plan should have a single system of accountability to one regional body. We would recommend that there would be key generic principles against which any new partnerships should be measured which should reflect strategic objectives, as set by the one regional body. In addition, if required, key performance indicators could be established at the local level to measure partnership progress against identified objectives within the overall Community Planning context.'

Recommendation: That Clause 33 (1) is removed.

Recommendation: That the Justice Committee request a review of the accountability measures proposed with the legislation.

Recommendation: That the Justice Committee request a review of role of the policing committee, as a matter of urgency.

Clause 34 (1) Duty on Public Bodies to Consider Community Safety Implications in Excercising Duties:

This clause does not reflect the requirements the new partnership would need to order to work effectively and efficiently. 'Due regard' does not put a great enough obligation on each public body to incorporate community safety into their daily approach.

From the consultation responses, we know that all those who referred to the statutory footing agreed that legislation was required. Many added that this should be similar to the Crime and Disorder Act (England and Wales model) and some outlined that this should be complementary to the community planning process. Further consideration needs to be provided on this matter.

Craigavon CSP would like to reiterate the following point previously made in our consultation response:

'We Believe That It Is Essential That New Legislation Is Developed At The Earliest Opportunity To Underpin Any New Partnership And Enable Statutory Responsibility From The Outset. This Will Assist The Implementation Of Community Planning And The Partnerships Role Within This Process. Furthermore, The Legislation Will Ensure All Bodies Involved In The Partnership Will Take Appropriate And Full Responsibility For Delivery Of The Overall Partnership Plan.'

Recommendation: That the legislation be strengthened to reflect the requirements of the partnership.

Schedule 1

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

Recommendation: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

Craigavon CSP would like to reiterate the following point previously made in our consultation response:

'The CSP and DPP would recommend that the amount spent on administration needs should be proportional to delivery requirements but at a reasonable level so that any future partnership is able to meet the objectives, as outlined in partnership plan. Furthermore, any savings made with the implementation of the new structure should be automatically reinvested into delivery of local partnership plans to address local need.'

Recommendation: That the Justice Committee investigates cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or PCSP?

Recommendation: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

Craigavon CSP would reiterate comments provided during the consultation:

'We believe that it is essential that new legislation is developed at the earliest opportunity to underpin any new partnership and enable statutory responsibility from the outset. This will assist the implementation of community planning and the partnerships role within this process. Furthermore, the legislation will ensure all bodies involved in the partnership will take appropriate and full responsibility for delivery of the overall partnership plan.'

Recommendation: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, should be re-examined as we believe all members should be entitled to go forward for these positions and elected through a standardized process.

Recommendation: That the Justice Committee re-examine the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodes 'shall' rather than 'may' provide a grant.

Craigavon would like to reiterate the following point previously made in our consultation response:

'Craigavon Borough Council and the two partnerships would like to request evidence based justification of the proposed models including cost implications and savings (as referred to within the document). In addition, it is requested that a programme of future expenditure is outlined and forwarded to Council, CSP and DPP.'

Recommendation: That the Justice Committee amend paragraph 17 to the above wording

Other Issues to Consider:

The Council should be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Furthermore, Craigavon CSP would strongly advise that any PCSP as established within the legislation must be fit for purpose at a local level and questions whether it would appropriate to conduct an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new PCSPs.

Derry District Policing Partnership

Views & Comments to the Justice Committee on the Justice (Northern Ireland) Bill 2010

Part 3

Clause 20. Establishment of PCSPs

It is noted that the consultation document entitled "Local Partnership Working on Policing and Community Safety" clearly sets the proposal to establish a new Partnership within the context of a Review of Public Administration and that it would deliver value of money, reflected in the introduction by the Minister for State Paul Goggins who said "in anticipation of the changing landscape in local government" and "the changes in council boundaries planned for May 2011 give us a golden opportunity to put public safety at the heart of local service delivery. Moving from 52 partnerships to 11 will free up resources for frontline delivery and allow the new partnerships to have a bigger impact on the ground".

The proposed policy may be open to a judicial review challenge as it is not being implemented in the context of the Review of Public Administration.

Further, evidence through a supporting business case for this new policy, should demonstrate how four reporting lines (DOJ, NIPB, Joint Committee and Council) for differing information and three funding streams (NIPB, DOJ and Council) will reduce bureaucracy and stakeholder confusion and provide effectiveness, efficiency and value for money.

Clause 24, paragraph 1 - Submit to Council a general report.

Clause 27 paragraph 1 - A PCSP shall submit to the Joint Committee.

Clause 30 paragraph 1 - The Policing Committee shall submit to NIPB a report.

Clause 33 paragraph 1 - The Policing Committee, with the approval of NIPB.

Schedule 2, Clause 17 – "the department and NIPB……. a grant towards expenses…."

The proposed name PCSP was the least favoured at consultation level. It was strongly felt that having policing in the title reinforces attitudes that the Police are primarily responsible for community safety and is against the overall ethos of shared responsibility and mainstreaming later referred to in the Bill.

Care should be taken to ensure that any proposed model for integration of the partnerships does not duplicate best practice models within the community planning framework, reflected in the Scottish Model where a community planning directorate within Council, consults on behalf of its citizens, establishes thematic groups to tackle issues identified and also holds a central monitoring role to monitor effectiveness of all action plans.

As the proposed PCSP has the same legislative basis as the Police (NI) Act 2000. Part III, 14, it is assumed that the new structure will be an unincorporated body established by Council. As elected members will not hold the balance of power on the full PCSP, care should be taken to ensure there are no vires issues under the 1972 Local Government Act (as amended). Under democratic principles, the balance of power should remain with the elected member as stated in Schedule 4(1) of the Local Government Act 1972.

Now that there is all party agreement on policing, as an unincorporated body established by Council, it should be for Council to identify, appoint and remove independent members and designated bodies serving on the PCSP, not for the Policing Board to appoint the independent members and the PCSP to appoint designated bodies. See Schedule 1, paras 4, 7. Alternatively, a public body similar to Crime and Disorder Reduction Partnership (CDRP) in England and Wales could be established.

It is inferred that the "designated bodies" will be from the statutory sector that will have a "due regard" to tackle community safety issues. Failure to include representatives from the third sector could be to the detriment of effective partnership working and buy in from the third sector.

The proposed model, which combines the roles and responsibilities of monitoring policing and enhancing community safety, could result in a degree of role confusion and a conflict of interest. For example, a question by the Policing Committee to the Police on how they are tackling a community issue could result in a standard response "as you are aware, the PCSP is responsible for the action plan relating to this issue and your question is best placed to be answered by yourselves". This new responsibility may dilute the effective monitoring of the police and will substantially change the relationship between the public and the police. It will also have an impact on public perception in relation to the usefulness of the committee in monitoring police performance locally. Indeed this will have an impact on public satisfaction.

Clause 21. Functions of PCSP

The term "Policing Committee" is not reflective of its remit. It is not a committee of Police nor is it a committee as it has no powers to designate and appoint members but rather with statutory powers to: monitor the Police and encourage the public to work with the Police. As evidenced with the name District Policing Partnership, this choice of name will lead to stakeholder confusion.

Consideration should be given to the impact of the unique and distinct role of the Policing Committee on the overall dynamic and performance of the PCSP, especially as members from designated bodies cannot hold the office of Chair and Vice Chair.

The proposed model does not have an equal emphasis on policing, problem-solving and tackling the root causes of crime, reflected in the size and remit of the "policing committee" and the number of statutory duties related to policing. This will lead to an emphasis on the policing aspect and dilution of dealing with community safety issues.

21(h) it is suggested that 'organisations' are included in this sentence as it would be unusual to provide grant aid for individuals for community safety initiatives. The DPP also recommend that the funding arrangements for the PCSP are fully qualified in the body of the legislation.

Clause 23. Code of Practice for PCSPs

It is suggested in line with the current legislation Police NI Act 2000, Part III, Para 19 (2), where the Code of Practice is approved by the Secretary of State, that the proposed Code of Practice to be developed by the Joint Committee should require approval from the Justice Minister. It is also worth noting that the procedures for meetings and holding public meetings will be addressed in the Code of Practice. Members of Derry DPP have already discussed the idea of public attending 'private' DPP meetings (as observers).

Clause 24(1). Annual Reports.

As an unincorporated body established by Council, Council should have an accountability role as opposed to solely a reporting role.

Clause 27 and 30. Reports to Joint Committee and by Policing Committees to Policing Board

As a body unincorporated established by Council, any reports requested by an external agency should also be provided to Council. In addition, there is a risk of duplication of reports required by both the Policing Board and Joint Committee, one covering the policing aspects of an issue and the other covering the community safety aspects of the same issue.

Clause 30. Reports by Policing Committees to Policing Board

The legislation suggests that the Policing Committee will not report on its function to the overall PCSP and will independently issue and publish reports. This is an unusual governance arrangement. One practical outworking of the proposed governance arrangement would be that the PCSP logo could not be applied to policing committee documents as they have not been ratified by the PCSP. However, if the police sit on the PCSP as one of the 'designated bodies' will they still have a role in ratifying reports from the Policing Committee before they are forwarded to the Policing Board.

Clause 34. Duty on Public Bodies to Consider Community Safety Implications in Exercising Duties

There are significant resource implications for all public bodies to have "due regard to the likely effect of the exercise of those functions on crime and anti-social behaviour in that community, and the need to do all that it reasonably can to enhance community safety." This brings with it a requirement to "community safety proof" all policies and procedures. It is suggested that the PCSP should be consulted within this suggested policy development process, so that the effectiveness of this structure is not diluted by mainstreaming.

Clause 35. Functions of Joint Committee and Policing Board

The legislation provides for the Joint Committee to assess public satisfaction and effectiveness of the overall PCSP; while the Policing Board will assess the public satisfaction and effectiveness of the Policing Committee. This duplication of roles will lead to confusion for all stakeholders.

Schedule 1

Clause 4. Independent Members

The proposal is unnecessarily bureaucratic and with limited benefit. As body unincorporated of Council, Council should be empowered to nominate and appoint independent members to the Policing Committee or alternative governance arrangements established.

Clause 7. Representatives of Designated Organisations

It is suggested that as body unincorporated of Council, Council should designate organisations to serve on the PCSP enabling full voting powers. If Council are reluctant to accept this responsibility, alternative governance arrangements should be established.

Currently the legislation reads "A PCSP must designate at least 4 organisations for the purposes of this paragraph". Initially, as the policing committee is the only element of the PCSP in existence, it is not possible for the PSCP to designate other organisations and consideration should be given to amending the wording to reflect this.

Giving the PCSP powers to appoint and revoke will increase the bureaucracy and training requirements for the PCSP.

Clause 8(f). Removal of Members

Consideration should be given to including in the definition of 'unfit' a relationship to attendance criteria. This will be important in any partnership.

Clause 10. Chair and Vice Chair

The PSCP is not an inclusive partnership as 'designated members' are excluded from holding the office of Chair or Vice Chair.

Clause 11 (Procedure of PCSP)

A quorum is defined in terms of the PCSP. To ensure representation, consideration should be given to stipulating the ratio between the Policing Committee members and designated members.

Clause 14. Other Committees

To ensure representation, consideration should be given to including a ratio between Policing Committee members and designated members.

Clause 15. Indemnities and Para 16 Insurance against Accidents

It is recommended that the relationship between the PCSP and the Council is clearly defined in legislation, particularly if the funding sources for the new partnership will be changed. Indeed, if the Council has no funding allocation towards the PCSP, or if the PCSP is designated as a stand-alone public body, it would be difficult for a council to justify indemnifying persons or organisations that it has no responsibility for or control off.

Clause 17. Finance

As funding ultimately comes from the Department, an arrangement to make one funding and accountability stream should be feasible. The proposed arrangements are bureaucratic and unnecessary. The removal of the existing 25% contribution from local government may reduce the degree of ownership the Council has to the partnership and how it is embedded locally.

The Bill does not make any assurance that Council will have adequate assistance to perform its enhanced statutory duties, or the PCSP duties for which it is not responsible and has no accountability function other than through receipt of the annual report. Also given the fact that it is the intention to remove the Service Level Agreement with Council there will be no incentive for local authorities to provide legal, financial, human resource, marketing or office accommodation support to the new partnership.

Consideration should be given to provision of a members allowance in particular for independent members. The proposed structures carry an increased significant workload from current structures and at a time of increased terrorist activity may have a detrimental impact upon take up from the independent sector. Many independent members rightly feel that they have taken substantial personal and family risks in support of new policing structures and the removal of their allowances after minimal consultation have left many feeling that their contribution has undervalued and dismissed by the Minister. Parity with Independent Board Members of NIPB should also be considered in relationship to including a provision for payment of an allowance.

Dungannon and South Tyrone Borough Council

DUNGANNON
& SOUTH TYRONE
Borough Council

Committee for Justice
Clerk to the Committee for Justice
Room 242, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

17th November 2010

Dear Ms Darrah

RE: Justice (Northern Ireland) Bill

Thank you for the opportunity to respond to the Justice bill for Northern Ireland 2010.

Council would request an extension to your current consultation period as we are very keen to engage in the development of the Justice Bill, particularly in light of the role of local government. We are currently looking at a model with members in line with the principles of the Patten report, and would like the opportunity to share this with you.

As a Council we are concerned that the level of consultation undertaken by the Department has been superficial as drafts for comment would seem to be agreed documents as consultation comments have been ignored. The new draft policy that has been provided by the Department for Justice is further concerning relating to the level of engagement with Council particularly as local government is named as a key delivery agent for community safety and district policing partnership.

Dungannon & South Tyrone Borough Council in its previous response did accept the principle of a single partnership, with a view to further discussion on how this could be arranged. We see the current proposals as limited that do not provide for any major transformation from what is currently in existence. To ensure real savings and efficiencies and a value for money model it is proposed that a more radical way forward be sought that is in keeping with the original aims of the Patten report.

Council are currently in consultation with its members to look at such a model that will take the principles of the Patten model forward and be a 'Fit for Purpose' solution.

The Patten report:

A new beginning: Policing in Northern Ireland' – The Report of the Independent Commission on Policing for Northern Ireland (Patten Report)

Paragraph 6.29 (extract) The Boards should represent the consumer, voice the concerns of citizens and monitor the performance of the police in their districts, as well as that of other protective agencies such as the fire service, environmental protection, public health and consumer protection authorities. ..... Like the Policing Board, the DPPBs should be encouraged to see policing in its widest sense, involving and consulting non-governmental organisations and community groups concerned with safety issues as well as statutory agencies.

Paragraph 6.30 (extract) We also envisage the DPPBs as forums for promoting a partnership of community and police in the collective delivery of community safety. This is to say, if policing problems are beyond the capacity of the police alone to resolve – because, for example, they are linked to inadequacies of transport or housing or youth facilities – the DPPBs may identify the wider

The model being developed by Council will seek to build on the Patten report and look at a community planning model that would meet the needs and expectations of local communities and be flexible for transfer into a future RPA structure, if and when it proceeds.

In light of the current publicity and review with regard to value for money it is important that any future Bill and model seeks to get the most favourable option and if this requires an extension of time to allow for this it would be advantageous in the longer term.

As a key partner in the proposed Justice (Northern Ireland) Bill along with the Department for Justice and the Policing Board it would be important that there was a greater level of partnership working to complete on the Bill and in the future policy for community safety and district policing partnership.

We would therefore welcome an extension to both the timescale for response and level of involvement in the development of the Justice (Northern Ireland) Bill and look forward to greater partnership working on this important piece of legislation for our area.

Yours sincerely

Iain Frazer

Acting Chief Executive

Committee for Justice
Clerk to the Committee for Justice
Room 242, Parliament Buildings
Ballymiscaw
Stormont

Belfast BT4 3XX

8th December 2010

Dear Ms Darrah

RE: Justice (Northern Ireland) Bill

As a follow up to a letter sent on 17th November, please find enclosed Dungannon & South Tyrone Borough Council's comments to the developing Justice (Northern Ireland) Bill.

As referenced previously Council would like to propose a more innovative model for delivery of district policing partnerships and community safety that seeks to give greater significance to the principles of the Patten report. We have attached a model that is based on these principles for the attention of the Committee.

The Patten report:

A new beginning: Policing in Northern Ireland' – The Report of the Independent Commission on Policing for Northern Ireland (Patten Report)

Paragraph 6.29 (extract) The Boards should represent the consumer, voice the concerns of citizens and monitor the performance of the police in their districts, as well as that of other protective agencies such as the fire service, environmental protection, public health and consumer protection authorities. ..... Like the Policing Board, the DPPBs should be encouraged to see policing in its widest sense, involving and consulting non-governmental organisations and community groups concerned with safety issues as well as statutory agencies.

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wider difficulties and draw them to the attention of the appropriate authorities for the purpose of developing a joint response.

The model being developed by Council seeks to build on the above statements, to monitor the performance of police as well as that of other protective agencies; and to view policing in its widest context involving a range of stakeholders. The proposed model attached seeks to provide an integrated approach to policing and community safety partnership.

In light of the renewed focus on community planning within Councils it would be an ideal time to look at such a concept to drive forward community safety and policing, ensuring that the consumer/voice of the citizen is represented and involved in seeking local solutions to policing and community safety.

In response to the current publicity and review with regard to value for money it is important that any future Bill and model seeks to get the most favourable option that is innovative, best value and fit for purpose. Local government should be directly involved in the development of this model with NIDPB and DOJ; as a key player and not solely as a consultee.

We look forward to working with the Committee and respective departments and bodies to seek a model that will deliver on the vision of Patten and a 'real' partnership approach for district policing and community safety.

If you would like to discuss the attached model further or require further clarification of any of the proposals please do not hesitate to contact myself on tel: 028 87720300.

Yours sincerely

Iain Frazer

Director of Development

A new beginning: Policing in Northern Ireland' – The Report of the Independent Commission on Policing for Northern Ireland (Patten Report)

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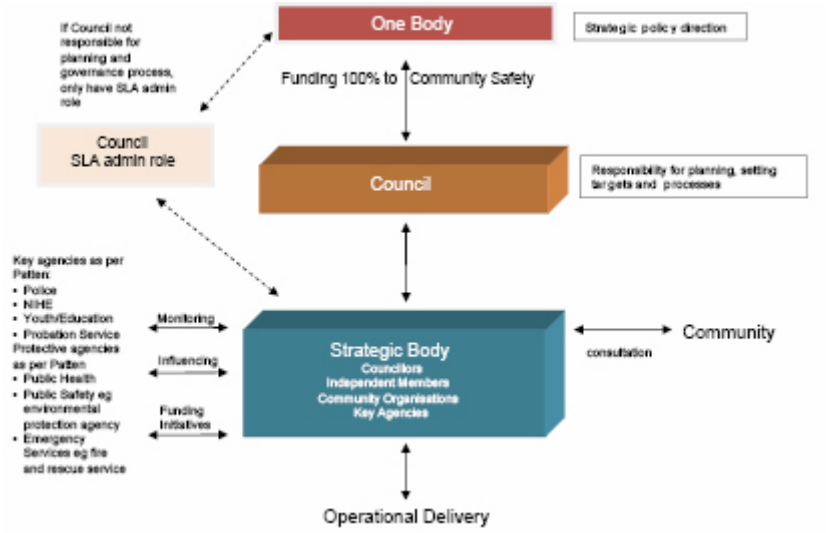

Notes

Membership : Membership Numbers - 7 key agencies (as noted above), 6 independent members, 7 Councillors, 2 community organisations

Council and its remit: To oversee planning, governance, delivery and monitoring in line with strategic policy

One Body: To set strategic policy, streamline funding and lessen bureaucracy

Strategic Body: Monitoring and influencing key agencies' as per Patten, 'promoting partnership in the collective delivery of community safety/district policing', and funding targeted initiatives

Community Organisations: Regular consultation

Dungannon and South Tyrone Community Safety Partnership

Dungannon & South Tyrone CSP - Response to Proposed Justice Bill on Policing and Community

Dungannon & South Tyrone Community Safety Partnership acknowledges the need for streamlining the functions and services of the existing Community Safety Partnership and District Policing Partnership. However, the over-riding view of the proposed model is that there is insufficient difference from the existing structures given the extent of the Review that has taken place.

With Specific Reference to the Proposed Legislation

Clause 20 (1) – page 16

Dungannon & South Tyrone Community Safety Partnership is concerned that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

It was noted from the consultation conducted in June 2010 that just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

Recommendation: That the Justice Committee re-examine the proposed title. Preference being that no partner is dominant in the title

Clause 21 (1) – page 17

Dungannon & South Tyrone Community Safety Partnership believes that the given functions are too similar to the Police Act and therefore are orientated towards policing without given adequate consideration to the wider issues of community safety and to the role of other partners. Multi-agency working is at the forefront of community safety and should be further developed, which has not been given consideration within the Bill. The role of the Partnership and policing could also be perceived as being monitoring rather than working in partnership.

Recommendation: A new partnership should address an integrated model to community safety and policing taking account of a number of key agencies and their role.

Clause 21 (2a) – page 17 & 18

Dungannon & South Tyrone CSO would query how real partnership can be promoted when there are functions which only pertain to one part of the model. In addition Clause 21 (1c) should not be restricted to the policing committee but rather to the whole partnership.

Clause 21 (3) (page 18) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

Recommendation: That the Justice Committee re-examine the proposed functions and refer back to the Patten Report for guidance in relation to community safety and policing in its widest context.

Clause 23 (3) – page 19

This clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to.

Recommendation: That the Justice Committee take account of the wider partnership and its remit, and as referred to previously an integrated approach in relation to community safety and policing.

Clause 24 – page 20

Accountability is stated as four bodies, namely the Joint Committee, Policing Board, DOJ and the Council, however it is difficult to identify what each role is and why all the different tiers are required. This is concerning given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests. This comment also applied to Clause 27 and 30. In addition, Dungannon & South Tyrone Community Safety Partnership asks why there is a need to for the proposed Policing Committee to report to the Policing Board and notes that

there is no requirement to report back to the whole Partnership. Also, the Council role in the proposed PCSP is not clarified as to whether it is to be an administrative or leadership role. Concern was expressed that the bureaucracy and reporting lines have not been reduced.

1. Recommendation: That the Justice Committee re-examine the lines of accountability so that they are simplified and clarify the role of the Council in relation to accountability.

Clause 24 (5) – page 20

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

2. Recommendation: That item 24 (5) be removed and the Annual Report presented to the Partnership and the one proposed lead body.

Clause 30 – page 22

The CSP would have concern that the policing committee can operate independently from the overall partnership with no legislative requirement to report back to the partnership.

Recommendation: That the Justice Committee re-examine the role of the policing committee as this proposal is not in the spirit of partnership working

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership, and consultation requirements will be wider than that of policing. I

Recommendation: That the Justice Committee re-examine the role of the policing committee as a separate entity with separate reporting and see how it could be more interlinked to the overall partnership and an integrated approach.

Clause 34 – page 24

Although this function is welcome, given the extremely positive response from the recent consultation, it would be recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

Recommendation: That the Justice Committee look to strengthen this aspect of the Justice Bill so that the partnership is 'fit for purpose'

Clause 35 – page 25

As previously outlined, this clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Recommendation: That the Justice Committee re-examine the lines of accountability so that they are simplified.as in ' Proposed Model ' attached

Schedule 1

Paragraph 4 (2) – page 64

The Dungannon & South Tyrone CSP would query why the Policing Board, through external consultants, is responsible for the election of independent members instead of the local Council and, given it is in the region of £24,000 per Council (totaling at least £600,000 across Northern .Ireland), cost savings could be achieved by the local Council being responsible for this recruitment. If Council is a leader of the Partnership then should have responsibility for appointment of independent members and other members (reference Patten Report for list of proposed members).

Recommendation: That the Justice Committee examine the potential cost savings of getting Council to recruit the independent members and give responsibility to Councils for appointment of members

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

Recommendation: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

Recommendation: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or PCSP?

Recommendation: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act and as referred to in the Patten Report.

Recommendation: That the Justice Committee seeks to name agencies in order to place obligation on them to reduce crime and disorder and that delivery partners should bring their designated funding for community safety initiatives to the Partnership.

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

Recommendation: That the Justice Committee re-examine the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodes 'shall' rather than 'may' provide a grant.

Recommendation: That the Justice Committee amend paragraph 17 to the above wording

Other Points to be Noted:

There is no mention of community and voluntary organisations in this legislation. These organizations currently contribute fully to CSPs.

It would be preferable for Council to be responsible for the decision on the make-up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Furthermore, Dungannon & South Tyrone Community Safety Partnership feels very strongly that any PCSP as established within the legislation must be 'fit for purpose' at a local level and would ask the Justice Committee to consider the merit in conducting an independent evaluation of the current DPP and CSP functions to ensure that only the highest standards of practice carry forward to the new Partnerships.

Dungannon and South Tyrone District Policing Partnership

Justice (Northern Ireland) Bill 2010

Dungannon and South Tyrone District Policing Partnership's Comments/Views

Dungannon and South Tyrone District Policing Partnership (DPP) is grateful for the opportunity to comment on the draft Bill. The views set out below refer specifically to Part 3 and Schedule 1, the establishment of Policing and Community Safety Partnerships.

Dungannon and South Tyrone District Policing Partnership welcomes the establishment of one body to deliver the policing and community safety functions currently performed by district policing partnerships and community safety partnerships.

Dungannon and South Tyrone DPP is further satisfied that the Bill does not diminish the current role and remit of District Policing Partnerships.

Schedule 1: Clause 17, Finance

The text should be amended to 'The Department and the Policing Board shall for each financial year make to the Council a grant.....'.

This clause should provide clarity in relation to who will fund the new Partnership and how it will be funded ie 100% as is currently the case for Community Safety Partnerships or a 75%/25% split as is the case for DPPs.

There should be one single stream of funding which reflects lines of accountability ie if the new Partnership is accountable to the Department and Policing Board for the effective delivery of its functions then funding should come from these organisations in one single stream.

Schedule 1: Clause 4 (12) Independent Members

'The Council may pay to Independent Members such expenses as the council may determine.'

If the Northern Ireland Policing Board is to appoint Independent Members Schedule 1: Clause 4 (2) and as part of the Joint Committee, have oversight of the effectiveness of the Policing and Community Safety Partnership Part 3: Clause 35 (1b) and (2b), why are the Council to bear the responsibility for determining the payment of expenses to Independent Members?

The Independent Members who sit on the Northern Ireland Policing Board are currently paid allowances and we are not aware of any proposals to change or cease this arrangement. In the interests of equality, the current provision for payment of allowances to Political and Independent District Policing Partnership Members should be retained for members of the new body and these costs should be borne by the Northern Ireland Policing Board and/or Department of Justice.

Extern

NI Assembly Justice Committee Consultation on Proposed Justice Bill (NI) 2010

Response from Extern

1. Extern

1.1 Extern and Extern Ireland work in partnership across the island of Ireland to enable people who are vulnerable and marginalised within the community to change their lives. We have a successful track record and over thirty years experience in developing innovative, responsive services that meet the identified needs of children and young people, adults and families, helping them to remain within their communities. Extern believes that people have the potential to change and our services aim to build capability and capacity for them to do so.

1.2 Our work with adults has expanded to include those who have offended, those who are affected by homelessness and those who are economically inactive and seeking to return to the labour market. Our services for children and young people commenced in the 1980s and we now provide a range of interventions to young people who are assessed as 'in need' and at risk of entering the care system, an alternative education programme, and family support services to help retain young people within their community. The organisation also manages a Practice Learning Centre for Social Work students and has developed innovative learning programmes in conjunction with Queen's University and University of Ulster.

1.3 Extern Ireland, which was founded as a charity in 2004, provides services to children and young people in three of the four Health Service Executive areas, and with Limerick Regeneration Agency.

1.4 Extern provides a range of services which

(a) support the rehabilitation and resettlement of offenders in safe environments in the community;

(b) hostel accommodation for homeless people many of whom are victims of crime, perpetrators of crime, witnesses to crime, or all three of these; and,

(c) support children and families in building behaviours in children who are at risk of engagement with the social care system, the family justice system or the criminal justice system.

1.5 Extern fully supports the Department of Justice (DoJ) policy intention "to bring significant benefits to the justice system and those who come into contact with it and the desire that the Bill as proposed should have both strategic significance and operational importance for the justice system in Northern Ireland.

1.6 Extern welcomes the Department of Justice's commitment to ensure that the proposed Bill does not contain any provisions that will result in an increased or adverse impact on business, charities or the community and voluntary sectors. Extern will advise the Department of Justice of any evidence it may have in relation to this potential impact.

2. Extern response to Victims and Witnesses

2.1 Extern works with people who are vulnerable and marginalized within the community to enable them to change. In Extern's experience, offenders have complex needs such as poor or no essential skills, a chaotic lifestyle, poor or no family supports, addictive behavior, poor mental health and physical health – and require highly skilled and specialist support to help them understand and engage, initially and continuously with services that aim to provide them with support. Extern believes individuals have the potential to change and works to build resiliency, capability and capacity for them to do so. Extern is therefore pleased with the scope and emphasis on special measures and supports for victims.

3. Extern response to proposed provisions on Community Engagement and Public Safety

3.1 Extern provides and works within community-based services to children, families and adults and would be keen to see the outworking of, for example, the new Crime Reduction Partnerships. Extern also believes that the improvements to sentencing powers for various offences are very positive.

4. Extern response to proposed provisions on Service Delivery and System Efficiency

4.1 The suggested reforms in freeing up police and court time will be important. Extern provides diversionary services which support statutory agencies in efficiently carrying out their role. Whilst we recognise the financial constraints and applaud the endeavour to work within such, it is vital that attempts at efficiencies within the system do not aggravate nor sanitise the robustness and impact of the criminal justice system.

5. Extern response to proposed provisions on Miscellaneous Changes

5.1 Extern welcomes the attempts to be creative and notes the shift towards a more measured and balanced 'justice in action' approach.

5.2 Proposal such as the Offender Levy and Victims of Crime Fund can be viewed as a concrete attempt to convey unacceptability and the need to make recompense. However there must be cognisance of the stark reality that many offenders have limited financial resources and are wholly dependent on state benefits. Such levies may further lead a person down a criminal pathway rather than enabling positive movement to rehabilitation. Extern recognises that resources for such approaches need to be found. The potential benefits of this levy may be negated by the administrative costs and Extern believes that further work is needed on this issue.

6. Extern response to proposed provisions on Special measures

6.1 The recognition that giving evidence in Court can be frightening for witnesses, is viewed as progressive by Extern and supporting those who are vulnerable to ensure their voice is heard we believe to be a positive move.

6.2 The court process particularly for young people can be a harrowing experience and to engage with appropriate professionals to inform processes and practices must be applauded. A positive key point to acknowledge is the importance of ongoing review and research in order to continue to improve special measures

7. Extern response to proposed provisions on Live Links

7.1 Extern welcomes the use and expansion of Live Links within the criminal Justice System. Extern staff regularly use this technology to interview offenders who are in prison who wish to access a placement in one of Extern's Approved Premises (specialist Hostel provision). The live link allows better management of the day to day relationship with vulnerable adults in Extern and is seen as a valuable tool to enable all to have access to justice. It is commendable that the management of issues such as mental health is being recognized as valid and not disregarded or ignored. Extern works with such issues on a daily basis – those with mental health issues, personality disorder, learning difficulties and so on, and strives to support service users to access appropriate services and rights within the criminal justice system and further to facilitate positive re-integration within the community.

8. Extern response to proposed provisions on District Policing and Community Safety Partnerships

8.1 The streamlining of CSPs and DPPs into one partnership has the opportunity to enable a more joined up approach by enabling better communication, agreed action and further offer the opportunity to be more cost-effective. Extern has significant experience of contributing to community safety and is supportive of efforts to promote such in a more 'user friendly' approach within the community. Extern is concerned about how it and other organizations supporting community safety in NI will be represented on these partnership.

9. Extern response to proposed provisions on Sport Law and Spectator Controls

9.1 Extern is committed to a shared and inclusive society and would welcome new legislation that seeks to extend the scope of public shared space, make sports grounds safer and more welcoming to all (through the inclusions of Rugby and Gaelic) and this can only be viewed as positive. This could go some way to promote anti-sectarianism within communities.

10. Extern response to proposed provisions on Changes to Sex Offenders Law

10.1 Extern views such proposals as vital to contribute to public protection.

10.2 The proposed provision that those convicted of a sexual offence outside the UK must give their details to the police within 3 days of arrival in Northern Ireland will contribute to keeping the community safer. Extern would propose that this is an appropriate point at which these convicted offenders should be referred to rehabilitation and resettlement services to support more effective targeting of these services.

10.3 Extern believes that the proposed provision on the return of a sex offender to court in NI if they break a requirement in GB is also vital in terms of compliance and consequences for law breaking

10.4 Extern believes that the current ongoing review of legislation pertaining to Sex Offenders is important and that this process should be continuous to ensure that the justice systems achieves the required outcomes.

11. Extern response to proposed provisions on Adjustment to Sentencing Powers

11.1 Extern believes the proposals concerning common assault and knife crime denotes the seriousness of such illegal behaviour.

11.2 Extern considers that the extension of the deferment period must be seen as giving the offender a more realistic opportunity to show change, improvement and evidence of sustaining such. Extern also recognizes that the offender would have the opportunity to comply with required programmes. Extern would however view that extension to the deferment period might require some level of support being offered to the offender to maximize effectiveness and positive outcomes.

11.3 Extern believes that the addition of the offence of hi-jacking to potentially attract a public protection sentence is reasonable.

11.4 Extern believes that the addition of money laundering, corruption and fraud to the list of offences attracting a 'Financial Reporting Order' is reasonable

12. Extern response to the proposed provisions on Alternatives to Prosecution

12.1 Extern supports the new disposals for certain offences and first time offenders, and believes this is a creative and reasonable approach. Guidance re implementation should be clear. In particular, Extern believes that Conditional Cautions offer a real opportunity within the restorative justice framework for adults. Extern views this development as positive.

13. Extern response to proposed provisions on Single Jurisdiction

13.1 Extern believes that current arrangements are suitable.

14. Extern response to proposed provisions on Case Initiation Reform

14.1 Extern believes that the direct issuing of a summons to the accused person from a PPS Prosecutor to be feasible.

15. Extern response to proposed provisions on Bail Reform

15.1 Proposed changes re hearings for compassionate Bail seem feasible and achievable.

16. Extern response to proposed provisions on Legal Aid: Means Test

16.1 Extern agrees that it seems realistic to review the means-test element which permits the granting of legal aid. However any review would need to consider Extern's experience that the offenders it deals with are almost wholly dependent on state benefits; face a range of personal, structural and legislative barriers to to employability; have no assets; have low levels of numeracy, and literacy generally and limited money management skills.

16.2 Extern also asserts the rights of individuals to receive justice so the further research and public consultation should contribute to this process being robust, proportionate and available to those who are in need.

17. Extern response to proposed provisions on Legal Aid: Recovery of Defence Cost Order

17.1 Extern recognizes financial constraints but again asserts the importance of the rights of individuals to justice and the importance of RDCO's being realistic and monitored. Extern has no evidence from its experience in delivering services that would indicate that this proposal would have a negative impact on any individual.

18. Extern response to proposed provisions on Legal Aid: Repeal of Article 41 of the Access to Justice (NI) order 2003

18.1 Extern supports the setting up of a Litigation Funding Agreement.

19. Extern response to proposed provisions on Solicitors' rights of audience

19.1 Extern would welcome this provison as a step in supporting citizen's engagement with a complex criminal justice system.

20. Extern response to proposed provisions on Investment fees or expenses

20.1 Extern believes that proposed changes seem appropriate.

21. Extern response to proposed provisions on Criminal Appeal Amendment

21.1 Extern believes that the diversion of a Crown Court Appeal to the Court of Appeal in Belfast seems appropriate.

22. Extern response to proposed provisions on Criminal Record Checks

22.1 Extern sees value in the issuing of a basic disclosure provided the employer is named in the application.

23. Extern response to proposed provisions on Supervised Activity Order Notification

23.1 Extern views the proposed introduction of a Supervised Activity Order (SAO) as creative and is an opportunity to divert fine defaulters from a custodial sentence. This may ultimately impact upon re-offending potential. It is however crucial that appropriate schemes and activities are available, realistic and properly costed.

24. Extern response to proposed provisions on Supervised Activity orders for financial penalties

24.1 This change is stated to be as a result of a European Directive. Extern views this proposal as realistic in that a person receiving a fine abroad is given the opportunity to avoid custody by completing a community sentence. Again Extern reiterates the importance of a structure and scheme to be appropriately available.

25. Extern response to proposed provisions on NI Law Commission Accounts

25.1 It seems appropriate that a summary of accounts is included within the annual report.

26. Extern response to proposed provisions on Third Party Disclosure

26.1 Extern response to Extern views that the proposed change to allow Courts to consider any evidence that 'is likely to assist a party in the proceedings in presenting their case' is appropriate.

27. Extern response to proposed provisions on Disclosure of Information relating to family proceedings

27.1 Extern views that the disclosure of information pertaining to family proceedings is rightly restricted. Any alteration to allow courts to set out special times when disclosure might be allowed seems appropriate if robust rule setting is implemented and the safety of all is maintained.

28. Extern response to proposed provisions on Crown Court Rules Committee

28.1 Extern views the nomination of a person bringing added knowledge and expertise to the Committee seems appropriate.

29. Extern response to proposed provisions on Transfer of Judicial Review Cases to the Upper Tribunal

29.1 Extern views the law change proposed, so that the Lord Chief Justice of NI can direct judicial review cases from the High Court in NI to the new Upper tribunal as feasible.

30. Extern response to proposed provisions on Closure orders

30.1 Extern views a Closure order as an important piece of legislation in terms of keeping people safe. Extern views the proposed provision on Closure Orders totally appropriate.

31. Extern response to proposed provisions on Miscellaneous legal aid and other improvements

31.1 Extern views these proposed provisions as positive.

Fermanagh District Policing Partnership

Fermanagh
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17 November 2010

Justice Committee
Northern Ireland Assembly

Dear Sir/Madam

JUSTICE (NORTHERN IRELAND BILL 2010)

Thank you for the opportunity to comment on the draft Bill, specifically the proposed integrated Partnership (PCSP – Policing & Community Safety Partnership) combining the existing functions of the established District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs).

Fermanagh DPP has considered the developmental process of this legislation at several meetings and has welcomed the proposed merger. I include the following specific comments in relation to the various clauses of the proposed Bill, as outlined below.

Clause 21
[Sets out the functions of the new Partnership]

The draft Bill includes legislation to merge the District Policing Partnerships and the Community Safety Partnerships and returns to the precepts recommended by The Report of the Independent Commission on Policing for Northern Ireland and is to be welcomed. The legislation effectively merges the current roles of both existing Partnerships.

The continued need to encourage widespread community support for the still relatively new policing arrangements are catered for in the legislation. Similarly the role of the Partnership in community consultation and influencing the Local Policing Plans are seen as critical in maintaining local community support.

Brendan Hegarty
B.Sc (Ulc) A.
Chief Executive

Clause 34
34.(1) A public body must exercise its functions in relation to any community with due regard to
(a) the likely effect of the exercise of those functions on crime and other antisocial behaviour in that community, and
(b) the need to do all that it reasonably can to enhance community safety.

This places a statutory duty on a 'public body' to exercise its functions with due regard to several issues in relation to Community Safety. This is a Clause which gives the PCSP some leverage in delivering community safety and would be an important first step towards matching the legislation in the Crime and Disorder legislation.

Clause 35 & 23
35.(1) The joint committee must
(a) assess the level of public satisfaction with the performance of PCSPs and DPCSPs;
(b) assess the effectiveness of PCSPs and DPCSPs in performing their functions (other than restricted functions) and in particular, the effectiveness of the arrangements made under section 21(1)(d) or 22(1)(d).
23.(1) The joint committee shall issue, and may from time to time revise, a code of practice containing guidance as to the exercise by PCSPs and DPCSPs of their functions.

It is anticipated that the Joint Committee will drive the strategic direction of the new Partnership, funding and assessing its performance. It is essential that there remains a single strand of funding and subsequent accountability.

Local Councils continue to have a significant role to play in the establishment and accountability mechanism of the new Partnership and consideration should perhaps be given to SOLACE representation on the Joint Committee.

Schedule 1

Paragraph 4 (3) and 7 (1)
4 (3) In appointing independent members the Policing Board shall so far as practicable secure that the members of the PCSP (taken together) are representative of the community in the district.
7.(1) A PCSP must designate at least 4 organisations for the purposes of this paragraph.

If the Partnership is to appoint Representatives of Designated Organisations [para 7] it will be impossible for the Policing Board to appoint independent members prior to this to ensure that the '*members of the PCSP (taken together) are representative of the community in the district'.*

Paragraph 4 (12)
4. (12) The council may pay to independent members such expenses as the council may determine.

If the Policing Board is to appoint Independent Members Schedule 1: Clause 4 (2) and as part of the Joint Committee, have oversight of the effectiveness of the Policing and Community Safety Partnership Part 3: Clause 35 (1b) and (2b), why do the Council have the responsibility for determining the payment of expenses to Independent Members? Would this not be in line with standard mileage/subsistence rates?

Paragraph 17
17. The Department and the Policing Board may for each financial year make to the council a grant towards the expenses incurred by the council in that year in connection with the establishment of, or the exercise of functions by, PCSPs.

It is unclear what form this funding will take. Under the current Police (Northern Ireland) Act 2000 [Schedule 3 paragraph 11] '*The Board shall for each financial year make to the council a grant equal to three-quarters of the expenses reasonably incurred by the council in that year in connection with the establishment of, or the exercise of functions by, a DPP.'* The DPPs are funded on a 75/25% basis by the Policing Board and the local Council.

Community Safety Partnerships are funded on a 100% basis.

The success of this new structure will be reflected by the impact it has on crime and policing and changes to budgets will obviously affect the service delivery in local communities. It would be beneficial if similar wording to the Police Act 2000 could be included i.e. '*The Department and the Policing Board shall for each financial year make to the council a grant towards the expenses reasonably incurred by the council in that year in connection with the establishment of, or the exercise of functions by, a PCSP.*'

I hope you find these comments useful but if you require clarification on any of these issues or comments, please do not hesitate to contact me.

Yours sincerely

David Eames
Partnership Manager
Fermanagh District Policing Partnership and Fermanagh Community Safety Partnership

General Council of the Bar of Northern Ireland

Submission on behalf of the General Council of The Bar of Northern Ireland in response to the Justice Bill 2010

Introduction

1) For many years practitioners in Northern Ireland had become accustomed to working with legislation forged in Westminister. While the parliamentary procedure that was in place for enacting legislation for Northern Ireland has ensured that legislation is technically adapted to fit our distinct legal system, on matters of substance, legislation has tended to follow fairly closely the previously devised Westminister enactment. The devolution of Policing and Justice powers will be generally welcomed by practitioners as offering legislative solutions that are specifically catered to meet the particular needs of Northern Ireland. This is obviously applicable to the proposed Justice Bill 2010.

2) Practitioners will not quibble with the impetus behind the proposed Justice Bill as identified in the explanatory memorandum which sets out the Bill's policy objectives, namely a desire for the Justice system to do business better, a need to reduce costs and a need to improve access to the Justice system. It does not, however, take a legally trained mind to recognise the potential tension within these plainly laudable objectives; practitioners, both solicitors and members of the Bar working day and daily to advance the interest of clients would be particularly alive to the difficulties of "doing business better" and at the same time improving access to the justice system in an environment of cost reduction.

3) The Bar is alive to the need for the Justice system to be continually improved, modernised and rendered more accessible. The Bar has demonstrated a commitment through difficult years to the highest standard of services. That commitment will remain undiminished but it is incumbent upon the profession to remind Government that the maintenance of excellence of service provisions requires proper funding. The Bar has no doubt that this view will be shared by the Solicitors profession which has demonstrated an equal commitment to the highest standard of legal services. The Bar Council is mindful of the remarks of the President of The Law Society Mr Norville Connolly in a speech at the President's Dinner in the City Hall with regard to ensuring continued access to justice for all members of the Community in this jurisdiction. The Bar of course is also mindful of its obligation to demonstrate where appropriate that public expenditure is justified within the different areas of legal services provision.

4) Before considering the specific provisions of the Bill it is worth reminding ourselves that the issues dealt with by the legal profession are of huge importance in the proper functioning of a democratic and civil society. It matters that those who are guilty of serious crimes are properly prosecuted in Courts of Law and dealt with appropriately if convicted. It matters that those who are charged with criminal offences are provided with fair trials to ensure their convictions are properly based. It matters that Family Courts ensure the proper provision and care of children who are the victims of family break down. It matters that Courts provide protection for those who are victims of domestic violence. It matters that those who suffer injuries in the course of their employment or who are the victims of acts of negligence have access to Courts to ensure that they are properly compensated. Victims of professional negligence also require access to Courts. It matters that those who are the victims of unlawful acts by agents of the State have a proper remedy before the law. It matters that those who have disputes with employers have access to a proper system of tribunals. Those who are involved in commerce have the right to a proper and fair mechanism of ensuring the just resolution of disputes. All these issues are of the utmost importance in any society and Government should be willing to ensure that proper resources and mechanisms are provided to enable these matters to be dealt with in the interests of Society.

The Justice Bill

5) Moving on to the specific provisions within the proposed legislation some areas more than others lend themselves to a practitioner's response. The integration of the roles of Community Safety Partnerships (CSPs) and district Policing Partnerships (DPPs), in part 3, for example, would perhaps not excite the practitioner although the public lawyer will be alive to the hazards

the new body may face in carrying out its functions in accordance with the revised legislative scheme. The Bar notes the proposals in relation to new offences relating to sports law which of course are a matter for the legislator. Obliviously the creation of new criminal offences bring with it a responsibility on practitioners to study carefully the parameters of the offending behaviour and the associated police powers to ensure the new laws are properly enforced and where necessary subject to appropriate challenge.

6) A key feature of the act and one which has attracted considerable public attention relates to the creation of a mandatory offenders levy as set out in part 1 of the Bill. It is difficult to criticise the principal of offenders contributing to support for victims but it is important that the scheme can work in practice.

7) When considering the effect of the levy it is important to look at other existing provisions which deal with the power of Courts to extract financial penalties from offenders and also the proposed new scheme envisaged in the Justice Bill and ensure that they are applied consistently and not in conflict with each other.

8) The Court already has the power to make compensation orders for individual victims of violence and it may be that this is another useful provision. This is taken into account specifically in part one of the Bill. The Court also in appropriate cases has the power to impose confiscation orders when individuals have been convicted of certain types of criminal offences. The new Bill also proposes new means testing for defendants in respect of criminal legal aid and also for defence cost orders. All of these provisions have the potential for imposing significant financial penalties on those convicted of crime.

9) At the heart of any such penalty or order must be the ability of the convicted person to pay any of the amounts sought. Of course the reality is that those who are responsible for causing the greatest impact on victims arising from their crime are those least likely to be able to pay either fines or levies to provide for victims schemes. The amount suggested for the offenders levy are relatively small for example, as low as £5.00 in respect of certain penalties in the Road Traffic Offenders (Northern Ireland) Order 1996. One wonders whether in principle it is right for someone who breaks a speed limit to be obliged to contribute to this levy in circumstances where it could not be said that there was any victim of such an offence. However, the main concern relates to the administration of the scheme itself. There are bound to be significant administrative costs associated with these provisions and one wonders whether the estimated figures in terms of what might be raised on an annual basis are unduly optimistic. If for example, the bulk of the funds are made up of reductions or deductions from prisoner's wages, is this simply not moving one pot of public money to another with significant administrative costs involved?

10) The provisions on vulnerable witnesses in part one and live links in part two of the Bill represent the continuation of ongoing development with which practitioners have become well familiar; the provision of assistance to vulnerable and intimidated witnesses in criminal proceedings and the use of modern technology to enable – in appropriate circumstances - participation in proceedings otherwise than by direct attendance at Court. Practitioners have worked with the existing special measures legislation for a decade; there is a general recognition that certain witnesses require special facilities to enable them to give their evidence most effectively and thereby to contribute to the aim of the criminal justice system to ensure just outcomes. On the other hand practitioners have guarded jealously the oral tradition of our criminal trial process and have striven to ensure that the fairness of a trial is never compromised by impediments being put in the way of a witnesses evidence being effectively tested.

11) Within the legistive scheme there are provisions to ensure that the use of special measures is suitably tempered by facilities to be properly challenged. It should be noted also that Courts in

this jurisdiction have been vigilant to ensure that outside of situations were there is automatic entitlement to special measures, such applications are properly grounded on clear factual evidence; it has been said that there needs to be a "compelling narrative" that addresses the precise basis of a witnesses eligibility for special measures. It is imperative that the Courts continue to play an important role in ensuring that the new provisions are applied in a way that will meet the needs for justice in a particular case.

12) It should be remembered that the purpose of these provisions is to ensure that vulnerable witnesses "give their best possible evidence in criminal proceedings". It is of course not necessarily the case that this is achieved by the use of video evidence or live link evidence. It is generally recognised by the profession that witnesses make a bigger impact on juries when they give evidence live in court. There is a danger that witnesses whose evidence is received by way of video link may have less impact on a jury and could remove or dilute the impact that a victims evidence given in person can have. It is the Bar's experience that defence counsel gain little by oppressive or unnecessary cross examination of vulnerable witnesses and indeed this would be curtailed by the Trial Judge in any event. In short even if special measures are available for vulnerable witnesses it is not necessarily the case that the objective of giving "best possible evidence" is achieved by the use of such measures. There is a danger that when measures like these are introduced they become routine or the norm and that insufficient consideration is given to whether or not witnesses should give evidence in the normal way. There is a risk that the over use or automatic use of special measures will have the opposite effect of that intended and could result in a dilution of the effect of such evidence and not necessarily serve the interest of justice.

13) Part 5 of the proposed legislation deals with various sentencing matters: notably, the provisions are "tidy up" improvements, not new sentences in themselves, addressing gaps and inconsistencies in existing laws. From a practitioner's perspective it is perhaps timely to note that the whole area of sentencing is one in which there has traditionally been substantive differences in legislation and in practice in Northern Ireland. Any further reform of sentencing law in this jurisdiction should be alive to the perils of "over legislating" in the field, a difficulty that has arguably beset reform in sentencing in England & Wales over the last two decades. There will no doubt be intensive debates ahead, in which the profession will participate fully, where more substantive changes to present sentence arrangements in this jurisdiction may be contemplated. In this regard I note the proposed consultation which has commenced in relation to a Sentencing Guideline Council and the recent lead of the Lord Chief Justice in this debate. It is the strongly held view of the Bar that the independence of the judiciary is rigoursly defended in matters of sentencing.

14) The provisions in part 6 of the Bill relating to new alternatives to prosecution will be generally welcomed. The diversion of low level crimes from the formal criminal justice system has the capacity not only to ease pressure in the court system and consequently to reduce delay, but also to provide a more measured response to offending at the lowest end of the criminal spectrum. The practitioner will, however, always be alive to the need to ensure that power to issue fixed penalties notices is exercised responsibly by police officers. The issuing of a notice is effectively an invitation to an individual to accept responsibility for a criminal offence; it remains important that the individual is fully advised as to the consequences of acceptance. In particular there is a risk that this could have a potentially disproportionate impact on younger and vulnerable males and in this respect the guidelines issued by the Department to the PSNI will be important. There is also a danger that the "easy fix" of the penalty notice results in the penalisation of behaviour that would have previously attracted only verbal censure without resort by police to a formal response.

15) Part 7 of the Bill deals with the question of Legal Aid which obviously will have a direct impact on both professions in this jurisdiction. The Bar repeats its remarks concerning the

potential tension or conflict, on the one hand between the need to reduce costs and the requirement to do business better and improve access to the justice system. Both branches of the profession have acknowledged the reduced public funding available for Legal Aid in this jurisdiction and have worked both with the Court Service and The Legal Services Commission to devise schemes so far as possible to provide fair remuneration and ensure continued access to justice for those most in need. The Bill provides for a new means test for Criminal Legal Aid and for recovery of defence cost orders in appropriate cases. The Regulations enacted to implement these provisions will obviously be crucial. In drafting the Regulations it will be imperative that those who appear before The Criminal Courts and who are charged with serious crime are afforded proper representation and that the most vulnerable in our society have access to Legal Services. The balance will need to be struck in such a way as to ensure effective representation for those who appear before the Courts. The Regulations will also need to have regard for the entirety of the potential financial implications for those brought before the Courts and should not be judged in isolation. In this regard the Bar queries whether the Department has prepared an estimate of the proposed savings in Legal Aid arising from such changes and whether such proposed savings have been factored into proposals in relation to remuneration in the Crown Court.

16) A key feature of the new Bill deals with the question of litigation funding agreements and the provision of Legal Aid for those involved in civil disputes, and in particular money damages claims. Much of the debate on the administration of justice in this jurisdiction focuses on criminal law. Whilst this may be understandable it is important to remember that perhaps for most citizens who come into contact with the Legal system they do so through civil disputes and the importance of this aspect of the administration of justice should not be overlooked. Obviously those people with limited means are also entitled to public support to ensure that they have access to justice to enforce their rights in civil disputes. It should be borne in mind that in relative terms the amount of public money expended in support of such claims is relatively small and to some extent this area of public funding is a victim of its own success. However the Bill envisages removing the restriction on Legal Services funding under litigation funding agreements. This restriction was set out in Article 41 of the Access to Justice (NI) Order 2003. Article 40 of the Act opened up the possibility of LFAs but to date this provision has not been brought into force and there has not been any funding by LFAs in this jurisdiction.

17) To permit the Legal Services Commission to provide services under LFAs is very much taking "a step into the dark" as there is no information or material to confirm how such a scheme will operate within this jurisdiction.

18) The Legal Services Commission has been considering alternative approaches to funding money damages cases. There has however, been a consistent approach from the Legal Services Commission and the profession and others that the English experience of conditional fee arrangements, success fees etc were not suitable for this jurisdiction and ought not to be introduced. The English experience has been strongly critised by many groups and most recently by the Jackson Report.

19) The Bar view has been that money damages cases which represent a very small figure in relation to the expenditure of the Legal Services Commission should be maintained as a priority area (most cases are successful and there is no claim on the Legal Aid to fund). It is recognised however that there are significant administrative costs.

20) The Bar is not opposed to the approach of a central fund helping to meet the costs of unsuccessful cases. There would be concern at the introduction of success fees. If they were permitted in the Legal Services Commission funded LFAs then there would be an inevitable and perhaps irresistible pressure to extend this to all cases giving rise to all the problems identified in the English experience.

21) Proposals to have a portion of the awards put into a central fund are initially attractive. It was an approach looked at by the Legal Services Commission and the professions in discussion of alternative funding of Legal Services and in particular the contingency Legal Aid Fund option. One difficulty identified was that there would be a risk of "cherry picking" of cases. Only the most difficult cases would use the scheme. If the proportion of damages to be paid or a fixed sum was in any way significant then Plaintiffs would be reluctant to use Legal Services Commission funding and thus there would be insufficient funds raised to make the scheme viable. If a payment was a percentage of damages in all cases it could give rise to major issues in catastrophic/high value cases. Is it appropriate that seriously injured persons use a portion of their damages – perhaps required to provide care in the future – to fund other cases?

22) If a losing party was required to pay the amount to central funds over and above the usual costs this could deal with such difficulties.

23) Article 42 of the Access to Justice provided for costs to be awarded against the LFA funder of a unsuccessful case. What is the suggested approach to that provision? Orders for costs against the Legal Services Commission backed LFAs would raise significant questions about its viability. Is it proposed that Legal Services Commission funded LFAs are to be excluded from a potential cost order against them?

24) The Bar's initial reaction to this proposal in the Bill is that difficulties associated with LFAs and payment to a central fund may not have been fully thought out and that potential serious difficulties have not been identified. If these difficulties can be identified and overcome and the proposals lead to a greater availability of funds for money damages cases, the Bar would certainly not be opposed to it and we will continue to work with the Legal Services Commission on this issue.

25) There are a number of other items on the Bill which the Bar welcomes. In particular the expansion of members of the Crown Court Rules Committee and the Court of Judicature Rules Committee. This will add to the value and expertise provided by these Committees and the Bar would urge that the views of these Committees are taken into account when considering relevant changes in our legal system.

26) The majority of the reforms proposed in the Bill understandably focus on the needs of victims and witnesses in criminal trials. The Bill also creates new criminal offences and new methods of dealing with criminal offenders. It is to be hoped that unlike the recent experience in England and Wales not all legislation in the field of criminal law focuses on such issues whilst ignoring the entitlements and rights of those who are on trial for criminal offences. The Bar will continue to argue for the protection of these rights as a fundamental pre-requisite in a democratic society, even if this means support for unpopular causes. In this regard the Bar welcomes the provisions of Clause 99 which provides for appropriate third party summonses and disclosure in the Magistrates Court on a par with the Crown Court.

Conclusion

27) The Bar would like to acknowledge that along with the new opportunities for the adoption of local solutions come new responsibilities on the profession to ensure that its voice is heard in the consultation process. Whilst the devolution of justice powers will present legal practitioners with new tests of their skills and abilities and perhaps will require lawyers to fight some hard battles to preserve aspects of a professional service, this is also an exciting time for all those with an interest in legal development and reform. With new assembly powers and importantly, a separate Law Commission, devoted to reform of law in this jurisdiction we look forward as legal professionals to an exciting new area of change, challenge and increased engagement.

Include Youth

Include Youth Evidence to Justice Committee on Justice Bill (NI)

Introduction

Include Youth promotes best practice with young people in need or at risk. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and policy awareness – both locally and nationally.

Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

The Give and Take Scheme aims to improve the employability and increase the self esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 135 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. 75% of people on the Scheme are care experienced and we have strong partnership with all Trusts, YJA, PBNI and Careers service. The Scheme provides essential skills training (ICT, English and maths) to all of the young people.

Include Youth manages the LACE (Looked After Children in Education) Project which is a multi-agency partnership with the aim of promoting better educational outcomes for children and young people in care.

In addition, Include Youth a Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk.

Include Youth's Young Voices project is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support young people at risk or with experience of the criminal justice system, as well as young people marginalised for a variety of reasons, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and both juvenile and youth custody facilities in Northern Ireland.

General Comments

Include Youth welcomes the opportunity to submit evidence to the Justice Committee on the Justice Bill 2010.

The introduction of the Justice Bill presents an opportunity to address weaknesses and inconsistencies within the current justice system and for the first time to allow local politicians to have some say on how legislation is framed on this important issue.

Some members of the Justice Committee have referred to the Bill as lacking ambition. (Hansard 21st October 2010) We agree that much more could have been achieved in this legislation and we regret that the recommendations from ongoing reviews, such as the Prison Review, the Youth Justice Review, Review on Access to Justice and the strategy on reducing offending and on community safety, will not be included in the Bill. The results of these consultations will not now inform the development of the Bill.

This highlights a lack of co-ordination between consultations.

The current Bill has undoubtedly got limitations and is not as comprehensive and progressive as we would have hoped. Furthermore, it has been completed in a restricted time frame which leaves us with a sense of it being a 'rush job'. We are disappointed that it largely a read over from legislation in England and Wales and as such is lacks local input and fails to place the legislation within a local context.

Furthermore, we do not agree with the Department's decision to screen out all the policies within the Bill. We are calling for a full EQIA of the Bill to be carried out (Include Youth Response to EQIA Justice Bill).

We support the overall purpose of the Justice Bill which is to improve the justice system in NI, but are not convinced that the Bill in its present form will deliver on that. There are many major issues which have not been covered in the Bill and much work remains to be done in for example, on youth justice - the use of custody, conditions in detention, reoffending and rehabilitation and delays in the system.

Part One

Chapter One: The offender levy:

Clause 1: We are supportive of the fact that the offender levy will not apply to an individual under the age of 18.

However, we remain concerned about the ability of young people over the age of 18 years old to pay a levy.

We are also concerned as to what level of understanding young people may have around the reasons why they are being asked to pay a levy. Nowhere in the legislation does it point to the need to explain to offenders why they are paying a levy.

We support the remission of the levy in certain circumstances, for example, when a person has genuine difficulty in affording it and imposing it would only create more problems.

We support the introduction of a two-tier rate on immediate custody sentences, as the Committee suggested.

We are concerned about the potential for young people to default on the payment of the levy.

Chapter Two: Provisions for vulnerable and intimidated witnesses:

Clause 6: We support the raising of the upper age limit under which a young witness is eligible for special measures from 17 years old to 18 years old.

Evidence of certain accused persons:

Clause 12: We support the introduction of an intermediary to communicate to the accused to explain questions and answers as far as is necessary to enable them to be understood by the accused. We welcome Clause 12 section (5), which states that where the accused is under 18 and their ability to participate effectively in the proceedings is compromised by their level of intellectual ability or social functioning, they may avail of an intermediary.

The use of an intermediary is vital in supporting young people through the court process.

Include Youth is aware that young people who appear as defendants often feel alienated. Many young people do not fully participate in the Court procedures, or understand what was happening:

"Can't understand what's being said. It's all big, stupid words – especially the Judge."

"You don't listen to anything – there's no point. The only thing you listen out for is the bit where they say '4 MONTHS!' "

"I was about 12. You just sit there and say nothing. And they don't speak to you anyway, just to your solicitor. They only ask you, "Do you understand the charges?" And you just say "Yes." even if you don't."

"You understand nothing, cos of all the pure big words they use – you just sit there and it goes in one ear and out the other."

"They [judges] go "Blah, blah, blah," and you sit there not knowing a word – it's like in a different language. Then they ask you, "Do you understand?", or "Will you do it [offence]again?", and you just sit there nodding or shaking your head, whatever you think you're meant to do, then they go on again, "Blah blah blah blah."'

"It might as well be Chinese, what the judges is saying, it means nothing."

"You're not sure what you're meant to do"

"What is a Youth Conference? 'Cos that's what I'm meant to be getting."

"I'm a 'ward of court'. What does that mean?"

"I just sat there,, with them all talking s***. I was just sitting there saying, "Am I free to go then?" in a wee quiet voice. I didn't know what was happening."

We are hopeful that the proposed changes will go some way to addressing the issues raised by the young people in the previous quotes.

Part Two

Clause 19: Live Links for vulnerable accused:

We note that there is an increasing use of live video links in judicial proceedings in Northern Ireland. We have asked the young people we work with about their experiences of using Video

Link technology. Clearly this issue is not without its problems particularly in relation to limiting full access and participation to the judicial process :

"You don't even hear the judge in video link, not clearly anyway – who knows what they're saying?"

"You can't hear properly, so you don't know what's going on."

"It's s***, but it's better than going to court, travelling 2 hours there, having to sit there, go into the cells, bunged in with some other f***er going on 20 something."

"I prefer going to court too, it gets you out of here, you get a change of scenery."

"I like going to court better than videolink – you get a day out of here (Young Offenders Centre) and I see my Ma and all when I go up there."

Clause 19 (5): We support the use of live link for accused under the age of 18 and aged over 18 where their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning, and where the use of live link would enable more effective participation. We recommend that this be piloted to assess effectiveness.

Part Three

Policing and Community Safety Partnerships

We support the inclusion of clause 34 which places a duty on public bodies to consider the crime, anti-social behaviour and community safety implications of exercising their duties and to have due regard to any guidance issued by the Department of Justice. We also support the statutory obligation for the Department of Justice to consult the other NI Departments in the preparation of that guidance. We understand that the Committee will consider this issue again but Include Youth does believe that any consequences of having that statutory duty are fully justified.

However, we believe it is imperative that the term 'anti-social behaviour' must be defined. There is a danger that this term is used subjectively and as a result children and young people can be wrongly accused of being engaged in criminal activity when all they are dong is 'hanging around' in a public space.

We believe that the commonly used and accepted thinking around what anti-social behaviour is is unhelpful because it fails to establish a common definition of what anti-social behaviour actually is. This lack of clarity is open to immense discretion in interpretation because it describes the consequences of certain behaviour rather than the behaviour itself. We believe that a clear definition is essential, not only for Departments but also for members of the general public, not to mention those children and young people and their families, who may be accused of anti-social behaviour. The use of the term without any clear definition to its limits gives rise to concerns about the arbitrary application of sanctions. Furthermore, absence of the agreed nature of what constitutes 'anti-social behaviour' will lead to problems in monitoring and evaluating the process and measuring outcomes under clause 34 of the Justice Bill.

ASBOS

We note the missed opportunity to remove ASBOs from the statute book. In light of the recent comments made by UK Home Secretary Theresa May, that ASBOS have resulted in an increase in the numbers of children being imprisoned and that she intends to cease their use in England in Wales, we would urge the Minister to make a similar statement about removing ASBOs from legislation in NI.

Part Six

Alternatives to Prosecution

We believe that this Bill represents a real opportunity to extend the use of effective diversionary alternatives for young people. We are sceptical as to whether the approach favoured within the Bill, of using fines and conditional cautions is the best method to keep young people out of the criminal justice system and to keep them from re-offending. These steps will not succeed in addressing the root causes of youth offending, and furthermore, may actually increase the chances of young people obtaining a criminal record. There is a danger that young people are being set up to fail under these proposals, because of their inability to meet necessary requirements and conditions. The real challenge is to address the offending behaviour. The current proposals will not assist someone whose offending behaviour is occurring within a context of mental health problems, drug and alcohol abuse, homelessness, dealing with past experiences of abuse and a chaotic and unstable social background. Fining someone who is going through these challenges will do little to address the offending behaviour. A holistic early intervention and diversionary approach will not only be more cost effective but will also actually deliver the desired outcome.

Whilst we appreciate that crimes must be dealt with and if not there is the potential to cause harm and damage to wider community, we remain concerned that the approach taken within the Bill on alternatives could impact significantly on young people.

Penalty Notices:

The use of FPNs is a form of summary justice and as such removes the right to due process. There is a concern that overzealous application of FPNs could result in large numbers of young people being brought into the criminal justice system, through their inability to pay.

We are also concerned that an individual may agree to a fine even though guilt has not been totally established, simply to have the matter dealt with quickly. This could be particularly true of a young person who may want to choose the immediate easiest option at a moment in time, but is not completely informed about the consequences of failing to pay.

Clause 65: We welcome the restriction of FPNs to over 18 year olds. However, we are concerned that Police Officers may mistakenly think that a youth may be over 18 yrs old when they are not.

Clause 69: The development of the Guidance will be critical in the outworking of the use of FPNs and we would welcome the inclusion of guidance specifically for dealing with 18 – 21 year olds. We are concerned that the use of FPNs may adversely impact on this age range and while we accept that these powers are being introduced to keep people out of the courts we are concerned that because of young people's inability to pay, they may end up being brought through the court system because of their limited financial capabilities, and as a result will be criminalised and will still ultimately end up in the criminal justice system.

We note that the period for making payment has been extended from 21 to 28 days to enable recipients to budget more effectively. We would question whether the addition of another 7 days will really make any difference.

Conditional Cautions:

We are concerned that a conditional caution and youth conference plans will have a major impact on a young person's future employment prospects.

Concluding Comments

While it is our understanding that the Department intends to introduce additional legislation in the future, we are disappointed that more has not been done to address concerns raised by organisations working with children and young people within the justice system, within this Bill. We are hopeful that the next piece of legislation will adopt a more progressive approach and we look forward to working with the Committee and the Department on the future stages.

Include Youth Supplementary Written Evidence - EQIA Response

November 2010

Introduction

Include Youth promotes best practice with young people in need or at risk. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and policy awareness – both locally and nationally.

Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

The Give and Take Scheme aims to improve the employability and increase the self esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 135 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. 75% of people on the Scheme are care experienced and we have strong partnership with all Trusts, YJA, PBNI and Careers service. The Scheme provides essential skills training (ICT, English and maths) to all of the young people.

Include Youth manages the LACE (Looked After Children in Education) Project which is a multi-agency partnership with the aim of promoting better educational outcomes for children and young people in care.

In addition, Include Youth a Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk.

Include Youth's Young Voices project is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support young people at risk or with experience of the criminal justice system, as well as young people marginalised for a variety of reasons, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and both juvenile and youth custody facilities in Northern Ireland.

General Comments

Include Youth welcomes the opportunity to respond to the EQIA on the proposed Justice Bill 2010.

Timing

While we welcome the fact that the Department of Justice haa undertaken an EQIA of all the proposals contained in the Bill, we are deeply sceptical as to whether any of the comments received from this consultation which actually result in any substantial change to the proposed Bill. Given the fact that the EQIA was released for consultation on the 12th August with a closing date for submissions as 4th November, and that the Bill was then introduced to the NI Assembly on 18th October, we fail to see how consultation responses on the EQIA could have been taken into account. Not only was there not sufficient time to address any suggested amendments to the Bill, arising from EQIA responses, but realistically there was not even the time to analyse the responses.

Questions must be asked as to what extent the consultation responses will actually influence the policy outcomes.

It is our view that the Department of Justice have not complied with statutory obligations under Section 75 of the NI Act 1998, with regard to this matter.

Lack of Evidence

We note that the Department has screened out all of the proposals. The reasons given for this within individual screening documents are because of "the spread and nature of the proposals". We would take serious issue with the validity of this reasoning. This is a vague and inconclusive reason, lacking any substantial evidence to support it. As such it is more of an assumption than a statement backed up by hard facts and demonstrative evidence.

We believe on the whole that the evidence provided around the potential impact of proposals is weak and does not relate specifically to the potential impact on children and young people. There is not enough information provided to suggest that the Department has adequately taken into account the impact this Bill will inevitably have on children and young people.

The document also fails to take account of a number of ongoing consultations which will undoubtedly have a bearing on some of the proposals contained within the Bill. For example, the consultation on Sentencing Guidelines is currently ongoing and will not be completed until 18th January. We would question then how definitive decisions can be taken on the impact of this

issue on various groups before the necessary evidence and responses have been collated on the subject.

Use of Terminology 'self selecting group'

We are concerned that the document repeatedly refers to the impact that a number of the proposals will have on young males, but reasons given for not conducting a full screening exercise seem to be on the grounds that these young men are a 'self selecting group' who have chosen to offend, and subsequently do not appear to have the right to avail of the protections afforded under Section 75 legislation. This is an extremely worrying and flawed argument and we would suggest that the Department reconsider its thinking around the applicability of Section 75, and its reasons for screening out. Furthermore, this thinking does nothing to take into account the reasons for offending and the vast body of research which exists around the links between offending and poverty, poor educational attainment, learning disability, social, environmental and family background etc. The argument around 'self selecting groups' and eligibility of Section 75 purported in the documents is totally unacceptable.

Consultation with children and young people

We would request further information on how children and young people were consulted on the EQIA of the Justice Bill.

Concluding Comments

In conclusion it is our opinion that a full EQIA of the Bill must be conducted. We would take issue with the suggestion in the screening report that any impact on age is low. Children and young people will be directly impacted upon by the Justice Bill.

Include Youth Supplementary Written Evidence - Part 3

Definition of anti-social behaviour

Part 3 – Clause 21

Include Youth has raised concerns in both our written submission and oral evidence to the Committee on 16 December 2010, with regards to the definition of "anti-social behaviour", stating that the current definition as outlined in the Anti-Social Behaviour (NI) Order, 2004, is too vague and subjective. The term is first mentioned in legislation in Northern Ireland in the Anti-social Behaviour (Northern Ireland) Order 2004, in which it is described as behaviour that:

"caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household".

We are therefore concerned at the response given by the Department of Justice on 16 December 2010 where they did not address our concerns and referred us to the consultation for a Community Safety Strategy.

'As regards clause 20, Include Youth made a point about antisocial behaviour. As you would expect, we have used the definition of antisocial behaviour that is in use currently. That can obviously be addressed in other forums, not least through the community safety strategy, which

is out for consultation. We, in the Department, can reflect on that. There are opportunities to look at it.'

Ms Nichola Creagh (Department of Justice)

Include Youth reiterates our fundamental concerns with the vague definition of behaviour, and caution against its being repeated in the Justice Bill. We ask that the term "antisocial behaviour" be removed from the Justice Bill until we can get a definition that is clear and can support the Police and Community Safety Partnerships in effectively doing something about it.

Include Youth January 2011

For more information please telephone Paula Rodgers or Edel Quinn on 028 9031 1007.
Paula@include youth.org
Edel@includeyouth.org

Include Youth Supplementary Written Evidence - Part 6

Alternatives to Prosecution

Following our session with the Justice Committee on 9th December 2010, when we gave evidence on Part 6 of the Justice Bill, we would now like to follow up on the request made by the Committee to forward further information on Include Youth's position on the use of Fixed Penalty Notices and Conditional Cautions as alternatives to prosecution.

Include Youth fully support the concept of providing effective alternatives to prosecution. However, we have significant concerns regarding the proposals contained within Part 6 of the Justice Bill in relation to the use of FPNs and conditional cautions. As we stated in our evidence giving we believe that these measures:

- Result in a criminal record, increasing barriers to education, training and employment opportunities – one of the fundamental requirements in terms of supporting the sustained diversion from the criminal justice system.
- Draw young people into the criminal justice system, including potentially to custody for what had originated as minor offences.
- Fail to deal with those 1700 people who spend short periods of time in custody as a result of fine default, having no opportunity to access necessary diversionary programmes of support to help them desist from offending in future.
- Could disproportionately impact on groups with very low incomes.
- Will disproportionately impact on groups of young males.
- Will adversely impact on vulnerable young people, and may not be effective in accessing necessary support services.

Having had time to reflect further on the detail of the legislation and to consider the response from Department of Justice officials to the evidence from Include Youth and NIACRO, and the subsequent discussion within the Committee we are now of the opinion that the proposals around the use of Fixed Penalty Notices and Conditional Cautions should be removed from the legislation.

Given the depth of criticism surrounding the use of these measures from those agencies working closely with offenders and the numerous questions which have been raised around the detailed outworking of the measures, it is our view that the proposals need a much more comprehensive examination before being introduced into legislation.

It is essential that this legislation is right and we would purport that there is no need to rush these proposals through before their effectiveness has been fully tested and safeguards considered. This is particularly relevant given the comment made by the Department of Justice official on the 9th December, that there is likely to be new legislation brought in over the next few years.

"Looking ahead, we will come every year for the foreseeable future with another Justice Bill. Those will present opportunities to pick up on the results of the reducing offending strategy, the prisons review and the review of youth justice."(Committee for Justice, Official Report, Hansard, Justice Bill: Parts 5 and 6, 9 December 2010)

This would suggest that there is an opportunity to delay these specific proposals until we have gathered the learning from the reviews mentioned, and more effective legislative proposals could then be brought forward at a later date. This would seem to be a more efficient way of drawing up effective legislation.

We accept that this Bill cannot cure everything but we would guard against any legislation being brought in which could actually make matters worse. Include Youth are not convinced that the proposals contained within Part 6 of the Bill in their current format will not make matters worse.

We conclude that Part 6 of this Bill should be held back until we have gleaned evidence from the findings of the Youth Justice Review, the development of the Reducing Offending strategy and the Prisons Review. These reviews will make recommendations which are directly relevant to any debate around alternatives to prosecution. The learning from the reviews will be invaluable. Now is not the time to introduce these proposals on to the statute books. The timing is premature and will not result in the best outcome and most worryingly, could actually result in the opposite effect.

Include Youth January 2011

For more information please telephone Paula Rodgers or Edel Quinn on 028 9031 1007.
Paula@include youth.org
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Irish Football Association

(P)

IRISH FOOTBALL ASSOCIATION

Our Ref: PN/SG/JEE

16 November 2010

Ms Christine Darrah
Clerk to Justice Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
BELFAST

Dear Christine

Justice Bill provisions relating to Sports Laws and Spectator Controls.

The Irish Football Association (IFA) as the governing body for football in Northern Ireland is committed to creating a safe and secure environment for all involved in football in Northern Ireland.

In November 2009 the IFA provided a comprehensive response to the consultation document 'Sports Law and Spectator Controls' issued by the Northern Ireland Office. In essence the IFA was fully supportive of the proposals contained in the consultation document.

However we do note a number of changes from the original consultation paper as now presented in the Bill presented to the Assembly and under scrutiny by the Justice Committee. These changes regarding the implementation of 'Banning Orders' basically 'water down' the original proposals and will place Northern Ireland 'out of step' with the rest of the United Kingdom and indeed Europe if harmonisation of this legislation was to be achieved.

Firstly, we strongly support the notion of a fully reciprocal system of banning orders throughout the United Kingdom and believe a 'stand alone' two tier system is illogical given the high migration of football fans from Northern Ireland to Great Britain.

Secondly, creating a banning order only upon conviction and not fully utilising the 'civil or administrative' process again puts us out of step with the rest of the United Kingdom and we would strongly urge the Committee to review this change. Our grounds for supporting this alternative option is set out in our original submission and is based upon lengthy discussions in England and Wales and especially Scotland where this method has been used to good effect to exclude trouble makers from matches.

In common with the possession of alcohol at football grounds' legislation in GB the proposed law (543) refers to 'during the period of a regulated match when P is in any area of the ground from which the match may be directly viewed, other than a room to which the general public is not admitted'.

EU Programme for Peace and Reconciliation

The IFA - Bringing Communities Together

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Our Ref: PN/SG/JEE
2
16 November 2010
Ms Christine Darrah

The 'period' includes 'two hours before and ending one hour afterwards'. We feel there could be some relaxation of this lengthy time period and would seek re-assurance on the rationale behind this proposal.

In recent years much has been achieved in transforming our football stadia from a secure environment to a safe environment with investment in many grounds to meet the criteria for a Domestic Licence and a Safety Certificate. Coupled with this has been the training and accreditation of both club stewards and those provided by external companies.

This proposed legislation will provide the essential element of enforcement, or if the experience in Scotland is an indicator, deterrence.

Despite the reservations outlined above, the Irish Football Association fully supports the proposals contained in:-

- Chapter 2 clauses 37, 38, 39, 40, 41, 42 and 43.
- Chapter 3 clause 44.
- Chapter 4 clause 45.
- Chapter 5 clauses 46, 47, 48, 49, 50, 51, 52, 53 and 54.

Finally, the Irish Football Association acknowledges the commitment by several government departments in bringing this proposed legislation to fruition and looks forward to working closely with colleagues to ensure it achieves the aim of a safe and secure environment for all attending football matches in Northern Ireland.

Yours sincerely

Patrick Nelson
Chief Executive

Copy to: Mr Nelson McCausland, Minister for Sports, Arts and Leisure
NI MLAs

Larne Borough Council

LARNE
Borough Council

16 November 2010

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242, Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Ms Darrah

Larne Borough Council welcomes this opportunity to provide evidence to the Committee for Justice on the contents of the Justice (Northern Ireland) Bill 2010.

In particular, Council would like to share with the Committee our concerns in relation to the Part 3 – Policing and Community Safety Partnerships. The proposed model will have a significant impact on local councils and on service delivery which Council do not believe have been fully considered.

Council's concerns falls under two main categories:

- Accountability and Governance
- Funding

Accountability and Governance

The proposed name, Policing and Community Partnership, implies a focus on policing and does not reflect the importance of the community. Council are surprised that this name has been chosen given that only one response from the 75 respondents to the NIO Local Partnership Working in Policing and Community Safety consultation document requested "policing" to be used in the name. ***(Part 3 20(1))***

The proposed functions are heavily weighted in on the original DPP functions and do not provide the correct balance with the CSP functions. ***(Part 3 21)***

The Joint Committee will set the strategic direction and issue the code of practice for PCSPs, however, Councils as a major funder and with the statutory responsibility for service delivery are not represented on the Joint Committee. In addition, there is a lack of clarity as to the level of accountability and oversight that will rest with Councils and as to whether the Chief Executive will act as the Accounting Officer for the PCSP. ***(Part 3 23)***

Reporting to three different bodies has the potential to make the PCSP more bureaucratic and will slowdown the decision making process. The reporting structure also does not make the lines of accountability clear. Council are also not clear as to the requirement for separate reporting mechanism directly from the Policing Committee to the Northern Ireland Policing Board, given the Policing Boards representation on the Joint Committee. Council believe that the Police Monitoring Function should be fully integrated. **(Part 3 24, 27 & 30)**

The Bill states that the appointment of independent members should be undertaken by the Policing Board, however this does not reflect the joint nature of the partnership and Council believe this would be better placed with the Joint Committee. ***(Schedule 1, 4(2))***

Funding

The Bill does not make provision for allowances to be paid to political members and independent members. This may create tension and impact on the recruitment of members, given the increased workload the number of meetings will have. Although the Bill allows for the payment of expenses which the Council may make to independent members, there is no similar provision for political members. **(Schedule 1 3, 4)**

The Bill does not provide any clarity with regards to the funding of the PCSPs. An annual funding cycle will negatively impact on the PCSP's ability to develop and implement long term projects and there is no indication that the previous funding arrangements will continue i.e. 75%/25% DPP, 100% CSP. ***(Schedule 1 17)***

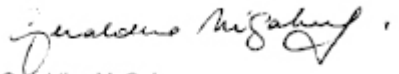
General comments

The duty on public bodies to consider community safety implication in exercising their duties is welcomed, it is a clause which provides the PCSP with "teeth" and must remain in order for the PCSP to be effective. ***(Part 3, 34)***

Council ask whether the proposed model is fit for purpose, given the concerns raised above and uncertainty surrounding Councils' role and remit for Community Planning following the delay in RPA.

If you require any clarification please do not hesitate to contact me and may I state that Larne Borough Council would welcome the opportunity for Council representatives to provide evidence in person to the Committee.

Yours sincerely,



Geraldine McGahey
Chief Executive

Law Society of Northern Ireland

THE LAW SOCIETY
OF NORTHERN IRELAND

From: The Chief Executive

17th November 2010

Christine Darrah
Clerk, Committee for Justice
Room 242, Parliament Buildings,
Stormont
Belfast
BT4 3XX

Dear Christine

RE: JUSTICE (NORTHERN IRELAND) BILL

I refer to your letter of 21 October 2010 in which you invited the views of the Law Society of Northern Ireland on the Justice (Northern Ireland) Bill.

The Society has given the Bill some consideration and I attach our written submission. We shall continue to examine the Bill and further points may arise. Please do not hesitate to contact me if any issue arises.

Yours sincerely,

ALAN HUNTER
Chief Executive

THE LAW SOCIETY
OF NORTHERN IRELAND

Committee for Justice – Justice (NI) Bill - Call for Evidence

Response of the Law Society of Northern Ireland

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1.1 The Law Society of Northern Ireland (hereinafter "the Society") is the professional body invested with statutory functions in relation to solicitors (primarily under the Solicitors (NI) Order 1976, as amended). The functions of the Society are to regulate responsibly and in the public interest, the solicitors' profession in Northern Ireland and to represent solicitors' interests.

1.2 The Society represents over 2,400 solicitors working in some 530 firms, based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private clients in legal matters. This makes the Society uniquely placed to comment on policy and law reform proposals.

1.3 The Society's key policy objectives are;

- to maintain a strong and ethical independent solicitors' profession equipped to meet the legal needs of the community and to support commercial activity;
- to ensure that justice is accessible to those in legal need; and
- to ensure that the human rights of all are respected and that the rule of law is upheld.

1.4 The Society has taken a keen interest in the Justice (Northern Ireland) Bill. Many of its proposals have been the subject of specific consultations which the Society has responded to and commented upon. The proposals contained within the Bill have far reaching implications across the justice system.

1.5 The Society welcomes the opportunity to provide its views on the Justice (Northern Ireland) Bill to the Committee for Justice. The Society remains willing to assist the Committee in any way possible as it takes forward clause by clause scrutiny of the Bill.

COMMENTS ON CLAUSES

PART 1

Clauses 1 - 6: The Offender Levy

2.1 The Society has no objection in principle to the Offender Levy. However, the Society considers that it is important that the scheme is administered effectively and that the scheme represents value for money, producing funds to support victims' services. The Society would refer the Committee to the attached article from the Gazette of the Law Society of England & Wales, reporting on the effectiveness of the administration of the scheme in England & Wales (Annex A).

Clauses 7 - 11: Eligibility for Special Measures: Age of Child Witnesses

2.2 In relation to Clause 11, the Society would suggest that appropriate guidance be provided to supporters to ensure they are fully aware of their role. Such guidance should safeguard against the possibility of the content of the witness's statement being improperly influenced.

Clauses 12 - 13: Examination of Accused through Intermediary

2.3 The Society has given detailed consideration to the proposal that the court may examine an accused through an intermediary. In the case of adults, it is only those suffering from a mental disorder or significant impairment of intelligence and social functioning who may be examined through an intermediary. The Society notes the Bradley Report in England & Wales[1] and the Criminal Justice Inspectorates' Report 'Not

[1] Lord Bradley 'Review of People with Mental Health problems or Learning Disabilities in the Criminal Justice System' 30th April 2009 available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_098698.pdf

a Marginal Issue: Mental Health & The Criminal Justice System in NI,'[2] which emphasised the importance of diverting those with mental illness away from criminal prosecution. This proposal would appear to be contrary to this emphasis.

2.4 The Society is aware that when similar proposals were put forward for England & Wales, these were subjected to significant scrutiny by the Houses of Parliaments' Joint Committee on Human Rights. The Committee raised significant concerns that the proposal may result in the criminal prosecution of the mentally unfit.[3] The Society emphasises that in considering this proposal, sufficient regard must be had to Article 6 of the European Convention on Human Rights, as incorporated into UK law by way of the Human Rights Act 1998. Under Article 6, an accused must be able to effectively participate in his/her trial. This includes understanding the nature of the trial process and the significance of any penalty imposed. The Society would highlight that the assistance of an intermediary is unlikely to overcome such a lack of understanding.

2.5 The Joint Human Rights Committee recommended that Government consider asking the Crown Prosecution Service and the Judicial Studies Board to consider issuing guidance, making clear the scope of the right to effective participation in criminal proceedings and highlighting circumstances where the use of an intermediary would be appropriate. The Society considers that the Committee for Justice may wish to make a similar recommendation.

2.6 The Society notes that the functions of an intermediary include *"to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question."*. The Society would suggest that it should be made clear that an intermediary's duties to support a defendant extend to assisting the accused to understand the proceedings and to facilitate consultation and communications with

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[2] March 2010 available at http://www.cjini.org/CJNI/files/24/24d6cd45-20bb-4f81-9e34-81ea59594650.pdf

[3] Human Rights Joint Committee Eight Report 'Legislative Scrutiny: Coroners and Justice Bill' 17th March 2009 available at http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/57/5702.htm

his/her legal team. The Committee may wish to query what level of expertise and experience will be required of an intermediary.

PART 2

Clauses 14 - 20: Live Links

3.1 The Law Society is, in general, cautious of the extended use of live links for defendants. A number of criminal law practitioners consider that defendants appearing via live links find it difficult to understand and participate in the proceedings. Communicating with clients via live link can be problematic, particularly when it comes to taking instructions.

3.2 The Society notes that it is proposed that persons remanded to hospital or who are subject to a hospital order may be able to appear via live link. Whilst it is, on occasion, in the person's best interests that they appear via live link, it is incumbent on Government to ensure that we avoid moving to a situation in which the administrative burden of prisoner movement is given primacy over the defendant's right to a fair trial. This is particularly the case when it comes to defendants suffering from mental illnesses. The Committee should be conscious of the UK's commitments under the Convention on the Rights of Persons with Disabilities, in particular, the commitment to ensure that those suffering from a disability, such as a mental disorder, are guaranteed access to justice.

3.3 The Society notes that the section of the Explanatory Memorandum referring to live links states that *"the provisions do not...alter the right to consult privately with their legal representative before, during or after a live link."*. The Society would suggest that the Committee seek information from the Department as to how it has arrived at this conclusion and what consideration it has given to the issues raised by the Society.

PART 3

Clauses 20 - 35: Establishment of PCSP & DPCSP

4.1 Whilst the Society keeps under review the law relating to oversight of the police and other forces of law and order, it has no comment on the proposals contained in the Justice (NI) Bill.

PART 4

Clauses 36 - 55: Regulated Matches

5.1 The Society has reviewed the clauses relating to sports and regulated matches. The Society has no specific comments to make in relation to these clauses but would highlight the importance of ensuring sufficient legal certainty when creating new offences.

PART 5

Clauses 56 - 63: Treatment of Offenders

6.1 The Society has reviewed the clauses relating to the treatment of offenders. The Society has no specific comments to make in relation to these clauses.

PART 6

Clauses 64 - 84: Alternatives to Prosecution

7.1 The Society has reviewed the clauses relating to penalty notices. The Society considers that it is important to note that penalty notices effectively operate outside of the

justice system. The Committee may wish to consider the judgement of the Court of Appeal in England & Wales in R v Hamer (2010) EWCA Crim 2053, in particular, the Court's comments set out below:

"The delivery of justice implies the admission or determination of guilt and not the mere issuing of a notice of a penalty based on reasonable suspicion. It is correct to describe Fixed Penalty Notices and PNDs as punishment for suspected offending, or a deterrent, as they plainly do deter. However, it seems to us to cause confusion, and may well have caused confusion in the present case, by the assumption that the issue of such a notice is some form of "swift, simple and effective justice" which is not in the ordinary sense of these terms."

7.2 This is an important observation to be conscious of when considering this proposal and in light of it, appropriate safeguards must be put in place. Government must ensure that fixed penalty notices are only issued when a police officer has a genuine reasoned belief that a person has committed a penalty offence. Police officers should be properly trained and the exercise of their powers should be audited. It is of fundamental importance that persons are informed of their right to be tried for the alleged offence. The penalty notice should inform the recipient of their right to seek independent legal advice. The Society notes that the provisions of PACE will not apply when a suspect is having a fixed notice served upon them. It is considered that any comments from the suspect at this time should not be considered as evidence of guilt.

7.3 It is proposed that a conditional caution will only be given where an offender signs a document admitting to the offences committed. The Society considers that sufficient safeguards must be put in place to ensure that any admission by an offender is made in the full knowledge of the case before him and the consequences. Government must avoid a situation in which an offender admits a crime he is not guilty of, simply to avoid prosecution. The Code of Practice referred to at Clause 82 must provide appropriate safeguards. Alleged offenders should be advised to discuss their options with their solicitor.

PART 7

Clauses 85 - 91: Legal Aid

8.1 In relation to the criminal legal aid means test, the Society responded to the Court Service consultation on this proposal. In its submission, the Society emphasised the importance of putting in place effective administrative arrangements to ensure that it does not create delay in the criminal justice system. The need for proper analysis of the likely cost of the scheme was emphasised. A copy of the Executive Summary of the Society's response is attached. (Annex B)

8.2 The Department has not indicated the prescribed sums which will determine eligibility. These are to be the subject of a separate consultation exercise. The Society considers that the levels of eligibility must be set at appropriate levels. An individual's right to fair trial must remain paramount.

8.3 In relation to the recovery of defence costs order, again the defendant's right to a fair trial must be paramount. The Society understands that these orders will initially apply only in respect of defendants at the Magistrates Court and welcomes this. The Society recommends that the application of recovery of defence costs orders is closely scrutinised before their extension to the Crown Court.

8.4 The removal of the prohibition on the NI Legal Services Commission funding legal services under litigation funding agreements is to be welcomed. The Commission consulted on a proposed Funding Code in June 2009. This Code sets out the criteria for the determination of public funding for civil legal services. If implemented, the proposed criteria would have unduly restricted access to legal aid for those in need with legitimate claims for personal injury. This proposal would have jeopardised access to justice for vulnerable persons who had suffered the negligent actions of others. The Commission has listened to the Society's concerns and has been in discussion with the Society in

relation to the development of alternative funding arrangements that could guarantee access to justice for those in need. The availability of litigation funding agreements should be of assistance in resolving this issue.

PART 8

Clause 92 - Bail: compassionate bail

9.1 The Society welcomes the proposal to enable compassionate bail to be granted by a Magistrates Court.

Clause 93 – Bail: repeat applications

9.2 The Society has no objection to the proposal that where bail has been refused by a Magistrate's Court and there has not been a change in circumstances, that the Crown Court would be allowed to deal with further applications.

Clause 95 – Publication of material relating to legal proceedings

9.3 The Society is not opposed to the proposed rule making powers relating to the publication of material relating to legal proceedings. The Society would highlight that at the core of such Rules must be the overriding principle that the interests of children are paramount.

Clause 96 – Membership of Crown Court Rules Committee

9.4 The Society has no objection to the proposal to include within the membership of the Crown Court Rules Committee, a public prosecutor nominated by the Director of the Public Prosecutions for Northern Ireland.

Clause 97 – Appeals from Crown Court: Proceeds of Crime Act 2002

9.5 The Society supports an amendment to the Criminal Appeal (NI) Act 1980 to enable an appeal of a conviction under section 218 of the Proceeds of Crime Act 2002 to be made to the Court of Appeal.

PROPOSED AMENDMENTS

10.1 The Society proposes that the Justice (NI) Bill should make provision for solicitor advocates to have rights of audience in the higher courts.

10.2 This was a recommendation of the Bain Report into Legal Services in Northern Ireland. The Society had been in detailed discussions with the NI Courts & Tribunals Service, who prepared draft clauses for inclusion within the Bill. However, a short time prior to the Bill being introduced to the Assembly, the Attorney General raised a concern that the clauses may be in breach of European Community law and therefore outside of the legislative competence of the Assembly. The Society sought a legal opinion on this matter which has been provided to the Committee.

10.3 The Society considers that it is in the public interest that solicitor advocates be given rights of audience in the higher courts. Providing solicitor advocates with rights of audience in the higher courts will extend client choice.

10.4 The Society requests that the Committee for Justice recommend that the Bill make provision for solicitor advocates to have rights of audience in the higher courts and to extend the scope of legal aid certificates in cases certified for counsel in the Magistrates Court to include solicitor advocates.

RESOURCE IMPLICATIONS

11.1 The Society is interested, from a public interest perspective to know what overall assessment has been made of the resource implications of the various measures proposed in the Bill including what assessment has been made of any income which the various proposals will potentially yield.

11.2 There are a number of proposals contained within the Justice (NI) Bill, which will have implications for the legal aid fund. The Society would therefore highlight the importance of ensuring that all relevant proposals contained within the Bill have been subjected to a Legal Aid Impact Assessment and that provision is made for any financial impact, to ensure that no additional burden is placed on the existing fund.

Annex A

The Law Gazette

Victim surcharge IT chaos

Created 13/09/2007 - 00:00

NEW SCHEME: Courts Service admits it has no system to count or assess collection rate

HM Courts Service (HMCS) did not have computer systems capable of accounting for or keeping track of victim surcharges when the scheme started on 1 April and still cannot calculate the rate of recovery or even how many people have been surcharged, according to information gained by the *Gazette* under the Freedom of Information Act (FoI).

Despite collecting an estimated £305,000 since it began, HMCS does not know how many £15 surcharges are levied or what percentage of those have been paid, and has had to resort to manually processing the surcharges. Its 'legacy IT systems' – those computer systems yet to be upgraded – do not even allow a national overview of how many people are fined in criminal convictions, the FoI response said, let alone how many surcharges on those fines are made.

According to the answer given to the *Gazette*, 'HMCS has not put any systems in place to assess the collection rate of victim surcharge' and it cannot count the number of surcharges because 'the existing IT legacy systems do not allow any kind of national overview around numbers of individuals with fines, victim surcharge or other impositions'.

Whitehall is on record as expecting the surcharge to make £16 million a year more than it costs to collect, but without being sure how much it is actually collecting, or from whom or how many surcharges remain unpaid, disbursement of funds to their intended recipients can hardly be an accurate system. This £16 million is supposed to prop up the Victims Fund, which government has pledged for the use of groups such as Victim Support.

In the FoI response, HMCS called the manual counting of receipts 'newly developed amendments to existing IT programmes', which allow it to separately identify the surcharge from other court revenues. This manual work 'precedes a more comprehensive IT network across the courts', it added. When this network will be in place is unknown.

Only once the manual methods 'prove satisfactory' will it be possible for the surcharge receipts on fines to be 'accounted for seperately and to form part of the Ministry of Justice audited accounts', it added.

An HMCS spokesman told the *Gazette* that the IT systems do 'work', in that that the manual arrangements allow the surcharge to be separately identified, and an audit is currently being conducted.

Rupert White

Source URL: http://www.lawgazette.co.uk/news/victim-surcharge-it-chaos

ANNEX B

LAW SOCIETY SUBMISSION TO NI COURTS & TRIBUNALS SERVICE CONSULTATION 'A PROPOSAL TO REVISE THE MEANS TEST FOR CRIMINAL LEGAL AID IN NORTHERN IRELAND EXECUTIVE SUMMARY

Q1. Do you agree that the time is right to consider reform of the grant of criminal legal aid in Northern Ireland?

Given current economic difficulties, Government must look at innovative ways of tackling spending on criminal legal aid, whilst endeavouring to maintain confidence in the justice system by holding firmly to the key principles of innocent unless proved guilty, the right to a fair trial and access to equality of arms.

This proposal may bring about greater consistency of decision-making and tighter control over criminal legal aid expenditure - laudable aims with which we agree. However it is equally important that the major cost drivers in the criminal justice system overall are identified. These include an increased volume of cases, changes in legislation and procedures, changes in the rules of evidence and a huge increase in the number of new criminal offences (in excess of 4000) placed on the statute book in the last ten years. These have all lead to the growth in legal aid spend and will continue to lead to budget overspending.

There are also failings in other parts of the criminal justice system that need to be addressed. Both the police and the PPS need to be included in any attempt to identify where costs are being incurred.

The Consultation Paper fails to consider a number of issues:- recovery of costs by an acquitted defendant, significant delays in prosecution processing times in Northern Ireland and differences in court practices, procedures and sentencing policy from that in England & Wales. Furthermore no proper costs and resource analysis has been undertaken.

Q2. Do you agree with our preferred option of considering reform of the means test in the first instance and review the interests of justice test at a later date?

In our view both tests are so closely intertwined that it is inappropriate to consider reform of one without considering the consequences for the other.

Q3. Do you agree that Northern Ireland should follow the approach taken by England & Wales and Scotland to prescribe financial eligibility limits for criminal legal aid in the Magistrates' Court?

We accept that it is only but right that those with earnings sufficient to pay for their own legal defence costs or in a position to contribute significantly towards them should not have the benefit of legal aid, if they are found guilty of a crime.

We note that the option of Recovery of Defence Costs Orders has not been included in this consultation.

It is the Society's view that any prescribed financial eligibility limits must be set at a level which ensures that those defendants who can afford to pay their legal costs do so and that those most in need of help continue to have access to justice.

We consider means testing should be first commenced in the Magistrates' Court and be the subject of a pilot scheme before it is fully introduced across all courts. Early review arrangements should also be put in place.

We seek clarification on the administrative arrangements for the means test. We are not convinced that the potential for savings will outweigh the likely delays and increased administration which will result.

Where a decision is awaited on initial eligibility, we anticipate that there will be the potential for delays and adjournments will be sought. We also consider that as a result of an increasing number of unrepresented defendants appearing in the courts, there is the potential for significant additional judicial time having to be expended in dealing with these cases.

Q4. Do you consider there are good reasons not to introduce prescribed financial limits to assess financial eligibility for criminal legal aid? If so, please specify.

These proposals are likely to exclude all but the poorest citizens in Northern Ireland.

The English provisions are likely to have removed from the scope of criminal legal aid such diverse groups as nurses, cleaners, teachers, firefighters, junior civil servants and ambulance drivers – the type of professional person who as a consequence of a criminal allegation is suspended from his/her employment on full pay without prior experience of criminal accusations, of good character and in the majority of cases, determined to clear his/her name.

Q5. To date our research has focused on the reforms which were introduced in England & Wales. Do you agree with this approach? If not, please specify a more suitable comparator jurisdiction.

We believe it is incumbent on Court Service to consider the particular circumstances of Northern Ireland before issuing consultation documents.
We trust Court Service will conduct further research in Scotland and advise the outcome there in due course.

We hope that lessons learnt from the Post-Implementation Review conducted in England & Wales with regard to the introduction and implementation of criminal legal aid means testing are reflected in any arrangements put in place for Northern Ireland. Difficulties identified included poor level of decision-making, challenges with the operation of the hardship procedure, the need for additional funds to administer the scheme and problems for clients with mental health issues.

Q6. Do you consider that the introduction of a revised means test for criminal legal aid would adversely affect access to justice?

It is crucial that the arrangements put in place for means testing do not infringe Article 6(3) of the ECHR, nor lead to breaches of the 'equality of arms' safeguards under the Convention.

The Society has concerns that there will be an increasing number of persons being either unrepresented or inadequately representing themselves at court. The current complexity of the process in the Magistrates' Court means that in most cases the average client will find it extremely difficult to defend him/herself without expert representation.

There is also the possibility of pressure being applied on some defendants to plead guilty in order to dispose of the proceedings as quickly as possible in order to avoid the financial burden of contesting the charges.

This proposal will also present particular difficulties for the self-employed and may have unintended consequences for victims.

7. Do you agree that if a prescribed means test was to be introduced, that an amendment should be made to Article 31 of the 1981 Order to confine the resolution of doubt provision to the interest of justice test only?

Pending sight of the primary legislation introducing a prescribed means test, the Society wishes to reserve its position on this question.

Limavady Borough Council

The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX 1 December 2010

Dear Sir/Madam

Justice (Northern Ireland) Bill

The Council noted that the above draft Bill was introduced into the Assembly on 18th October 2010 and that it was anticipated the Committee Stage of the Bill would commence in November 2010.

Consideration was given by Council to the contents of the proposed draft Justice (Northern Ireland) Bill and Council would comment as follows. These comments reflect to a certain extent the views expressed by Limavady District Policing Partnership and by Limavady Community Safety Partnership:

- Using a reference to "policing" in the proposed name of the new body (PCSP) could reinforce the view that the PSNI are responsible for community safety. This seems to contradict the ethos of shared responsibility and mainstreaming contained in other sections of the draft Bill. The Council is of the view that the proposals should reflect the multi-agency approach needed to community safety and that the name of the new body should be revisited.
- The Council would question how the proposed model will integrate with any proposed future community planning framework, particularly the action planning aspects of such a framework and the monitoring/reporting mechanisms it may utilise.
- The PCSP will be established as a separate body outside Council (similar to the DPP structure) and it is noted that elected members will not hold the balance of power on the full PCSP. The Council is concerned that this will result in a dilution of the influence Councils will have within the new Partnership.
- There is also a lack of clarity around how the PCSP's will integrate/interact with Councils, particularly in relation to the level of accountability and oversight accorded to Councils. Will, for example, the Chief Executive of Council act as the Accounting Officer for the PCSP? The Council would also ask whether it should not also be for Councils to identify and appoint independent members and designated bodies to serve on the PCSP.
- The proposed funding streams give Council cause for concern. There appears to be three anticipated sources of funding (NIPB, DoJ and Councils) but no set allowance from central government has been agreed and clarity is needed on how much contribution Councils will be expected to make.
- Members were of the view that, if Council were required to make a substantial financial contribution to the new structure, then they should have a majority voice within the new structure.
- Council is particularly concerned that the proposed structure may, instead of improving efficiency and effectiveness, result in increased bureaucracy and confusion. For example, the proposed arrangements see the PCSP submitting reports to the Council, the Joint Committee and the Policing Board and the Council would ask that the Justice Committee looks again at these complex procedures which would appear to encourage duplication of effort and confusion.
- At a strategic level it is proposed that there will be a Joint Committee of the Department of Justice and the Policing Board. This Joint Committee will set strategic direction, channel funding, issue Codes of Practice and act as an accountability forum. However, even though local government will be a major funder of the new structures, it will have no role on this Joint Committee. Council finds this oversight a major cause for concern.

- The Council is also of the view that the proposed functions of the Joint Committee and the Policing Board (Para 35) could potentially cause increased confusion and bureaucracy because of the dual lines of accountability. For example, the Joint Committee will assess public satisfaction and effectiveness of the overall PCSP while the NIPB will assess public satisfaction and effectiveness with the Policing Committee. The Council would point to the possible confusion and duplication of effort that this could lead to.
- The Policing Committee will undertake a unique and distinct role within the proposed PCSP structure and the Council would question how this Committee will fit in with the overall role of the PCSP. The Council is concerned that the legislation suggests the Policing Committee will not report on its functions to the overall PCSP and would ask for the role of the proposed Policing Committee to be reconsidered, particularly their apparent power to act independently of the PCSP.
- The Council is concerned that the proposed Code of Practice appears to focus extensively on the work of the Policing Committee and does not appear to give much consideration to the work of the wider PCSP.
- Clause 34 will place a statutory duty on all public bodies to exercise their functions with due regard to issues in relation to Community Safety. The Council would question how this will be practically implemented. It is recognised that addressing community safety issues is an important consideration but the Council would question whether the resource implications of Clause 34 have been considered as well as the potential for introducing another layer of bureaucracy into the proposals, eg having to community safety proof all Council policies and procedures.

In conclusion, the Council is of the view that the proposed model is over-complicated and it is difficult to see what benefit will be gained from the proposals. It is also difficult to see where the proposals will result in improved efficiencies and a reduction in public confusion over the role of DPP's and CSP's, as stated at the launch of the public consultation. The proposed model has multiple reporting lines and funding streams and the Council is concerned that it will be extremely difficult to implement in a small Council area such as Limavady.

Yours faithfully

Liam Flanigan

Chief Executive

Limavady Community Safety Partnership

Justice (Northern Ireland) Bill

Limavady CSP welcomes the opportunity to further comment on the Justice (Northern Ireland) Bill.

The Partnership notes, with regret, that this process has taken no opportunity to fine tune or improve current arrangements; simply merging both partnerships and their existing functions for no clear gain. Department Officials state that this was never about cost savings or efficiencies; this makes it very difficult to determine the benefit of what is proposed.

Minister Paul Goggins also stated, at the launch of public consultation, that the rationale for new combined partnership arrangements was improved efficiencies and in order to minimise public

confusion. The proposed model, with multiple lines of reporting and two funding streams cannot achieve either aim but delivers the very real possibility of increased confusion and bureaucracy at a local level.

The CSP believes that the proposed model is over-complicated and will be unworkable in smaller Council areas, which are in the majority across Northern Ireland. No lessons have been learned from the 3 tier CSP structure originally prescribed which has, in many cases, been simplified to one tier, more fit for purpose.

20. - Establishment of PCSPs – (1) The proposed partnership should have the local community, and not the police, at its centre. The CSP recommends that the Justice Committee re-examines the proposed partnership title.

21. – Functions of the PCSP – The CSP notes that the proposed structure places huge emphasis on policing and undermines multi-agency working at a local level. This will deliver a scenario where the police monitoring role supersedes frontline delivery. The model proposed and the partnership out-workings are very much to the detriment of community safety and effective local interventions. The proposed model is not reflective of the wide range of public, voluntary, community and business sector organisations that have important roles to play in the delivery of safer communities.

The Review of the Criminal Justice System in Northern Ireland (2000) identified that reducing crime and the fear of crime is not solely a matter for criminal justice agencies but demands the concerted efforts of all sectors. The proposed membership arrangements will dilute the current position of CSPs in respect of multi-agency working.

Under the proposed functions of the PCSP, it is noted that only at point (h) - i.e. point number 7 is delivery mentioned. Up to that point, the entire focus is on discussion and consultation, in respect of policing.

At point (h) the partnership is financing delivery by others but does not appear to be a delivery body in itself. In smaller Council areas, the CSP manager is often the delivery agent and driver of initiatives. The proposed functions of the PCSP focus, for the most part, on policing, to the detriment of delivery of much needed initiatives to the local community.

23. –Code of Practice for PCSPs – Again, the partnership notes that these provisions are from the current Police Act.

(b) Public meetings are prescribed even though, since the inception of DPPs, these have been costly and very poorly attended. There is no proposal to engage with the public by another, more innovative, means. The CSP recommends evaluation of the current methods of public engagement to determine effectiveness. The CSP also notes that the code of practice concentrates on the work of the Policing Committee but disregards that of the PCSP.

24. – Annual Reports by PCSP to Council - The proposed arrangements see the PCSP submitting reports to Council, the joint committee and the Policing Board even though officials insist that joint working was embarked upon to achieve increased efficiencies and lessen bureaucracy. The CSP recommends that the Justice Committee re-examines and simplifies these procedures.

24 (5) - The CSP does not believe that the policing committee should consult with the district commander. This questions the independence of the proposed policing committee. The CSP recommends that this be removed.

30 – Reports by Policing Committees to Policing Board - The proposed policing committee should not have the power to act independently of the PCSP. The CSP believes the Justice Committee should re-examine the role of the proposed policing committee.

33. (2) – Other community policing arrangements- The requirement to consult with the public will have a remit greater than policing. The CSP recommends that this is re-examined and amended accordingly.

33 (3) The CSP does not believe that the remit should include the establishment of bodies. This is a role for Community Development within local Councils.

34. – Duty on public bodies to consider community safety implications in exercising duties - A duty on public bodies to consider community safety implications in exercising duties is vital, mandating member commitment and contribution. This however, has significant resource implications for all partner organisations and it is questionable as to whether it will be achievable under the proposed arrangements. The CSP believes that this should be strengthened, in line with provisions in the Crime and Disorder Act in England.

35 – Functions of Joint Committee and Policing Board – The CSP notes that there is very real potential for increased confusion and bureaucracy with dual lines of accountability and recommends that the Justice Committee reviews the proposed arrangements.

Schedule 1 Paragraph 4 (2) The CSP believes that local Councils, not the Policing Board, should be responsible for the election of independent members. The CSP believes that clear guidance should be issued to ensure equality and maximise member effectiveness.

Paragraph 6 (3) The CSP is uncertain as to the equality responsibilities of the partnership, in respect of the requirements for the proposed policing committee and the PCSP and recommends the Justice Committee examine proposals in respect of equality duties.

Paragraph 7 The CSP believes that the legislation should stipulate key stakeholders, similar to the Crime and Disorder Act. This would further strengthen Clause 34.

Paragraph 10 –The CSP feels that the positions of Chair and Vice-Chair should not be restricted to elected members, in the spirit of true partnership working.

Paragraph 13 – The appointment of sub-committees should be overseen by the PCSP and not just the policing committee.

Limavady District Policing Partnership Response to the Committee for Justice on the Justice (Northern Ireland) Bill

Part 3

Clause 20. Establishment of PCSPs

It is noted that the consultation document entitled "Local Partnership Working on Policing and Community Safety" clearly sets the proposal to establish a new Partnership within the context of a Review of Public Administration and that it would deliver value of money, reflected in the introduction by the Minister for State Paul Goggins who said "in anticipation of the changing

landscape in local government" and "the changes in council boundaries planned for May 2011 give us a golden opportunity to put public safety at the heart of local service delivery. Moving from 52 partnerships to 11 will free up resources for frontline delivery and allow the new partnerships to have a bigger impact on the ground". Therefore evidence through a supporting business case for this new policy should demonstrate that four reporting lines (DOJ, NIPB, Joint Committee and Council) for differing information and three funding streams (NIPB, DOJ and Council) will reduce bureaucracy and stakeholder confusion and provide effectiveness, efficiency and value for money.

- Clause 24 - Submit to Council a general report.
- Clause 27 - A PCSP shall submit to the Joint Committee.
- Clause 30 - The Policing Committee shall submit to NIPB a report.
- Clause 33 - The Policing Committee, with the approval of NIPB.
- Schedule 2, Clause 17 – "the department and NIPB..... a grant towards expenses...."

As the proposed policy is not being implemented in the context in which the public consultation process was envisaged i.e. the Review of Public Administration it is therefore open to a judical review challenge.

The proposed name PCSP was the least favoured at consultation level. It was strongly felt that by having policing in the title reinforces attitudes that the Police were primarily responsible for community safety and is against the overall ethos of shared responsibility and mainstreaming later referred to in the Bill.

Care should be taken to ensure that any proposed model for integration of the partnerships does not duplicate best practice models within the community planning framework, reflected in the Scottish Model where a community planning directorate within Council, consults on behalf of its citizens, establishes thematic groups to tackle issues identified and also holds a central monitoring role to monitor effectiveness of all action plans.

As the proposed PCSP has the same legislative basis as the Police (NI) Act 2000. Part III, 14, it is assumed that the proposed PCSP will be an unincorporated body of Council. As elected members will not hold the balance of power on the full PCSP, care should be taken to insure there are no vires issues under the 1972 Local Government Act (as amended). Under democratic principles, the balance of power should remain with the elected member as stated in the Local Government Act 1972.

Now that there is all party agreement on policing, as an unincorporated body of Council, it should be for Council to identify, appoint and remove independent members and designated bodies to serve on the PCSP, not for the Policing Board to appoint the independent members and the PCSP to appoint designated bodies. See Schedule 1, clauses 4,7. Alternatively a public body similar to Crime and Disorder Reduction Partnership (CDRP) in England and Wales should be established.

It is inferred that the "designated bodies" will be from the statutory sector who will have a "due regard" to tackle community safety issues. Failure to include representatives from the third sector could be to the detriment of effective partnership working and buy in from the third sector.

The proposed model, which combines the roles and responsibilities of monitoring policing and enhancing community safety, could result in a degree of role confusion and a conflict of interest. For example, a question by the Policing Committee to the Police on how they are tackling a

community issue could result in a standard response "as you are aware, the PCSP is responsible for the action plan relating to this issue and your question is best placed to be answered by yourselves". This new responsibility may dilute the effective monitoring of the police and will substantially change the relationship between the public and the police. It will also have an impact on public perception in relation to the usefulness of the committee in monitoring police performance locally. Indeed this will have an impact on public satisfaction.

Clause 21. Functions of PCSP

The term "Policing Committee" is not reflective of its remit. It is not a committee of Police nor it is not a committee as it has powers to designate and appoint members but rather with statutory powers to: monitor the Police and encourage the public to work with the Police. As evidenced with the name District Policing Partnership, this choice of name will lead to stakeholder confusion.

Consideration should be given to the impact of the unique and distinct role of the Policing Committee on the overall dynamic and performance of the PCSP, especially as members from designated bodies cannot hold the office of Chair and Vice Chair.

Consideration should be given to the PCSP functions in particular the Policing Committees, monitoring without powers to recommend or request reports and evidence can reduce the ability to adequately shape local policing.

The proposed model does not have an equal emphasis on policing, problem-solving and tackling the root causes of crime, reflected in the size and remit of the "policing committee" and the number of statutory duties related to policing. This will lead to an emphasis on the policing aspect and dilution of dealing with community safety issues.

21(1)(e) is not clear in its intent. Without knowing what the mind of the legislative drafter it is difficult to suggest alternative wording or punctuation.

21(h) As funding can only be provided to constituted groups, suggest that "persons" should be replaced by "organisations". In addition, the delivery methodology of the PCSP is unclear. The wording implies that the PCSP will tackle community safety issues primarily through provision of funds to persons to undertake community safety activities. In line with Crime and Disorder Reduction Partnerships operating in England and Wales, it is preferable that the PCSP not only develop actions plan but take the lead in tackling complex community safety issues, supplemented by third sector involvement to ensure that outcomes are achieved.

Clause 23. Code of Practice for PCSPs

It is suggested in line with the current legislation Police NI Act 2000, Part III, Clause 19 (2), where the Code of Practice is approved by the Secretary of State, that the Bill includes the Code of Practice to be developed by the Joint Committee should require approval from the Justice Minister.

Clause 24(1). Annual Reports.

As body unincorporated of Council, Council should have an accountability role as opposed to reporting role.

Clause 27 and 30. Reports to Joint Committee and by Policing Committees to Policing Board

As a body unincorporated of council, any reports requested by an external agency should also be provided to council. In addition, there is a risk of duplication of reports required by both the Policing Board and Joint Committee, one covering the policing aspects of an issue and the other covering the community safety aspects of an issue. Streamlining should be considered.

Clause 30. Reports by Policing Committees to Policing Board

The legislation suggests that the Policing Committee will not report on its function to the overall PCSP and will independently issue and publish reports. This is an unusual governance arrangement. One practical outworking of the proposed governance arrangement would be that the PCSP logo could not be applied to policing committee documents as they have not been ratified by the PCSP.

Clause 34. Duty on Public Bodies to Consider Community Safety Implications in Exercising Duties

There are significant resource implications for all public bodies to have "due regard to the likely effect of the exercise of those functions on crime and anti-social behaviour in that community, and the need to do all that it reasonably can to enhance community safety." This brings with it a requirement to "community safety proof" all policies and procedures. It is suggested that the PCSP should be consulted within this suggested policy development process, so that the effectiveness of this structure is not diluted by mainstreaming. This policy aspect would be more effective if initiated in the context of community planning.

Clause 35. Functions of Joint Committee and Policing Board

The legislation provides for the Joint Committee to assess public satisfaction and effectiveness of the overall PCSP; while the Policing Board will assess the public satisfaction and effectiveness of the Policing Committee. This duplication of roles will lead to confusion for all stakeholders. Streamlining should be considered.

Schedule 1

Clause 4. Independent Members

The proposal is unnecessarily bureaucratic and with limited benefit. As body unincorporated of Council, Council should be empowered to nominate and appoint independent members to the Policing Committee or alternative governance arrangements established.

Clause 7. Representatives of Designated Organisations

It is suggested that either alternative governance arrangements should be sought or as body unincorporated of Council they should designate organisations to serve on the PCSP enabling full voting powers.

Currently the legislation reads "A PCSP must designate at least 4 organisations for the purposes of this paragraph". Initially, as the policing committee is the only element of the PCSP in

existence, it is not possible for the PSCP to designate other organisations and consideration should be given to amending the wording to reflect this.

Giving the PCSP powers to appoint and revoke will increase the bureaucracy and training requirements for the PCSP.

Clause 8(f). Removal of Members

Consideration should be given to including in the definition of 'unfit' a relationship to attendance criteria. This will be important in any voluntary partnership.

Clause 10. Chair and Vice Chair

The PSCP is not an inclusive partnership as 'designated members' are excluded from holding office.

Clause 11. Procedure of PCSP

A quorum is defined in terms of the PCSP. To ensure representation, consideration should be given to stipulating the ratio between the Policing Committee members and designated members.

Clause 14. Other Committees

To ensure representation, consideration should be given to including a ratio between Policing Committee members and designated members.

Clause 15. Indemnities and Clause 16 Insurance Against Accidents

It is recommended that the relationship between the PCSP and the Council is clearly defined in legislation, particularly if the funding sources for the new partnership will be changed. Indeed, if the Council has no funding allocation towards the PCSP, or if the PCSP is designated as a stand-alone public body, it would be difficult for a council to justify indemnifying persons or organisations that it has no responsibility for or control off.

Clause 17. Finance

As funding for NIPB and Community Safety Units comes from the Department, streamlining for funding and accountability should be feasible. The proposed arrangements are bureaucratic and unnecessary. The removal of the existing 25% contribution from local government may reduce the degree of ownership the Council has to the partnership and how it is embedded locally.

The Bill does not make any assurance that Council will have adequate assistance to perform its enhanced statutory duties, or the PCSP duties for which it is not responsible and has no accountability function other than through receipt of the annual report.

Consideration should be given to provision of a members allowance in particular for independent members. The proposed structures carry an increased significant workload from current structures and at a time of increased terrorist activity may have a detrimental impact upon take up from the independent sector. Parity with Board Members of Northern Ireland Policing Board should also be considered in relationship to including a provision for payment of an allowance.

Lisburn City Council

LISBURN
CITY COUNCIL

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Norman Davidson *Chief Executive*
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Our ref: CC/af

17 November, 2010

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Ms Darrah

Consultation – "Justice (NI) Bill"

I would wish to advise that the Corporate Services Committee had delegated authority to consider the above Bill at its meeting held on 9 November, 2010.

The Committee agreed to submit the paper attached, together with the following comments:

- the absence of remuneration for Members having a detrimental effect on the calibre of candidates which would be attracted for membership of the Policing & Community Safety Partnership;
- concern regarding the uncertainty in relation to funding arrangements of the Policing & Community Safety Partnership;
- reservations regarding the range of categories of membership – apart from Elected Members – on the Policing & Community Safety Partnership;
- the fact that, as Council has statutory responsibility for delivery, Elected Members should comprise the majority in both the Policing & Community Safety Partnership and also the Policing Committee; and
- the fact that the Chairman of the Policing & Community Safety Partnership and that of the Policing Committee should be the same person and be an Elected Member.

I hope this is of assistance.

Yours sincerely

Carmel Connolly
Assistant Director of Corporate Services

ISSUES FOR CONSIDERATION RELATING TO JUSTICE (NORTHERN IRELAND) BILL 2010

The Justice (Northern Ireland) Bill 2010 was introduced to the Assembly on 18 October 2010. The Committee for Justice is now inviting views/comments on the contents of the Bill, which should be submitted by **Wednesday 17 November 2010.**

At the Meeting of Council held on 28 October 2010, delegated authority was given to the Corporate Services Committee to respond on behalf of Council due to the tight timescale by which a response should be made.

This response is dedicated to the specific parts of the Bill which will have a direct impact on this Council, namely the establishment of 'Policing and Community Safety Partnerships' (PCSP). Part 3 and Schedule 1 of the Justice Bill refers.

In summary the six main areas of the Bill that require further consideration by Corporate Services Committee are:

- **Chairmanship of the PCSP and the Policing Committee**
- **Remuneration of Members of the PCSP**
- **Funding arrangements**
- **Representatives of designated organisations**
- **Governance and accountability arrangements**
- **Duty on public bodies to consider community safety implications in exercising duties**

CHAIRMANSHIP OF THE PCSP AND THE POLICING COMMITTEE

Within each PCSP there will be a policing committee which will only comprise political and independent members . This committee will perform the statutory police monitoring functions that the current DPPs perform and will also make

arrangements for obtaining the co-operation of the public with the police in preventing crime and enhancing community safety. The Chair of the policing committee will be a political member appointed by the Council in order that the office is held in turn by each of the four largest parties represented on the Council immediately after the last local general election. The vice chair will be an independent member appointed from among such members.

Schedule 1 10 (2) states that in the first twelve months of the new PCSP, the Chair of the policing committee will be the Chair of the PCSP, thus the same political member will be chair of the PCSP and the policing committee. However this situation will change in relation to the Chairmanship of the PCSP after the first year as Schedule **2 10 (4)** states that **"at any time thereafter the chair and vice chair shall be elected in accordance with arrangements made by the Department."** This means that an independent member or a representative of a statutory organisation could be the Chair of the PCSP after the initial 12 months and could also be a different person to the Chair of the policing committee, who will always be a political member. If a political member is not the Chair of the PCSP democratic accountability of the Partnership will be greatly diminished.

REMUNERATION OF MEMBERS OF THE PCSP

The Bill as it stands makes no provision for the payment of an allowance to either political or independent members. **Schedule 2 12** enables the council to pay to independent members **"such expenses as the council may determine."** Political members must perform this duty as part of their role as an elected representative; expenses will however continue to be paid in line with NJC/Local Government rates and conditions. Members should be aware that political and independent members will be required to sit on the PCSP and the policing committee, thus an increased role than the current one they undertake as DPP Members. In making its response to this part of the Bill, Members should consider whether they agree that this arrangement is satisfactory or whether political and independent members should continue to be paid an allowance and at what level this should be paid eg in line with the

current level of remuneration paid to DPP Members. The argument put forward by the Department around the non payment of members who will sit on PCSPs is that the Community Safety Partnership members were never paid. Members should be aware that most members of Community Safety Partnerships attend in a paid capacity as employees of statutory organisations or members of the community who attend in a voluntary capacity.

FUNDING ARRANGEMENTS

Schedule 1 17 "The Department and the Policing Board may for each financial year make to the council a grant towards the exponses incurred by the council in that year in connection with the establishment of, or the exercise of functions by, PCSPs"

This aims to replace the current 75%/25% funding arrangements in place between the Policing Board and Councils in relation to DPPs and the word 'may' does not place a firm enough commitment on the Board or Department to contribute. The Bill does not include any reference to the contribution that Councils 'may' be required to make or place an obligation on a 'designated organisation' to financially contribute to the delivery of community safety. It is very ambiguous and in light of the current financial situation this Council must be aware of how much it 'may' be required to contribute, given that it will now have a DPP and community safety remit combined.

REPRESENTATIVES OF DESIGNATED ORGANISATIONS

Schedule 1 7 (1) requires the **"PCSP to designate at least 4 organisations for the purposes of this paragraph"**, in other words, at least 4 representatives of delivery organisations to attend meetings of the PCSP, but not the policing committee. This person will be treated as a member of the PCSP which may pose potential difficulties –

- firstly how and on what basis are such organisations designated by the PCSP in the Council area;

- what contribution, if any, are they required to make ie in terms of a financial commitment to the delivery of community safety – will it be 'in kind' or will they be required to contribute on an equal basis;
- at what level in the organisation are they required to attend. If the representative is not at a sufficiently senior level in the organisation and are unable to make decisions on that organisations behalf it could delay the decision making process and hence the effectiveness of the PCSP.

GOVERNANCE AND ACCOUNTABILITY ARRANGEMENTS

As previously mentioned the council may receive a grant towards the operation of a PCSP in its area. This will be provided by the Policing Board for the work of the policing committee and the Department of Justice for delivery of community safety. Members are aware of the rigid arrangements that are already in place in terms of the grant that the Policing Board provides for the work of DPPs and this arrangement as outlined in the Bill will further impose on Council a second and separate governance and accountability arrangement with the Department of Justice. This will only add to the bureaucracy already in place and incur additional administration. A single funding stream should be put in place rather than the proposed dual arrangement.

DUTY ON PUBLIC BODIES TO CONSIDER COMMUNITY SAFETY IMPLICATIONS IN EXERCISING DUTIES

Part 3 34 (1)-(4) places a duty on Departments and other public bodies to exercise their functions giving due regard to **the likely effect of the exercise of those functions on crime and other anti-social behaviour in that community, and the need to do all it can to enhance community safety.** This has implications in terms of financial and human resources for this Council in fulfilling its obligation in this area. There has been no consultation by the Department with public bodies on this proposal.

To conclude, in attempting to create an integrated Partnership, there is a real risk that some of the issues raised in this paper, if not given further consideration by the Committee for Justice, will reinforce duplication rather than streamlining roles, functions, accountability and delivery of outcomes for the benefit of the community.

In order that the proposed new partnerships can carry out their work efficiently and effectively, a level of grant commensurate with the work that they are to undertake should be provided to Councils in order that it can be adequately staffed, resourced and managed in the Council environment.

Lisburn District Policing Partnership

Working together
for a safer community

c/o Island Civic Centre,
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www.districtpolicing.com
www.lisburncity.gov.uk 17 November 2010

To Whom It May Concern

Justice (Northern Ireland) Bill 2010

On behalf of Lisburn District Policing Partnership, I have attached specific comments in relation to the above named Bill, in particular the establishment of Policing and Community Safety Partnerships which Lisburn DPP would like the Committee to take into consideration in its discussions before the Bill is finalised.

In particular Lisburn DPP would like to emphasise the following comments:

- The absence of remuneration for Members having a detrimental effect on the calibre of candidates which would be attracted for membership of the PCSP. Lisburn DPP agreed that provision should be made for the continuation of funding for Members;
- Concern regarding the uncertainty around the funding arrangements of the PCSPs, in particular the grant available to Councils and the contribution that the Council and other designated organisations would be required to make;
- There should be no barrier to independent members becoming Chairman of the PCSP or the Policing Committee

Yours sincerely

Mrs Angela McCann

Lisburn DPP Manager

LISBURN
CITY COUNCIL
Lisburn, a City for everyone

Issues for Consideration Relating to Justice (Northern Ireland) Bill 2010

The Justice (Northern Ireland) Bill 2010 was introduced to the Assembly on 18 October 2010. The Committee for Justice invited views/comments on the contents of the Bill to be submitted by Wednesday 17 November 2010.

This response is dedicated to the specific parts of the Bill which refers to the establishment of 'Policing and Community Safety Partnerships' (PCSP). Part 3 and Schedule 1 of the Justice Bill refers.

In summary, the Lisburn DPP agreed that the five main areas of the Bill that require further consideration are:

- Chairmanship of the PCSP and the Policing Committee
- Remuneration of Members of the PCSP
- Funding arrangements
- Representatives of designated organisations
- Governance and accountability arrangements

Chairmanship of the PCSP and the Policing Committee

Within each PCSP there will be a policing committee which will only comprise political and independent members. This committee will perform the statutory police monitoring functions that the current DPPs perform and will also make arrangements for obtaining the co-operation of the public with the police in preventing crime and enhancing community safety. The Chair of the policing committee will be a political member appointed by the Council in order that the office is held in turn by each of the four largest parties represented on the Council immediately after the last local general election. The vice chair will be an independent member appointed from among such members.

Schedule 1 10 (2) states that in the first twelve months of the new PCSP, the Chair of the policing committee will be the Chair of the PCSP, thus the same political member will be chair of the PCSP and the policing committee. However this situation will change in relation to the Chairmanship of the PCSP after the first year as Schedule 2 10 (4) states that "at any time thereafter the chair and vice chair shall be elected in accordance with arrangements made by the Department." This means that an independent member or a representative of a statutory organisation (this is not clear) could be the Chair of the PCSP after the initial 12 months and could also be a different person to the Chair of the policing committee, who will always be a political member. Lisburn DPP agreed that there should be no barrier to an independent member becoming Chairman of the PCSP or the Policing Committee.

Remuneration of Members of the PCSP

The Bill as it stands makes no provision for the payment of an allowance to either political or independent members. Schedule 2 12 enables the council to pay to independent members "such expenses as the council may determine." Political members must perform this duty as part of their role as an elected representative; expenses will however continue to be paid in line with NJC/Local Government rates and conditions. This will be an increased role to the one Members currently undertake as a member of the DPP. Lisburn DPP disagrees with this proposal and considers that the absence of remuneration for Members will have a negative impact on the calibre of candidates which would be attracted for membership of the PCSP. The argument put forward by the Department around the non payment of members who will sit on PCSPs is that the Community Safety Partnership members were never paid. Most members of Community Safety Partnerships attend in a paid capacity as employees of statutory organisations or members of the community who attend in a voluntary capacity.

Funding Arrangements

Schedule 1 17 "The Department and the Policing Board may for each financial year make to the council a grant towards the expenses incurred by the council in that year in connection with the establishment of, or the exercise of functions by, PCSPs"

This aims to replace the current 75%/25% funding arrangements in place between the Policing Board and Councils in relation to DPPs and the word 'may' does not place a firm enough commitment on the Board or Department to contribute. The Bill does not include any reference to the contribution that Councils 'may' be required to make or place an obligation on a 'designated organisation' to financially contribute to the delivery of community safety. It is very ambiguous and in light of the current financial situation Lisburn City Council must be aware of how much it 'may' be required to contribute, given that it will now have a DPP and community safety remit combined.

Representatives of Designated Organisations

Schedule 1 7 (1) requires the "PCSP to designate at least 4 organisations for the purposes of this paragraph", in other words, at least 4 representatives of delivery organisations to attend meetings of the PCSP, but not the policing committee. This person will be treated as a member of the PCSP which may pose potential difficulties –

- firstly how and on what basis are such organisations designated by the PCSP in the Council area;
- what contribution, if any, are they required to make ie in terms of a financial commitment to the delivery of community safety – will it be 'in kind' or will they be required to contribute on an equal basis;
- at what level in the organisation are they required to attend. If the representative is not at a sufficiently senior level in the organisation and are unable to make decisions on that organisations behalf it could delay the decision making process and hence the effectiveness of the PCSP.

Governance and Accountability Arrangements

As previously mentioned the council may receive a grant towards the operation of a PCSP in its area. This will be provided by the Policing Board for the work of the policing committee and the Department of Justice for delivery of community safety. Members are aware of the rigid arrangements that are already in place in terms of the grant that the Policing Board provides for the work of DPPs and this arrangement as outlined in the Bill will further impose on Council a second and separate governance and accountability arrangement with the Department of Justice. This will only add to the bureaucracy already in place and incur additional administration. A single funding stream should be put in place rather than the proposed dual arrangement.

To conclude, in attempting to create an integrated Partnership, there is a real risk that some of the issues raised in this paper, if not given further consideration by the Committee for Justice, will reinforce duplication rather than streamlining roles, functions, accountability and delivery of outcomes for the benefit of the community.

In order that the proposed new partnerships can carry out their work efficiently and effectively, a level of grant commensurate with the work that they are to undertake should be provided to Councils in order that it can be adequately staffed, resourced and managed in the Council environment.

Magherafelt Community Safety Partnership

Justice (Northern Ireland) Bill
Part 3 Policing and Community Safety Partnerships

The following comments are being provided on behalf Magherafelt Community Safety Partnership

Clause 20 (1) – page 16

The CSP are concerned that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

RECOMMENDATION: That the Justice Committee re-examine the proposed title

Clause 21 (1) – page 17

Overall the functions are too similar to the Police Act and therefore are very police orientated. The CSP would be concerned that community safety hasn't being legislated for outside of the policing arena. In addition, multi-agency working, which is the core of the community safety function, has been neglected within these proposed functions. The role of the police may also be perceived as being monitored rather than working in partnership. Finally the PCSP is unbalanced in terms of delivery to the community.

RECOMMENDATION: That the Justice Committee re-examine the proposed functions

Clause 21 (2) – page 17 & 18

The CSP would query how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (2c) should not be restricted to the policing committee but rather to the whole partnership.

Clause 21 (3) (page 18) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

RECOMMENDATION: That the Justice Committee re-examine the proposed functions

Clause 23 (3) – page 19

Many of the proposed provisions refer to practices which are currently taking place within the DPP model under the Police Act. However no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation.

In addition, this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to.

RECOMMENDATION: That the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24 – page 20

Accountability remains to 3 bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests.

RECOMMENDATION: That the Justice Committee re-examine the lines of accountability so that they are simplified

Clause 24 (5) – page 20

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

RECOMMENDATION: That item 24 (5) be removed

Clause 30 – page 22

The CSP would have concern that the policing committee can operate independently from the overall partnership with no legislative requirement to report back to the partnership.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the committee should be able to establish any body.

In addition, there is a fear that the establishment of bodies may be a duplication of the role of community development department of Council.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Clause 34 – page 24

Although this function is welcome, given the extremely positive response from the recent consultation, it would be recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

RECOMMENDATION: That the Justice Committee look to strengthen this aspect of the Justice Bill so that the partnership is 'fit for purpose'

Clause 35 – page 25

As previously outlined, this clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Schedule 1

Paragraph 4 (2) – page 64

The CSP would query why the Policing Board, through external consultants, is responsible for the elected of independent members instead of the local council and, given it is in the region of £24,000 per council (totalling at least £600,000 across N.Ireland), cost savings could be enhanced by the local Council being responsible for this recruitment.

RECOMMENDATION: That the Justice Committee examine the potential cost savings of getting Council to recruit the independent members

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

RECOMMENDATION: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

RECOMMENDATION: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or PCSP?

RECOMMENDATION: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

RECOMMENDATION: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership.

RECOMMENDATION: That the Justice Committee re-examine the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodes 'should' rather than 'may' provide a grant.

RECOMMENDATION: That the Justice Committee amend paragraph 17 to the above wording

Other Issues to Consider:

There is no mention of community and voluntary organisations in this legislation who currently contribute fully to CSPs.

The Council should be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Magherafelt District Policing Partnership

Justice (Northern Ireland) Bill
Part 3 Policing and Community Safety Partnerships

The following comments are being provided on behalf Magherafelt District Policing Partnership

Clause 20 (1) – page 16

The DPP are concerned that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

RECOMMENDATION: That the Justice Committee re-examine the proposed title

Clause 21 (1) – page 17

Overall the functions are too similar to the Police Act and therefore are very police orientated. The DPP would be concerned that community safety hasn't being legislated for outside of the policing arena. In addition, multi-agency working, which is the core of the community safety function, has been neglected within these proposed functions. The role of the police may also be perceived as being monitored rather than working in partnership. Finally the PCSP is unbalanced in terms of delivery to the community.

RECOMMENDATION: That the Justice Committee re-examine the proposed functions

Clause 21 (2) – page 17 & 18

The DPP would query how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (2c) should not be restricted to the policing committee but rather apply to the whole partnership.

Clause 21 (3) (page 18) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

RECOMMENDATION: That the Justice Committee re-examine the proposed functions

Clause 23 (3) – page 19

Many of the proposed provisions refer to practices which are currently taking place within the DPP model under the Police Act. However no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether this is the best method.

In addition, this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to.

RECOMMENDATION: That the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24 – page 20

Accountability remains to 3 bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests.

RECOMMENDATION: That the Justice Committee re-examine the lines of accountability so that they are simplified

Clause 24 (5) – page 20

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

RECOMMENDATION: That item 24 (5) be removed

Clause 30 – page 22

The DPP would have concern that the policing committee appears to operate independently from the overall partnership with no legislative requirement to report back to the partnership. This would defeat the purpose of a single integrated partnership.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the committee should be able to establish any body without agreement from the whole partnershjp as part of its overall strategy.

RECOMMENDATION: That the Justice Committee re-examine this

Clause 34 – page 24

Although this function is welcome, given the extremely positive response from the recent consultation, it would be recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

RECOMMENDATION: That the Justice Committee look to strengthen this aspect of the Justice Bill so that the partnership is 'fit for purpose'

Clause 35 – page 25

As previously outlined, this clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Schedule 1

Paragraph 4 (2) – page 64

The DPP would query why the Policing Board, through external consultants, is responsible for the elected of independent members instead of the local council and, given it is in the region of £24,000 per council (totalling at least £600,000 across N.Ireland), cost savings could be enhanced by the local Council being responsible for this recruitment.

RECOMMENDATION: That the Justice Committee examine the potential cost savings of getting Council to recruit the independent members

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

RECOMMENDATION: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models. However no members should be financially disadvantaged.

RECOMMENDATION: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who the equality responsibility applies to i.e. the policing committee or overall PCSP?

RECOMMENDATION: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

RECOMMENDATION: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

RECOMMENDATION: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership.

RECOMMENDATION: That the Justice Committee re-examine the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

RECOMMENDATION: That the Justice Committee re-examine this

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodes 'should' rather than 'may' provide a grant.

RECOMMENDATION: That the Justice Committee amend paragraph 17 to the above wording

Other issues to Consider:

There is no mention of community and voluntary organisations in this legislation who currently contribute fully to DPPs.

The Council should be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Mr J McKeown

3 December 2010

Lord Morrow (Chairperson)
The Justice Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3TA

Dear Lord Morrow

I am writing to you as Chairperson of the Justice Committee which I understand is currently considering the new Justice Bill.

I am an Ulster Rugby season ticket holder and have been since these were first made available to supporters. I do not intend to go into detail as I am aware Officials from Ulster Rugby are making representations directly to your committee and will do so much more succinctly than me, however I would like to add my name to those opposing the section of the Bill which would seek to impose draconian restrictions on the sale of alcohol in the Ravenhill ground.

In all my years as a rugby fan alcohol has been available at all grounds which I have attended and I have yet to witness any problems due to its consumption. If the restrictions as presently proposed were implemented at Ravenhill it would have a severe and detrimental effect on the whole atmosphere, especially pre-match when both sets of fans are able to mingle and enjoy the craic, something which is common within the rugby fraternity worldwide. Alcohol at rugby matches does not create problems and should not be restricted any more than at present at Ravenhill or indeed at club grounds throughout Northern Ireland.

The financial burden which would be faced by Ulster Rugby through the loss of revenue would undermine the whole future of the club as a viable operation. Visiting fans may decide to give Ravenhill a miss because the whole rugby atmosphere would be missing there and this would have a knock on effect on hotel room occupancy. No doubt you and your committee members are aware that in addition to UK and Ireland teams we now have Italian and French visitors. What message are they going to take home?

I cannot speak for other sports but I do not think alcohol at rugby matches causes a problem. By all means have measures which **may be enforced** if, in the opinion of the PSNI, they are required in certain locations but not a blanket ban as is presently proposed.

Yours sincerely,

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Assembly Legislation NIA Bill 1/10 Justice Bill (Justice Act Northern Ireland 2010)

MindWise

MindWise is a leading membership charity which supports those affected by severe mental illness and other mental health difficulties and promotes early intervention. The charity's mission is focused on transforming lives and developing new visions for mental health by challenging stigma and discrimination, and providing quality services and support. MindWise offers a range of recovery based services including, supported housing, community resource centers, advocacy services, carer support , volunteer and self management programmes.

As one of the largest voluntary sector providers of mental health services in the province, we support approximately 1500 people a year and together we work to ensure that all those at risk of, and affected by severe mental illness and other mental health difficulties have choice, hope, support and the opportunity to recover a better quality of life. With one in every four people in Northern Ireland affected by mental illness at some stage in their lives, there is a real need for this local, customised professional approach.

The MindWise response

The draft bill of 108 sections and 7 schedules is a bill making provision for a wide range of criminal justice measures. Some measures specifically relate to mentally vulnerable people while some areas of the draft legislation is mute in this respect. MindWise is a leading Mental Health charity with an interest in Criminal Justice maters, outlines its response to various parts of the bill in chronological order as the order reads.

Some aspects are worthy of observation only, however there are sections where we have express recommendations.

NIA Bill 1/10 Justice Bill

Part 1 Chapter 1 The Offender Levy

We make the following observation only, with all its associated exceptions it may be so difficult to manage, as to outweigh the benefits of taking amounts of £15-£50 from serving prisoners from prison work earnings, and amounts of £15 may soon be outweighed by administrative costs, to the detriment of the tax payer.

Part 1 Chapter 2 Vulnerable Child Witnesses

We welcome any protective measures for children as child witnesses, and in addition the court taking in to account the witnesses social cultural and ethnic origins, as part of its protective decision making.

We currently support young vulnerable people in PSNI station and see that whilst there is a victim support scheme for the vulnerable victim in court at court the only support for a young person is a parent if they choose to attend.

Our experience suggests that between 1st June 2009 and 31st May 2010 at least 640 parents refused/failed to support their child, which suggests this reflects in the court attendance also.

We recommend that that the person who supported the vulnerable person in the Police Station is best placed to offer further support to the person when giving evidence by video link.

Part 1 Chapter 2 Evidence of Accused through an intermediary.

This is of particular interest to our organisation. The communication in court with a young person under 18 years whose level of intellectual ability or social functioning compromises his/her ability to give evidence in court, or as an adult of 18 years he/she suffers from a mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986.

In our view this presents the courts with the same difficulties that the PSNI have at the interview stage.

The Department of justice has correctly identified the PSNI difficulties and rectified them with the creation and Governance of a Northern Ireland Appropriate Adult scheme .In order to comply with The Police and Criminal evidence (Northern Ireland) Order 1989 and subsequent amendments.

We commend this development for the benefit of those accused that have communication issues or mental health issues regardless of age, bearing in mind there will be an overlap where people will fall in to one or more categories.

As a Mental Health charity who currently delivers the Northern Ireland Appropriate Adult Scheme it would make perfect sense to us that we are best placed to provide a trained mental health /vulnerable person's advocate, to assist the person known to be a vulnerable person during the investigation stage of the Police enquires.

We recommend that the services of a trained Advocate (not to be confused with Counsel/Barrister) be called upon to support the person (now to give evidence by intermediary). If that person required the assistance of an appropriate adult during the investigative stage of the enquiry this is considered good evidence that the services of an Advocate as intermediary are required.

Part 2 Chapter 2 Live link direction for a vulnerable accused.

We support the notion of evidence through a TV link for those accused under 18 years whose level of intellectual ability or social functioning compromises his/her ability to give evidence in court, or as an adult of 18 years he/she suffers from a mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 with a significant mental health impairment. Assuming the same assistance is afforded when giving evidence by video link as afforded when attending in person.

An 'Advocate' trained in supporting vulnerable people should be present and ensure the same level of understanding takes place regarding the administering and accepting of the oath and the giving of evidence via a TV link. If a person to give evidence was interviewed and deemed to need an appropriate Adult under PACE during questioning then we suggest this confirms the person requires support. We recommend the service of an advocate is called upon to attend at any location where the TV link is to take place from, within Northern Ireland.

A live link may occur via a secure hospital venue (part 2 art 14) such as 'Shannon Clinic' a prison prerelease establishment within the Knockbraken Health Care park complex, MindWise currently have trained advocate staff employed with this establishment , which we suggest are ideally placed to deliver this support.

(Special exceptional arrangements can be made for any overseas live links).

We recommend that the services of a trained MindWise Advocate (not to be confused with Counsel/Barrister) be the default intermediary in relation to Shannon Clinic (where available) for any person therein being required to give evidence by live link .

We also recommend that the services of a trained Advocate (not to be confused with Counsel/Barrister) be called upon to support the person (now to give evidence by live link). If that person required the assistance of an appropriate adult during the investigative stage of the enquiry this is considered good evidence that the services of an Advocate are required.

Part 3 Chapter 2 PCSP and DPCSP

The compressive arrangements for Policing and Community Safety Partnerships PCSP,, in each district and District Policing and Community Safety Partnerships DPCSP is to be welcomed. PCSP Composition SHALL consist of representatives nominated by organisations designated under paragraph 7 (up to 4 organisations may be nominated) We suggest that hearing from and engaging with an organisations those people who provide service provision within the custody suite where members of the local communities are detained, should be considered as key organisations within the provisions of the code regarding composition.

Schedule 2 DPCSP is not to dissimilar to the provision as in Schedule 1 reference DPCSP we therefore voices the same views as above. Organisations with an interest in criminal justice issues, such as MindWise who are stakeholders in the criminal justice system and a leading mental health charity should be listed in a schedule of partnership organisations and received more than just consideration for membership.

We recommend that organisations with an interest in criminal justice issues, who are stakeholders in the criminal justice system be listed in a schedule of Partnership organisations for the purpose of Schedule 1 and 2.

Part 4 Chapter 1-2-3-4-5 Regulated Matches

We make the following observation only, we welcome all the measures to secure sporting events are free from offensive chanting, missile throwing, fireworks and flares etc and excessive use of alcohol.

Part 6 Chapter 1 Alternatives to Prosecution

The penalty notice is for people over 18 years (see 65(1) page 28) we suggest this should read 'people who have attained the age of 18 years'. The term over 18 year suggested this is aimed at those people aged 19 years and above. The age of adulthood is 18 years with a child being under 18 years. The rationale behind this age band is lost to us. There may be a drafting error in section 65(1) as chapter 2 section 76(1) re conditional cautions relate to 'persons aged 18 years or over'.

If the age is aimed at people aged 18 we understand the adult /child distinction, but if this is aimed at people aged 19, we now have 3 legal age band areas under 18, 18, and over 18.This would cause confusion amongst young people, as they move from 17 to 19 years of age with the potential for a different disposal at each age.

The issues is, does the term over 18 mean 19 years of age

(Over meaning NOT within that year, i.e. you are not over 18 if you 'are' 18years)

PACE in defining an appropriate adult describes at Code C1.7 (a) (iii) failing these, some other responsible adult aged 18 years or over. Which implies there are 2 groups those of 18 and those over.

The Interpretation Act (Northern Ireland) 1954 is silent on the definition of Over as is The Children and Young Persons Act 1968, however if this has since been defined to include that year, then the mater we raise has become obsolete and can be ignored.

But if not, we suggest the term as used in the children and young person's act be used " has attained the age of " would be less uncertain for young people.

The penalty notice is a natural progression towards reducing the numbers of people appearing in court for relatively minor offences and as such we welcome this initiative for several reasons including the avoidance of a stress full court appearance for those who are mentally vulnerable, and can appreciate that they have offended.

Part 6 however is mute regarding those people who are mentally vulnerable.

As a mental health charity we have some concerns regards those people involved in minor offending as listed in schedule 4 i.e. theft ,criminal damage, etc whom may be given a penalty notice and do not have the capacity to understand its contents or payment methods. The associated instructions that accompany the penalty notice will by necessity be required to be drafted as to be understandable to all recipients.

It's clear diversionary routes are the avenues of the future, the revolving door offender is a drain on the economy and is self destructive, this has been identified a number of times most recently in the

Criminal Justice Inspection Northern Ireland March 2010 NOT A MARGINAL ISSUE MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND page 19 3.1 Significant numbers of mentally disordered offenders are ending up in prison when they ought ,it is argued to be diverted into the Health service.

There are other routes for diversionary support which would be a better provision for some offenders, particularly those with mental health difficulties. Inn 1996 HM Inspectorate of prisons published a report entitled PATIENT OR PRISONER ,which drew attention to the deficiencies in the Prison service ,which lead to changes in Northern Ireland 12 years later by transferring Prisoner Health care to Health trusts. We hope future change can occur much more speedily.

The NO ONE KNOWS report, Prisoners Voices Dratted by the Prison Reform trust, by Jenny Talbot page 3 highlights the prevalence of offenders with learning disabilities or difficulties coming in to the criminal justice system

This could be as high as 30%. This figure includes mental health issues such as the autistic spectrum disorder range ASD which Includes Asperger Syndrome (National Autistic Society).

The Bradley report April 2009 section 4 community sentences and resettlement, open the chapter identifying community sentences can be a worthwhile alternative, it identifies that Prison does not always have to be the default position for many offences. We concur with this principle, as a leading mental health Charity MindWise (A New Vision for Mental Health) we have an ethos of

'Transforming lives and developing new visions for mental health by challenging stigma and discrimination, and providing quality services and support'

The MindWise Recovery plan for those experiencing the adverse impact of mental health has empowered people towards self management, goal achieving and maintaining recovery through managed support with a Whole Person approach across Education/Employment/Training/ Accommodation/Medication/Therapies amongst other steps.

Diversionary schemes are in existence across the UK with various police services, Cardiff Bay Police South Wales are engaged in a court diversionary scheme working in conjunction with our sister organisation 'Hafal'.

Here within Northern Ireland the PSNI are pursuing an excellent new initiative with The Offender Management Initiative launched in the Ballymena area. We compliment their approach to crime reduction and diversion.

We recommend that diversion becomes a key focus in Northern Ireland and that this works in conjunction with partnership organisations who express a particular skill area such as mental health in relation to the person affected by the diversionary process. So that the immediate and follow on support can be provided similar the MindWise recovery plan, either working unilaterally or in partnership with agencies such as Probation/Youth Justice Agency.

The associated instructions that accompany the penalty notice be in a format that is understandable to all recipients.

Part 6 Chapter 2 Conditional Cautions

The development of a cautioning system that included conditions helping rehabilitation or reparation is welcomed expansion of the caution process, however care is needed with regards to those offenders who admit offences and have a mental health difficulty. As part of the cautioning process an 'Advocate' trained in supporting vulnerable people should be present and ensure the same level of understanding takes place regarding the administering and accepting of a caution as occurs in the initial investigation stage. If a person is interviewed and is deemed to need an appropriate Adult under PACE during questioning and admission, then this confirms the person requires support. We recommend the service of an advocate is called upon to attend with the person cautioned so that there is clarity of understanding of all the criteria laid out in the caution, and any conditions that follow. This is of particular importance as breach of the caution conditions carries a power of arrest for failure to comply

In respect of conditional cautions the department must prepare a code of practice (section 82(1) page 33)

We recommend that our suggestion be incorporated in to the statutory codes namely that the services of a trained Advocate be called upon to support the person (now to be cautioned) if that person required the assistance of an appropriate adult during the investigative stage of the enquiry. The advocate should be called upon to assist the person during the cautioning process, for continuity of support.

Part 6 chapter 2 Application of PACE

Since the 1st of June 2009 Mindwise is proud to say it has delivered the NI Appropriate Adult Scheme. The Aim of the scheme is to safeguard juveniles and mentally disordered or mentally vulnerable people in police custody by ensuring Police Comply with The Police & Criminal

Evidence (NI) Order 1989 (PACE) (Incl, Amendments to PACE anticipated late 2009) The term mentally disordered is direct take from the relevant legislation is not a term used/adopted by the MindWise organisation.

Juveniles must have an appropriate adult with them when they are being interviewed by Police, a parent or guardian often undertakes this role but increasingly we see parents are unable to attend, unwilling to attend for a variety of reasons.. We support, advise and assist juveniles under 18 years and/or mentally vulnerable of any age person in police custody through their encounter with Police. (Advice is not legal advice that reserved remains with the legal representative, but it may include advising that a Solicitor is necessary).

We aim to provide fundamental support, by ensuring that a suitably qualified open college network OCN accredited 'Appropriate Adult' is made available to the detained person in a timely fashion, who will explain police procedures and help and guide the detained person in a variety of ways .i.e.

- Advising a person being questioned
- Facilitating communication with Police
- Observing whether or not the interview is being conducted properly,
- Ensuring the person understands his/her rights, and entitlements,
- Being present when searches are taking place,
- Being present when fingerprints, photographs, samples are being taken,
- Being present during identification procedures,
- Being present when and if the person is being charged

The Service provides 24 hours per day 365 days per year response, as of 1st November this support system has sat in over 1900 Police interviews, with some 6000 hours spent in police stations.

This has shown that the NIAAS, delivered by MindWise, is delivered by a team of competent, trained and conscientious staff, who attended a vast array of case types, within 12 months staff attended 1461 station callouts.

The attendances took place across all custody .The statistical data revealed 60% of the people supported were vulnerable by virtue of age, with 40% mentally vulnerable. The change in legislation on 1st November 2009 bringing 17 year old young people into the vulnerable category saw this age group make up the greatest number of young people requiring NIAAS support.

The overall age range of people using the service ranged from 10 years old, the youngest legal criminal age, to 87 years, with the greater percentage being young men in the 20-30 year old age band. Males account for 82-86 % of all calls, while females account for up to 14-17 %.

The NIAAS team has competent regarding police procedures and the detained person. With call ranging from 1 hour to 96 hours and they have accrued hundreds of experiential hours in the role.

The lack of bail housing in Northern Ireland has been identified time and time again with juveniles been detained in Justice Centers as opposed to more cost effective local accommodation, which a competent organisations with training support staff could run effectively. With the aim of secure attendance at court through advocacy support and guidance,

and avoid Justice Centre detention and expense. Last year we saw over 640 young people requiring what is effectively a stand in parent the provision of a Bail hostel in NI particularly the greater Belfast area could significantly reduce the burden on the Justice centre who are forced to accept Young people for no other reason that no alternative exist, which introduced some young offenders and young mentally vulnerable offender to those more experienced in crime at an age when the less contact is advised.

We recommend that as the Department of Justice approved appropriate adult service delivery scheme in Northern Ireland any amendment to PACE should contain within either the code of Practice or a PACE schedule stating that in the event of an appropriate adult being required other than;-

Code C1.7 (a) (i) The parent, relative, guardian or if the juvenile is in care, a member of a care authority, or voluntary organisation;

Code C1.7 (a) (ii) A social worker;

Code C1.7 (a) (iii) Failing these, some other responsible adult aged 18 years or over who is not a police officer or employed by the Northern Ireland Policing Board.

Should where possible default to the Department of Justice approved scheme ,before considering any person aged 18 years or over. This will ensure that failing a relative or care professional that before moving to any person an accredited, trained, appropriate adult takes precedence over the final category, being other responsible person.

Part 8 Witness Summons Art 99

In relation to a witness is required to attend court, either on foot of a summons, or by virtue of a warrant for failing to attend court. When that witness is a juvenile and vulnerable by virtue of age or a vulnerable person by reason of mental health regardless of age they should be supported and assisted with a trained advocate as described above.

Links with Victim support have been explored between MindWise and victim support as the expertise in mental health falls to the later of these two professional orgaisation.

We recommend that when that witness is a juvenile and vulnerable by virtue of age or a vulnerable person by reason of mental health regardless of age they should be supported and assisted by a trained advocate.

Part 8 Criminal Convictions certificates to be given to employer

This links inextricably to the subject of vetting and barring which Northern Ireland Association for the Care and Resettlement of Offenders NIACRO has raised concerns about, as it raises difficulties with offender resettlement. Some concerns exist about the remodeling of the vetting and barring procedures. The employment of ex offenders and the safety of vulnerable groups is a balance that must be achieved to ensure employers have safeguards and ex offenders have a chance to de-criminalise their lifestyle with gainful employment. Access NI checks are necessary to protect the vulnerable however the result should not become an automatic exclusionary device.

Employers need a process which is less complicated and less costly and we support NIACRO in this suggestion.

A revised scheme must be easy for employers to interpret and must encourage them to work with a less risk adverse approach to employment within reason.

We understand and agree that "substantial and unsupervised" access to children and/or vulnerable adults will always require protective measures from those with specific convictions .However generally there should be balance so there is not a mandatory exclusion which prohibits the possibility of an employer making suitable adjustments to accommodate an ex offenders to enter the workplace.

We recommend that employers be permitted to consider if suitable adjustment can be made in the interest of employing ex offenders subject to a limited number of prohibitions.

MindWise Supplementary Written Evidence - Key Issues

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Supplementary written evidence provided by MindWise for the consideration of the Justice Committee in its deliberations on the Justice Bill [Justice Act Northern Ireland 2010]

Introduction

MindWise would like to thank the Chair and members of the Justice Committee for the opportunity afforded to present oral evidence on 25th November 2010.

Given the limited time available to discuss and explore the issues raised by members this supplementary evidence aims to address some of the key issues discussed:

1. Role of the Appropriate Adult (AA) within Police custody suites, and appreciating the distinction between the Adult role and a solicitor's role, and why it is relative to this legislation.

Under the Police and Criminal Evidence (Northern Ireland) Order 1989, and the statutory 'Codes of Practice' (2007 edition) for police that accompany the Order, when a vulnerable person is detained at a police station by the police for questioning concerning the investigation of a crime, an Appropriate Adult must be contacted and attend the station to assist, support and advise a young person under 18 or a mentally vulnerable person.

(A parent or guardian often undertakes this role but increasingly we see that parents are unable to attend i.e. single parent with other young children in the home, or sadly those that are unwilling to attend for a variety of reasons from being disheartened to disinterested, or prohibited from attending as they are the victim or witness in the case)

In the absence of a parent or legal guardian the NI appropriate adult scheme fulfills this role, and has done so 2000 times since its inception.

The role of the AA is to ensure that the person being interviewed fully understands the reason for their interview and the processes that are or are likely to take place and explain when consent is or is not required, and why.

The first function of the AA is to understand the nature of the allegation against the detained and his/her capacity to understand the allegation and if need be to ensure a solicitor is contacted to provide legal advice regarding the particular alleged offence.

The AA also liaises with PSNI on behalf of the detained person and the person's legal representative to ensure that a number of actions have been correctly followed, in accordance with PACE procedures have been followed so that the detained person's welfare is addressed, as well as his/her understanding of rights and consent. This is very significant for the Police as it secures the admissibility of any evidence gained from interviews, DNA, fingerprints, identification, and other procedures.

AA's are not required to be legally qualified (although some are) and it does not matter to them whether the person has committed an offence or not. That is a matter between the person and their legal representative. The AA is there to ensure that due process is followed and that the person's age and vulnerability is recognised.

In our experience there is no confusion between the role of AA and lawyer or conflict of interest. Indeed the feedback received from custody suite Sergeants and solicitors is that the AA scheme has greatly improved communications throughout the interview process and has resulted much greater clarity and understanding for the person detained and their family.

Research by the NIO through the statistical research series report no.9 The detention and questioning by the police in Northern Ireland Sept 2003.

Chapter 6 is dedicated to the legal advisor.Solicitors, acting as appropriate adults, expressed difficulties with acting as an AA such as advising a client to consent to the taking of fingerprints or samples from young person, and finding they may have placed themselves in a difficult situation, in facilitating police to gain evidence against their own client.

Our experience

Of the 1461 AA call outs during year one, 60% were determined on the basis of age alone. If a young person is under 18 years of age this automatically triggers a call to the AA service, in the absence of a parent, guardian. If the individual is over 18 but appears' vulnerable ' due to mental ill health or intellectual impairment the custody suite Sergeant makes a subjective decision as to the requirement of an AA.

This decision is supported by a number of objective questions taken from the police custody computer, (NICHE) which we are aware is intended to be enhanced in the future with a screening tool universally recognised across all sectors. (MAKING A DIFFERENCE FOR INDIVIDUALS WITH LEARNING DISABILITY, LEARNING AND COMMUNICATION DIFFICULTIES IN NI CRIMINAL JUSTICE SYSTEM Draft report to steering group includes - PSNI, PPS,YJA,NIPS,DHSSPS,DOJNI,NICTS,HSC,RCSLT,DE,NI-ADD,AutismNI,BDA,NASEN)

The youth Justice Agency currently use an enhanced mental health screening tool.

(A tool developed by the youth Justice Board in England and Wales and used in NI with their permission, for all young people admitted to the Juvenile Justice Centre soon after admission

and also used as part of a mental health audit across the Agency. Users of the questionnaire consult the Screening for Mental Disorder Manual. © Copyright Youth Justice Board 2003)

Currently the PSNI personnel are both trained and experienced in dealing with vulnerable people and err on the side of caution in seeking AA assistance it is our experience that this process works well.

As stated during our oral evidence decisions made are subsequently supported with the medical opinion of the Forensic Medical Officer (FMO) on call .We do not consider that the current arrangement should be altered.

However much more can be done to prevent re-offending and address the mental health issues at an early stage MindWise is proud to lead in pursuing a new initiative.

MindWise's propose early intervention at the stage of arrest for young people experiencing mental health problems including personality disorders and supporting them through the criminal justice system and Child & Adolescent Mental Health Services (CAMHS) / Adult Mental Health Services (AMHS) simultaneously. MindWise is uniquely placed to do so due to its Appropriate Adult Worker Scheme which supports the young person at the time of arrest where no appropriate adult is available. During the extended period of time an Appropriate Adult Worker spends with the young person, a Mental Health Questionnaire can be completed with the young person's permission and potential mental health problems can be flagged up and brought to the attention of the Forensic Medical Officer.

Where a young person has been identified as being able to benefit from additional support, they will be referred to the Advocacy Worker and become eligible for the Discretionary Scheme .The Advocacy Worker will support the young person to inform appropriately about the criminal justice system and supported and encouraged to attend legal proceedings as required. The Advocacy Worker will also inform the solicitor about any potential impact of existing mental health problems and risk factors and stressors the young person might be experiencing. During this period the Worker will also support the young person in accessing services in CAMHS / AMHS by providing appropriate information, reminding the young person of appointments and accompanying them as required while also trying to re-engage the young person with their communities by supporting them to attend local voluntary / community sector services and education or training. There are likely to be many benefits to this scheme including early intervention in mental health problems and preventing re-offending and the reduction in the costs of young people not attending court appointments leading to court arrest warrants being issued and the keeping of appointments within the mental health system.

Criminal convictions

Criminal convictions certificates provided to employers

There is ample research evidence to show that people with disabilities and mental health issues in particular are discriminated against by employers. Indeed a recent survey showed that 1 in 5 employers stated that they would never employ someone with a history of mental illness.Similar research shows that employers are reluctant to employ individuals with a conviction.

Our concern was the (now withdrawn for further consideration) vetting and barring arrangements which were 'black and white' with a list of convictions presented to an employer which are out of context from any mental illness evident at the time which may subsequently have been successfully treated.

The Justice Bill we hope contains some opportunity for employers to make reasonable adjustments or to identify that a particular conviction does not impact upon their company.

We respectfully suggest it may be possible for legislators to create schedules of offences falling into specific categories and drafted to the effect that;-

Schedule 1 offences 'prohibits absolutely' employment with children or vulnerable people.

Schedule 2 offences 'prohibits' employment with children or vulnerable people.

However a Schedule 2 offences may subject to provisions put in place by an employer which causes the offence to considered being in the same category as a schedule 3 offences. Any employer instigating steps to have a Schedule 2 offences managed as a Schedule 3 offence must document the decision making process, and steps taken, which will be available to the appropriate authority for which they may be held liable..

Schedule 3 offences do not prohibit/prevent employment with children or vulnerable people.

(An example may be a student who urinates outside a public house on Saturday evening who subsequently applies for a job on leaving university may find his one drunken indiscretion is taken out of context if he seeks employment within the time frames listed in the Rehabilitation of Offenders (Northern Ireland) Order 1978)

It is not the intention of a Mental Health charity to advise the legislators on how law should be drafted but with the right safeguarding legislation and Access NI procedures the balance could be struck for the fair and equal treatment of ex-offenders in the recruitment process.

It is suggested by NIACRO, that employers choose not to follow Access NI Code of Practice (as they are not duty bound to do so with basic disclosure information) and use the information to openly discriminate against a candidate who has a conviction. This suggests that if category groups were created there will be very few employers likely to make adjustments to their work place or employment conditions to accommodate an ex-offender, so wide scale changes in the work place is not something we envisage, each applicant for employment should be considered in a fair recruitment process that protects the public from unsafe situations yet facilitating those with conviction to gain suitable employment

Committee members made reference to serious crimes perpetrated against children and the restrictions which these must impose on employment opportunities. We totally concur with this view.

Stigmatisation and Discrimination

Stigmatisation and Discrimination within the broader context of the Justice Bill

There is much evidence to show that our society is deeply intolerant of individuals with mental health issues.

This is reflected in employment, service provision and daily social encounters . Many people who have experienced mental ill health keep their experience secret due to the stigma which it attracts.

MindWise would encourage legislators to recognise this stigma in the drafting of new legislation. Currently the review of Mental Health legislation in NI aims to combine a mental health bill with

capacity legislation with the result that an individual deemed to have decision making capacity showed be treated in the way any citizen would be treated bearing in mind the need to protect both the individual and society.

It is our view that the proposed Justice Bill should take account of the changes in mental health legislation and ensure that similar standards are applied. We would hope that the drafters of both Bills are in discussion to ensure that a similar ethos is applied to mental illness and intellectual impairment.

At present there is something of a lottery for individuals with a mental illness who come into contact with the criminal justice system. If they go through the criminal justice and prison system their mental health needs are likely to not receive the treatment required. People with mental disorders are significantly over represented in the prison population with 12-15% having four concurrent mental health disorders, and 30% of prisoners having a history of self harm. 'The Fundamental Facts' by the mental health foundation report 2007 p30.

However if they are dealt with through the health and social care system their ''sentence '' may be indeterminate and they will forever carry the stigma associated with mental illness. This issue is further compounded by the lack of resources in both systems. This is an issue which MindWise has had the opportunity to address with the Judiciary where there is recognition that mental health needs are not currently being addressed within the criminal justice system.

Moyle Community Safety Partnership

Moyle CSP Response to Draft Justice NI Bill

General

- Moyle CSP remains to be convinced, due to lack of any evidence, of the potential cost savings of merging the CSP and DPP.
- Moyle CSP remains to be convinced of the duplication of the work carried out by the two existing partnerships
- Moyle CSP queries if the proposed model and legislation is fit for purpose in the event of RPA and community planning
- Lack of clarity in relation to staffing the new structure will lead to differences across NI which will cause issues if/when RPA is put in place.
- The proposed functions are biased to Policing rather than community or other contributing partners needs and responsibilities. They largely reflect current DPP priorities and do not take a balanced account of the current role, functions and output of existing CSPs.

Response to Part 3 Policing and Community Safety Justice Bill

Establishment of PCSP's

Clause 21 (1)

Moyle CSP has concerns about the negative impact of the proposed new title:

The proposed title suggests a Policing lead organisation which may be detrimental to some area of work wishing to be achieved and hinder continuing engagement with some communities.

The proposed title excludes the importance of the 'Community' as a key player in the community safety remit and the wider partnership remit.

Community safety to date has provided a platform to build relationship between the Police and the community in what would previously have been a contentious arena. Opportunities for this work to develop, in contribution to the normalisation agenda, may well be adversely affected by this new title.

There is no evidence of wide support for this proposed title.

Functions of the PCSP

Clause 21 (1)

Moyle CSP view the proposed functions as being too heavily weighed towards achieving Policing and current DPP outputs. The Overall multi agency work which has a proven record of success in the past is largely overlooked and the wider community safety delivery in relation to prevention, education, postvention work has been neglected.

Clause 21 (2)

The "restricted functions" highlighted poses questions over how can the 'PCSP' act as a single partnership when a number of functions only refer/apply to one partner, this comment is specifically in relation to subsection (1)(c) which should not be restricted to the policing committee as it applies to the whole partnership. Paragraph 21 Subsection 3 (page 18) illustrates why this subsection in particular should not be restricted to the policing committee. It would be our recommendation that the Justice Committee re-examine this proposed function.

Code of Practice for PCSP's

Clause 23 (3)

The bulk of the proposed provisions are reiterating the current practices performed by the DPP's in line with the Policing Act. With reference to public consultations and public meetings, the effectiveness of this approach has not been evaluated fully to warrant their inclusion in these provisions. In order to achieve the effectiveness desired of any new partnership arrangements the provisions should be based on evidential best practice and allow for appropriate local arrangements/considerations to be adopted in consultation and contact methods.

The role of the Policing committee has been clearly identified and drafted, however there is little information or clarity in relation to the wider partnership remit.

Annual Reporting

Clause 24,

3 lines of accountability have been identified, which has the potential for conflicting targets and requests. This has the potential to complicate the reporting process, force duplication and make

the system more bureaucratic – which all are against the proposed principal and rationale of the merging arrangements.

Clause 24 (5)

It is unclear why the practice of providing an annual report to the policing committee in order to consult with the district commander appears inappropriate when the area commander would presumably be a member of the overall partnership. Therefore it would be more appropriate for the police representative on the partnership to carry out the consultation with the district commander.

Clause 30

The arrangements for the Policing Committee to operate independently, with no responsibility to report to the wider partnership, creates a hierarchy that is alienated to the principals of partnership working.

Consultation

Clause 33

Consultation on and by policing alone will not provide the necessary information to inform any worthy operational plan. The community safety agenda needs to be informed and supported by a much wider consultation process. Also the responsibility placed on the Policing Board to approve any such consultation arrangements undermines the status of the joint committee. Clarification required in relation to the' establishment of bodies' to ascertain the number and nature of such bodies to ensure no duplication or unnecessary administration / bureaucracy etc

Duty on Public Bodies

Clause 34

We support the requirement on public bodies to consider community safety implications. This builds on existing partnership/relationship building that has been achieved however it could be strengthened, similar to the duties laid out in the Crime & Disorder Act. Only with this wider commitment to community safety and policing will the true benefits be realised.

Function of Joint committee and Policing Board

Clause 35

This clause demonstrates the dual lines of accountability creating the potential for duplication and conflicting requirements as well as reflecting the different approach being taken for the managerial role as opposed to those proposals required and advised for delivery arrangements.

Appointments

Schedule 1

Para 4 (2)

The Justice committee are asked to consider the cost implications of the Policing Board having responsibility for recruiting independent members against the potential for the lead organisation, the Council, undertaking this role.

It should be queried if the demographics of all partners being taken into account would be appropriate, this may be a consideration for the proposed Policing committee only.

There is currently no mention of community and voluntary sectors in the legislation – without the cooperation of whom the community safety outputs would suffer. Their value is clearly demonstrated by current CSP activity.

Expenses

Para 4 (12)

Expenses provided should not affect overall frontline service delivery

Representation

Para 7 (1)

There is a real risk that the partnership working currently developed and encouraged by the CSP model with a wide range of public, voluntary and community engagement will be lost or diluted. Given the multi agency nature of partnership working and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

Para 10

The recommendation of the appointment of the Chair and vice Chair positions only being held by elected or independents will devalue the role of the other key agencies on the partnership and further limit their perceived role.

Para 13

The appointment of sub committees should be agreed by the entire partnership to prevent duplication and confusion.

Finance

Para 17

It is unclear if the partnership will be adequately resourced as the terminology 'may' reflects an uncertainty of what financial provision will be made available and what proportion of overall costs for example: There is no indication if the current 75%/25% (DPP) and 100% (CSP) funding arrangements will continue.

There exists no indication if there will be one funding system or two and therefore it is unclear if two financial accounting systems would have to be put in place.

Implied 1 year funding cycles which will not allow for any long term planning and thus is not recognising the needs reflected in the Community Safety Strategy as identified over the history of Community Safety in NI.

Moyle District Policing Partnership

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Christine

Re: Justice (Northern Ireland) Bill 2010

On behalf of Moyle DPP I would like to thank you and the Committee for Justice for the opportunity to comment on the contents of the Justice (NI) Bill 2010.

Moyle DPP submits the following observations and comments for consideration by the Committee.

Comments in Relation to the Provisions Contained in Schedule 1

1. Chairmanship of the PCSP and Policing Committee.

Schedule 1 10 (2) states that in the first twelve months of the new PCSP, the Chair of the policing committee (a political member) will also be the Chair of the PCSP; however, this situation will change in relation to the Chairmanship of the PCSP after the first year as schedule 2 10 (4) states that "at any time thereafter the chair and vice chair shall be elected in accordance with arrangements made by the Department." This means that an independent member, or a representative of a statutory organisation, could be the Chair of the PCSP after the initial 12 months and could also be a different person to the Chair of the policing committee, who will always be a political member. This arrangement has the potential to undermine the democratic accountability of the PCSP and, perhaps, raise leadership tensions and issues.

2. Remuneration and payment of expenses to members of the PCSP.

Schedule 1 4 (12) provides for the payment of expenses which the Council may make to independent members of the PCSP; however there is no similar provision, in Schedule 1 3, which relates to political members. It is, therefore, suggested that the Bill should include similar provisions in schedule 1 3 to those outlined in schedule 1 4 (12) in respect of expenses incurred by political members and thus allow the Council to recoup a percentage of such expenses from any grant provided under schedule 1 17.

In relation to PCSP finance (schedule 1 17) it is noted that there is no similar provision for payment of 'members allowances' in the Bill as outlined in schedule 3 10 (Allowances) of the

Police (NI) Act 2000, this will clearly result in the cessation of allowances currently made to members of the DPP. It is the view of members that the rationale for paying the current allowance, under the Police (NI) Act 2000, has not changed under the Justice Bill; indeed, it would appear that there would be additional demands on the political and independent membership. Members have made it clear that it would be unreasonable to expect them to undertake an enhanced level of commitment without an allowance to facilitate this.

Members also note that provisions for the payment of allowances to members of the Northern Ireland Policing Board, by virtue of Schedule 1 12 of the Police (NI) Act 2000, have not been repealed. Accordingly members feel that this, perhaps, raises questions of equality.

3. Funding arrangements.

Schedule 1 17 replaces the current 75%/25% funding arrangements between the Policing Board and Councils in relation to DPPs. However, the use of the word 'may' does not place a firm enough commitment on the Board, or Department, to make a financial contribution to the PCSP. The Bill does not include any reference to the contribution that Councils 'may' be required to make, or place an obligation on a 'designated organisation' to financially contribute to the delivery of community safety. It is very ambiguous and in light of the current financial situation Council must be aware of how much it 'may' be required to contribute as a percentage of the total costs.

4. Representatives of designated organisations.

Schedule 1 7 (1) provides for the representation of designated organisations on a PCSP. However, in effect, this will mean that it will be the policing committee (of the not yet formed PCSP) that will designate such organisations. This schedule may pose potential difficulties and raises a number of queries: firstly, how, and on what basis, will such organisations be designated in the Council area; secondly, what contribution, if any, will designated organisations be required to make, i.e. in terms of a financial commitment to the delivery of community safety; and at what level, within each of the designated organisations, will representatives be required to attend the PCSP?

Comments on Part 3

1. Accountability Arrangements.

As previously mentioned the Council may receive a grant towards the operation of the PCSP. This will be provided by the Policing Board for the work of the policing committee and the Department of Justice for delivery of community safety. It is considered that this arrangement will further impose, on Council, a second and separate governance and accountability arrangement with the Department of Justice. This will only add to the bureaucracy already in place and necessitate additional administration. A single funding and reporting stream should be put in place rather than the proposed dual arrangement.

2. Duty on Public Bodies to Consider Community Safety Implications in exercising their duties.

Part 3 34 (1)-(4) places a duty on Departments and other public bodies to exercise their functions giving due regard to the likely effect of the exercise of those functions on crime and other anti-social behaviour in that community, and the need to do all it can to enhance community safety. This duty will undoubtedly have implications, in terms of financial and human

resources, for public bodies in fulfilling their obligations in this area. Therefore, a wider consultation exercise, on the implications of this clause, is required.

This duty could potentially raise issues with regard to the sustainability of the membership, on the part of the delivery bodies; because you could have a situation where one agency (from the justice sector for example) would be required to consider committing staff to a number of partnerships which happen to be within their particular geographical area, which transcends neighbouring council boundaries. You could also have problems in convincing delivery bodies to attend, as has happened in the past in CSPs, because they feel that the partnership model represents an over-administration of public money.

Perhaps the partnership (comprising of elected and independent members) would have more success, in terms of buy in, if it had responsibility for engaging with the relevant stakeholders (or delivery bodies) in the district, to develop the community safety strategy, as well as identifying the priorities for local policing. After which, the partnership could undertake further engagements with these bodies to help deliver the strategy, by inviting them to participate on the relevant delivery committees, at the most appropriate level within their respective organisations, without insisting that they become full members of the partnership.

General Comments:

- Members observed that the Bill does not include a section on consultation with Area Commanders regarding Local Policing Plans.
- Commitment of members – Members are concerned that the level of commitment to the work of the new PCSP, on the part of political and independent members, could be severely hampered due to the removal of allowances. This could also mean that there would be a limited, or, perhaps, no requirement for members to attend meetings.
- In relation to Schedule 6 3 and 8, members consider that the PCSP could be included in the provisions of Council policies relating to equality, disability awareness and freedom of information. This would contribute to greater efficiency and avoid duplication of effort.

Moyle DPP looks forward to receiving a response to the issues that have been raised in this letter.

Yours sincerely

Cllr Robert McIlroy
Chairman

Newtownabbey Community Safety Partnership

Justice (Northern Ireland) Bill
Part 3 Policing And Community Safety Partnerships

The following comments are being provided on behalf of Newtownabbey Community Safety Partnership.

Functions of PCSP

Clause 21 (1) – page 17

Overall the functions are very similar to those contained in the Police Act and therefore appear to be very police orientated. The CSP would be concerned that the importance of 'community' has been neglected. In addition, there is no emphasis on multi-agency working within these proposed functions.

RECOMMENDATION: That the Justice Committee re-examines the proposed functions

Functions of PCSP

Clause 21 (2) – page 17 & 18

The CSP would query how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (1) (c) 'to make arrangements for obtaining the cooperation of the public with police in preventing crime and enhancing community safety...', should not be restricted to the policing committee but rather to the whole partnership.

RECOMMENDATION: That the Justice Committee re-examines the proposed functions

Annual Report by PCSP to Council

Clause 24 – page 20

Accountability remains with 3 bodies, namely the Joint Committee, Policing Board and Councils, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may lead to conflicting targets and requests.

RECOMMENDATION: That the Justice Committee re-examine the lines of accountability so that they are simplified

Annual Report by PCSP to council

Clause 24 (5) – page 20

The CSP would question why the policing committee would consult with the District Commander given that it is likely the Area Commander will be a member of the overall partnership. Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said Commander.

RECOMMENDATION: That item 24 (5) be removed

Reports by policing committee to Policing Board

Clause 30 – page 22

The CSP would question the need for the policing committee to report directly to the Policing Board as this would be divisive and therefore not conducive to integrated partnership working. We would suggest that the policing committee should report to council as will the PCSP.

The CSP would have concern that the policing committee can operate independently from the overall partnership with no apparent legislative requirement to report back to the PCSP.

RECOMMENDATION: That the Justice Committee re-examines the role of the policing committee

Other community policing arrangements

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be inappropriate for the policing committee alone to establish any body. If required this should be done by the PCSP.

In addition, there is a fear that the establishment of bodies may be a duplication of the role of community development within councils.

RECOMMENDATION: That the Justice Committee re-examines the role of the policing committee

Duty on public bodies to consider community safety implications in exercising duties

Clause 34 – page 24

Although this function is welcome, it is recommended that this clause is strengthened in an attempt to secure full engagement of other public bodies.

RECOMMENDATION: That the Justice Committee looks to strengthen this aspect of the Justice Bill so that the partnership can secure the engagement of public bodies

Functions of joint committee and policing board

Clause 35 – page 25

As previously outlined, this clause is a demonstration of the dual lines of accountability which can lead to conflicting targets, monitoring requirements and outcomes.

Schedule 1

Paragraph 4 (2) – page 64

The CSP would query why the Policing Board will be responsible for the election of independent members to the PCSP given the fact that this process currently costs in the region of £24,000 (totalling at least £600,000 across N.Ireland). Could cost savings be enhanced by the local Council being responsible for this process?

RECOMMENDATION: That the Justice Committee examines the potential cost savings of getting Council to recruit the independent members

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

RECOMMENDATION: That the Justice Committee investigates cost savings of expenses compared to the current arrangements

Paragraph 7 –page 66

The representatives from other organisations (at least 4) which will form the PCSP should be appointed by the Council. The proposal currently contained in the Bill would mean that the policing committee would be responsible for these appointments.

There is some confusion as to whether these other organisations can include community and voluntary bodies who currently make a vital contribution to CSPs. This needs to be clarified.

RECOMMENDATION: That the Justice Committee places the responsibility on councils for the appointment of member organisations.

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by elected members and Independents, could devalue the role of the other agencies on the PCSP and further limit their perceived role on the partnership.

RECOMMENDATION: That the Justice Committee re-examines the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

RECOMMENDATION: That the Justice Committee re-examines the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodies, DOJ and Policing Board 'will' rather than 'may' provide a grant to councils towards the costs of the PCSP.

RECOMMENDATION: That the Justice Committee amends paragraph 17 to the above wording

Other Issues to Consider:

There is no mention of the community and voluntary sector in this legislation who currently contribute fully to CSPs.

Newtownabbey District Policing Partnership

Newtownabbey
District Policing Partnership
Local people shaping local policing

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Ms Darrah

Re: Justice (Northern Ireland) Bill

Thank you for the opportunity to comment on the contents of the Justice (Northern Ireland) Bill 2010.

Newtownabbey District Policing Partnership submits the following observations and comments for consideration:

In relation to the proposed model there are concerns that whereas a Council is required to establish a body to be known as a policing and community safety partnership, it has a restricted accountability function, i.e. in relation to the 'restricted functions' of a PCSP as defined in Section 21(1) (a), (b) and (c). It is considered that, as there is nothing of a confidential nature in relation to the 'restricted functions,' the reporting of these should be no different from other accountability processes.

The duty on public bodies to consider community safety implications in exercising duties (Section 34) is welcomed. However it is considered that this requirement should be couched in stronger terms.

In relation to the provisions contained in Schedule 1:

Clarity is sought regarding the arrangements for the dissolution of DPPs and CSPs and the formation of the new body (PCSP), given that 'the transition period' as defined under Paragraph 1(4) will not apply to any period between dissolution of the DPP/CSP and the formation of the PCSP.

Paragraph 4(12) provides for the payment of expenses which the Council may make to independent members of the PCSP however there is no similar provision under paragraph 3 which relates to political members. Accordingly it is suggested that the bill should include similar provisions in paragraph 3, as in paragraph 4(12), in respect of expenses incurred by political members and thus allow the Council to recoup such expenses from any grant provided under paragraph 17.

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Paragraph 7 provides for the representation of designated organisations on a PCSP. However in effect this will mean that it will be the 'policing committee', (of the not yet formed PCSP), that designates such organisations. It is considered that, for completeness and co-ordination of effort, such designation should be made by the Council, having regard to other functions which are delivered through partnership arrangements with statutory and community bodies such as Good Relations, Neighbourhood Renewal and Peace 111. This would allow for a more 'joined up'/corporate approach to achieving the aims of the legislation and associated Council objectives.

It would be helpful to members if the intentions of the department in relation to Paragraph 10 (4) could be more fully explained.

In relation to Paragraph 17 it is noted that this will result in the cessation of allowances currently made to member of the DPP. It is the view of members that the rationale for the payment of the current allowances under the 2000 Act have not changed under the Justice Bill, indeed it would appear that there will be additional demands. Members have made it clear that it would be unreasonable to expect this level of commitment without an allowance.

Member also note that provisions for the payment of allowances to members of the Northern Ireland Policing Board by virtue of Schedule 1 paragraph 12 of the Police 2000 Act have not been repealed. Accordingly members strongly feel this raises questions of equality.

It is noted that no indication of the level of resources to be made available to council under paragraph 17 have been included in the proposed policy document furnished by the departments in relation to the PCSP. Members request clarification on this issue. Members have also raised concern that the provision of a grant from the Department and the Policing Board appears to be optional. Elected members particularly would not wish the Council to add additional demands on ratepayers in order to fund something that previously was resourced centrally.

In relation to Schedule 6 paragraphs 3 and 8, members consider that the PCSP could be included in the provisions of Council policies relating to equality, disability awareness and freedom of information. This would contribute to greater efficiency and avoid duplication of effort.

Finally members have requested details of proposed efficiencies that will be generated as a result of the amalgamations of DPPs and CSPs at department and NI Policing Board level.

Newtownabbey District Policing Partnership looks forward to your response to the issues raised in this paper at your earliest convenience.

Yours Sincerely

Campbell B Dixon
Manager

Newtownabbey
District Policing Partnership
Local people shaping local policing

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Ms Darrah

Re: Justice (Northern Ireland) Bill

Further to the response from Newtownabbey DPP there is one additional issue that would need clarification and guidance.

It concerns the position of political members of the DPP.

By virtue of paragraph 3 of the District Policing Partnerships (Northern Ireland) Order 2005, which amends Paragraph 1 of Schedule 3 to the 2000 Act, the 'transition period' is defined. Further paragraph 3(3) of the 2000 Act is amended in consequence.

This raises questions regarding the continuing representation of elected members during the 'transition period' which is not per se an issue to be considered under the Justice Bill, however the question to be addressed is whether the 'transition period' will end on the day before the 'reconstitution date' or the day before the 'constitution' of the PCSP.

I would be grateful if you could consider this issue in addition to the suggestions made in the original submission form Newtownabbey DPP.

Yours sincerely

Campbell B Dixon
Manager.
16 November 2010

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Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)

Wednesday 17 November 2010

Lord Maurice Morrow, MLA
Chairperson,
Committee for Justice

Dear Lord Morrow,

I enclose NIACRO's report following the call for written evidence on the Justice (Northern Ireland) Bill 2010.

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for over 40 years to reduce crime and its impact on people and communities. NIACRO provides services under the headings of; working with children and young people who offend; providing services to families and children of offenders; supporting offenders and ex-prisoners in the community and working with prisoners.

NIACRO receives funding from, and works in partnership with all the main criminal justice agencies in Northern Ireland.

We are happy to clarify any of our concerns further and are keen to discuss our thoughts with the Committee.

Yours faithfully,

Olwen Lyner
CEO, NIACRO

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- Criminal Conviction Certificates to be Given to Employers

6. Conclusion

7. Summary of Niacro Recommendations

Introduction

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for almost 40 years to reduce crime and its impact on people and communities. We receive funding from, and work in partnership with all the main criminal justice agencies in Northern Ireland.

We appreciate this Bill is necessary to help cement devolved policing and justice powers and welcome the Minister's commitment to delivering key legislation for the criminal justice system.

While we understand in many ways this is a Bill consolidating a number of NIO-led consultations, it remains the case that it does not deal with many of the very real concerns expressed by third sector organisations working on criminal justice issues.

Taking each chapter in order, NIACRO will consider the following areas –

- Part 1 – Victims and witnesses
- Part 3 – Policing and community safety partnerships
- Part 6 – Alternatives to prosecution
- Part 7 – Legal Aid etc
- Part 8 – Miscellaneous

We will conclude with our views on the Bill and recommendations we would like the Committee to consider.

About NIACRO

NIACRO works to reduce crime and its impact on people and communities. We are a voluntary organisation and offer a number of services:

Working with Children and Young People who offend –

- Child and Parent Support (Caps) - intensive support services to families whose children (aged 8 to 13) are at risk of taking part in anti-social/offending behaviour
- Independent Visitor Scheme - a befriending and independent support service to young people who are "looked after" by the Trusts and who have little or no contact with a parent or parental figure.
- Youth Employability programme supports young people aged 15 to 18 who are involved with the youth justice system, to undertake education, training or employment.
- Working with offenders and ex-prisoners –
- Jobtrack - a partnership between NIACRO and the Probation Board for Northern Ireland, which aims to increase the employability of offenders in the community.

- Working with employers - Encouraging fair treatment for job applicants who disclose criminal convictions. Employers who want to promote their commitment to good practice can apply for accreditation of NIACRO's Employment Equity Award.
- APAC (Assisting people and communities) - helps people to deal with problems which may have led to difficulties with neighbours and the community. Two new services were introduced in 2009/10 focusing on young men with mental health issues and women coming out of custody.
- Base 2 - a crisis intervention and support service for people who may be at risk of violence or exclusion from the community, and for their families.
- Working with Prisoners, Families and their children –
- Advice Centre - the only service offering advice and support right across Northern Ireland to prisoners' families, and released prisoners and offenders in the community. We provide information, advice and representation on subjects like benefits, housing and debt.
- Family Links - programme to help people cope with having a family member in prison.
- Magilligan and Hydebank Woods Visitors Centre - Contributing to the Family Links programme, NIACRO staff based at Magilligan and Hydebank Wood provide a service for people visiting prisoners.

General Comments

NIACRO welcomes the Minister's commitment to deliver locally produced legislation for a local Assembly. However, it should not be rushed through the process. As the first locally produced legislation on criminal justice, it is still imperative the Department of Justice consider how effective the impact of the Bill will be in addressing the issues of the past and the Shared Future progress in Northern Ireland.

The Department's Equality Scheme commits to Equality Impact Assessing all policies that are identified as having a substantive adverse impact. Therefore, a full EQIA of this Bill must be carried out.[1]

1. Part 1 – Victims and Witnesses

The offender levy

Reparation

1.1 NIACRO supports the need for offenders to make reparation. We believe it is important to address offending behaviour and understanding the impact of a crime on a victim is key to this.

1.2 However, we notice that no part of the legislation places a requirement on the criminal justice system to explain to the offender why they must pay the levy. If the levy is intended to "make offenders more accountable for the harm or damage which their actions cause to victims and witnesses of crime,"[2] the person paying it must understand why they are doing so.

This is particularly relevant in the case of serving prisoners who will have the amount deducted from their wages.

Administration

1.3 The Department predicts the administration costs for the scheme will be taken out of existing monies throughout the criminal justice system and will not be taken from the proceeds of the levy itself.[3] NIACRO wants the Department to review this on an annual basis. Further, we would like to see a published annual report, which details which programmes receive funding and the costs of administration.

Fine default

1.4 While we appreciate the act of not paying the levy will not result in a warrant, the process of obtaining the levy is still another layer of punishment to the already complicated criminal justice system.

1.5 For instance, Part 4 (3) states that defaulting on a fine may allow the court to remit all or part of the levy because the offender will be in prison or under a supervised activity order.

1.6 In 2007, the number of people sent to prison for failure to pay fines was over 1,700; every day throughout this year 25–30 individuals were incorporated into the prisoner population. The cost of holding these people in custody amounts to over £1 million for the prison service.

1.7 Fines are not necessarily the best form of disposal in the first instance. They have not been proven as a proper deterrent to continuous offending behaviour and proper alternatives need to be considered.

1.8 There are many reasons why people do not pay fines. Women are disproportionately convicted for fine default. In 2009, 20% of women committed to prison defaulted on low level fines for minor offences.[4] This is often due to an inability to pay and choosing custody as an alternative.

1.9 Simply remitting the payment of an offender levy is not going to resolve the wider difficulties of the number of fine defaulters appearing in court, going through the criminal justice system, having a conviction and remaining in difficult financial and social situations.

2. Part 3 – Policing and Community Safety Partnerships

Establishment of PCSPs and DPCSPs

2.1 In the absence of a Review of Public Administration, the current Community Safety Partnerships remain the best option to discuss issues of community engagement, planning and safety.

2.2 Amalgamating the functions of the District Policing Partnerships and Community Safety Partnerships will allow police accountability issues to dominate the agenda at the expense of wider community safety issues.

2.3 The fact is that the DPP agenda is essentially about police accountability and monitoring. CSPs (of which NIACRO is represented on 8) have a far wider remit.

2.4 NIACRO is not convinced that an amalgamation will meet the needs of two organisations with such different purposes and functions.

Proposed make up of the DPCSPs and PCSPs

2.5 The proposed make up of the partnerships does little to ease our concerns regarding community engagement when they have a built-in majority of political representatives and designated organisations. With only four places for designated organisations, which will be split between statutory and voluntary (depending on decision of each partnership,) there seems to be limited opportunity for community and voluntary sector involvement. This is only mitigated by a person representing an organisation being elected as an independent.

2.6 It remains a concern that partnerships dominated by these groupings will continue to focus on issues of police accountability through the legislative requirement to monitor local policing plans, (21 (1)) driving out wider community based issues.

2.7 This is further enhanced by the legislative requirement for each partnership to have a policing committee, without the same requirement for a community engagement committee. In addition, Schedule 1 (10) (2) states the Chair of any PCSP has to also be the chair of the policing committee for at least twelve months. It is not enough to give the partnerships the ability to form other committees if they wish to do so. The proposals are not giving community safety and engagement the same status as policing.

Community safety is not just for criminal justice

2.8 Amalgamation will further cement community safety into the criminal justice system and reinforce, in the eyes of the community, the view that community safety is a policing issue rather than a community and partnership issue.

2.9 Anti-social behaviour orders (ASBOs) are a good example of this. The problem with ASBOs is that they create the impression in the minds of some members of the community that anti-social behaviour can be "fixed" by the imposition of a Court Order. This simply gives the offender a conviction without dealing with the causes of their offending behaviour, a wider responsibility than the police can resolve. Therefore, combining policing issues with community engagement poses the very real danger that 'anti-social' behaviour is considered to be the responsibility of the police and not of the community.

3. Part 6 – Alternatives to Prosecution

See attached NIACRO research paper.

4. Part 7 - Legal Aid Etc

Decisions as to the eligibility for free legal aid.

4.1 NIACRO is pleased that the Bill states that where it is desirable in the interests of justice that a person should have free legal aid, the doubt should be resolved in favour of granting the aid (85 (31) (1).) We had previously stated that the interests of justice test must have precedence over means testing. Reform of the system should not be driven by the need to reduce costs.

4.2 We also believe it is important that the legal aid system is tested to ensure that this legislation is compliant with Article 6 of the European Convention of Human Rights. We refer in particular to Clause 1 which says everyone is entitled to a fair and public hearing in reasonable time and in an independent and impartial tribunal. Clause 3 is also relevant, as it states a person who cannot afford legal assistance has the minimum right to access it at no cost.

4.3 NIACRO supports the call from the Women's Support Network for amended legislation to allow women fleeing from a dangerous home environment not to be subject to financial eligibility

criteria. This is particularly important when they are seeking non molestation or occupation orders.

5. Part 8 – Miscellaneous

Criminal conviction certificates to be given to employers.

5.1 NIACRO understands that if any employer or voluntary organisation requests an Access NI Standard or Enhanced Disclosure certificate, they are duty bound to comply with the Access NI Code of Practice in handling and assessing information safely and fairly. For Basic Disclosure certificates, while the employer is entitled to have sight of the information, they are not subject to the Code.

5.2 The proposed change to legislation (100) does little to alter this process. Employers will continue to have access to basic disclosure information regarding an applicant, without being subject to regulation.

5.3 There is a very real danger that employers will choose not to follow Access NI Code of Practice (as they are not duty bound to do so with basic disclosure information) and use the information to openly discriminate against a candidate who has a conviction.

5.4 NIACRO has a great deal of evidence that employers discriminate against people with a conviction. 70% of calls to our employment advice line are from employers asking how they can use legislation to avoid employing someone with a conviction. Employers are more likely to request disclosure information when it is not appropriate to do so and if they are provided with this, use it to discriminate.

5.5 NIACRO wants legislators to deal with the wider issues surrounding an employer's right to request criminal conviction information.

As an organisation, we advocate the fair and equal treatment of ex-offenders in the recruitment process. We encourage all our service users to properly disclose their convictions. We also work with employers across Northern Ireland, advising them on fair recruitment practices and how to use disclosure information.

5.6 NIACRO understands the risks in employing a certain type of ex-offender in certain roles. We work to advise employers and statutory agencies on the proper use of safeguarding legislation and Access NI procedures.

5.7 However, there remains little doubt that discrimination exists in both legislation and wider society. And as employment is key in reducing re-offending, it is important people with a conviction are given fair treatment when trying to find a job. NIACRO is working alongside partner organisations across the UK who are calling for Parliament to revisit the 1974 Rehabilitation of Offenders legislation (Northern Ireland is subject to the 1978 version of the same act.)

5.8 At both Westminster and local devolved administrations, NIACRO wants to see legislation that both protects the public and allows people with a conviction to seek suitable employment. We have written extensively on this subject.[5]

6. Conclusion

6.1 NIACRO welcomes the fact there is a Justice Bill for Northern Ireland. Nevertheless, we remain concerned that its contents do not appear to reflect long-held concerns expressed by the community and voluntary sector.

6.2 In order for reparation to work, an offender must understand why they are paying a levy. At present, the legislation does not place a requirement on the criminal justice system to explain to an individual why they must pay a levy. It should do so.

6.3 NIACRO wants the Department to review the costs of the levy scheme on an annual basis. Further, we would like to see a published annual report, which details which programmes receive funding and the costs of administration.

6.4 As it stands, the levy itself may also add an extra layer of punishment to an already complicated criminal justice system. NIACRO wants to see the Department review the issues surrounding fine defaulters and work to keep them out of the criminal justice system.

6.5 Along with other third sector organisations, NIACRO does not believe there can be a successful amalgamation of DPPs and CSPs. The two bodies have such different purposes and functions and joining the two will inevitably result in one function subsuming another.

6.6 Given the proposed make up of the DPCSPs and PCSPs, we believe policing accountability issues will dominate the agenda at the expense of wider community safety issues.

As there is no current vehicle for community planning and engagement other than the Community Safety Partnerships, NIACRO believes it is very likely that, should this go ahead, community engagement and safety issues will suffer.

6.7 It is our firm belief that Northern Ireland has a unique opportunity to reduce crime through proper alternatives to prosecution. Effective diversionary methods can both prevent people from entering the criminal justice system in the first instance and keep them from re-entering once they come out the other side.

6.8 Based on 40 years experience of working with vulnerable people, NIACRO is certain that fine-based solutions and conditional cautions will not work. In our experience, neither deal with the causes of offending behaviour. Both can result in a criminal record, thereby creating a barrier to education, training and employment. Simply offering a longer pay period as a solution will have little effect on someone who chooses custody over payment (the case for almost 2,000 fine defaulters each year.) An opportunity to address their offending behaviour will be lost.

6.9 Instead we urge the relevant authorities to divert individuals to alternative services on a needs basis. Thus the factors behind a person's offending are addressed and there is an opportunity to change behaviour, reduce re-offending rates and victim numbers. Our proposed model is in the attached paper.

6.10 NIACRO understands the Department is planning to introduce further legislation for Northern Ireland. We hope the next Bill features progressive initiatives, systems and processes that will truly work to reduce crime and its impact on communities. It is our fear this Justice Bill does not necessarily do this.

7. NIACRO Recommendations

- Obligation on criminal justice system to explain to offenders why they are paying a levy. This should be a legislative requirement.

- The issues surrounding fine default should be a priority for the next Justice Bill.
- Do not create DPCSPs and PCSPs. Rather, work to increase partnership between the two existing bodies to ensure community engagement and planning remains the key to community safety and policing.
- Introduce a proper diversionary based system, rather than a reliance on fine based solutions and conditional cautions as alternatives to prosecution.
- Amend legislation to allow women fleeing from a dangerous home environment not to be subject to financial eligibility criteria.
- NIACRO wants protection for applicants whose conviction appears in a basic disclosure certificate. Employers should not be allowed to use this information to discriminate against a person with a conviction, but should be obliged to follow fair recruitment practices.
- Government at all levels should work to review existing legislation. It should make sure the law both allows people with a conviction to seek proper meaningful and appropriate employment and simultaneously protect the public.

[1] NIACRO response to Department of Justice consultation on EQIA for Justice (NI) Bill 2010, October 2010 http://www.niacro.co.uk/current-issues/73/response-to-doj-equality-impact-assessment-for-the-justice-bill/

[2] Northern Ireland Office consultation: Offender levy and Victims of Crime Fund, May 2010

[3] Department of Justice: Offender Levy and Victims of Crime Fund: A Consultation - Summary of Responses and Way Forward, October 2010

[4] Department of Justice: A Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour, October 2010.

[5] NIACRO News, Issue 24 http://www.niacro.co.uk/filestore/documents/publications/NIACRO_news_24_January_2010.pdf

NIACRO Addendum

Alternatives to Prosecution

The case for real alternatives to prosecution

NIACRO supports alternatives to prosecution which divert people from the criminal justice system and have been shown to

- Be cost-effective;[1]
- Reduce courts' caseload; [2]
- Reduce reconviction, leading to fewer victims of crime.[3]

They can also work effectively with people involved in low level offending, including those who repeatedly appear before the courts. Focused interventions can assist this group in remaining out of the criminal justice system.

To NIACRO, well designed alternatives to prosecution should aim to change an individual's offending behaviour, thereby reducing crime and the impact of crime on our communities. When successful, they should –

- Keep people from entering the criminal justice in the first instance and;
- Divert consistent low-level offenders from returning to the criminal justice system.

Keeping people, particularly young people, out of the criminal justice system is crucial. Research shows that once people are in the system, they are more likely to offend again. This is partly due to employer attitudes and existing legislation, which heavily reduces their chances to enter into training or employment. Across the UK, 60% of ex-offenders are refused jobs because of their criminal record. [4] Therefore, the chances of this group re-offending increases significantly.

NIACRO accepts that penalty notices and conditional cautions for minor offences may reduce police, prosecution service and court caseload. They may also reduce delay in the justice system but NIACRO disputes that they will reduce re-offending.

The problem with fines

The Government's proposed alternative to prosecution is a predominately fine-based system. The difficulty with this is that where a person is at risk of offending, imposing a fine will do nothing to reduce this risk and may, in some cases, serve only to increase the likelihood of them re-offending. This is borne out by NIACRO's 40 years of working with offenders and the families. Fines don't normally change behaviour. In Northern Ireland over 1,700 people per year enter custody because they have defaulted on fines. [5] Increasing the use of fines will increase the size of this group, while failing to reduce their offending behaviour.

NIACRO accepts in some circumstances, fines may be appropriate. For some offences, an individual will see the fine as an effective deterrent. However, fines also punish those who cannot pay by criminalising them through the courts. Similar criticisms can be applied to penalty notices, particularly if (as was the case in England and Wales) a problem of overenthusiastic application is likely. [6]

Conditional cautions and youth conference plans, while attempting to deal with causes of crime, can also result in barriers to an individual's chance of employment and/or provide the entry to the criminal justice system that leads to further offending. For instance, while a youth conference order may not appear on a young person's record once they turn 18 years, should they require an enhanced check for their career of choice, their conviction will appear and an education provider may choose to cancel their enrolment on a course. NIACRO has numerous experiences of this being the case.

In addition, as the proposed Justice Bill places further expectations on conditional cautions which means that a person who fails to comply without reasonable excuse (Part 6, Chapter 2, 79 (1)) [7] can be arrested without a warrant, there is a very real chance vulnerable people may fall through the cracks and be arrested without knowing or understanding why.

As an organisation well qualified in working with people with complex needs, NIACRO is seeking to develop the debate on how best to reduce crime in the long-term, and create a safer society. In doing so, we propose a more extensive diversion system as both an alternative to prosecution and to a fine-based solution.

How diversion can work

Internationally, there are good examples of diversion from prosecution working to reduce crime and ultimately the numbers in custody.

In Canada, the youth justice system focuses on diversion from court and the rate of detention has dropped significantly, without any increase in youth crime rates. The rate of spend has also fallen and a percentage has been redirected back into community based programmes. [8] In Northern Ireland, it currently costs up to £200,000 per year for each young person in the Juvenile Justice Centre and up to £80,000 per young person per year in Hydebank Wood. Even a small reduction in these numbers could fund significant community based diversionary programmes.

In the Netherlands a 'Safety House' combines a number of services including police, probation and mental health services in one building, to provide a multi-disciplinary response to the underlying causes of offending behaviour. The 'Safety House' scheme has proven to be successful and has now been implemented across the Netherlands. [9] [10]

A recent evaluation of a conditional caution scheme in England, aimed at women offenders and which contained a rehabilitative element, concluded that it had a positive impact on their offending and other key areas of their lives.[11] Diversion offered a chance to move away from the cycle of offending and the stigma of being labelled as 'an offender.' Northern Ireland also has a new strategy for working with women who offend. The Inspire Project is a pilot partnership between PBNI, NIACRO and Women's Support Network. Offered to women returning to the community, it provides a model of intervention which helps service users access the help they really need. It has considerable merit as a means of diverting women from prosecution, as well as from custody.

A failure to tackle the criminality of prisoners who serve sentences shorter than 12 months is costing England and Wales between £7bn and £10bn annually in reoffending. [12] The situation is likely to be similar in Northern Ireland. Alternatives to prosecution should therefore also be focused on effectively diverting people from going back into the criminal justice system.

A Way Forward

NIACRO proposes a system of assessment of offenders at the first point of contact, when they are apprehended or being charged with a low level offence. Instead of immediately being issued with a penalty, the individual should be offered a referral to an appropriate service. In offering a diversion as the first alternative to prosecution, we can begin to address causes of offending behaviour. Penalties have limited impact on such cases as those who experience mental health problems, have issues with substance misuse or are socially isolated. Having worked with thousands of vulnerable people in our 40 years of experience, NIACRO knows most people want and need intervention and support to make changes in their lives.

This initial assessment and offer of diversion could be made either by police officers (following appropriate training) or by independent teams (similar to the Drug Arrest Referral Teams.)

Services already exist to meet the needs of referred individuals. These include addiction services, debt management services and housing support projects. NIACRO has shown that focused interventions with vulnerable people can be successful through the APAC Project, which helps people maintain their tenancies through use of voluntary agreements, and the RIO Project, designed to help young men coming out of Hydebank without statutory supervision manage their lives once they're back in the community. APAC Mental health has also completed its first year of implementation and has successfully assisted young adult offenders with mental health issues reintegrate in the community.

For those where diversion is successful, no further action is required. Those who reoffend will enter the system.

NIACRO acknowledges the DOJ proposals include a rehabilitative element via conditional cautions. This route is "aimed at individuals who already have some history of minor offending that is suggestive of an ongoing pattern of behaviour that is contributing to their offending."[13]

Our proposals stress the need for more emphasis on addressing the causes of the offending behaviour at the earliest possible stage, that is before a person enters the criminal justice system, rather than only after repeat offences.

The role of the PPS will be important in this process. The Service could act as both a monitor for the work of the PSNI and frontline services, as well as potentially acting as a safety net. That is, should a person be sent forward for a court appearance, the prosecutor (similar to the Safety House model in the Netherlands) will be in a position to divert them to a support service, rather than imposing a penalty notice or conditional caution.

James

James is 22 years old. He left school without completing GCSE's and has been working in labouring jobs on and off since this time. James has a drinking problem, which has grown more serious, as he has not been in employment for three months. James has no convictions, although police believe he has been involved in at least two acts of vandalism.

Under the proposed NIACRO scheme, should James be caught shoplifting an item under £100 (considered to be a low level offence and eligible for an alternative) instead of being issued with a penalty notice, police would refer James to a service dealing with addiction issues. This is an alternative to the proposed DOJ suggestion, which would be to issue James with a penalty notice, this being his first recorded offence.

By making sure James receives support and his offending behaviour is properly challenged, NIACRO believes it is less likely he will become involved in the criminal justice system. Our understanding is that, under the proposed system, the PSNI will put James' details in their system whilst onsite and – should he appear in their records as a person of note – they will take action. Currently, this means a penalty notice or a conditional caution. The first will not deal with the underlying issues of his behaviour. The second may leave James with a conviction.

Instead, focused intervention, delivered before a conditional caution becomes necessary and/or James defaults on a penalty notice (or pays it and continues offending), would be more effective in reducing the chances of him committing further offences and creating more victims.

The savings

The Department of Justice suggest that their proposals would save the criminal justice system £750,000 to £1 million per year. This may well be the case; however, the NIACRO proposals could result in the same cost reductions. The main difference in our proposals is the appropriate use of early intervention, instead of reverting immediately to a fine-based solution. And these have the potential to lead to further savings.

In 2009, the Make Justice Work Matrix, [14] suggested that -

- Diverting one offender from custody to residential drug treatment would save society approximately £200,000 over the lifetime of the offender.

- Diverting one offender from custody to intensive supervision with drug treatment would save society approximately £60,000 over the lifetime of the offender.

These cost savings include not only the lower cost of implementing custodial sentences, but also the costs avoided due to reduced re-offending. In our view, early intervention will divert low-level offenders who could go onto more serious offending, and remove them from the criminal justice system.

Conclusion

NIACRO commends the Minister and the Department of Justice for seeking to implement effective alternatives to prosecution and endorses the ambition to create a safer society

However, we are concerned the proposals focus almost exclusively on fines and conditional cautions. In our experience, neither deal with the causes of offending behaviour. Both can result in a criminal record, thereby creating a barrier to education, training and employment and simply offering a longer pay period as a solution makes little difference to those in default. Further, it will have little effect on someone who chooses custody over payment (the case for more than 1,700 fine defaulters each year) and an opportunity to address their offending behaviour will be lost.

Instead we urge the relevant authorities to divert individuals to alternative services on a needs basis. Thus the factors behind a person's offending are addressed and there is an opportunity to change behaviour, reduce re-offending rates and victim numbers.

NIACRO believes offender should face up to what they have done. However, we believe diversion and early intervention is more likely to deliver a cost effective and humane resolution that will assist in reducing crime and its impact on victims and the community.

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North Down District Policing Partnership

470045

16th November 2010

By e-mail and post

Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Stormont Estate
BELFAST
BT4 3SG

Dear Ms Darrah,

Justice (Northern Ireland) Bill

Further to your letter dated 21st October, 2010, Members of the North Down DPP were asked to comment specifically on Chapter 3 of the Justice Bill which relates to the establishment/functions of the new Policing and Community Safety Partnerships. Below are details of the issues raised, although I must advise that this is not a corporate view of the Partnership, as Members were asked to respond on an individual basis.

- The merger of the DPP/CSP was welcomed, and although not ideal, the view was that model 2 was the best option.
- Concern was expressed that DPPs were being asked to accept a major change in the police monitoring role without having sufficient information as to how that would be undertaken.
- The view was expressed that the new PCSPs was the best way forward, with a single partnership in each of the 26 Councils. Concern was expressed that Councils merging to

form a single PCSPs would not be advantageous until the formation of new Councils under RPA, whenever that might happen.

- It was not clear from the Bill how the DPPs in their new equivalent form would retain their effectiveness within the restructuring; how it would be selected and how it would be managed within the new arrangements – clarification was required on how independent Members of the PCSPs were to be appointed. The Bill stated that they would be appointed by the NIPB, but was that following an interview stage carried out by the PCSPs as per the current procedure for DPPs?
- Further clarification was required regarding the representatives of delivery organisations and how they were going to be appointed by the PCSPs.
- Concern was expressed regarding the proposed withdrawal of allowances and it was felt that that would be counterproductive, and devalue the important work that DPP representatives presently undertook. An allowance was not seen as a payment by the Members but as a form of recognition that the work they undertook was valued. It was felt that if the allowance was withdrawn, that could be detrimental to the effectiveness and image of the new Partnerships.
- Also, the view was expressed that Members serving on the Policing Committee would have additional responsibilities and would be required to attend many more meetings which would necessitate a much bigger time commitment and that it was unreasonable to expect members of the Policing Committee to fulfil that role without the payment of some form of an allowance as per current practice. It was understood that only "expenses" would be covered.
- There was total opposition to local Councils being expected to fund allowances. Also, in terms of funding for the running of the new PCSPs, the view was expressed that the combined grants from the Department of Justice and NI Policing Board to fund the PCSPs must equate at the very least to the 75% funding from the Policing Board at present. Again, Councils should not be expected to fund any more than the 25% they paid at present.
- The view was expressed that PCSPs produce their own individual Partnership Plans for their own areas.
- Proposals for a Joint Committee were welcomed as it was believed that there was very little co-ordination/co-operation between the Department and the NI Policing Board under the current arrangements.
- The view was also expressed that in terms of the Policing Committee, that would appear to mirror the current DPP functions with the make-up being similar and the perception was that the DPP element of the new functions could find itself operating as an isolated group within the new organisation.
- Finally, there was no mention of the Northern Ireland Policing Board's allowances being discontinued, and that disparity would also give rise to the view that the work of those in the new PCSPs was less valued than that of the Board. The Policing Board would depend on the work and output of the PCSPs to carry out its functions effectively.

I appreciate that some of the concerns raised will become clearer once the Justice Bill receives Royal Assent and Official Guidelines and a Code of Practice are produced, but in the meantime, I would submit the above comments on behalf of North Down DPP Members.

Yours sincerely

TREVOR POLLEY
Chief Executive and Town Clerk

The Northern Ireland Commissioner for Children and Young People

The Northern Ireland Commissioner for Children and Young People (NICCY) was set up under the Commissioner for Children and Young People (NI) Order 2003 No. 439 (NI 11).

The principal aim of the Commissioner in exercising her functions under the Order is to safeguard and promote the rights and best interests of children and young persons.

Various powers are given to the Commissioner under the 2003 Order. This includes, under Article 16, the power to conduct formal investigations. Article 16(1)(a) provides that that Commissioner is prevented from conducting investigations in relation to relevant authorities listed in Part II of Schedule 1 to the 2003 Order.

The Authorities contained in Part II of Schedule 1 of the 2003 Order are:

Part II

Justice and policing

11. The Northern Ireland Court Service.

12. The Northern Ireland Policing Board and the Chief Constable of the Police Service of Northern Ireland.

13. The Juvenile Justice Board and any other body or person with whom the Secretary of State has made arrangements for the provision of juvenile justice centres or attendance centres under the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).

14. The Probation Board for Northern Ireland.

15. The Chief Inspector of Criminal Justice in Northern Ireland.

16. The Northern Ireland Legal Services Commission.

17. The Northern Ireland Law Commission.

The rationale behind excluding these from the remit of the Commissioners investigation powers at the time of drafting the 2003 Order was that these matters were dealt with by Westminster and not devolved to the NI Assembly.

Given that policing and justice are now devolved to the NI Assembly we specifically request that all public authorities names above at 11 to 17 inclusive be moved to Part I of Schedule 1 so that the Commissioner obtains the power to undertake formal investigations of same.

We therefore would suggest that this amendment be included under Schedule 6 of the proposed Justice Bill as enacted by Article 106(1) of the proposed Bill.

Our suggested working would be thus:

"The Commissioner for Children and Young People (Northern Ireland) Order 2003

15. In Schedule 1 (Relevant Authorities) the authorities numbered 11 to 17 inclusive entitled "Justice and Policing" shall be removed from Part II and shall be inserted in Part I."

Northern Ireland Human Rights Commission

The Clerk
Committee for Justice
Room 242
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November 2010

Dear Mrs Darrah

Re: Justice Bill

The Commission welcomes the opportunity to contribute its views on the Justice Bill. The attached paper comments on several aspects of the proposals. A previous submission addressed the clauses relating to sports.

As a general point, the Addendum to the Programme for Government contained in the Agreement at Hillsborough Castle outlined a number of issues requiring consideration, including a comprehensive strategy for the management of offenders; establishment of a sentencing guidelines council; adequate provision of diversionary alternatives to prosecution and a review of alternatives to custody; a review of the conditions of detention, management and oversight of all prisons, and learning from international best practice in matters of criminal justice. Noting that a number of these reviews are underway, it might have been beneficial to incorporate the outworking of the reviews into a wider review of the criminal justice system prior to inclusion of a number of the provisions within the Justice Bill. The Minister for Justice has indicated that some of these issues will be addressed in another Justice Bill in the next Assembly, and we look forward to further engagement on those points with the successor Committee.

Yours sincerely

Professor Monica McWilliams
Chief Commissioner

Submission by the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,[1] and advising on whether a Bill is compatible with human rights.[2] In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies. The present response draws in particular on a range of

UN and regional standards setting out human rights-based approaches to formal and restorative criminal justice interventions, and the rights of victims.

2. The Commission welcomed the devolution of responsibility for justice matters to the Northern Ireland Assembly and Executive, and commends the initiative to address a wide range of important issues through this first Justice Bill. The Commission in particular welcomes the attention given to the interests of victims and witnesses, and to alternatives to prosecution. The Commission does not propose to comment on all aspects of the Bill.

Part 1: Victims and Witnesses

Offender Levy (Chapter 1)

3. There is a range of state obligations towards victims of crime, and the rights of victims in that regard are not dependent on the ability of the state to secure all or part of the cost of redress from the offender. The introduction of an offender levy appears to have the principal aim of making offenders more accountable for the harm or damage which their actions cause. However, the resourcing of improvements to victims' services is an issue that is quite distinct from the restorative justice approach of enabling offenders to engage in a process that acknowledges the harm caused by their actions and, where appropriate and depending on means to pay, to provide compensation to the victim. Some of the benefits of a restorative approach, in terms of rehabilitation and behavioural change, are likely to be lost if compensation is not offered through a process of acknowledging harm and acceptance of responsibility, but is imposed by way of compulsory financial penalties on offenders. In any case, victims' services need to be provided, whether or not they can be partially funded by such measures.

4. It is noted at Chapter 1, clause 1(9), that certain reductions may be made to the amount of a fine on account of the offender levy, dependent on "the extent that the offender has insufficient means to pay both". The proposal that the levy and/or the fine may be reduced by the court in certain circumstances is welcomed. However, the benefits of this proposal will depend on the quality of the 'means to pay' information available to the Court. Whilst a number of reforms have been put in place including a 'reminder scheme', the Commission seeks assurance that systems are available to provide the Court with an effective mechanism to assess an offender's means prior to sentencing.

5. In respect of the management of the surcharge, further information should be provided as to the estimated costs of implementation, in particular collection of the levy, set against revenue gained from the levy.

Deduction of offender levy imposed by court from prisoner's earnings (Chapter 1)

6. A prisoner's earnings take the form of 'rewards' paid by the administrative authority according to his/her behaviour and other criteria, rather than proper remuneration for work undertaken. Therefore, the ability to earn is severely restricted. The proposal that some of those earnings should be deducted to meet the costs of the levy should also be considered in the context of the human rights standards that govern prison regimes.

7. The European Prison Rules[3] state (rule 105.5) that "In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents" (emphasis added). Reference is also made (Rule 103.7) to a "programme of restorative justice" which envisages a broader incorporation of restorative principles than a mere financial penalty. It is also important to view the proposal

within the wider context of Rule 26 which states that prison work should never be used as a punishment (European Prison Rules, 26.1); prisoners may also be encouraged to save part of their earnings (26.12); sufficient work of a useful nature should be provided (26.2); prisoners should be able to spend at least part of their earnings on approved articles, and to allocate a part of their earnings to families (26.11). These concepts are also referred to in the Basic Principles for the Treatment of Prisoners[4] (8) and Standard Minimum Rules for the Treatment of Prisoners[5] (76.2).

8. The proposal to deduct the levy from prisoners' earnings needs careful consideration as the amount earned by prisoners may vary considerably, for example due to the availability of work in particular prison establishments. The negative impact that weekly deductions may have upon vulnerable prisoners and on staff/prisoner relations may require further risk assessment.

9. A recent Assembly question referred to the average hours per week a sentenced prisoner works. The Minister for Justice stated that "it is not possible to isolate the figures which relate exclusively to work activities", but indicated an average of 20 'constructive activity' hours and average weekly earnings of £10-£12, the lower figure relating to the largest prison, Maghaberry.[6] Once the offender levy is introduced it will be important that all prisoners are provided with an adequate amount of remunerative work.

10. In cases where a victim impact statement is introduced, this may have the potential to influence the court in its consideration of a levy. The Commission would prefer that a clear protocol be introduced to regulate the use of such statements, such as is in place in England and Wales for Victim Personal Statements, or in Scotland for the Victim Statement Scheme.

Part 2: Live Links

11. The European Convention principle (from Article 6) that court hearings should be "public" creates a strong presumption that, in particular, the defendant in a criminal case should have the right to be physically present in the courtroom for all elements of the process. The Commission has in the past (in relation to the draft Criminal Justice Order of 2008) objected to the use of live links for sentencing and appeal hearings, particularly in the latter case where there was no requirement for the appellant's consent. We noted that no statistical evidence had been provided regarding either breaches of prisoner security or court delays resulting from the transportation of prisoners.

12. The present Bill (in addition to providing, in clause 11, for the presence of a supporter in live-link witness evidence given under special measures) provides for live links for patients detained under the Mental Health (NI) Order 1986 (clause 14); for preliminary hearings in the High Court (clause 15); for appeals to the country court, subject to the parties being given the opportunity to make representations (clause 16); for sentencing hearings in the county court, with the appellant's consent (clause 17); and in the Court of Appeal, subject to the consent of the relevant party (clause 18). It further provides (clause 19) for live links for vulnerable accused in the magistrates' court or county court, subject to conditions.

13. On further consideration, and having regard to the recent Criminal Justice Inspection report on prisoner escort and court custody,[7] the Commission is persuaded that in the circumstances addressed by the Bill, the use of live links ought not to amount to a significant intrusion on the Article 6 right and has a potential to reduce the delays, inconvenience and costs of prisoner transport and court custody, overcoming the issue of segregation of male and female prisoners in transit, and, to a small extent, reducing escape risk. The Commission positively welcomes clauses 11, 14 and 19 as working in the interests of vulnerable groups, but would prefer that

clause 16 be amended to insert a requirement for the appellant's consent; it is otherwise content with the draft clauses.

Part 4: Sport

14. The Commission made a submission on Part 4 on 16 November, in advance of the debate on those clauses.

Part 5: Treatment of Offenders

Supervised activity order in respect of certain financial penalties (clause 63)

15. We note the amendments to Article 45 of the Criminal Justice (Northern Ireland) Order 2008. The Commission has previously drawn attention to the lack of an alternative to custody for fine defaulters in Northern Ireland.

16. Schedule 6, paragraph 13: It is our understanding that the main reason for inclusion of proposals relating to supervised activity orders within the Justice Bill is to ensure that there is a mechanism available to end the scheme once the pilot period has been completed. We are unclear as to the need for the insertion of the wording "and the notice has not been withdrawn": is not a pilot scheme by definition capable of being withdrawn, if so decided?

17. Clause 63(2)(c): The circumstances in which the Court would consider committal more appropriate than a supervised activity order should not rest simply on the availability of a supervised activity order in a particular locality. A fine defaulter living in one area of Northern Ireland could be committed to prison for fine defaulting whereas another living in an area covered by such a scheme could benefit from a non-custodial disposal.

18. Clarification is required as to when supervised activity orders will be piloted; what geographical area will be covered; and how long the pilot is envisaged to run prior to evaluation.

19. It is disappointing that seemingly minor amendments to commencing the supervised activity order scheme (legislated for in the Criminal Justice (NI) Order 2008), are now part of a wide-ranging Justice Bill, the outworking of which may lead to further delay in the introduction of an alternative disposal.[8]

Part 6: Alternatives to Prosecution

20. The Commission has consistently stated its preference for a strengthening of alternative or diversionary measures that address the root causes of re-offending, rather than recourse to additional penalties for minor offences that have the potential to escalate to fine default and potential imprisonment, particularly for low income groups.

21. In considering the imposition of a fine as an appropriate response, the high levels of poverty that exist in Northern Ireland must be acknowledged along with the potential difficulties that this may present in relation to fine default.

22. Within the criminal justice system in Northern Ireland, there already exists a range of disposals for responding to low-level minor offending including the Youth Conference Service, Community-Based Restorative Justice schemes, community service sentences and the range of

work undertaken by the Probation Service for Northern Ireland. It is important that additional options are not introduced in a piecemeal fashion.

Penalty Notices (Chapter 1)

23. In general terms, a positive aspect of this proposal is that it provides an alternative to prosecution, and the potential benefits to low level or first time offenders in avoiding a criminal record are acknowledged unless, of course, the individual defaults on payment.

24. This provision creates a power for the police to dispose of certain prescribed offences without a direction from the Public Prosecution Service, through a Fixed Penalty Notice. There is a potentially problematic degree of discretion available to the police in responding to a range of offences such as being drunk; breach of the peace; disorderly behaviour; obstructing police; indecent behaviour; criminal damage and petty shoplifting. This proposal removes the separation of functions of investigation, prosecution and adjudication, so a robust mechanism would have to be in place to ensure effective police training and oversight of the use of the proposed new powers. The seriousness, or otherwise, of such offences is open to interpretation, and runs the risk of being susceptible to subjective decision-making by police officers.

25. Net widening through an 'over-enthusiastic' application of the Penalty Notice may run the risk of minor offending behaviour that may previously have been disregarded or dealt with informally by police officers, escalating to the use of a penalty. Clear guidance to police officers must put in place to ensure that responses are proportionate, reasonable and fully accountable.

26. It is also important to acknowledge broad support within Northern Ireland for measures that divert suitable cases from prosecution, address underlying offending behaviour and promote restorative interventions involving the victim and the community.[9]

Conditional Cautions (Chapter 2)

27. Decisions in relation to this disposal are prosecution-led, unlike the issuing of Penalty Notices which are police-led. This disposal appears to conform better to restorative justice principles, in that it enables prosecutors to attach rehabilitative and reparative conditions to a caution. However, it is our understanding that a conditional caution will be included on an individuals' criminal record. Experience in England and Wales demonstrates that compensation to the victim is the most commonly applied condition to cautions (in 64 per cent of cases). Again, the issue of cost neutrality has been raised by way of explaining the high use of compensation rather than referral to rehabilitation programmes. Such high use of a condition that involves financial compensation raises similar concerns in relation to the ability of some low-income groups to meet the compensation payment. If such a disposal were to be introduced in Northern Ireland, conditions other than a financial penalty should be considered where appropriate.

Matters omitted from the present Bill

Retention of DNA Profiles

28. The Commission feels it would be remiss, in the context of the present Bill, not to mention the need for legislative reform relating to the retention of DNA profiles and fingerprints of innocent persons (persons arrested but acquitted in court, or who have charges dropped). The legal framework for DNA profile retention in England and Wales, replicated in Northern Ireland, was found to be unlawful under the ECHR in 2008.[10] The implementation of legislative change from the judgment remains outstanding. Whilst we take no strong view as to the legislative

vehicle that is used to discharge the reform required to satisfy the judgment the Commission recommends that the law be reformed, to provide a human rights compliant system, as a matter of urgency. In the interim the PSNI continues to retain DNA profiles of innocent persons indefinitely, and has refused requests by individuals for the removal of their data.

29. Prior to devolution reforms to the legal framework had already been consulted on by the Home Office. The Commission made submissions to the UK Government and the Committee of Ministers which oversees the implementation of judgments of the European Court of Human Rights, and following devolution, wrote to the Justice Minister in early June 2010. The Commission is aware from presentation by Department of Justice officials to the Committee that the Minister's preference is to seek legislative consent for the matter to be addressed in the 'Freedom Bill' the UK government intends to introduce to Westminster at some stage in the future.[11] The Commission has not seen the detail of any proposed clauses and will assess them for human rights compliance once they have been published.[12]

30. The Committee may wish to explore whether the provisions to reform the retention framework can be considered as part of the present Justice Bill.

Disability

31. The Commission, mindful of its role as part of the Independent Mechanism established to promote, protect and monitor implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD), wishes to see CRPD principles reflected in the domestic legal order.

32. The Criminal Evidence (Northern Ireland) Order 1999, at Part II: Special Measures Directions in Case of Vulnerable and Intimidated Witnesses, refers to "witnesses eligible for assistance on grounds of age or incapacity". The reference to incapacity at article 4(b) relates to those suffering from mental disorder, significant impairment of intelligence and social functioning and physical disability. These all refer to persons with disabilities and thus presume an equivalence or causal relationship between disability and incapacity, whereas Article 12 CRPD "Equal recognition before the law" provides that "State Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life". The wording in the 1999 Order should be amended to reflect the presumption of legal capacity for disabled people and it would also be appropriate to draw on the wording from Article 1 CRPD: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

33. The 1999 Order contains provision for the examination of a witness through an intermediary; while this could ensure support for disabled people to give evidence in court, the relevant Article (17) has not yet been commenced. The Bill could be an appropriate vehicle for doing so.

Language

34. A further matter for redress through justice legislation is the repeal of the Administration of Justice (Language) Act (Ireland) 1737, which prevents the use of the Irish language in the Courts. The Council of Europe recently assessed commitments entered into by the UK under the European Charter for Regional and Minority Languages. The Committee of Experts that monitors implementation of the Charter stated that the 1737 Act constitutes an "unjustified distinction" (i.e. is discriminatory) and does not comply with Article 7(2) of the Charter.[13] The continued existence of the 1737 Act is therefore clearly at odds with a treaty commitment the UK has entered into, yet is not dealt with by the present Bill.

35. The Committee may wish to explore further how the Department of Justice intends to deal with the 1737 Act and provide for the use of Irish in the Courts. Such a remedy could be referenced in, but need not await, the Executive strategy to enhance and protect the development of the Irish language.[14]

36. The Commission may provide further commentary as the Bill progresses.

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[1] Northern Ireland Act 1998, s.69(1).

[2] As above, s.69(4).

[3] Council of Europe, Recommendation (2006)2 on the European Prison Rules, adopted January 2006.

[4] United Nations General Assembly resolution 45/111 of 14 December 1990.

[5] Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, 1955, and approved by the Economic and Social Council by resolutions 663 C (XXIV), 31 July 1957, and 2076 (LXII), 13 May 1977.

[6] Written Answer AQW 691/11, 15 October 2010.

[7] Criminal Justice Inspection Northern Ireland (October 2010), An inspection of Prisoner Escort and Court Custody arrangements in Northern Ireland.

[8] In connection with this range of issues see the Commission's website for responses to the Department of Justice consultation on an Offender Levy and Victims of Crime Fund (May 2010); the Northern Ireland Office consultation on fine default in Northern Ireland (October 2008); the NIO consultation on Alternatives to Prosecution (June 2008), and the consultation on the draft Criminal Justice (NI) Order 2007 (January 2008).

[9] Northern Ireland Office (March 2000), Review of the Criminal Justice System in Northern Ireland.

[10]S and Marper v UK (App. nos. 30562/04 and 30566/04), judgment of 4 December 2008.

[11]Hansard, Northern Ireland Assembly, Committee for Justice, Departmental Briefing on DNA Retention Policy, 30 September 2010.

[12] For the Commission's position see Submission to the Committee of Ministers in relation to the UK government's revised proposals on retention of data on the national DNA database

(November 2009). Available at: <http://www.nihrc.org/index.php?page=subresources&category_id=26&from=1&resources_id=112&search_content=&Itemid=61>

[13] Council of Europe (21 April 2010), Report of the Committee of Experts on the Charter (UK 3rd Monitoring Cycle), ECRML (2010)4, paragraphs 117-121.

[14] As required under the Northern Ireland (St Andrews Agreement) Act 2006.

Northern Ireland Human Rights Commission

Submission by the Northern Ireland Human Rights Commission

Sport (Part 4)

Chanting at spectator sports (clause 38)

1. Clause 38 would introduce an offence, punishable by a fine of up to £1,000, of offensive chanting at regulated sports matches.[1] Any restriction criminalising particular speech or expression requires justification under Article 10(2) of the European Convention on Human Rights (ECHR) which sets out permitted limitations on freedom of speech. This allows restrictions and penalties only when they are clearly prescribed by law (legal certainty) and are 'necessary in a democratic society' for one of a number of legitimate aims, including protecting the reputation or rights of others.[2] In order for a restriction to be deemed 'necessary in a democratic society' the state must demonstrate that there is pressing social need for the measure and that the restriction is proportionate to addressing that need.

2. An area of expression that does not usually attract the protection of Article 10 ECHR, and where restrictions have been found to be legitimate, is racist expression. This should be taken as including sectarianism in Northern Ireland: in human rights law sectarianism is understood as a specific form of racism. The UK has already entered into commitments in the United Nations human rights system to prohibit 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'[3] and the prohibition of dissemination of all ideas based on racial superiority or hatred.[4] Measures that are consistent with UK commitments under UN instruments should always be acceptable restrictions on freedom of expression under ECHR Article 10(2).[5]

3. Determinations under the ECHR have also taken into consideration general recommendations of the Council of Europe's European Commission Against Racism and Intolerance (ECRI). ECRI Policy Recommendation 7 advises on legislation to combat racism and recommends that the legal frameworks should provide, in a manner compatible with the ECHR, for restrictions on the exercise of freedom of expression to combat racism. Among other measures it recommends criminalisation of intentional incitement, public insults, or threats on grounds of race, colour, language, religion, nationality, or national or ethnic origin. It also recommends prohibiting public racist expression which deprecates or denigrates a grouping of persons on any of the same grounds.[6]

4. ECRI has issued a specific policy recommendation that deals with racism in sport. This recommends that, where necessary, legislation against racism in sport should be taken forward in addition to general anti-racism legislation.[7] This 'soft law' standard also contains a broader

range of legislative recommendations that the Committee may wish to consider in relation to the Bill.[8]

5. The Commission therefore advises that the inclusion of a measure to sanction chanting containing sectarian and other discriminatory expression on interrelated grounds is consistent with human rights standards.

Defining sectarianism

6. Turning to the precise text of the clause there has been some debate among MLAs regarding the desirability of defining sectarianism in law, and a commitment from the Justice Minister to take the issue on board.[9] Explicit reference is not made to sectarianism in clause 38. Rather the inclusion of prohibition of sectarian chanting is provided obliquely by reference to grounds of nationality (e.g. British/Irish) and religious belief (e.g. Protestant/Catholic).

7. The Commission does not regard defining sectarianism in Northern Ireland as a complex matter and to draws attention to the well developed body of international standards from which definition can be drawn. The Commission has called for the explicit recognition of sectarianism in Northern Ireland as a particular form of racism, as defined in international standards.[10] This does not mean that sectarianism should not continue to be individually named and singled out just as other particular forms of racism are, for example, anti-Semitism or Islamophobia. In addition to UN definitions,[11] in the regional context racism has been defined by the Council of Europe as follows:

...the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.[12]

Application to 'regulated matches' (Chapter 1)

8. As part of proportionality considerations of the measure the Committee may wish to further explore evidence base for the measure applying only to particular "regulated matches".[13] As long as there is an evidence base justifying the application of the special measure to particular types of events the ECHR principles of proportionately and non-discrimination should be satisfied.

'Indecent' chanting (clause 38(3)(a))

9. 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. This is not least because of a lack of legal certainty as to the definition of 'indecency', so that this measure may fail the 'prescribed by law' test, regardless of whether the expression per se is afforded protection under the ECHR. For these reasons the Commission advises that this sub-clause be re-considered.

10. The Commission will provide further commentary on other Parts of the Bill.

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[1] Clause 38 provides: "(1) It is an offence for a person at any time during the period of a regulated match to engage or take part in chanting falling within subsection (3). (2) For this purpose 'chanting' means the repeated uttering of any words or sounds (whether alone or in concert with one or more others). (3) Chanting falls within this subsection if: (a) it is of an indecent nature; or (b) it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability. (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale."

[2] Article 10(2) provides: "The exercise of [freedom of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

[3] Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR). The UK does have a reservation indicating that this duty will be interpreted consistently with the right to freedom of expression, but the UN Human Rights Committee has confirmed that the obligations under Article 20(2) are fully compatible with such freedoms under the ICCPR.

[4] International Convention on the Elimination of all forms of Racial Discrimination (ICERD) Article 4. These duties, which are mandatory under ICERD, are subject to the ICERD provision for freedom of expression and the principles in the Universal Declaration of Human Rights. A UK interpretative declaration re-emphasises these points.

[5] For example, in relation to duties under ICERD, see Jersild v Denmark (Application no. 15890/89), judgment of 23 September 1994, paragraph 30.

[6] European Commission Against Racism and Intolerance (Council of Europe) General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, 13 December 2002 (CRI(2003)8).

[7] In relation to non-sport specific legislation in Northern Ireland providing a level of protection against incitement to hatred there is the Public Order (Northern Ireland) Order 1987 (1987/463(NI7)). Part III of the Order (as amended) covers offences of 'stirring up hatred or arousing fear' against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. Offences include (subject to qualification) threatening, abusive or insulting words or behaviour, or displaying written material which either intends to stir up hatred or arouse fear (on one of the above grounds), or which, having regard to all the circumstances, is likely to have that effect. Offences under Part III on summary conviction (that is, conviction in a lower court) can carry a prison term of up to six months and/or a fine, and on conviction on indictment (after trial in a Crown Court) up to seven years' imprisonment and/or a fine. In addition the Criminal Justice (No. 2) (Northern Ireland) Order 2004, commonly referred to as 'hate crimes' legislation,

provides for courts to treat motivation by hostility on racial, religious, sexual orientation or disabilit

[8] European Commission Against Racism and Intolerance (Council of Europe) General Policy Recommendation No. 12 on Combating Racism and Racial Discrimination in the Field of Sport, 19 March 2009 (CRI(2009)5). Whilst ECRI focuses on racism the recommendation also recognises that intolerance in sport 'occurs on other grounds or a combination of different grounds, including gender or sexual orientation' and draws attention to many of its recommendations being applicable to other such grounds.

[9]Hansard, Northern Ireland Assembly, Second Reading Justice Bill, 2 November 2010, Volume 57, No 3 Session 2010-2011, p141 (see also pp97 & 131, and Hansard, Committee for Justice, Departmental Briefing on the Principles of the Justice Bill, 21 October 2010, pp16-17.)

[10] The ethnic divide between the two largest groups in Northern Ireland is often characterised on the basis of religion, or political opinion, but it is manifest also in nationality. This was accepted by both states in the Belfast (Good Friday) Agreement with the adoption of a pluralist approach to British and Irish nationality, both in terms of citizenship and national identity. This is not to say that the two largest communities are rigid and homogenous: all ethnic boundaries are complex rather than fixed. However, particularly given correlations between religious and political affiliation, national identity and citizenship, sectarianism in Northern Ireland can be located within internationally recognised definitions of racism. The UN Committee on the Elimination of Racial Discrimination has regarded discrimination on religious grounds as racial discrimination when there is an overlap with another indicator of ethnicity. Other human rights instruments explicitly include religion among the determinants of forms of racism, including the cited definition recommended by the Council of Europe.

[11] Article 1(1) of ICERD defines racial discrimination. A definition of racism is provided by the 1978 UNESCO Declaration on Race and Racial Prejudice (UN Doc E/CN.4/Sub.2/1982/2/Add.1 annex V).

[12] European Commission Against Racism and Intolerance, General Policy Recommendation No. 7: On National Legislation to Combat Racism and Racial Discrimination, CRI(2003)8, para 1a). Notably the ECRI General Policy Recommendation 12 dealing with racism in sport adopts this definition and recommends a clear definition of racism and racial discrimination is provided for within legislation (paragraph 5).

[13] In summary major soccer, GAA and rugby matches in Northern Ireland.

Northern Ireland Local Government Association

17 November 2010

Dear Sir/ Madam,

Re: Justice (Northern Ireland) Bill

NILGA, the Northern Ireland Local Government Association is the representative body for district councils in Northern Ireland. The membership is comprised of the local authorities and the organisation is supported by all the main political parties.

Please note that this is a draft response which will be presented to the NILGA Full Members' meeting on 26th November 2010 for consideration and sign-off. We will update the Committee on any further comments or issues after this date.

For further information or clarification on issues within this response, please contact Nora Winder, at the NILGA Offices: n.winder@nilga.org (028) 90798972

Part 3 Policing and Community Safety Partnerships

In principle NILGA members broadly welcome the proposals to establish Policing and Community Safety Partnerships (PCSP) as an opportunity to establish a more focussed and holistic approach to reducing crime and improving community safety across council areas.

As the PCSP will be established as a separate legal entity from councils, there is a key issue over the governance and accountability relationship with councils. Clause 20 proposes that the Joint Committee will establish the strategic direction, channel funding, issue Codes of Practice and act as an accountability forum for the PCSPs. While members welcome the streamlining of the administrative process through the establishment of the Joint Committee, it is felt that this model does not take account of the role of councils in supporting PCSPs. PCSPs will have three funding sources; the Policing Board, the Department of Justice and local councils. Indeed the proposed removal of the 75/25 funding split between the Policing Board and councils could lead to an increase in overall council contribution, yet councils are not represented on the Joint Committee nor is there a direct link with council priorities.

In addition, there is a lack of clarity on the level of accountability and oversight that will rest with Councils if it is considered that a PCSP is underperforming in any way.

NILGA members support the inclusion of Clause 34, which places a duty on public bodies to consider community safety implications in exercising duties. While key contributors, members consider that community safety cannot be successfully delivered by the Police or PCSPs alone.

Crime, fear of crime and anti-social behaviour all have negative impacts upon community well-being and quality of life. As well as the direct costs of crime experienced by its victims, the fear of crime contributes to social exclusion, particularly for vulnerable groups. Crime also threatens the success and vitality of town centres and employment areas by acting as a brake on economic growth and prosperity. In the absence of any community planning legislation, due to the suspension of the local government reform programme, it is considered that the inclusion of this clause provides an opportunity to build broad based responsibilities for community safety and can contribute to the delivery of a shared community safety agenda. The duty should ensure that community safety issues are made central to all policy development by Government and public authorities and not limited to those public bodies directly involved in the PCSPs. It therefore has the potential to make a real difference to the lives of people in Northern Ireland by providing a framework to shape public services round the needs of individuals.

By way of illustration in an area where crime or the fear of crime are important issues, promoting good design and layout in new development can help to address crime issues. Clause 34 therefore could contribute to making community safety issues a major consideration in the determination of planning applications. Similarly, other cross-departmental issues for consideration could include street scene, lighting, signage and traffic management improvements.

Schedule 1 Paragraph 17 Finance "The Department and the Policing Board may for each financial year make to the council a grant towards expenses...."

In relation to Schedule paragraph 17 Members would urge that this clause be strengthened to ensure that the joint committee will (or shall) make a contribution in connection with the establishment or the exercise of functions by PCSPs. This will ensure the retention of a tripartite approach to the PCSPs. There is some concern that especially in these economic times this clause could weaken the financial commitment from the Department and Policing Board.

There is no reference in the legislation as to the contribution councils may be required to make towards the re-constitution costs of the DPP/CSPs and councils would welcome clarity on this.

Across local government, there is ongoing debate on the merits of payment of allowances to members of PCSPs however; NILGA members would also welcome clarity on the views of the Minister/Department on this issue.

Schedule 1 Paragraph 2 proposes that a PCSP shall consist of –

(a) Political members (8, 9 or 10 depending on the size of council)

(b) Independent members (1 less than the number of political members) plus

(c) Representatives nominated by designated organisations (at least 4)

Under these proposals, there will be at least 3 more "non elected member" representation on the PCSP. NILGA members would strongly advocate that the majority of members within the PCSP should be elected members. This will maintain democratic accountability and act as representatives for their constituencies.

I hope that you will find these comments useful.

Yours Sincerely,

Nora Winder
Acting Chief Executive & Director of Policy and Strategy

Northern Ireland Policing Board

Brian Rea
Acting Chairman

Date: 22nd November 2010

Christine Darrah
Clerk to the Justice Committee
Room 242
Parliament Buildings
Stormont
BELFAST
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Dear Christine

Written Submission to the Justice Committee on the Justice (Northern Ireland) Bill 2010

Background

The Policing Board welcomes this opportunity to comment on the contents of the draft Justice (NI) Bill. The Board has provided comment in relation to the clauses which deal specifically with Policing and Community Safety Partnerships and diversionary disposals. This submission is made without prejudice to individual political party submissions.

Policing and Community Safety Partnership Clauses

In general the Board welcome the clauses that deal with the Policing and Community Safety Partnerships as the Board remains strongly of the view that the existing District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs) should be fully integrated. In responding to the Justice Minister's earlier consultation the Board stated its views in relation to a number of specific issues. These are as follows:

- The Board is strongly of the view that it should have the primacy of accountability for any new partnership;
- The partnerships should be democratically accountable in the way the current membership and composition of DPPs is established. The Board acknowledges that the overall number of Members must be manageable;
- The Board re-iterates its position that there should be no diminution in the statutory responsibilities that it currently has for DPPs; and
- The new partnership should sit within community planning arrangements.

The above continues to be the view of the Board and I have expanded on the detail of specific relevant points on this below.

Accountability

The proposed model in the Justice Bill has accountability for the partnership to the council and then to the Joint Committee, comprising representatives from the Department of Justice and Policing Board. Accountability for the Policing Committee would be directly to the Policing Board. The Board supports the establishment in legislation of a Joint Committee as a model for operating joint governance arrangements between the Department of Justice and the Board. Its support is on the understanding that the establishment of a Joint Committee will not affect the statutory duties that the Board currently has.

The Board also welcomes the recognition of the importance of maintaining the accountability of policing arrangements in the proposed model.

Membership & Composition

In relation to the membership, the Board is strongly of the view that a Policing and Community Safety Partnership should be democratically accountable in the way the current membership and composition of DPPs is established. Elected members should therefore be in the majority and representativeness of districts should be delivered through the appointment of independent members.

Funding

The proposal in the Justice Bill is that funding for the partnerships would be agreed by the Joint Committee and drawn from two organisations – the Department of Justice and the Policing Board.

The Board view is that Department of Justice funding of the single partnership should come through the Board, that is, the current funding arrangements for DPPs and for CSPs. This funding model would enable the Board to support local delivery of community safety and for the Department of Justice to retain the strategic co-ordination of community safety across other government departments.

The Board is aware of concerns around planned changes to the remuneration of partnership members. In its submission to the Minister's consultation last year the Board put forward the view that remuneration of members should be considered as part of local government reform and until that is finalised the remuneration of elected and independent members should continue.

Community Planning

The Board has supported the view that community planning provided the opportunity for councils to have an enhanced role, through the development of a delivery plan and by facilitating local discussion and feedback on policing and community safety issues.

The Board further support clause 34 in the proposed Justice Bill which places a duty on all public bodies in exercising their functions to have due regard to (a) the likely effect of the exercise of those functions on crime and other anti-social behaviour in that community, and (b) the need to do all that they reasonably can to enhance community safety. The Board view this provision as key to the developing policy for the new partnerships in providing the opportunity for placing policing and community safety at the centre of local service delivery enabling more effective working together and outcomes for local communities.

Diversionary Disposals

The Human Rights and Professional Standards Committee have also expressed concern that the potential out workings of any new legislation and specifically in the case of the provisions in the Justice Bill for three new diversionary proposals are consistent with Human Rights standards, Equality obligations and the PSNI Code of Ethics.

Summary

Finally, the Policing Board submission is consistent with its previous views, particularly on the importance of maintaining in the new legislation the democratic accountability that DPPs and the Board deliver.

The Board would welcome an opportunity to meet with the Justice Committee to expand on any of these or other points that the Committee would consider helpful. I would also like to take this opportunity to extend an invite for the Justice Committee to the Policing Board to meet with Members in the near future.

Yours sincerely

BRIAN REA
Acting Chairman

Mr Nick Norwood

16-11-2010

Dear Lord Morrow,

I write to you in your capacity as Chair of the Justice Committee. As a fan of Ulster Rugby, I am concerned by certain aspects of the Justice Bill (NI) 2010, specifically those elements of part four of the Bill which deal with the sale and consumption of alcohol during sports matches. As stands the bill would outlaw the sale of alcohol at sportsgrounds for two hours before and for one hour after any fixture other than in private boxes and areas of the ground from which the match may not be viewed. While there may be sporting fixtures which may merit this degree of control I would contend that such measures are unnecessary at Ravenhill and will in fact be damaging to the game of Rugby in Northern Ireland. In this regard I should like to bring the following to your attention.

There is no history of crowd trouble or drunk & disorderly behaviour at Ravenhill. Despite attracting thousands of home and away supporters match days require the presence of only four members of the PSNI for crowd & traffic control duties. Further Ulster Rugby in consultation with Belfast City Council provide stewarding to the tune of £150,000 per annum.

The inclusion of Ulster Rugby in the bill undermines the new stadia plans at Ravenhill which places emphasis upon event hospitality and the business case recently approved by the Department of Finance and Personnel.

It also completely undermines the ability of Ulster Rugby to host HC and Magners knock out matches on account of significantly compromising the competition sponsors requirements to promote their products within the ground.

Ulster are the only N.I. Based team competing internationally on a full season fixture list, and a significant attraction for off peak visitors to Belfast, the legislation also is completely odds with the policy of building a vibrant tourist industry with top class destinations.

The proposals treat rugby in a discriminatory and unfair manner in comparison to the remainder of the United Kingdom, Ireland and the other European Rugby playing nations.

I would be grateful if you could raise these concerns where appropriate in the Assembly.

Yours sincerely,

Nick P. Norwood

Police Service of Northern Ireland

Com Sec: 10\7149

December 2010

Thank you for the opportunity to provide views and comments on behalf of the Chief Constable to the Committee for Justice on the provisions included in the Justice (Northern Ireland) Bill 2010, which are presented below.

Part 1 Victims and Witnesses
Chapter 2 Vulnerable and Intimidated Witnesses
Special measures for vulnerable and intimidated witnesses
Section 7 to 11.

The Service fully supports the proposed changes to Special Measures particularly as they seek to extend eligibility rather than restrict it. The proposed changes also ensure that the views of victims are fully taken into account. In the case of a child or young person who has automatic entitlement to Special Measures provisions, that child or young person will have the ability to dispense with the measure and give evidence in person in court. In effect, this establishes that Special Measures provisions will be tailored to meet the needs, preferences and capabilities of the witness. We regard this is an extremely positive development in terms of victim and witness care. We believe that these provisions will improve access to justice for some of the most vulnerable members of our society. Similarly, we support the proposal to enable the presence of a supporter in a live link room. This will be enhance the support available to vulnerable witnesses and has the potential to enhance the rate of engagement of witnesses with the Criminal Justice System.

Part 3
Policing and Community Safety Partnerships
Section 20 to 33

The use of the term Police District throughout Part 3 may obfuscate the establishment of Policing and Community Safety Partnerships. Geographically, Northern Ireland is divided into eight District Commands, each of which is further divided into a number of Area Commands. Area Commands are co-terminous with District Councils outside Belfast. Belfast City Council area is divided into two District Commands. The current reporting and partnership arrangements are based on Area Commands. The legislation seems to offer twin definitions of a 'police district' or 'the police district'. This may create an inconsistency with our definition of a District. Similarly, references to District Commander are inconsistent with the current practice involving Area Commanders.

At sub-paragraphs (d) and (e) of Section 21 and 22 reference is made to certain non-restricted functions. It is the PSNI view that if these functions (which are primarily focused on police accountability) are conducted by the full PCSP or DPCSP, rather than the policing committee, then these functions may prevail at the expense of practical and constructive co-operation on community safety issues.

Part 3
Policing and Community Safety Partnerships
Miscellaneous
Section 34

We consider it important and wholly appropriate that other public bodies are required to exercise a duty to consider community safety implications in exercising their duties. For some time it has

appeared to the Police that monitoring and accountability mechanisms are disproportionately skewed towards the PSNI and away from other delivery partners.

Part 4
Sport
Chapter 5
Banning Orders in relation to regulated matches
Section 46 to 55

In the 'Consultation on proposals for New Sports Law and Spectator Controls Way Forward' document dated August 2010 the following proposal was made in relation to Banning Orders.

" The Minister intends that Banning Orders should be available not only following a persons conviction in Northern Ireland of a relevant offence, but also on the application of the Chief Constable or Director of Public Prosecutions, without a prior Northern Ireland conviction."

It seems that this Bill does not provide for such an application without a previous conviction in Northern Ireland. We remain however content with this position on the basis that it is a proportionate initial response considering the relative absence of serious football-related disorder experienced elsewhere.

Section 19 of the Football Spectators Act 1989 specifically sets out the functions of the, 'Enforcing Authority' (the Football Banning Orders Authority in Great Britain) and of the officer responsible for the police station at which a person subject to a banning order reports. It further provides for the issuing of a notice to a person subject to a banning order requiring that person to report to a police station specified at specific times in connection with regulated football matches outside the U.K. Whereas it is accepted that no passport surrender requirement is included in the Northern Ireland legislation, the 'Way forward' document did make the following reference regarding foreign matches. "In relation to matches abroad, it would require the person to report to a police station and to comply with the conditions set by a police officer." We note that such specific conditions do not seem to be provided for in this legislation.

Part 5
Treatment of Offenders
Penalty for certain knife offences
Section 57

Knife Crime remains a concern in society, and whilst the majority of knife related deaths are domestic, there are still other offences including assaults and robberies where knives are used. It is of some reassurance that the number of knife related incidents in Northern Ireland's schools remains relatively low. It is our view however that the proposals for an increase in penalties for knife offences in schools will both act as a deterrent and also demonstrate the commitment of the devolved administration to ensuring that schools remain a safe environment.

We further support those proposals which will provide more robust sentencing options following consideration of the relevant circumstances, including police recommendations in line with Youth Diversion Scheme.

Part 6
Alternatives to Prosecution.

Chapter 1 Penalty Notices.
Section 64 to 75.

It is our current understanding that the Department is minded to establish an offence value limit for shoplifting offences of £100. We further understand that Penalty Notices will only be rendered appropriate in cases of first time offending and where goods are resalable (or where they have been consumed or are otherwise not saleable but the shopkeeper has accepted payment for the goods from the offender).

It is also our understanding that the comparable limit for criminal damage will be £200 and will not be restricted to first time offence. The guidance will establish a time limit within which it would be inappropriate to issue a further penalty notice, and this seems to us to be based upon varying degrees of criminal intent.

Whilst we understand this thinking around the issue of intent, the differing manner in which these offences will be handled may add unnecessary bureaucracy. An alternative, simpler process could be based on the use of a Penalty Notice for up to two offences in a rolling twelve month period. For example, an individual can have one issued for criminal damage and a further one for theft within a rolling year. However any second or subsequent Penalty Notice for the same offence would only be issued in cases where another non-court disposal is deemed inappropriate.

It is our view that penalty notices will best contribute to effective justice as one of a range of available measures which includes Discretion, Informed Warnings, Cautions and Prosecutions and which form part of an escalating process to address offending.

Additional Comments

The PSNI notes the absence of provision for parenting orders and curfews for young persons with some disappointment. It is our view that the inclusion of such provisions would be helpful in dealing with young persons engaged in crime and anti-social behaviour. Such provisions would, of course, be used proportionately.

We would ask the Committee for Justice to further note our understanding that a commitment has been made by the Criminal Justice Board, and endorsed by the Minister, that they will critically examine proposals to move towards a civil-based fine enforcement model.

The present system of fine enforcement cannot be changed without a legislative framework to provide provisions for civil enforcement. Similarly, legislation to allow for deductions from earnings or benefit payments would improve default rates. A Fine Default Register has been developed to provide timely information on the previous payment history of offenders prior to considering the imposition of a further fine. As this initiative awaits approval, it remains important that there exists a broad range of mechanisms designed to reduce the number of defaulters prior to issuing a fine warrant, rather than imprisonment being the first default position.

I trust this is of assistance.

Yours sincerely

John McCaughan
Superintendent
For Chief Constable

Prisoner Ombudsman for Northern Ireland

The Prisoner Ombudsman for Northern Ireland

The Lord Morrow of Clogher Valley MLA
Chair, Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

9 November 2010

Dear Lord Morrow

Thank you for providing the opportunity for views to be submitted on the draft Justice Bill.

Our comments on those elements of the Justice Bill which are relevant to our role and work are as follows:

1. Offender Levy – We note the intention behind this particular element of the Bill to provide funds for victim focussed initiatives.

   We would suggest that, when determining the rate at which the offender levy can be deducted from prisoner earnings, the following should be taken into account:

   - Prison earnings have not increased in 8 years;
   - Prisoners, who have no family to supplement their prisoner earnings, find it difficult to make their earnings cover those basic needs which are not provided for by the prison; and
   - Prisoners should continue to be encouraged to work and motivated to do so and the level of any levy taken off their earnings should not act as a discouragement to working.

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2. We very much support the new arrangements for Alternatives to Prosecution through penalty notices and conditional cautions. We know from our work that often the needs of victims are not best addressed through an offender receiving a prison sentence. Often the length of the sentence means that it is impossible for the Prison Service to do any meaningful work with the prisoner and the opportunities for this are further reduced if a prisoner is on remand.

We believe that the alternative measures proposed provide the opportunity to divert suitable cases from prosecution (particularly young and first time offenders): conditional cautions can provide a more effective means of providing reparation as they will include measures to address underlying offending behaviour. They can also helpfully promote restorative justice interventions involving the victim and the community. Bringing victims and offenders together to decide on the most appropriate response to the harm caused by the offence with the victim playing a major role in the process and often receiving some form of restitution from the offender, arguably better meets the needs of the victim.

We note from the consultation on this issue that comparisons with the conventional justice system show that restorative justice approaches:

- substantially reduced repeat offending for some, but not all, offenders reducing recidivism more than imprisonment did (for adults) or as well as imprisonment did (for youths)
- doubled the offences brought to justice;
- reduced crime victims' post-traumatic stress symptoms and related costs;
- provided both victims and offenders with more satisfaction;
- reduced crime victims' desire for violent revenge against their offenders;
- reduced the costs of administering justice.

We hope you will take these matters into account in your consideration of the Bill.

Yours sincerely

pp Sinead Simpson

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Probation Board for Northern Ireland

Probation Board for Northern Ireland Written evidence to the Northern Ireland Assembly Committee for Justice on the Justice Bill (NIA Bill 1/10)

1. Background

1.1. The Probation Board for Northern Ireland (PBNI) is a Non-Departmental Public body (NDPB). The PBNI was created in 1982 by the Probation Board (NI) Order 1982 and is a key organisation within the Northern Ireland Criminal Justice system.

1.2. The aim of the PBNI is to prevent reoffending by assessing offenders; challenging offending behaviour; positively changing offenders' attitudes and behaviour; and protecting the public, to create safer communities.

1.3. As an NDPB, the PBNI has a Board of 13 members drawn from across the community. The Chair of the Board is Mr Ronnie Spence. The Director of PBNI is Mr Brian McCaughey. PBNI employs over 400 people, of mixed grades, based in 31 locations throughout Northern Ireland. PBNI staff are also based in Northern Ireland's 3 prison sites. All Probation Officers hold a professional qualification in Social Work (DipSW or equivalent). The PBNI also has a forensic psychology unit, and a victims unit. PBNI provide grant aid to voluntary and community organisations in respect of rehabilitation services for offenders.

1.4. The PBNI provide around 6,000 Pre-Sentence Reports to the Courts every year. At any given time PBNI supervise over 4,300 court orders placed on offenders. These offenders are supervised in relation to compliance against a wide variety of court orders; probation orders; custody probation orders; combination orders; and community service orders. PBNI also supervise offenders released on licence from prisons and the Juvenile Justice Centre.

1.5. The PBNI delivers a wide range of challenging programmes tackling violent behaviour including specific programmes for those who perpetuate domestic violence and sexual offences.

1.6. All PBNI activities are delivered to clear standards and service requirements and in accordance with best practice principles.

1.7. Further information can obtained from PBNI, 80/90 North Street, Belfast, BT1 1LD, Tel: 028 90262400 or from the PBNI website at www.pbni.org.uk

2. Introduction

2.1. Since its inception, the PBNI has been an organisation which has sought to continuously review and improve its performance in how it fulfils its statutory role, and has been at the forefront of testing out new ways of working, whether enabling the implementation of new sentences and measures introduced by legislation or piloting new initiatives in partnership with organisations in the public, voluntary and community sectors.

2.2. PBNI provides effective supervision of court orders. Seven in ten people subject to community based orders are not reconvicted within two years, for community service, three in four people are not reconvicted within two years. Supervision on release from custody gives better outcomes compared to those who are not supervised in the community on release from prison. The two year adult reconviction rate for Custody Probation Orders is 38%, compared to 48% for releases from immediate custody.[1]

2.3. In the past two years PBNI has undertaken extensive work with regard to the introduction of the Criminal Justice (NI) Order 2008. The range of work PBNI undertakes includes: being part of the Public Protection Arrangements for Northern Ireland, chairing Local Area Public Protection Panels; providing Pre-Sentence Reports for sentencers considering the imposition of public protection sentences and determinate custodial sentences; working in custody to address offending behaviour; providing reports to Parole Commissioners and providing reports to the Offender Recall Unit.

2.4. Recently launched partnership initiatives include the INSPIRE Women's Project which provides services to females in the Greater Belfast area, and has afforded significant opportunities to increase the amount and quality of partnerships with organisations in the voluntary and community sector; as well as the Priority Youth Offender Project dealing with higher risk young people, which PBNI operates in partnership with the Youth Justice Agency.

2.5. PBNI welcomes the policy intent reflected in this legislation- the tangible contribution of offenders to a Victims of Crime fund which is a visible means of reparation to victims; the removal of lower level cases from courts which will assist in the reduction of avoidable delay; the streamlining of community safety arrangements and also the tightening of the provisions in relation to the enforcement of sex offender law.

3. Part 1, Chapter 1: The Offender Levy

3.1. PBNI fully support the reparative principle of an offender 'paying back' for their crime encapsulated in this measure. The level of funding which could be generated from this measure is significant. Given the range of disposals to which this levy may be attached, the resulting administrative arrangements may be complex. PBNI would hope that the administrative costs to delivery agencies can be kept to a minimum, thus ensuring maximum benefit from the distribution of this funding.

4. Part 3: Establishment of PCSPs and DPCSPs

4.1. Clause 20: PBNI welcomes the amalgamation of DPPs and CSPs by establishing PCSPs. This is a policy PBNI has consistently advocated since 2003.

4.2. Clause 20 (para 1): The number of PCSPs is of concern as there will be 27 of these bodies throughout Northern Ireland. There could be personnel and financial resource implications. However, PBNI is willing to support the establishment of the proposed PCSPs within the context that the current number of PCSPs will reduce in the future through the outworking of the Review of Public Administration.

4.3. Clause 21: PBNI agree with the functions set out for these new partnerships. PBNI are of the view that incorporating a regional approach to specific functions, namely functions (d), (f) and (g), progress and performance may be consistently and efficiently monitored. This would not preclude partnerships from putting in place local priorities and related performance indicators.

4.4. PBNI wishes to be specifically named in the Justice Bill as one of the "Designated Organisation (as per Schedule 1, Para 2 & Para 7; and Schedule 2, Para 2 & Para 7) to be represented on PCSPs/DPCSPs. This should be outwith the power of the individual PCSPs/DPCSPs designating organisations to be represented.

4.5. PBNI recognise the advantage to the delivery of justice sector services at local levels and that a certain flexibility is required to reflect the appropriate local organisations best placed to be represented on each PCSP/DPCSP. However, there should also be room for a regional context in order to provide some consistency of approach. PBNI has 31 offices throughout Northern Ireland with staff who are aware of regional strategy and skilled at delivering that strategy in a local context. PBNI prides itself on working in, through and with the community.

4.6. Having PBNI statutorily identified as a 'Designated Organisation' within the Justice Bill would bring a consistent level of experience and skills to the offender management role of each PCSP/DPCSP, provide a consistent approach to the work of PCSPs/DPCSPs, and allow for better co-ordination across the sector in pursuing the objective of reducing offending/reoffending. PBNI

have proven expertise in the effective supervision of over 4, 300 orders and licences in local communities across Northern Ireland.

5. Part 5, Clause 59: Breach of Licence Conditions by Sex Offenders

5.1. PBNI welcome the proposed amendment paragraph (II) (a) as a means of overcoming problems, associated with petty sessions boundaries, in respect of warrant applications for offenders residing in Northern Ireland.

5.2. In relation to warrant applications required outside of office hours, PBNI would ask that the single jurisdiction boundary also applies to warrant applications before Lay Magistrates.

5.3. In addition, it would be beneficial to extend the amendment (II) (a) to: Custody Probation Orders; and Probation Orders respectively.

5.4. PBNI welcome the proposed amendment in respect addressing the residency gap in respect of sex offenders who are in the territory of Northern Ireland.

5.5. However the proposed amendment does not deal with the bigger issue, of territoriality in respect of Article 26 Orders, as per the Criminal Justice (NI) Order 1996.

5.6. As the law stands at present Article 26 Orders are limited to the territory of Northern Ireland. Therefore if an offender leaves Northern Ireland and travels / moves to England, Scotland or Wales, the Article 26 Order is not enforceable. Further sex offenders, in such circumstances, cannot be compelled to return to Northern Ireland.

5.7. Given the potential public protection concerns that could arise in such instances, PBNI would recommend that legislative change is made to extend the provision of Article 26 Orders, to the Jurisdiction of England and Wales; and Scotland.

6. Part 6, Chapter 2: Conditional Cautions

6.1. Whilst PBNI welcomes the clauses covering Conditional Cautions, more detail on budgetary and personnel commitments will be required in order to properly cost this development in the Justice procedure. In this regard, PBNI would welcome the opportunity to be involved in the formulation of the Code of Practice for Conditional Cautions, and early enactment of the same in respect of this provision.

Brian McCaughey
Director of Probation

17 November 2010

[1] Adult Reconviction in Northern Ireland 2004, Research and Statistical Bulletin 6/2008, Northern Ireland Office

Public Prosecution Service

Ms Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings

Stormont
BELFAST
BT4 3XX 18th November 2010

Dear Ms Darrah

Justice (Northern Ireland) Bill 2010

I refer to your letter dated 21st October 2010 addressed to the Acting Director, inviting the views and comments of the Public Prosecution Service (PPS) in relation to the provisions of the proposed Justice (Northern Ireland) Bill 2010. I now reply on his behalf.

At the outset may I observe that apart from certain discrete matters, the PPS has not been consulted in detail by the Department of Justice in relation to the overall provisions of the Bill. In these circumstances the PPS has had limited time to fully consider the Bill.

May I further observe that the PPS is mindful that its proper role in relation to consultation of this nature is to furnish its views on the practical outworkings of the proposed legislation from a prosecutorial perspective. Legislative policy is, of course, for ministers and in the ordinary course of events the PPS would not normally comment other than when this is necessary to clarify on how matters are liable to operate in practice.

Having regard to the limited time available it is proposed to comment in particular at this stage on the provisions of Part 4 only, in respect of which I would make the following observations. These are intended to be of assistance to the Committee in their deliberations.

While the policy intent behind the provisions relating to conduct is clear, there may be difficulty in certain circumstances in satisfying the test for prosecution or in proving the commission of an offence to the requisite criminal standard, namely beyond reasonable doubt.

For example, the proposed offence in Clause 41 of being drunk at a regulated match does not include a definition of drunkenness for the purposes of the offence. Accordingly, an assessment of a defendant's condition is likely to be open to challenge on a number of grounds, including that such assessment is subjective and wrong, that the alleged symptoms observed are attributable to other explanations such as tiredness, medication, drugs.

A further example arises in regard to the proposed offence in Clause 44 which requires the prosecution to establish that the operator of a hired vehicle knowingly permitted alcohol to be carried in his vehicle. In the absence of an admission from the operator, the amount of alcohol carried may allow a court to conclude that the operator may have knowingly permitted alcohol to be carried in the vehicle. This, however, may be more difficult to prove where the amounts of alcohol are small and easily secreted.

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.

With regard to the offence of chanting referred to in Clause 38 it is noted that the Department of Justice undertook to look again with the Justice Committee at ways of strengthening the offence. This would clearly be a helpful development since there are a number of phrases in common usage in Northern Ireland where it may not be clear that they are covered in the present draft. Any obvious gap in the law is liable to undermine the general effectiveness of the legislation.

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.

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

Investigation and prosecution of offences committed outside the United Kingdom, whether during cross-border or international sporting occasions may give rise to difficulty, particularly in gathering the necessary evidential proofs. If conduct outside the United Kingdom were to be prosecuted in this jurisdiction on the basis of the extraterritorial provisions in the Bill, it is likely that international Letters of Request would have to issue under the provisions of the Crime (International Co-operation) Act 2003 in order to gather the requisite evidence.

Proceeding in such a manner inevitably gives rise to delay and as the offences created by the Bill are summary only, there could be no expectation of the necessary evidential proofs arriving within the six month timescale within which proceedings would ordinarily have to issue. Consideration may be given to either removing the extraterritorial provision or extending the limitation period to twelve months, if the provision is to remain.

A final issue arises in relation to provisions which appeared in Clause 48 of an earlier draft of the Bill. This enabled the Director of Public Prosecutions to make an application for a banning order where "the respondent has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere". I should be grateful if you could confirm that it is not now intended to include such provision in the present Bill.

I hope that the above is of assistance to you and to the Committee in their deliberations. It is intended to forward a further commentary in relation to the remaining Parts of the Bill at the earliest opportunity.

If I can assist further, please do not hesitate to contact me.

Yours sincerely

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Cllr Ken Robinson MLA

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Lord Morrow
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Friday, 12th November 2010

Dear Maurice

Please find below my views on the proposed Clauses 36 to 55, relating to Sport, as part of the Justice Bill which may be of interest to your good self and other members of the Committee.

Clause 36.

The time period for regulated matches of two hours before and one hour after the advertised starting time is perhaps too long, in that many grounds do not open to spectators until ninety minutes before kick-off. In addition to this, the majority of spectators arrive at the ground in the period beginning thirty minutes before kick-off for major games and within fifteen minutes for standard or lower attended matches. Again, the majority of spectators leave immediately after the final whistle, reducing the need for a one hour time period afterwards.

The potential costs that could be incurred by financially strained clubs in meeting obligations for time periods that exceed the norm in the case of most matches and also including the majority of local derbies and cup finals, which of themselves are organised by the Irish Football Association or the relevant Divisional Association, could result in extreme hardship progressing to the disappearance of some clubs.

Clause 37.

I would question the blanket use of this clause and the scale of the fine. For example, a person throwing chewing gum or a paper aeroplane, whilst being guilty of a littering offence, is surely not engaged in the same spectrum of missile throwing as hurling a bottle or coin or some of the more unusual items that have made their way onto pitches across the world.

Clause 38.

The definition of indecent chanting being left in the hands of an individual officer without firm legal grounds may result in expensive test cases in court and failure to convict. In the House of Lords on 16th November 2004, Lord Pendry asked for a definition of "indecent chant at a football match (HL4788) and the Minister answering, Baroness Scotland, was only able to provide a vague answer:

"There is no legal definition of 'indecent' and no definition in law of 'indecent chanting' under Section 3 of the Football (Offences) Act 1991. The police and courts have to determine whether a football chant is 'indecent.' Ultimately, each case has to be treated on its merits."

Following "indecent chanting" at a Portsmouth v Tottenham Hotspur match in 2000000, The magistrate suggested that whilst that she was offended and that other decent people may be too. As you can see, this is subjective and open to interpretation unless a definition is provided in law in Northern Ireland, considering the general predisposition of some to be offended on a regular basis, and from afar.

Clause 39.

The "pitch invasion" in Northern Ireland terms is nearly exclusively a celebratory occasion across all three of the major sports and in many of the smaller ones. They frequently occur after cup finals or league triumphs and indeed there was concern about the erection of fencing at Croke Park to limit this activity amongst members of the GAA fraternity and also players who had reached the final in 2010.

An insertion here allowing for clubs to permit fans onto the pitch by announcement or invitation would halt any possible criminalisation of supporters of all sports and maintain the legislation for those who go on with the intention of causing mischief. Indeed, any such acts can and should be dealt with by the courts if they involve attempted or actual serious misdemeanours such as assault.

Clause 40.

I have pressed for the inclusion of laser pens into the section regarding the possession of fireworks, flares, etc and would urge that its omission be revisited.

Whilst there are obviously incidents of fireworks being used maliciously in general society and in sporting grounds across Europe and beyond, there have been supporters' groupings who have used flares, including cold burning flares, to create visual tapestries that would be highly thought of in an artistic sense. Discussions with clubs and representatives of fans to create a safe and regulated use of flares should be carried before a blanket ban is put in place as responsible use can increase the positive atmosphere at games.

Clause 41.

The ability of an individual without a medical background to assess on sight whether or not someone is drunk can prove problematic in borderline cases. For example on 9th November 2010,

"a Tranmere Rovers fan was acquitted of being drunk at a game after police misread his stroke symptoms. During the two-day hearing Magistrates heard that Renton, of Birkenhead, had in fact been the victim of a stroke two years ago which left him with slurred speech and difficulty staying on his feet." (Football Supporters' Federation)

Being drunk in and of itself should not be a criminalised act that can result in a level 2 fine. However, any behaviour carried out by a person, whether sober, drunk or somewhere in between which breaks current laws should be pursued.

Clause 42.

The possession of drink containers, etc clause should be more explicit to allow for the taking into grounds of reusable containers which may contain a substance that cannot necessarily be bought within the ground. For example, a child's drinks cup containing either no liquid or a drink for that child's consumption or a baby's milk bottle. It is dangerous to assume that parents do not take their children to matches or that they do not follow their normal procedures for a day out shopping or at an event when they go to a sporting occasion and any inflexibility within legislation could result in needless prosecution or in difficulties with obtaining entry for families or single parents with children.

Clause 43.

This clause provides a major concern for me in that the Minister of Justice has already made reference in his Consultation Responses and in the answers to Assembly Questions that he is minded to implement the legislation designed to cover the three sports equally in an unequal manner. I would suggest that Clause 43 (3) will allow one sport in particular to be exempt from the Possession of alcohol clause that will allow drinking to be continued on the terracing and in the stands whilst in the case of football, the legislation will be vigorously and fully enforced. This raises Equality Impact issues above and beyond the already strange lack of Equality Impact Assessment carried out before consultation and its dismissal as unimportant in the Consultation Response.

I would also suggest that this section should be expanded beyond the three major sports to include for example the Odyssey Arena when ice hockey is played as it, whilst not listed as a Scheduled Ground nevertheless does have a capacity exceeding 5,000, and also other sporting occasions held at venues with large numbers such as racecourses and if it is not to be expanded, that the Department should provide valid reasons as to their exemption.

Clause 44.

I note that this clause deals solely with vehicles and does not include trains within the parameters of transport. Whilst Translink have their own by-laws covering alcohol on trains, it would perhaps be helpful to expand this section to cover trains as well.

Clause 44 (5) may cause similar difficulties to Clause 41 in terms of identifying "drunk" and, due to the responsibility placed upon the driver or the operator of the vehicle by the proposals, may result in a legal mess if prosecution is carried out. Also in the interests of personal safety and not wishing to cause a breach of the peace, the driver and/or the others in the party carried within the vehicle may decide that the best course of action is to take the "person who is drunk" on board with them rather than to leave them at a pick-up location or their original starting point.

Clause 45.

The Minister has clarified his position on Ticket Touting to me and that this section is being used solely for assisting segregation and therefore that there will be no protection afforded to spectators from illegal sellers or touts.

I would suggest that, despite assurances from the Minister, the clause may result in the unnecessary prosecution of fans who are unable to attend events and who then either pass their ticket on to a friend or acquaintance for face value or who use contacts on the internet to sell their ticket, again at face value.

As this applies only to football, and beyond the equality issues that have been pointed out in Assembly Questions and at the Debate, the general negative perception of supporters outwith their own constituency may lead police to believe that there is an opportunity to make examples of individuals who will have little access to redress. This may lead to the ill-feeling between the police and some supporters which have resulted in incidents being reported to the Football Supporters' Federation on the mainland.

It must be noted that there is a huge discrepancy in the level of punishment for this offence (level 5) and that of throwing a missile (level 3).

Clauses 46-54

As these clauses deal with banning orders on football only, I feel that I shall take them as a group rather than individually.

In the three major sports, there is a degree of cross-national travel. Within rugby, supporters may watch the IRFU's representative side in Dublin or outside the island of Ireland, Ulster supporters must travel outside Northern Ireland for all away matches and of course there are spectators within Northern Ireland who support other teams and perhaps travel to their matches.

At county level in GAA, cup finals and semi-finals are played outside Northern Ireland, some league and cup matches also involve travelling to grounds outside Northern Ireland for away games and international rules games are played outside Northern Ireland.

In football, Northern Ireland away matches are obviously outwith the country as are domestic clubs' European and some Setanta cup away matches, whilst Derry City play all their domestic away matches in the Republic of Ireland as well as their possible future European and Setanta matches. Beyond this, there is a substantial number of people who either leave Northern Ireland or pass through Northern Ireland on their way to matches involving English and Scottish clubs.

It is important that local and international football are not treated as some easy target for legislation because ill-behaviour is not solely confined to the demographic that is represented on Irish League terraces. Any legislation should be capable of dealing with those convicted of misdemeanours around a sporting event, no matter what the event is, by providing for banning orders from similar occasions.

It is my understanding that banning orders will be enforced through the PSNI rather than having a separate body. This would surely allow more than just football banning orders to be dealt with.

Clause 55.

In some matches, police are not on duty. This may either be due to the small size of the anticipated crowd or for more historic reasons.

I would suggest therefore that the enforcement of any provisions will appear to apply in far greater numbers to, for example, a Big Two derby or an Irish Cup final than they would to other occasions such as Ballyclare Comrades v Larne or games in other sports.

I trust that the impact upon football will be considered in light of these issues.

Conclusion.

I am of the opinion that the legislation is discriminatory in that the sole focus of two of the Chapters, namely Four and Five, is football and that there are noises emanating from the Department of Justice and the Minister that other sports will be dealt with on a different level than football in other Chapters of the Bill.

There is an attitude at play in legislative and judicial circles that football supporters, even if they are wrongly accused as was the case in Mr Renton's "drunk" charge, there is always a qualification that, "this would never have happened if…", as was added by Magistrate Jennings at Bristol. This attitude allows the easy criminalisation of football

supporters as it is the belief in higher society that football fans need talking down to and they should be saved from themselves. This legislation reinforces that approach.

Widening the range, there should be a recognition that the legal route as laid down by this Bill is not the only path to take and there should be a parallel approach which recognises a preventative or educational approach. This would appreciate the role spectator sport plays in areas of Northern Ireland society, the economic impact that legislation can make upon clubs who provide the spectacle and the cultural bonds that are built within and between clubs of the same code and could become a model for other countries to follow and would perhaps break the apparent cycle here, where the Northern Ireland Assembly will follow the English and Welsh approach without looking beyond the United Kingdom for best practice.

Yours sincerely

Cllr Ken Robinson MLA

Sport Northern Ireland

SPORT NORTHERN IRELAND

RESPONSE FROM SPORT NORTHERN IRELAND TO THE DEPARTMENT OF JUSTICE

ISSUE DATE:

10 November 2010

This document is available in other accessible formats on request and on-line at www.sportni.net

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1. BACKGROUND TO SPORT NORTHERN IRELAND

1.1 Sport Northern Ireland is a Non-Departmental Public Body (NDPB) of the Department for Culture, Arts and Leisure (DCAL) and is charged with the development of sport in Northern Ireland. DCAL's vision is of: *"a confident, creative, informed and vibrant community".*

1.2 DCAL intends to realise this vision through the development of policies and resources to: *"Protect, nurture and grow our Cultural Capital for today and tomorrow"* (DCAL Mission).

1.3 For DCAL, Cultural Capital is manifested in three ways:

- **People** – the creators and consumers of Cultural Capital, including sportswomen and sportsmen;
- **Infrastructure** – the physical spaces within which culture is created and enjoyed, including sports grounds; and
- **Products and Services** – our cultural output, including sporting success.

1.4 SNI's vision is embedded in DCAL's vision: *"Through sport, to contribute to an inclusive, creative, competent, informed and vibrant community".*

In practice, this means SNI designing and implementing programmes and partnerships that will contribute to the following strategic objectives:

- increased participation in sport and physical activity;
- improved sporting performances; and
- improved efficiency and effectiveness in the administration of sport.

1.5 SNI's business is designed to provide people, especially young people and under represented groups, with pathways and options for lifelong sporting and personal development.

1.6 SNI welcomes the opportunity to comment on the Justice Bill in that we consider it to be an important element in upgrading safety arrangements at larger sports grounds in Northern Ireland, and in promoting a spectator friendly environment at these venues. SNI consider that Part 4 will complement the provisions contained within the Safety of Sports Grounds (NI) Order 2006. SNI believe that these provisions will assist the operators of 'designated' venues in complying with the terms and conditions contained in their respective Safety Certificates.

2. INTRODUCTION

2.1 Following an incident at Ibrox Park, Glasgow in 1971 when 67 football fans were crushed to death and hundreds injured, the Safety of Sports Grounds Act 1975 was introduced in Great Britain. This required that operators of larger venues obtain a Safety Certificate from their respective Local Authority. The Safety Certificate would state the safe capacity of their venue / parts of their venue and contain conditions that relate to public safety.

2.2 Subsequent to the introduction of the legislation, standards of spectator

behaviour deteriorated with a proliferation of violence at soccer matches that resulted in a number of security measures being introduced at venues.

2.3 In the mid 1980's, two further disasters occurred:

- Heysel (1985) when 39 Italian fans were killed when a wall collapsed during a match in Belgium that involved an English team;
- Bradford (1985) when 56 people were killed in a fire during a league match.

2.4 Following these incidents, further legislation, mainly relating to fire safety was introduced in Great Britain. However, as with the Safety of Sports Grounds Act, enforcement practises were poor.

2.5 In 1989, a further disaster took place at Hillsborough Football Ground in Sheffield when 96 football fans were crushed to death and many more were injured. Lord Chief Justice Taylor was asked to conduct an inquiry into the incident and to provide recommendations regarding safety arrangements at football stadia.

2.6 The report by Lord Chief Justice Taylor into the Hillsborough Disaster of 1989 included a recommendation that public order legislation should be introduced into the statute book to create specific offences regarding disorderly behaviour at soccer matches. The Football Offences Act was enacted in 1991 and created 3 specific offences.

- Throwing a missile within a sports ground;
- Invading the field of play without authorisation; and
- Participating in racial or offensive chanting.

2.7 This legislation, along with the full implementation of the Safety of Sports Ground Act 1975 and a funding package to address safety management and structural issues at larger venues were seen as the key elements in the 'sea change' in safety and spectator comfort at venues in Great Britain. Upgrading safety arrangements generally resulted in a reduction in security in many venues and the Football Offences Act was seen as essential in managing spectator behaviour at larger events.

2.8 The legislation has subsequently been amended to include provisions relating to banning orders. Other legislation in place in Great Britain relates to the sale of alcohol at sporting events and the unauthorised sale of tickets (ticket touting).

2.9 SNI and others have been lobbying since the late 1990's for a package of measures to address safety at sports grounds in Northern Ireland. These measures included safety legislation similar to the Safety of Sports Grounds Act 1975 and ancillary legislation relating to public order at sporting events.

2.10 The Safety of Sports Grounds (NI) Order 2006 was enacted in February 2006. The purpose of this legislation is to improve safety arrangements at larger sporting venues in Northern Ireland and the legislation mirrors that implemented in Great Britain following the Hillsborough disaster in 1989 and the subsequent report by Lord Chief Justice Taylor.

2.11 The legislation requires that operators of designated venues and of smaller venues with stands with a capacity in excess of 500 obtain a safety certificate from the respective district council.

2.12 Thirty sports grounds in Northern Ireland have been 'designated' and Safety Certificates have been issued by the respective District Councils in recent weeks.

2.13 It is therefore timely that the provisions contained in Part 4 of the Justice Bill are being considered by the Executive. These would complement the provisions of the Safety of Sports Grounds (NI) Order 2006. The provisions contained in Part 4, Chapter 2 of the Justice Bill will be of particular assistance to the operators of the venues designated under the Safety of Sports Grounds legislation in upgrading safety arrangements and providing spectator friendly environments.

3. SNI'S COMMENTS ON PART 4 (SPORT) OF THE JUSTICE BILL

3.1 CHAPTER 1 - REGULATED MATCHES

3.2 Section 36 - Regulated matches

SNI notes that different sections of the legislation refer to different categories of matches.

3.3 CHAPTER 2 – CONDUCT AT REGULATED MATCHES

3.4 Section 37 - Throwing of missiles

SNI is most supportive of this section and considers it to be essential as a complement to the Certification processes relating to the Safety of Sports Grounds (NI) Order 2006. SNI notes that there have been a number of serious incidents when missiles have been thrown inside larger venues in recent years in Northern Ireland. SNI also notes the defense, of 'lawful authority' or 'lawful excuse'.

3.5 Section 38 - Chanting

SNI is most supportive of this section. It is accepted that it is often difficult to take legal action against individuals who are part of a large crowd that are engaged in offensive chanting, however, the provision both acts as a deterrent and stresses the Executive's commitment to curbing this type of activity. Unfortunately, offensive chanting has been evident at some fixtures in Northern Ireland in recent years. Much of the population disapprove of chanting of an offensive nature and this may well have resulted in persons not attending fixtures at a venue.

3.6 Section 39 - Going on to the field of play

SNI is most supportive of this section and notes that unauthorized incursions onto the field of play have led to disorder at fixtures played in Northern Ireland in recent years. This has created a negative image of sport. Mass incursions on to the field of play can also place players and match officials at

risk, in addition to risking injury to those 'scrambling' over seats and barriers to get onto the field of play. SNI also notes the defense of 'lawful authority' or 'lawful excuse'.

3.7 **Section 40 - Possession of fireworks, flares, etc**

SNI is most supportive of this section and welcomes its inclusion following comments made in response to the initial legislative proposals. The discharge of fireworks has been a problem at venues in Northern Ireland in recent years, and has caused injury to spectators, and also to a player. The discharge of a firework led to a fatality at a match in Wales some years ago. SNI notes the defense of 'lawful authority'.

3.8 **Section 41 - Being drunk at a regulated match**

SNI is supportive of this section. Unfortunately, drunken behavior has led to disorder at matches in recent years resulting in a negative image of sport. The drunken behavior by a few can also deter potential fans from attending fixtures.

3.9 **Section 42 - Possession of drink containers, etc.**

SNI is generally supportive of this section. SNI is aware that bottles (including those that contained 'soft drinks' have been used as missiles and weapons at some soccer matches in Northern Ireland in recent years. SNI consider that some guidance may be required to clarify the term 'article capable of causing injury' and if it refers to plastic bottles with / without the cap removed and plastic receptacles such as cartons.

3.10 **Section 43 - Possession of alcohol**

SNI consider that care should be exercised in the implementation of this section.

3.11 Persons in possession of alcohol at some soccer matches in Northern Ireland in recent years have behaved in a disorderly and anti social manner. SNI therefore consider it to be appropriate for this Section to be implemented at 'designated' venues where soccer is played.

3.12 Spectators at matches in Ravenhill Rugby Football Grounds have been drinking socially on viewing decks at fixtures for many years and SNI is unaware of any incidents. SNI consider 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.

3.13 Alcohol is generally not available at larger Gaelic fixtures. However, if proposals to upgrade facilities at Casement Park proceed, the sale of alcohol in controlled circumstances may be permitted by the GAA. Again, SNI consider 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.

3.14 SNI is advised that a Commencement Order will be required to enact the

provisions of the Bill, and that a Commencement Order will be required that will relate to each one of the three sports. This would enable the legislation to be applied as appropriate.

3.15 **CHAPTER 3 – ALCOHOL ON VEHICLES TRAVELLING TO REGULATED MATCH**

3.16 **Section 44 - Offences in connection with alcohol on vehicles**

SNI is supportive of this section. There have been a number of incidents at fixtures in Northern Ireland when supporters arriving by private hire coaches, arrive in an intoxicated state and have behaved in a disorderly fashion. Similar legislation in Great Britain would appear to have had a positive effect on spectator behavior at larger fixtures.

3.17 **Chapter 4 - TICKET TOUTS: REGULATED MATCHES**

3.18 **Section 45 - Sale of tickets by unauthorized persons**

SNI is supportive of this section. There is the potential for spectators supporting a given soccer team to obtain tickets for an area of a sports ground, occupied by supporters of a rival team. Contentious matches such as the recent NI v Poland require segregation measures to be in place. Polish fans were endeavoring to buy tickets for any part of the ground and given the disorder associated with that fixture, it is likely that matters would have been exacerbated if they had been successful.

3.19 **CHAPTER 5 - BANNING ORDERS IN RELATION TO REGULATED MATCHES**

3.20 **Section 46 - Banning orders: making a conviction**

SNI is supportive of this section. This should act as a deterrent to those who may involve themselves in disorderly behaviour.

3.21 **Section 47 - Banning orders: content**

SNI note the content of this section.

3.22 **Section 48 - Banning orders: supplementary**

SNI note the content of this section

3.23 **Section 49 - Banning orders: "violence" and "disorder"**

SNI note the content of this section.

3.24 **Section 50 - Banning orders: duration**

SNI note the content of this section.

3.25 **Section 51 - Banning orders: additional requirements**

SNI note the content of this section.

3.26 **Section 52 - Termination of banning orders**

SNI note the content of this section.

3.27 **Section 53 - Information about banning orders**

SNI note the content of this section.

3.28 **Section 54 - Failure to comply with banning order**

SNI support the content of this section.

3.29 **CHAPTER 6 – ENFORCEMENT**

3.30 **Section 55 - Powers of enforcement**

SNI is generally supportive of the content of this section.

4. CONCLUSION

4.1 SNI generally supports the provisions of Part 4 of the Justice Bill. SNI consider that the content of Chapter 2 – Conduct at Regulated Matches will assist the holders of Safety Certificates issued under the provisions of the Safety of Sports Grounds (NI) Order 2006 to comply with the terms and conditions of the Certificates, and thus maximise the safe capacity of their venue.

4.2 The provisions will assist venue operators with safety management arrangements at the respective venues. This should reduce the number of stewards required and the need to have police officers at a fixture. The provisions of Chapter 2 should reduce the potential for disorder, improve safety arrangements, and provide a more spectator friendly environment which in turn should lead to higher attendances.

4.3 The implementation of the Justice Bill in conjunction with the Safety of Sports Grounds Order would mirror legislation in Great Britain that is believed to have a positive effect on spectating at larger venues and the increase in attendances in particular by women, families and young persons as well as persons with a disability.

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Strabane Community Safety Partnership

Strabane Community Safety Partnership Response To Justice (Northern Ireland) Bill

Justice (Northern Ireland) Bill
Part 3: Policing And Community Safety Partnerships

Clause 20 (1) – page 16

Strabane Community Safety Partnership is concerned that the prominence of 'community' is not at the front of the title and that the proposed name indicates that the police are the dominant partner.

Furthermore, from the consultation conducted in June 2010, just under half of respondents suggested 'Safer Communities Partnership' as a favoured title (27 stakeholders suggested within 16 responses). Of all responses, none suggested the title of 'Policing & Community Safety Partnership', as outlined in the Justice Bill, however 8 stakeholders (within 5 responses) suggested 'Community Safety & Policing Partnership'. Therefore, it should be queried why this title was opted for?

RECOMMENDATION: That the Justice Committee re-examine the proposed title

Clause 21 (1) – page 17

Overall the functions are too similar to the Police Act and therefore are very police originated. Strabane Community Safety Partnership would be concerned that community safety has not been legislated for outside of the policing arena. In addition, multi-agency working has been neglected within these proposed functions.

The role of the police may also be perceived as being monitored rather than working in partnership. Finally, the PCSP is unbalanced in terms of delivery to the community.

RECOMMENDATION: That the Justice Committee re-examine the proposed functions

Clause 21 (2) – page 17 & 18

Strabane Community Safety Partnership would query how a partnership can be formed when there are functions which only pertain to one part of the model. In addition Clause 21 (2c) should not be restricted to the policing committee but rather to the whole partnership.

Clause 21 (3) (page 18) is evidence as to why Clause 21 (2c) should not be restricted to policing committee.

RECOMMENDATION: That the Justice Committee re-examine the proposed Functions

Clause 23 (3) – page 19

Many of the proposed provisions refer to practices which are currently taking place within the DPP model under the Police Act. However no evidence, either within the consultation or subsequent papers, provides information on whether these practices are effective within local council or local community settings.

Therefore, it is proposed that robust evaluations of these practices are carried out in order to establish whether there is merit in including them within this current piece of legislation.

In addition, this clause provides clear insight into the role of the policing committee, however little is mentioned in relation to the practices which the overall partnership will have to adhere to.

RECOMMENDATION: That the Justice Committee request evaluation of current practices, proposed for inclusion in this Bill, and that further consideration should be given to the practices of the overall partnership.

Clause 24 – page 20

Accountability remains to 3 bodies, namely the Joint Committee, Policing Board and the Council, with potential requests from the Department of Justice. This is concerning given that the process was to simplify lines of accountability and this legislation may led to conflicting targets and requests.

RECOMMENDATION: That the Justice Committee re-examine the lines of accountability so that they are simplified

Clause 24 (5) – page 20

The practice of providing an annual report to the policing committee in order to consult with the district commander seems inappropriate, given that, it would be assumed, the area commander will be a member of the overall partnership.

Therefore it would be more appropriate, in line with policing structures, for the police representative to carry out this consultation with said commander.

RECOMMENDATION: That item 24 (5) be removed

Clause 30 – page 22

Strabane Community Safety Partnership would have concern that the policing committee can operate independently from the overall partnership with no legislative requirement to report back to the partnership.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Clause 33 – page 24

This clause contradicts and undermines the spirit of the single partnership and consultation requirements will be wider than that of policing. It would be unadvisable that the committee should be able to establish any body.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Clause 34 – page 24

Although this function is welcome, given the extremely positive response from the recent consultation, it would be recommended that this clause be strengthened to be similar to that of the England and Wales Crime and Disorder Act. This is an extremely important element of the legislation and must be included to enable the partnership to be 'fit for purpose'.

RECOMMENDATION: That the Justice Committee look to strengthen this aspect of the Justice Bill so that the partnership is 'fit for purpose'

Clause 35 – page 25

As previously outlined, his clause is a demonstration of the dual lines of accountability which can led to conflicting targets, monitoring and outcomes.

Schedule 1

Paragraph 4 (2) – page 64

Strabane Community Safety Partnership would query why the Policing Board is responsible for the elected of independent members and, given it is in the region of £24,000 (totalling at least £600,000 across N.Ireland), cost savings could be enhanced by the local Council being responsible for this recruitment.

RECOMMENDATION: That the Justice Committee examine the potential cost savings of getting Council to recruit the independent members

Paragraph 4 (3) – page 64

It should be queried if the demographics of all partners being taken into account would be appropriate and this item should say that 'In appointing independent members the Council shall so far as practicable secure that the members of the policing committee (rather than PCSP) are representative of the community in the district.'

RECOMMENDATION: That the Justice Committee amend paragraph 4 (3) to the above wording

Paragraph 4 (12) – page 65

The amount of total expenses should not affect the overall delivery of frontline services and should provide cost savings, in comparison to the current models.

RECOMMENDATION: That the Justice Committee investigate cost savings of expenses compared to the current arrangements

Paragraph 6 (3) – page 65

Clarification is required on who is responsible to adhering to equality legislation. Is it the Council, PCSP or the Policing Committee?

RECOMMENDATION: That the Justice Committee investigate further the equality requirements

Paragraph 7 – page 66

Given the multi-agency nature of the partnership and the success of CDRPs in England and Wales, named agencies should be included in the legislation, similar to the Crime and Disorder Act.

RECOMMENDATION: That the Justice Committee look to name agencies in order to place obligation on them to reduce crime and disorder

Paragraph 10 – page 67

The reference to Chair and Vice-Chair positions, and that these can only be held by Elected Member or Independents respectively, could devalue the role of the agencies on the PCSP and further limit their perceived role on the partnership.

RECOMMENDATION: That the Justice Committee re-examine the Chair and Vice-Chair positions

Paragraph 13 (5) – page 69

As referred to previously in this response, the appointment of sub-committees should be agreed by the whole partnership to prevent duplication and confusion.

RECOMMENDATION: That the Justice Committee re-examine the role of the policing committee

Paragraph 17 – page 70

This paragraph needs to be amended to reflect that the two bodes 'should' rather than 'may' provide grant aid assistance to the administrative and programme costs of the PCSP

RECOMMENDATION: That the Justice Committee amend paragraph 17 to the above wording

Other Issues to Consider:

There is no mention of the role of community and voluntary sector organisations in this legislation who currently contribute fully to CSPs.

The Council should be responsible for the decision on the make up of the partnership. Currently the legislation allows limited input from Council however it would appear that all liabilities will lie with Council.

Strabane District Council

Response on Justice Bill 2010

1.1 Strabane District Council welcomes the introduction of the Justice Bill and is thankful for the opportunity to comment. This legislation is particularly significant for Strabane District Council given that it proposes the merging of two very effective partnerships in Strabane District. Whilst Strabane District Council supports the rationale for change it is mindful that it will have a significant impact on those people who have supported, worked for and engaged with both committees since 2003.

1.2 Notwithstanding the above point, Strabane District Council recognises that both partnerships have a natural synergy and trust that this new structural arrangement will ensure an enhanced focus on policing, crime and community safety across districts whilst also maintaining the ethos of the Independent Review of Policing Arrangements in Northern Ireland (Patten Report).

1.3 Strabane District Council is also mindful that the proposals within the bill relating to policing and community safety will have a significant contribution to the new Cohesion, Sharing and

Integration Policy and will have a natural interface with it. Council trust that the Department is liaising with OFMDFM in this regard.

1.4 Strabane District Council would also welcome evidence which shows that the proposals within the bill will reduce the levels of subvention the partnerships receive at present.

1.5 Strabane District Council's comments on each of the clauses are detailed below.

2. Re clause 20(7) - Strabane District Council note that the governance arrangements for this new rationalised partnership will be undertaken by a joint committee of the regional bodies namely the Northern Ireland Policing Board and the Department of Justice. Whilst Council welcome the introduction of the Department to the governance arrangements in Northern Ireland, Council note that the continued focus for rationalisation is at a local level with no real consideration or action in relation to same across central government.

3. Clause 21 – It is noted that the roles and responsibilities of the PCSP (a) – (c); i.e the "restricted functions" are exact copies of the statutory functions of the DPPs laid out in the Police (Northern Ireland Act) 2000 with the words "community safety" added in (c). Whilst Council understands the need for alignment with the ethos of the Patten reforms, Council would suggest that the Department should take this opportunity to remodel this new partnership to develop the current functions and roles of both partnerships to help create a new culture, identity and remit. Conversely however, if the Department wish to keep the statutory functions of the DPPs exactly as they were, Council suggest that the Department should remove the words "community safety" in (c) as it relates to the role and function of the wider partnership. Strabane District Council would prefer that the functions of the new PCSPs would be remodelled to avoid silos within the partnership and to embrace a new culture in monitoring policing and enhancing community safety collectively.

4. Clause 21(g) - Strabane District Council suggests that this clause is rather verbose and suggest it should read as follows: "to quantifiably measure the performance of the partnership in terms of reducing crime and enhancing community safety in the district"

5. Clause 21(h) - It is suggested that "organisations" are included in this sentence as it would be unusual to grant aid individuals for community safety initiatives. Council also recommend that the funding arrangements for the PCSP are fully clarified in legislation.

6. Clause 21 (4) It is recommended that the relationship between the PCSP and the Council is clarified in this Bill and not the Code of Practice. The funding arrangements should also be clarified in legislation also.

7 Clause 22(c) Taking into consideration the comments outlined above in point 3, this clause outlines that community safety is a "restricted function" of the policing committee. Council suggest that the reference to this is removed as it is a function that relates to the wider membership PCSP.

8. Clause 23(f) Suggest that this clause is reworded as follows: "The arrangement that the policing committee makes to monitor the performance of the police."

9. To reiterate point 2, Clause 23(h) outlines the three governance structures at central government for the partnership. Council suggest that this is rather a bureaucratic reporting structure, particularly when the PCSP report to the joint committee on the functions outlined in clause 21(c),(d). Council would assume that the PCSP (and PC therein) will need to report separately on the remaining functions - (e), (f), (g), (h) and (i). Council suggests that this

tripartite reporting structure is administratively burdensome and does not assist in the development of fully integrated and functioning partnership.

11. Clause 24(6) states that the Council shall arrange for a report submitted under subsection (1) to be published in such a manner as appears to be appropriate. Council stresses that the role, relationships and funding arrangements between the PSCP and the Council should be clarified in this bill. Council is not clear whether this new partnership will have autonomy with independent legal status or will it be a sub committee of council – closely aligned to its statutory functions. Council stress that this should be clarified at the outset with the direction to Councils to prepare a report on the PCSPs functions outlined thereafter.

12. Clause 33(1). Council note that this clause strengthens the consultative role of the PC whereby they shall undertake consultations on behalf of the police. It is suggested that "on any matter affecting the community policing of the district" is added to ensure clarity that the PC is not required to undertake consultations which involve operational policing matters.

13. Clause 33(2). Council stress that it is important that this clause relates only to the consultative role the PC has in relation to the police and not ongoing monitoring and discussion in relation to policing of the district.

14 Clause 33(3) Council suggest that the words "to consult in relation to community policing matters" is added to this clause and subsection in order to ensure that the roles of the PCSP locally are safeguarded.

15. Clause 33(4) states that the Policing Board may defray the reasonable expenses of any body established to facilitate policing consultations. It is recommended the Bill provides clarity in relation to the overall funding streams for the PCSP at the outset as opposed to any body established to act on its behalf or instead of.

16. Clause 34(1) Council asserts that this is a significant clause which will have resource implications for all public bodies. It will create many questions in relation to how this clause will be conformed to and regulated. Whilst broadly supportive of the need to review Community Safety considerations in policy development, there is a risk that this clause will add unnecessary bureaucracy to public bodies and create added focus on processes and procedures as opposed to outcomes and impacts.

17. Clause 35(1) (b). It is notable that the PCSP will only be accountable to the joint committee in terms of public satisfaction and particularly their effectiveness in carrying out function - 21(d). Council would again suggest that the tripartite reporting structure is rather bureaucratic and that this prioritisation of functions of the PCSP shall create an unhelpful degree of hierarchy within the partnership.

18. Clause 35(2) outlines that the Northern Ireland Policing Board shall assess public satisfaction with the policing committee and assess their effectiveness. Council would query what powers the NIPB would have if the PC were proven to be lacking in public satisfaction or in effectiveness and how this would be related into the joint committee. Clarity at the outset would be welcome in order to ensure that this power has sanctions and that Councils can comment fully on its implications.

19. Schedule 1. Council notes that political members will be in the minority in the PCSP and whilst the council may decide on the community safety priorities for the district, there is no guarantee that they will be taken forward by the partnership. Council recommend that the Bill should include a clause which states that the PSCP shall implement Community Safety initiates

informed by priorities recommended by the Council and that the Council can designate and delegate authority to same.

20. Schedule 1(12). Council notes that this clause outlines that the Council will pay the independent members their expenses. It does not stipulate any recommendation in relation to political members. Council would welcome more clarity in relation to what financial contribution local government will make to the PCSP in this bill. Council would also welcome clarification on who will pay for recruiting the independent members.

21. Schedule 7(1). Council would assert that the addition of the minimum designated organisations onto the PCSP would limit the scope of the partnership and it would not assist in developing community planning locally. Council recommend that the key statutory players in any PCSP should be stipulated in legislation to ensure active participation.

23. Schedule 1 (11)(2) Council suggest that this paragraph should be reconsidered. It is too formal and would make the workings of the partnership unwieldy. Council suggests that the chairman should seek "consensus of agreement" rather than a vote on every question raised within the PCSP. Votes should be taken only on items of particular significance.

24. Schedule (1) (13) (1) Council recommend that the quorum is broken down and it should stipulate the numbers of independent and political members required to make a quorum.

25. Schedule (1)(13)(2) Council suggest that this should be reworded as follows: "Every question at a public policing committee meeting shall be determined by a majority of votes of the members of present..." Council agree that a more formal approach is required when holding policing committee meetings in public but that normal private meetings do not require a majority vote for every question raised.

26. Schedule (1)(15) & 16(1) Council notes that: "the council may indemnify a member of the PCSP in respect of liability incurred by that member and insure against risks and personal accident." Council would again welcome statutory clarification in relation to the relationship between council and the PCSP and whether it is responsible for financing any percentage of it. It is highly unusual for Council to insure any organisation or individuals which Council does not have control of or responsibility of. In the absence of this clarity, Strabane District Council is therefore opposed to schedule 15, 16 (1) – (4).

27. Schedule 1(17) states that: "the Department and the Policing Board may make to the council a grant towards to expenses incurred by the council in that year in connection with the establishment of, or the exercise of the functions by PCSPs". Whilst Strabane District Council welcomes this clarification it is suggested that the word "may" is replaced with "will". This will ensure that this aspect of the Bill is effective and directional. Council would therefore assume that the new PCSPs will be 100% centrally funded. If this is not the case, Council argue that it should be stipulated within this legislation and be subject to the normal consultation frameworks. Moreover Council suggests that Joint Committee should develop a three year integrated funding programme to allow budget profiling and a more long term strategy for crime reduction and community safety locally.

Strabane District Policing Partnership

Justice (Northern Ireland) Bill
Part 3

Clause 20. Establishment of PCSPs

It is noted that the consultation document entitled "Local Partnership Working on Policing and Community Safety" clearly sets the proposal to establish a new Partnership within the context of a Review of Public Administration and that it would deliver value for money, reflected in the introduction by the Minister for State Paul Goggins who said "in anticipation of the changing landscape in local government" and "the changes in council boundaries planned for May 2011 give us a golden opportunity to put public safety at the heart of local service delivery. Moving from 52 partnerships to 11 will free up resources for frontline delivery and allow the new partnerships to have a bigger impact on the ground". Therefore evidence through a supporting business case for this new policy should demonstrate that four reporting lines (DOJ, NIPB, Joint Committee and Council) for differing information and three funding streams (NIPB, DOJ and Council) will reduce bureaucracy and stakeholder confusion and provide effectiveness, efficiency and value for money.

Para 24 - Submit to Council a general report.

Para 27 - A PCSP shall submit to the Joint Committee.

Para 30 - The Policing Committee shall submit to NIPB a report.

Para 33 - The Policing Committee, with the approval of NIPB.

Schedule 2, para 17 – "the department and NIPB..... a grant towards expenses...."

The proposed policy is open to a judical review challenge as it is not being implemented in the context of the Review of Public Administration.

The proposed name PCSP was the least favoured at consultation level. It was strongly felt that by having policing in the title reinforces attitudes that the Police were primarily responsible for community safety and is against the overall ethos of shared responsibility and mainstreaming later referred to in the Bill.

Care should be taken to ensure that any proposed model for integration of the partnerships does not duplicate best practice models within the community planning framework, reflected in the Scottish Model where a community planning directorate within Council, consults on behalf of its citizens, establishes thematic groups to tackle issues identified and also holds a central monitoring role to monitor effectiveness of all action plans.

As the proposed PCSP has the same legislative basis as the Police (NI) Act 2000. Part III, 14, it is assumed that the proposed PCSP will be an unincorporated body of Council. As elected members will not hold the balance of power on the full PCSP, care should be taken to insure there are no vires issues under the 1972 Local Government Act (as amended). Under democratic principles, the balance of power should remain with the elected member as stated in Schedule 4(1) of the Local Government Act 1972.

Now that there is all party agreement on policing, as an unincorporated body of Council, it should be for Council to identify, appoint and remove independent members and designated bodies to serve on the PCSP, not for the Policing Board to appoint the independent members and the PCSP to appoint designated bodies. See Schedule 1, paras 4,7. Alternatively a public body similar to Crime and Disorder Reduction Partnership (CDRP) in England and Wales should be established.

It is inferred that the "designated bodies" will be from the statutory sector who will have a "due regard" to tackle community safety issues. Failure to include representatives from the third sector could be to the detriment of effective partnership working and buy in from the third sector.

The proposed model, which combines the roles and responsibilities of monitoring policing and enhancing community safety, could result in a degree of role confusion and a conflict of interest. For example, a question by the Policing Committee to the Police on how they are tackling a community issue could result in a standard response "as you are aware, the PCSP is responsible for the action plan relating to this issue and your question is best placed to be answered by yourselves". This new responsibility may dilute the effective monitoring of the police and will substantially change the relationship between the public and the police. It will also have an impact on public perception in relation to the usefulness of the committee in monitoring police performance locally. Indeed this will have an impact on public satisfaction.

Clause 21. Functions of PCSP

The term "Policing Committee" is not reflective of its remit. It is not a committee of Police nor is it a committee, as it has powers to designate and appoint members but rather with statutory powers to: monitor the Police and encourage the public to work with the Police. As evidenced with the name District Policing Partnership, this choice of name will lead to stakeholder confusion. It is suggested that this title is changed to "Police Monitoring Committee".

Consideration should be given to the impact of the unique and distinct role of the Policing Committee on the overall dynamic and performance of the PCSP, especially as members from designated bodies cannot hold the office of Chair and Vice Chair.

The proposed model does not have an equal emphasis on policing, problem-solving and tackling the root causes of crime, reflected in the size and remit of the "policing committee" and the number of statutory duties related to policing. This will lead to an emphasis on the policing aspect and dilution of dealing with community safety issues.

21(1)(e) is not clear in its intent. Without knowing what the mind of the legislative drafter it is difficult to suggest alternative wording or punctuation.

21(h) As funding can only be provided to constituted groups, suggest that "persons" should be replaced by "partner organisations". In addition, the delivery methodology of the PCSP is unclear. The wording implies that the PCSP will tackle community safety issues primarily through provision of funds to persons to undertake community safety activities. In line with Crime and Disorder Reduction Partnerships operating in England and Wales, it is preferable that the PCSP not only develop actions plan but take the lead in tackling complex community safety issues, supplemented by third sector involvement to ensure that outcomes are met.

Clause 23. Code of Practice for PCSPs

It is suggested in line with the current legislation Police NI Act 2000, Part III, para 19 (2), where the Code of Practice is approved by the Secretary of State, that the proposed Code of Practice to be developed by the Joint Committee should require approval from the Justice Minister.

Para 24(1) Annual Report by PCSP to Council

As body unincorporated of Council, Council should have an accountability role as opposed to reporting role.

Clause 27 and 30. Reports to Joint Committee and by Policing Committees to Policing Board

As a body unincorporated of council, any reports requested by an external agency should also be provided to council. In addition, there is a risk of duplication of reports required by both the Policing Board and Joint Committee, one covering the policing aspects of an issue and the other covering the community safety aspects of an issue.

Clause 30. Reports by Policing Committees to Policing Board

The legislation suggests that the Policing Committee will not report on its function to the overall PCSP and will independently issue and publish reports. This is an unusual governance arrangement. One practical outworking of the proposed governance arrangement would be that the PCSP logo could not be applied to policing committee documents as they have not been ratified by the PCSP.

Clause 34. Duty on Public Bodies to Consider Community Safety Implications in Exercising Duties

There are significant resource implications for all public bodies to have "due regard to the likely effect of the exercise of those functions on crime and anti-social behaviour in that community, and the need to do all that it reasonably can to enhance community safety." This brings with it a requirement to "community safety proof" all policies and procedures. It is suggested that the PCSP should be consulted within this suggested policy development process, so that the effectiveness of this structure is not diluted by mainstreaming. This would work better under the context of community planning.

Clause 35. Functions of Joint Committee and Policing Board

The legislation provides for the Joint Committee to assess public satisfaction and effectiveness of the overall PCSP; while the Policing Board will assess the public satisfaction and effectiveness of the Policing Committee. This duplication of roles will lead to confusion for all stakeholders.

Schedule 1

Clause 4. Independent Members

The proposal is unnecessarily bureaucratic and with limited benefit. As body unincorporated of Council, Council should be empowered to nominate and appoint independent members to the Policing Committee or alternative governance arrangements established.

Clause 7. Representatives of Designated Organisations

It is suggested that as body unincorporated of Council, Council should designate organisations to serve on the PCSP enabling full voting powers. If Council are reluctant to accept this responsibility, alternative governance arrangements should be established.

Currently the legislation reads "A PCSP must designate at least 4 organisations for the purposes of this paragraph". Initially, as the policing committee is the only element of the PCSP in existence, it is not possible for the PSCP to designate other organisations and consideration should be given to amending the wording to reflect this.

Giving the PCSP powers to appoint and revoke will increase the bureaucracy and training requirements for the PCSP.

Clause 8(f). Removal of Members

Consideration should be given to including in the definition of 'unfit' a relationship to attendance criteria. This will be important in any voluntary partnership.

Clause 10. Chair and Vice Chair

The PSCP is not an inclusive partnership as 'designated members' are excluded from holding office.

Clause 11 (Procedure of PCSP)

A quorum is defined in terms of the PCSP. To ensure representation, consideration should be given to stipulating the ratio between the Policing Committee members and designated members.

Clause 14. Other Committees

To ensure representation, consideration should be given to including a ratio between Policing Committee members and designated members.

Clause 15. Indemnities and Para 16 Insurance Against Accidents

It is recommended that the relationship between the PCSP and the Council is clearly defined in legislation, particularly if the funding sources for the new partnership will be changed. Indeed, if the Council has no funding allocation towards the PCSP, or if the PCSP is designated as a stand-alone public body, it would be difficult for a council to justify indemnifying persons or organisations that it has no responsibility for or control off.

Clause 17. Finance

As funding ultimately comes from the Department, an arrangement to make one funding and accountability stream should be feasible. The proposed arrangements are bureaucratic and unnecessary. The removal of the existing 25% contribution from local government may reduce the degree of ownership the Council has to the partnership and how it is embedded locally.

The Bill does not make any assurance that Council will have adequate assistance to perform its enhanced statutory duties, or the PCSP duties for which it is not responsible and has no accountability function other than through receipt of the annual report.

Consideration should be given to provision of a members allowance. The proposed structures carry an increased significant workload from current structures and at a time of increased terrorist activity may have a detrimental impact upon take up from the independent sector. The initial threat to DPP members in Strabane cannot be undermined, given the level of attacks that members endured in this area when DPPs were first established and the potential dissident threat at this time. Parity with Board Members of Northern Ireland Policing Board should also be considered in relationship to including a provision for payment of an allowance.

Superintendents' Association of Northern Ireland

Superintendents' Association
of Northern Ireland
Delivering the Future

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22 November 2010

Dear Christine,

RE: Justice Bill (Northern Ireland)

The Association would like to thank you for the opportunity to comment on the Bill and do apologise for the delay in response.

In general the Association believes that the Bill has merit in its provisions. The two main issues that we would seek to raise are as follows:

Firstly, the Association believe, as we stated in a previous consultation, that the concept of amalgamating DPPs and CSPs to form a body tasked with delivering an effective partnership on policing matters to the community is ill founded. The Association believe that a partnership body should be specifically set up to deliver effective solutions to policing and community problems and the proposed structure will not achieve that aim.

Secondly, with the need to address the youth problems in our society, there is a need to introduce Parenting Orders into Northern Ireland and this Bill does not take that initiative. We believe that is to the detriment of effective policing in our community.

It is hoped that you find these comments useful.

Wesley Wilson

W W WILSON
Secretary

Ulster GAA

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Response to the Draft Justice Bill

Introduction

GAA Mission: "The GAA is a Community based volunteer organisation promoting Gaelic Games, Culture and Lifelong Participation".

The Vision of Ulster GAA is "To foster and grow the GAA across Ulster, strengthening its position as the Province's leading amateur, cultural; community; and volunteer - driven movement".

The GAA is Ireland's largest Sporting, Cultural and Community Organisation with over one million members and over 2,750 Clubs through the world. Within Ulster we have some 580 Clubs and units, involving around 250,000 volunteer members and over 1500 school activity involved in the promotion of Gaelic Games and Culture. As the governing body for the GAA in the Province the Ulster Council works in partnership with the nine GAA County Committees as well as the Ulster Councils for Ladies Gaelic Football, Camogie, Handball and Rounders. We do that to promote enhance, develop and strengthen gaelic games and associated activities at grassroots level.

Volunteering is a vital in every aspect of all the activities undertaken by Ulster GAA. In 2005 the Economic and Social Research Institute of Ireland report titled "Social and Economic Value of Sport in Ireland" highlighted that the GAA accounts for over 40% of all volunteer activity on the island of Ireland. As part of the GAA, Ulster GAA unequivocally value-driven. The values which guide its plans and its day-to-day work are:

- Community
- Volunteerism
- Identity
- Inclusion
- Excellence

Each year over 250,000 spectators attend Provincial level fixtures in Ulster. The Ulster Senior Football Championship which takes place in venues across the Province is the largest spectator sporting event in Ulster and is a significant contributor to the local economy. 85% of Ulster GAA revenue is reinvented in the County, Club and Community projects that have a significant effect on Community Development and Cohesion.

The Ulster Council:

- Oversees the development and delivery of Gaelic games associated activities across 580 GAA Clubs and some 250,000 active members
- Directly oversees year on year some 12 major inter- County GAA competitions
- Manages GAA events which attract annual lives attendance of 250,000.

- Facilitates the development of the GAA by the direct delivery of coaching and development programmes; by improving Club capacity; by providing grant aid; and by helping deliver government strategies and programme
- Supervises the core activities of its nine County Committees in the area of Games; fixtures; finance marketing; public relations and physical facilities.
- Deals directly with government on relevant issues

Response Part 4: Sport

While the Ulster GAA broadly supports the spirit of the proposed bill to deal with disorder associated with travelling to and from, attending and behaviour at sporting events there are a few high level matters that require immediate clarification:

1. Clarification must be provided to identify which measures apply to GAA events and which don't. The current draft is confusing and could lead to errors in interpretation.

2. The Commencement orders for introduction should not be relied on solely to create exemptions.

3. The bill needs to confirm the fact that venue operators are in overall control of their events and that Safety in Sports Grounds legislation does not currently demand the presence of PSNI officers at all fixtures. Therefore it is conceivable that some cases may arise where the circumstances outlined in these parts are enacted by a sporting body or member(s) of the public.

4. The bill needs to take account of the similar measures which were applied to British sport and in particular association football fixtures, rugby fixtures in England where in the same venue differing arrangements apply depending on the sport being played. The same 'local differential' needs to apply in the North.

5. We would also ask that the as the governing body for Gaelic Games that the GAA be defined in the bill as the Gaelic Athletic Association under schedule 3 "regulated matches"

The GAA would also highlight an area of serious concern regarding the section 3 Regulated Matches part 4: (b) "at which there is a stand requiring a safety certificate under Part 3 of that Order".

GAA is opposed to the entrapment of GAA Clubs inside the scope of the Justice Bill as the significance of the Designated Stand is relevant to the capacity of it and has no other function other than to establish that such structures must be licensed by the relevant Local Authority and are fit for purpose. It should be understood that this applies to grounds that are not Designated under the Safety At Sports Grounds Legislation. The GAA ask that the definition of Regulated Games should only apply to those played at Designated Ground rather than the draft that applies to games played at the venue involving County teams but the scope is also applying to all games at a designated ground or having a Designated Stand in the present wording. The GAA strongly oppose the extension in this section to all games played at grounds affected by the Safety at Sports Grounds Legislation that are for safety purposes having the core Legislation defined in such a fashion as to effect games that were never countenanced in the original legislation. Indeed, it needs to be stated that the abject failure of the implementation of this Legislation on several fronts to date due to funding constraints is a matter that places the Department of Culture Arts and Leisure in some jeopardy as they have failed to honour the commitment given to Westminster in February 2006. This has very significant legal consequences for the Governing Bodies of Sport and to the Clubs and the owners of properties covered by the Safety at Sports

Grounds Legislation. This further expansion is also going to affect volunteers at all levels including Administrators and also those organising juvenile and schools sport.

GAA requires a definition of what constitutes a regulated match. It is necessary to ascertain that the measures below should only apply to venues designated, and licensed by the responsible local authority as part of the Safety in Sports Grounds (NI) order. Otherwise this legislation will apply to venues never intended and create a 'un-enforceable' situation which could damage the credibility of the draft proposals.

Other Comments on Specific areas within the draft legislation:

1. Regulated Matches (j1fo) 4: Ulster GAA seeks clarification as to the role and power of the Department of Justice in the control of the order verses that of the Assembly.

2. Conduct at regulated Matches and Chanting: Confirmation is required if this part of the legislation applies to Gaelic Games fixtures or not. The terminology of chanting needs to revert to the terminology used in previous draft regulations and contained within the Equality Impact Assessment which referred to 'offensive chanting' which is a more specific and measurable provision.

3. Spectators going onto the playing area: The Ulster Council seeks confirmation of the term 'lawful excuse' to ensure that it covers the necessary emergency evacuation procedures and indeed the controlled, celebratory occasions which are a long standing GAA tradition where supporters gather on pitch after the conclusion of games. Ulster GAA deal incursion by way of Ground Regulations as contained in Appendix A while the GAA at Central level have recently introduced measures to deal with circumstances following major fixtures in Croke Park. There does need to be a reasonable position taken to accommodate many less high profile fixtures at all levels within the GAA and Sport in general.

4. Possession of fireworks, flares, etc. The GAA once more seek confirmation if Gaelic Games fixtures are except or not?

5. Being drunk at a regulated match: The GAA is committed to ensuring a quality family experience at our games which reflects the profile of attendees. Our Ground Regulations will be applied to this circumstance, please see Appendix A

6. Possession of drink containers: Again the GAA is committed to ensuring a quality family experience at our games which reflects the profile of attendees. Our Ground Regulations should be applied to this circumstance. (Please refer to appendix A)

7. Possession of alcohol: Again the GAA seeks clarification that in the event of providing corporate facilities at main County Stadia and Facilities that this draft legislation applies. Ulster GAA would highlight that such reasonable provisions that apply in Croke Park Dublin can also be provided in this jurisdiction. This is evidenced by the approach in England and Wales which in affect provides for separate and tailored standards for two sports in a venue like Vickerage Road, Watford (London) where operating practices for Rugby and Soccer are entirely different. A similar approach is encouraged by the GAA in this jurisdiction. The Ulster GAA would further point out that the GAA is only sporting body which has had experience of managing 'other sporting' fixtures at our Stadium in Croke Park. That experience lead by the Croke Park Stadium Management team has demonstrated to the GAA the need to deal with the variables in a sport specific manner akin to the profiling of the /behaviour of supporters who attend sports events. The measures controlling consumption of alcohol at International Rugby fixtures' was very different to the measure in place for International Soccer fixtures. The Governing Bodies for the

respective sports alongside the local authorities in each jurisdiction need to be given a level of autonomy to control such circumstances and to decide if the game in question is a Regulated Game..

8. Offences in connection with alcohol on vehicles: GAA would ask the Justice Committee to note that there are major implications for GAA County Committees and GAA Clubs in educating spectators to Gaelic Games on the new arrangements. Clarity is also sought on operational function of any cross jurisdictional co-operation with An Gardai Siochanna on the policing of such matters due to the all-Ireland structure of Gaelic games. The reverse operational application to transport operating outside of Northern Ireland travelling to Regulated Games within the jurisdiction is also not specifically referred to in the Draft Justice Bill.

9. Sale of tickets by unauthorised persons: The GAA seeks clarification that Gaelic Games are not included in the arrangements outlined in the draft legislation.

10. Banning orders on conviction: supplementary: The GAA again seeks clarification that Gaelic Games are not included in the arrangements outlined in the draft legislation.

11. Banning orders made on a complaint: The GAA again seeks clarification that Gaelic Games are not included in the arrangements outlined in the draft legislation.

12. Banning orders under section 46 or 48: "violence" and "disorder": The GAA again seeks clarification that Gaelic Games are not included in the arrangements outlined in the draft legislation.

The Ulster GAA asks the Justice Committee to consider The Football Offences Act 1999 and the Control of Alcohol Act 1985 as it applies in Britain plus other core legislation that needs to be examined in relation to the measures detailed above. Ulster GAA note that other forms of Transport are not included in the Draft Legislation.

Chapter 6 Enforcement:

Ulster GAA is concerned that this Powers of Enforcement section (J11fo) is in conflict with the Safety in Sports Ground legislation.60 (2) as there is no legal imperative to have police attending at games. This raises very significant enforcement issues as created by this Draft Legislation and could lead to unnecessary confrontational matters arising. In Regulated Games with large attendances this means policing and stewarding by consent. We would accept that a police officer has the power defined in the Draft Justice Bill but entry onto premises to effect such enforcement needs to be triggered by a report unless the Constable himself is present to observe the alleged breach. Equally does this legislation extend to CCTV coverage of games and events and their seizure by the PSNI from the promoter or Governing Body where such CCTV recordings exists.

Part 3: Policing and Community Safety Partnerships

Ulster GAA would also like to highlight the following issues as part of the overall consultation of the draft Justice Bill.

General Issue: It is the view of Ulster GAA that the draft justice bill should include a provision to review section 51 of the NI Police Order 2000.

As part of the Ulster GAA response to the draft Cohesion, Sharing and Integration Strategy the Ulster Council suggested that the justice bill should oversee "Establishment of lower level

Community forums at District Council level to link with Community Policing Partnerships to promote community engagement, leadership and understanding".

The role of Community Policing Partnerships as outlined in the draft Justice Bill needs to be reviewed in line with the need for community engagement in local and regional issues based on eliminating matters are obstructing the development of a cohesive community, this can be achieved by having a diverse membership from all sections of the Community.

This proposed body needs to be given a statutorily role as part of the draft Justice Bill and there should be a specific section in Part 3: section 33 under "other community arrangements" that outlines the role, function and membership of Community partnership and a defined structure were they fit into the overall policing structure.

Policing Community Safety Partnerships should act as a forum representative of all stakeholder groups in the local community, the PCSP should advise and offer assistance to the local district Commander and local district Policing Partnership but should not act as an oversight of governance body that has a direct role in the operational functions of the district police.

Appendix A

Ground Regulations for Ulster GAA Fixtures

1. All persons entering an Ulster Championship venue are admitted only subject to the following Ground Regulations and to the Rules and Regulations of the Gaelic Athletic Association. Entry to the ground shall be deemed to constitute unqualified acceptance of all these Rules and Regulations. Any person who fails to comply with these Ground Regulations may be refused entry or removed from the ground.

2. Fireworks, smoke canisters, gas- horns, bottles, glasses, cans, flags, banners, poles and other similar articles or containers, including anything, which may be used as a weapon, are not permitted within the stadium.

3. The consumption of alcohol is not permitted within the ground and spectators are not permitted to bring alcohol into the stadium

4. The unauthorised climbing of any structure, walls or buildings in the ground is strictly forbidden

5. Unnecessary noise such as that from the use of radio sets, gas-horns and behaviour likely to cause confusion or nuisance of any kind, including foul or abusive language, are not permitted in any part of the ground

6. Under no circumstances is it permitted to throw any object onto the pitch

7. Unauthorised persons are not permitted to enter upon the field of play at any time before, during or after the games

8. The Ground Management reserve the right to refuse admission or to eject any person who refuses to be searched were such a search is deemed necessary

9. A person may not obstruct a gangway, stairwell or circulation area at any time

10. All persons entering or in the ground are reminded of their obligation to ensure that their behaviour does not present a danger from fire or other occurrence to anyone using the premises.

11. The Ground Management reserve the right for its' servants or agents to remove from the ground any person who does not comply with the Ground Regulations or whose presence in the ground could reasonably be construed as constituting a source of danger, nuisance or annoyance to other spectators.

Ulster Rugby

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Response to the Draft Justice Bill 2010

Introduction

Ulster Rugby participates in the Magners League and Heineken Cup, playing a minimum of 30 matches during the season, which runs from August to May each year. With matches played on a home and away basis, half of these games are played at the Ravenhill Grounds, home of Ulster Rugby and headquarters of the Ulster Branch of the Irish Rugby Football Union which is the governing body for the sport in the nine counties of Ulster.

As well as hosting Ulster Rugby matches, Ravenhill also plays host to a number of other fixtures throughout the year, including matches played by the Ulster Ravens (Ulster Rugby's 'A' team) in the British & Irish Cup, Ulster's representative teams (Ulster Schools, Under 19s, Under 20s, Ulster Juniors, Ulster Women) as well as a number of club and school finals.

Ravenhill has also hosted international rugby, most recently in April 2007 when the IRB Under 19 World Championship centred on the stadium and in August 2007 when Ireland played Italy in a warm-up match ahead of the start of the Rugby World Cup. It is also used as a venue for Ireland 'A' international matches with Ireland A v England Saxons scheduled for February 2011.

Response Part 4: Sport

Ulster Rugby is committed to ensuring a safe and welcoming experience at matches, reflecting the wide-ranging profile of our spectators but wishes to specifically oppose the inclusion of Clause 43 in the draft Justice Bill 2010, relating to the possession of alcohol in relation to Ulster Rugby matches played at Ravenhill.

Our understanding is that the intent of the sports package within the Justice Bill is to complement the Safety in Sportsgrounds Legislation of 2006, yet it is our view that clause 43 goes far beyond the scope of the Safety in Sportsgrounds 2006 Legislation and is disproportionate when applied to Ulster Rugby

We note that both the Department of Justice and the Justice Minister are on record as stating that while the offence of possessing alcohol in view of the pitch would cover all three designated

sports, that they will set out, in subordinate legislation, how this clause will apply to each sport and times when it will and will not be permitted.

However, we would be concerned about relying solely on a commencement to create an exemption and wish to put forward a case to strongly oppose the inclusion of rugby in clause 43 based on the key points which follow.

This paper has been prepared in consultation with our official supporters club, the Ulster Rugby Supporters' Club (URSC).

1. Inconsistency with legislation elsewhere in the UK/Ireland

The inclusion of proposed legislation relating to the possession of alcohol at Ulster Rugby matches (clause 43) is totally inconsistent with legislation in Ireland, and elsewhere in the UK where the offence of being in possession of an alcoholic beverage during a match and in view of the pitch applies only to football. For example under the Football Offences Act of 1991, supporters are watching Reading FC at the Madjeski Stadium are not permitted to drink alcohol in view of the pitch during the game, however supporters watching London Irish playing rugby at the same venue are permitted to consume alcohol from their seats during the game. This is also the case at other grounds where both football and rugby are played such as Vickerage Road (Watford, London) and the Liberty Stadium (Swansea).

A similar approach in Northern Ireland is encouraged by Ulster Rugby as it is our view that our organisation and supporters attending our matches are being treated in a discriminatory and unfair manner in comparison to our rugby counterparts in the UK, Ireland and rest of Europe.

2. No History of Disorder

In the Official Report (Hansard) Departmental Briefing from 3rd June 2010, the Chair of the Justice Committee, Lord Morrow, asked why other sports, for example, cricket, were not included in the proposed legislation. The official from the Department of Justice responded that they had looked at other sporting events that might attract crowds such as ice hockey or cricket but that they "did not see a problem with violence, misbehavior or disorder in these sports" which was why the Department was targeting the three main sporting events.

We are at a loss to understand this comment in relation to rugby, and why rugby has been included in this part of the legislation. For many years, supporters attending Ulster Rugby matches at Ravenhill have been able to enjoy a sociable drink within sight of the pitch without disorder.

There is no history of disorder, of any kind, at Ulster Rugby matches, not least regarding alcohol and we would invite the Committee to take evidence from the PSNI to that effect and also with regard to the number of police officers (4-6) required to police large matches at the ground.

We take our responsibilities as both an event organiser and governing body of sport extremely seriously. We ensure that our stewarding within the ground is to the highest standard and invest a considerable amount of time and money in both capital expenditure and staff costs, approx £100,000 and £150,000 respectively in the past 12 months, to make certain that our spectators are safe and that we have appropriately and professionally trained stewards on duty and this ensures that Ulster Rugby matches are viewed very much as a family-friendly night out.

3. Financial Implications and Obligations to Tournament Sponsors

Ulster Rugby participates in two major competitions each season, both with long-term title sponsors in the alcohol category (Magners League and Heineken Cup). If clause 43 were to come into effect and apply to Ulster Rugby, Ravenhill would be the only rugby ground in either of these competitions, which are played across, England, Ireland, Scotland, Wales, Italy and France, where restrictions around the consumption of alcohol are in place.

Ulster Rugby would consequently, not be competing on an equitable basis with the other clubs in Europe and this is a serious concern when the ability to compete financially will be a key consideration for successful future participation in the Magners League and Heineken Cup. The inclusion of clause 43 in relation to rugby could have a significant detrimental impact on our ability to sustain our position as a major rugby force in Europe.

In addition to adding to the social occasion that is Ravenhill on a Friday night or Saturday afternoon, the availability of alcohol at matches contributes significantly to the financial viability of Ulster Rugby. We receive a considerable fee in sponsorship from both our drinks partner and bar franchisee for the right to pour and responsibly serve alcohol with the ground on match night and the ability to enjoy a sociable drink whilst watching the game is a vital part of the match night experience for both our supporters on the terraces and those using Ravenhill as a venue for corporate hospitality, the latter paying a premium for, among other things, private bar service.

While we welcome the easing of the restriction around private corporate facilities, or as they are referred to in the proposed legislation, "rooms to which the general public are not admitted", this represents only a portion of our business. Even with this amendment, Ulster Rugby stands to lose a considerable amount of income if clause 43 comes into effect and we would urge the Justice Committee and Justice Department to amend the proposed legislation so that Ulster Rugby matches at Ravenhill are removed altogether from clause 43.

The effect of the proposed legislation in clause 43 could also undermine Ulster Rugby's ability to host quarter/semi and final stages of the Magners League and Heineken Cup tournaments at Ravenhill on account of compromising the competition sponsors' requirements to sell their product within the ground during the matches – as stated earlier, Ravenhill would be the only ground where this is an issue.

This would have a very serious effect not only on Ulster Rugby's financial viability but also on its reputation as a world-class rugby venue within the rugby and we argue that Ulster Rugby may find itself unable to attract "blue riband" matches to Ravenhill for example Internationals or 'A' Internationals, and would be forced to consider the option of playing our own major matches, such as Heineken Cup Quarter or Semi-Finals elsewhere, for example at the Aviva Stadium in Dublin.

4. Plans for the Redevelopment of Ravenhill Stadium

In 2009 Ulster Rugby submitted a business case to the Department of Culture Arts and Leisure (DCAL) regarding the redevelopment of the Ravenhill Grounds.

Our plans take cognisance of the fact that there are many families and young people attending matches at Ravenhill on a regular basis and consequently include an alcohol-free family stand at the Aquinas end of the ground.

However, our plans, produced in conjunction with Sport Northern Ireland 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.

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.

5. Potential Impact on Tourism

Major rugby matches at Ravenhill have the knock-on effect of creating a boost for tourism in Belfast and beyond. For example, Bath Rugby Club has taken an initial allocation of 800 tickets for our Heineken Cup match which is to be played at Ravenhill on the 11th December 2010.

Given that this match will be played on a Saturday afternoon it is a likely assumption that visitors will spend two bed-nights in the city with potential for dining out and visiting other attractions. The limitations on being able to enjoy a sociable drink whilst watching their team at Ravenhill may make the notion of a weekend in Belfast, based around rugby, a less attractive proposition for opposition supporters and particularly those who expect to be able to enjoy a sociable drink whilst watching the game because they can do so at any other rugby match they attend.

Research from the Belfast Visitor and Convention Bureau shows that in 2009, 2% of 1.6 million out-of-state overnight visitors stated sport as the main reason they came to Belfast, that is 32,000 people spending money on hotels, dining and attractions in the city. While the figures are not broken down into individual sports, the fact that Ulster Rugby plays regular matches from mid-August to end of May in Belfast against teams from elsewhere in Ireland, Scotland, Wales, England, France and Italy mean that it is entirely likely that rugby supporters feature significantly in these visitor numbers.

Summary

In summary, the Department of Justice have stated that the overall aim of the sports package is to "create a safe and welcoming environment at major sporting matches", however it is Ulster Rugby's view that limiting the option to enjoy a sociable drink in view of the pitch before, during and after a game will prove very detrimental to the welcome Ulster Rugby can offer its supporters and that of the opposition at matches as well as having very serious financial implications for our organisation.

We would urge the Committee and the Department to re-consider clause 43 in relation to Ulster Rugby and would welcome the opportunity to meet with the Committee to discuss this matter further.

Ulster Rugby Supporter's Club

Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Belfast
Stormont
Belfast
Northern Ireland
BT4 3XX

Ulster Rugby Supporters Club
c/o Ravenhill Grounds
Ravenhill Park
BT6 0DG

16th November 2010

Dear Members of the Committee,

Ulster Rugby Supporter's Club response to Draft Justice Bill 2010

I write on behalf of the Ulster Rugby Supporters Club and further to our letter of 8th September 2010 to the Committee for Justice in connection with the above proposed legislation. In particular we write in response to the proposals of Part 4, Chapter 2, Clause 43 of the Justice Bill (published 18th October 2010)

We also participated in the consultation process on the proposed Sports Law and Spectator Controls by way of our letter of 30 November 2009 and we wish now to respond to the proposals contained within the Bill as follows.

Aims of the Club

The Ulster Rugby Supporters' Club represents the views of fans who attend Ravenhill on match nights. Our aims include the following:

- To support Ulster Rugby on and off the field;
- Acting as a link between the supporters and Ulster Rugby and to communicate the views of the supporters; and
- To advance public education, appreciation and understanding of the game of rugby by arranging open discussions, lectures, social and other meetings.

In the outworking of the above we act as a focal point for extending hospitality to visiting fans, frequently in the form of city tours, dinners and the organisation of related sporting events. Such events are often in reciprocation for hospitality extended to us on our travels to games throughout Europe.

Match nights at Ravenhill

It is normal practice on match nights for fans of both sides to meet, to enjoy the ambience of the evening and to offer hospitality. This bonhomie always continues throughout the game and afterwards, regardless of the result. It is indeed a common site to see opposing fans standing side by side on the terrace, enjoying a drink and exchanging 'banter' at each others expense as the match unfolds.

With the recent addition of the food village and pre and post match entertainment, Ravenhill has indeed assumed a carnival air on match nights. It is a common sight to see fans young and old, families, school children and youth clubs mingling on the concourses prior to the match and enjoying a wide range of food and drink.

We pride ourselves in our Ulster hospitality and humour and consider ourselves in the vanguard of promoting all that is good about our city and our sport. We believe this is a view shared by Sport Northern Ireland, the Department of Culture, Arts and Leisure and the tourist industry at large. We also believe that with the construction of our new stadium Ravenhill will become even more of quality destination for visitors to Belfast.

We also take great pride in the behaviour of all our fans at Ravenhill, where respect for the visiting team is the order of the day, as evidenced in generous applause for displays of skill and our silence for kicks at goal by either side.

Further, and by way of stressing the irrelevance of this legislation to our sport, all of our members know from personal experience of match nights over the past ten years of professional rugby that crowd trouble at Ravenhill is non existent.

Discrimination

Of particular concern to us is the discrimination that we, as rugby fans and citizens of Northern Ireland, will suffer should this legislation be enacted. From our widespread travels as supporters we know that such restrictions on hospitality are not imposed elsewhere in the United Kingdom, the Republic of Ireland, France, Spain and Italy.

Specifically, the situation in other jurisdictions is:

Scotland; Alcohol is available at Murrayfield, home to Edinburgh Rugby, on match nights, on the concourse, in the hospitality suites and executive boxes prior to, during and after the match. It is also permissible to take food and alcohol to one's seat in the stadium at any time on match night.

Wales: The Liberty Stadium is the home of the Ospreys. They share this ground with Swansea City Football Club. For football the Liberty Stadium is licensed to sell alcohol on the concourses before, during and after the match, but it cannot be brought inside the stadium – ie the viewing area. Alcohol can also be served within the hospitality areas but cannot be taken beyond the door during the match. For executive boxes they are required to close the blinds 15 minutes prior to KO and keep them closed until 15 minutes after the final whistle.

For rugby the stadium is licensed to sell alcohol through out the ground and it can be taken to ones seat, providing it is in a plastic container. There is no restriction on sale or drinking and watching at the same time. The situation at Llanelli (Parc y Scarlets) and Cardiff Blues (Cardiff City Stadium) is the same as for the Liberty on rugby nights.

England: The situation throughout England for rugby is the same as that in Wales. In other words while there is a viewing restriction associated with alcohol during football matches there is none whatever at rugby matches, with no restriction on consumption on the terraces and seating areas. This distinction also applies at grounds which co-host both sports.

France: From our experience of travelling to support Ulster in rugby matches in Paris, Toulouse and Biarritz we can confirm that there is no restriction on the sale and consumption of alcohol prior to, during and after the match.

Proposed Legislation

Bearing all of the foregoing in mind we are at a total loss as to why the legislators see any requirement to include rugby within the scope of this portion of the proposed legislation. Indeed we cannot state strongly enough how misguided we consider these proposals to be and it is our fervent hope that common sense will prevail and that the Committee will see fit to exclude Ravenhill from this section of the Bill.

We thank you for the opportunity to respond further on this matter,

Yours sincerely,

Iain Campbell
Chair, Ulster Rugby Supporters' Club

Victim Support Northern Ireland

Victim Support

The Committee Clerk, Justice Committee
N I Assembly
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

9 November 2010

Dear Ms Darragh

Justice (Northern Ireland) Bill 2010

Thank you for the opportunity to comment on the draft Justice Bill.

Victim Support NI is an independent charity striving to support people affected by crime. We offer community and court based services to anyone affected by crime, irrespective of when the crime happened, the motivation for the crime or if it has been reported to the police.

Each year we receive over 26,000 referrals. Out of this number around 3,500 people who have experienced crime will be helped to work through the effects those crimes have had on their lives. In addition, some 7,000 victims and witnesses are supported through the process of attending court and giving evidence and over 2,000 citizens hurt by violent crime will have been assisted by us to apply for criminal injuries compensation.

Policy objectives of the Bill

Victim Support approves of the stated policy objectives of the Bill, notably the need and desire to improve access to the justice system. The desire to deliver better and enhanced

services to victims and witnesses is also to be applauded. However the extent to which the provisions of the Bill will bring about any significant improvements in either area is questionable.

Offender levy

Victim Support Northern Ireland supports the introduction of an offender levy and agrees that the revenue should be used to support services to victims and witnesses of crime. However the creation of this tax on offenders must not replace any current financial support provided by government and must be an **additional** source of funding to support victims of crime.

Special measures

Victim Support welcomes the expansion of the current provisions for special measures. Any provisions which can assist witnesses to be less damaged and traumatised by the court experience will serve to improve the standing of the criminal justice system and may reduce the negative impact which giving evidence can often have on victims and witnesses of crime. However our main concern with current arrangements is that special measure are not been deployed to their fullest extent. We consider that procedures to ensure that the needs of the victims and witness concerned are paramount need to be introduced.

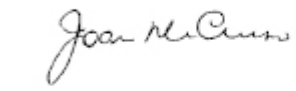
Alternatives to prosecution

We would wish to draw the Committee's attention to the provision of the Bill relating to reparative conditions. Restorative practices are part of our justice system though to date these apply mainly to young offenders and to post sentencing interventions (for example, the Probation and Prison Service information schemes).

The proposal in the Bill is to have restorative conditions imposed as part of the new diversionary disposals. It is possible that such conditions may provide a benefit to an individual victim and perhaps also to a local community. However it is essential that an identified victim is provided with an opportunity to comment on action being proposed in relation to an offender, particularly where the victim's participation is integral to the

proposal. Only the victim is in a position to advise if a proposed reparative condition would serve that purpose as opposed to 'pouring salt on the wound'. For example, a victim of criminal damage, however minor, may not wish to have the person responsible approach their home. They may be fearful of reprisals and may not wish the offender to be provided with their name and address. For these and other reasons it is essential that the police consult with any victim before such reparative conditions are imposed and take fully into account the wishes of the victims. In addition, appropriate support needs to be provided to the victim to ensure that they are fully informed of their options and can thus make an informed choice.

Yours sincerely



pp Susan Reid
Chief Executive

Women's Aid Federation Northern Ireland

Written Submission to the Committee for Justice on the Justice (Northern Ireland) Bill 2010

Core Work of Women's Aid: Background Information & Statistics

1.0 Introduction

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic violence and providing services for women and children. We recognise domestic violence as one form of violence against women. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic violence and, through our work, promote healthy and non-abusive relationships.

2.0 Core Work of Women's Aid

The core work of Women's Aid in Northern Ireland, including Women's Aid Federation Northern Ireland and the 10 local Women's Aid groups is:

- To provide refuge accommodation to women and their children suffering mental, physical or sexual abuse within the home.
- To run the 24 Hour Domestic Violence Helpline.
- To provide a range of support services to enable women who are leaving a violent situation to rebuild their lives and the lives of their children.
- To provide a range of support services to children and young people who have experienced domestic violence.
- To run preventative education programmes in schools and other settings.
- To educate and inform the public, media, police, courts, social services and other agencies of the impact and effects of domestic violence.
- To advise and support all relevant agencies in the development of domestic violence policies, protocols and service delivery.
- To work in partnership with all relevant agencies to ensure a joined up response to domestic violence.

3.0 Women's Aid Statistics (2009 - 2010)

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 1077 women and 854 children sought refuge.
- 15 resource centres for women seeking information and support; group work and training.
- 2,938 women and 4,489 children accessed the Floating Support service enabling women to access support whilst remaining in their own homes and communities.
- Move-on houses for women and children leaving refuges.
- In 2009/10 the 24 Hour Domestic Violence Helpline, open to anyone affected by domestic violence, managed 32,349 calls. This represented an increase of 17% on 2008/09.

4.0 Additional Women's Aid Statistical Data

- Since 1999, Women's Aid across Northern Ireland gave refuge to 13,656 women and 13,602 children and young people.
- During the last 15 years Women's Aid Federation Northern Ireland managed 244,564 calls to the 24 Hour Domestic Violence Helpline.

5.0 Statistics: Domestic Violence & Violence Against Women

- Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment";
- The joint NIO, DHSSPS Strategy "Tackling Violence at Home" estimates that the cost of domestic violence in Northern Ireland, including the potential loss of economic output, could amount to £180 million each year.
- UNICEF research released in 2006, showing per capita incidence, indicates that there are up to 32,000 children and young people living with domestic violence in Northern Ireland.
- Where the gender of the victim was known, 75% of adult victims of domestic crimes recorded by the PSNI in 2009/10 were female.*
- Over 30% of all domestic violence starts during pregnancy. **

6.0 Domestic Violence: Crime Statistics

- Domestic Violence is a crime. PSNI statistics for 2009/10 indicate that there were more recorded crimes with a domestic motivation (9,903) than the combined total of all the following crimes (9,864). These include all recorded sexual offences (1,944), robbery (600), armed robbery (557), hijacking (119), theft or unauthorised taking of a motor vehicle (2975), arson (1980) dangerous driving (865), handling stolen goods (226) and offences under anti-terrorism legislation (7).
- PSNI Statistics for 09/10 indicate that they responded to a domestic incident every 21 minutes of every day of the year.
- The total of 9,903 crimes with a domestic motivation in 09/10 represents an average of approximately 1 domestic crime every 53 minutes in Northern Ireland.
- The number of all recorded offences of murder in Northern Ireland in 09/10 total 18. Those classed as having a domestic motivation total 7. Therefore, 38.9% of all murders in Northern Ireland in 09/10 had a domestic motivation.
- There were 461 rapes (including attempted Rapes) in Northern Ireland in the period 2009/10.

(Source: PSNI Statistics 2009/10)

- Official sources (NISOSMC) estimate that up to 80% of sex crimes are not reported.
- Violence Against Women is not limited to domestic violence, it includes amongst other crimes murder, rape, sexual assault, sexual exploitation, trafficking, sexual stalking and sexual harassment.

(*Findings from the PSNI Crime Statistics Report2009/10 N.B. "Adult" defined as aged 17 and over)

(** Women's Aid Federation NI)

7.0 Comments

7.1 Women's Aid Federation Northern Ireland welcomes the opportunity to comment upon the Justice (Northern Ireland) Bill 2010 on behalf of our ten local groups. The following comments

reflect their collective views and have been made in conjunction with colleagues in the Women's Support Network (WSN). Our comments focus mainly on the clauses in the Bill relating to special provisions relating to sexual offences, alternatives to prosecution, the offender levy and legal aid.

Special provisions relating to sexual offences

7.2 Women's Aid Federation notes that clause 9 of the Bill covers special provisions relating to sexual offences. This clause provides adult complainants of sexual offences with an automatic entitlement to video recorded evidence in chief. However this clause cannot be availed of in proceedings taking place in a Magistrates Court. We would wish to highlight our organisation's response to the Northern Ireland Law Commission's consultation on "Vulnerable Witnesses in Civil Proceedings." Women's Aid Federation Northern Ireland notes that it is wrongly assumed that civil proceedings are unlikely to deal with evidence in cases involving sexual offences. We believe that this clause fails to recognise that in domestic violence cases, there is frequently sexual violence involved and that this is often exceptionally difficult and painful to disclose in open court. Women seeking non molestation orders in Magistrates courts may have been subjected to sexual violence by respondents. It is our strong opinion therefore, that these special provisions in clause 9 should be extended to cases of non molestation orders in Magistrates courts.

Alternatives to prosecution

7.3 Women's Aid joins with WSN in welcoming the Department's objective of seeking to find alternatives to prosecution in appropriate cases; however we are concerned that the clauses in the Bill relating to alternatives to prosecution (Part 6, clauses 64-75) focus mainly on financial penalties. We would like to be very clear that under no circumstances do we think that alternatives to prosecution, or financial penalties alone, are appropriate in cases of domestic violence. We are in favour of the creation of alternatives to prosecution for minor offences, given the impact of the imprisonment of women on children and families. However we believe that financial penalties are not a suitable alternative for all offenders, particularly female offenders given that the recently published "Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour" acknowledges that poverty is one of the prime motivators for women becoming involved in offending behaviour.[1]

7.4 Statistics show that the conviction rate for women (13%) is lower than men, however 20% of women committed to prison in 2009 defaulted on low level fines for minor offences.[2]Whilst it is important that people who commit offending behaviour should make reparations, Women's Aid and WSN are concerned that the introduction of fine based penalties is not the most suitable way to deal with minor offences. For example the proposals relating to fixed penalties in clause 64 are designed to deal with offences such as being drunk, shoplifting, criminal damage, disorderly behaviour, breach of the peace, amongst others. However this offending behaviour could be manifested due to complex needs such as domestic violence, poverty, homelessness or mental health problems. We are concerned that women with such complex needs may not be able to meet the costs of these fines and the payment of an offender levy.

Offender Levy

7.5 Clause 67 of the Bill states that in cases of default or where the person has not requested to be tried; the penalty will be increased by 50% and will be registered as a court fine. Furthermore, given that fixed penalties also attract an offender levy, clause 5 of the Bill states that where a penalty has been increased under clause 67 of the Bill, the offender levy shall be treated as having been increased by the same proportion. Whilst under clause 74, the court may

in some cases set aside a fine where it is in the interests of justice to do so, Women's Aid once again share the concerns of WSN that women, particularly those with complex needs will continue to find themselves in the system, facing custodial sentences. Furthermore, a fixed penalty will not address the causes of offending behaviour. In our experience of working with women in disadvantaged communities and often on the margins of financial exclusion, women who are committed to custody as a result of defaulting on fines can't pay, rather than won't pay. Women's Aid would also wish to highlight that in cases involving domestic violence, it is not uncommon for women to be subjected to financial abuse.

7.6 We welcome the recognition that a vulnerable group of people require support that can be provided by conditional cautions set out in Clauses 76-84 of the Bill. However we have concerns that cautions would continue to bring people into the criminal justice system. Women's Aid supports the view of WSN and NIACRO that conditions or intervention should take place before the caution stage for example referral to a support initiative which would divert low level offenders away from the criminal justice system and address the causes of offending behaviour. One example of such an approach is the Women's Community Support Project, a pilot project which is partnership between Probation Board, NIACRO and Women's Support Network which provides support to women at all stages of the criminal justice process. We fully support WSN in urging the Committee to recommend that the Bill is amended to ensure conditions are applied before cautions in dealing with low level female offenders and this diversion should also be adopted rather than the imposition of a fixed penalty. Women's Aid strongly believes that women should not be imprisoned for fine defaults and imprisonment should only be used in extreme cases where a non custodial sentence is inappropriate or is not an option.

7.7 Clause 77 (4) of the Bill provides a requirement that an authorised person explains the effect of the conditional caution to the offender and to warn the offender of consequences in instances of failure of non compliance. Women's Aid and WSN share the concern that this could be given when an offender is in distress or is experiencing mental health problems, domestic violence or addiction issues. We urge the Committee when considering clause 77, to recommend that the Bill ensures that cognisance is taken with respect to persons with mental health and other complex needs to ensure they understand the implications of the conditional caution. We also recommend training for authorised persons i.e police officers or persons authorised by the Director of Public Prosecutions on complex needs such as mental health issues, domestic violence and addiction issues and ensuring that women are diverted to appropriate support services.

7.8 Clause 80 (1) of the Bill states that "if a constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, the constable may arrest the offender without a warrant." We note that there is no definition of what constitutes reasonable grounds contained within the clause, nor does it define what constitutes a reasonable excuse. In keeping with WSN, Women's Aid would seek assurance that those accused of non compliance of conditions are afforded every opportunity to provide a reasonable explanation and to have that explanation verified. We recommend that the Bill is amended to include this safeguard.

Legal Aid

7.9 Clause 85 of the Bill introduces a means test for the granting of legal aid in criminal cases and sets out an enabling power for rules to be made to determine legal aid eligibility. WSN is concerned that a person going through the criminal system could, potentially, have their access to a fair hearing limited. Access to a fair hearing is protected by Article 6 of the European Convention on Human Rights. Article 6 (1) sets out that "in determination of civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Furthermore Article 6 (3) (c) provides that where a person is facing a criminal charge, they have a minimum right to free legal assistance if they do not have the means to pay for it themselves. WSN wishes to highlight the importance of ensuring the right of access to a fair hearing, particularly for those going through the criminal justice system and ensuring the State complies with its obligations under Article 6 of the ECHR.

7.10 Women's Aid would wish to highlight that in Northern Ireland, women fleeing domestic violence situations or seeking legal remedies such as non molestation orders or occupation orders have to meet financial eligibility criteria to access legal aid. However in England and Wales, women in domestic violence situations may not have to meet financial eligibility criteria in seeking such remedies.[3] Women in Northern Ireland seeking non-molestation orders, who are not eligible for legal aid, can face prohibitive legal bills, which can effectively deny them access to justice and legal protection.

7.11 Women's Aid believes that women suffering from domestic violence should not have to incur financial costs in order to keep themselves safe. Women should not have to choose between the financial stability of their families and their individual safety and that of their family. We believe that this Justice Bill provides an ideal opportunity to remedy this situation and we call for the amendment of current civil legal aid rules to ensure women in domestic violence situations have automatic right of access to justice. We are of the opinion that the Justice Bill could be amended to include an enabling power to amend civil legal aid rules and we strongly recommend the insertion of a clause which makes provision for an enabling power to address this issue.

Conclusion

Women's Aid joins with colleagues in WSN in welcoming the opportunity to submit this written submission on the Justice (Northern Ireland) Bill 2010 to the Committee for Justice and we have offered some constructive recommendations as to how the Bill could be improved. Women's Aid is happy to discuss these issues further with the committee and would welcome the opportunity to give oral evidence should this be considered helpful.

For further information about this response contact:

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[1] Department of Justice (2010) A Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour, Pg 5.

[2] Ibid,Pg 13.

[3] Since April 2007, the Legal Services Commission in England and Wales has been able to waive eligibility limits for legal representation for victims of domestic violence, see http://www.legalservices.gov.uk/civil/family/domestic_abuse.asp#domestic

Women's Support Network

Women's Support Network written submission to the Committee for Justice on the Justice (Northern Ireland) Bill 2010

Introduction

1.1 The Women's Support Network (WSN) welcomes the opportunity to make a written submission on the Justice (Northern Ireland) Bill 2010.

1.2 The Women's Support Network (WSN), established in 1989, is an infrastructural umbrella organisation, which provides support services to, and represents, 62 community based Women's Centres, women's groups and projects, and women's infrastructure groups and 22 associated members across Northern Ireland (see Appendix 1).

1.3 Our members provide a wide range of women-centred front line services across Northern Ireland, including:

- Specialist Advice
- Childcare and Family Support
- Counselling, Support and Advocacy
- Complementary Therapies
- Training & Education
- Health & Wellbeing Programmes
- Personal Development & Employment Support
- Volunteering, Leadership & Empowerment

1.4 WSN aims to achieve social, political and economic justice through the promotion of the autonomous organisation of women. The Network aims to strengthen the collective voice of women's groups and to promote and develop networking opportunities, to enable collective action and to impact upon policy and decision making processes. WSN provides an accessible, feminist, relevant and high quality support service and resource for its member groups. The Network is also an important information resource on issues relevant to community based women's organisations and for other infrastructure groups, nationally and internationally.

1.5 Over the past 30+ years, the community based women's sector has developed a range of childcare, support, advice, and education & training services in response to the needs they identified at a grass roots level. Women's groups continue to meet the particular needs of women and their children living in areas considered to be some of most affected by the conflict, and recognised as some of the most disadvantaged areas across Northern Ireland today.

1.6 Network members are actively engaged with their local communities, cross-community initiatives and regional structures throughout Northern Ireland.

2.0 Comments

2.1 WSN welcomes the opportunity to submit a written submission to the Committee for Justice on the Justice (Northern Ireland) Bill 2010. Our comments focus mainly on the clauses in the Bill

relating to the offender levy, special provisions relating to sexual offences, alternatives to prosecution and legal aid.

2.2 WSN notes that clause 9 of the Bill covers special provisions relating to sexual offences. This clause enables adult complainants of sexual offences to automatic entitlement of video recorded evidence in chief. However this clause cannot be availed of in proceedings taking place in a Magistrates Court. WSN wishes to highlight a response to the Northern Ireland Law Commission's consultation on "Vulnerable Witnesses in Civil Proceedings" by Women's Aid Federation Northern Ireland which notes that it is wrongly assumed that civil proceedings are unlikely to deal with evidence in cases involving sexual offences.[1] WSN believes that this clause fails to recognise that in domestic violence cases, there is often an element of sexual violence involved. Women seeking non molestation orders in Magistrates courts may have been subjected to sexual violence by respondents. These special provisions in clause 9 should be extended to cases of non molestation orders in Magistrates courts.

2.3 WSN welcomes that the Department is seeking to find alternatives to prosecution; however we are concerned that the clauses in the Bill relating to alternatives to prosecution (Part 6, clauses 64-75) focus mainly on financial penalties. WSN is in favour of the creation of alternatives to prosecution for minor offences, given the impact of imprisonment of women on children and families. However we believe that financial penalties are not a suitable alternative for all offenders, particularly female offenders given that the recently published "Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour" acknowledges that poverty is one of the prime motivators for women becoming involved in offending behaviour.[2]

2.4 Statistics show that the conviction rate for women (13%) is lower than men, however 20% of women committed to prison in 2009 defaulted on low level fines for minor offences.[3]Whilst it is important that people who commit offending behaviour should make reparations, WSN is concerned that the introduction of fine based penalties is not the most suitable way to deal with minor offences. For example the proposals relating to fixed penalties in clause 64 are designed to deal with offences such as being drunk, shoplifting, criminal damage, disorderly behaviour, breach of the peace, amongst others. However this offending behaviour could be manifested due to complex needs such as poverty, domestic violence, homelessness or mental health problems. WSN is concerned that women with such complex needs may not be able to meet the costs of these fines and the payment of an offender levy.

2.5 Clause 67 of the Bill states that in cases of default or where the person has not requested to be tried, the penalty will be increased by 50% and will be registered as a court fine. Furthermore, given that fixed penalties also attract an offender levy, clause 5 of the Bill states that where a penalty has been increased under clause 67 of the Bill, the offender levy shall be treated as having been increased by the same proportion. Clause 74 states the court may in some cases set aside a fine where it is in the interests of justice to do so, however WSN remains concerned that women, particularly those with complex needs will continue to find themselves in the system, facing custodial sentences. WSN believes that a fixed penalty will not address the causes of offending behaviour. In terms of the Offender Levy, Clause 4 (3) enables a court to remit the levy where a person has defaulted on an fine and in consequence of the default the person has been committed to prison or makes a supervised order. In our view remitting the levy will not address the issues of fine defaulters going through the criminal justice system. In our experience of working with women in disadvantaged communities and often on the margins of financial exclusion, women who are committed to custody as a result of defaulting on fines can't pay, rather than won't pay. WSN also wishes to highlight that in cases involving domestic violence, it is not uncommon for women to be subjected to financial abuse.

2.6 WSN welcomes the recognition that a vulnerable group of people require support that can be provided by conditional cautions set out in Clauses 76-84 of the Bill. However we have concerns

that cautions would continue to bring people into the criminal justice system. WSN supports the view of NIACRO that conditions or intervention should take place before the caution stage for example referral to a support initiative which would divert low level offenders away from the criminal justice system and address the causes of offending behaviour. One example of such an approach is the Women's Community Support Project, a pilot project which is a partnership between Probation Board, NIACRO and Women's Support Network which provides support to women at all stages of the criminal justice process. WSN urges the Committee to recommend that the Bill is amended to ensure conditions are applied before cautions in dealing with low level female offenders and this diversion should also be adopted rather than the imposition of a fixed penalty. WSN strongly believes that women should not be imprisoned for fine defaults and imprisonment should only be used in extreme cases where a non custodial sentence is inappropriate or is not an option.

2.7 Clause 77 (4) of the Bill provides a requirement that an authorised person explains the effect of the conditional caution to the offender and to warn the offender of consequences in instances of failure of non compliance. WSN is concerned that this could be given when an offender is in distress or is experiencing mental health problems, domestic violence or addiction issues. WSN urges the Committee when considering clause 77, to recommend that the Bill ensures that cognisance is taken with respect to persons with mental health and other complex needs to ensure they understand the implications of the conditional caution. WSN also recommends training for authorised persons i.e police officers or persons authorised by the Director of Public Prosecutions on complex needs such as mental health issues, domestic violence and addiction issues and ensuring that women are diverted to appropriate support services.

2.8 Clause 80 (1) of the Bill states that "if a constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, the constable may arrest the offender without a warrant." WSN notes that there is no definition of what constitutes reasonable grounds contained within the clause, nor does it define what constitutes a reasonable excuse. WSN seeks assurances that those accused of non compliance of conditions are afforded every opportunity to provide a reasonable explanation and to have that explanation verified. WSN recommends the Bill is amended to include this safeguard.

2.9 Clause 85 of the Bill introduces a means test for the granting of legal aid in criminal cases and sets out an enabling power for rules to be made to determine legal aid eligibility. WSN is concerned that potentially a person going through the criminal system could have their access to a fair hearing limited. Access to a fair hearing is protected by Article 6 of the European Convention on Human Rights. Article 6 (1) sets out that "in determination of civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." Furthermore Article 6 (3) (c) provides that where a person is facing a criminal charge, they have a minimum right to free legal assistance if they do not have the means to pay for it themselves. WSN wishes to highlight the importance of ensuring the right of access to a fair hearing, particularly for those going through the criminal justice system and ensuring the State complies with its obligations under Article 6 of the ECHR.

2.10 WSN wishes to highlight that in Northern Ireland, some women fleeing domestic violence situations and seeking legal remedies such as non molestation orders or occupation orders may have to meet financial eligibility criteria. However in England and Wales, women in domestic violence situations may not have to meet financial eligibility criteria in seeking such remedies.[4] WSN believes that women suffering from domestic violence should not have to incur financial costs in order to keep themselves safe. Women should not have to choose between the financial stability of her family and her safety and the safety of her family. WSN believes that this Justice Bill provides an ideal opportunity to remedy this situation and we

support Women's Aid Federation Northern Ireland call for the amendment of current civil legal aid rules to ensure women in domestic violence situations have automatic right of access to justice. WSN believes that Justice Bill could be amended to include an enabling power to amend civil legal aid rules and we recommend the insertion of a clause which makes provision for an enabling power to address this issue.

Conclusion

WSN welcomes the opportunity to submit this written submission on the Justice (Northern Ireland) Bill 2010 to the Committee for Justice and we have offered some constructive recommendations as to how the Bill could be improved. We are happy to further discuss these issues if required

[1] Northern Ireland Women's Aid Federation Northern Ireland Response to Northern Ireland Law Commission Consultation of Vulnerable Witnesses in Civil Proceedings, para 6.27

[2] Department of Justice (2010) A Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour, Pg 5.

[3] Ibid,Pg 13.

[4] Since April 2007, the Legal Services Commission in England and Wales has been able to waive eligibility limits for legal representation for victims of domestic violence, see http://www.legalservices.gov.uk/civil/family/domestic_abuse.asp#domestic

Appendix 4

Northern Ireland Assembly Research Papers

15 November 2010

Justice Bill 2010

Analysis of the provisions of the Justice Bill 2010.

Research and Library Service briefings are compiled for the benefit of MLA's and their support staff. Authors are available to discuss the contents of these

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Key Points

The Bill as introduced has been generally uncontroversial and widely welcomed as a positive piece of legislation with cross-community and cross-party support, albeit as an eclectic mix of provisions relating to a wide scope of justice.

During the second stage debate on the bill some Members did, however, express concerns as to proposals, such as the use of solicitor advocates, which did not form part of the bill.

Much of the content of the Bill mirrors legislation which already exists in Great Britain and concerns have been raised there that legislative reform has been driven by the interests of economy rather than justice.

In general terms, the research contained in this paper highlights issues not in relation to the legislative provisions themselves but rather in their application. The identification across agencies of victims and intimidated witnesses, for example, has been regarded as an ongoing problem in England and Wales. In relation to alternatives to prosecution, their use for what some consider to be inappropriate offences was identified as an issue, in spite of the existence of guidance. Implementation of the victim surcharge in England and Wales too was problematic, as HM Courts Service did not have computer systems capable of accounting for or keeping track of surcharges when the scheme was introduced.

As significant elements of the Bill mirror legislation already introduced in England and Wales, it might be expected, however, that knowledge of the existence of such problems in other jurisdictions will enable their prevention here.

Executive Summary

The Justice Bill 2010 was introduced in the Assembly on 18th October. It consists of nine parts and seven schedules. This paper provides information relating to the key provisions contained within the bill.

Offender Levy

The Bill provides for an offender levy which is to be imposed as a financial payment to acknowledge the suffering of victims and to contribute to a fund to assist victims of crime. The paper describes the operation of the levy as set out in the Bill and identifies similar charges in other jurisdictions. The paper notes the view, expressed by some consultees, that the offender levy is additional punishment and that the funding of services should be separate from a restorative approach of offenders acknowledging harm caused by their actions. The paper also notes the suggestion that the levy should not apply to what some refer to as victimless crime, such as minor road traffic offences. Once the principle of imposing a levy on offenders to support victims and witnesses has been accepted, however, questions relating to the application of the levy remain. The paper identifies variations in amounts of levy and breadth of application. The

paper also highlights difficulties relating to the collection of the levy on its introduction in England & Wales.

Vulnerable and Intimidated Witnesses

The Bill introduces special measures which are to be used for vulnerable and intimidated witnesses, such as children, including the presence of a supporter during live links, video-recorded evidence and intermediaries. It also provides for the expansion of the use of live link facilities in courts to enable witnesses to give evidence from outside the court environment. The paper highlights findings from the 2006 Home Office report Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies[1], which influenced development of the provision in England and Wales which are mirrored in the Justice Bill.

Live Links

The Bill sets out provisions to expand the use of live links in courts. The paper outlines concerns that their use might dilute defendant's evidence and impact on convictions.

Policing and Community Safety Partnerships

The Bill merges the functions of District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs) into single bodies, as is the case in Britain and the Republic of Ireland. The provisions directly carry over those of the legislation which established the DPPs and CSPs. The paper outlines how these bodies compare with other jurisdictions and in particular, how those in England and Wales have stronger scrutiny powers than those envisaged in the Bill.

Sport

The Bill introduces several new offences:

- Offensive chanting
- Missile throwing
- Unauthorised pitch incursion
- Offences relating to having alcohol, bottles and flares and being drunk at sporting events and in transport to and from matches
- Ticket touting
- Football banning orders

The paper describes these new offences and how they are legislated for in England and Wales with relevant tables outlining numbers of arrests in relation to offences committed at or around certain football matches. It's not anticipated that these new offences will have the volume of arrests that have occurred in England and Wales. Issues raised include status of registered clubs inside grounds and possible commercial effects of an alcohol ban; definition of being drunk; problems with alcohol in the vicinity of grounds; the fact that ticket touting is not a particular problem for Northern Ireland compared with England and Wales; whether in regard to football banning orders, like the situation in England and Wales, the PPS or PSNI should be able to apply to courts for a banning order regardless of an offence being committed.

Alternatives to Prosecution

The Bill provides for the following alternatives to prosecution:

Fixed penalty notices

Conditional cautions

Penalty Notices for Disorder

The Bill sets out provisions for fixed penalty notices. The paper highlights a number of issues relating to their use including; characterisation as pay-as-you-go crime; concerns that they amount to sentencing but out of the public view without the benefit of independent, judicial scrutiny; inappropriate use in spite of guidance; and failure to address underlying problems of those committing crimes. The paper also notes evidence suggesting that out-of-court penalties are expanding the number of offenders who are dealt with rather than being used as an alternative to prosecution.

Legal Aid

The Bill makes provision for three reforms to legal aid:

- Enabling power to means test applicants' incomes;
- Enabling power for an order to recover costs of legal aid; and
- Repeal of prohibition on NILSC funding services under Litigation Funding Agreements.

The paper briefly outlines how similar provisions have worked in England and Wales and includes concerns from the legal profession regarding changes to Litigation Funding Agreements.

Miscellaneous Provisions

Changes to bail law in regard to repeat bail applications and applications for compassionate bail. The Bill also makes amendments to court membership in regard to the Crown Court Rules Committee and Court of Judicature Rules Committee. The Bill provides for Access NI to issue a copy of a criminal conviction certificate to an employer in addition to issuing the certificate to the applicant and the Northern Ireland Law Commission is no longer required to produce a full set of audited accounts

Contents

1. Victims and Witnesses: Clauses 1-13.

This opening section of the paper will outline provisions for the Offender Levy and Victims of Crime Fund as well as measures to protect vulnerable and intimidated witnesses.

1.1 The Offender Levy: Clauses 1-6

This initial section will examine the Offender Levy and Victims of Crime Fund provisions to be included in the Justice Bill (NI) 2010. The offender levy seeks to introduce a mechanism whereby offenders pay a financial levy which acknowledges the harm caused by the offence they have committed, although this is not intended as reparation. That offender levy is then directed to help finance support services to all victims and witnesses of crime before, during and after trial.

At present victims of crime, if eligible, can receive compensation from the Northern Ireland Compensation Agency or directly from an offender through Compensation Orders passed by the court. These compensation arrangements will still remain in place after the introduction of the levy.

This section also outlines how similar levies operate in England and Wales, New Zealand and Sweden to examine best practice and then assesses the principal themes of offender levies with examples from various jurisdictions.

1.2 Proposed Offender Levy for Northern Ireland

The provisions introducing an offender levy for Northern Ireland stem from a commitment outlined in the strategy – 'Bridging the Gap'. This strategy, published in 2007, seeks to improve criminal justice services to victims and witnesses of crime in Northern Ireland, with the ultimate aim of increasing satisfaction and confidence in the criminal justice system[2]. The Victim and Witness Task Force (VWTF) is responsible for managing and implementing the strategy through the Victim and Witness Strategic Action Plan 2010-11[3]. The VWTF is a sub-group of the Criminal Justice Board for Northern Ireland. It is chaired by the Department of Justice and is made up of representatives of the:

- Police Service of Northern Ireland;
- Public Prosecution Service;
- Northern Ireland Courts and Tribunals Service;

- Northern Ireland Prison Service;
- Probation Board for Northern Ireland;
- Youth Justice Agency;
- Victim Support Northern Ireland; and
- National Society for the Prevention of Cruelty to Children.

The offender levy proposals will apply to the following court proposals and non-court based penalties:

- Immediate or suspended custody or detention;
- Community sentence;
- Court-imposed fine;
- Prosecutorial fine – these fines are to be introduced as part of the forthcoming 'Alternatives to Prosecution' policy measures. They will be applied by the Prosecutor at prosecutorial decision stage and used as a diversionary measure to prosecution through the court;
- Endorsable Fixed Penalty Notice (EFPN) for a road traffic offence;
- Conditional offer of fixed penalty (speed camera detections);
- Fixed penalty fine – these are on-the-spot fines also to be introduced as part of the forthcoming 'Alternatives to Prosecution' measures. They will assist police in dealing with a specified range of low level offences; and
- Fixed penalty notice for a Departmental type case (for example Driver Vehicle Agency which is introducing fixed penalties for road haulier offences).

This covers the full range of disposals that are currently available across the magistrates and Crown Courts as well as penalties that can be used outside of the court system through existing Fixed Penalty Notices and new alternatives to prosecution mechanisms which are also part of the provisions of the Bill.

Where the levy is applied for more than one sentence it will be attached to the principal (most serious) offence[4]. This means that the levy the offender is liable for will always be at the higher range of the scale. The levy will only be applicable to those aged 18 and over.

Offender levies can be applied as either a flat rate or a tiered rate across all disposals. The imposition of a flat or fixed rate would equate all disposals as the same for the purposes of the levy, meaning that more serious offences that caused more harm would be subject to the same levy as less serious offences.

The provisions for Northern Ireland are for a tiered system; the different tiers are set out below. The offender levy would be payable within 28 days; although where a monetary order (fine) is payable by instalment this would also apply to the offender levy[5].

The Bill provides for the following levy rates:

- £5 for an endorsable Fixed Penalty Notice for a road traffic offence, a Conditional Offer of Fixed Penalty for a speeding offence and a Fixed Penalty Fine;
- £15 for court imposed fines and prosecutorial fines;
- £20 for community sentences; and

- £25 or £50 for a custodial sentence (immediate or suspended)

As a result of concerns raised in both the consultation and by the Justice Committee the value of the tiers were changed in line with the seriousness of the disposal. There will now be a two tier levy rate for custodial sentences: a £50 levy for those receiving indeterminate sentences and custodial sentences of more than two years and a lower rate of £25 being applied to those serving shorter sentences of less than two years. These amendments aim to reflect the severity of the disposal and the offence. It had previously been proposed that the offender levy for custodial offences would be £30.

Table 1 presents information on the number of disposals given to adult offenders in all courts in 2006[6]:

Table 1 Disposals given to adult offenders in all courts in 2006

Immediate custody	Suspended sentence	Community sentence	Fine	Total
2,115	2,304	1,755	17,119	23,293

Source: Northern Ireland Statistics and Research Branch

On the basis of the proposed rates of levy set out above and the information contained in Table 1, Table 2 indicates that, if the levy had been in use in 2006, potentially £250,000 could have been collected in relation to fines alone.

Table 2 Approx values of the levy if applicable to disposals collected by courts in 2006

Immediate custody	Suspended sentence	Community sentence	Fine	Total
£63,450	£69,120	£43,875	£256,785	£433,230

Figures relating to the new Fixed Penalty Notices in terms of the levy are not included in the data set out in Tables 1 and 2, as they are fines collected outside the court system as part of the alternatives to prosecution. These new alternatives to prosecution disposals, however, will be the subject of the proposed offender levy.

Given that over 37,000 fines remain uncollected[7] in the system from previous years, it may be necessary to treat these projected returns with caution until the effectiveness of the collection system can be assessed. In this context it is worth highlighting that the anticipated collection system for the levy will be same as that currently used to collect fines. In addition, projected start-up costs for the levy collection are in the region of £100,000 with running costs operating alongside the costs for fine collection.[8]

With regard to the offender's ability to pay the levy, the proposals outline specific circumstances in which the court could reduce the amount of the levy or the fine where the offender has insufficient means to pay – these measures include:

- Where a compensation order is to be imposed and the court has determined that the offender does not have the means to pay both the compensation order and the levy, the amount of the levy may be reduced by the court (to nil) if necessary. This will help protect the amount of direct compensation awarded to the victim;

- Where a fine is imposed and the court has determined that the offender does not have the means to pay both the fine and the levy, the amount of the fine and not the levy will be reduced; and
- Where a compensation order and fine is imposed and the court has determined that the offender does not have the means to pay the compensation order, fine and the levy, the amount of the fine and not the compensation order or levy will be reduced.

The Departmental Briefing on an Offender Levy and Victims of Crime Fund outlined that the Payment Priority Order should be:

i. Compensation Order

ii. Levy

iii. Fine

iv. Court costs

This order is designed to place the needs of victims at the forefront in particular the individual victim, through the payment of compensation and then victims as a collective through the payment of the levy.

The Northern Ireland Courts and Tribunals Service (NICTS) will be responsible for the collection of the levy in the same way that fines are currently collected. Where the offender has been given a custodial sentence, the Northern Ireland Prison Service will be responsible for collection.

For those offenders serving a custodial sentence and who have an earning capacity of between £6 and £20 per week in prison then the levy will be deducted from their prison wages at a proposed rate of £1 per week[9]. The payment once collected will be transferred to the NICTS for processing.

The Northern Ireland Human Rights Commission (NIHRC) has highlighted that such deductions could impact negatively on a prisoner in terms of being able to purchase approved items like phone cards and supplementary food[10]. The NIHRC suggests that this may impact more significantly on prisoners who may not receive visits or are vulnerable or at risk. The paper will explore further below the full responses to the offender levy and victims of crime consultation paper.

NIHRC also raises the arguments of the effect of the European Prison Rules, in particular rule 105.5 which states that 'in the case of sentenced prisoners part of their remuneration or savings from this (prison work) may be used for reparative purposes if ordered by a court or if the prisoner concerned consents'[11]. Although this is in contrast to European Prison Rule 26.1 which states that prison work should never be used as a punishment[12]. Therefore if the prison work being carried out is to fulfil payment of the levy is that against the European Prison Rules? The European Prison Rules are not binding in law either nationally or internationally but are intended to serve as guidelines for national administrations and courts.[13]

The offender levy proposals outline that the levy is not to be applied to young offenders i.e. those offenders under the age of 18 years. This is due to the unique restorative approach and disposals available for young offenders in Northern Ireland through the use of Youth Conferencing Orders[14]. The NIHRC outlines that the policy of even fining children should be discontinued[15] – pointing out the large percentage of children in Northern Ireland that live in poverty; 38% in a report commissioned by Save the Children in 2007[16].

1.3 England and Wales – the Victim Surcharge

While Scotland and the Republic of Ireland do not have an offender levy, in England and Wales the Domestic Violence Crime and Victims Act 2004[17] legislated for the victim surcharge. Although the legislation creating the victim surcharge made provision for its use across all court and non-court disposals the victim surcharge is presently only attached to fines resulting from criminal conviction. The victim surcharge is set at a flat rate of £15 on all court-imposed fines.

The Ministry of Justice is giving consideration to extending the victim surcharge to other court-imposed disposals (custodial and community sentences), Fixed Penalty Notices (for defined road traffic offences) and Penalty Notices for Disorder[18]. This would make the victim surcharge more similar to the proposed offender levy for Northern Ireland. In England and Wales custodial (both immediate and suspended) and community sentences would attract a £30 surcharge if the provisions of the 2004 Act are enacted.

In instances where the offender is unable to pay a Compensation Order and the victim surcharge, statutory provision is in place to reduce the victim surcharge to 'nil'[19]. Furthermore where the offender is unable to pay both the fine and the victim surcharge, the fine and not the victim surcharge will be reduced[20]. Therefore the position in England and Wales in this regard is the same as the proposals for Northern Ireland.

The payment priority in England and Wales is the same as the proposals for Northern Ireland i.e.:

i. Compensation

ii. Levy

iii. Fine

iv. Court costs

A major argument against the victim surcharge in England and Wales is that by presently restricting its application to fines only, 'the scheme currently excludes those cases involving the more serious offender, who arguably cause greater harm to victims'[21]. In light of this concern the Ministry of Justice is considering widening the application of the victim surcharge to all other court and non-court disposals.

The victim surcharge serves two purposes:

First, it supports the (non-statutory) Victims' Fund which makes grants, on the basis of an open competition, to community and voluntary organisations providing victim support and services. A sum of £1.75m was allocated for this purpose in 2008-09. Secondly, revenue from the surcharge supports the delivery of a range of cross-cutting victim and witness related initiatives through grants administered by the Office for Criminal Justice Reform (part of the Ministry of Justice). In 2008-09 this included grants of £2.6m to support independent Domestic Violence Advisor services, £3m to the Crown Prosecution as a contribution to the costs of providing witness care units and £7m to the organisation Victim Support for creating a national centre.[22]

Revenue from the victim surcharge is used in two ways: firstly, part goes to the Victims' Fund (which was established to provide support services to victims of sexual offending and childhood sexual abuse operating as an open competition grant scheme); and secondly the remainder

provides support 'via the Office for Criminal Justice Reform to government organisations providing services to victims.'[23]

The Office for Criminal Justice Reform is responsible for victim surcharge policy and administering the Victims' Fund; the revenue from the victims surcharge 'goes into the Consolidated Fund but is ring-fenced through agreement with HM Treasury and the Attorney General's Office, the Ministry of Justice and the Home Office to ensure that it is solely used to support victim and witness related projects'.[24]

In response to a parliamentary question in the House of Commons, the Parliamentary Under-Secretary of State at the Ministry of Justice Lord Bach outlined that the victim surcharge raised £3.8m in 2007/08, the year of introduction, and £8m in 2008/09.[25]

This total of £8m was 50% less than the amount that the government thought would be raised by the victim surcharge, as outlined in the Explanatory Memorandum to the Criminal Justice Act 2003 (Surcharge) Order 2007 No. 707 which states that:

Once fully operational, it is estimated that levying the surcharge on fines or a combination of a fine and compensation order (in either case with or without costs) in this way will generate some £16m a year (net of the costs of collection). If the number of fines increases or decreases, the surcharge raised will be correspondingly more or less. Similarly, if the success of enforcement increases or decreases, the surcharge raised will be more or less.[26]

1.4 Offender Levies Internationally

This part of the paper examines the application of offender levies internationally to outline how they operate and how successful they have been (if this can be determined). Similarities or differences to the proposals for Northern Ireland are also identified.

New Zealand is assessed due its relatively recent introduction. The Sentencing (Offender Levy) Amendment Act 2009[27] introduced the offender levy in October 2009. All offenders sentenced in either the District or High Court must pay an offender levy of $NZ50 (approx £22.50)[28]. This is distinct from the Northern Ireland proposals as a flat levy is being employed as opposed to a tiered levy in Northern Ireland. An obvious criticism of a flat levy is that it treats all offenders equally.

A distinguishing feature of the levy in New Zealand is that 'the courts should not consider whether or not the levy would cause hardship or the financial capacity of the offender in determining the fine'[29]. The proposals for Northern Ireland considered the possible adverse financial implications on offenders subject to the levy where a Compensation Order was also implemented and facilitated the court to reduce the levy as far as nil were applicable.

The levy is not applicable in the following instances:[30]

- Where an offender is discharged without conviction;
- When a youth is sentenced in the Youth Court;
- When anyone is sentenced in the Family Court;
- When an order is set by a Tribunal; or
- To people who have infringement fines (as they are not a sentence from a District or High Court nor do they result from a conviction)

The collection of the levy is similar to the proposals for Northern Ireland with centralised collection but with various district units, in much the same way that the Northern Ireland Courts and Tribunals Service operates centrally but with a presence for collection at regional courthouses. The levy will be collected within 28 days.

The levy in New Zealand will provide additional services to victims not catered for by the accident compensation scheme and revenue is expected to total $NZ13.6m (£6.12m) over the next four years.[31]

In terms of the order of collection of the levy if other monetary orders have been made it's the same as Northern Ireland:

- Reparation;
- Offender levy; and
- Fine

In Sweden a Fund for Victims of Crime is funded by the offender levy; the Fund is non-statutory whilst the offender levy has a legal basis through the 'Decree on the Fund for Victims of Crime'[32]. The Fund has specific aims 'to provide economic support to research, education and information concerning crime victims, development work and programmes aimed at improving the circumstances of crime victims'[33]. These aims and objectives are quite similar to the aims of the proposed Victims Fund in Northern Ireland.

The offender levy in Sweden is only payable by offenders convicted of an offence punishable by imprisonment, with the offender levy fixed at 500 SEK (approx £44)[34]. In Sweden the offender levy takes precedence in terms of collection over both fines and compensation payable directly to the victim.

A centralised enforcement authority is responsible for the collection and enforcement of the levy. However, a novel aspect is that if the levy has not been paid within a specified time limit then 'an enforcement officer is empowered to collect money from a debtor's bank account, deduct money from wages or seize assets in lieu of payments'[35]. In comparison to other jurisdictions these are quite wide-ranging powers of enforcement and can be used in the event of the offender having no extenuating circumstances for failure to pay the levy.

Revenue from the levy is then allocated by the Crime Victim Compensation and Support Authority 'where it is processed and distributed twice a year on an application grant basis'[36]. The most recent available data (2005) indicated that grants made by the Fund amounted to SEK 30m (£2.6m) – with 415 applications granted from 672 applications received.[37]

1.5 Offender Levies: Principal Themes

This part of the paper will outline the principal themes implicit in the operation of offender levies with any relevant examples illustrated.

Imposing a levy on an offender places a requirement on that offender to make monetary reparation in addition to the punishment passed by the court. This levy is then used to contribute to services for victims and witnesses, providing a level of accountability to society and victims as a whole thus 'the criminal justice system is thereby seen to be more balanced in its treatment of victims relative to offenders'[38]. The development of an offenders' levy has been described as 'a natural progression towards strengthening the position of the victim'.[39]

The scope of the offender levy can be either narrow or wide in terms of the offences and disposals covered. Sweden provides an example of the narrow application of the offender levy. In Sweden the levy is only applicable to those convicted of an offence punishable by imprisonment irrespective of whether or not a custodial sentence was passed; this is a reflection on 'the thinking that those convicted of crimes which carry a prison sentence as a punishment are more likely to have inflicted significant harm'.[40]

A further example of narrow application is the victim surcharge in England and Wales which is only attached to those offenders who have been fined by the courts. The United States illustrates broad application of the victim surcharge where all those convicted of an offence are subject to the surcharge and in a novel development the victim surcharge can also be applied to defendants other than individuals[41]. This makes it possible to impose the surcharge on corporations; this is significant in respect of corporations being guilty of criminal conduct in areas like financial services and the environment.

The rate structure of an offender levy or victim surcharge can vary between a fixed rate and a varied/tiered rate. A fixed rate is more simplistic to legislate for and easier to administer because it applies as the same regardless of offence or disposal. However a fixed rate may be interpreted as being unfair as it does not distinguish between the severity of the offence or disposal. In contrast a varied/tiered rate may be regarded as more equitable in terms of distinguishing between the severity of offences but it may be more complex and thus more costly to administer and enforce.[42]

Offender levies contain the provision for judges to waive the payment, either in part or in total, where it is deemed that the offender does not have the means to pay. The only exception found to this waiver was in New Zealand (this is outlined at paragraph 26 above). An example of the levy being waivered extensively is in the province of New Brunswick in Canada where between 2000 and 2005, 66.2% of levies were waived[43]. This was despite no evidence being offered as to the offender's financial hardship which was a provision of the judge's right to waiver the levy. This may have the consequence of devaluing the levy. Where this situation arises potential solutions are to either limit the judge's ability to apply discretion or have more stringent mechanisms to outline financial hardship or lower the amount of the levy.

The prioritisation of payment of the offender levy varies between different jurisdictions. Where either the offender levy or compensation order takes precedence over a court fine, there is an implied correlation between harm caused by the offender and restitution either directly to the victim through compensation or to victims as a whole through payment of the levy[44]. In New South Wales, Australia and Sweden the levy takes precedence over fines and compensation, whereas in England and Wales and New Zealand compensation orders take precedence.[45]

The collection and enforcement of levies and surcharges varies across jurisdictions. In England and Wales the surcharge is collected in the same form as fines and compensation orders. The significant challenge in making these collections for fines, surcharges and compensation orders was reflected in an answer to a parliamentary question in July 2010, where the Minister of State Mr Djanogly outlined that some £597,926,217 was outstanding in financial penalties in England and Wales.[46]

In jurisdictions where an offender levy is imposed on those serving a custodial sentence, the method of collecting the levy from an inmate's wages is straightforward because of the relatively simple process of making deductions from those wages[47]. This forms part of the proposals for Northern Ireland. Some jurisdictions use either special purpose units or separate enforcement agencies to collect levies as well as fines. For example, the Fines Payment Unit in South Australia and Fine Recovery Unit in New Brunswick, Canada[48] have the advantage of clearly defined roles and responsibilities regarding collection.

A number of factors affect the amount of money that is raised through a levy or surcharge namely its structure, value, waiver rate, collection and enforcement mechanisms with the amount of convicted offender's eligible directly affecting the levy.

In most jurisdictions the finances collected from the levy are paid into a Victim's Fund for distribution and allocation, general observations to be drawn from the organisation of victim funds are:[49]

- A fund dedicated to provision of services for the victims of crime is less vulnerable to fluctuations in contributions from tax revenue than a fund which also covers criminal injuries compensation as the proportion of funding from the Consolidated Fund is smaller;
- Victims' funds which include revenue from a proportion of fines paid, seizure of criminal assets, prison inmates' wages and other crime-related revenue in addition to the offenders' levy are equally consistent with the principle that the offender should be accountable to the victim;
- A separate victims' fund provides greater transparency and facilitates demonstration of the scale on which support is being provided to victims;
- If the offender surcharge is paid into the Consolidated Fund, steps should be taken to ensure that the funding for victims' services is protected so that its original purpose of making offenders accountable to victims is not lost.

1.6 Summary commentary on consultation responses

This section of the paper provides summary commentary on the consultation responses to the offender levy and victims of crime consultation paper.

The majority of respondents were supportive of the principle of adopting an offender levy although two respondents expressed reservations, namely that the levy is an additional punishment and that the resourcing of improvements to victims' services should be separate from a restorative approach of offenders acknowledging harm caused by their actions.

In relation to the offender levy being used solely to support victims and witnesses of crime services – respondents concerns focused on the funding remaining additional as opposed to a replacement for existing provisions and that administration costs should not have to be covered by the fund.

With regard to the range of disposals and penalties that the levy will apply to, respondents expressed concern about the application of Fixed Penalty Notices and their financial impact on 'economically disadvantaged offenders' notwithstanding their potential inability to pay the offender levy. Two respondents highlighted that the levy should not be applied to fixed penalties for road traffic offences due to there being no victim and that this could be perceived as an additional tax on motorists.

In consideration of the levy rates opinion was divided. Two respondents thought that the more serious and violent the offence the higher the levy should be. One respondent thought that the rate of levy should be dependent on the offender's salary whilst another felt that the tiered rates could impact on an offenders ability to pay with the potential for fine default.

All respondents, except one, thought that the levy should apply only to the principal offence with one respondent suggesting that the levy should increase proportionately where there is more than one victim.

The majority of respondents were generally supportive of creating a statutory power so that the courts could reduce the offender levy where the offender has insufficient means to pay. Although issues flagged up included how the court would make the decision about the ability to pay, quality of information available and that reduction should only be employed as a last resort or in exceptional circumstances.

Although most respondents were broadly supportive of reducing the levy only when accompanied by a compensation order reservations were expressed by other respondents. The reasons included that the mechanism appeared potentially difficult to administer, that each case should be examined on its merits and that there should be statutory provision to allow the court to waive the levy in the interests of justice.

In relation to the levy being deducted from prisoner earnings whilst the offender is in custody reservations suggested that deductions should only occur when the prisoner is in employment, the potential impact on prisoners' families and on staff/prisoner relations. Furthermore concern was expressed in relation to Rule 26 of the European Prison Rules re standards governing prison work, although not contending that the proposal contravened these rules, that as a prisoner's ability to earn money depended on their behaviour additional deductions may impact on rehabilitation.

Respondents supported the proposal that a statutory priority payment order should be provided to safeguard the allocation of payments to victims and victims of crime fund, although one respondent thought the proposal potentially unwieldy and difficult to administer.

In consideration of whether the rate of the levy should be uplifted alongside the value of the fixed penalty when registered as a court fine no predominant view emerged although two respondents agreed without reservation. Points of disagreement included not uplifting the levy if the offender was in custody, unemployed or economically inactive and that the offender's means to pay should be assessed before uplifting the fine or levy.

More than half the respondents felt that under 18s should be excluded from the paying the levy because generally the onus for payment fell on parents or guardians, with potentially greater impact on those on low incomes or benefits. Although one respondent highlighted the potential benefit on young offenders of recognising harm caused to victims by imposing a reduced levy on those in custody or detention. Another view expressed was that where the offences were serious or repetitive there should be no exclusion and moreover that if young offenders were included then the levy payable should be proportionately lower than for adults.

In relation to equality concerns the consultation identified a greater impact on young males than any other section 75 category because they form the largest grouping in the offending population. Whilst three respondents believed an EQIA is necessary due to the high proportion of the female prisoner population who are in prison due to fine default.

1.7 Vulnerable and Intimidated Witnesses: Clauses 7 – 13

In 2006 the Home Office published a report, Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies[50], in which several problems relating to the provision of special measures for vulnerable and intimidated witnesses in England and Wales were identified;

- Identification of Vulnerable and Intimidated Witnesses is cited as an ongoing problem in England and Wales:

"Early identification by the police and the CPS is vital but the police continued to have difficulty in identifying VIWs, particularly those with learning disabilities, mental disorders or those who are intimidated."

- Cross-agency communication does not always take place which means that even if the police have identified a witness as vulnerable the other agencies working with the witness may not make this identification themselves:

"The police are usually the first agency to provide VIWs with information about the measures available to them and ascertaining their views. They often did not flag up the vulnerability of witnesses to other agencies, thus preventing them from making their own assessment."

- Lack of existing infrastructure to facilitate special measures:

"Video recordings were made of only a minority of VIW interviews, even with child witnesses. This may have been in part because some magistrates' courts did not have the facilities to use videos as evidence during the Phase 2 fieldwork."

- Guidance including a minimum period for advance notice of application for special measures may help prevent applications at a late stage. When applications for special measures are lodged at a late state there will not always be the opportunity to prepare the witness on how the proceedings will occur:

"In many cases the CPS applied for special measures at a late stage, including on the day of the trial. This was accepted practice in relation to measures such as screens, clearing the public gallery and the removal of wigs and gowns. This ignored the value to VIWs of knowing what will happen in court well in advance of the hearing."

- The right to a fair trial versus the rights of the witness:

"The CPS did not make applications for some prosecution witnesses because defendants were also VIW and they sought parity of treatment. If special measures were available to defendants this problem would not arise."

- Evidence may be needed to access the effectiveness of video recorded evidence versus live evidence:

"Video recorded evidence and the live television link (CCTV) were highly regarded by practitioners and VIWs who used them. Some practitioners had reservations about televised evidence because they thought it was less convincing than 'live' evidence. There is no research evidence to indicate that acquittals are more likely using these methods, however."

- Alternatives to video recorded evidence may be preferable to the witness:

"Screens were less highly regarded by most agencies. However, for VIWs themselves there were advantages – screens shield VIWs from the defendant's view whereas CCTV does not."

If the Bill is passed in its current form it will mean an addition to the Criminal Evidence (Northern Ireland) Order 1999 allowing for examination of the accused through an intermediary.

The Department for Justice set out proposals for supporting Vulnerable witnesses in their Victim and Witness Strategic Action Plan 2010-11 in which they committed to the following action points:

"Recognise, and be responsive to, victims' and witnesses' individual needs to ensure that the most appropriate level of support can be provided before, during and after court proceedings;

Developing a model for the provision of an Intermediaries Service to help vulnerable witnesses. Intermediaries will facilitate communication between the police, prosecution and defence legal teams and/or the court and a witness to ensure that the communication process is as complete, coherent and accurate as possible;

Extending the availability of special measures for vulnerable witnesses in criminal cases, both to protect them and to enhance the quality of their evidence."

The Department consulted on the proposed changes to the legislation on vulnerable and intimidated witnesses between March and May 2010. The responses to this consultation have been included in the following commentary.[51]

1.7.1 Children[52]

Looking at the consultation responses to the Department of Justice consultation on the introduction of statutory special measures to assist vulnerable witnesses, raising the age limit from 17 to 18 to allow young witnesses to qualify for special measures received widespread support. This measure is in line with the upper age limit of a child as determined by the youth court and definition of a child in the United Nations Convention on the Rights of the Child.

In Scotland special measures automatically apply to children up to the age of 16 while in England and Wales special measures apply up to the age of 17.[53] [54]

Child witnesses would be provided with the opportunity to decline special measures, subject to the courts approval that this would not diminish their evidence. The Courts are given specific criteria in how they should determine whether or not the witness should be allowed to decline special measures. The Department have commented in the consultation response summary document that;

"In relation to the concerns raised about possible abuse of allowing for a more flexible system, it should be noted that the presumption will remain in the legislation that young witnesses will give video recorded evidence in chief and further evidence by live link."

Again in response to the Department of Justice consultation this measure was given wide support in the context that it gives the witness a more flexible approach.

The age of a Child Complainant in the Criminal Evidence (Northern Ireland) Order 1999 will be amended by this Clause from '17' to '18'. This was given broad support by respondents to the Department's consultation.

1.7.2 Sexual Offences[55]

This provision allows for adult complainants to give video recorded evidence in chief with the exception of proceedings in a magistrates' court. There was overall support for this Clause as it might address the rate of complainant withdrawal from giving evidence. Some respondents were concerned that it may compromise the defendant's right to a fair trial.

1.7.3 Support, video evidence and intermediaries[56]

The presence of a supporter in the live link room is formalised in the legislation. Looking at the consultation responses to the Department of Justice consultation on the introduction of statutory special measures to assist vulnerable witnesses, this clause received widespread support. The Department commented that there would be guidance provided on who can act as a supporter; what skills are needed to fulfil this role; and what the required standards for the supporter's conduct are.

Restrictions are to be relaxed on giving evidence in addition to video evidence in chief which are contained within the Criminal Evidence (Northern Ireland) Order 1999;

(b) the witness may not give evidence in chief otherwise than by means of the recording—.

(i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or

(ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.[57]

This Article is amended so that issues which have already been dealt with in the recorded testimony are no longer restricted in terms of supplementary evidence in chief. There no longer needs to be a material change to the substance of the evidence for supplementary testimony to be approved by the court.

Some respondents to the Department's consultation were concerned that this amendment would impact on the defendant's right to a fair trial but the majority of respondents were content with this amendment.

The purpose of an intermediary is to act as a facilitator to communicate on behalf of the accused. If for reasons of age, mental health, learning impairment or social functioning, the witness is unable to participate effectively in the court proceedings then an intermediary may be used in order that the defendant receives a fair trial.

The intermediary can be discharged of at any time throughout the proceedings if it is thought to be unnecessary in order for the defendant to receive a fair trial; the intermediary can also be reinstated at any time.

Respondents to the Department's consultation were broadly in favour of the establishment of an intermediaries' service but were particularly concerned about the need for guidance on the role of an intermediary, including who can act as an intermediary, their training and how this would be resourced.

2. Live Links: Clauses 14 – 19

This part of the Bill aims to expand the use of live link facilities in courts. Live link is where a room is provided outside the court to enable the witness to give evidence via a live television link to the courtroom. The witness will be able to see those in the courtroom and those inside, including the defendant, will be able to see the witness via the television screen. The proposals will enable live links to be used not only by witnesses but also by vulnerable defendants and patients with mental health problems.

Six provisions are included:[58]

- Providing live links between courts and psychiatric hospitals for patients detained under Part 3 of the Mental Health (Northern Ireland) Order 1986;[59]
- Strengthening live links at preliminary hearings in the High Court by putting them on a statutory footing as opposed to the court's inherent jurisdiction;
- Extending live links at preliminary hearings on appeals to the county court where the appellant is likely to be in custody;
- Providing live links at sentencing hearings on appeals to the county court where the appellant is likely to be in custody;
- Extending the use of live links in the Court of Appeal in relation to specified criminal appeal proceedings if a party to those proceedings is likely to be in custody; and
- Making provision for an accused person of any age who has a physical disability or suffers from a mental disorder to make an application to the court to give evidence through a live link. This relates to proceedings in the magistrates' court, Crown Court and any appeals in the county court. The court must be satisfied as to the physical or mental disability and that it's in the interests of justice to provide a live link.

The six clauses as a package 'are designed to increase the use of live links in courts, prisons and now hospital psychiatric units providing a cost effective and secure means for patients/prisoners to participate in hearings'[60]. These provisions do not prevent a defendant or patient from retaining the right to attend a hearing or consult privately with their legal representative before, during or after a live link.

At a recent Agenda NI conference (October 2010) 'Examining the Justice Bill', the Chair of the Bar Council, Adrian Colton QC, commented that the use of live links had the potential to dilute evidence and warned of the potential danger of live links becoming the norm for vulnerable witnesses. Mr Colton also outlined that video link evidence may have less impact on the jury and that vulnerable witnesses can be protected from unreasonable questioning by counsel due to the role of the trial judge.

3. Policing and Community Safety Partnerships: Clauses 20 - 35

Part 3 of the Bill proposes to merge the functions of the existing Community Safety Partnership (CSP) and District Policing Partnership (DPP) in each local authority area into a single Policing and Community Safety Partnership (PCSP) and sets out functions, duties and codes of practice of the new body.

Partnerships for policing have been introduced in a range of contexts following conflict as a mechanism for establishing new ways of working to deal with legacies attached to the role of police in conflict[61]. However, there is also a body of literature that promotes such partnership working between police and communities as a means for addressing local problems related to crime with local solutions devised by local people.[62]

The DPPs and CSPs in Northern Ireland emerged from the Belfast Agreement 1998, where the DPPs were a recommendation of the Patten Review in 1999[63] and CSPs being developed from the Community Safety Strategy of 2002[64], following a recommendation in the Criminal Justice Review of 2000[65]. The former were established in legislation by the Police (Northern Ireland) Act 2000 (Sections 14-19) and the latter by the Justice (Northern Ireland) Act 2002 (Section 72). However, the Review and the Community Safety Strategy only saw the CSPs as an interim measure pending the implementation of the Review of Public Administration (RPA), suggesting

they be merged with the DPPs, as has also been recommended by successive reports by Criminal Justice Inspection Northern Ireland[66].

The consultation document produced in 2010 proposed merging the DPPs and CSPs for the following reasons:[67]

- For a more joined up approach;
- To complement the introduction of community planning;
- Streamlining to make better use of resources; and
- There is a consensus to move to single partnerships

Indeed, responses to the consultation were generally in agreement with moving to single partnerships and the lack of implementation of the RPA was not seen as a hindrance to doing so.[68]

Single partnerships are the norm elsewhere in these islands:

England[69] - Crime and Disorder Reduction Partnerships (CDRPs) are located within local authority areas for the development of strategies to reduce crime. These are established through the Crime and Disorder Act 1998[70] and the Police and Justice Act 2006. The Home Office has recently been consulting on 'removing unnecessary prescription' on the operation of CDRPs, proposing to repeal regulations governing them, to afford greater flexibility at the local level.[71]

Wales[72] - Community Safety Partnerships (CSPs) in Wales are governed by the same legislation as in England and are likewise located at local authority level, but the devolved administration monitors the performance of CSPs in partnership with the Home Office, with which some of the devolved responsibilities overlap.

Scotland[73] - The Community Safety Partnerships (CSPs) in Scotland are similar to those in England and Wales at the local authority level, except they are not governed by the same legislation. Co-ordination and strategic guidance are undertaken by the Community Safety Unit in the Scottish administration.

Republic of Ireland[74] - Community safety is the remit of the Department of Justice and Law Reform. A National Crime Council report of 2003 recommended a structure of Crime Reduction Sub-Committees for each county and city area[75]. Joint Policing Committees were established in each local authority area by the Garda Síochána Act 2005[76] and a discussion document of 2009[77] and associated responses found this structure of local partnerships the most effective method of tackling crime.[78]

The proposed legislation reflects some of the models from other contexts and feedback from the consultation process. The proposed model is at Figure 1.

3.1 Functions

Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) are to be merged into Policing and Community Safety Partnerships (PCSPs), with District Policing and Community safety Partnership (DPCSP) in each policing district in Belfast[79]. This is in line with the situation elsewhere and with the majority of consultation responses, however, there were some concerns that the level of accountability of the police, for which the partnerships were envisaged, would be diluted by the reduction in the number of bodies[80]. The PCSPs are under the control of a joint committee of the Policing Board and the Department of Justice.

The functions of the PCSPs are:[81]

- Provide views on policing matters[82]
- Monitor performance of the police[83]
- Make arrangements for obtaining the co-operation of the public on crime prevention and community safety[84]
- Make arrangements for obtaining the views of the public on crime prevention and community safety[85]
- Act as a general forum for discussion[86]
- Prepare plans for reducing crime and enhancing community safety[87]
- Identify targets relating to plans[88]
- Provide financial or other support to initiatives to reduce crime and enhance community safety[89]
- Other functions conferred on the PCSPs by statutory provision[90]

The first three functions are 'restricted functions' for the policing committee of the PCSP, being the DPP functions that are not considered appropriate for the full Partnership. The CSP function to conduct research into the issues people in the area feel ought to be addressed[91] is missing from the list. The functions of the Irish Joint Committees are to review patterns of crime, give advice, arrange public meetings and the additional function to establish and co-ordinate local policing fora[92]. Partnerships in England and Wales have the additional function of making reports or recommendations to the local authority for action[93].

The functions listed above reflect the original functions of the DPPs and CSPs, as indicated in the Police (NI) Act 2000 and Justice (NI) Act 2002 respectively, to provide views, monitor performance, obtain views and co-operation of the public and make plans with targets. The legislation for England and Wales is stronger in the Police and Justice Act 2006, which empowers the equivalent committees to review or scrutinise decisions made or actions taken in relation to crime and disorder functions and to make reports or recommendations to the local authority[94]. In turn, the local authority is accountable to members of the public to provide answers, through the committee if applicable, on matters relating to crime and disorder[95]. The scrutiny powers and accountability to the public features of the Bill are therefore weaker than those in place in England and Wales.

The Bill is made more complex by the repetition of provisions for the Belfast PCSP with two DPCSPs.[96] However, this may facilitate the amalgamation of PCSPs in the event of the implementation of RPA, creating two tier systems, as has happened in England, where the merging of Partnerships for resource reasons has been possible at the strategic level, but there remains a necessity for closer local partnership for connection with communities on the ground. Figure 2 shows policing districts in Northern Ireland, with two districts for Belfast.

A code of practice for partnerships is to be issued by the joint committee, which may include the following[97]:

- Procedures for meetings
- Holding of public meetings
- Notice of meetings
- Submission of reports to the PCSP or DPCSP

- Arrangements for putting questions to the police
- Monitoring of the police by the policing committee
- Arrangements for consultation and discussion with the public
- Dealings with the Policing Board, department and joint committee

The same provisions are in the current legislation for DPPs[98]. There is no such code of practice in the Irish legislation, but that for England and Wales includes 'regulations' to be issued by the Secretary of State, which may include co-opting additional members, the frequency of scrutiny, information required to be provided, restrictions on information provided, arrangements to summon employees of the responsible authorities, referral of matters to the local authority and periods of reporting and receiving information.[99]

Policing committees may make arrangements to facilitate consultation within local communities, for which bodies may be set up[100]. The Policing Board must give approval for such actions and may pay reasonable costs, or the Board may intervene itself if it is felt that insufficient consultation has taken place. This is a new function that may equate to the power of Irish Joint Policing Committees to establish local policing fora[101], although in this case with deference to the Policing Board.

Public bodies have a statutory duty to have due regard for the impact of actions on crime and disorder and to promote community safety[102]. Guidance on how to comply with this duty may be issued by the Department of Justice in consultation with other Departments. This is a new provision, which is already included in the legislation for England and Wales[103] and the Republic of Ireland[104], with the exception that the Northern Ireland legislation will impose a duty on all public bodies, the British and Irish provisions only covering local authorities.

Schedule 1 gives additional provisions of the PCSPs, with Schedule 2 providing the same for DPCSPs. This equates to Schedule 3 of the Police (NI) Act 2000, which sets out additional provisions for DPPs. Schedule 8 of the Police and Justice Act 2006 sets out further provisions for Partnerships in England and Wales, but is less prescriptive than that of the Bill, allowing for more flexibility at local authority level, and legislation for the Republic of Ireland gives suggestions for guidelines to be issued by the Minister for Justice and Law Reform[105].

Provisions cover interpretation of terminology, Partnership composition, appointment of political members, independent members, representatives of designated organisations, removal of members, disqualification, establishment of chair and vice-chair, procedure, constitution of the policing committee, procedure for the policing committee, other committees, indemnities, insurance, finance, validity or proceedings, disclosure of interests, joint PCSPs and the Belfast PCSP.

3.2 Membership

PCSP composition is to be 8, 9 or 10 political members, the number of independent members to be one less than the number of political members and at least four representatives of organisations[106]. This gives a minimum composition of 19 members, compared with 15, 17 or 19 for the DPPs[107]. Representatives of organisations are a new addition, DPPs only having political and independent members. The policing committee will comprise the political and independent members only[108]. The composition is a reduction from the original proposed 32, in response to the suggested numbers of between 12 and 25 during the consultation[109]. Membership is shown at Figure 3.

Concerns raised during the consultation that certain groups need to be assured places in the PCSP, such as Trades Unions[110], minority groups[111] or women[112], are partly reflected in the necessity for the PCSP to be 'reflective of the community in the district'[113], but there is no specific provision for, say, a gender balance. The reduction in the number of bodies, which will reduce again in the event of the implementation of RPA, reduces the number of places available for diversity of representation.

3.3 Accountability and Oversight

PCSPs are required to issue annual reports within 3 months of the end of the financial year[114]. This is the same provision as the current legislation for both DPPs[115] and CSPs[116]and for the Irish Joint Policing Committees[117].

There are obligations for additional reporting by the PCSPs to the joint committee, Belfast PCSP to the joint committee, DPCSPs to the Belfast PCSP, policing committees to the Policing Board, the policing committee of the Belfast PCSP to the Policing Board and the policing committee of the DPCSPs to the policing committee of the Belfast PCSP when required[118]. The reporting establishes a level of accountability of the Partnerships to the Policing Board and echoes the provisions for DPPs under the existing legislation[119], albeit under the more complex arrangements of the PCSPs, DPCSPs and associated policing committees. The British and Irish legislation does not contain this level of scrutiny of Partnerships, rather the focus is on the scrutiny by the Partnerships of the police.

The joint committee must ascertain the level of public satisfaction with the Partnerships and the Policing Board must do the same with the policing committees[120]. This is a new level of scrutiny which is not contained in the British or Irish legislation.

Concerns were raised during the consultation that the proposed models appeared to reflect the more 'closed' model of the CSPs[121], rather than the more public DPPs, consultees generally in agreement that the functions of both Partnerships are retained[122]. The nested model of a policing committee within the wider Partnership appears to incorporate most functions of both, with some exceptions, such as the loss of the research function.

Accountability was also a theme raised in the consultation, with hopes of streamlining[123]. PCSPs will be located at local authority level, but will report to the joint committee, which comprises representatives of the Department and the Policing Board (see Figure 1). Funding will also be provided from both the Policing Board and the Department[124].

Figure 1: The Proposed Model for Policing and Community Safety Partnerships[125]

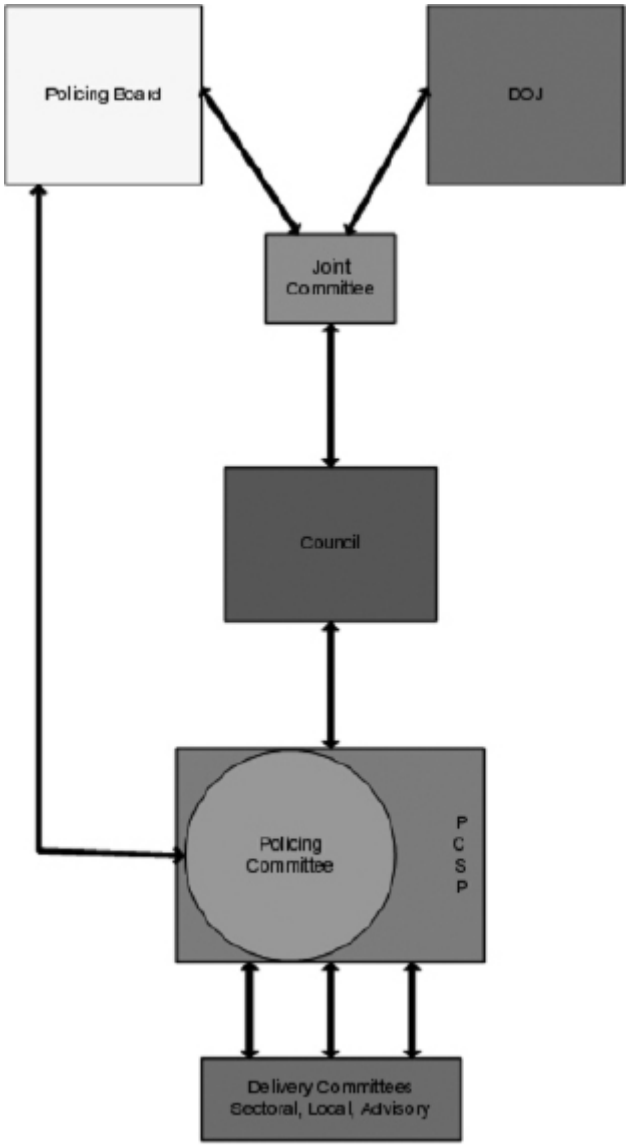

Figure 2: Police Districts in Northern Ireland[126]

Figure 3: Policing and Community Safety Partnership Membership

4. Sport: Clauses 36 - 55

This paper assesses the sports law and spectator control provisions to be included in the Bill. Four different provisions will be assessed individually. The purpose of the proposals is to promote good behaviour by fans of certain sports in Northern Ireland, in particular Football, GAA sports and Rugby Union. The aims of the sports law and spectator control provisions 'are to create a safe and welcoming environment at major sporting matches and to tackle violence and bad behaviour'[127].

Within each individual provision the position in England and Wales[128] will be assessed by looking at legislation, outlining incidents that have occurred within any given provision and presenting information in tables for the numbers of various offences committed (this will focus on football as it provides the most up to date and detailed data). The responses to the consultation document on sports law and spectator controls will also be considered. The purpose of the provisions is to provide new criminal laws to complement the sports ground safety regime enacted under the Safety of Sports Grounds (Northern Ireland) Order 2006 (The 2006 Order)[129]. The 2006 Order provides for:

a mandatory sports ground certification scheme to increase safety at Northern Ireland's major sporting events. Alongside the focus on safety at grounds, a key element of the order is the promotion of good behaviour and the combating of misbehaviour among spectators[130].

4.1 New offences of offensive chanting, missile-throwing and unauthorised pitch incursion: Clauses 37-39

The Bill provides that offences should be created covering offensive chanting, missile-throwing and unauthorised pitch incursion. Chanting is considered offensive if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability[131]. The new offence is designed to deal with particular instances of chanting by a spectator or section of a crowd inside grounds; the provision being needed due to the possibility of offensive chanting leading to crowd-control problems which would be counter-productive to the aims of creating a safe and welcoming sporting environment.

The 2006 Order makes provision for spectators to move from spectator areas onto the playing pitch in the event of an emergency, incumbent on this is the removal of barriers that are designed to keep spectators off the playing pitch. The Bill seeks to make it an offence for spectators to enter the playing pitch unauthorised.

In relation to missile-throwing the Bill seeks to allow persons to be prosecuted for throwing missiles or objects onto the playing pitch, whether targeted or thrown aimlessly[132].

Under the provisions, the offences above would be triable summarily in a magistrates' court where the maximum sentence available would be a fine of £1,000. These offences would apply to designated football, GAA and Rugby Union matches[133]. In relation to football, according to the consultation document, this would apply to matches played in Northern Ireland by teams in the Irish Premier League, First Division, Setanta Cup, any Northern Ireland team playing in the Eircom League (e.g. Derry City at present) and the Northern Ireland international team[134]. With regard to GAA and rugby union, designated matches are those matches played at venues in Northern Ireland designated as requiring a safety certificate or with a stand requiring a safety certificate under the 2006 Order; these are grounds that accommodate at least 5,000 people[135].

In England and Wales The Football (Offences) Act 1991[136] makes provision for the offences of indecent or racialist chanting, missile-throwing and going onto the playing area (pitch incursion). The legislation is set out as follows[137]:

Section 2 Throwing of missiles

It is an offence for a person at a designated football match to throw anything at or towards –

(a) the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, or

(b) any area in which spectators or other persons are or may be present, without lawful authority or lawful excuse (which shall be for him to prove)

Section 3 Indecent or racialist chanting

(1) It is an offence to take part at a designated football match in chanting of an indecent or racialist nature.

(2) For this purpose –

(a) "chanting" means the repeated uttering of any words or sounds in concert with one or more others; and

(b) "of a racialist nature" means consisting of or including matter which is threatening, abusive or insulting to a person by reason of his colour, race, nationality (including citizenship) or ethnic or national origins.

Section 4 Going onto the playing area

It is an offence for a person at a designated football match to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, without lawful authority or lawful exercise (which shall be for him to prove).

A high profile example of offensive chanting occurred in England at a Premier League match between Portsmouth and Tottenham at Fratton Park, Portsmouth in September 2008. Former Tottenham defender Sol Campbell was subjected to racist and homophobic chanting from a section of the Tottenham crowd, contrary to the Football Offences Act 1991. Four defendants admitted their role in the chanting by pleading guilty and were handed a three-year football banning order, fined £370, ordered to pay £120 in costs and £15 towards a victim surcharge fund[138]. Magistrate Susan Wardle said:

There were families present, very young children. We also heard from witnesses who found the behaviour disgusting and embarrassing...Whether or not Mr Campbell was offended, decent members of the public found this very offensive and so did the bench. Anyone who indulges in this disgusting behaviour will be dealt with very severely by the courts[139].

The comments above from the Magistrate highlight that the offensiveness of the chanting need not merely apply to the individual concerned but can constitute a criminal offence where members of the public are present or indeed offended.

An example of the courts passing sentence in relation to missile-throwing stemmed from an English Championship match between Cardiff City and Swansea at Ninian Park, Cardiff in April 2009. A 'supporter' pleaded guilty to throwing a missile (piece of chewing gum) onto the playing area contrary to the Football Offences Act 1991 for which he received a three year banning order, £200 fine, ordered to pay £60 costs and pay a victim surcharge of £15[140]. In the same match the referee was injured by a coin thrown from the crowd. This highlights that the courts may impose penalties regardless of the type of missile thrown or previous character of the offender[141].

In relation to pitch incursion a Sheffield Wednesday supporter was found guilty of entering the playing area contrary to section 4 of the Football (Offences) Act 1991; he was fined £150 and ordered to pay £85 in costs and a £15 victim surcharge.

4.2 New offences relating to having alcohol, bottles and flares and being drunk at sporting events and in transport to and from matches: Clauses 41-44

According to the consultation document, the Bill seeks to make it an offence 'to bring throw-able drink containers such as bottles and cans into grounds or to try to gain entry with these items'[142]. Furthermore the provisions exclude the admittance or possession of flares inside grounds. However the use and possession of fireworks are already regulated under existing law in Northern Ireland.

The main focus of this section of the Bill is to control the carrying and consumption of alcohol at certain sports events[143]. This will be applicable not only to the possession of alcohol inside grounds but also on hired transport en route to and from grounds[144]. This would apply to specially hired motor vehicles able to carry 9 passengers or more that are being used to attend a designated match. In relation to public transport under the Northern Ireland Railways By-Laws, it is already an offence 'to be intoxicated or to take alcohol onto trains'[145]. The new offence of being drunk inside a sports ground is also created under this part of the provisions.

In relation to the possession and consumption of alcohol at sports grounds, this 'would include periods before, during and after matches, because alcohol can be a key ingredient in exacerbating disorder on the part of fans, especially at some crucial matches'[146]. Furthermore the Bill sets out to provide that:

Possession of alcohol within the ground and in sight of the pitch would be banned from two hours before the game until one hour after the game. Possession of alcohol in private viewing facilities would have a lesser restriction, with the ban starting 15 minutes before the game and lasting until 15 minutes after the game[147].

In relation to 'private viewing facilities' this relates to corporate boxes which provide corporate entertainment and where spectators can consume alcohol from behind a screen which is not in sight of the playing pitch[148].

The offences would be triable summarily in a magistrates court with maximum penalties as follows:

- Knowingly allowing alcohol on a vehicle, a level 4 fine which is currently a maximum fine of £2,500
- Being in possession of alcohol, flares, etc, either a level 3 fine (currently a maximum fine of £1,000) or three months imprisonment or both
- Being drunk at a ground or in a vehicle, (including travelling outside of Northern Ireland) a level 2 fine (currently a maximum of £500)

These offences would apply to designated football, GAA and Rugby Union matches. These designated matches are those that are outlined above.

In relation to offences of alcohol in transport to and from matches played outside Northern Ireland, the provisions include the designated football matches listed above, GAA matches involving county teams and Rugby Union matches involving the Ulster or Ireland rugby team.

Provision for these offences in England and Wales is legislated for by Sporting Events (Control of Alcohol etc) Act 1985[149]. In summary the legislation is:

An Act to make provision for punishing those who cause or permit intoxicating liquor to be carried on public service vehicles and railway vehicles carrying passengers to or from designated sporting events or who possess intoxicating liquor on such vehicles and those who possess intoxicating liquor or certain articles capable of causing injury at designated sports grounds during the period of designated sporting events, for punishing drunkenness on such vehicles

and, during the period of designated sporting events, at such grounds and, where licensed premises or premises in respect of a club is registered (for the purposes of the Licensing Act 1964) are within designated sports grounds, to make provision for regulating the sale or supply of intoxicating liquor and for the closure of bars[150].

The tables below present information on arrests of football supporters by selected offences (i.e. those discussed above) for the 2008/09 season (the most recent data available):

Table 3 Arrests by selected offence England and Wales International matches 2008/09

Type of offence	International matches (Home)	International matches (Away)
Violent Disorder	4	6
Public Disorder	11	0
Missile Throwing	0	3
Racist Chanting	0	0
Pitch Incursion	0	0
Alcohol Offences	5	0
Possession of Offensive Weapon	0	0
Breach of Banning Order	2	0
Total	22	9

Source: Home Office[151]

Table 4 Arrests by selected offence European Club Competition matches 2008/09

Type of offence	European Club matches (in England and Wales)	European Club matches (outside of England and Wales)
Violent Disorder	13	8
Public Disorder	53	9
Missile Throwing	2	0
Racist Chanting	3	0
Pitch Incursion	6	2
Alcohol Offences	21	8

Type of offence	European Club matches (in England and Wales)	European Club matches (outside of England and Wales)
Possession of Offensive Weapon	3	2
Breach of Banning Order	0	0
Total	101	29

Source: Home Office[152]

Table 5 Arrests by selected offence in Premier League 2008/09

Type of Offence	Number of arrests
Violent Disorder	135
Public Disorder	604
Missile Throwing	19
Racist Chanting	20
Pitch Incursion	92
Alcohol Offences	658
Possession of Offensive Weapon	10
Breach of Banning Order	29
Total	1567

Source: Home Office[153]

Table 6 Arrests by selected offence in Championship 2008/09

Type of Offence	Number of arrests
Violent Disorder	122
Public Disorder	454

Type of Offence	Number of arrests
Missile Throwing	12
Racist Chanting	8
Pitch Incursion	62
Alcohol Offences	272
Possession of Offensive Weapon	4
Breach of Banning Order	24
Total	958

Source: Home Office[154]

Table 7 Arrests by selected offence in League 1 2008/09

Type of Offence	Number of arrests
Violent Disorder	48
Public Disorder	244
Missile Throwing	13
Racist Chanting	5
Pitch Incursion	52
Alcohol Offences	139
Possession of Offensive Weapon	3
Breach of Banning Order	16
Total	520

Source: Home Office[155]

Table 8 Arrests by selected offence in League 2 2008/09

Type of Offence	Number of arrests
Violent Disorder	17
Public Disorder	169
Missile Throwing	2
Racist Chanting	3
Pitch Incursion	25
Alcohol Offences	67
Possession of Offensive Weapon	7
Breach of Banning Order	8
Total	298

Source: Home Office[156]

4.3 Ticket Touting: Clause 45

A new offence of ticket touting for certain football matches to be played inside and outside Northern Ireland will also be created. This is to ensure that fans are properly segregated in football grounds and kept apart if necessary; although this is not widely recognised as being a particular problem for Northern Ireland[157]. These certain football matches include the Irish Premier League, Irish League First Division, any Northern Ireland team playing in the top two leagues in the Republic of Ireland (e.g. Derry City at present), the Northern Ireland international team as well as European club competition matches sanctioned by UEFA. There are currently no plans to add other sports beyond football; however should the need arise, it was stated in the consultation document that 'other sports could be added to the offence and penalty by way of subordinate legislation'[158].

The offence of ticket touting would be triable summarily with a maximum penalty of a £5,000 (level 5) fine.

The offence of ticket touting in England and Wales is legislated for by section 166 of the Criminal Justice and Public Order Act 1994[159] -

Section 166 Sale of tickets by unauthorised persons

(1) It is an offence for an unauthorised person to sell, or offer or expose for sale, a ticket for a designated football match in any public place or place to which the public has access or, in the course of a trade or business, in any other place.

(2) For this purpose –

(a) a person is "unauthorised" unless he is authorised in writing to sell tickets for the match by the home club or by organisers of the match

(b) a "ticket" means anything that purports to be a ticket; and

(c) a "designated football match" means a football match, or football match of a description, for the time being designated under section 1(1) of the Football (Offences) Act 1991

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5000).

Currently "designated football matches" for these purposes are Premier League, Football League, European (UEFA) and international matches played at major grounds. Section 53 of Violent Crime Reduction Act 2006 states:[160] 'updated ticket touting provisions in connection with football to cover unauthorised internet ticket sales and other ticket touting practices designed to circumvent prosecution under pre-existing provisions'[161].

Ticket touting can cause a myriad of problems as outlined by Detective Sergeant Will Hodgson, of the Metropolitan Police's public order crime team:

Ticket touting is not only illegal but can lead to an increase in violence at football games through segregation breakdowns...People who buy from touts run the risk of finding themselves among opposing supporters, being ejected from grounds or not receiving their tickets at all[162].

Fears of violence and hooliganism from unsegregated football supporters are the main considerations behind ticket touting legislation. Financial considerations, in terms of lost revenue, for clubs and associations are also important.

A recent major 'ticket touting' case in England that went before the courts in October 2009 resulted in the defendant being sentenced to 8 months imprisonment and ordered to pay £12,400 within two months. It was alleged during proceedings that the defendant made hundreds of thousands of pounds selling tickets for Premier League and international football matches[163].

Table 9 below presents information on the number of people arrested in connection with Ticket Touting in the 2008/09 football season:

Table 9 arrests for ticket touting in 2008/09

Type of match/competition	Number of arrests
England and Wales internationals	4
European club competitions	15
Premier League	61
Championship	3
League 1	0
League 2	1

Type of match/competition	Number of arrests
Total	84

Source: Home Office[164]

4.4 Football banning regime to ban individuals from attending major football matches in Northern Ireland and abroad: Clauses 46-54

Football banning orders would be available to the courts to deal with persons convicted of a football-related offence. The court could impose a penalty for the original offence as well considering implementing a football banning order which could result in that person being banned from football matches for up to 10 years[165]. The ban would apply to matches involving local teams as well as teams playing in Great Britain where football banning orders are already in place, no equivalent exists in the Republic of Ireland[166].

The football banning order would require the person subject to the order to report to a police station when the designated matches were taking place. There would be no requirement unlike Great Britain for the person to surrender their passport; this would not be an effective control as the result of the number of Northern Ireland residents in possession of a passport from another jurisdiction[167] namely the Republic of Ireland. A football banning order or regime is only effective internationally where other jurisdictions have similar provisions in place. Indeed it has been suggested that further work should be done at European Union level to develop cross-jurisdictional responses to travelling gangs of supporters who may be subject to banning orders in their own country[168].

Breaching a banning order would be triable summarily with a maximum penalty on conviction of six months' imprisonment, a level 5 fine (maximum £5,000) or both.

In England and Wales under the Football Spectators Act 1989[169] (the 1989 Act), the courts have the power to impose football banning orders to help prevent violence and disorder, although this has historically been on a different scale to Northern Ireland[170]. In England and Wales the person subject to the order may have their passport and/or identity card confiscated temporarily when a match is taking place abroad as well as having to report to a police station at the time of the match[171].

Where a person is found guilty of a relevant offence, usually connected to violence or disorder, listed in the 1989 Act although not necessarily linked to football and having been sentenced the courts must also consider imposing a football banning order[172]. The person retains the right to appeal to a higher court.

Furthermore in England and Wales a civil route exists for police to apply to the courts to impose a football banning order, this is not proposed for Northern Ireland nor is a separate authority (the Football Banning Order Authority) to deal with football banning orders unlike England and Wales.

A football banning order may have effect for up to ten years although the person subject to the banning order can appeal to the courts for its termination after two thirds has been served. The banning order can also prohibit the person from using public transport on match days and 'from visiting other potential hotspots, such as town centres, pubs and bars during risk periods'[173].

As of July 2009 there were 3160 individuals subject to football banning orders, 2922 linked to a conviction for violence and disorder and 238 issued on a police complaint[174].

4.5 Commentary on responses to sports law and spectator controls consultation

This part of the paper will examine the consultation responses to the various provisions of the sports law and spectator controls proposals contained in the Justice Bill (NI) 2010.

4.5.1 Offensive chanting, missile throwing and unauthorised pitch incursion

These three proposals were welcomed by all respondents. In relation to offensive chanting one respondent queried the omission of flags and other forms of visual material. It was also suggested that the government should set parameters for what amounted to offensive chanting with agreement in advance from stakeholders like DCAL and the PSNI[175].

With regard to unauthorised pitch incursion there was general support for the proposal. Issues raised included fans being allowed onto the playing area to erect banners before a match began; implications for organisers with regard to insurance and emergency procedures; that the new law should reflect different degrees of incursion for example a distinction between spontaneity and maliciousness and that legislation should be set alongside education and self regulation[176].

In reference to the responses the Minister outlined that he would consider the interface with flags and emblems legislation. In relation to differing degrees of incursion the Minister determined that pitch incursion of whatever nature should become unauthorised and therefore an offence. The Minister recognised the parallel importance of education and self regulation as well as the importance of the PSNI, clubs, association and stewards in the delivery of the proposed new powers[177].

4.5.2 Offences relating to alcohol, being drunk, having bottles and flares at sporting events and in transport to and from matches

Points of contention from respondents related to the status of registered clubs inside grounds, definition of being drunk and clarification on meaning of private viewing facilities. Respondents highlighted that problems with alcohol were as prominent in the vicinity of grounds and whether possession of alcohol outside grounds could be made an offence? A number of respondents outlined potential commercial harm to clubs of an alcohol ban contrasting the situation in England and Wales regarding rugby where no additional liquor related restrictions were in place. Other issues detailed include allowing drinking of alcohol in grounds subject to appropriate controls; more effective controls on bars and pubs in the vicinity of matches and flexibility for corporate facilities regarding alcohol consumption[178].

In reference to banning alcohol on special transport there was broad support. However some respondents outlined that owing to travel times in NI being fairly short the focus should be on drinking in pubs around match venues; difficulty for vehicle operators to comply in practice with proposals in relation to transport to matches and that other match journeys should be included namely RoI international football matches, club GAA matches, all-Ireland rugby matches and matches in GB[179].

Some respondents challenged the suggestion that possession of fireworks is already adequately controlled by legislation in NI. Regarding flares a respondent thought they added to a spectacle and called for investigation into use of flares in controlled area and in reference to drink containers two respondents suggested they should be excluded as a condition of entry as opposed to being an offence[180].

In reply to the responses the Minister outlines that he recognises that the risk of disorder varies between sports and that whilst creating the offence of possession and consumption of alcohol inside grounds there will be a measured and flexible approach to it application. The Minister reinforced the original proposals that in reference to executive boxes or registered club premises the prohibition would only apply 15 minutes before a match starts until 15 minutes after the match finishes. Furthermore the Minister outlined that prohibition periods, after consultation and tailoring to needs, may be amendable by subordinate legislation. Possession of fireworks as well as flares would be made illegal at designated sports matches[181].

4.5.3 Ticket touting

Respondents supported the creation of the offence. Although respondents indicated that it did not cause a particular problem in NI. One respondent indicated that the offence should be extended to GAA and rugby matches with another respondent suggesting an enabling power to extend the offence to other areas like concert tickets if deemed appropriate[182].

In response the Minister confirmed that the offence would only be applicable to football matches. The offence aimed at preventing crowd disorder by keeping supporters separated[183].

4.5.4 Football Banning Orders

Some respondents argued that the banning orders should apply to sports other than football. A respondent contended that the banning order should only be triggered by an offence of violence and not disorder as well. A further respondent queried whether offences committed outside the UK would count. Two respondents felt that the avenue available in England and Wales should be open in NI were an application can be made by the PSNI or PPS to the courts for a banning order without the person having been convicted in NI. One respondent felt that the banning order should have a maximum lifetime term instead of the proposed 10 years maximum. Respondents also outlined that there should be Football Banning Authority either a separate entity or by extending the powers of the body in GB. The effectiveness of good liaison was also highlighted to ensure compliance and consistency[184].

5. Treatment of Offenders: Clauses 56 - 63

This part of the Justice Bill (NI) 2010 makes amendments to sentences for existing offences under the collective term of Treatment of Offenders. In relation to common assault the Bill amends section 42 of the Offences against the Person Act 1861[185] to increase the maximum penalty on conviction from three months to six months. This is in part a response to the increased level of assaults on healthcare workers in the course of their duties.

In 2008 sentencing provision in relation to knife crime and possession of weapons was increased to a maximum of 12 months imprisonment on summary conviction in the magistrates' court, a fine not exceeding the statutory maximum or both and four years imprisonment on conviction on indictment in the Crown court, an unlimited fine or both. However at the time two offences were overlooked namely possession with intent and possession on school premises. The Bill now makes provision for these two offences to be subject to the same maximum penalties both

summarily and on indictment. The original increases were as the result of knife crime becoming an increasing problem.

The Bill proposes to make the offence of hijacking under section 2 of the Criminal Jurisdiction Act 1975[186] eligible for both indeterminate and extended custodial sentences under the provisions of the Criminal Justice (Northern Ireland) Order 2008[187]. This relates to the hijacking of both vehicles and ships and serves to strengthen public protection by now including the offences in the public protection sentences regime.

The maximum period of deferment of sentence will be increased from six months to 12 months except in a case where an interim driving ban is also being imposed. In this instance the maximum would remain at six months. These proposals afford the courts 'a greater chance of seeing if the offender has shown marked and persistent improvement in conduct before sentencing'[188].

The Bill also proposes to add the offences of money laundering, corruption and fraud to the list of offences which can receive a Financial Reporting Order as well as introducing Supervised Activity Orders (SAOs) in respect of certain financial penalties. SAOs 'are available to magistrates' courts in respect of anyone who has had a financial penalty imposed elsewhere in the EU, who then returns or moves to Northern Ireland without having paid the fine, and in respect of whom the penalty is transferred to Northern Ireland'[189].

Two clauses make improvements to sex offending law. Article 27 of the Criminal Justice (Northern Ireland) Order 1996[190] is amended 'so that if a person breaches the conditions of their licence and have no known address in Northern Ireland they can be brought before the court which made the original order'[191].

The Sexual Offences Act 2003[192] is amended to ensure that a district judge (magistrates' court), rather than as at present a Lay Magistrate or district judge, will hear applications relating to closure orders which can close premises being used for activities relating to certain prostitution or pornography offences for up to three months.

6. Alternatives to Prosecution: Clauses 64 - 84

This section of the paper will outline the alternatives to prosecution provided for in the Bill. Two new disposals which aim to provide effective ways to deal with certain types of uncontested non-habitual minor crimes are provided for[193]. The two disposals are: police-issued fixed penalty notices and conditional cautions. In regard to each disposal, the offender will still retain the right to ask for the offence to be prosecuted at court instead. There is no explicit reference to victim's rights in the Bill. The new disposals will only apply to those over 18. The provisions mirror legislation already in place in England and Wales and the paper considers the arguments for their introduction there and information on their operation.

The UK government's case for the introduction and use of alternatives to prosecution was that the courts would be presented with fewer relatively minor offenders. Furthermore the police and CPS could deal with minor offences more effectively and speedily. The then Director of Public Prosecutions (DPP), as Head of the Crown Prosecution Service, Sir Ken McDonald, argued that court time could be freed up by the removal of less serious offences from court lists enabling sentencers to concentrate on more serious offending. Subsequently this could reduce delay in dealing with more serious offenders, shortening periods on remand whilst reducing the prison population with the potential for making overall savings.

The Magistrates' Association, however, has expressed concern that considerable power was being transferred from the courts to prosecutors, stating that:

Whilst the Association accepts the use of fixed penalty and penalty notices for disorder for minor offences, where all who accept them receive the same punishment, it has always believed that where a choice of sentence has to be made, that it is a judicial decision and not one that should be reserved to an arm of the executive[194].

Similarly, Lord Justice Leveson contended, in a public lecture delivered to the Centre for Crime and Justice Studies, Kings College London in 2007 that since the enactment of the Police Justice Act 2006, public scrutiny has been eroded due to magistrates no longer possessing certain powers of enforcement. The 2006 Act extended the provisions for conditional cautions from, for example, writing a letter of apology or payment of a compensation order, to payment of a financial penalty or doing unpaid work not exceeding 20 hours Lord Justice Leveson stated that:

I do not believe that I am alone in expressing concern about these powers. It is not a question of not trusting the police or the CPS, or challenging the will of parliament. It goes back to the origins of our system of summary justice, carried out in public by members of the public, appointed as magistrates, whose decisions can be scrutinised by the public, can be subject of public debate and, if appropriate, appeal to the court in public[195].

In a report by the House of Commons Justice Committee 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System' the DPP in giving evidence to the House of Commons inquiry indicated that conditional cautions would not have the effect of usurping the court and argued that alternatives to prosecution were effective provided that they were transparent and had safeguards built in[196]. The Chief Inspector of the CPS, who is independent of the Service, outlined that prosecution was only one means of enforcement and using alternatives to prosecution brought benefits to the criminal justice system by taking cases out of the system if there was be a fair and just penalty.

In the same House of Commons Justice Committee report, the Chief Inspector of the CPS made the following criticisms of alternatives to prosecution:

- the inconsistency of approach in use of disposals and their operation in reference to geographical application
- inconsistencies regarding the level of penalty for offences that have different levels of severity
- the lack of scrutiny of the disposals to assess how the powers are being used

In particular, he noted that:

'such powers are less subject to judicial processes...I am not satisfied that the present level of checks and balances is sufficient to retain public confidence'[197]

The report by the House of Commons Justice Committee 'The Crown Prosecution Service: Gatekeeper of the Criminal Justice System' concluded by commenting that the use of alternatives to prosecution had transformed the role of the prosecutor and had made a material difference to how the state punishes people. It also noted that if their use prevented people entering or being drawn further into the criminal justice system then this would have benefits not only to potential victims but also to society as a whole if re-offending is subsequently reduced. The report, however, also argued that 'the growth of out-of-court disposals represents a fundamental change to our concept of a criminal justice system and raises a number of concerns about consistency and transparency in the application of punishment'[198].

6.1 Police-issued fixed penalty notices: Clauses 64-75

The Bill contains provisions which mean that, without direction from the Public Prosecution Service (PPS), the police would be able to issue fixed penalty notices to discharge a person's liability for certain offences by paying a fixed penalty within 28 days. The proposed offences are:

- Simple drunk;
- Breach of the peace;
- Disorderly behaviour;
- Obstructing police;
- Indecent behaviour (urinating on the street);
- Low value criminal damage; and
- Petty shoplifting (for first-time offences involving goods of up to £100 recovered in a re-saleable condition).

The offences would have a fixed penalty of either £40 or £80 and if paid on time a record of its issue would be maintained on a database and this would influence decisions on the issuing of fixed penalties for any future offences. However, if not paid within 28 days, the fixed penalty would be uplifted by 50% and registered as a court fine with enforcement through existing fine default mechanisms; by registering the fixed penalty as a court fine it would be recorded on the criminal record. Fixed Penalty Notices will be available to police for issue to individuals aged 18 years and over. A Fixed Penalty Notice would not result in a criminal record unless the individual defaults on payment and fixed penalty notice becomes court registered. The Bill does not provide for the issuing of penalty notices to only first time and non-habitual offenders although this may be subject to guidance.

Tables 10 and 11 below provide information on the number of relevant disposals in both the Magistrates' Court and Crown Court for the years 2007, 2008 and 2009. The offences of purchasing alcohol for a minor and selling alcohol to a minor have been dropped from the original proposals – this could be due to the low level of convictions for these offences within the last three years.

Table 10 – Number of charges disposed of in the Magistrates' Court[199][200][201]

Offence	Number of charges 2007	Number of charges 2008	Number of charges 2009
Simple Drunk	158	136	125
Behaviour likely to cause breach of the peace	95	78	80
Disorderly behaviour	3909	3350	3983
Obstructing police	1141	1033	110
Purchasing intoxicating liquor for a minor	0	1	8
Selling intoxicating liquor to a minor	3	1	0

Offence	Number of charges 2007	Number of charges 2008	Number of charges 2009
Indecent behaviour199	461	389	503
Criminal Damage200	3834	4219	4158
Theft – Shoplifting201	1091	1330	1771
Total	10692	10537	11728

Source: Northern Ireland Courts and Tribunals Service

The figures in Table 1 are based on defendants disposed of in 2007, 2008 and 2009 and defendants may be charged with a combination of offences

2007: 10692 charges relates to 8607 defendants

2008: 10537 charges relates to 8277 defendants

2009: 11728 charges relates to 9369 defendants

Table 11 – Number of charges disposed of in the Crown Court[202][203][204]

Offence	Number of charges 2007	Number of charges 2008	Number of charges 2009
Simple Drunk	0	0	0
Behaviour likely to cause breach of the peace	0	0	1
Disorderly Behaviour	1	0	0
Obstructing Police	43	25	35
Purchasing intoxicating liquor for a minor	0	0	0
Selling intoxicating liquor to a minor	0	0	0
Indecent Behaviour202	0	0	0
Criminal Damage203	150	160	150
Theft – Shoplifting204	4	10	5
Total	198	195	191

Source: Northern Ireland Courts and Tribunals Service

The figures in Table 2 are based on defendants disposed of in 2007, 2008 and 2009 and defendants may be charged with a combination of offences

2007: 198 charges relates to 142 defendants

2008: 195 charges relates to 138 defendants

2009: 191 charges relates to 132 defendants

6.2 Use of Penalty Notice for Disorder (PND) in England & Wales

The provisions contained within the Bill relating to penalty notices mirror provisions contained within the Criminal Justice and Police Act 2001[205]. This part of the paper, therefore, outlines the use of Penalty Notices for Disorder (PNDs) in England and Wales and provides statistical information on their use for a number of police force areas.

PNDs have been applicable since January 2004 to offenders aged 16 years and over for a specified range of low level public disorder offences. They have been used by all 43 police forces in England and Wales and currently apply to 25 offences for example drunk and disorderly and causing harassment, alarm or distress and can be issued for incidents of criminal damage up to £500 and retail theft up to £200[206]. Under section 6 of the Criminal Justice and Police Act 2001, the Secretary of State has the power to issue guidance to the police on the issuing of penalty notices with the latest version being issued in March 2005. This decreased the thresholds for which PNDs could be issued in relation to criminal damage from £500 to £300 and retail theft from £200 to £100. Furthermore the Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004 enabled penalty notices for disorder to be given to 10 to 15 year olds.

PNDs can be for either £50 or £80 depending on the level of offence and are issued at the police officer's discretion working to strict operating guidelines. PNDs must be paid within 21 days and failure to do so will result in court registration as a fine. When a PND is issued the offender must consent to having a DNA sample and fingerprints taken; the offender may refuse the PND with the effect that the offence may be prosecuted through the courts[207].

Included at Appendix 1 are tables presenting information on the numbers of PNDs by individual constabularies in England and Wales. The tables highlight that theft (retail under £200) and drunk and disorderly had the most numerous PNDs in four out of the five constabularies featured. The exception was Greater Manchester Police which had a disproportionately higher number of PNDs for criminal damage (under £500) than the other four constabularies but still a large numbers of PNDs for theft.

In percentage terms there constabularies had drunk and disorderly PNDs as their highest – Northumbria 76%, West Midlands 71% and West Yorkshire 63% whilst the other two constabularies had retail theft (under £200) as their highest percentage – Greater Manchester 60% and Northamptonshire 57%.

On the floor of the House of Commons various issues have been raised in connection with PNDs. In response to a parliamentary question on out-of-court disposals being used for serious offences like grievous bodily harm (GBH), Home Office Minister David Hanson outlined what the government was seeking to achieve through their use. This was swift and effective justice in order to reduce police bureaucracy whilst at the same time not criminalising young people with the process having a positive benefit for victims as their views will be taken into account and notices will not be appropriate where the victim is not compliant[208].

In July 2010, Mr Dominic Rabb MP asked the Parliamentary Under-Secretary of State for Justice (Mr Jonathan Djanogly) whether the government intended to 'reverse Labour's pay-as-you go crime policy'[209] that had led to fewer than half of offenders being brought to justice or passing through the dock of the court. Mr Rabb quoted two incidents: a serial thief being issued with a dozen on-the-spot fines and a man being cautioned for assaulting a pub landlady with a glass. In response Mr Djanogly stated:

The number of out-of-court disposals administered each year has risen by 135% since 2003. Such disposals now account for 40% of all offences brought to justice. However, during the same period, the number of convictions at court has remained broadly stable, suggesting that out-of-court penalties are expanding the number of offenders who are dealt with rather than being used as an alternative to prosecution[210].

Another area of contention surrounds the inappropriate use of alternatives to prosecution (by police and CPS) which leaves victims dissatisfied with the outcome. This was raised by Alan Beith MP Chairman of the House of Commons Justice Committee who was concerned to know what measures were being taken to deal with the problem of out-of-court disposals being used mistakenly. In reply, the Solicitor-General, Vera Baird MP stated that:

I am aware of at least one Chief Prosecutor who has already started to make representations about what he regards as the overuse of fixed penalty notices when he feels prosecutions would be appropriate[211].

6.3 Conditional Cautions: Clauses 76-84

Conditional cautions are the second new alternative to prosecution this is contained in the Bill. Conditional cautions powers, which will be applied by the PPS, will enable prosecutors to apply conditions (either rehabilitative or reparative) to a caution to which the offender must comply or face reconsideration of the original offence. Conditional cautions target different types of offenders from fixed penalty notices, namely individuals who have some history of minor offending. An example of a rehabilitative condition would be enrolment and participation on a programme that addresses offending behaviour e.g. drugs or alcohol misuse programme. An example of a reparative condition would be an apology to the victim or an agreed course of action to make good the harm caused. Conditional cautions would be an additional diversionary disposal available to prosecutors to use alongside adult and juvenile cautions, youth conferencing and Community Based Restorative Justice referrals. Five requirements must be met for a conditional caution to be issued[212]:

- The authorised person has evidence that the offender committed an offence, other than an offence only triable by indictment;
- That a Public Prosecutor decides there is sufficient evidence to charge the offender with the offence and that a conditional caution should be given to the offender;
- That the offender admits to the authorised person that they committed the offence;
- The authorised person explains the effect of a conditional caution and that failure to comply may result in the offender being prosecuted for the offence; and
- The offender must sign a document detailing the offence, admitting the offence, consenting to be given a conditional caution and outlining the conditions attached to the caution.

With regard to the introduction of conditional cautions in England and Wales, the Magistrates' Association indicated that the CPS had taken on the role of sentencers because prosecutors decided whether to use conditional cautions, with the effect being a shift in power from the courts to prosecutors. In the House of Commons Justice Committee report an academic from University of Dundee asserted that the shift to the use of out-of-court disposals represented 'the most important change in criminal procedure in all parts of the UK for the past 100 years or more, but it seems to be largely unnoticed'[213]. This was described as a paradigm shift with the effect that:

Reasons for using (alternatives to prosecution) have expanded from coping with numerous minor regulatory offences by routinisation, to asserting that many "real crimes" (including assaults, breaches of the peace and thefts), simply do not justify a court appearance[214].

The mistaken use of alternatives to prosecution is a concern where the offence committed is serious and this issue has been raised in House of Commons by Dominic Grieve MP. He referred to two serious offences that resulted in a caution; namely a 15 year old boy cautioned for rape and a man cautioned for assaulting a woman in a pub with a glass object and asked whether this was the Minister's idea of summary justice. The Minister responded by stating:

We have made it absolutely clear that there is a place for out-of-court disposals and for cautions. They are not for serious, violent offences, and that is why my Right Hon. Friend the Justice Secretary has announced a review of the circumstances in which out-of-court disposals are used, and whether they are being used ppropriately. If they are being used for serious, violent offences, as has been stated over the past few days that is exactly why we need to review them[215].

Table 19 shows the type and number of conditional caution issued under legislation in England and Wales over a twelve-month period. The figures indicate a decline in the number of conditional cautions issued in comparison with the previous twelve-month period and that over 50% of such conditions have been the payment of compensation.

Table 19: Type of Condition Attached to Cautions over a 12-Month Period – 2009-2010 and 2008-2009

Type of Conditional Caution		**Oct 2009-Sep 2010**	**Oct 2008-Sep 2009**
Rehabilitative	Drug intervention programme	612	1078
	Alcohol-related	659	822
	Other	476	520
Reparative	Restorative justice	266	288
	Compensation	6458	6882
	Letter of apology	1907	2257
	Other	175	234
Restrictive		411	730
Total		**11114**	**12811**

Source: Crown Prosecution Service[216]

6.4 Consultation responses to Alternatives to Prosecution consultation

The consultation by the Northern Ireland Office which concluded in July 2008 document sought views on the potential impact of fixed penalty notices and conditional cautions in Northern Ireland in terms of both general principles and some specific issues[217]. There were a total of 29 respondents. Respondents felt that introducing alternatives to prosecution could help reduce time required to process a case and a reduction in bureaucracy could potentially free up police

resources[218]. Respondents highlighted the benefits of not criminalising low level offenders and young offenders for committing low level offences that should be dealt with outside the formal court system. Some respondents felt that alternatives to prosecution should operate with limited bureaucracy but with clear guidelines and protocols, as this would allow for a standardised approach across geographical areas. Respondents favoured the introduction of PNDs and viewed them as a useful tool to tackle anti-social behaviour, particularly in relation to alcohol consumption, without criminalising first-time offenders. Other points highlighted include:

- Preparation and resourcing of implementation measures
- Consistency in application
- The role of guidelines, training and quality assurance

Concerns centred on the impact of PNDs on those on low incomes and whether other local enforcement bodies should have similar powers.

A general view held by respondents was that conditional cautions needed to have adequate resourcing and appropriate programmes in order to be successful. Positive responses include the following:

- Potential for conditional cautions to address victims' needs
- Restitution for victims of criminal damage
- Opportunities to address offenders' underlying problems e.g. addiction to alcohol or drugs

Reservations concerned individual's ability to pay associated compensation and consequences of defaulting on payment.

Several respondents suggested that any revenue generated by alternatives to prosecution should be allocated for community safety programmes and the needs of victims should be a priority in the development of alternatives to prosecution. Some respondents highlighted the benefits for victims of restorative justice and youth conferencing.

In relation to autonomy of the PSNI in issuing PNDs, some respondents saw the advantage of allowing the PSNI to make a quick decision whilst others felt that such autonomy could undermine public confidence in policing. Most respondents thought the PSNI should be provided with clear guidance on the issuing of PNDs and the arrangements subject to safeguards and scrutiny. The advantage of allowing the PPS to focus on more serious crimes also featured.

With regard to potential implementation issues respondents felt these could be addressed by adequate training for police officers and measures to monitor, evaluate and ensure consistency and individual accountability. Other issues surrounded making offenders aware of the longer term consequences of providing DNA samples and fingerprints.

Potential operational difficulties include potential level of default with the need for appropriate mechanisms to deal with this issue, with a number of respondents suggesting diversionary rather financial penalties to be more appropriate for those on low incomes. Respondents also felt that alternatives to prosecution should not be seen as trivialising offences or a 'soft option'.

Respondents thought there was a need for close monitoring of alternatives to prosecution to ensure consistency of application across community and geographical boundaries. Some respondents felt compiling comprehensive statistics would help to identify any unintended

impacts. A few respondents were concerned about an individual's right to liberty in the event of significant restrictions being attached to a conditional caution.

All respondents were in favour of revenue raised through alternatives to prosecution being directed to fund victims' and rehabilitative services, with a general recognition that rehabilitative services can help to reduce crime.

In relation to human rights and equality there was a consensus that any limitation of rights created by alternatives to prosecution would be proportionate whilst a transparent and accountable system should guard against any perceptions of inequality.

Respondents felt it was important to recognise the impact of punitive action on women offenders and the potentially disproportionate impact on a family where women are fined for more minor offences. Furthermore respondents thought that diversionary penalties as opposed to financial penalties would have a less detrimental effect on women offenders.

6.5 Guidance

Difficulties highlighted above due to application highlight the important role of guidance for the police and prosecutors.

Under section 6 of the Criminal Justice and Police Act 2001, the Secretary of State has the power to issue guidance to the police on the issuing of penalty notices. The latest version of the guidance was issued in March 2005. Clause 69 of the Bill contains a similar provision but relating to the Department of Justice. The operational guidance in England and Wales outlines that officers may only issue a penalty only where[219]:

- They have reason to believe a person has committed a penalty offence and they have sufficient evidence to support a successful prosecution;
- The offence is not too serious and is of a nature suitable for being dealt with by a penalty notice;
- The suspect is suitable, compliant and able to understand what is going on;
- A second or subsequent offence, which is known, does not overlap with the penalty notice offence;
- The offence (s) involve (s) no one below the age of 16;
- Sufficient evidence as to the suspect's age, identity and place of residence exists.

In March 2006, the Secretary of State issued guidance to the police on the issuing of penalty notices. However, in view of concerns raised over the inappropriate use of PNDs, the Ministry of Justice issued strengthened revised guidance on retail theft and criminal damage. The guidance indicates that, in relation to retail theft, the use of PNDs should be restricted to first-time offenders who are not substance mis-users and where the value of goods stolen is less than £100 or where damage caused is less than £300. The definition of retail theft has also been tightened to ensure that the disposal can only be considered for cases of shoplifting where normally the goods recovered are fit for re-sale.

Under section 25 of the Criminal Justice Act 2003 (the 2003 Act), the Secretary of State has the power to issue a code of practice to the police on the issuing of conditional cautions and this is published with the consent of the Attorney General. The latest version of the code of practice was issued this year. Clause 82 of the Bill contains a similar provision requiring the Department of Justice to prepare a code of practice in relation to conditional cautions but relating to the

Department of Justice. In making decisions on imposing conditional cautions prosecutors will take into account[220]:

- The seriousness of the offence;
- The circumstances of the offence;
- Any views expressed by the victim;
- Any wider neighbourhood or community considerations or concerns;
- The background, circumstances and previous offending history of the offender;
- The willingness of the offender to comply with possible conditions;
- The likely effect of the conditional caution; and
- The likely outcome if the case is proceeded to court.

7. Legal Aid: Clauses 85-91

The Bill will make provision for an enabling power to means test applicants' incomes. After the completion of a consultation exercise no thresholds have been established although rules will prescribe the financial eligibility limits[221]. The grant of criminal legal aid in Northern Ireland is currently governed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981[222]. There are two tests to be met to receive legal aid in criminal proceedings:

- The means test; and
- Interests of Justice Test

However under the current legislation there are no prescribed financial limits for the means test for criminal legal aid.

Means testing was introduced in England and Wales for those applicants earning between £12,475 and £22,325 with those exceeding the upper threshold being exempt unless they can prove hardship. Applicants on prescribed benefits are pass-ported through the tests but still must pass an interest of justice test. In 2008-09, 562,000 people passed the means test and the Interest of Justice test – 93 per cent of those who applied for criminal legal aid. For 2008-09, the Commission calculated that the means test achieved a gross saving of £51.8 million at a cost of £20.3 million; a net saving of £31.5 million[223].

The Bill will also provide an enabling power for an order to recover costs of legal aid. This would enable the courts to make an order to recover the defence costs or proportion of costs of a legally aided defendant where the court considers that the defendant has sufficient means to pay. This would be known as a recovery of defence costs order (RDCOs). Initially RDCOs would be restricted to grants of legal aid under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 for cases in the Crown Court, though it may be extended to grants under the Criminal Appeal (Northern Ireland) Act 1980[224] for cases in the Court of Appeal at a later date.

In England and Wales the RDCO scheme collects legal aid costs for representation in the Crown Court and it applies only to defendants in cases where the new system of Crown Court means testing has not applied[225]. Crown Court means testing was introduced in England and Wales in January 2010 being fully operational in all Crown Courts by July 2010 with RDCOs only being used for old cases. At the end of a trial a judge can make a RDCO if they decide the defendant could and should pay for their defence.

RDCOs do not apply to cases that are:[226]

- Committals for sentence
- Appeals against sentence

Only defendants with:[227]

- An annual income in excess of £22,235
- Capital in excess of £3,000
- Or equity in their home of over £100,000

can receive a RDCO.

Defendants in receipt of 'pass-ported' benefits and those under the age of 18, for example income based job seekers allowance, are removed from the scope of the Order

The Bill contains provisions to repeal Article 41 of the Access to Justice (Northern Ireland) Order 2003[228] (prohibition on Northern Ireland Legal Services Commission funding services under Litigation Funding Agreements LFAs). LFAs are:

A type of agreement that allows litigants to pursue money damages cases, including personal injury litigation, on the basis that they would not be liable for their legal costs if their case was unsuccessful. If a client, funded by way of an LFA, was successful in his claim for damages, then either a success fee obtained from the losing side, or a portion of the client's award (or both) would be paid into a central fund. This fund would then help meet the cost of legal fees in unsuccessful cases[229].

At a recent conference hosted by Agenda NI Adrian Colton QC, Chair of the Bar Council, commented that there was no information to confirm how such a scheme would work in this jurisdiction and that the pitfalls should be examined in advance to consider whether such a scheme would work in Northern Ireland. Furthermore there was the danger, he suggested, of cases being cherry-picked, with the most feasible and winnable cases being favoured. Another point of possible contention concerns the impact in relation to claims for serious injuries and injuries to children where money has to be given back into the fund through the LFA. This might instances where the claim award is made to cover long-term medical treatment and care responsibilities.

The remaining provisions in relation to legal aid include[230]:

- Having a single legal aid certificate process for bail applications made initially in the magistrates' court and subsequently made to the Crown Court as repeat bail applications;
- Allowing a compassionate bail application to be made to a magistrates' court after an assisted person has been returned for trial at the Crown Court;
- The inclusion of applicants in receipt of the guarantee credit element of the State Pension Credit as automatically meeting, in certain circumstances, the financial eligibility tests for civil legal aid;
- Amending the Access to Justice (Northern Ireland) Order 2003[231] to provide that the power of the court or the Northern Ireland Legal Services Commission to grant criminal legal aid may only be exercised following an assessment of the applicant's means to be provided for in regulations; and

- A series of miscellaneous amendments must of which relate to extending the scope of civil legal services.

8. Miscellaneous provisions: Clauses 92-101

This part of Bill provides for improvements to a range of miscellaneous powers available to the courts. There are two changes in relation to Bail; it's proposed that repeat bail applications can now be heard by the Crown Court whereas currently these are heard by the High Court under its inherent jurisdiction and a proposal to allow the magistrates' court the power to grant defendants compassionate bail. Hearings for the granting of compassionate bail are currently the preserve of the High Court or Crown Court.

The Bill provides for court rules to be made on disclosure of information relating to family proceedings concerning children without the need for a court order authorising the disclosure. The disclosure will be between specified persons and in specified circumstances.

Amendments are also made to court Membership – providing for a public prosecutor (nominated by the DPP) and a person nominated by the Attorney General for NI to be included within the membership of the Crown Court Rules Committee and also for the Attorney General for NI or a person nominated by the Attorney General for NI to be included within the membership of the Court of Judicature Rules Committee[232].

Provision is also made to bring the powers of the magistrates' court into line with the Crown Court in relation to consideration of applications for third party disclosure in respect on any evidence that may be of use to a party to the proceedings in presenting their case. It's envisaged that this will relieve the burden of such applications to the Crown Court.

The Bill provides for Access NI to issue a copy of a criminal conviction certificate to an employer in addition to issuing the certificate to the applicant – this will help reduce delay in employers completing pre-employment checks on job applicants.

The Northern Ireland Law Commission is no longer required to produce a full set of audited accounts although a requirement will remain to include a financial summary within their annual report.

Appendix 1 – Tables presenting information on numbers of Penalty Notices for Disorder issued by individual constabularies in England

Table 12 Penalty Notices for Disorder issued by Greater Manchester Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	812
Criminal Damage (under £500)	913

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Theft (retail under £200)	2,961
Sale of alcohol to person under 18	135
Purchase alcohol for person under 18	40
Total	4,861

Table 13 Penalty Notices for Disorder issued by Northamptonshire Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	266
Criminal Damage (under £500)	188
Theft (retail under £200)	667
Sale of alcohol to person under 18	24
Purchase alcohol for person under 18	7
Total	1,152

Table 14 Penalty Notices for Disorder issued by Northumbria Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	5,075
Criminal Damage (under £500)	525
Theft (retail under £200)	959

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Sale of alcohol to person under 18	35
Purchase alcohol for person under 18	20
Total	6,614

Table 15 Penalty Notices for Disorder issued by West Midlands Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	3,237
Criminal Damage (under £500)	320
Theft (retail under £200)	918
Sale of alcohol to person under 18	77
Purchase alcohol for person under 18	3
Total	4,555

Table 16 Penalty Notices for Disorder issued by West Yorkshire Police by offence type

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Drunk and Disorderly	1,648
Criminal Damage (under £500)	389
Theft (retail under £200)	431
Sale of alcohol to person under 18	122

Type of Penalty Notice for Disorder	Number of Penalty Notices for Disorder
Purchase alcohol for person under 18	15
Total	2,605

[1] Home Office Online Report 01/06, Mandy Burton, Roger Evans, Andrew Sanders, Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies; http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0106.pdf

[2] 'Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010 http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[3] Victim and Witness Strategic Action Plan 2010-11 http://www.cjsni.gov.uk/pubUploads/V&W_Strategy.pdf.PDF

[4] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010 http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[5] Committee for Justice 'Departmental Briefing on Proposals for an Offender Levy and Victims of Crime Fund' – Official Report (Hansard) 3rd June 2010 http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_

[6] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010 http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[7] Committee for Justice 'Departmental Briefing on an Proposals for an Offender Levy and Victims of Crime Fund' – Official Report (Hansard) 3rd June 2010 http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_an_Offender_Levy.pdf

[8] See above

[9] Committee for Justice 'Departmental Briefing on Proposals for an Offender Levy and Victims of Crime Fund' – Official Report (Hansard) 3rd June 2010 http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_an_Offender_Levy.pdf

[10] Northern Ireland Human Rights Commission – 'Submission on Offender Levy and Victims of Crime Fund' http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/114/Offender_Levy_and_Victims_of_Crime_Fund_-_Response_to_Dept_of_Justice_(May_2010).pdf

[11] European Prison Rules http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_sexual_exploitation_of_children/1_pc-es/Rec_2006_2E_on_the_European_Prison_Rules.pdf

[12] See above

[13] Prison Rules: A Working Guide
http://www.prisonreformtrust.org.uk/uploads/documents/prisonrulesworkingguide.pdf

[14] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[15] Northern Ireland Human Rights Commission – 'Submission on Offender Levy and Victims of Crime Fund'
http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/114/Offender_Levy_and_Victims_of_Crime_Fund_-_Response_to_Dept_of_Justice_(May_2010).pdf

[16] See above

[17] Domestic Violence Crime and Victims Act 2004
http://www.legislation.gov.uk/ukpga/2004/28/contents

[18] International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[19] Offender Levy and Victims of Crime Fund: A Northern Ireland consultation' March 2010
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/offender_levy_and-2.pdf

[20] See above

[21] See above

[22] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[23] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[24] See above

[25] Parliamentary Question number 3617 (House of Commons) 21st May 2009
http://services.parliament.uk/hansard/Lords/ByDate/20090521/writtenanswers/part002.html

[26] Explanatory Memorandum to the Criminal Justice Act 2003 (Surcharge) Order 2007 No. 707
http://www.opsi.gov.uk/si/si2007/em/uksiem_20070707_en.pdf

[27] Sentencing (Offender Levy) Amendment Act 2009
http://www.legislation.govt.nz/act/public/2009/0042/latest/DLM1826706.html

[28] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[29] See above

[30] New Zealand Ministry of Justice
http://www.justice.govt.nz/fines/fines/offender-levy-q-a

[31] See above

[32] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[33] See above

[34] See above

[35] See above

[36] See above

[37] See above

[38] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[39] See above

[40] See above

[41] See above

[42] See above

[43] See above

[44] See above

[45] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[46]
http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100726/text/100726w0004.htm

[47] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[48] 'International Development of Victims Funds' NIO Research and Statistical Series: Report No. 22, Professor Roger Bowles – Centre for Criminal Justice Economics and Psychology University of York
http://www.york.ac.uk/criminaljustice/documents/Publishedreport.pdf

[49] See above

[50] Home Office Online Report 01/06, Mandy Burton, Roger Evans, Andrew Sanders, Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies; http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0106.pdf

[51] Department of Justice, Summary of responses to the consultation on the statutory special measures to assist vulnerable and intimidated witnesses give their best evidence in criminal proceedings, September 2010;

[52] Clauses 7, 8 and 13.

[53] Scottish Executive, Vulnerable Witnesses (Scotland) Act 2004, Information Guide, 2005; http://www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf

[54] Youth Justice and Criminal Evidence Act 1999, Part 2 Chapter 1;
http://www.legislation.gov.uk/ukpga/1999/23/contents

[55] Clause 9.

[56] Clauses 10-12.

[57] The Criminal Evidence (Northern Ireland) Order 1999,

[58] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc

[59] Mental Health (Northern Ireland) Order 1986
http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Primary&PageNumber=42&NavFrom=2&activeTextDocId=2934104

[60] Justice Bill 2010 – Explanatory and Financial Memorandum
http://www.dojni.gov.uk/index/media-centre/justice_bill_efm.doc

[61] See, for example, Bruce Baker, 'A Policing Partnership for Post-War Africa? Lessons from Liberia and southern Sudan' in Policing and Society (2009) 19:4 372-389; Monique Marks et al, 'Who should the police be? Finding a new narrative for community policing in South Africa' in Police Practice and Research (2009) 10:2 145-155.

[62] For example, Carolyn Coggan and Laurie Gabites, 'Safety and local government partnerships and collaboration: How can all the intersections and actually do something about it' in Social Policy Journal of New Zealand (2007) 32 94-105; Daniel Gilling, 'Community safety and Social

Policy' in European Journal on Criminal Policy and Research (2001) 9:4 381-400; Adam Cranford and Mario Motassa, Community Safety Structures: An International Review, March 2000.

[63] Independent Review on Policing for Northern Ireland, A New Beginning: Policing in Northern Ireland (1999) Recommendation 27, p.113.

[64] Community Safety Unit, Creating a Safer Northern Ireland through Partnership: A Strategy Document (2002) p.42.

[65] Criminal Justice Review Group, Review of the Criminal Justice System in Northern Ireland (2000), Recommendation 196, p.425.

[66] Criminal Justice Inspection Northern Ireland, A Inspection of Community safety Partnerships, November 2006, p.vii; Criminal Justice Inspection Northern Ireland, Policing with the Community: An Inspection of Policing with the Community in Northern Ireland, March 2009, p.ix.

[67] Northern Ireland Office, Local Partnership Working and Community Safety: A Consultation Paper, March 2010, p.7.

[68] Department of Justice, Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward, September 2010, pp.8, 4.

[69] http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/crime-victims/reducing-crime/community-safety/.

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[71] Home Office, Policing in the 21st Century: Re-connecting Police and the People, July 2010, pp.38-9.

[72] http://wales.gov.uk/topics/housingandcommunity/safety/?lang=en.

[73] http://www.scotland.gov.uk/Topics/Justice/public-safety/17141.

[74] http://www.justice.ie/en/JELR/Pages/Safety_and_security.

[75] National Crime Council, A Crime Prevention Strategy for Northern Ireland: Tackling the Concerns of Local Communities (2003), p.32.

[76] Sections 35-38.

[77] Department for Justice, Equality and Law Reform, White Paper on Crime: Crime Prevention and Community Safety, July 2009.

[78] Department for Justice, Equality and Law Reform, White Paper on Crime: Crime Prevention and Community Safety – Summary of Submissions, February 2010.

[79] Clause 20.

[80] Mick Beyers, Committee on the Administration of Justice response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper', 8 June 2010, p.2.

[81] Clause 21.

[82] DPP function, Police (NI) Act 2000, Section 16(1)(a).

[83] DPP function, Section 16(1)(b).

[84] DPP function, Section 16(1)(c)(ii).

[85] DPP function, Section 16(1)(c)(i).

[86] DPP function, Section 16(1)(d).

[87] CSP function, Justice (NI) Act 2002, Section 72(4)(b).

[88] CSP function, Section 72 (4)(c).

[89] CSP function, Section 72(4)(d).

[90] DPP function, Police (NI) Act 2000, Section 16(1)(e).

[91] Justice (NI) Act, Section 72(4)(a).

[92] Garda Síochána Act 2005, Section 36(2).

[93] Crime and Disorder Act 1998, Section 6(2)(c) and Police and Justice Act 2006, Section 19(1)(b).

[94] Section 19(1).

[95] Section 19(3).

[96] For example, Clause 22.

[97] Clause 23.

[98] Police (NI) Act 2000, Section 19(4).

[99] Police and Justice Act 2006, Section 20(5).

[100] Clause 33.

[101] Garda Síochána Act 2005, Section 36(2)(d)-(e).

[102] Clause 34.

[103] Crime and Disorder Act 1998, Section 17.

[104] Garda Síochána Act 2005, Section 37.

[105] Garda Síochána Act 2005, Section 35(2).

[106] Schedule 1, Paragraphs 3, 4 and 7.

[107] Police (NI) Act 2000, Schedule 3, Paragraph 2.

[108] Schedule 1, Paragraph 12.

[109] Department of Justice, Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward, September 2010, p.10.

[110] NIPSA response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper', 8 May 2010, p.1.

[111] Mick Beyers, Committee on the Administration of Justice response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper', 8 June 2010, p.7.

[112] Women's Support Network response to 'Local Partnership Working on Policing and Community safety: A Consultation Paper' (2010).

[113] Schedule 1, Paragraph 4(3).

[114] Clauses 24-26.

[115] Police (NI) Act 2000, Section 17.

[116] Justice (NI) Act 2002, Section 72(4)(e).

[117] Garda Síochána Act 2005, Section 36(5).

[118] Clauses 27-32.

[119] Police (NI) Act 2000, Section 18.

[120] Clause 35.

[121] See also the review of CSPs by Criminal Justice Inspection Northern Ireland, which confirms this view: Criminal Justice Inspection Northern Ireland, An Inspection of Community safety Partnerships, November 2006.

[122] Department of Justice, Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward, September 2010, p.12.

[123] Department of Justice, Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward, September 2010, p.11.

[124] Schedule 1, Paragraph 17.

[125] Department of Justice, Consultation on Local Partnerships Working on Policing and Community Safety: Report on Responses and Way Forward, September 2010, p.15.

[126] From http://www.psni.police.uk/.

[127]Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010

http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_Sports_Law.pdf

[128]In the Republic of Ireland, public order legislation, such as the Criminal Justice (Public Order) Act 1994, regulates behaviour at sporting events, along with a code of practice, which references this legislation: Department of Education, Code of Practice for Safety at Sports Grounds, January 1996, pp.151-155; likewise in Scotland, legislation such as the Police, Public Order and Criminal Justice (Scotland) 2006 impacts on conduct during sporting events.

[129]Safety of Sports Grounds (Northern Ireland) Order 2006
http://www.opsi.gov.uk/si/si2006/20060313.htm

[130]Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010
http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_Sports_Law.pdf

[131]The draft Public Assemblies, Parades and Protests Bill also seeks to forbid language that is "threatening, abusive, sectarian, obscene or racist" in a proposed Code of Conduct for all 'public assemblies'.

[132]Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010
http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_Sports_Law.pdf.

[133]See Schedule 3 of the Bill.

[134] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009
http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

[135]Committee for Culture, Arts and Leisure 'Sports law and spectator safety' – Official Report (Hansard) 22nd October 2009
http://archive.niassembly.gov.uk/record/committees2009/CAL/091022_SportsLawSpectatorSafety.pdf

[136]Football (Offences) Act 1991
http://www.opsi.gov.uk/acts/acts1991/Ukpga_19910019_en_1

[137]See above

[138]'Four banned from matches over abusive chants against Sol Campbell' The Guardian 20th January 2009
http://www.guardian.co.uk/uk/blog/2009/jan/20/sol-campbell-abusive-chanting

[139]See above

[140]'Supporter handed three-year ban for missile-throwing incident' The Guardian 20th April 2009
http://www.guardian.co.uk/football/2009/apr/20/supporter-banned-cardiff-city-swansea-missile

[141]See above

[142] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009 http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

[143]Similar provisions for the control of alcohol were proposed in the draft Public Assemblies, Parades and Protests Bill (Clauses 40-43); in the Republic of Ireland, legislation regarding intoxicating liquor and disposable containers at 'events' is referred to in Sections 20-22 of the Criminal Justice (Public Order) Act 1994

[144]Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_Sports_Law.pdf

[145] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009 http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

[146]Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010 http://archive.niassembly.gov.uk/record/committees2009/Justice/100603Briefing_on_Proposals_for_Sports_Law.pdf

[147]See above

[148]Committee for Culture, Arts and Leisure 'Sports law and spectator safety' – Official Report (Hansard) 22nd October 2009 http://archive.niassembly.gov.uk/record/committees2009/CAL/091022_SportsLawSpectatorSafety.pdf

[149]Sporting Events (Control of Alcohol etc) Act 1985. http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1985/cukpga_19850057_en_1

[150]See above

[151]Home Office – Statistics on arrests and banning orders 2008-09 http://www.homeoffice.gov.uk/crime/football-banning-orders/

[152]See above

[153]Home Office – Statistics on arrests and banning orders 2008-09 http://www.homeoffice.gov.uk/crime/football-banning-orders/

[154]See above

[155]Home Office – Statistics on arrests and banning orders 2008-09 http://www.homeoffice.gov.uk/crime/football-banning-orders/

[156]Home Office – Statistics on arrests and banning orders 2008-09 http://www.homeoffice.gov.uk/crime/football-banning-orders/

[157]Committee for Justice 'Departmental Briefing on Proposals for Sports Law' – Official Report (Hansard) 3rd June 2010

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[158] Northern Ireland Office consultation – 'Sports law and spectator controls' July 2009
http://www.nio.gov.uk/sports_law_and_spectator_controls_-_a_consultation_undertaken_by_the_northern_ireland_office.pdf-2.pdf

[159]Criminal Justice and Public Order Act 1994
http://www.opsi.gov.uk/acts/acts1994/ukpga_19940033_en_1

[160] Violent Crime and Reduction Act 2006
http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060038_en.pdf

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[198]See above

[199] This relates to all Indecent Behaviour not just urinating on the street

[200] This relates to all Criminal Damage not just low-level Criminal Damage

[201] This relates to all shoplifting not just for first time offences involving goods of up to £100 recovered in a re-saleable condition

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[203] This relates to all Criminal Damage not just low-level Criminal Damage

[204] This relates to all shoplifting not just for first time offences involving goods of up to £100 recovered in a re-saleable condition

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Appendix 5

Memoranda and Papers from the Department of Justice

Memoranda and Papers from The Department of Justice

18 October 2010 Final Content of the Justice Bill

29 October 2010 Delegated Powers Memorandum

16 November 2010 Briefing Paper on Sports Law and Spectator Controls

22 November 2010 Briefing Paper on the Offender Levy, Special Measures and Live Links

26 November 2010 Solicitor Advocate Clauses

30 November 2010 Correspondence to Ulster Rugby on Clause 43

30 November 2010 Briefing Paper on Legal Aid

30 November 2010 Briefing Paper on Miscellaneous Provisions

6 December 2010 Briefing Paper on Treatment of Offenders

6 December 2010 Briefing Paper on Alternatives to Prosecution

13 December 2010 Briefing Paper on Policing and Community Safety Partnerships

13 December 2010 Notice of Amendment – Sex Offender Notification

20 December 2010 Notice of Amendments – Clauses 96 and 97

22 December 2010 Access to Legal Aid for victims of domestic violence

22 December 2010 Victims and Witnesses – training for intermediaries

5 January 2011 Sporting events incidents

6 January 2011 Equality Impact Assessment

6 January 2011 Victims and Witnesses - Third Party Assistance

11 January 2011 Alternatives to Prosecution

19 January 2011 Live Links and Vulnerable Accused

20 January 2011 Notice of Amendment– Clause 16

26 January 2011 Notice of Amendments – New Provisions

26 January 2011 Further Information on PCSPs

26 January 2011 PCSPs – Bodies which may be considered for designation

26 January 2011 Notice of Amendments– PCSPs

27 January 2011 Further information on Clause 14

28 January 2011 Notice of Amendments - Sports Law

28 January 2011 Amendments and Delegated Powers

1 February 2011 Requested information on paragraph 6 of Schedule 6

1 February 2011 Proposed Amendments to Assembly Procedures Applicable to Court Rules

2 February 2011 Formal Consideration of Clause 34 – Indication to bring forward further proposals

3 February 2011 Consideration of Amendment to Schedule 1 Paragraph 10

3 February 2011 Notice of amendment – Legal Aid etc

4 February 2011 Notice of amendments – PCSPs

7 February 2011 Notice of amendment – Court Funds

8 February 2011 Solicitors' Rights of Audience

9 February 2011 Further information relating to the Offender Levy

Final Content of the Justice Bill

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The Lord Morrow of Clogher Valley MLA
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Justice Bill 2010

Can I begin for thanking both you and Raymond for your time over lunch on Monday 11th to talk over progress and plans for the Justice Bill which, as I explained, had at that stage already received Executive approval to be introduced. You may also be aware that I have, this morning, now formally introduced the Bill into the Assembly.

Through my officials and via the Committee Clerk, the Committee should by now have received a copy of the Bill and Explanatory and Financial Memorandum as I promised on Monday. I thought it may be useful for me to advise the Committee more formally about the Bill's final content. For Members benefit I thought that a list of the final content and structure of the Bill would be helpful - provided at Annex A.

Committee members will recall that the Bill has three main themes: providing better services for victims and witnesses; enhancing community safety; and improving access to justice. It also takes the opportunity to adjust a range of miscellaneous matters designed to tidy up or improve

operational aspects of the law. It is one of the largest pieces of legislation to be brought before the Assembly and is a key and specific commitment contained in the Hillsborough Agreement and will contribute across a wide range of the Agreement's undertakings.

Committee Members might also wish to be aware of a number of matters proposed for the Bill which have changed since my last letter dated 15th September. A few items have been removed; a few have been adjusted and one Clause has been of particular interest to the Executive. Annex B provides details and may be of assistance to the Committee.

Now that the Bill has been introduced, I understand that the Committee will be formally provided with printed copies of the Bill and the Explanatory and Financial Memorandum by the Bill Office during the course of this week. You will wish to note that the copy you will receive from the Bill Office will be the one as introduced and which has a few late and minor drafting errors corrected from the version you received from my officials. I mention this purely to ensure that there is no confusion in your future discussions and that you use the version as introduced.

I understand that my officials will be meeting with the Committee on Thursday 21st to brief Members on the final content. I hope that you and the Committee find this letter and attachments helpful in preparing for the meeting. I am more than happy to provide further information on any matters discussed above, or indeed anything else relating to the Justice Bill.

Thank you for your assistance to date in getting the Bill this far and I look forward to working closely with you during the Committee's detailed considerations.

David Ford MLA
Minister of Justice

Annex A

The Justice Bill 2010 - Overview

Part 1: Victims and Witnesses

Chapter 1: The Offender Levy

The aim of the offender levy is to make offenders more accountable for the harm they cause by requiring them to make a financial contribution towards support services to victims of crime.

The offender levy is:

- a statutory, mandatory monetary order imposed on adult offenders;
- applied to a specified range of court disposals and non-court based penalties;
- set at a fixed, but tiered rate, of between £5 and £50 which will be proportionate to the disposal or penalty given; and
- used to directly fund a victims of crime fund which in full operation could realise around £500,000 per annum.

Allocation of the Fund will be prioritised by the Victim and Witness Task Force

Chapter 2: Vulnerable and Intimidated Witnesses

The aim of these provisions is to improve legislation to assist vulnerable and intimidated witnesses by way of special measures to give their best possible evidence in criminal proceedings.

The Special Measures provisions will:

- raise the upper age limit, under which a young witness is eligible for special measures from 17 years to 18 years;
- allow young witnesses views to be taken into account when special measures applications are being made (subject to certain safeguards);
- remove the special category of child witnesses in need of special protection thereby placing all child witnesses on the same footing;
- provide automatic entitlement for adult complainants of sexual offences to give video recorded evidence in chief;
- formalise the presence of a supporter in the live link room when a witness is giving evidence;
- relax restrictions on a witness giving additional evidence in chief after their video recorded statement has been admitted; and
- allow intermediaries to be made available to vulnerable defendants

Part 2: Live Links

The aim of the live links provisions is to extend the range of matters that can be dealt with by way of a "live link", where evidence is given from outside the courtroom via a live television link to the courtroom.

The Live links provisions:

- extend the conditions for a vulnerable accused live link direction to include those of any age who have a physical disability or suffer from a physical disorder;
- improve the services for mentally disordered offenders by allowing live link connections between courts and psychiatric hospitals; and
- include a number of technical improvements to fill gaps in existing law where they might be beneficial.

Part 3: Policing and Community Safety Partnerships (PCSPs)

The aim of the PCSP changes is to provide a more joined-up approach with better local delivery and accountability targeted on the real issues of concern in local neighbourhoods by integrating the roles of Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) to create a single partnership for each district council.

Policing and Community Safety Partnerships will:

- comprise of councillors, independent members and representatives of designated organisations (both statutory and voluntary);
- contain a 'policing committee' comprising councillors and independents performing specific functions inherited from the DPPs;

- as a whole, deal with all the other functions of DPPs and CSPs, reporting to the relevant council, the Department of Justice and the Policing Board;
- for Belfast, be divided into a maximum of four "District Policing and Community Safety Partnerships" for each police district within Belfast; and
- make better use of the resources available for partnership working and therefore direct more of the funding to projects and initiatives on the ground.

Part 4: Chapters 1-6: Sport

The aim of the sports law provisions is to promote good behaviour amongst sports fans in Northern Ireland.

The sports law provisions:

- apply variously to association football, Gaelic games and rugby union;
- create new offences of offensive chanting, missile throwing and unauthorised pitch incursion;
- create new offences of possessing alcohol, drink-containers, fireworks or flares, and of being drunk at specified sporting matches in the three sports concerned;
- create new offences of possessing alcohol or allowing it to be carried in Northern Ireland on hired buses to and from certain matches played inside or outside Northern Ireland;
- create a new offence of ticket touting for certain association football matches to be played inside or outside Northern Ireland; and
- give the courts powers to impose orders which ban attendance at certain association football matches in NI, in order to prevent violence and disorder.

Part 5: Treatment of Offenders

The aim of this Part is to adjust and improve existing sentencing powers which address problems caused by gaps or inconsistencies in existing laws. This Part does not create any new sentences, merely updates existing law.

These individual sentencing powers are:

- an increase in the maximum penalty for the offence of common assault from three months imprisonment to six months;
- to bring the maximum penalties available for the offence of possessing a weapon on school premises into line with the sentence package created in 2008;
- to extend the court sentencing powers by including the offence of hi-jacking within the public protection sentences regime;
- a technical amendment in respect of closure orders (orders which close premises being used for activities relating to certain prostitution or pornography offences for up to three months);
- an enhancement to breach powers for sex offenders on licence who live outside the jurisdiction;
- an increase in the maximum period of sentence deferment to twelve months; with one specific exception (in relation to interim driving disqualifications);

- to fill an existing gap in financial reporting law is to include the offences of money laundering, corruption and fraud within the remit of the "financial reporting order"; and
- a technical change to allow NI to comply with the EU Framework Decision on the mutual recognition of financial penalties.

Part 6: Alternatives to Prosecution

The aim of the Alternatives to Prosecution powers is to create new diversionary disposals – wider fixed penalty notice powers and to deal effectively with minor offences outside the court room therefore maximising the time spent on front-line policing duties, contributing to reducing avoidable delay in the justice system, assisting in the rehabilitation of offenders and improving the response to victims. The offender will retain the right to ask to have their case heard at court.

Chapter 1: The Fixed Penalty notices will be:

- given to first-time or non-habitual offenders by the police, without direction from the Public Prosecution Service, offering the opportunity to discharge liability for the offence by paying a Fixed Penalty within 28 days;
- available for 7 offences: simple drunk, breach of the peace, disorderly behaviour, obstructing police, indecent behaviour, criminal damage and petty shoplifting;
- fixed at either £40 or £80 depending on the offence;
- available in certain circumstances only, detail will be set out in guidance; and
- registered as a court fine with their value uplifted by 50% if no action is taken within 28 days of the issue of the penalty

Chapter 2: Conditional Cautions are:

- cautions where prosecutors attach rehabilitative and reparative conditions with which the offender must comply or face reconsideration of prosecution for the original offence.

Part 7: Legal Aid etc

The aim of the legal aid adjustments is to improve legal aid legislation so that those who can afford to pay for their own defence do and to fill small gaps in existing laws.

The Legal Aid changes are:

- a rulemaking power for a means test for the grant of criminal legal aid;
- a separate enabling power to allow courts greater power to recover costs from legally aided defendants who are convicted;
- to remove the restriction on the Northern Ireland Legal Services Commission from establishing or funding services under Litigation Funding Agreements; and
- a series of miscellaneous amendments largely filling small gaps in existing laws.

Part 8: Miscellaneous

The aim of this Part is to make improvements to a range of miscellaneous powers available to courts along with several other business improvement matters. The Miscellaneous provisions include:

- "opening-up" the court tiers to which a compassionate bail or repeat bail application can be made;
- adjusting the membership of the Crown Court Rules Committee and the Court of Judicature Rules Committee;
- allowing a magistrates' court, in criminal proceedings, to consider applications for witness summonses in respect of any evidence likely to assist a party to the proceedings in presenting their case;
- allowing court rules to be made specifying the circumstances in which the disclosure of information relating to family proceedings concerning children is permitted;
- improving arrangements for appeals under Proceeds of Crime law;
- adjusting the processes around the preparation of NI Law Commission accounts;
- allow AccessNI to issue a copy of a criminal record certificate (or basic disclosure) to an employer where that employer was specifically identified within the application; and
- repealing an existing offence under the Vagrancy Act 1824 and creating a more modern equivalent, free-standing offence and penalty (being armed with a weapon with intent to commit a serious offence).

Part 9 provides supplementary provisions.

Annex B

Adjustments to the Justice Bill

The Committee will wish to note that the "rights of audience for solicitor advocates" provisions previously proposed for the Bill have not now been included. These were provisions to give solicitors who are registered with the Law Society as 'solicitor advocates' the same rights of audience as barristers in the High Court and the Court of Appeal in Northern Ireland. The conferral on solicitor advocates of rights of audience formerly enjoyed exclusively by barristers in independent practice gave the Attorney General concerns about the competence of the Assembly under section 6(2)(d) of the Northern Ireland Act 1998. The Attorney was not content that the construction of the solicitor advocate clauses was sufficiently robust in preventing conflicts of interest under the EU Services Directive 2006/123 and therefore he would not certify competence at this stage. These provisions have been removed from the Bill with a view to further work and the possibility of reintroduction by way of amendment.

Secondly the Court Funds provisions have also been removed from the Bill. These proposals dealt with the deduction of fees for stockbroker advice in respect of the management of funds of minors and other vulnerable persons held in court. The Attorney expressed the view that, unlike a private investor, a court funds client has no choice about the investment nor a remedy should his investment result in a net loss. The Attorney General advised that in their current form they could fall foul of Article 1 Protocol 1 of the European Convention on Human Rights. If this issue can be resolved following further discussions and potential redrafting of the clause it would be hoped to bring the provisions back as an amendment subject to the necessary clearances and at the appropriate time.

Thirdly, differing aspects of the sports law proposals have been removed or adjusted. In terms of the Football Banning Order (FBO) regime the option of an FBO by way of civil application (as opposed to the FBO following a criminal conviction in Northern Ireland) has been removed for further consideration. There was a concern around the imposition of an FBO following what could be lawful conduct, and the possible remand in custody of persons against whom a FBO application is made without a criminal charge being preferred. That aspect of FBOs that would apply them to matches outside NI has also been removed. The Attorney was concerned that the Chief Constable's functions (around requirements on persons under FBOs to report to a NI police station at the time of a match outside NI) could be outside the legislative competence of the Assembly.

The Attorney also advised that he thought that the retrospective aspects of football banning orders (that they could have been imposed following conviction of offences committed before the commencement of the provisions) may contravene Article 7 of the ECHR (no punishment without law). The retrospective aspects of the FBO have therefore been removed.

Finally in terms of sports law, the limitation proposed on the possession of alcohol in private facilities with a direct view of the match has been removed. The Attorney had a concern that preventing alcohol possession in these facilities, and the knock-on effect on sales of alcohol, might contravene the licence holders' right to property (Article 1 of the First Protocol of the ECHR) and Article 8 (right to respect for private life). As now drafted, those facilities are now fully excluded from the scope of the offence.

As with the solicitor advocates and court funds proposals, the detail of some of these aspects is being looked at again with a view to possibly bring some of them back by way of amendment.

One other aspect of the Bill and discussions with the Executive merits mention relating to proposals for Policing and Community Safety Partnerships and Clause 34 of the Bill. Clause 34 places a requirement on NI Departments and public bodies to have due regard to crime, anti-social behaviour and community safety implications in exercising their duties and to do what they reasonably can to enhance community safety.

The Committee may wish to note that some members of the Executive were concerned about the implications and requirements that might arise for Departments. Assurances were given that Clause 34 now includes a requirement for my Department to publish guidance alongside an undertaking to go back to the Executive once the Committee had considered the Clause.

Delegated Powers Memorandum

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29 October 2010

Dear Christine

Justice Bill 2010 - Delegated Powers Memorandum

Please find attached a copy of the Delegated Powers Memorandum as prepared by the Department to assist the Justice Committee in their considerations of the Justice Bill.

The document identifies the provisions of the Bill which confer powers to make delegated legislation; and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

I would be grateful if you would bring this matter to the attention of the Committee. Officials will be happy to provide any further information or advice as required.

Jane Holmes
DALO
Department of Justice

Delegated Powers Memorandum
Justice Bill 2010

Introduction

1. The Justice Bill has three main themes - it improves services for victims and witnesses; improves community safety arrangements and tackles some specific problem areas such as sports law; and allows the justice system to do its business better; improving systems; reforming Legal Aid and reducing costs. It also deals with a range of miscellaneous improvements and adjustments to various procedural powers.

2. The Bill amends some previous legislation as well as creating new freestanding provisions. This memorandum considers each delegated power in the sequence of the Bill.

3. Some of the provisions for delegated legislation are Henry VIII powers which enable primary legislation to be amended or repealed by secondary legislation. For ease of reference the clauses containing such Henry VIII powers are clauses 1, 2, 5, 6, 36, 43, 44, 64, 72, 102 and 107.

4. In overview, the Bill contains the following provisions for delegated legislation:

- Clause 1 enables the Department to amend, by order, the list of sentences to which the offender levy will apply, as specified in clause 1(1).

- Clause 2 permits the Department to make regulations relating to the enforcement of the levy, including the modification of statutory provisions, or the making of any necessary incidental, supplemental or consequential provision, relating to the enforcement of a court fine.
- Clause 5 permits the Department to provide that the levy can be applied to other specified penalty notices and contains two order making powers. The first enables the Department to specify, by order, the other penalties on which the levy may be imposed, and the second enables the legislation relating to those penalties to be amended, by order, to make provision for the imposition of the levy to that penalty.
- Clause 6 sets out the amount of the levy which is applicable to particular sentences and penalties and provides a power, by order, for the Department to amend the subsections detailing the eligible sentences and penalties and the amount of the levy for each of them.
- Clause 12 of the special measures provisions enables court rules (at relevant tiers) to specify the persons who must be present before examination of an accused through an intermediary takes place and to prescribe the form of the declaration which the person must make before they can act as an intermediary in a particular case.
- Clause 36 enables the Department to amend, by order Schedule 3 to the Bill, which sets out the list of regulated matches to be affected by the sport provisions of the Bill.
- Clause 43 makes it an offence to possess alcohol at a regulated match, whilst in any part of the ground from which the match may be directly viewed (other than a room to which the general public are not admitted), for a set period before, during and after the match. It also contains a power enabling the Department, by order, to disapply the offence inside the ground or to amend the period concerned.
- Clause 44 creates offences around the carriage and possession of alcohol, and being drunk, on certain vehicles. The Department can, by order, amend the sort of vehicles affected and the circumstances in which the offences apply to them. It can also make any consequential amendments that are necessary or appropriate as a result of any such change.
- Clause 53 requires the court that makes or terminates a football banning order to give a copy of it (or the terminating order) to the person subject to the order and to send a copy also to the Chief Constable and to any "prescribed" person. A "prescribed" person is one prescribed by order made by the Department.
- Clause 64 enables the Department, by order, to amend, add or remove offences and adjust the penalty payable for each offence for which a policeissued fixed penalty may be issued.
- Clause 70(5) enables the Department, by order, to designate persons, other than the Clerk of Petty Sessions, who may undertake the functions set out in relation to the collection and registration of penalties.
- Clause 72 enables regulations to be made to enable an unpaid penalty sum registered to be enforced. Such regulations may include modifications to the Magistrates Courts (Northern Ireland) Order 1981 relating to the enforcement of fines, and other incidental, supplemental or consequential modifications of statutory provisions.
- Clause 82 requires the Department to produce a code of practice for conditional cautions, and provides for its subsequent amendment. Publication and amendment of the code of practice must have the consent of the Attorney General for Northern Ireland and be laid before the Assembly before being brought into operation by order.
- Clause 85(2) substitutes Article 31 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 regarding decisions as to eligibility for criminal legal aid. As

substituted, Article 31(2) and (3) will enable the Department of Justice to make rules with respect to determining whether the means of a person are insufficient to enable him to pay for his own legal representation.

- Clause 86(2) inserts new Article 33A into the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to allow the court to make a 'recovery of defence costs order' against a defendant following conviction, in accordance with rules to be made under the new provision.
- Clause 89(2) inserts new Article 27A into the Access to Justice (Northern Ireland) Order 2003 to provide that the power to grant criminal legal aid may only be exercised following an assessment of the applicant's means, which is to be provided for in regulations.
- Clause 95(2) and (3) amends the Family Law (Northern Ireland) Order 1996 and the Children (Northern Ireland) Order 1995 to enable the making of court rules to authorise the publication, in such circumstances as may be specified, of information relating to family proceedings held in private.
- Clause 99 inserts new Articles 118A-118E into the Magistrates' Courts (Northern Ireland) Order 1981 which set out specific procedural issues, relating to witness summonses, which may be provided for in court rules.
- Clause 102 confers power on the Department to make such supplementary, incidental, consequential, transitory, transitional, or saving provision as it considers appropriate for the purposes of the Bill. The power includes the power to amend or repeal any statutory provision.
- Clause 107 confers on the Department commencement powers.
- Paragraph 20 of Schedule 1 enables the Department, after consultation with the Policing Board and the councils affected, to provide by order that two or more councils can by agreement establish a joint Policing and Community Safety Partnership (PCSP) for their districts.

5. A summary of the clauses containing powers to make delegated legislation and their associated Assembly procedure is outlined in tabular form is attached at Annex A.

6. The Justice Committee will be consulted on the detailed policy content of all future subordinate legislation.

Delegated Provisions

Part 1: Victims and Witnesses

Clause 1: Offender Levy Imposed by Court

Purpose of delegated legislation

7. Clause 1 specifies the sentences upon which the levy is to be imposed by a court. Clause 1(7) provides a delegated power to permit the Department, by order, to amend the list of sentences identified in subsection (1).

Reason for delegated legislation

8. The delegated power under clause 1(7) would provide the Department with some flexibility to attach the levy to further court-imposed sentences considered appropriate at a future stage or which may be subsequently introduced or to omit application to a current sentence.

Assembly control

9. The Department considers that the inclusion or omission of sentences in the future should be the subject of Assembly debate and therefore clause 1(8) specifies the procedure for an order to amend clause 1(1), which is that a draft of the order is laid before, and approved by resolution of, the Assembly.

Clause 2: Enforcement and Treatment of Offender Levy Imposed by Court

Purpose of delegated legislation

10. Clause 2 makes provision for an offender levy imposed by a court to be treated for the purposes of collection and enforcement as though it were a court fine (except where otherwise provided for under Part 1 of the Bill). It specifically provides for any relevant statutory provision, relating to the enforcement of a court fine, to have effect in relation to the enforcement of an offender levy.

11. Clause 2(4) provides a delegated power for the Department to make regulations in relation to the enforcement of the levy. Its purpose is to enable such statutory provisions, relating to the enforcement of a court fine, to be modified or such incidental, supplemental or consequential provision to be made as may be necessary in order to achieve the legislative intention of this clause.

Reason for delegated legislation

12. The delegated power enables regulations dealing with the operation of existing court enforcement measures to be modified as may be necessary to fully provide for the enforcement of the levy in the manner of a court fine as provided in the primary legislation.

Assembly Control

13. The Department considers that an order subject to the negative resolution procedure would provide a sufficient and appropriate level of Assembly control for this order making power.

Clause 5: Offender Levy on Certain Penalties

Purpose of delegated legislation

14. Clause 5 contains two delegated powers which will permit the Department, by order, to firstly specify other penalties on which the levy may be imposed and secondly to amend legislation made by any Government Department in order to include provision for the imposition of the levy on any relevant fixed penalty notice scheme which they operate.

Reason for delegated legislation

15. A number of Government Departments are proposing the introduction of fixed penalty schemes to deal with certain low-level criminal offences which would ordinarily be prosecuted at court (where the levy would have attached to a qualifying disposal).

16. The delegated powers enable the Department of Justice to include provision for the imposition of the levy on certain departmental fixed penalties and amend the relevant statutory provisions for those penalty schemes.

Assembly Control

17. Although orders made under these delegated powers would only be made following consultation with the Department(s) concerned it is considered, given the cross-cutting interests, that they should be subject to Assembly debate. Accordingly, clause 5(3)(b) specifies the procedure for an order under clause 5(1)(c), which is that a draft of the order is laid before, and approved by resolution of, the Assembly.

Clause 6: Amount of the Offender Levy

Purpose of delegated legislation

18. Clause 6 specifies the amounts of the levy to be imposed on particular court sentences and fixed penalties. Clause 6(3) provides a delegated power to permit the Department, by order, to amend subsections 6 (1) and (2) which provide for the amount of the levy for the particular disposals identified.

Reason for delegated legislation

19. The delegated power under clause 6(3) would provide the Department with some flexibility to amend the amount of the levy as may be appropriate at a future stage taking factors such as inflation into account.

Assembly control

20. The Department considers that changes to the respective rates of the levy, as imposed on particular sentences and penalties, should be the subject of Assembly debate and therefore clause 6(4) specifies the procedure for an order to amend clauses 6(1) and (2), which is that a draft of the order is laid before, and approved by resolution of, the Assembly.

Clause 12: Examination of Accused Through Intermediary

Purpose of delegated legislation

21. Clause 12(1) inserts a new Article 21BA into the Criminal Evidence (Northern Ireland) Order 1999, which will enable examination of a vulnerable accused to be conducted through an interpreter or other person approved by the court ("an intermediary"). Paragraph (7) of the new Article 21BA enables court rules (at relevant tiers) to specify the persons who must be present before examination of an accused in pursuance of a direction under Article 21BA(3) takes place. Paragraph (9) of new Article 21BA enables court rules (at relevant tiers) to prescribe the form of the declaration which the person must make before they can act as an intermediary in a particular case. Rules in Crown Courts (Crown Court Rules) are made under the Judicature

(Northern Ireland) Act 1978. Rules in the magistrates' court (Magistrates' Courts Rules) are made under the Magistrates' Courts (Northern Ireland) Order 1981.

Reason for delegated legislation

22. These delegated powers will allow court rules to specify the persons who must be present before examination of an accused in pursuance of a direction under Article 21BA(3) takes place and to prescribe the form of the declaration which the person must make before they can act as an intermediary in a particular case. The provisions will be specific and technical. Therefore they are more suited to subordinate legislation.

Assembly Control

23. Magistrates' Courts Rules are made by the Magistrates' Courts Rules Committee after consultation with the Department of Justice and with the agreement of the Lord Chief Justice. They are not required to be laid before the Assembly. By virtue of the Standing Orders, however, the Justice Committee is entitled to scrutinise any Statutory Rule, and so may see these Rules if they wish.

24. Crown Court Rules are made by the Crown Court Rules Committee (which is chaired by the Lord Chief Justice) and allowed by the Department of Justice. They are required to be laid before the Assembly and are subject to the negative resolution procedure.

Part 4: Sport

Clause 36: Regulated Matches

Purpose of delegated legislation

25. Clause 36 and Schedule 3 set out which matches are to be subject to regulation under this Part of the Bill. Schedule 3 specifies the sorts of matches of football, gaelic games and rugby to which each offence under this Part is to apply, and which matches are to be the subject of football banning orders. Clause 36(4) permits the Department to amend Schedule 3 by order.

Reason for delegated legislation

26. Schedule 3 provides a very detailed list of the matches to be affected by Part 4 provisions. It includes, for example, the current names of leagues which might change over time, and would therefore require amendment of the schedule. The order making power in clause 36(4) would also allow for an existing category of match to be removed or a new entry to be added. The Department seeks flexibility, in such circumstances, to amend the Bill's schedule from time to time without recourse to primary legislation. The corresponding legislation in England and Wales allows for regulated football matches to be specified by subordinate legislation subject to negative resolution.

Assembly Control

27. Under clause 103(2), such orders are to be subject to negative resolution of the Assembly. The Department suggests that negative resolution offers a sufficient and appropriate level of Assembly control for the proposed delegated order-making power.

Clause 43: Possession Of Alcohol

Purpose of delegated legislation

28. Clause 43 makes it an offence to possess alcohol at a regulated match, whilst in any part of the ground from which the match may be directly viewed (other than a room to which the general public are not admitted), for a set period before, during and after the match. As specified in clause 36, the set period begins two hours before the match is due to start and finishes one hour after it actually ends. Clause 43 contains one delegated legislation power, in subsection (3), enabling the Department by order to disapply the offence inside the ground or to amend the period concerned. This power would allow the offence to be disapplied, or the set period to be amended for one, two or all three sports or for any sorts of regulated match specified.

Reason for delegated legislation

29. The Department recognises that the banning of alcohol at matches, albeit in direct sight of the match only, may need to be applied differently between one sport and another. For example, the need for controls of the sort provided for in the Bill is not the same for football as for either gaelic games or rugby. Before commencing the clause 43 offence in relation to any of the three individual sports, the Department will wish to consult in detail with each of the sports authorities and others, including DCAL and Sport NI, about how / whether the offence should be applied in practice to each sport. As a complement to this desired flexibility, we also need to be able to specify periods less than the standard periods set out in the Bill. We also recognise that it is quite possible that in the course of time, good behaviour by fans inside grounds, in one sport or more, could justify the disapplication of the offence inside the grounds, or an adjustment to the standard period of the alcohol ban. The proposed delegated powers would permit the Department an appropriate degree of flexibility in pursuit of its policy, to disapply the offence or change the set period, by amending clause 43 without the need for further primary legislation.

Assembly Control

30. Under clause 103(2), such orders are to be subject to negative resolution of the Assembly. The Department considers that this procedure would allow a sufficient and appropriate level of scrutiny by the Assembly of orders of this sort.

Clause 44: Offences in Connection with Alcohol on Vehicles

Purpose of delegated legislation

31. Clause 44 creates offences around the carriage and possession of alcohol, and being drunk, on certain vehicles. Subsection (1) sets out the sort of vehicles affected and the circumstances in which the offences apply to them. It specifies motorised road vehicles that are adapted to carry 9 or more passengers (as this qualifies the vehicle as a bus rather than, for example, a people carrier which can take up to 8 people), and that are being used for the principal purpose of carrying passengers for reward, for the whole or part of a journey to or from a regulated match. Subsection (9) permits the Department, by order, to amend subsection (1); and subsection (10) allows for the order to include any amendments to the rest of clause 44 that are necessary or appropriate as a consequence of the changes to subsection (1).

Reason for delegated legislation

32. In setting the criteria in subsection (1) the Department has recognised that over time, in the light of experience in operating the offences under those criteria, it may become desirable to adjust them. For example, if fans seek to circumvent the criteria in order to engage in alcohol-related disorder, the Department would wish to be able to counter that with appropriate and timely amendments. It might prove desirable, for example, to lower the passenger capacity threshold below nine, or to broaden the scope of the offences to include other forms of vehicle, such as trains. Given the possible need to adjust the criteria in future, and the potential need for an amendment to be made quite quickly, the Department feels it appropriate to suggest that this delegated power be included.

Assembly Control

33. Subsection (10) specifies the procedure for an order to amend subsection (1) which is that a draft of the order is laid before, and approved by resolution of, the Assembly. This reflects the substantive nature of the provisions that could be amended, and their key importance to the nature of the offences being created. The Department therefore considers that this procedure would provide the appropriate level of debate and scrutiny by the Assembly of orders of this sort.

Clause 53: Information About Banning Orders

Purpose of delegated legislation

34. Clause 53 requires the court that makes or terminates a football banning order to give a copy of it (or the terminating order) to the person subject to the order and to send a copy also to the Chief Constable and to any "prescribed" person. Subsection (4) indicates that this means prescribed by order made by the Department.

Reason for delegated legislation

35. The Department envisages that, in addition to the police receiving a copy of each banning order and each termination order, it would be appropriate that the Irish Football Association, and / or the affected football clubs themselves, are sent a copy by the court. This will require detailed consultation and discussions with all relevant parties about the necessary practicalities for the successful operation of banning orders. It may also become more sensible in due course, in the light of experience, to have such orders sent to other named bodies or individuals.

Assembly control

36. Under clause 103(2), such orders are to be subject to negative resolution of the Assembly. An order would not affect the substantive operation of the banning order system. The Department therefore considers that this procedure would allow a sufficient and appropriate level of scrutiny by the Assembly of orders of this sort.

Part 6: Alternatives to Prosecution

Clause 64: Penalty Offences and Penalties

Purpose of delegated legislation

37. Clause 64 and Schedule 4 lists the offences which can attract a penalty notice and the amount payable for those offences. There are 7 eligible offences listed in Schedule 4, which will attract either £40 or £80 penalties. The clause provides that the Department may amend, add or remove offences and adjust the penalty payable for each offence. However, a penalty payable in respect of a penalty offence may not exceed one quarter of the maximum fine for which a person is liable on summary conviction of the offence.

Reason for delegated legislation

38. The delegated power has been provided to enable amendments to be made to the list of offences for which a penalty notice may be issued, and to enable alteration of the value of the penalty amounts associated with each penalty. For example, if the amount of court fines for these offences were to be altered, it would be appropriate to consider amendment of Schedule 4 to ensure consistency with the revised values of those court fines.

Assembly control

39. Clause 64(5) specifies the procedure for an order to amend Schedule 4, which is that a draft of the order is laid before, and approved by resolution of, the Assembly. It is considered appropriate that any additions or amendments to the Schedule should continue to be the subject of Assembly debate.

Clause 70: Payment of Penalty

Purpose of delegated legislation

40. Clause 70 sets out the procedure for the payment of a penalty, requiring that payment must be made to, or at an office of, the fixed penalty clerk specified in the penalty notice. The purpose of Clause 70(5) is to enable the Department to designate a person or persons, other than the Clerk of Petty Sessions, who may subsequently be required to perform the functions undertaken by a fixed penalty clerk.

Reason for delegated legislation

41. The clause anticipates any future administrative need to designate a role other than the clerk of petty sessions as a "fixed penalty clerk" to take receipt of a penalty payment. This provides the flexibility to accommodate any future changing of staff roles within the Northern Ireland Courts & Tribunals Service.

Assembly control

42. Providing for another person to undertake the role of "fixed penalty clerk", assigned in the first instance to the Clerk of Petty Sessions, would not otherwise affect the operation of the provisions as already set out in primary legislation. The Department therefore considers that an order subject to negative resolution procedure would provide an appropriate level of Assembly control in such cases.

Clause 72: Registration of Penalty

Purpose of delegated legislation

43. Clause 72 makes provision for the registration of a penalty notice sum as a court fine where it has failed to be paid within the 28 day suspended enforcement period from the date of issue. It also provides that any existing statutory provision referring to fines imposed at court on conviction will have effect in relation to the registered sum as though it were a fine imposed by the court on the date of registration. Clause 72(4) provides a delegated power for the Department to make regulations in relation to enforcement of the registered sum. Its purpose is to enable more detailed regulations about enforcement to be made, and to the extent necessary to enable statutory provisions, relating to the enforcement of sums to be paid on conviction, to be modified or such incidental, supplemental or consequential provision to be made as may be necessary in order to achieve the legislative intention of this clause.

Reason for delegated legislation

44. The power has been provided to enable the Department to make more detailed regulations about the enforcement of registered penalties. The power includes the ability to modify the provisions of Magistrates' Courts (Northern Ireland) Order 1981 relating to the enforcement of fines, as those provisions apply to the enforcement of registered penalties. This is to ensure that those provisions work effectively in respect of the enforcement of sums registered under Article 72. The power also enables regulations to include incidental supplemental or consequential provisions, including the modification of statutory provisions. The Department cannot discount the possibility that it may be necessary to make consequential amendments to legislation to ensure that the enforcement of registered penalties works effectively. The power is strictly limited to the enforcement of penalties registered under Clause 72. A power in similar terms is contained in Article 76 of the Road Traffic Offences (Northern Ireland) Order 1996 in respect of Road Traffic Fixed Penalties.

Assembly control

45. The Department considers that the delegated powers under clause 72(4) to (6) should be subject to the negative resolution procedure. This is because the modifications to other statutory provisions would be minor or consequential in nature, made simply to give effect to provisions for the enforcement of the registered sum as already set out in the primary legislation.

Clause 82: Code of Practice

Purpose of delegated legislation

46. Clause 82 requires the Department of Justice to prepare a code of practice in relation to conditional cautions. The code may include provisions as to the circumstances, procedures and places for giving a conditional caution; what conditions can be attached to a caution and time they can have effect for; the people who can give a caution; the form the caution takes and the manner in which they are to be given and recorded; the monitoring of compliance with conditions; the use of arrest powers for non-compliance; and who makes decisions about the release of persons arrested.

Reason for delegated legislation

47. Clause 82 provides the statutory basis for provision of a code of practice on Conditional Cautions. A statutory code of practice will ensure consistency in the implementation of conditional cautions as provided for in primary legislation.

Assembly control

48. A draft code of practice may only be published with the consent of the Attorney General and following both public consultation and consideration by the Justice Committee. In these circumstances, the Department considers that the negative resolution procedure provides a sufficient and appropriate level of Assembly control.

Part 7: Legal Aid, Etc.

Clause 85: Eligibility for Criminal Legal Aid

Purpose of delegated legislation

49. Clause 85(2) substitutes Article 31 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ("the 1981 Order") regarding decisions as to eligibility for criminal legal aid. As substituted, Article 31(2) and (3) will enable the Department of Justice to make rules under Article 36 of the 1981 Order with respect to determining the question whether the means of a person are insufficient to enable him to pay for his own legal representation.

Reason for delegated legislation

50. These delegated powers will allow rules to make provision for, and in connection with, determining whether the means of a person are insufficient to enable him to pay for his own legal representation. The provisions will be specific and detailed and are, therefore, more suited to subordinate legislation. The provisions are likely to include, for example, a prescribed sum for a person's income/disposable income below which they can obtain legal aid, details of how the determination is to be made and by whom.

Assembly control

51. The Department considers that rules made under clause 85 should be subject to the negative resolution procedure. This is because:

(a) the Justice Committee will be consulted on the detailed policy content; and

(b) any rules made by the Department under Article 36 require the approval of the Department of Finance and Personnel.

Clause 86: Order to Recover Costs of Legal Aid

Purpose of delegated legislation

52. Clause 86(2) inserts new Article 33A into the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ("the 1981 Order") to allow the court to make a 'recovery of defence costs order' against a defendant following conviction, in accordance with rules to be made under Article 36(3) of the 1981 Order.

Reason for delegated legislation

53. A recovery of defence costs order may be made if the court determines that a defendant, who has been granted criminal legal aid to defend their case, has sufficient means to pay all (or a proportion) of the costs of his or her defence. The provisions will be specific and detailed and are, therefore, more suited to subordinate legislation. The provisions are likely to include the

descriptions of courts by which, and individuals against whom, an order may be made; the circumstances in which such an order may be made and the principles to be applied; the determination of the cost of legal aid incurred; and the enforcement of such an order.

Assembly control

54. The Department considers that rules made under clause 86 should be subject to the negative resolution procedure. This is because:

(a) the Justice Committee will be consulted on the detailed policy content; and

(b) any rules made by the Department under Article 36 require the approval of the Department of Finance and Personnel

Clause 89: Financial Eligibility for Grant of Right to Representation

Purpose of delegated legislation

55. Clause 89(2) inserts new Article 27A into the Access to Justice (Northern Ireland) Order 2003 to provide that the power of the court or the Northern Ireland Legal Services Commission to grant criminal legal aid may only be exercised following an assessment of the applicant's means, to be provided for in regulations made by the Department.

Reason for delegated legislation

56. Regulations made under Article 27A may include provision requiring the furnishing of information, together with provision for the notification of decisions to withdraw a right to representation in relation to an individual if it appears: (a) that his financial resources are not such that he is eligible to be granted such a right, or (b) that he has failed to comply with regulations about the furnishing of information. The provisions will be specific and detailed and are, therefore, more suited to subordinate legislation. Any regulations to be made under this power will be subject to public consultation.

Assembly control

57. The first regulations made by the Department under Article 27A must be laid before, and approved by resolution of, the Assembly. Any further regulations will be subject to the negative resolution procedure.

Part 8: Miscellaneous

Clause 95: Publication of Material Relating to Legal Proceedings

Purpose of delegated legislation

58. Clause 95(2) and (3) allows court rules to be made (for relevant court tiers) to authorise, for the purposes of the law on contempt of court, the publication of information relating to family proceedings held in private in such circumstances as may be specified. Rules governing

proceedings in county courts (including Family Care Centres) and the High Court are made in Family Proceedings Rules, principally under the Family Law (Northern Ireland) Order 1993. Rules in magistrates' courts (including the family proceedings courts) are made in Magistrates' Courts Rules, principally under the Magistrates' Courts (Northern Ireland) Order 1981.

Reason for delegated legislation

59. These delegated powers will allow court rules to prescribe the circumstances in which disclosure is permitted and between which individuals. The provisions will be specific and detailed and are, therefore, more suited to subordinate legislation. Any rules to be made under this power will be subject to public consultation.

Assembly Control

60. Family proceedings rules, which are subject to the negative resolution procedure, are made by the Family Proceedings Rules Committee and then submitted to the Department of Justice for allowance or disallowance (Article 12A of the Family Law (Northern Ireland) Order 1993).

61. Magistrates' courts rules are made by the Magistrates' Courts Rules Committee after consultation with the Department of Justice and with the agreement of the Lord Chief Justice.

62. Magistrates' courts rules are not required to be laid before the Assembly. By virtue of the Standing Orders, however, the Justice Committee is entitled to scrutinise any Statutory Rule.

Clause 99: Witness Summons in Magistrates' Court

Purpose of the delegated legislation

63. Clause 99 inserts new Articles 118A-118E into the Magistrates' Courts (Northern Ireland) Order 1981. These new provisions will allow a magistrates' court, in criminal proceedings, to issue a witness summons directing a third party to appear and produce an item of evidence where the court is satisfied that that person is able to provide material evidence.

64. New Articles 118A-118E provide that procedures for applications to the court in respect of a witness summons will be made in accordance with magistrates' courts rules. Magistrates' courts rules are made under the general rule making power in Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981. Further to this, new Articles 118A-118E set out specific procedural issues, relating to witness summonses, which such rules may make provision for:

- Article 118A(6) provides that rules may specify the cases in which an application for witness summons should be made by a party to the case, when it should be served on the person to whom it is directed, when that person should be present or represented at the hearing and when it should be supported by an affidavit;
- Article 118A(7) allows that rules may make provision as to the content of an affidavit in support of an application for a witness summons;
- Article 118B(4) allows rules to specify the circumstances in which a direction by the court that a witness summons, which requires advance production of evidence, be of no further effect should be notified to the person to whom the summons is directed;
- Article 118C(6) provides that rules may specify the cases when an application to have a witness summons made ineffective, should be served on the person on whose application the witness summons was issued;

- Article 118C(7) provides that rules may specify the circumstances in which a person applying to have a witness summons made ineffective (on the grounds that the evidence is not material evidence) must bring that evidence with them to court for the hearing of the application.
- Article 118D(5) provides that rules may specify the circumstances in which a person who has been ordered of the court's own motion to produce evidence, and who is applying to the court for that summons to be made ineffective (on the grounds that the evidence is not material evidence), must bring that evidence with them to court for the hearing of the application.

Reason for delegated legislation

65. These delegated powers will enable court rules to be made to prescribe the procedure to be followed when making an application to a court in respect of a witness summons. The provisions will be specific and detailed and are, therefore, more suited to subordinate legislation.

Assembly Control

66. Magistrates' courts rules are made by the Magistrates' Courts Rules Committee after consultation with the Department of Justice and with the agreement of the Lord Chief Justice.

67. Magistrates' courts rules are not required to be laid before the Assembly. By virtue of the Standing Orders, however, the Justice Committee is entitled to scrutinise any Statutory Rule.

Part 9: Supplementary Provisions

Clause 102: Supplementary, Incidental, Consequential and Transitional Provision, Etc

Purpose of Delegated Legislation

68. This Clause confers power on the Department to make such supplementary, incidental, consequential, transitory, transitional, or saving provision as it considers appropriate for the purposes of the Bill. The power includes the power to amend or repeal any statutory provision.

Reason for Delegated Legislation

69. The Justice Bill makes wide ranging changes to the law including existing primary legislation. While every effort has been made to identify consequential amendments and transitional provisions, it is possible that not all of the consequences have been identified. This provision will enable any such consequential and other provisions to be made, to ensure that the provisions of the Bill operate as the Assembly intended.

Assembly Control

70. To the extent that an order under this Clause amends or repeals primary legislation, it will be laid before, and approved by resolution of, the Assembly. Otherwise an order under Clause 102 will be subject to negative resolution.

Clause 107: Commencement

Purpose of Delegated Legislation

71. The power in Clause 107(3) and (4) has been provided to enable certain provisions of the Bill to be brought into operation by Commencement Order made by the Department.

Reason for Delegated Legislation

72. The delegated power has been provided to enable provisions of the Bill to be brought into force on a date determined by the Department, when appropriate administrative and other arrangements have been made. The ability to make transitional or transitory modifications to the Justice Act that are considered necessary in connection with the commencement of the provision is included. This is included to facilitate the phased commencement of provisions in the Bill where that is considered appropriate.

Assembly Control

73. As is usual with commencement orders, the power is not subject to any Assembly procedure.

Schedules

Schedule 1, Paragraph 20: Joint PCSPS

Purpose of delegated legislation

74. This paragraph enables the Department, after consultation with the Policing Board and the councils affected, to provide by order that two or more councils can by agreement establish a joint Policing and Community Safety Partnership (PCSP) for their districts.

Reason for delegated legislation

75. The Department considers a delegated power is needed to provide councils with the flexibility to come together and establish a joint Partnership which would be responsible for a number of council districts. The Department is required to consult with the Policing Board and affected councils before making such an order.

Assembly control

76. The Department considers that the delegated powers under paragraph 20 of Schedule 1 should be subject to the negative resolution procedure. In practice a single partnership would only be established if the councils involved were in agreement.

Department of Justice
Criminal Law Branch
October 2010

Annex A

A summary of the clauses containing powers to make delegated legislation:

Clause	Title	Assembly Procedure
1	Offender levy imposed by court	Laid before, and approved by resolution of, the Assembly.
2	Enforcement and treatment of offender levy imposed by court	Negative resolution
5	Offender levy on certain penalties	Laid before, and approved by resolution of, the Assembly.
6	Amount of the offender levy	Laid before, and approved by resolution of, the Assembly.
12	Examination of accused through intermediary	Magistrates' Court Rules are not laid before the Assembly; the Crown Court Rules are subject to negative resolution.
36	Regulated matches	Negative resolution
43	Possession of alcohol	Negative resolution
44	Offences in connection with alcohol on vehicles	Laid before, and approved by resolution of, the Assembly.
53	Information about banning orders	Negative resolution
64	Penalty offences and penalties	Laid before, and approved by resolution of, the Assembly.
70	Payment of penalty	Negative resolution
72	Registration of penalty	Negative resolution
82	Code of practice	Negative resolution
85	Eligibility for criminal legal aid	Negative resolution
86	Order to recover costs of legal aid	Negative resolution
89	Financial eligibility for grant of right to representation	Various
95	Publication of material relating to legal proceedings	The Family Proceedings Rules are subject to negative resolution; the Magistrates' Court Rules are not laid before the Assembly
99	Witness summon in magistrates' court	Magistrates' Court Rules are not laid before the Assembly.
102	Supplementary, incidental, consequential and transitional provisions, etc	Various
107	Commencement	Not subject to any Assembly procedure
Sch 1	Policing and community safety partnerships	Negative resolution

Sports Law and Spectator Controls

Department of Justice Paper for the Justice Committee meeting on Thursday 18 November 2010 on Justice Bill Provisions on Sports Law and Spectator Controls

Purpose of paper

1. The purpose of this paper is to provide the Justice Committee with information on the policy issues which arose in developing the Part 4 of the Justice Bill entitled "Sport"; the key views expressed about the draft proposals; and the Department's view on the issues raised. The aim is to ensure that, as the Committee begins its scrutiny of the Bill, it is fully briefed on the sports law proposals and their development.

Content

2. The paper provides a synopsis of Part 4, its six Chapters and 20 clauses (in the knowledge that the Committee already has a detailed description as provided in the Bill's Explanatory and Financial Memorandum) along with details of the main policy issues for consideration. By way of Annex (Annex A), should the Committee find it helpful, the paper provides information on a number of further more detailed issues which arose in respect of individual clauses.

Approach

3. The paper has been prepared in anticipation of representations being made to the Committee by interested parties as part of evidence taking in the Bill scrutiny stage. It is based on a series of questions and issues posed by some of those we now know will be appearing before the Committee (Ulster Rugby, Ulster GAA, IFA (TBC), AONISC and SportNI) to the Department in developing and publishing the Bill. It describes the Department's policy thinking to date and how the clauses have been finalised to date.

Attendance

4. Presenting the paper to the Committee will be:

- Gareth Johnston: Deputy Director Justice Strategy Division, Department of Justice
- Tom Haire: Justice Bill manager, Department of Justice
- David Mercer: Criminal Law Branch, Department of Justice

5. The proposals and draft legislation have been developed in close co-operation with the Department of Culture Arts and Leisure to complement that Department's Safety of Sports Grounds legislation. With the permission of the Minister of Culture Arts and Leisure and the CAL Committee, a representative of the Department of Culture Arts and Leisure will accompany DoJ officials at the presentation.

6. The Department welcomes the opportunity to share its thinking to date and looks forward to the Committee's considerations, advice and requirements.

12 November 2010
Justice Strategy Division
Department of Justice

Annex A

Sports Law and Spectator Controls: Briefing paper for Justice Committee meeting on 18 November 2010.

1. Introduction

1.1 Following this introduction, this paper is divided into two sections with a supporting Annex.

1.2 Section 2 of the paper describes in broad terms the content of Part 4 of the Justice Bill. It deliberately avoids being overly detailed in the knowledge that the Committee already has the Bill's Explanatory and Financial Memorandum which provides overview and clause by clause descriptors. Section 2 will provide the basis of the more detailed exposition of the Clauses in Departmental officials' in opening presentation to the Committee.

1.3 Section 3 of the paper provides information on the main and overarching issues which emerged in the development of the clauses in the policy consultation stage, from interested parties and respondents; matters raised by the Justice Committee; and in Second Stage of the Bill. It anticipates issues that may arise in the Committee's scrutiny stage; describes Departmental policy thinking and response; and seeks to assist the Committee in terms of Bill development

1.4 Annex A(i) to the paper provides additional material in relation to individual clauses should the Committee find it helpful.

2. Part 4 of the Justice Bill: Sports provisions

Introduction

2.1 The provisions for new laws in Northern Ireland are designed to support clubs and sports authorities to establish a welcoming, safe environment for all spectators at major sports events. They complement the ground safety measures established by the Department of Culture, Arts and Leisure through the Safety of Sports Grounds (NI) Order 2006. Their main focus is on helping to prevent and tackle violence and disorder at certain major sports grounds and fixtures.

Chapter 1

2.2 The package of offences in Chapters 2-5 apply to specified sporting events. Broadly speaking, for football the offences would apply to matches played in Northern Ireland by teams in the Irish Premier League, First Division, any Northern Ireland team playing in the Eircom Leagues in (e.g. Derry City at present) and the Northern Ireland international team. For gaelic games and rugby the offences would apply to all matches played at venues in Northern Ireland designated as requiring a safety certificate or with a stand requiring a safety certificate under the Safety of Sports Grounds (NI) Order 2006. The list of sporting events covered by the package can be amended by order of the Department. Any such order would be presented to and considered by the Committee.

Chapters 2 and 3

2.3 Offences of offensive chanting, missile-throwing and unauthorised pitch incursion are created. Offensive chanting includes chanting that attacks a person's colour, race, nationality,

ethnic or national origins, religious belief, sexual orientation or disability. The offences would be triable in a magistrates' court and the maximum sentence available would be a fine of level 3 on the standard scale (currently £1,000).

2.4 Offences relating to having alcohol, drink containers, fireworks and flares and being drunk at designated matches and in transport to and from matches are also created. The offence of having alcohol on vehicles going to and from designated matches would apply to specially arranged transport – mainly hired buses. Offences relating to alcohol on transport would only apply to the part of the journey that is in Northern Ireland.

2.5 The offences would be triable in magistrates' courts with varying penalties: knowingly allowing alcohol on a vehicle, a level 4 fine (currently £2,500); being in possession of alcohol, flares, etc, either a level 3 fine (currently £1,000) or three months' imprisonment or both; and being drunk at a ground or in a vehicle, a level 2 fine (currently £500).

Chapter 4

2.6 The offence of ticket touting for football matches is created for safety purposes to ensure that, when required, match organisers and police can be supported in managing crowd segregation. The offence is triable in a magistrates' court with a maximum penalty of a level 5 (£5,000) fine and applies only to football.

Chapter 5

2.7 A banning regime is created for football, by which courts would order that an offender be banned from attending major football matches in Northern Ireland. Courts could ban a person from attending designated matches with the banning order being triggered when a person was convicted of a qualifying offence. The person would be required to report to a police station within five days of an order being made. Breaching a banning order would be an offence triable in a magistrates' court, with a maximum penalty on conviction of six months' imprisonment, a level 5 (£5,000) fine, or both.

3. Sports law: policy issues and Departmental consideration

Overarching issues

3.1 A number of issues arose in creating the sports law package which can be grouped under three broad headings: scope and application; practical/operational impact; and some broader policy matters.

Scope and application

3.2 Issues arose around the application of the package to the three sports that it does and why; whether it is focused unduly on any particular sport; and whether or not some of the provisions targeted individual sports or people.

3.3 There were views that this was a "one-size-fits all" package; that it was overlyexpansive; that there were no major problems around spectator behaviour in NI; and that fans are on the whole very well behaved.

3.4 From the outset, the Department has very much taken its lead from the Northern Ireland Assembly debate on 11 September 2007 in which the Assembly, in response to a Private

Members' Motion, called on the responsible Department to introduce legislation to address racism, sectarianism and violence at sports events, having widened the original motion beyond football alone. Allied to this is the desire of the Department of Culture Arts and Leisure to improve spectator control and crowd safety across the three main spectator sports in Northern Ireland. The package provides essential criminal law measures to complement the Safety of Sports Grounds (Northern Ireland) Order 2006 which principally affects Association Football, Gaelic Games and Rugby Union.

3.6 The sports law proposals are therefore a package that helps sports authorities make improvements in safety terms and in response to an identified need at a strategic level.

3.7 In terms of unduly targeting any particular sport, or being inappropriate in particular aspects to any sport, differing sports and differing lobby groups had differing views. Some voices asserted an undue targeting of football in certain aspects – most notably the football banning regime and ticket touting powers; others had no difficulty. Some felt that the application of alcohol restrictions would have a particular impact on one sport – mostly rugby - more than others in terms of corporate sponsorship and hospitality.

3.8 The Department took the view that key aspects of the proposals should apply to all three sports – the areas dealing with conduct at, to and from major sporting events. Missile throwing, chanting, pitch incursion, firework possession, drunkenness and possession of containers were all needed to ensure proper order and safety.

3.9 Possessing alcohol in sight of the pitch at matches evoked differing views. Some sports felt that drinking in private viewing facilities did not present a problem and should be exempt. We removed this from the Bill. Rugby felt that consumption in sight of the pitch at Ravenhill did not create a problem and that terracing there should also be exempt. A view was expressed that an enclosed hospitality area in sight of the pitch might be a compromise.

3.10 Over-consumption at any of the sports could lead to anti-social behaviour – as noted by the Assembly debate in 2007. Some Assembly Members expressed the view that the regulation of spectator behaviour including excessive drinking should apply to all major stadia. Over-consumption can result in, for example, the other offences in the package being committed – such as chanting or pitch incursion for example. Intoxication of spectators can exacerbate crowd control issues generally. Professional players and match officials also need protection, even if the intention is good-natured, and we would not see any sport as being exempt from the potential for trouble.

3.11 Our view has been that it is therefore important to provide a consistent framework within which these proposals could be applied to each sport. We have however recognised the need for flexibility. We have therefore developed a model (within Clause 43 and Clause 107 on commencement) that would allow the application of the powers to individual sports to be considered and consulted upon.

3.12 A number of responses advocated alcohol restrictions in the vicinity of grounds. The Department took the view that restricting alcohol sales outside match venues was a matter for licensing laws more generally. Moreover, the criminal law on being drunk and disorderly, coupled with the new offence being created of drunkenness at a regulated match, was an appropriate range of powers.

3.13 The Department does acknowledge the importance of the views expressed and would welcome the Committee's consideration of the offences around the possession of alcohol.

3.14 Representatives and voices on behalf of football fans felt that their sport was being unduly targeted. It questioned the need for the ticket touting powers and the football banning regime, and if they were needed, why they did not apply also to other sports.

3.15 The Department's view is that the package is in response to some of the issues raised in the Assembly debate in 2007 which in itself arose as a consequence of a major football incident. Football has unfortunately been the sport that has experienced major crowd incidents in recent years and the intention is that these powers will assist in preventing similar incidents in the future. We fully acknowledge and welcome the improvements in behaviour of Northern Ireland team fans. However, our proposals are about addressing and preventing the sort of trouble that has been known to arise - albeit amongst a minority of fans.

3.16 Ticket touting powers are included, not for reasons of commercial exploitation – distasteful as that may be - but based on issues of public safety both inside and outside grounds. There can be occasions when big games attract large crowds and numbers of people might turn up outside a ground in the hope of buying a ticket. Significant numbers milling about outside a ground can create crowd management issues and preventing touting will be of assistance to match organisers and police.

3.17 There can also be occasions whereby supporters within grounds need to be segregated for safety and control purposes. From experience this is more likely to be a football related issue - crowd segregation has not, we understand, been an issue in Gaelic Games or Rugby Union. Nor is it an issue around, for example, pop concerts where some representations called for application in that sphere. The ticket touting proposals are focused solely on public safety and crowd control at major sports events and are intended to assist match organisers and police.

3.18 The Department does recognise that the occasions when touting might occur will be limited and in all likelihood to international games or major finals. The provisions are intended to be preventative and as an aid to match organisers and the police. The Department would welcome the Committee's views on the ticket touting provisions.

Operational impacts

3.19 In terms of operational impacts, enforcement issues were raised around the role of stewarding and how the proposals might be policed. Clause 55 (see below) would give police powers of ground entry and personal search but with most games selfstewarded there needed to be clarity of roles and discretion in application.

3.20 Responsibility for safety at sports grounds rests with the organisers of games and owners of venues. It will be for match organisers to manage events with the PSNI available should they be required. Match organisers can request their presence if required though police will retain the power to act if it becomes necessary. The package however gives match organisers the strength of the criminal law behind them as an important backstop and preventative tool.

3.21 The police will also benefit from the new regimes. Professionally trained and qualified stewarding is now one of the requirements that owners of grounds must satisfy in order to obtain a safety certificate. Certification is acquired through Councils with police advice. A stronger and more professional stewarding scheme should prevent the need to call on police and allow them to concentrate on other front-line duties.

3.22 The Department's view is that the safety certification scheme provides clarity in roles and responsibilities. We will ensure that implementation of any new powers is properly planned and introduced in conjunction with police and sporting bodies.

Broader policy issues

3.23 The issue of sectarianism in sport was raised – particularly its absence in the body of the "chanting" offence (Clause 38). An issue was raised around the concept of freedom of speech and that chanting that was merely insulting was a step too far. The issue of equality in the Bill's application to football fans or that it is anti-football was also mentioned.

3.24 In terms of using the word "sectarian" in the Bill, the Department took the view that clause 38 already covered chanting that is sectarian. By reference to colour, race, nationality, ethnic or national origins, religion belief and the other Section 75 categories, the concept of sectarianism was in effect already covered. The Department recognises however that the term "sectarian" is in common parlance and usage within Northern Ireland and that there might be benefits from its inclusion as a word within the chanting offence. We have already been in discussion with the draftsman and would propose to come back to the Committee in more detail at the clause by clause analysis stage.

3.25 We also had the observation that in placing the limitations that we have on chanting we were in some way curtailing freedom of speech. To an extent we are – though entirely consistently with public order legislation. Freedom of expression is not in itself an unqualified right. The Department believes that outlawing offensive chanting which is threatening, abusive or indeed insulting on the basis of the categories targeted is appropriate but would welcome the Committee's views.

3.26 In terms of equality and football, the assertion was made that, by having a number of provisions apply solely to football, they were unfairly targeted at Protestant working class males. The Department disagrees with this analysis.

3.27 As is the case with the offences and penalties aspects of the Bill as a whole, the powers are directed at those who break the law whatever their background. The Bill as a piece is designed to deliver improved community safety and public protection to everyone in Northern Ireland irrespective of their background. People who offend – and who choose to so offend – will be affected by these powers, not because they are one religion, class or another.

3.28 In terms of being anti-football, again the Department disagrees. The Bill is not anti-football or even anti-sport: the Bill is pro-football and pro-sport. The Department's view is that the Bill looks – indeed has to look – beyond existing fans and towards the much wider constituency of the public as a whole. Those who might be considering attending games; who could be increasing attendances and much needed revenue; and who may be attracted in by an improved and welcoming environment.

3.29 Sports bodies locally have already made great strides in improving their sporting events and atmosphere. Other jurisdictions have used crowd safety and sports law packages to great effect, increasing individual and family attendances. The sports law package is designed to support all of the work already undertaken and to help sport move even further forward.

Annex A(i)

Issues within Clauses

A1. Clause 36 sets the framework for the sports and matches across which the package would operate. For football, regulated matches are generally defined in terms of teams playing in certain competitions; whereas for Gaelic Games and Ulster Rugby, the definitions are based on

sports grounds. In consultation, the three main sports bodies supported the structure as proposed.

A2. Clause 37 creates an offence of missile throwing. Other than clarifying the importance of "lawful authority or lawful excuse" in permitting, for example, the ball to be returned, there appeared to be no issues around this clause.

A3. Clause 38 makes it an offence to engage in indecent, threatening, abusive or insulting chanting. The inclusion of sectarianism was raised alongside an issue about freedom of speech (dealt with above) along with requests for clarity on the term "indecency" and whether or not friendly "banter" would be banned.

A4. The Department had considered that clause 38 already covered chanting that is sectarian – by reference to race, nationality, religion and the other Section 75 categories. It has also been aware that to date there has been no definition in law of "sectarian" and there had been concerns about how successfully it could be defined in law – other than by use of the Section 75 list. The Department is happy to discuss this matter further with the Committee to see if the correct terminology can be developed and inserted into the Bill.

A5. With regard to the term "indecent" the Department's view has been that interpretation is best left to match officials, police and ultimately the courts to interpret. On the other hand we would not wish the chanting offence to limit a person's fun at sporting events. Friendly "banter" could continue - however if it were to stray into the offensive arena it will certainly be caught by the offence. Again it will be for match organisers to step in or ultimately for the police and courts to act.

A6. Clause 39 (going onto the playing area) raised an issue about "good-natured" pitch incursion – a tradition in certain sports or match finals.

A7. The Department believes this new offence is indeed needed primarily for safety reasons. With most perimeter fences to be taken down under new DCAL ground safety rules allowing safe, emergency spill-off from terraces new risks are presented. Pitch incursion – even for good-humoured reasons – can cause problems that all three sports recognise. It can mask some who might have less humorous intent – referees and players need protecting too; it can damage pitches; it can affect commercial contracts; and it can lead to injuries and civil claims. More seriously, it can in itself provoke trouble between rival fans. However the offence will only apply to unauthorised pitch incursions. Safety issues where the crowd must go on to the pitch are not the problem. The situations when pitch incursion is authorised will be for match organisers to make clear as part of their ground rules.

A8. Clause 40 creates an offence of possessing fireworks or flares at matches. An issue arose as to whether or not an item such as a laser pen could also be included.

A9. Existing legislation already covers anyone with illegally made/sold laser pens to ensure that they are in breach of the law. The Department is willing to consider whether all laser pens (legal or otherwise) should be banned from being taken into sports matches and would welcome the Committee's view on the matter.

A10. Clause 41 makes it an offence to be drunk at a regulated match. A question was posed as to the definition of, and decision making as to whether a person was or was not, drunk.

A11. The offence of 'being drunk in a public place' was put into legislation in 1980. For this offence whether a person is drunk is for the police, and ultimately the courts, to decide – "drunk" is not defined in that legislation. The Department is of the view that it is best to remain

consistent with this approach and with other legislation. Defining "drunk" might only limit its meaning with undesirable effect. The police and the courts will apply their judgement and discretion in each case, based on the usual symptoms one would normally take into account to decide if some one was drunk.

A12. Clause 42 makes it an offence to possess certain drink containers inside a ground. The level of detail of the types of container covered was questioned – when viewed alongside, for example, the generality of clause 41.

A13. The Department considers the level of detail used to describe a "drink container" as essential for the practical working of the provisions. It is important that it clearly defines which items people will or will not be allowed to bring to sporting events. Clause 41 is consistent with existing legislation on being drunk; it is already an established procedure which is implemented by police officers. The matters of fact addressed by Clause 42 allow for an effective definition of terms to be given so ensuring that all the desired items are covered.

A14. The offence is focused on drink containers which could cause injury that are routinely either discarded when empty or normally returned to the supplier. Drink cans or bottles are what are intended. The Department is aware that in many instances, for safety reasons, sports clubs already remove drinks containers from spectators entering the ground. Clause 42 is also designed to provide the authority of the criminal law as an important supporting power. Spectators could then be told that it is in fact a criminal offence to bring such containers in.

A15. Clause 43 creates the offence of possession of alcohol in view of the pitch (excluding rooms to which the general public are not admitted) during set times. (The times are provided in clause 36 and are from two hours before the match until one hour after.) Issues arose around the need for the application of the offence to all three sports; the areas in the grounds where the offence would apply; and the times within which alcohol possession would be limited.

A16. As outlined earlier in this paper, the Bill is drafted to include all three sports in a context that differing circumstances may require differing application. The Department appreciates the sensitivities and has no desire to penalise the well-behaved. The Bill is drafted to allow for flexibility and we will wish to consult closely with each of the sports on how and when the offence should apply (including the time period of the exclusion before and after the match), before the provisions are brought into force.

A17. Clause 44 creates a number of offences around having alcohol on vehicles travelling to and from regulated matches. A hire company operator or driver of a vehicle would be guilty of an offence for knowingly allowing alcohol onto the bus; so to would the person who possessed it; and it would be an offence to be drunk on the vehicle.

A18. Issues arose around the breadth of these powers in terms of the inability for a person to have a quiet or celebratory drink even if only on the way home from a game; the absence of trains from the package (it only applies to certain motor vehicles); and the likelihood of displacement into bars on the way to and from a game – thereby not actually tackling the problem of drunkenness at games. The limited distances and travelling times within Northern Ireland might also suggest that drunkenness on transport was not a real issue.

A19. The Department is building on the existing offence of consuming alcohol on public service vehicles – the new provision tightening things up in terms of making it an offence to possess alcohol on hired buses. Our view is that these will also provide additional authority to transport providers and drivers to refuse to take passengers who are intending or are actually consuming alcohol. These are powers that were welcomed by football authorities and GAA – which already have their own codes in place to control spectator travel and drink.

A20. Match buses have been linked to disorder en route and at grounds, so the Department thinks it is right to ban possession on hired buses going specifically to matches as well as on the way home. The problems which prompted the need for this offence happen both before and after matches and can, for example, lead to other issues such as public urination.

A21. As to displacement – and as described in the main body of the paper - the Department takes the view that restricting alcohol sales outside match venues is a matter for licensing laws more generally. The criminal law on being drunk and disorderly, coupled with the new offence being created of drunkenness at a regulated match is, we feel, an appropriate range of sanctions.

A22. Trains are specifically not included in the provisions as the offences are already covered by rail transport by-laws and the conditions of liquor licences on relevant train services. Private hire vehicles are not and that gap is now being filled.

A23. Clause 45 creates an offence of ticket touting at regulated football matches. Issues arose as to the need for such a power, given limited attendances at local games and the practical arrangements in place for ticket sales; why this only applied to football, should it also apply to other sports and indeed non-sporting events such as music concerts. This has been dealt with earlier in the main body of the paper.

A24. Clauses 46-54 create a banning regime applicable to football matches within Northern Ireland. In their detail they include the power to make such a football banning order (FBO) in conjunction with a criminal conviction which is related to violence or disorder in and around a regulated match; a requirement on foot of an FBO to report to a police station; the length of, and ability for a court to adjust or terminate, an FBO; and various procedural requirements placed on the court.

A25. Issues which arose in relation to football banning orders varied across the need for such a regime at all and the fact that it is limited solely to association football – the reasons for which are covered earlier in this paper. Others were why banning orders can now only apply within Northern Ireland; why they are no longer retrospective; and why the banning order on civil application (also previously intended for the Bill) was no longer included.

A26. Banning orders had indeed been intended to apply beyond Northern Ireland; to be retrospective; and to have a civil application route. On legal advice the Department took the view that football banning orders requiring a person to report to an NI police station at the time of a match outside NI could be extra-territorial and beyond the scope of the Assembly. In terms of the civil route the Department had a concern that the imposition of an FBO following what could be lawful conduct, and the potential for remand into custody, would be too wide in the absence of a criminal charge. Retrospective aspects of football banning orders - that they could be imposed following conviction of offences committed before the commencement of the provisions - may contravene Article 7 (no punishment without law) of the European Convention.

A27. The Department is looking in more detail at the opportunities in particular for an amended form of the external FBO to be developed and would welcome the Committee's views.

A28. Clause 55 provides the police with powers of enforcement by way of entry into grounds and the search of suspected offenders across the sports law package. The issue which arose was the role of stewarding versus police powers in ensuring good order at grounds – dealt with earlier in the main body of this paper.

Offender Levy, Special Measures and Live Links

Department of Justice Papers for the Justice Committee Meeting on Thursday 25 November 2010 on Parts 1 and 2 of the Justice Bill

Purpose of papers

1. The purpose of the two attached papers is to provide the Justice Committee with information on the policy issues which arose in developing Justice Bill provisions in relation to the Offender Levy (Paper 1) and Special Measures and Live Links (Paper 2); the key views expressed about the draft proposals; and the Department's view on the issues raised.

Content

2. The papers provide a brief synopsis of the draft provisions; provide details of the main policy issues for consideration; and provide information on a number of further, more detailed issues which arose in respect of individual clauses.

Approach

3. The papers have been prepared on the basis of issues raised during development of the policy proposals – by way of responses to policy consultations for instance - and in response to written representations made to the Committee by interested parties in advance of the Committee's oral evidence session on 25 November 2010. The papers describe the Department's current policy position and how the clauses have been developed to date.

Attendance

4. Presenting the papers to the Committee will be:

- Gareth Johnston, Deputy Director Justice Strategy Division, Department of Justice
- Tom Haire, Justice Bill Manager, Department of Justice
- Janice Smiley, Head of Criminal Policy Unit, Department of Justice.
- Chris Matthews, Head of Sentencing Delivery and European Unit, Department of Justice

5. The Department welcomes the opportunity to share its proposals and looks forward to the Committee's consideration, advice and requirements.

19 November 2010
Justice Policy Directorate
Department of Justice

Paper 1

Offender Levy: Briefing Paper for Justice Committee Meeting on 25 November 2010

Section 1: Introduction

1.1 Following this introduction, this paper is divided into two sections with a supporting Annex.

1.2 Section 2 of the paper describes, in broad terms, the content of Chapter 1 of the Justice Bill. It does not provide an overly detailed account of the provisions, in the knowledge that the Committee already has the Bill's Explanatory and Financial Memorandum, which provides an overview and clause by clause descriptors.

1.3 Section 3 of the paper provides information on the key overarching issues which emerged in the development of the proposals including issues raised by: consultation respondents and other interested parties; members of the Justice Committee; and by other Assembly members during the second reading of the Bill. It anticipates some issues that may arise during the Committee's scrutiny stage, describes the Department's policy response and seeks to assist the Committee in terms of its consideration of the Bill.

1.4 Annex A to the paper provides additional material in relation to other issues impacting on individual clauses which the Committee may find helpful.

Section 2: Offender Levy provisions. Part 1, Chapter 1

2.1 Provisions in Chapter 1 create the powers which enable a financial levy to be (i) imposed by the court in relation to sentencing disposals made on conviction and (ii) attached to a voluntarily accepted non-court imposed penalty (issued as an alternative to prosecution). The principal aim of the levy is to make offenders more accountable for the harm which their actions cause, by requiring them to make a financial contribution to the delivery of support services to victims and witnesses of crime. The revenue from the levy will be used exclusively to resource a non-statutory Victims of Crime Fund.

2.2 Chapter 1 sets out:

- the scope of the levy including the qualifying sentences and penalties and restriction on imposition to those aged 18 years and over;
- how the levy will be collected and enforced – which broadly mirror the arrangements for dealing with a court imposed fine, expect where the offender has been given a period of immediate custody, in which case the levy will be deducted automatically from prisoner earnings;
- the amount of levy which will apply to each sentence and penalty ranging from £5 to £50 on an escalating scale rate according to the severity of the disposal given, with a two tier rate applying to immediate custody sentences; and
- the circumstances in which: the courts may, where necessary, reduce the levy to prioritise a compensation order made in respect of the direct victim of the offence; or the levy imposed can be remitted.

Section 3: Offender Levy: Overarching policy issues and Departmental consideration

Introduction

3.1 When proposals for the levy were being developed, a number of issues were raised concerning potential overarching impacts arising from the outworking of the provisions. These fell under three broad headings: the offender's ability to pay; the impact of non-payment on fine default levels; and the potential for administration of the levy and the Victims of Crime Fund to

outweigh the benefits it would realise. Any issues raised in relation to specific aspects of the provisions are set out separately, in the description of individual clauses, at Annex A.

Offender's ability to pay

3.2 A number of interested parties identified that they would have concerns if an additional financial penalty, such as the levy, was imposed without any recognition of the ability of the individual to make payment.

3.2.1 Provision has been made in the draft Bill which will allow the courts to consider the issue of means in relation to the levy. The amount of the levy may be reduced (to nil if necessary) by the court in circumstances where a victim compensation order has been given, and it has been determined that the offender does not have the ability to pay both the compensation order and the levy. Our thinking in doing so is to ensure priority is afforded to securing the payment of compensation awarded by the court to the direct victim of the offence. Where the ability to pay both the compensation order and the levy is not an issue, then the levy will not be reduced.

3.2.2 Additionally, in circumstances where it is assessed by the court that the offender does not have the means to pay both a court fine and the levy, it will be the court fine and not the levy which may be reduced to an appropriate level.

Whilst some may perceive this as potentially diminishing the penalty for the offence, it is a reflection of current practice in relation to the imposition of court fines. When a fine or other financial order is imposed at court, there is already statutory provision for the court to consider the offender's means and to reduce the fine if necessary to a level which it is assessed the offender is capable of paying.

3.2.3 As with other monetary orders imposed by the court, if the offender is unable to pay in full by the due date, he/she will be able to make an application to the court for an extension of time in which to pay, or to agree payments by instalment. This means that those who may have particular difficulties are given the appropriate assistance to help them make payment.

3.2.4 The inability to reduce either the levy or penalty itself, when attached to fixed penalty disposals was raised by some respondents to the consultation. Fixed penalties, unlike court fines, have a defined financial value and are not means tested disposals. The levy maps onto the existing arrangements for collecting the fixed penalty sum and it would not be proportionate to consider a separate means test for the application of a £5 levy. The offender retains the right to reject the offer of a fixed penalty and opt for a court hearing, at which point means can be considered.

3.2.5 The levy is a comparatively modest amount in most cases and, with the existing arrangements in place to assist offenders to make payment, the Department believes that the levy amount is unlikely to place significant hardship on an offender. The higher levy rates of £25 and £50 are attached to immediate custody disposals, where the Bill makes separate provision for the collection of the levy through deductions from prisoner earnings.

3.2.6 During policy consultation, some concerns were expressed about the potential impact of the provision which allows the levy to be deducted from prisoners whilst in custody. These centred on perceptions as to the possible impact on the prisoner's family, or their motivation to progress to enhanced status within the current prisoner earnings scheme (the Progressive Regimes & Earned Privileges Scheme - PREPS).

The purpose of PREPS is to encourage prisoners to engage in work and developmental activity in order to prepare them for their release and contributes to a better controlled, safer and healthier environment for prisoners and staff within the prison. Payment is made to prisoners on a weekly basis according to their work activity and behaviour and increases in line with the regime level earned. Earnings range from £6 to £20 per week across 3 regime levels. The Northern Ireland Prison Service in particular, wished to ensure that the proposal would not diminish the ability to operate the PREPS scheme effectively.

3.2.7 Deductions are already made from prisoner earnings for in-cell TV rental (£0.50 - £1.00 per week). Provision has been made to deduct the levy by instalment from earnings at a consistent rate across all the regime levels (potentially £1.00 per week). The Department considers that this would be both proportionate and would provide no disincentive to prisoners to progress to higher regime levels. In doing so, they increase their earnings capacity enabling them to afford to buy non-essential items in prison without requiring financial help from families and, if they choose, to pass money to their families or save towards their resettlement.

Fine Default

3.3.1 Some concerns were raised both during consultation and subsequently by the Committee, about the potential for application of the levy to lead to an increase in those imprisoned for fine default.

3.3.2 The compliance rate for the payment of court fines is over 90% with around half of fines paid within the initial payment period set and the remainder when enforcement action is taken. The recent implementation of new enforcement reminder measures by the Northern Ireland Courts and Tribunals Service are having a positive impact, driving up payment rates of fines (before warrants are issued) and reducing by 30%, the number of warrants issued for non-payment. This equates to over 7,000 more fines being paid without the need for police intervention.

3.3.3 Around 93% of the levies imposed in any given year will be on disposals with an existing monetary order which is being enforced. Therefore, improvements in early payment rates for fines will automatically translate into early payment rates for the levy, which is collected in the same payment. An individual who defaults on payment of the levy will inevitably have defaulted on their other monetary order, and it is this, rather than the levy alone, which will have triggered enforcement action in those cases.

3.3.4 Implementation of the levy will be staged in line with the introduction of other planned fine default reform measures which aim to further improve early payment rates and provide alternatives to a custodial default outcome.

3.3.5 With regard to the remaining 7% of disposals to which the levy will apply, 2% of levies will be imposed on immediate custody sentences, where deductions will automatically be made from prisoner earnings. The remaining 5% of disposals will be phased-in when proposed additional collection methods – including deductions from benefits and attachment of earnings – are introduced.

3.3.6 The ability of the courts to reduce the amount of the levy or fine where the offender has insufficient means to pay or to allow an extension of time in which to pay in full or by instalment, combined with the work being administered by NICTS to drive up early payment rates, will have a positive impact in reducing the potential for fine default.

Administration issues

3.4.1 During consultation, Committee briefing sessions and at the second reading of the Bill, particular interest was expressed on a number of practical issues concerning: how the levy and the Victims of Crime Fund would be administered and whether this might outweigh the benefits to be realised from levy revenue; the ring-fencing and use of that revenue; and the impact it might have on delivery of victims' services.

Administration of the Levy

3.4.2 Provision has been made in the Bill to allow the levy to be treated as a fine for the purposes of collection and enforcement. Practically this means that for the most part, the levy will be collected and enforced by the courts, mapping onto current infrastructures which courts already operate for dealing with the administration of monetary orders. As already indicated, 93% of disposals to which the levy will apply have an existing financial element which is enforced by courts. The imposition of the levy to those disposals simply increases the overall sum being pursued, rather than representing any significant additional administrative burden. The levy imposed on custodial sentences will be collected by the Northern Ireland Prison Service, with minimal additional administration.

3.4.3 Implementation of the levy will incur one-off capital costs of c £100k to effect the necessary changes to organisational IT systems, enabling each criminal justice organisation involved to capture and share imposition, collection and enforcement data. As already indicated, the day to day administration cost is largely absorbed within existing administrative processes onto which the levy is mapped. We estimate that around 5% of disposals will not map onto existing administration arrangements and therefore propose to phase implementation over 3 years. That period will see the introduction of planned IT and other system reforms onto which the levy can piggy-back, to further minimise its administrative impact.

Administration of Victims of Crime Fund

3.4.4 The Victims of Crime Fund will pay for projects that support victims and witnesses during their engagement with the justice process, as well as small local initiatives working with victims in the community. The proportion of funding being provided to groups working with victims in the community will be routed through the existing Policing & Community Safety partnerships infrastructure, within existing administration costs. A dedicated grant scheme was considered, but discounted, because it would be too costly to administer. The remainder will be allocated according to strategic priorities agreed with the Victim and Witness Task Force across a number of victim service policy areas: general victim and witness needs; hate crime; sexual violence; domestic violence; families of homicide victims and other vulnerable victims groups.

The Fund could be used to introduce improvements which victims themselves have highlighted in the Victim and Witness Experiential Survey, as well as those where a specific need has been identified, for example, introducing Independent Sexual Violence Advisers to assist victims of sexual violence and abuse throughout their engagement with the criminal justice system.

3.4.6 The Fund will be managed centrally by the Department of Justice, within existing departmental financial management structures, without incurring any additional running costs. The Fund will be clearly separated from other funding streams, which will provide transparency and accountability on the movement of money into and out of the Fund. The Department will be required to report regularly to DFP and Treasury on its operation, and will publish data on revenue, spend and projects supported.

Revenue projections

3.4.7 The levy is not retrospective and will only apply to disposals for offences which are committed on or after commencement of these provisions. There will therefore be a time-lag before those disposals to which a levy can be attached will complete the investigative process and come before the courts.

3.4.8 The combined effect of phased implementation and the lead-in time to imposition on qualifying disposals means that levy revenue will build steadily, achieving a significant revenue return by year 3 and reaching its fullest potential – a maximum of £500k per year – in years 4 to 5 of its operation. (See table of projected revenue below.)

Table 1: Projected levy revenue

	Immediate Custody* (£50 for > 24mths; £25 for 24mths or less)	Suspended custody* (£20)	Community sentence* (£20)	Fines* (£15)	Endorsable fixed penalty notices and conditional offers** (£5)	Total
Year 1	£11,250	N/A	N/A	£153,620	N/A	£164,870
Year 2	£29,067	N/A	N/A	£231,049	£193,650	£453,766
Year 3	£30,175	£13,307	£10,760	£231,106	£193,650	£478,998
Year 4	£30,175	£22,783	£17,432	£231,106	£193,650	£495,146
Year 5	£30,175	£23,040	£17,550	£231,106	£193,650	£495,521

* Revenue on court imposed sentences based on principal offence 2006 NICtS statistics (adult offenders only) ** FPNs and conditional offer revenue based on 2008 PSNI statistics (adult offenders only)

Ring-fencing levy revenue

3.4.9 The ring-fencing of revenue from the levy for the sole purpose of resourcing a dedicated Victims of Crime Fund was first explored during consultation, where it was widely supported. It is proposed that, with DFP and HM Treasury's agreement, revenue will be diverted from the consolidated fund by courts at the point of collection and automatically directed to the Victims of Crime Fund. DFP is currently consulting with Treasury officials on the detail of the similar administrative arrangement the Ministry of Justice has agreed with Treasury for the Victim Surcharge in England and Wales. We have assured the Finance Minister that implementation of the levy will not commence, until DFP have reached agreement on the proposed arrangements.

3.4.10 A number of sources also sought assurance that the levy revenue would provide an additional funding stream, rather than replacing existing provision. We recognise that there will be obvious pressures on all public spending over the next four years and cannot rule out that some existing victims' services may come under pressure. However, we will maintain the principle of using levy revenue exclusively to support services meeting victims' needs.

Annex A

Issues within Clauses

A1. Clause 1 sets out the court sentences which will attract the levy for offenders aged 18 years old and over. It enables the court to reduce the levy in limited circumstances where a victim compensation order has been made (which has been discussed in section 3 of the briefing paper concerning the overarching issue of an offender's ability to pay). The majority of respondents were supportive of application of the levy to the proposed range of court disposals.

A2. It was proposed that the levy should be confined to adult offenders because of existing statutory provisions on monetary penalties, which provide that the young offender's parent or guardian is responsible, in law, for making payment. This was seen as conflicting with the policy aim of making the offender more accountable for their actions. Views were sought during the consultation about whether it should be applied to those under 18 years of age. The majority of respondents were not in favour of imposing a levy on juvenile offenders, and believed it could also have a detrimental impact on low income families.

A3. Clause 2 allows for the levy to be enforced in the same manner as a court fine (except where an immediate custodial sentence has been given – in which case the levy will be deducted from prisoner earnings). Apart from the overarching issue of the potential impact on fine default (addressed in section 3 of this paper), no other specific issues were raised in relation to this clause.

A4. Clause 3 enables the governor of a prison or young offender's centre (or a person authorised by him) to deduct the levy on a custodial sentence from prisoner earnings, at a rate and in accordance with conditions which will be set by the Department. The potential impact of deductions on offenders and their families was raised during the consultation and has been discussed in detail in section 3 of this paper in relation to the overarching issue of an offender's ability to pay the levy.

We propose setting a flat rate of £1 per week (from earnings of between £6 and £20 per week), but allowing governors some limited discretion in relation to dealing with particularly vulnerable offenders, where deductions in a particular week, may impact on their ability to maintain phone contact with their family. We believe that this minimises any potential for the levy to place an offender in hardship, impact on their ability to save towards their resettlement or place any additional burden on families.

A5. Clause 4 provides that a court cannot set a default period of imprisonment for non-payment of the levy. It also provides that where an offender is released from custody before the levy has been fully recouped, the outstanding amount will only be discharged on the full expiry of his sentence.

A6. The provision which prevents the court from setting a default period of imprisonment for non-payment of the levy was considered appropriate in recognition that it is not part of the sentence for the offence, but a separate levy based on the disposal, which acknowledges the impact of offending behaviour on victims. Where an offender defaults on a court fine and this is dealt with by means of a supervised activity order or committal to custody, the clause provides that the outstanding levy amount may be remitted. This is because in such circumstances those sanctions have dealt substantively with discharging the non-payment of any court imposed monetary orders.

A7. Preventing the court from setting a default period of imprisonment for non-payment of the levy is important, as it protects the status of the levy, and enables it to be recovered from the most serious offenders - those sentenced to custody. Otherwise, those offenders could seek to

serve a period of imprisonment (concurrent with their sentence) in lieu of payment of the levy, which is normal practice in the case of outstanding unpaid court fines. We explored this point during consultation and found that the majority of respondents were unreservedly supportive of this proposal.

A8. The outworking of that proposal is that there is currently no non-custodial sanction available to the court to enforce payment of any part of the levy, which may be outstanding when the offender is released from custody. We explored the possibility of introducing measures providing for deductions to continue to be made on their release, by means of attachments of earnings or deductions from benefits arrangements. These are not currently available for any financial penalty arising from criminal proceedings, but are being examined as options within the wider fine default reform programme.

A9. One option was to delay introduction of the levy to immediate custody sentences until such sanctions became available, but we considered it was important that those causing the greatest harm to victims should be expected to contribute to the Victims of Crime Fund in the early phase of levy implementation. Until such measures are available, we have made provision in clause 5 which allows the statutory remittal of the levy on the full expiry of the prisoner's sentence i.e. when he is no longer liable to be recalled to custody for breach of the licence conditions imposed on his release. This is considered a temporary measure, which allows for introduction of the levy to custodial sentences at the same time as it is introduced for fine disposals. We would plan to review the provisions for automatic remittal when additional measures as an alternative to a custodial default, are legislated for in due course.

A10. Clause 5 sets out the specific fixed penalties which will attract a levy for offenders aged 18 years and over, and provides that where a penalty is increased on default, the levy will be increased by the same proportion. It also provides that fixed penalties issued by other Government departments for criminal offences may, following consultation, be subject to the levy at a future date.

A11. The attachment of the levy to fixed penalties for road traffic offences was raised during consultation, with some respondents believed that attaching the levy to the road traffic offences proposed (those attracting licence endorsement), was inappropriate, with the inference that these were 'victimless' crimes. The Department does not share that view. Endorsable road traffic offences have a very direct impact on other road users and on the communities in which they occur. Driving whilst using a mobile phone, driving at excess speed and parking on a pedestrian crossing, are all examples of endorsable traffic offences that can lead to serious accidents and fatalities. It is our view, that no offence which causes concern to the public is 'victimless', and that all offences impact on the community as a whole.

A12. Clause 6 details the amount of levy to be paid in relation to the disposal given. Where more than one court sentence is imposed, the levy will be applied to the sentence which attracts the highest rate.

A13. Despite concerns expressed by some respondents on the offenders' ability to pay the levy, others thought it should be set at a higher tier rate for more serious offences, or offenders with higher earnings. It was suggested that a rate should be applied which varied according to the perceived seriousness of the offence, or the economic status of the offender, but we consider this would be difficult to administer and could potentially lead to a greater margin for error in imposition.

A14. Further concerns regarding the rate were raised by the Committee during its initial evidence session on consultation proposals. Specifically members felt there was insufficient differential between £5 for a traffic offence and £30 for custody. Whilst the purpose of the levy is not to

make a value judgment on the degree of harm caused to victims in individual cases, we have now provided a 2 tier rate for custodial sentences, to reflect the greater harm caused to victims by those convicted of serious and violent offences. A rate of £50 will be applied to those receiving indeterminate sentences and custodial sentences of more than 2 years and a lower rate of £25 will be applied to those serving shorter sentences of 2 years or less.

Paper 2

Special Measures and Live Links: Briefing Paper for Justice Committee Meeting on 25 November 2010

1. Introduction

1.1 Special measures are statutory provisions to assist vulnerable and intimidated witnesses give their best possible evidence in criminal proceedings. The special measures provisions are legislated for in the Criminal Evidence (NI) Order 1999 (the 1999 Order).

1.2 Following a review, Part 1, Chapter 2 of the Bill makes improvements to the special measures provisions in the 1999 Order. It;

- raises the upper age limit, under which a young witness is automatically eligible for special measures from 17 years to 18 years;
- allows young witnesses' views to be taken into account when special measures applications are being made (subject to certain safeguards);
- removes the special category of child witnesses in need of special protection;
- provides automatic entitlement for adult complainants of sexual offences to have their video recorded statement admitted as evidence in chief;
- formalises the presence of a supporter in the live link room when a witness is giving evidence;
- relaxes restrictions on a witness giving additional evidence in chief after their video recorded statement has been admitted; and
- allows intermediaries to be made available to vulnerable defendants.

1.3 Live Links are live television links, video conferencing facilities or similar technologies between Courts, prisons and other institutions that allow Court proceedings to take place as though defendants were present in the Court. They are a cost –effective and secure means of allowing proceedings to take place without having to physically transport individuals to Court premises.

1.4 Part 2 of the Bill expands the opportunities for "live links" by video in courts to cover a wider range of case types. Six situations are provided for: three are tidying up gaps in existing law; two widen the use of live links in cases of vulnerable defendants/patients; and one puts live link arrangements on a statutory basis that has heretofore been within the court's inherent jurisdiction.

1.5 Live link facilities are expanded in respect of vulnerable defendants or patients to include mental health patients detained under Metal Health legislation (Part 3 of the 1986 Order). The provisions also allow for a vulnerable accused person who has a physical disability or disorder to avail of link live facilities ensuring consistency with the criteria applied to witnesses.

1.6 Three gaps in existing law are filled by allowing live links in both preliminary and sentencing hearings on appeals to the county court; and also to allow a series of specific – largely infrequent – categories of appeal to the Court of Appeal. The current power of the High Court to deal with preliminary hearings, including bail applications, by live link under its inherent jurisdiction is being placed on a statutory basis.

2. General issues

2.1 As part of the consultation process, we asked for views on providing for automatic eligibility to special measures for witnesses in proceedings related to offences involving firearms, knives and offensive weapons.

2.2 We received a split response to this proposal. To summarise, seven respondents were supportive of this proposal. Six did not give any helpful reasons for their view, while one considered that automatic eligibility reflected the serious nature of the offences and the potential for intimidation, fear or distress.

2.3 Seven respondents were not supportive of the proposal. Views expressed included:

- it is considered that, as a principle, witnesses should give evidence in the court room where the defendant is entitled to be present to see and hear the evidence against them and that such a principle should only be departed from in the particular circumstances of the current legislative scheme;
- the court currently has discretion to apply eligibility;
- there does not appear to be a need for automatic special measures in these types of cases;
- eligibility for special measures should be based upon an individual assessment of each case; and
- it is not appropriate to introduce a hierarchy of victims and offences.

2.4 On balance, we decided not to take this proposal forward at this particular time. In coming to that decision, we were reassured that witnesses of such offences can of course still be considered for special measures assistance as is the case at present. We will, however, keep the decision under review.

2.5 Concern was expressed during the special measures consultation that eligible witnesses were not being considered for special measures' assistance. We therefore intend to establish a Vulnerable and Intimidated Witness sub-group of the Victim and Witness Task Force early in the New Year to address this issue as well as the other operational issues which were raised as areas of concern during the evaluation of the effectiveness of special measures.

2.6 Extending "live link" opportunities for defendants were welcomed alongside a comment that improvements should be made in knowledge of planned changes to mental health legislation. The importance of ensuring the defendants right to a fair trial was highlighted, particularly for defendants suffering from mental illness. There was concern raised from the legal profession that consulting with clients before, during and after a live link could be problematic.

2.7 The Department welcomes the support for the protections being created and recognises the importance of plans for new mental health legislation. The live link package contains a series of procedural protections and controls to ensure a fair trial and access to justice for all defendants whereby appellants can make application or representations; where consent is required; and

where the court must be satisfied that a live link is in the interests of justice. Legal representatives can consult with their clients, via live link or telephone, in private booths situated in the courthouse. These facilities are available to legal representatives prior to the court hearing (and afterwards) and facilitate consultation during the hearing at the courts discretion.

3. Issues within clauses

Clause 7: Eligibility for special measures: age of child witness

3.1 Concern has been expressed about 18 year olds who have a lower mental age which would affect their ability to give their best evidence in court. It was considered that processes should be put in place to support adults with hidden communication difficulties. It should be noted that the establishment of an intermediaries service, which is currently being developed, will assist such persons with communication difficulties give their best evidence in court.

Clause 8: Special measures directions for child witnesses

3.2 Concern has been expressed that allowing for a more flexible approach should not be abused by making the child give evidence in court if it is thought that doing so would help the case. However, the presumption will remain in the legislation that young witnesses will give video recorded evidence in chief and further evidence by live link.

3.3 There have been concerns that young witnesses will not understand the consequences of indicating that they do not wish to avail of special measures' assistance. However, we have written a number of safeguards into the legislation, or example the court must taken in consideration the age and maturity of the witness. The court will also consider the young witness's ability to understand the consequences of not giving video recorded evidence in chief and further evidence by live link (i.e. they will have to give evidence in court).

Clause 9: Special provisions relating to sexual offences

3.4 There was some confusion about background to this clause. To clarify, adult complainants, who are called as witnesses in sexual offence proceedings, are automatically eligible to be considered for special measures assistance. However, as part of our commitment to reduce the rate of victim withdrawal of complaints in sexual offences cases (or in a sexual offence and other offence), we wish to go a step further and provide greater certainty to adult complainants in sexual offence cases, which include rape, buggery, indecent assault and incest, that they will be able to give their evidence in chief by way of a video recorded statement. Clause 9 therefore makes provisions in favour of admitting the video recorded statement of adult complainants in respect of sexual offences tried in the Crown Court, when an application to do so is made and the court is satisfied that the requirement would be likely to maximise the quality of the complainant's evidence. The provision applies to the Crown Court as, due to the serious nature of these offences, they tend to heard in that court tier. If a case is heard in the magistrates' court, a special measures application can of course still be made. There is just not the presumption in the legislation in favour of granting it.

3.5 There has been concern that this proposal would impinge on the defendant's right to a fair trial. However, the 1999 Order provides that, in deciding on special measures applications, the court must consider if the measures would inhibit the evidence being effectively tested.

3.6 It has been pointed out that the phrase 'serious sexual offences', which was in the consultation document, is not used in the 1999 Order and clarification was requested as to whether there was an intended differentiation. We have subsequently confirmed that there was

not an intended differentiation. We are providing that automatic eligibility to admit a video recorded statement is extended to adult complainants in those sexual offences contained in Article 3 of the 1999 Order. These include offences such as rape, buggery and incest.

3.7 A query has also been raised by what was meant by the phrase "the requirement would not maximise the quality of the complainant's evidence". This phrase is in line with the wording in Article 7 of the 1999 Order. In other words, the court will give a direction to admit the video recorded statement as evidence in chief if would be likely to improve, or to maximise as far as practicable, the quality of the evidence given by the complainant. "Quality" is defined in Article 4(5) of the 1999 Order.

3.8 It has been understood from the phrase "party to the proceedings" that it was proposed that it was only the complainant who could apply to have their video recorded evidence admitted as evidence in chief. We have clarified that this phrase is used throughout Part II of the 1999 Order and essentially means the legal representatives, either for the prosecution or defence.

3.9 There have been calls that this provision should apply to proceedings relating to breaches of non-molestation orders in magistrates' courts. We can advise that victims who have experienced domestic violence can be considered as eligible for consideration for special measures assistance by virtue of Article 5 of the 1999 Order (witnesses eligible for assistance on the grounds of fear or distress about testifying).

3.10 It has been suggested that this clause is flawed as it fails to recognise that in domestic violence cases there is frequently sexual violence involved and that this is often exceptionally difficult and painful to disclose in open court. However, we can advise that an application to give evidence in private can be made in respect of witnesses in proceeding which relate to a sexual offence.

Clause 10: Evidence by live link: presence of supporter

3.11 Concern has been expressed that a supporter would not be available to adult vulnerable and intimidated witnesses. We can confirm that the option of a supporter in the live link room will be available to both adult and young vulnerable and intimidated witnesses.

3.12 Further issues that have been raised include: guidelines would be needed; a definition is needed of "independent supporter"; the supporter must not interfere with, or cast doubt on, the witness's evidence; and the supporter should be trained. These issues will be addressed in the practitioner guidance document, Achieving Best Evidence, which is due to be published early next year. It will set out standards for supporters in the live link room. These will include the role of the supporter; who can act as one (generally speaking, can be anyone known to the witness who is not a party to the proceedings and has no detailed knowledge of the evidence in the case); what skills they require; and standards for conduct. Standards for conduct include how they should act whilst in the live link room and contact with the witness, for example they must remain visible to the courtroom when the witness is giving evidence and they must not prompt or influence the witness in any way.

3.13 It has also been considered that the court should be able to approve the supporter/withdraw approval and the witness's views re the presence of a supporter should be taken into consideration. The clause provides that the court determines who the supporter is, whilst taking the views of the witness into account. As with other special measures directions, the court has the power to discharge or vary the direction.

Clause 11: Video-recorded evidence in chief: supplementary testimony

3.14 There has been concern that the proposals may impact on the defendant's right to a fair trial. However, the defendant's right to a fair trial is not affected as the court gives permission for additional evidence in chief to be admitted where it is the interests of justice to do so.

3.15 There was concern that the proposal would place undue pressures on vulnerable witnesses. However, we believe that more can be done to improve the effectiveness of the complainant's evidence. One of the intentions behind this proposal is to assist witnesses in settling down before they are cross-examined. At present normal practice is that the video recorded statement is played and then the witness is cross-examined. The provisions will allow the prosecutor to ask some "warm up" questions.

Clause 12: Examination of accused through intermediary

3.16 It has been considered that assistance to defendants does not go far enough and that provision should be made for a supporter to accompany a defendant in the live link room. We have undertaken to consider putting this assistance on a statutory footing.

3.17 It has also been suggested that the intermediaries special measures provisions should be extended to all child defendants. The intermediaries provision will be available to young defendants under the age of 18 if the court is satisfied that their ability to participate effectively in a trial in terms of giving oral evidence as a witness is compromised by their level of intellectual ability or social functioning. This condition is consistent with that which applies to the consideration of applications for young defendants to give evidence by live link. In effect this will mean that young defendants, while fit to plead, if they have a low cognitive age, will be eligible for intermediary assistance to assist them understand proceedings and participate effectively in their trial.

3.18 It has also been queried why child defendants cannot avail of the other special measures. We considered that as defendants' right to a fair trial enshrined in the Human Rights Act means that they will receive the support they require to give their evidence. However, victims and witnesses up until the introduction of special measures in 1999 did not have assistance to give evidence. This can often be daunting in the adversarial system that we have and it is right that vulnerable and intimidated witnesses should be assisted through the use of special measures to give their best possible evidence.

3.19 It has been considered that this provision to contrary to the recommended emphasis of the Criminal Justice Inspectorate that those with mental illness are diverted away from criminal prosecution. We can advise that the background to this proposal is as follows. In 2004 the case of SC v UK involved an 11-year-old defendant, who was judged to have a cognitive age of between six and eight years. The argument was that, while he was fit to plead, he was so confused by the proceedings that he had not been able to participate effectively in his trial. The European Court of Human Rights agreed with this argument and required action to be taken by the UK to assist defendants in their understanding of the proceedings in which they are being tried. While we have made some progress in response to the judgment, we consider that more can be done and that there is therefore merit in extending the intermediaries special measures provision to vulnerable defendants who would benefit from an intermediary to assist them when giving evidence to ensure that they receive a fair trial.

3.20 Concern has been expressed by the absence of a definition of "Intermediary". We consider that Article 21BA(4), which outlines the intermediary's function, provides an adequate definition

of an intermediary. It would not be practical to specify who can act as an intermediary in the legislation as they can come from such a wide background of roles and occupations, including social workers, psychologists, speech and language therapists, occupational therapists, those in the medical profession and teachers.

3.21 There has been some concern that this proposal may result in the criminal prosecution of the mentally unfit. However, it should be noted that the assistance of an intermediary is applied for by the accused's legal representative not the Public Prosecution Service.

3.22 It has been suggested that guidance should be issued when the intermediary service for the vulnerable accused goes live. We can confirm that this will be done.

3.23 It has been asked what level of expertise and experience will be required of an intermediary. It is planned that intermediaries will come from a wide background of roles and occupations, including social workers, psychologists, speech and language therapists, occupational therapists, those in the medical profession and teachers. Intermediaries will have to apply to become a "Registered Intermediary" and, if successful at interview, will then be expected to undergo an accreditation and assessment process to provide them with the necessary knowledge and skills to meet the required standards for the role.

Clause 14 Live links for patients detained in hospital

3.24 Only one clause attracted a particular contribution. Clause 14 provides for live links to be extended to include patients detained in hospital under Part 3 of the Mental Health (NI) Order 1986. There was support for the proposal for live links from hospitals subject to patients receiving the same intermediary assistance they would be afforded if they were at court and the importance of ensuring access to justice for vulnerable defendants was highlighted. The Department confirms provision will be made for an intermediary to provide assistance at a psychiatric hospital when an application is made by a patient who is appearing via a live link and the live link package contains a series of procedural protections and controls to ensure a fair trial and access to justice for vulnerable defendants.

3.25 Comments were made that those detained in hospital might not be in a fit state to participate in criminal proceedings or that they might have communication difficulties. The Department can confirm there will be provision to ensure use of the facilities will be subject to judicial consideration prior to any decision on the use of a live link. The patient's Responsible Medical Officer will also be available to provide advice on their fitness to participate in proceedings. The Department can also confirm that these provisions were developed in conjunction with relevant health authorities.

Solicitor Advocates Clause

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The Lord Morrow of Clogher Valley MLA
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26 November 2010

Dear Maurice

Solicitor Advocates

Thank you for your letter of 23rd November enclosing correspondence from the Chief Executive of the Law Society.

The Society had also shared with me their Counsel's opinion on the withdrawal of the solicitor advocates clauses from the Justice Bill and I had an opportunity to discuss the matter with the President and Chief Executive when I met with them recently.

I have since shared the opinion with the Attorney General and am meeting with him to discuss the solicitor advocate clauses, which I would hope to table as an amendment.

David Ford
Minister of Justice

Correspondence to Ulster Rugby - Clause 43

FROM THE OFFICE OF THE MINISTER OF JUSTICE

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Ms Lyndsey Irwin
Senior Manager, External Relations
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30 November 2010

Dear Ms Irwin

Thank you for your letter of 17 November in which you made clear your concerns about Clause 43 (*Possession of alcohol in grounds*) of the Justice Bill as introduced in the Assembly.

I found it very helpful to meet you last week to hear your views at first hand. I do appreciate the points you made about the good behaviour of fans at Ravenhill and the implications that a drinking ban would have on operations there.

I described the mechanisms within the current text of the Bill which provide for flexibility in implementing the sports provisions, and in particular clause 43. These mean that a sport-by-sport approach can be taken to commencement of that clause. I also undertook to re-examine how the Bill deals with these mechanisms with a view to strengthening the commitment to consult before commencing this clause. While it would not have been your first preference, you accepted this as a possible way forward.

[redacted]

FROM THE OFFICE OF THE MINISTER OF JUSTICE

Department of Justice
www.dojni.gov.uk

My officials are now engaging with the legislative draftsman about this and I will write to you, and the Justice Committee, with my further thoughts on it as soon as possible.

I am taking the liberty of copying this letter to Lord Morrow, Chairman of the Justice Committee.

DAVID FORD MLA
Minister of Justice

[redacted]

Legal Aid

PAPER 1

LEGAL AID REFORM: BRIEFING PAPER FOR JUSTICE COMMITTEE MEETING ON 2 DECEMBER 2010

Part 7 of the Justice Bill: Legal Aid

1. Introduction

1.1 Part 7 of the Justice Bill is in respect of legal aid. It clauses are entitled:

- Eligibility for criminal legal aid – clause 85
- Order to recover costs of legal aid – clause 86
- Eligibility of persons in receipt of guarantee credit – clause 87
- Legal aid for certain bail applications – clause 88
- Financial eligibility for grant of right of representation – clause 89
- Litigation funding agreements – clause 90
- Civil legal services: scope – clause 91

This paper discusses the contents of Part 7 on a clause by clause basis.

2.0. Eligibility for criminal legal aid - clause 85

2.1 The grant of criminal legal aid in Northern Ireland is currently governed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, (the 1981 Order). Articles 28 to 30 of the 1981 Order provide the statutory framework for legal aid for criminal proceedings in the magistrates' court, for onward appeals to the county court, and for trials before the Crown Court.

2.2 There are 2 tests to be met to receive legal aid in criminal proceedings:

- the means test and
- the interests of justice test.

2.3 The current legislation does not prescribe fixed financial limits beyond which an accused is ineligible for legal aid. The absence of prescribed financial limits for the means test has the consequence that decisions on whether or not to grant legal aid can be inconsistent.

2.4 The Courts and Tribunals Service's public consultation exercise on the means test proposal indicated that there was a significant degree of support for introducing a fixed means test. The majority of respondents were of the opinion that those who can afford to pay for their own defence should do so.

Scope and application

2.5 This provision gives effect to the policy aspiration that resources should be targeted at those who need them most and, consequently, that those who can afford to pay for their own defence should do so.

2.6 The clause provides an enabling power to introduce statutory rules to govern the operation of means testing. This will be at the magistrates' court and on appeal to the county court. It is currently envisaged that the means test will be based on the test being operated in England and Wales but adapted to suit this jurisdiction. The test would be made up of an initial income test which would compare an applicant's (adjusted) income with a lower and upper income threshold. An applicant whose income is above the upper threshold would not be eligible for legal aid, but would be offered the right to a review on the grounds of hardship. An applicant whose income is below the lower threshold (and applicants in receipt of passporting benefits) would be granted legal aid if they were also able to pass the interests of justice test. [Note: At present an applicant for legal aid must pass both the means test and the merits (interests of justice) test. No change is being made to the latter test.) Applicants whose income falls between the two limits would be subject to a full means test.

2.7 Research has been commissioned from an independent economist to examine factors affecting ability to pay in Northern Ireland such as incomes, costs of living and measures of deprivation to inform the decision regarding at what level to set the thresholds.

2.8 Certain issues were raised during consultation regarding the impact of means testing on disabled members of society. However, the test will take account of the additional costs associated with living with a disability through the hardship review process.

2.9 Concern was also raised regarding the additional costs associated with the need for interpreter services. Again we believe that the hardship review process, which takes account of additional costs in exceptional circumstances, will provide a safeguard in respect of this particular issue and in other instances where defence costs are significantly increased by some other exceptional circumstance.

3.0 **Order to recover costs of legal aid - clause 85**

3.1 The introduction of recovery of defence costs orders (RDCOs) will allow the courts to recover costs from legally aided defendants where the court considers that the defendant has sufficient funds to pay for all, or a proportion of, the costs of his defence.

Scope and application

3.2 Again, this provision gives effect to the policy aspiration that resources should be targeted at those who need them most and that those who can afford to pay for their own defence should do so.

3.3 The clause provides an enabling power to introduce statutory rules to govern the operation of RDCOs. Initially, RDCOs would be restricted to grants of legal aid under the 1981 Order for cases in the Crown Court, though it may be extended to grants under the Criminal Appeal (Northern Ireland) Act 1980 for cases in the Court of Appeal at a later date. RDCOs would only be made against convicted defendants on the completion of the case.

4.0 Eligibility of persons in receipt of guarantee credit – clause 87

4.1 Clause 87 is a technical amendment. The Guarantee Credit element of State Pension Credit is a passporting benefit for the purposes of civil legal aid. In other words a person in receipt of this benefit is deemed financially eligible for civil legal aid without the need for a detailed means assessment. This is currently achieved by way of Ministry of Justice Guidance (previously Lord Chancellor's Guidance) and the intention behind this clause is to place it on a statutory footing by including it on the face of the primary legal aid legislation (the 1981 Order), alongside the other passporting benefits. Further amendments are necessary to two other pieces of subordinate legislation but this can be achieved outside the Bill.

5.0 Legal aid for certain bail applications – clause 88

5.1 This clause provides for a technical amendment to legal aid legislation as a result of clauses 92 (Bail: compassionate grounds) and 93 (Bail: repeat applications) of the Bill to ensure that an accused person who has been granted a criminal legal aid certificate for proceedings before a magistrates' court will continue to get free legal aid not only for any bail application made in that court, but also for a repeat bail application made to the Crown Court.

6.0 Financial eligibility for grant of right of representation – clause 89

6.1 This clause amends the Access to Justice (Northern Ireland) Order 2003 (the 2003 Order) as it relates to the granting of representation orders (criminal legal aid) and provides an enabling power to make statutory rules to give effect to a means test under the 2003 Order. The relevant Articles in the 2003 Order, regulating the granting of representation orders, have not yet been commenced. Where they are commenced and the equivalent provisions in the 1981 Order are repealed, it would be our intention to introduce a fixed means test in a like manner to clause 85.

7.0 Litigation funding agreements – clause 90

7.1 Clause 90 repeals Article 41 of the 2003 Order. The 2003 Order introduces a statutory framework for a new type of agreement called a Litigation Funding Agreement (LFA).

7.2 In essence, an LFA can operate as follows. A claimant pursuing a money damages case (eg, a personal injury claim) is provided with protection against the risks of incurring costs in losing a case. He/she would not have to pay the successful opponent's costs in the event the case is lost and would not be responsible for paying his/her own lawyer's costs. As a condition of receiving support by way of an LFA a successful claimant may have to pay a portion or his or her damages to the Fund and/or a success fee would be obtained from the losing side.

7.3 Article 41 of the 2003 Order places a restriction on the Northern Ireland Legal Services Commission (the Commission) from maintaining or establishing LFAs. This was because Government at the time did not propose to meet the cost of establishing or underwriting LFAs. However, the Commission has argued that Article 41 restricts its ability to consider fully the range of alternatives to the current funding of money damages cases. Current proposals to replace the merits test for civil legal aid with a "Funding Code", based on the England & Wales model, has the potential to reduce the number of people who can access legal aid for money damages cases.

7.4 The Commission has been in discussion with the Law Society and the Bar in relation to the development of an alternative funding arrangement for handling money damages claims, which could provide an evidence base for the introduction of a statutory arrangement. Those discussions have identified a range of options and identified the key impediments to be resolved. Further meetings are scheduled to bring the discussions to a conclusion.

7.5 If Art 41 is repealed it does not automatically follow that LFAs will be introduced in Northern Ireland or that they will be publicly administered. Stakeholders, including both branches of the legal profession, are generally supportive of the approach, but have rightly pointed out that much work still needs to be done to establish the viability of a scheme in this jurisdiction, including addressing concerns that cases could potentially be 'cherry picked' with the result that legal assistance would not be available for cases where the complexity (and workload) is seen to outweigh the likely reward. Also to be considered is the potential impact on an individual in retaining a portion of damages, especially where these are awarded to cover long term medical treatment and care responsibilities etc.

7.6 We will wish to consider closely the findings of the Review of Access to Justice in Northern Ireland, due to report in early summer 2011. This Review will examine a range of options with regard to funding money damages cases and these include:

- introducing conditional and/or contingency fees (no win, no fee) with safeguards to keep costs under control of the type recommended by Lord Justice Jackson in his report into the costs of civil litigation in England & Wales;

- a privately funded Contingent Legal Aid Fund or publicly administered Supplementary Legal Aid Scheme with a Fund that is sustained out of a levy on general damages in successful cases and out of which costs in losing cases are paid;

- a privately arranged insurance scheme whereby subscribers from the legal profession would, for a small fee in individual cases, be able to underwrite claims under a particular value;

- the workings of the Personal Injuries Assessment Board in the Republic of Ireland, responsible for processing claims for personal injury (other than clinical negligence) for a small charge to the claimant.

8.0 Civil legal services: scope – clause 91

8.1 This clause seeks to make a number of minor amendments to the 2003 Order in relation to the scope of civil legal aid. They are:-

- applications to vary or discharge restraining orders made under the Protection of Harassment (NI) Order 1997. This ensures that civil legal aid is available for the person specified in the order who may feel that they would be in danger if an application was made to have it varied or discharged;

- replacing references to the now abolished Asylum and Immigration Tribunal (AIT) with new references to the First Tier/Upper Tribunal which now carries out the functions of the AIT;

- applications to vary or discharge witness anonymity orders or investigation anonymity orders. This ensures that legal aid is available for the witness if they feel they would be in danger if an application was made to have the order varied or discharged;

- proceedings relating to the making of an Order under section 215A of the Proceeds of Crime Act. This is an order which authorises an appropriate officer to sell seized property in satisfaction of a confiscation order. Civil legal aid is available for a number of confiscation proceedings under the Proceeds of Crime Act;

- proceedings relating to an order for the variation, renewal or discharge of a Foreign Travel Restriction Order, made under the Counter Terrorism Act 2008. The provision of civil legal aid for this is consistent with the treatment of other types of civil preventative orders (such as Foreign Travel Orders made under the Sexual Offences Act 2003).

8.2 While this clause brings these proceedings into the scope of civil legal aid, the usual financial eligibility and merits test will still be applied. Adjustments to the scope of the current legal aid legislation (the 1981 Order) for these proceedings will also be required but this can be taken forward in subordinate legislation.

9.0 Victims of domestic violence

9.1 Whilst the Justice Bill does not contain any legal aid clauses on domestic violence, Women's Aid and Women's Support Network responded to the consultation on the Bill suggesting the introduction of an enabling power to amend the current legal aid rules with regard to victims of domestic violence. They point to the fact that those seeking remedies such as non-molestation orders currently have to meet financial eligibility criteria to access civil legal aid and they compare that with England & Wales where income and capital eligibility limits for these proceedings have been waived.

9.2 The Northern Ireland Courts and Tribunal Service and the Commission are examining the viability of introducing a waiver similar to that which operates in such cases in England & Wales. We are considering whether we can use an existing power to authorise the Commission to waive income and capital limits for non-molestation proceedings, rather than seek to make an amendment to regulations at this stage. While the income and capital limits would be waived the requirement to make a financial contribution would remain and the extent of the contribution would be dependant on the applicant's means.

Miscellaneous Provisions

PART 8: MISCELLANEOUS PROVISIONS: BRIEFING PAPER FOR JUSTICE COMMITTEE MEETING ON 2 DECEMBER 2010

1. Introduction

1.1 Following this introduction, this paper is divided into two sections with a supporting Annex.

1.2 Section 2 of the paper describes, in broad terms, the content of Part 8 of the Justice Bill. It does not provide an overly detailed account of the provisions, in the knowledge that the Committee already has the Bill's Explanatory and Financial Memorandum, which provides an overview and clause by clause descriptors.

1.3 Section 3 of the paper provides information on the key overarching issues which emerged in the development of the proposals including issues raised by: consultation respondents and other interested parties: members of the Justice Committee; by other Assembly members during the Second Reading of the Bill. It anticipates some issues that may arise in the Committee's scrutiny stage; describes Departmental policy response; and seeks to assist the Committee in terms of its consideration of the Bill.

1.4 As the Committee will be aware, (subject to satisfactory resolution of some matters with the Attorney General about competence), it is intended to bring forward amendments at Consideration Stage in relation to extending rights of audience for solicitor advocates in the higher courts and changes to court funds law to allow the court to give the Accountant General a specific power to deduct, from funds held in court, certain fees charged by stockbrokers in relation to the management and investment of those funds. **Annex A** to this paper provides additional material in relation to these areas, should the Committee find that helpful.

2. Part 8 of the Justice Bill: Miscellaneous provisions

The provisions

2.1 The provisions in Part 8 of the Bill are intended to make improvements to a range of miscellaneous powers available to courts, along with a number of other enhancements to improve how business within the justice system is carried out. Their main focus is on increasing service delivery and improving operational effectiveness.

2.2 The range of miscellaneous provisions in this Part include:

(a) a power to allow magistrates' courts to grant defendants compassionate bail (clause 92) and a power to enable a repeat bail application to be heard by the Crown Court (clause 93). These proposed powers represent an "opening-up" of the court tiers to which such applications can be made;

(b) provision to repeal the offence of being armed with a dangerous or offensive weapon with intent to commit an arrestable offence and create, instead, a more modern equivalent with increased penalties (clause 94);

(c) an enabling power to allow court rules to be made to specify the circumstances in which the disclosure of information in family proceedings concerning children may be permitted (clause 95);

(d) provisions to adjust the membership of the Crown Court Rules Committee (clause 96) and the Court of Judicature Rules Committee (clause 97);

(e) a technical amendment to existing law to allow an appeal from the Crown Court under section 219 of the Proceeds of Crime Act to lie to the Court of Appeal (clause 98);

(f) provision to allow a magistrates' court, in criminal proceedings, to consider applications for the disclosure of any evidence held by a third party which is likely to assist a party to the proceedings in presenting their case (clause 99);

(g) provision to enable AccessNI to issue a copy of a criminal conviction certificate (or basic disclosure) to an employer as well as to the applicant (clause 100); and

(h) provision to remove the requirement for the Northern Ireland Law Commission to produce a full set of audited accounts (although a requirement will remain that they include a financial summary within their annual report) (clause 101).

3. Miscellaneous provisions: policy development; consultation and equality

Issues within clauses

3.1 As the provisions in Part 8 contain specific adjustments or improvements to existing law, they have, in certain areas, been subject to targeted consultation with the NI Human Rights Commission ("NIHRC"), the Law Society, Bar Council and the Office of the Lord Chief Justice ("OLCJ") to inform policy development. Where the proposal was likely to engage specific interests, the targeted approach was widened to include additional stakeholders, as outlined below.

Bail

3.2 **Clause 92** allows a magistrates' court to grant a defendant compassionate bail i.e. bail to allow a remand prisoner to be released from custody for a specified time for a specified purpose, with the requirement that the prisoner surrenders themselves into the custody of the prison governor. At present, only the High Court or the Crown Court can grant compassionate bail.

3.3 **Clause 93** would permit an application for repeat bail to be made to the Crown Court. Repeat bail in this context, means the first (and subsequent) application for bail following refusal by the magistrates' court, where there has been no change in circumstances.

3.4 These proposals have the support of the judiciary and are aimed at allowing more effective use to be made of High Court resources. They are limited in scope and do not affect the jurisdiction of any other court to deal with bail. As well as targeted consultation with the NIHRC, Law Society, Bar Council, and OLCJ, officials consulted with the Public Prosecution Service, Prison Service and the NI Law Commission.

3.5 No objections to the proposals were raised. The Law Society, in particular, welcomed the proposal in relation to compassionate bail. In developing the proposals, officials were mindful that the Law Commission was working on a bail reform project and consideration was given to whether it was appropriate to defer the proposals until the outcome of that work. The Law Commission indicated, however, (given the practical benefit of the proposals) that it was appropriate to proceed with them at this time.

Possession of offensive weapon with intent to commit offence

3.6 **Clause 94** replaces part of section 4(i) of the Vagrancy Act 1824, which is still commonly in use. This subsection at present makes it an offence to be armed with a dangerous or offensive weapon, or having any instrument, with intent to commit an arrestable offence. The maximum penalty on summary conviction is a 3-month prison term and / or a Level 3 fine (currently £1000).

3.7 The main purpose of clause 94 is to bring this offence and penalty, insofar as they apply to offensive weapons, into line with the standard package of other knife and offensive weapons provisions already in NI criminal law. These latter provide for trial to be in either a magistrates' court or in the Crown Court, and for much higher maximum penalties than in the 1824 Act. The new maxima are to be:

- on summary conviction (magistrates' court), 12 months' imprisonment and / or a statutory maximum (£5,000) fine;

- on conviction on indictment (in the Crown Court), 4 years' imprisonment and / or an unlimited fine.

3.8 Rather than simply amend the 1824 Act, the opportunity has been taken to establish this as a new, modernised offence, repealing and adjusting the relevant provisions of the 1824 Act accordingly in schedules 6 (minor and consequential amendments) and 7 (repeals) to the Bill.

3.9 There has been public and Assembly support for enhancements to knife crime and offensive weapons legislation. This provision modernises and brings this offence into line with the standard package of other knife and offensive weapons provisions already in NI criminal law.

Publication of material relating to family proceedings

3.10 **Clause 95** enables court rules to made so that information relating to family proceedings concerning children could be disclosed in certain circumstances (for example, to permit a parent to talk to the Children's Commissioner about a case concerning their child), without the need for a court order authorising the disclosure. Currently, such a conversation could be a contempt of court or a criminal offence. The clause does not, however, change the law on media attendance in family courts.

3.11 NICTS undertook targeted consultation with key interested groups; the NI Commission for Children and Young People, the NI Human Rights Commission, Children's Law Centre, Gingerbread, Parents' Advice Centre, the Law Society, Bar Council and OLCJ. No adverse issues or equality issues were identified. There will also be a full public consultation before any court rules are made to ensure that they are in the best interest of children in Northern Ireland.

Composition of Rules Committees

3.12 **Clauses 96 and 97** alter the membership of the Crown Court Rules Committee ("CCRC") and the Court of Judicature Rules Committee ("CJRC"). The CCRC and CJRC are statutory bodies that make rules for the purpose of regulating and prescribing the practice and procedure to be followed in the Crown Court, and in the High Court and Court of Appeal respectively. Rules may be allowed or disallowed by the Department (or, if they relate to excepted matters, by the Lord Chancellor). Membership of the Committees is prescribed in statute.

3.13 The membership of the CCRC includes the Lord Chief Justice, seven members of the judiciary, two barristers and two solicitors. The membership of the CJRC includes the Lord Chief Justice, four members of the judiciary, two barristers and two solicitors.

3.14 It had originally been intended to amend the composition of the Crown Court Rules Committee only by including a public prosecutor nominated by the Director of Public Prosecutions (a long standing request by the DPP.) Targeted consultation took place with the NIHRC, Law Society, Bar Council and the OLCJ. At the suggestion of the Attorney General, we took the view that by also including the Attorney's nominee on the Crown Court Rules Committee, and the Attorney or his nominee on the Court of Judicature Rules Committee, it would further enhance the expertise available to those Committees.

Appeals from the Crown Court: Proceeds of Crime Act 2002

3.15 **Clause 98** makes a technical amendment to section 9 of the Criminal Appeal (Northern Ireland) Act 1980 to allow an appeal from the Crown Court (following committal to that court for consideration of a confiscation order under section 219 of the Proceeds of Crime Act) to be dealt with by the Court of Appeal (this is the normal venue for appeals from the Crown Court).

3.16 No statutory provision currently exists to allow an appeal of a decision of the Crown Court under section 219 to be heard by the Court of Appeal, and this provision is necessary in the interests of justice to ensure that there is a route of appeal to the appropriate court venue. Targeted consultation took place with the NIHRC, the Law Society, Bar Council and OLCJ. No issues arose.

3.17 The Committee are asked to note that unfortunately this clause, as currently drafted, requires a minor technical amendment to remedy a typographical error which unfortunately was not picked up before Introduction. The reference to "after subsection (3C)" should instead read "after subsection (3B)", and the reference to "(3D)" should, instead, read "(3C)".

Witness summons in a magistrates' court

3.18 **Clause 99** allows a magistrates' court, in criminal proceedings, to issue a witness summons directing a third party to appear and produce any item of evidence where the court is satisfied that that person is able to provide material evidence. Provision for third party evidence in the magistrates' courts is made by Article 118 of the Magistrates' Courts (NI) Order 1981 - it is, however, restricted in its application to evidence which is admissible. This proposal seeks to bring the powers of the magistrates' courts in respect of third party disclosure in criminal matters into line with those currently available to the Crown Court, in which disclosure is permitted of any evidence likely to assist a party in presenting their case. Targeted consultation was carried out with the Law Society, Bar Council and the Public Prosecution Service and the proposals have the support of the judiciary. No issues have been raised in relation to this measure.

Criminal conviction certificates to be given to employers

3.19 **Clause 100** enables AccessNI to issue a copy of a criminal conviction certificate to an employer where the application is for employment purposes. At present only one copy of the certificate is issued to the applicant, unless the applicant consents to this being sent to his employer. The change would enable both applicant and employer to see the information (if any exists) at the same time. This should allow employment decisions to be taken more quickly. In addition if information on the certificate raised a query in the mind of the employer both parties would be able to discuss this armed with the appropriate information.

3.20 Criminal conviction certificates contain details of an applicants "unspent" criminal record (anything spent under the Rehabilitation of Offenders (NI) Order 1979 would not appear on it). These certificates are not used for working with children or vulnerable adults but in a range of more general employment scenarios or where there is a legislative (e.g. airports) or other requirement.

3.21 This change would mean Northern Ireland is the only jurisdiction providing such a service for applicants for criminal conviction certificates. Issuing two copies of the certificate would also put these certificates on a par with criminal record certificates and enhanced criminal record certificates where two copies are issued. AccessNI asked 40 employers known to use criminal conviction certificates to give their views on the change. Only 6 responded; all welcomed the change.

Accounts of the Law Commission

3.22 **Clause 101** removes the requirement for the Northern Ireland Law Commission (NILC) to produce a full set of audited accounts and the need for the Comptroller & Auditor General for NI to undertake separate examination and certification of those accounts. The current provisions relating to production of the NILC's accounts within the Justice (NI) Act 2002 were prepared on the assumption that the NILC would be an Executive Non-Departmental Public Body with its own bank account. However, the NILC was designated as an Advisory NDPB when it was established in 2007 to reflect its role in providing independent advice to Minsters rather than carrying out executive functions. On that basis, the NILC's finances are administered directly by the Department of Justice which processes invoices on behalf of the Commission. This means that the NILC's expenditure is reported and audited within the scope of the DoJ's accounts.

3.23 This change would yield a small saving for the NILC as it would not be required to pay for the preparation and audit of a full set of accounts. The NILC will be required, however, to include a summary of its financial expenditure within annual reports. The change has been agreed with the Department of Finance and Personnel and the Northern Ireland Audit Office.

Annex A

Matters to be introduced by way of amendment

Extending rights of audience

A1. As the Committee is aware provisions to give solicitors who are registered with the Law Society as 'solicitor advocates', the same rights of audience as barristers in the High Court and Court of Appeal in Northern Ireland, were withdrawn from the Justice Bill prior to Introduction.

A2. The conferral on solicitor advocates of rights of audience formerly enjoyed exclusively by barristers in independent practice gave rise to concerns about the competence of the Assembly under section 6(2)(d) of the Northern Ireland Act 1998. In particular that the construction of the solicitor advocate clauses was not sufficiently robust in preventing conflicts of interest as required by EU Services Directive 2006/123. The Attorney General would not therefore certify the clauses as within the competence of the Assembly.

A3. The Department has had useful meetings with the Attorney General and Law Society in this regard and is working on revising the clauses to address the concerns and preserve the policy. It is hoped that revised clauses may be tabled as an amendment to the Bill at Consideration Stage.

Amendment to court funds law

A.4 As the Committee has previously been advised, it is intended to bring forward proposals to amend court funds legislation. This would confer a specific power on the Accountant General (with the approval of the court) to deduct directly from funds held in court on behalf of minors and patients the cost of certain services provided by stockbrokers in relation to the management and investment of those funds.

A5. On foot of judicial approval, funds held in court are invested in various ways (all prescribed in legislation). For certain investments, a stockbroker is retained to provide advice. Charges are incurred under this contract for management fees. These are charged to each client on a quarterly basis and have been deducted directly from the individual clients' accounts.

A6. Legal advice indicates that there is a doubt as to whether it is permissible to deduct such charges without express legislative authority and that the Judicature (NI) Act 1978 should be amended. Therefore, no further fees have been deducted from clients' funds.

A.7 If stockbroker services are discontinued, there would be little alternative other than to hold funds as cash deposits only. This would detriment clients as they would not have the opportunity to enhance the return on their funds. Stockbrokers have to be paid for their services and, in principle, this cost should be met by those who receive those services rather than by the public purse.

A8. In developing these provisions, the Department has been working closely with the Attorney General to ensure accurate construction and drafting. The Attorney has understandably been keen to ensure proper judicial scrutiny where vulnerable clients are concerned. This quite complex work is underway and -- subject to this ongoing engagement with the Attorney and the necessary clearances – we hope to be in a position to introduce an appropriate provision by way of amendment at Consideration Stage.

Treatment of Offenders

Part 5: Treatment of Offenders: Briefing Paper for Justice Committee Meeting on 9 December 2010

1. Introduction

1.1 Following this introduction, this paper is divided into two sections.

1.2 Section 2 of the paper describes, in broad terms, the content of Part 5 of the Justice Bill. It does not provide an overly detailed account of the provisions, in the knowledge that the Committee already has the Bill's Explanatory and Financial Memorandum, which provides an overview and clause by clause descriptors.

1.3 Section 3 of the paper provides information on any key overarching issues which emerged in the development of the proposals, including issues raised by consultation respondents and other interested parties; members of the Justice Committee; and by other Assembly members during the Second Stage of the Bill. It anticipates some issues that may arise in the Committee's scrutiny stage; describes Departmental policy response; and seeks to assist the Committee in terms of its consideration of the Bill.

2. Part 5 of the Justice Bill: Treatment of Offenders

The provisions

2.1 The provisions in Part 5 of the Bill are intended to make improvements to a number of existing standalone or individual sentencing powers to deal with particular types of offences and sentences. The provisions address problems caused by gaps or inconsistencies in existing laws that deal variously with common assault; knife crime; sexual offences and public protection sentencing.

2.2 The provisions in this Part include;

(a) a power to increase the maximum term of imprisonment for common assault or battery (clause 56);

(b) a power to increase the maximum penalty for having a weapon on school premises (clause 57);

(c) a power to increase the maximum period by which sentencing for an offence can be deferred (clause 58);

(d) powers to amend the arrangements for dealing with sex offenders who breach their licence conditions (clause 59) and revised arrangements for closure orders under the Sexual Offences Act 2003 (clause 60);

(e) a power to add additional offences to the list for which an offender can receive a Financial Reporting Order (clause 61);

(f) a power to add hijacking offences to the Schedule of serious and specified offences that can attract indeterminate and extended custodial sentences (clause 62); and

(g) a power to ensure that a supervised activity order would, on introduction of such orders, be available as a default mechanism for someone that has had a financial penalty imposed elsewhere in the E.U., who subsequently returns or moves to Northern Ireland without having paid the fine (clause 63).

3. Treatment of Offenders: policy development; consultation and written representations to the Justice Committee

3.1 The aim of Part 5 of the Justice Bill is to adjust and improve existing sentencing powers. Part 5 does not create any new sentences, but updates existing laws to address problems caused by gaps or inconsistencies. Some of the provisions are technical in nature, while others enhance and, in some instances, increase the penalties available for particular offences.

3.2 Policy development for these provisions was informed - where appropriate - by targeted engagement with key stakeholders, including the Office of the Lord Chief Justice; the Public Prosecution Service; PSNI; SOCA; and the Probation Board for Northern Ireland. They were also included in the EQIA consultation on the Bill.

Increase in maximum term of imprisonment for common assault or battery.

3.3 Clause 56 increases the maximum penalty for common assault to six months' imprisonment. This provision was developed at the request of District Judges, who reported that the existing maximum penalty of three month's imprisonment was not sufficient to deal with the wide range of cases tried under common assault.

3.4 This proposal was supported by the Health Minister to address concerns at the numbers of healthcare workers assaulted in the course of their duties. Whilst not limited to such cases, this would have the benefit of increasing the sentencing powers available to the courts for the increasing number of assaults in this area.

3.5 The proposal also received a number of positive messages of support from members that spoke during the Second Stage debate on the Bill.

Penalty for certain knives offences

3.6 Clause 57 increases the maximum penalty on summary conviction of "having an offensive weapon on school premises". The clause amends an inaccurate sub-section reference in Article 90 of the Criminal Justice (NI) Order 2008 to ensure the full and consistent application of the 2008 package of maximum sentences for offences involving knives, offensive weapons, etc,. The clause, by amending the original drafting error, brings the maximum penalties for this offence into full alignment with the other maxima in the 2008 Order ensuring the full application of the original policy intent.

3.7 The clause was supported by a number of members during the Second Stage debate. Any references in the written representations made to the Committee during its consultation on the Justice Bill have been positive.

Extension of maximum period of deferment of sentence

3.8 Clause 58 increases the period for which sentences can be deferred from six months to twelve months. This power will allow courts to better monitor improvements in behaviour ahead of sentencing. The increase to 12 months was requested by District Judges who felt that the longer period would offer them a better timeframe for assessing the behaviour of some offenders ahead of sentence.

3.9 While there were supportive comments of this power during the Second Stage debate, a question was also asked about the prospect of the power adding further delays in sentencing and causing frustration to victims.

3.10 Our view is that the extra time will create real prospects for offenders to show good behaviour; indicate an ability to stay out of trouble; and demonstrate a change – all of which ultimately reduce numbers of victims. Behavioural issues could also be resolved - undertaking drug treatment or some other form of therapy would be examples where a longer period could be beneficial - before informed sentencing takes place.

3.11 A broader effect would be to reduce the likelihood of re-offending; remove offenders from the justice system; and thereby reduce delay.

Breach of licence conditions by sex offenders

3.12 Clause 59 makes an adjustment to breach proceedings law to allow sex offenders who are released from prison and subject to probation supervision under Article 26 of the Criminal Justice (NI) Order 1996 to be dealt with more efficiently. Clause 59 corrects and improves the court before which such offenders can be brought.

3.13 At the moment a licensee who breaches his licence is to be brought before the court in the district in which he resides. This residency dimension causes difficulties in circumstances where offenders leave Northern Ireland or in circumstances where a "local" offender's residence is unknown and they need to be breached. A requirement to bring either type of offender to a court "where they reside" simply does not work in either circumstance. The Clause changes this to allow such offenders to be dealt with by an appropriate Northern Ireland court.

3.14 Any comments made in response to the Justice Committee's consultation exercise were supportive of the provisions as provided. The Probation Board requested further inclusions in the Justice Bill suggesting that the court flexibility being created to provide flexibility in breach proceedings should be replicated in other business areas. They suggested that warrant applications, custody probation and probation orders should also have a single jurisdiction. They also suggested that legislative change should be made to extend the territoriality of Article 26 licences – which are limited to Northern Ireland – to the rest of the UK.

3.15 Creating a single jurisdiction for warrant applications, custody probation andprobation orders would be a fresh departure not previously considered for the Bill. This will be considered as part of a wider review of jurisdictional boundaries for future legislation. Extending the territoriality and enforcement of Article 26 licences beyond Northern Ireland could not be created by way of a NI Justice Bill and would require amendment to UK legislation

Sexual Offences: Closure Orders

3.17 Clause 60 makes a technical amendment to the Sexual Offences Act 2003 ('the 2003 Act') to provide that in Northern Ireland all applications for a closure order will be made to a district judge (magistrates' courts)

3.18 A closure order is used to close premises which have been used for specified prostitution or pornography offences and the 2003 Act currently provides that an application in respect of a closure order may be made to either a 'magistrates' court' (i.e. a lay magistrate) or a district judge (magistrates' courts).

3.19 In Northern Ireland a lay magistrate sitting out of petty sessions can constitute a magistrates' court, but their functions are limited compared to that of a district judge (magistrates' courts). The function of determining a potentially contested application (e.g. whether to discharge or extend a closure order), would not normally be exercised by a lay magistrate, but would instead be exercised by a district judge (magistrates' courts).

3.20 It is considered that a district judge (magistrates' courts) is the most appropriate judicial officer to determine such applications so the provision amends the 2003 Act to allow applications in respect of a closure order to be made only to a district judge (magistrates' courts).

3.21 Any comments made in response to the Justice Committee's consultation exercise were supportive of the provisions as provided.

Financial reporting orders

3.22 Clause 61 adds the offences money laundering, bribery and further fraud offences to those that come within the scope of Financial Reporting Order (FRO) powers in the Serious Organised Crime and Police Act 2005.

3.23 A financial reporting order requires the offender to make reports of their financial affairs such as, income and assets, as set out by the court. The reports enable law enforcement agencies to monitor an offender's financial activities over the period of the order. Offences already specified include theft, some fraud offences and offences under the Proceeds of Crime Act 2002, including drug trafficking, arms trafficking and intellectual property.

3.24 This clause did not draw any comments – either positive or negative – during the early stages of the Bill's development, during introduction or Second Stage debate. It was mentioned in passing in a written representation to the Committee, with the organisation – Extern – remarking that they considered the power reasonable.

Dangerous offenders: serious and specified offences

3.25 Clause 62 extends the list of offences eligible for public protection sentences to include the offence of hijacking under the Criminal Jurisdiction Act 1975. This clause is to ensure that where an offence of hijacking has been committed by a dangerous offender, the courts can, where appropriate, impose either an extended or indeterminate sentence under the Criminal Justice (Northern Ireland) 2008 Order for the purposes of public protection.

3.26 Public protection sentences allow judges to address both the offence committed and the risk of future harm caused by further offending. At the appropriate point of their sentence, offenders have the opportunity to demonstrate to the independent Parole Commissioners that they have reduced their risk in order to secure release on licence.

3.27 Once released, the remainder of the sentence is served on licence; during which time the offender is eligible for recall to custody should they fail to comply with the terms of the licence.

3.28 Clause 62 did not draw any comments – either positive or negative – during the early stages of the Bill's development, that is, during introduction or Second Stage debate. Any comments made in response to the Justice Committee's consultation exercise were supportive of the provisions as provided.

Supervised activity order in respect of certain financial penalties

3.29 Clause 63 is a technical adjustment to allow fines imposed abroad to be mapped onto NI supervised activity order powers. The clause ensures that supervised activity orders, when introduced, are available to magistrates' courts in respect of anyone who has had a financial penalty imposed elsewhere in the EU, who then returns or moves to Northern Ireland without having paid the fine, and in respect of whom the penalty is transferred to Northern Ireland. No

comments were received in relation to this proposal during the various stages of development of the Bill

Alternatives to Prosecution

Alternatives to Prosecution: Briefing Paper for Justice Committee Meeting on 9 December 2010

Section 1: Introduction

1.1 Following this introduction, this paper is divided into two sections with a supporting Annex.

1.2 Section 2 of the paper describes, in broad terms, the content of Chapter 6 of the Justice Bill. It does not provide an overly detailed account of the provisions as the Committee already has the Bill's Explanatory and Financial Memorandum which provides an overview and clause by clause descriptors.

1.3 Section 3 of the paper provides information on the key overarching issues which emerged in the development of the proposals including issues raised by consultation respondents and other interested parties and Assembly members during the second reading of the Bill. It anticipates some issues that may arise during the Committee's scrutiny stage, describes the Department's policy response and seeks to assist the Committee in terms of its consideration of the Bill.

1.4 Additional material in relation to other issues impacting on individual clauses, which the Committee may find helpful, is included at Annex A.

Section 2: Alternatives to Prosecution provisions. Part 6 (Chapters 1 & 2)

2.1 Part 6 provides for two new diversionary disposals - penalty notices and conditional cautions - aimed at expanding the options for dealing effectively with minor offences which the individual does not intend to contest, outside the court room. In either case, the individual retains their right to request that the offence be dealt with at court.

2.2 Chapter 1 makes provision for the issue of penalty notices attracting a £40 or £80 penalty for first-time or non-habitual offenders aged 18 years and over committing one of seven prescribed offences (as listed in Schedule 4). The list of offences and penalty rates may be amended by Order which would be the subject of consideration by the Committee and debate in the Assembly. Payment of the penalty sum within 28 days discharges the individual's liability for that offence. Where a recipient neither pays the penalty, nor requests a court hearing instead, within 28 days of the issue of the penalty, its value is uplifted by 50%, registered as a court fine and enforced through existing court fine default arrangements. The Department will issue guidance to police on their use.

2.3 Chapter 2 makes provision for the creation of a new conditional caution disposal for persons aged 18 years and over. The Public Prosecution Service is currently able to direct the issue of an unconditional caution as a disposal in suitable cases for offences capable of being heard in a Magistrates' court. These new provisions will enable prosecutors to attach rehabilitative and reparative conditions to a caution with which the individual must comply or face re-consideration of prosecution for the original offence. These could involve addressing any issues underpinning their offending behaviour in order to minimise their risk of re-offending. Rehabilitative conditions

would include for example attendance at relevant programmes, whilst reparative conditions may include an oral or written apology to a victim or other reparative activity to make good the harm caused. The Bill makes provision for a statutory Code of Practice which is to be approved by the Attorney General and laid before the Assembly before being brought into operation by order.

Section 3: Alternatives to Prosecution: Overarching policy issues and Departmental consideration

Introduction

3.1 When proposals for alternatives to prosecution were being developed, a number of issues were raised concerning potential overarching impacts arising from the outworking of the provisions for fixed penalties. These fell under three broad headings: the use of financial penalties and their impact on an individual's ability to pay; the importance of alleged offenders being able to make an informed choice and effectively exercise their rights; and the need for appropriate safeguards to avoid inappropriate issue of fixed penalties by police. Any issues raised in relation to specific operational aspects of the provisions are set out separately, in the description of individual clauses, at Annex A.

Use of financial penalties

3.2 Some interested parties expressed disappointment that fixed penalties were being proposed as an alternative to prosecution expressing their preference for the use of other non-monetary diversionary options. In many cases this was based on the premise that those unable to afford to pay a fixed penalty would inevitably end up in the criminal justice system on default without any consideration of the sometimes complex needs that underpinned their offending behaviour.

3.3 There are already a range of existing diversionary measures – based around restorative interventions, warnings and cautions - which act as alternatives to prosecution. The fixed penalty provisions increase the range of options available for responding proportionately to isolated and uncontested incidences of minor offending by mainly first-time offenders. The seven eligible offences which have been identified would usually, on conviction in the Magistrates' Court, result in a court fine of £100 or less.

3.4 Fines remain the most commonly used disposal at court accounting for around two thirds of all sentences imposed in any year. The proposed fixed penalty therefore does not represent an additional application of a financial penalty but rather an alternative to the court fine which would otherwise be imposed in those cases. The fixed penalty amounts of £40 and £80 are pitched slightly lower than the average court fine which a first-time or non-habitual offender is likely to receive for one of the seven eligible offences proposed. An individual retains the right to opt to have the offence considered at a court hearing at which their means can be taken into consideration in setting the appropriate court fine level or agreeing payment by instalment.

3.5 The other diversionary disposal proposed – the conditional caution - is aimed more specifically at assisting individuals to address matters underpinning their offending behaviour and minimise their risk of re-offending. This is achieved through a combination of rehabilitative conditions, which challenge inappropriate behaviour and support individuals in tackling substance misuse or other factors contributing to offending, and reparative conditions which seek, where appropriate, to repair the harm caused to victims.

3.6 We believe their introduction will bolster the range of options for considering the diversion of suitable cases of minor offending from prosecution. Their introduction is however only one element in the development of a cross-cutting Reducing Offending Strategy which will

encompass broader objectives dealing with prevention, diversion, sentencing and reducing recidivism.

Offender's Rights

3.7 A number of respondents highlighted the importance of offenders, particularly vulnerable individuals, being able to make an informed choice about accepting a fixed penalty or conditional caution in full knowledge of the consequences of doing so and of how to exercise their rights in relation to the disposal.

3.8 It is our view that these rights are properly observed in the provisions in the Bill. In relation to fixed penalties, the individual will have a period of 28 days after issue in which to pay or to reject a fixed penalty and request a court hearing instead. This will be explained by the issuing officer and will be fully detailed in writing on the penalty notice itself. There are two additional safeguards built in to the process which provide that the individual can make a declaration to the court to set aside the registration of the penalty on default (in circumstances where he or she is not the recipient of the penalty notice or had already requested a court hearing within the 28 day period) or the court can do so, of its own volition, in the interests of justice. The latter provision enables the court to deal with any case where an individual has a legitimate reason for not complying with the requirements within 28 days, for example, because of their level of comprehension or social functioning and preserves their right to a court hearing. We believe that this adequately protects the individual's rights to a fair trial under Article 6 of the European Convention on Human Rights.

3.9 In relation to conditional cautions, the offender will have made a PACE-compliant admission of the offence before the disposal is administered. The caution, its conditions and the consequences of non-compliance will be fully explained by the issuing officer, inthe presence of an appropriate adult where this is required, and provided in writing.

3.10 In the case of either disposal the individual can seek the advice of a legal representative before exercising their options.

Safeguards on issue

3.11 One of the predominant views expressed concerned the importance of ensuring there were adequate safeguards on the issue of fixed penalty notices by police to avoid the potential for net-widening or inappropriate usage.

3.12 We believe that those safeguards are in place. The fixed penalties will only be capable of being issued for the seven offences prescribed in Schedule 4 of the Bill. Their use for those limited number of offences will also be subject to clear Departmental guidance and PSNI have made a commitment to fully training officers in their issue priorto implementation. In terms of internal monitoring, supervisory officers will check and verify all penalty notices issued and operational experience will also be subject to external review by inspectors from Criminal Justice Inspection Northern Ireland.

Annex A

Issues within Clauses

Chapter 1: Penalty Notices

A1. Clause 64 brings in Schedule 4 which lists the offences which can attract a penalty notice and the amount payable in relation to each offence.

Offences which attract a £40 penalty are

- indecent behaviour (urination) in any street, road, highway or other public place, or in any place to which the public have access; and
- being drunk in any road or other public place.

Offences which attract a £80 penalty are

- theft (first-time offence of shoplifting only up to £100);
- criminal damage (i.e. destroying, damaging or intending to do so to any property belonging to or being reckless as to whether any such property would be destroyed or damaged) up to £200;
- disorderly behaviour in any public place;
- behaviour likely to cause a breach of the peace in a public place; and
- assaulting, resisting, obstructing or impeding a constable in the execution of his duty.

A.2 The Department may amend Schedule 4 by an affirmative resolution order of the Assembly. The penalty payable in respect of a penalty offence may not however exceed one quarter of the maximum fine for which a person is liable on summary conviction of the offence. Penalty notices are also subject to the offender levy provisions in the Bill.

A.3 A small number of consultation respondents expressed reservations about whether petty shoplifting and obstructing police were suitable offences to be dealt with by way of a fixed penalty. We feel that, in circumstances where they are committed by first-time offenders, they can represent a measured and proportionate justice outcome. We targeted organisations representing retailers seeking views on the proposals for fixed penalties for shoplifting and had a very positive response from Belfast City Centre Management (representing over 200 retailers).

A.4 Following the presentation to the Committee on 27 May on proposals for fixed penalty notices, officials were asked to consider an extension to proposed arrangements for dealing with first-time petty shoplifting. Its effect was to provide that a fixed penalty could be issued in a case of petty shoplifting where the individual agreed to replace goods which had been eaten or inadvertently spoiled and not just where goods were recovered in a re-saleable condition. We recognise the value in adopting this suggestion and would propose to supplement the provision in the administrative guidance to police accordingly. This will provide police officers with additional discretion to issue fixed penalty notices in cases of first-time petty shoplifting where the offender and the retailer are in agreement to the cost of spoiled or consumed goods under £100 being reimbursed.

A.5 Reservations about including the offence of obstructing police centred on police potentially acting as 'judge in their own cause'. However, we believe that there are sufficient safeguards in place to guard against inappropriate usage - the police will be operating under clear guidance and supervision, will be subject to external scrutiny by CJINI and the individual retains their right to refuse the penalty notice and ask to be tried for the offence instead.

A.6 Clause 65 defines a "penalty notice" as a notice offering the opportunity by paying a fixed penalty to discharge any liability to be convicted of the offence to which the notice relates. Penalty notices would be issued by the police to a person over the age of 18.

A.7 Some respondents commented that officers must be assured of an individual's identity and age before considering issue of a fixed penalty. This is a fundamental requirement and guidance to police will clearly state that a fixed penalty may not be issued by an officer unless the age and identity of the alleged offender has been confirmed.

A.8 Clause 66 dictates that a penalty notice must state the alleged offence, specifics about the alleged offence in order to provide reasonable information about it, specify the period before prosecution will be brought about (suspended enforcement period), the amount of the penalty, to whom and where the penalty must be paid and inform the alleged offender of the right to request a trial. There were no issues raised in relation to this clause.

A.9 Clause 67 provides that if the alleged offender requests to be tried for the offence then proceedings may be brought against them. The request to be tried must be made in the manner specified in the notice within the suspended enforcement period. If the suspended enforcement period elapses and the person has neither requested to be tried nor paid the amount then the sum of the notice is increased by 50% and the penalty may be registered as a court fine.

A.10 Clause 68 sets out the restrictions on prosecution. No proceedings can be brought within the suspended enforcement period which is 28 days from the date on which the notice was given, unless the individual requests to be tried. If the penalty is paid before the end of the suspended enforcement period no proceedings may be brought for the offence.

A.11 The provisions in Clauses 67 and 68 generated views about the need to ensure that an individual's rights were assured in challenging the validity of the penalty notice. This has already been dealt with substantively in the overarching issues outlined in section 3 of this paper.

A.12 Clause 69 enables the Department of Justice to produce guidance about issuing a penalty notice, about the exercise of the discretion given to police officers and with a view to encouraging good practice in connection with the operation of this provision.

A.13 Several of the submissions made to the Committee stated that guidance should be clear, and that officers should be adequately trained in the issues of fixed penalty notices. The Department will produce clear guidance on their issue and PSNI have committed to undertaking staff training before implementing fixed penalty provisions.

A.14 Clause 70 sets out the procedure for payment of a penalty. The payment mustbe made to, or at an office of, the fixed penalty clerk specified in the penalty notice. Where payment is made by post, this is to be done by addressing, pre-paying and posting a letter to the fixed penalty clerk containing the penalty notice and the amount of the penalty. Sums paid by way of a penalty for an offence shall be treated as if they were fines imposed on summary conviction of that offence. The fixed penalty clerk is the clerk of petty sessions or such other persons as the Department of Justice may by order direct.

A.15 Views were expressed during consultation about the potential impact on persons with low incomes being asked to make fixed penalty payments before salaries or benefits were due to be paid. It was therefore decided that the period for making payment should be extended from 21 to 28 days to enable recipients to budget more effectively.

A.16 Clause 71 comes into effect if a person neither pays their penalty notice nor requests to be tried within the suspended enforcement period. In this instance the Chief Constable, or a person authorised by him, may issue a certificate stating that the sum can be registered as a fine. This certificate must be issued to the fixed penalty clerk. There were no issues raised in respect of this clause.

A.17 Clause 72 states that the fixed penalty clerk must upon receiving a certificate under clause 71 register a sum in default for enforcement as a court fine. Once registered as a fine the individual who received the penalty notice is given a notice of registration specifying the amount and date for payment alongside information with respect to the offence. It will be treated as a court fine and therefore attract the normal payment and enforcement methods such as payment by instalments, extra time to pay or any of the sanctions available for fine default. The Department can make regulations with respect to the enforcement of payment of sums registered under this section as it considers appropriate. There were no issues raised in respect of this clause.

A.18 Clause 73 applies where a person who has received a notice of registration of a sum under clause 72 for enforcement as a fine makes a declaration, within 21 days (or outside that period at the discretion of the court), that they were not the person to whom the relevant penalty notice was given or that they had given notice requesting to be tried. If the person is not the individual to whom the penalty notice was issued the registration as a fine and any other proceedings made will be void. If the person requested to be tried within the specified period then the registration of the fine is void and the case shall be treated as if the person had requested to be tried within the suspended enforcement period.

A.19 Clause 74 allows a court of summary jurisdiction to void the penalty notice, the registration as a fine and any proceeding related to the alleged offence if it considers it is in the interests of justice to do so. It also allows the court to set aside the registration as a fine and to treat the case as if the person concerned had given notice requesting to be tried in respect of the offence.

A.20 Clauses 73 and 74 are two safeguarding measures provided in response to views (outlined in section 3 of this paper) that emphasised the importance of ensuring individuals' rights to be able to challenge the validity of a fixed penalty and the legitimacy of its enforcement as a court registered fine.

A.21 Clause 75 defines some of the terms used in this chapter of the Bill. There were no issues raised in respect of this clause.

Chapter 2 - Conditional Cautions

A.22 Clause 76 introduces a conditional caution as a caution, given by an authorised person, in respect of an offence which has conditions attached to it that the offender must comply with. A conditional caution can be given if the five requirements set out in clause 77 are satisfied. The conditions should have the objective of facilitating the rehabilitation of the offender and/or ensuring the offender makes reparation for the offence. For the purposes of this chapter an "authorised person" is a police officer or a person authorised by the Director of Public Prosecutions for Northern Ireland.

A.23 Clause 77 sets out five requirements that must be met for a conditional caution to be issued:

(1) That the authorised person has evidence that the offender committed an offence, other than an offence triable only on indictment;

(2) That a Public Prosecutor decides there is sufficient evidence to charge the offender with the offence and that a conditional caution should be given to the offender;

(3) That the offender admits to the authorised person that they committed the offence;

(4) That the authorised person explains the effect of a conditional caution and that failure to comply may result in the offender being prosecuted for the offence; and

(5) The offender must sign a document detailing the offence, admitting the offence, consenting to be given a conditional caution and outlining the conditions attached to the caution.

A.24 The provisions in clauses 76 and 77 elicited a number of views. Some thought that conditional cautions would be a suitable vehicle for the promotion of restorative interventions. Others cautioned that victims needed to be closely engaged in the conditional caution process and that their views must be given careful consideration in the determination of any restorative conditions. A number of respondents expressed the view that vulnerable offenders, who required specific support during the investigative process, should be similarly supported during the cautioning process to ensure full comprehension of its requirements and the consequences of non-compliance. These are all matters which will be covered in the Code of Practice.

A.25 Clause 78 allows a Public Prosecutor, with the consent of the offender, to vary the conditions attached to a caution by modifying or omitting any of the conditions or adding a condition. No issues were raised in respect of this clause.

A.26 Clause 79 provides that if an offender fails (without reasonable excuse) to comply with the conditions then criminal proceedings may be instituted against the offender for the offence in question in which case the conditional caution will cease to have effect

A.27 Clause 80 states that a constable can arrest an offender without a warrant if they have reasonable grounds for believing that the offender has failed (without reasonable excuse) to comply with any of the conditions attached to the caution and makes provision for dealing with such circumstances. The arrested person must (i) be charged, (ii) released without charge on bail to enable a decision to be made as to whether he should be charged or (iii) released without charge or bail and with or without any variations to the conditions of his caution as appropriate. Conditional cautions are issued to an offender by PPS with a clear indication that a failure to comply may result in prosecution for the original offence. This power enables the facilitation of such a prosecution in that event.

A.28 In relation to clauses 79 and 80, views were received that there should be clear guidance as to what constitutes "reasonable excuse" and "reasonable grounds", and that the needs of vulnerable offenders should be considered in the determination of what constitutes failure to comply with conditions. Decisions about whether an individual has failed to comply with conditions without reasonable excuse will be made taking account of all available information and in accordance with guidance set out in the Code of Practice. The power of arrest will only be exercised in circumstances where such action is necessary to allow such a determination to be made. It is intended that offenders are assisted as far as possible in achieving their rehabilitative or reparative objectives and that is why there are provisions at clause 78 which allow conditions to be varied in recognition of changing circumstances or unforeseen consequences.

A.29 Clause 81 ensures that the relevant provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply in relation to a person arrested under provisions in clause 80. There were no issues raised in respect of this clause.

A.30 Clause 82 requires the Department of Justice to prepare a Code of Practice in relation to conditional cautions. The code may include provisions as to the circumstances, procedures and places for giving a conditional caution; what conditions can be attached to a caution and time they can have effect for; the people who can give a caution; the form the caution takes and the manner in which they are to be given and recorded; the monitoring of compliance with conditions; the use of arrest powers for non-compliance; and who makes decisions about the

release of persons arrested. The code must be published in draft for comment and the Department of Justice may amend the code accordingly. The code cannot be published or amended without the consent of the Attorney General for Northern Ireland. Once the draft is agreed it must be laid before the Assembly. A clear Code of Practice was seen as essential by a number of respondents but otherwise there were no other specific issues raised in relation to this clause.

A.31 Clause 83 provides that the powers for the Probation Board for Northern Ireland may include a power to assist Public Prosecutors in determining whether a conditional caution should be given and which conditions to attach. The Probation Board can also make provision for the supervision and rehabilitation of persons to whom a conditional caution is given. There were no issues raised in respect of this clause.

A.32 Clause 84 defines some of the terms used in this chapter. There were no issues raised in respect of this clause.

Policing & Community Safety Partnerships

Department of Justice Paper for the Justice Committee Meeting on Thursday 16 December 2010 on Justice Bill Provisions on Policing and Community Safety Partnerships

Purpose of paper

1. The purpose of this paper is to provide the Justice Committee with information on the policy contained in Part 3 of the Justice Bill entitled "Policing and Community Safety Partnerships" (PCSPs); the key views expressed about the draft proposals; and the Department's view on the issues raised. The aim is to ensure that, as the Committee continues its scrutiny of the Bill, it is fully briefed on the PCSP proposals and their development.

Content

2. The paper provides a synopsis of the 16 clauses captured within Part 3 and Schedules 1 and 2 (in the knowledge that the Committee already has a detailed description as provided in the Bill's Explanatory and Financial Memorandum) along with details of the main policy issues for consideration. In Annex A, should the Committee find it helpful, the paper provides information on a number of further more detailed issues which arose in respect of individual clauses.

Approach

3. The paper has been prepared in anticipation of representations being made to the Committee by interested parties as part of evidence taking in the Bill scrutiny stage. It is based on a series of questions and issues posed by some of those we assume will be appearing before the Committee (DPP managers, CSP managers, council chief executives, representatives from voluntary organisations) to the Department in developing and publishing the Bill. It describes the Department's policy thinking to date and how the clauses have been finalised to date.

Attendance

4. Presenting the paper to the Committee will be:

- David Hughes: Head of Policing Policy & Strategy Division, Department of Justice
- Gareth Johnston: Head of Justice Strategy Division, Department of Justice
- Nichola Creagh: Policing Policy & Strategy Division, Department of Justice
- Dan Mulholland: Policing Policy & Strategy Division, Department of Justice

5. The Department welcomes the opportunity to share its thinking to date and looks forward to the Committee's considerations, advice and requirements.

9 December 2010
Justice Policy Directorate
Department of Justice

Policing & Community Safety Partnerships: Briefing paper for Justice Committee meeting on 16 December 2010.

1. Introduction

1.1 Following this introduction, this paper consists of an overview of the provisions captured within Part 3 of and Schedules 1 and 2 to the Justice Bill and a supporting Annex A.

1.2 Section 2 of the paper describes in broad terms the content of Part 3 of the Justice Bill. It deliberately avoids being overly detailed in the knowledge that the Committee already has the Bill's Explanatory and Financial Memorandum which provides overview and clause by clause descriptors.

1.3 Annex A to the paper provides additional material in relation to individual clauses should the Committee find it helpful.

2. Part 3 of the Justice Bill: Policing and Community Safety Partnerships

Introduction

2.1 The provisions create new Policing and Community Safety Partnerships. These partnerships will integrate all the functions of existing Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) in a single partnership for each district council. These partnerships will be known as Policing and Community Safety Partnerships (PCSPs).

2.2 In addition the provisions allow two or more councils (by agreement) to establish a single PCSP. This would be facilitated by the Department of Justice (DOJ) by way of an Order.

2.3 The provisions also allow for up to a maximum of four "District Policing and Community Safety Partnerships" (DPCSPs) to be established within Belfast. The members of a DPCSP need not be members of the principal PCSP.

2.4 The membership of the PCSP is intended to include representation from a wide range of interests, combining to achieve maximum effect for the district. Each PCSP will comprise:

- 8, 9 or 10 councillors nominated by the Council

- 7, 8 or 9 independent members (so that there is one more councillor than the number of independent members) appointed by the Policing Board;
- at least four representatives of delivery organisations appointed by the PCSP (the provisions are not prescriptive on the overall size of the PCSP) who will attend meetings of the overall partnership but not meetings of the policing committee of the partnership (see below).

2.5 The provisions provide that the Department and the Policing Board may (each) make a grant towards the expenses incurred by each council in connection with the establishment of, or the exercise of functions by, PCSPs. The level of grant will be agreed by the Department and Board together. This replaces the current 75% / 25% funding arrangements in place between the Policing Board and Councils in relation to DPPs. We are however minded to suggest an amendment to require a 25% contribution from councils towards the costs associated with both the initial and subsequent appointment of independent members to the PCSP. Also, once the new partnerships are established, councils will not be funded to pay allowances to councillors and independent members; expenses will however continue to be paid in line with National Joint Council / Local Government rates and conditions.

2.6 The provisions allow each PCSP (and DPCSP) to set up othe committees to look at specific issues and neighbourhoods and deliver specific projects. These would be made up of five or more members of the Partnership and would in addition be able to co-opt people who are not members of the other committee or the PCSP. There would be no maximum size. The ability to set up these committees provides PCSPs and DPCPS with the flexibility to bring on board additional delivery partners as and when required. It also enables Partnerships to focus on particular issues or neighbourhoods.

The Policing Committee

2.7 Within each Partnership will sit a 'policing committee' comprising the councillors and independents. The Committee will perform the police monitoring functions inherited from the DPPs and will also make arrangements for obtaining the co-operation of the public with the police. The Committee will report on the delivery and outcome of these functions to the Policing Board. The Chair of the Policing Committee will be an elected member of the Partnership.

2.8 In the initial twelve months of the new Partnerships, the Chair of the Policing Committee will be the Chair of the Partnership, and the vice-Chair of the Policing Committee will be the vice-Chair of the Partnership. After the first 12 months it will be possible for the Chair of one to be the vice-Chair of the other.

The Work of the Partnerships

2.9 The statutory functions of the Partnerships will be:

- to make arrangements for obtaining the views of the public about matters concerning the policing of the district and enhancing community safety in the district; and
- to act as a general forum for discussion and consultation on matters affecting the policing of the district and enhancing community safety in the district;
- to prepare plans for reducing crime and enhancing community safety in the district;
- to identify targets or other indicators by reference to which it can assess the extent to which those issues are addressed by action taken in accordance with any such plans;

- to provide any such financial or other support as it considers appropriate to persons involved in ventures designed to reduce crime or enhance community safety in the district.

The Partnership Plan

2.10 It is envisaged that the PCSP will operate broadly as follows. The PCSPs will be responsible for finding out what people believe are the primary needs of the district in policing and community safety. They will then be able to draw up a Partnership Plan which will set out what they want to achieveand by when; what has to be done; and how delivery partners will deliver the necessary interventions and actions. If necessary, the Partnership can set up working-level delivery groups to support specific projects or streams of work.

2.11 The Partnership as a whole will adopt the Plan. The Plan will therefore need to reflect local needs. It will also need to be broadly compatible with regional strategic priorities for policing and community safety, and the priorities of delivery partners. At times funding will be available to local partnerships to deliver regional programmes or schemes. The Plan will also be costed, to ensure that the actions identified in it are deliverable. The Plan will be brought to the DOJ and Policing Board (meeting jointly – see below for further information) for approval. This will inform the sponsoring authorities about the use that is being made of the funds they are providing.

2.12 The Partnership will report against the delivery of the Plan to Council and to the Department of Justice and the Policing Board. The PCSPs will be able to evaluate the success of different projects and use that evidence to inform the development of future Plans.

Statutory Duty

2.13 The DOJ recognises the principle that a wide range of organisations can contribute to the reduction of crime and the delivery of community safety. To reflect this, and to support the work of the PCSPs, it is proposed to establish a duty on public bodies to exercise their functions giving due regard to the impact on crime and anti-social behaviour. The DOJ will issue guidance to set out how this duty might be delivered. This provision will not be commenced before the Department has consulted with other Departments and public bodies.

Regional Structures

2.14 In order to coordinate the strategic direction being given by the sponsoring authorities, and to coordinate their respective funding and accountability functions, the Department of Justice and the Policing Board will meet as a "joint committee". The Joint Committee will consist of representatives of the Department and the Policing Board.

2.15 The Joint Committee will have specific statutory functions: it will assess the level of public satisfaction with the performance of PCSPs and DPCSPs and assess the effectiveness of PCSPs and DPCSPs in performing their functions. The joint committee will also be responsible for issuing a code of practice as to the exercising of functions of the PCSPs (and DPCSPs). Just as importantly, the two authorities will perform their respective sponsorship functions (in respect of funding, monitoring expenditure, approving Plans, etc), as far as possible in parallel through the Joint Committee.

Annex A

Clauses

A1. Clause 20 requires each district council to establish a single partnership to be titled 'Policing and Community Safety Partnership' and for the district council for Belfast to establish a 'District Policing Community Safety Partnership' for each [police district] (ie area command unit).

A1.1 The public consultation paper suggested a working title of 'Crime Reduction Partnership' for a future single partnership. Responses to the consultation highlighted that the working title was not widely accepted. Taking on board alternative titles and general comments received, a new title including the words 'policing' and 'community safety' which capture the main focus of the partnerships work was proposed. We are aware that the title 'Policing and Community Safety Partnership' is not the preferred option of a number of stakeholders.

A2. Clause 21: Functions of a PCSP

This clause sets out the functions of a PCSP. The functions are in relation to the policing of and community safety in the district. They are to obtain the views of the public, to act as a forum for discussion and consultation on these matters, prepare plans to reduce crime, identify targets to measure the success of the plans and provide financial or other support to persons involved in ventures designed to reduce crime or enhance community safety in the district. This clause also explains that there are a number of "restricted functions" which must be carried out by the policing committee of the PCSP, these are the specific functions inherited from DPPs in relation to holding PSNI to account for its performance in respect of the local policing plan, and making arrangements for obtaining the co-operation of the public with the police, and reporting on these to the Policing Board.

A2.2 The majority of responses to the public consultation highlighted the desire that no functions of either DPPs or CSPs should be lost. The functions listed at clause 21 encompass all existing functions of DPPs and CSPs. We are aware that some stakeholders feel that restricting some of the functions of a PCSP to a policing committee that sits within the overall partnership will not be conducive to the joined up working approach we hope the partnership will adopt.

A2.3 Conversely, it would not be appropriate for officers or officials of other statutory bodies on the main partnership to be responsible for monitoring the work of the police commander. A predominant view from stakeholders has been that any future partnership arrangements must maintain the special policing accountability arrangements that are in place in Northern Ireland and ensure that the line of accountability for this monitoring directly links back to the Policing Board. In developing a model for a single partnership we have been required to work within an existing statutory framework established by the Police (Northern Ireland) Act 2000 and the Police (Northern Ireland) Act 2003. The Policing Board has a statutory duty to assess the level of public satisfaction with the performance of the police; the current DPP framework assists the Board in fulfilling this statutory duty. Consequently, it is proposed that these functions are fulfilled by the Policing Committee, reporting to the Board.

A3. Clauses 24 - 32: Reporting mechanisms

These clauses detail the statutory reporting requirements and mechanisms which must be operated by PCSPs and DPCSPs.

A3.1 A familiar comment from stakeholders was that the current reporting mechanisms in place for DPPs were overly complicated and labour intensive. The reporting mechanisms captured within clause 24-32 do essentially mirror the existing reporting provisions for DPPs. It is our intention to work with the Policing Board to consider how the framework could be supported by less onerous requirements.

A3.2 A code of practice which details the roles and functions of PCSPs and DPCSPs will be developed by the Department and the Policing Board in conjunction with Councils. We envisage this code being used as a tool to create a more simplified reporting framework for PCSPs and DPCSPs.

A4. Clause 34: Duty of public bodies to consider community safety implications in exercising duties

This clause places a duty on public bodies to consider the crime, anti-social behaviour and community safety implications in exercising their duties. "Public bodies" covers Northern Ireland departments and bodies listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996. The clause also places a statutory obligation on a public body, in deciding how to comply with this duty, to have regard to any guidance issued by the Department of Justice. The Department has a statutory obligation to consult with the other Northern Ireland Departments in the preparation of such guidance.

A4.1 A provision of this sort was a desire of the majority of stakeholders, notably the PSNI and NIPB who actually hoped that this provision might be further reaching. We are aware of concerns that exist within some of the Departments regarding this provision. In summary these related to the perceived wide scope of the clause and the corresponding potential for legal challenges, the potential costs both in relation to any legal challenge and in implementing the requirement within Departments and ALBs and the associated administrative burden. We are committed to consulting with all Departments to produce statutory guidance on the operation of this clause and not to commence the provision until the Executive is content. We believe that this provision will be an extremely useful tool for the future partnerships and are committed to working closely with the Justice Committee and the Executive to secure inclusion.

A5. Clause 35: Functions of joint committee and Policing Board

This clause states that the joint committee must assess the level of public satisfaction with the partnerships and assess the effectiveness of the partnerships to perform their functions. The Policing Board must assess the level of public satisfaction with the policing committees and assess the effectiveness of the policing committees to perform their functions.

A5.1 The creation of a joint committee made up of representatives from the DOJ and the Policing Board is intended to address a number of requests from stakeholders to establish a more joined-up working relationship between the DOJ and the NIPB. The joint committee will set out strategic direction to the partnerships and should create a more streamlined reporting framework for the partnerships and Councils. The DOJ and NIPB are currently working together to develop terms of reference and guidance on the operation of the joint committee.

Notice of Amendment - Sex Offender Notification

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Your ref:
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The Lord Morrow of Clogher Valley MLA
Chairman, Committee of Justice
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13 December 2010

Dear Maurice

SEX OFFENDER NOTIFICATION: AMENDMENT TO JUSTICE BILL

You will recall that I informed the Committee before the Bill was introduced that a challenge to the Sexual Offences Act 2003 had resulted in a Supreme Court ruling that the indefinite notification requirements attached to sex offenders who have been sentenced to 30 months or more imprisonment were incompatible with Article 8 of the ECHR. As a result all UK, jurisdictions are under an obligation to remedy the legislative incompatibility as it applies to their own jurisdiction.

I signalled that an amendment would need to be prepared for the Justice Bill to meet the Supreme Court ruling. Before that happens, however, I want to share with the Committee the policy proposal for a legislative amendment. This amendment will provide for a review mechanism which sex offenders who have completed 15 years of notification can access.

[redacted]

The first principle which will be adhered to in the proposed review mechanism remains the overriding commitment to protect the public from the risk posed by sex offenders. In other words, there will be no removal of notification requirements if the individual continues to pose a risk of sexual harm and it is considered necessary for the police to have access to the personal information provided through notification in the interests of the investigation and prevention of crime.

The review will be carried out by the police, in cooperation with other relevant agencies where appropriate, and any decision to remove the requirements will be made by the police. In the event of a police decision to continue the requirements, the offender will have a right to apply to the court for an order to remove their notification. The Crown Court will consider the risk posed using the same criteria as the police. If the Court upholds the police decision, there will be a right of appeal to the Court of Appeal.

For those cases where notification requirements continue, the offender will have the right to a further review after another five years.

I have enclosed a more detailed paper which I hope you find useful.

The proposal is similar, although not identical, to changes already made in Scotland and to proposals for change in England and Wales. Each jurisdiction has developed a mechanism to suit its own needs, although there has been inter-jurisdictional agreement on the 15 year period before any review is carried out. This means that offenders cannot try to manipulate the system by moving from one jurisdiction to another to achieve earlier review dates.

In terms of numbers, there are less than 300 offenders in Northern Ireland subject to indefinite notification. We anticipate that the first adult offender will become eligible for review in 2012, and that an average of 20 offenders will then be eligible

[redacted]

year on year. The time period for offenders who were under 18 at the date of conviction will be set at 8 years, so it is possible that there may be a very small number eligible for review immediately on commencement, but the numbers would be extremely small, if any.

It is important that a change to the legislation is made as soon as possible in order to remove the incompatibility with ECHR rights. My intention is to introduce a legislative amendment to the Bill in January to allow for commencement of a review procedure before the summer.

You will also recall that an earlier proposed provision for sex offender notification, which was the subject of full public consultation and had been presented to the Committee, was withdrawn from the Bill due to the incompatibility ruling. This provision would make it a legislative requirement for sex offenders convicted outside the UK to notify their details to the police if they came to Northern Ireland. The present arrangement requires the police to first obtain a court order. The amendment to introduce a review mechanism will also allow for reconsideration of this issue and I hope to be in a position to bring both amendments forward in January to provide for the legislative changes.

Yours

DAVID FORD MLA
Minister of Justice

[redacted]

Notice of Amendments - Clauses 96 and 97

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Your ref:
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The Lord Morrow of Clogher Valley MLA
Chairman, Committee of Justice
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20 December 2010

Dear Maurice

Justice Bill: Clauses 96 and 97: Membership of Crown Court Rules Committee and Court of Judicature Rules Committee

As you will recall, my officials briefed the Justice Committee in relation to the provisions contained in Part 8 of the Justice Bill, on 2 December. In the course of the briefing, members helpfully commented on clause 96 (membership of the Crown Court Rules Committee) and clause 97 (membership of the Court of Judicature Rules Committee).

In particular, members noted that the draft clauses provide for the appointment to the Committees of "a person nominated by the Attorney General". It was also noted that the existing provisions relating to appointment to those Rules Committees prescribe the professional status of certain Committee members e.g. a practising

[redacted]

member of the Bar of Northern Ireland nominated by the Department of Justice or the Bar Council; a member of the Council of the Law Society nominated by the President of the Law Society or a practising solicitor nominated by that Council etc.

Members enquired whether it might be preferable for the clauses to similarly prescribe the status of the Attorney's nominee to the Committees and my officials undertook to consider this point further.

The Attorney General has indicated that his nominee will be either a solicitor or barrister, and I think that it would be helpful if the relevant clauses were amended to make that clear.

I am very grateful to the Committee for their input in relation to this matter. My officials will instruct Legislative Counsel to draft suitable amendments to each clause and we will provide the Committee with revised draft clauses after Recess.

I have also written to the Lord Chief Justice, as Chairman of the Rules Committees, to make him aware of my intention to table amended draft clauses at Consideration Stage.

DAVID FORD MLA
Minister of Justice

[redacted]

Access to Legal Aid for Victims of Domestic Violence

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The Lord Morrow of Clogher Valley MLA
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22 December 2010

Dear Maurice

I am writing to you to advise the Committee of a small, but important, change which I have decided to make to improve access to legal aid for victims of domestic violence. As you will be aware, civil remedies are available to protect persons suffering from domestic violence and these include Non-Molestation Orders made under the Family Homes and Domestic Violence (Northern Ireland) Order 1998. In order to obtain legal aid for a Non-Molestation Order, applicants must satisfy two tests. The first is that the applicant is financially eligible for legal aid and the second is that there are reasonable grounds for initiating proceedings.

In England & Wales, in April 2007, the financial eligibility rules were relaxed to allow the Legal Services Commission discretion to waive the income and capital limits for those seeking injunctions for the protection of harm to a person, such as Non-Molestation Orders. The requirement to make a payment towards costs was not

waived and applicants are still required to make a financial contribution, linked to their financial circumstances. In their evidence to the Committee on 2 December, Women's Aid argued for similar arrangements to be introduced in Northern Ireland.

The Northern Ireland Legal Services Commission (the Commission), as part of its reform of civil legal aid, is developing proposals for new reforms for financial eligibility. In advance of these reforms however, and in view of the importance of ensuring the safety of victims of domestic violence, I have decided to make changes to civil legal aid to remove the income and capital limits attached to applications for those seeking to secure Non-Molestation Orders made in the Magistrates' Court. This will allow persons access to legal aid who in the past would not have been eligible for funding due to their financial status. As in England & Wales, a contribution from disposable income and capital would be required. The Commission will consult on more wide ranging changes, but this immediate change is an important response to protect those who are the subject of domestic violence.

I will use the powers available to me under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to authorise the Legal Services Commission to disapply the current thresholds for applications those seeking to secure Non-Molestation Orders. This will be an interim measure, as I intend to bring forward proposals for more general changes to civil legal aid, which will require legislation and be subject to consultation and Assembly scrutiny in the normal way.

Yours

DAVID FORD MLA
Minster of Justice

Victims and Witnesses - Training for Intermediaries

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Christine Darrah
Clerk to the Committee for Justice
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22 December 2010

Dear Christine

Justice Bill: Victims and Witnesses

During the Committee for Justice's scrutiny of the victims and witnesses clauses in the Justice Bill on 25 November, some questions arose around training for intermediaries. Officials undertook to write to the Committee with some further detail.

As the intermediaries provision in the legislation is an evidential provision, the Department needs to ensure that the evidence given in court with the assistance of an intermediary is admissible for the purposes of the trial. Therefore, persons who apply to be intermediaries will, having been successful at interview, have to complete and pass a modular accreditation training course before they can be registered to work as intermediaries.

The course will prepare prospective intermediaries to understand their role in the criminal justice system. They will learn about relevant criminal law and procedures, and about stakeholders and participants with whom they will be working to enable them to operate effectively and credibly.

The course currently costs £2,000 per person; this is a cost which the department presently plans to meet. The overall cost of the training will however be dependant on how many people apply to be registered as intermediaries and who are successful at interview.

Jane Holmes
DALO

Sporting Events Incidents

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Our ref: SUB/1225/2010

Mrs Christine Darrah
Clerk
Justice Committee
Room 242, Parliament Buildings
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Belfast BT4 3XX

5 January 2011

Dear Christine,

At a recent appearance before the Justice Committee, officials agreed to provide the Committee with a list of incidents at and around sporting events. I am now writing to provide the Committee with relevant details along with some other information the Committee might find helpful.

The Minister recently answered a number of Assembly Questions about incidents at sports events put down by Ken Robinson MLA and has now also written to Mr Robinson with further information about incidents around the Northern Ireland/Poland football match in March 2009.

I therefore attach for the Committee's information a copy of the Minister's letter to Mr Robinson which includes a list of incidents which I trust provides the details required.

Committee Members will wish to note that in the past few days a further incident occurred at a Portadown v. Glenavon match on 27 December which, as I understand it, involved a pitch incursion, missile throwing, arrests, and serious disorder inside and

outside the ground. This happened after the AQ was answered and is not therefore included in the table.

We hope the Committee finds this helpful.

I have attached a letter to Lucia Wilson on similar terms as the CAL Committee also expressed an interest in this subject. I would be grateful if you could forward this on to Lucia, please.

Jane Holmes.

JANE HOLMES
DALO

[redacted]

Sporting Events Incidents

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Your ref:
Our ref: SUB/1225/2010

Mr K Robinson MLA
Northern Ireland Assembly
Parliament Buildings
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BELFAST
BT4 3XX

23 December 2010

Dear Ken

I have recently answered three Assembly questions you asked concerning incidents of disorder, etc, linked to sporting events. For convenience I attach a copy of these, and the answers I have given.

I have now received additional information from the police in relation to incidents around the Northern Ireland vs Poland international football match which took place in March 2009 – the subject of one of your questions.

Prior to the match a number of incidents of public disorder involving both Poland and Northern Ireland supporters occurred. These mainly concentrated in the following areas:

- Wetherspoons, Bedford Street
- Lisburn Road (outside Ryan's Bar/Hill's Bar)

[redacted]

- Tate's Avenue.

During the match the following incidents were reported:

- Polish fans lit flares and fireworks (thrown at police)
- disorder broke out in the South Stand
- Eirigi flags/banners were displayed within the South Stand by Polish fans
- an assistant referee was struck by a coin thrown from within the Northern Ireland supporters' area of the crowd.

After the match police came under a sustained attack and nine arrests were made for a range of offences including public order offences.

Six people have since been charged and dealt with at court, with prosecutions pending for a further six people.

I hope that you find this information helpful.

I am having this letter copied to the Assembly library, and to the Justice and CAL Committees, who asked to be informed about such incidents.

DAVID FORD MLA
Minister of Justice

AQWs 2703/11
2704/11
2707/11

Ken Robinson (East Antrim) has asked:

To ask the Minister of Justice to detail (i) the number of arrests made by the PSNI for offences committed within a sports stadium in each of the past three years; (ii) the number of these arrests which resulted in a conviction; and (iii) the sentences that resulted from these convictions.

To ask the Minister of Justice whether his Department holds any information on any person, currently living in Northern Ireland but originally from outside the UK, who has been convicted, in another part of the European Union, of an offence related to sport.

To ask the Minister of Justice how many people have been convicted of offences committed (i) before; (ii) during; and (iii) after the Northern Ireland vs Poland football international on 28 March 2009; and to outline the sentences handed down as a result of these convictions.

ANSWER
The information requested is not available in the format requested, however the following table details incidents at and related to sporting events in recent years.

Sports incidents

Football

DATE	LOCATION	INCIDENT	TYPE OF OFFENCE
06/11/2010	Coleraine Showgrounds (Coleraine v Cliftonville)	Cliftonville supporters causing disturbance in local bar. PSNI officers attacked. After match stones thrown at police car and Cliftonville supporters bus.	5 arrests public order and assault on police.
16/10/2010	Solitude (Cliftonville v Glentoran)	Alcohol removed from Glentoran supporters as they arrived on bus.	Alcohol on buses
09/10/2010	Coleraine Showgrounds (Coleraine v Linfield)	Male shouting obscenities at Linfield team bus following game.	Chanting abuse
25/9/2010	Coleraine Showgrounds (Coleraine v Ballymena)	Youths ('Coleraine casuals') gathered after second half of match. Banger thrown at police car. Youths continued to cause annoyance, throwing bangers at each other and passers by.	
28/08/2010	Donegal Celtic Suffolk Road (Donegal Celtic v Glentoran)	Glentoran supporters entered sterile zone, failed to leave when requested.	Pitch incursion

May 2010	Windsor Park	Sectarian chanting at Irish Cup Final	Chanting abuse
31/10/2010	Donegal Celtic Suffolk Road (Donegal Celtic v Cliftonville)	Altercation between a DC supporter and a Cliftonville supporter	
15/09/2010	Strangmore Park, Dungannon FC	Racial abuse towards Dungannon FC player	Chanting abuse
15/08/2009	Shamrock Park, Portadown FC (Portadown v Glentoran)	Supporter ran onto pitch and attacked Glentoran player.	Pitch incursion
28/03/2009	Windsor Park (NI v Poland)	Violence inside and outside ground before, during and after match. Assistant referee struck by coin. Fans attack police with fireworks	Fireworks
13/01/2009	Windsor Park (Linfield v Cliftonville)	Cliftonville official hit by plastic bottle	Missiles
26/12/2008	Windsor Park (Linfield v Glentoran)	Trouble causing play to be suspended	
04/11/2008	Windsor Park	Linfield players hit by a firework	Fireworks
Oct 2008	The Brandywell (Derry City FC)	Sectarian language towards stewards	Chanting/abuse
22/03/2008	Ballymena Showgrounds (Ballymena v Lisburn Distillery)	Missiles thrown onto pitch during match	Missiles
Oct 2007	Windsor Park	Baseball thrown onto pitch and flag burned in the wooden stand	Missile

11/08/2007	Ballymena Showgrounds (Ballymena v Linfield)	Sectarian chanting	Chanting/abuse
May 2006	Mourneview Park, Glenavon FC	Crowd trouble after Irish Cup semi final	
23/04/05	The Oval, (Linfield v Glentoran)	Major trouble at match. Hundreds of fans on pitch fighting and throwing missiles	Pitch incursion, missiles
22/02/2005	Brandywell, Derry City FC	Buses attacked as they leave the Brandywell	
02/05/2004	Windsor Park	2 men stabbed at Irish Cup Final	
May 1998	Windsor Park	Crowd trouble at end of Irish Cup Final. Stewards attacked.	

Gaelic Athletic Association

18/10/2009	Healy Park, Omagh	Referee assaulted at Tyrone County Football Final	Pitch incursion
23/03/2008	Edendork GAC, Tyrone	Crowd congestion causes match to be delayed	
20/11/2004	Casement Park	Referee attacked at Ulster Cup semi final	Pitch incursion

Equality Impact Assessment

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Ms Christine Darrah
Committee Clerk
Committee for Justice
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6 January 2011

Dear Christine

Justice Bill: Equality Impact Assessment

Please find attached a briefing paper and a copy of the Report of Responses document on the Justice Bill Equality Impact Assessment consultation exercise for the Committee meeting on 11 January 2011. To facilitate the Committee's considerations, we thought it worth sharing with the Committee details of the issues that were raised with the Department along with the positions we have adopted. We trust that this will assist the Committee and welcome the opportunity to share our thinking.

I would also like to take this opportunity to advise you that the officials attending to give evidence in the meeting on the 11th are:

- Gareth Johnston: Head of Justice Strategy Division, Department of Justice
- Janice Smiley: Head of Criminal Policy Unit, Department of Justice
- Tom Haire, Justice Bill Manager, Department of Justice.

I trust the Committee finds this helpful.

Jane Holmes
Departmental Assembly Liaison Officer
028 90 528272

Department of Justice Paper for the Justice Committee Meeting on Tuesday 11 January 2011 on Justice Bill Equality Impact Assessment

Purpose of paper

1. The purpose of this paper is to provide the Justice Committee with information on the outcome of the proposed Justice Bill's equality impact consultation. The consultation began on 12 August 2010 with a planned 12-week consultation period due to close on 4 November. The consultation was extended to 24 November, resulting in a period of some fifteen weeks in total, at the request of several stakeholders who sought additional time to facilitate their responses. The aim of this paper is to ensure that, as the Committee undertakes its equality consideration of the Bill, it is fully briefed on the issues which arose. The paper is provided to the Committee along with the full Report on Reponses by way of separate attachment.

Content

2. The paper provides a synopsis of the main issues which arose and the Department's responses and is structured in line with that of the full report. The four elements of this overview paper are:

- The overall response to the consultation and the supporting comments received.
- The main consultation comments around equality assessment procedure: the processes followed; the timing of the consultation; the assessment outcome; and data availability.
- Future undertakings: to ensure ongoing compliance, commitments around subordinate legislation; commencement; and future monitoring.
- By way of Annex A to the paper, the assessment of individual policy topics within the Bill: any equality issues raised in the consultation; and the Department's response.

3. The Committee will wish to note that six policy topics which were included in the equality consultation were not included in the Bill as introduced into the Assembly and presented to the Committee.

4. Committee members will be aware that three of these topics (proposals for a single territorial jurisdiction for magistrates' and county courts in Northern Ireland; proposals for case initiation reform which would allow prosecutors to issue summonses in appropriate circumstances; and the transfer of certain Judicial Review cases to the Upper Tribunal) were held back to be considered for future legislation. Three other topics have been identified for potential re-introduction into the Bill by way of amendment (the creation of solicitors' rights of audience; adjustments to court funds legislation; and improved cross-border reporting arrangements for sex offenders) subject to resolution of outstanding policy, legislative competence issuesand Committee consideration.

5. For completeness all of these policy topics have been included in this summary paper and in the full Report on Responses.

Attendance

6. Presenting the paper to the Committee will be:

- Gareth Johnston: Head of Justice Strategy Division, Department of Justice
- Janice Smiley, Head of Criminal Policy Unit, Department of Justice
- Tom Haire, Justice Bill Manager, Department of Justice.

7. Copies of the full Report will also be made available to all 14 respondents to the consultation and a copy will be placed on the Department's web-site.

8. The Department welcomes the opportunity to share its Report on Responses and looks forward to the Committee's considerations, advice and requirements.

5 January 2011
Justice Policy Directorate
Department of Justice

Justice Bill Equality Assessment: Briefing paper for Justice Committee meeting on 11 January 2011

1. Introduction

1.1 Following introduction, this paper is divided into three sections supported by an Annex along with, by way of a supporting attachment, the Department's full Report on Responses on the Justice Bill's equality assessment.

1.2 Section 2 of the paper presents a short overall picture of the number of responses and the supporting feedback received.

1.3 Section 3 considers the overarching and procedural comments which were made in relation to the equality assessment process. The four main areas and the topics raised were:

a) The processes followed: compliance with Section 75 requirements; EQIA versus screening; previous challenges; and the Department's Equality Scheme.

b) The timing of the equality consultations: the consultation overlapping with the Bill's introduction; the impact it will have on the Bill; the relevance of other parallel and ongoing consultations which were considered related to the Bill.

c) The assessment outcome: that the criminal law impacts significantly on certain Section 75 groups; the importance/absence in the proposals of mitigation and alternative policies; and that the Department implied that offenders are not entitled to equality and human rights protections.

d) Data: the limited availability of Section 75 data; the absence of data on impacts of the Bill on children; and the availability of a child accessible document for the consultation.

1.4 Section 4 of the paper recognises the importance of commitments in terms of equality impact assessment and monitoring. It describes the Department's undertakings towards ongoing accountability and reporting on equality issues. It outlines what will be done in terms of subordinate legislation arising from the Bill, consultation and equality screening; consultation and engagement with the Committee in terms of commencements; and future commitments around evaluation, reporting and inspection.

1.5 Annex A to the paper provides summary information on each of the fifteen policy topics included in the consultation. Many of the responses received on individual topics dealt more with policy questions rather than equality issues per se. All points raised are covered in the full Report on Responses however, for the Committee's assistance and focus on equality, Sections 1 and 2 provide the main and procedural equality issues. Should the Committee find it helpful, Annex A then explores the individual policy headings.

1.6 The full Report on Responses including full and detailed responses to all points raised in the consultation is provided by separate attachment. This paper to the Committee provides a synopsis of the consultation as a whole.

2. Overall report on responses

2.1 A total of 14 respondents made submissions on the EQIA on the proposals for a Justice Bill ranging across a spectrum of interested parties. From statutory criminal justice agencies responses were received from the Chief Constable and the Probation Board for Northern Ireland.

2.2 The Equality Commission, Committee on the Administration of Justice, and the Law Society submitted their views as did voluntary sector respondents including the NI Association for the Care and Resettlement of Offenders, the Children's Law Centre, Include Youth, Extern, Disability Action, the Spiritual Assembly of the Baha'is and the NI Council for Ethnic Minorities. Others included Lisburn City Council and Omagh District Policing Partnership.

2.3 The nature of responses was varied. A number of respondents welcomed the proposals and recognised their benefits; some respondents were broader in their submissions commenting on criminal justice system issues generally; others addressed specific policy proposals in the draft Bill; some focused on aspects of particular relevance to their organisation; and others raised questions on the process and procedures surrounding the publication of the EQIA.

2.4 In terms of welcoming the proposals, five respondents welcomed the equality appraisal and agreed with the analysis particularly in terms of the Bill's overall aims. The Chief Constable and the Probation Service supported the Bill, its contents and equality assessments.

2.5 Four respondents stated that they recognised the policy intention was to bring significant benefits to both the justice system and those who come in contact with it – particularly victims, witnesses and vulnerable defendants - whilst ensuring monies available are spent sensibly. All agreed on the positive outcomes for persons belonging to all the equality categories as well as the measures to mitigate possible adverse effects of some.

2.6 Two voiced particular appreciation for the significant public engagement incorporating some 9 consultations in preparation of the Bill. Each of those consultations had in themselves attracted considerable support at the policy consultation stage and have been reflected by way of policy background where as appropriate at the relevant sections of this report.

2.7 One respondent noted that the presentation of the equality impacts of the Bill as a whole, as well in relation to s75 categories within the public, victims and offenders in turn, resulted to a large extent in an accessible and useful document.

Section 3: Equality assessment process

Introduction

3.1 A number of responses commented on the Department's overall approach to the equality assessment of the proposed Justice Bill. Issues which emerged were: the process that had been followed; the timing of the impact assessment consultation; the conclusions reached in terms of impacts on offenders and the absence of mitigating measures where proposals might impact adversely on relevant groups. There were also a number of comments on the availability of Section 75 data in the justice system and limitations that this placed on assessments.

Equality assessment process

3.2 In terms of the assessment process, one respondent felt that the Department had not had due regard to Section 75 and referred to a previous equality challenge against the Northern Ireland Office in its approach to ASBO legislation. Some respondents considered the EQIA to be more of a screening exercise - the Equality Commission, for example, recognised the outcomes of our screenings, complimented the Department as to the quality of its publication, and in some ways questioned the need for, or the status of, the document as a formal EQIA. Others felt that a new and full EQIA of the Bill should now be carried out. One respondent asked which Equality Scheme was being applied – that of the Department of Justice or that of the previous NIO.

Department of Justice response

3.3 Each of these points is addressed in detail in the main report, however, in summary the Department's view is that it has complied fully with its Section 75 duties. It has given full and due regard to Section 75 categories in all of its Justice Bill policy proposals and has complied with all of the procedural requirements. The Department brought forward our proposals on the basis of a full series of preceding policy consultations all of which were screened and the screening forms published as part of those consultations. The Department analysed and published the results of those consultations, adjusted some of our proposals, and brought forward further proposals for legislation.

3.4 Recognising that bringing the various proposals together into a potential single Justice Bill might require an overarching assessment – the sum having the potential to be greater than the constituent parts – the Department then completed a combined impact assessment on what was then emerging as potential legislation. That impact assessment – some 125 pages in total covering individual policy areas and collective justice system issues – was also published for full public consultation. This current report is the outcome of that consultation.

3.5 In terms of "which Equality Scheme" the assessment is made under, as a new Department the DOJ is now working on and will be developing its own Equality Scheme with the Equality Commission for Northern Ireland during the course of next year. As such a DOJ Equality Scheme does not exist on paper at this stage – however all of the changes proposed by the draft Justice (NI) Bill 2010 have been the subject of an equality screening exercise in line with the Equality Commission's guidance on the implementation of statutory duties arising from s75.

3.6 The Department has consulted on its original policy proposals, equality screened and consulted upon those screenings; mitigated its policies where appropriate; screened, impact assessed, and consulted (again) on those proposals as a collective piece for a proposed Justice Bill; consulted with and received the approval of the Executive and the Assembly for the Bill; briefed (May/June 2010) and given evidence (November/December 2010) to the Justice Committee on Bill proposals; and will be presenting its equality assessments to the Committee shortly (see below). Subject to the Bill receiving Assembly approval, the Department will monitor and address any future adverse impacts. The Department's view is therefore that it has complied with, and will continue to comply with, its equality duties in terms of the proposals for a Justice Bill.

Timing and parallel consultations

3.7 Three respondents commented on timing of the consultation and the fact that its closing date (4 November extended on request to 24 November) fell after the Bill had been introduced into the Assembly (5 October). How could the responses impact greatly on any of the policy proposals? Another noted that there were other parallel and ongoing consultations which they

considered related to component parts of the Bill and as such relevant parts should not have proceeded ahead of those concluding.

Department of Justice response

3.8 In terms of parallel consultations (for example, consultations on offender management and a review of youth justice which are now underway) the Department's view is that the current proposals have significance for our justice system in service delivery terms now and therefore should be proceeded with; the parallel consultations do not conflict with nor would they be compromised by the policy areas addressed in the Bill; and more strategically, the proposals have a major significance in terms of the newly devolved Department quickly delivering one of its requirements under the Hillsborough Castle Agreement.

3.9 In terms of the timing of the assessment consultation the Department recognises the overlap, however, that short overlap does not mean that equality requirements have not been or are not going to be met. The assessment consultation was carried out to ensure that the Justice Committee had the results of our assessments available to it during its scrutiny of the proposed Justice Bill - that stage is now underway. The Committee will consider the equality process and assessments; the policies will be reviewed, adjusted and finalised in Committee as appropriate.

3.10 A Bill will only become law if and when the Assembly approves it. There are many opportunities for a Bill to be amended as it proceeds throughthe Assembly and in its equality assessment timing, the Department has been fully alert to and planned for the scrutiny stages of the Bill. Given the timetable available, the equality timings do not, in the Department's assessment, breach the statutory duties under s75 and will be a crucial aspect in influencing and finalising the Justice Bill.

3.11 The Department's view is therefore that whilst parallel consultations will bring added benefits in due course, it is nevertheless appropriate to proceed with the current proposals; and in terms of timings of the impactassessment consultation, equality assessments will still have a bearing as the Bill is being taken forward.

Assessment conclusions and mitigation

3.12 Several respondents disagreed with the Department's assessment of low impact on Section 75 groups pointing out that the criminal law impacts largely on males – particularly young males. Some felt that, for example, those on low incomes or with dependents would be impacted upon. There was a concern about the Department's comment that offenders were "selfselecting"; that they are not entitled to equality and human rights protections; and that there were no proposals for mitigating measures or alternative policies.

Department of Justice response

3.13 The Department takes the view that much of the Bill either does not impact on offenders or in fact has a positive - not adverse - impact. Penalty notices, for example, remove the acquisition of a criminal record; and live links, certain special measures, and access to bail hearings are being widened to admit more into the options. Other aspects are designed to improve services to victims, community safety, and to deliver better justice systems.

3.14 In terms of the Department's comment that offenders were "selfselecting" the Department recognises that there are many reasons for offending. Reasons can indeed be linked to a myriad of social, environmental and family factors and the term "self selecting" may not fully accord the depth of causality. It would be insufficient to justify a law purely on the grounds of a choice to

break it or not and that was not our intention. Equally, any suggestion which might imply that offenders are not entitled to equality andhuman rights protections would be of major concern. The Bill itself has been fully competence assessed and approved and the justice system as a whole operates to the highest compliance standards.

3.15 Where the Bill does have an impact on offenders, any impacts are either low in terms of the numbers affected; are for the broader policy aim of public protection (and therefore have positive impacts on all Section 75 groups); and do indeed have mitigating measures built in. The offender levy for example – which does impact on offenders – has a whole series of mitigating features around affordability, payment management, and even remittal; and offender consent is at the heart of the alternatives to prosecution provisions.

3.16 In terms of mitigation, the originating impact assessment consultation recalled the considerable amount that is done to mitigate the impact of the justice system on, for example, young males. Considerable resources, services and arrangements are provided to prevent, divert and rehabilitate offenders who come into or are in danger of entering the system. Crime prevention initiatives are designed to keep people out of the justice system; informal advice, warning and cautioning schemes divert young people away from the formal process; and a Youth Justice Agency exists alongside special youth justice system arrangements to cater specifically for young people's needs. Statutory and voluntary bodies provide a whole series of early intervention programmes and where offenders do enter the system numerous programmes and services are provided to assist successful reintegration.

Data availability

3.17 Four respondents commented on limited availability of equality data in the justice system. The absence of data on impacts on children under 18 was commented upon alongside an assertion about the Department's alleged failure to produce a child accessible document for the Impact Assessment.

Department of Justice response

3.18 The Department's view is that where data are available the impact assessment has sourced and used them as appropriate. The assessment drew on data from a range of sources: public experiences of crime and criminal justice; surveys and research studies providing analysis according to a number of section 75 categories; age, gender, disability, marital status are all available and considered in the report.

3.19 For victims, again similar survey material data were used. Information relating to offenders – prosecutions, convictions and sentencing – age and gender are routinely collected and have been drawn on. Religious denominations of prisoners are, for example, available.

3.20 In terms of the points made in relation to children and the absence of data, this is simply a feature of the fact that in our assessment few of the proposals will in fact apply to children. The Offender Levy; the Fixed Penalty regime; and Conditional Cautions were specifically disapplied to children; Policing and Community Safety Partnerships are structural arrangements; live links and special measures expansions are improvements to services; and a whole series of minor procedural adjustments are not age-related. In procedural terms, an easy read version of the consultation paper was indeed produced and placed on the Department's web-site; explicitly referred to in the main consultation paper; and issued to some 300+ consultees which included a series of youth focused organisations.

3.21 On data availability more generally, the Department does recognise that there is some way to go in terms of s75 data in the justice system and, across the board, the Department has been working to improve the information available. Equity monitoring arrangements are now in place in police custody suites covering seven of the nine section 75 categories. There are and will continue to be certain difficulties in gathering all aspects of s75 data in the justice process. In the initial period, voluntary disclosure of some aspects has been low. Requesting some aspects of such personal information in what can be a tense and stressful context can be misinterpreted and can cause other difficulties. The Department recognisesthat there is not yet a full and sufficient body of data available; that it must use those sources that are best available to it; and in the meantime will work to improve data availability – though recognising that data collection in the justice field can in itself be problematic.

4. Future undertakings

4.1 The Department fully recognises the importance of equality assessment and trusts that it has demonstrated its commitment in developing a Justice Bill for the Committee and Assembly's consideration. It also recognises that legislation is but the start of a process that must be followed up with ongoing actions and procedures.

Subordinate legislation

4.2 The Bill itself contains, for example, a number of enabling provisions that will in themselves need to be developed further before they are finalised. The Bill will also spawn a series of subordinate legislative provisions and requirements – provided separately by way of a Regulatory Powers Memorandum – which will need to be brought before the Committee.

4.3 The Department is fully committed to consulting on, and equality screening, those Rules, Regulations, Codes of Practice, and Published Guidances which will arise from the Bill and bringing them, along with their equality assessments, before the Committee for consideration.

4.4 At this stage those main Regulatory Powers include (excluding Court Rules and order making powers which will nevertheless still be brought to the Committee):

- Regulations with respect to the enforcement of the offender levy;
- A code of practice for Policing and Community Safety Partnerships;
- Guidance on the use of fixed penalty notices;
- Regulations for the registration of unpaid penalty sums.
- A code of practice in relation to conditional cautions;
- Rules as to the eligibility for free legal aid;
- Rules to recover costs of legal aid;
- Regulations for financial eligibility for grant of right of representation.

4.5 The Department notes that there may be other requirements to be introduced as a consequence of Committee scrutiny. Potential additional requirements may be for the operation of relevant sports law provisions – the types of containers to be allowed into grounds and the selling of tickets for example.

Commencement

4.6 Subject to successful passage through the Assembly, plans for the commencement of individual provisions and subsequent commencement orders will also be brought to the Committee. At this stage commencement orders are exclusively negative resolution orders though in relation to sports law there is the potential for an affirmative resolution procedure (whereby an order cannot be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly) for the commencement of powers to control alcohol possession in grounds. As and when commencements occur they will be subject to advance justice system notice and publicity as appropriate.

Future monitoring

4.7 At various points in the equality consultation, respondents commented on the need for data and the importance of future monitoring.

4.8 The Department has a work programme in hand to improve Section 75 data availability in the justice system with Causeway at the core. It also undertakes – again subject to successful passage of the Bill – to monitoring the impact of the Bill to ensure that the provisions deliver with regard to Section 75 requirements.

4.9 The Department also undertakes to ensure that, where relevant and appropriate, evaluations are completed or inspections undertaken by the Criminal Justice Inspectorate again to ensure successful outcomes and improve practice.

4.10 Annual reports will also be prepared on certain provisions within the Bill as will the Department's annual report to the Equality Commission on its Equality Scheme now in development.

Conclusion

4.11 The Department is firmly committed to ensuring that the provisions of the Justice Bill are and will continue to be compliant with Section 75 duties.

Annex A

Responses to Individual policy topics

A.1 This Annex to the paper provides a brief summary of points made in the consultation in respect of each separate policy topic in the Bill. A number of respondents took the opportunity to raise policy questions – all of which are addressed in the main report. However, given the focus of the Committee at this stage on equality aspects, each of the following topics focus on that aspect. Responses to all points raised are nevertheless provided in the full Report.

Offender levy

A.2 Three equality impact points were raised in consultation: the need for the levy to factor in an ability to pay; the potential impact on children; and the need for mitigation in the provisions.

A.3 Regarding the offender's ability to pay, mitigating provision has been made in the draft Bill, which will allow the courts to consider the issue of means in relation to the levy. The amount of the levy may be reduced (to nil if necessary), where a compensation order has also been made, and it has been determined by the court that the offender has insufficient means to pay both the compensation and the levy. In circumstances where the offender does not have the means to

pay both a court fine and the levy, the court fine can be reduced to an appropriate level. This is a reflection of current practice in relation to the imposition of court fines - when a fine or other financial order is imposed at court, there is already statutory provision for the court to consider the offender's means and to reduce the fine if necessary, to a level which it is assessed the offender is capable of paying. As with other monetary orders imposed by the court, if the offender is unable to pay the levy in full by the due date, he/she will be able to make an application to the court for an extension of time in which to pay, or to agree payments by instalment. This means that those who may have particular difficulties are given the appropriate assistance to help them make the payment. The offender levy will not be applied to children – it will only apply to adult offenders aged 18 and over.

Special measures

A.4 Four points were made: the importance of the rights of people with disabilities; the need for disability training and awareness in the justice system; the balance between provision for victims/witnesses versus defendants; and the need for mitigation in the provisions.

A.5 The Department and its criminal justice partners recognise the importance of training, awareness and consideration of disability issues. These are already part of the Department's equality strategy and the agencies currently provide training on a range of disability issues for staff, such as deaf awareness and autism awareness training. The Department will however review its arrangements and remind the justice system of the continuing importance of disability issues. In terms of balance of provision, it is worth recalling more generally that defendants are afforded considerable safeguards in proceedings so as to ensure a fair trial. The law already provides for special procedures to be adopted when interviewing vulnerable accused in respect of whom intermediary assistance is also being provided in the Bill. So too is the expansion of live links to include mentally ill and physically disabled defendants. In terms of special measures themselves, recognising the importance of balance, in approving their use the court must be satisfied that they do not inhibit evidence being effectively tested. In terms of mitigating safeguards, the Bill provides that the court must take into consideration the age and maturity of a young witness and must also consider their ability to understand the consequences of not giving evidence by live link if they indicate that they do not wish to avail of special measures.

Live links

A.6 Two points were made: the need for safeguards; and that the provisions should not be used to frustrate direct access to the court.

A.7 In terms of mitigating safeguards, the live links provisions in the Bill proposals have the core principles of application and representation when the court is considering a live link. Offender consent is built in across the package. Live link directions will not therefore be used to frustrate direct access to the court and use will be monitored. A monitoring system has already been in place for some years following a recommendation by the Criminal Justice Inspectorate. Policing and Community Safety Partnerships

A.8 Two points were made: the importance of community – and Section 75 representation – on the PCSPs; and clarity around which Equality Scheme would apply to PCSPs.

A.9 PCSP membership is intended to include representation from a wide range of interests including councillors nominated by the Council; independent members appointed by the Policing Board, and representatives of delivery organisations appointed by the PCSP. There is the potential for additional bodies supporting community safety in NI to be represented in the new partnerships. Partnerships can also set up working level delivery groups to support specific

projects or streams of work. A code of practice which details the roles and functions of PCSPs and DPCSPs will be developed by the Department and the Policing Board in conjunction with Councils. As statutory bodies in their own right the Partnerships will have their own Section 75 responsibilities under the Northern Ireland Act and cannot come under a Council's, the Policing Board's or the Department's equality scheme.

Single Territorial Jurisdiction for Magistrates' and County Courts in Northern Ireland

A.10 The need to ensure accessibility under new arrangements was stressed.

A.11 The Department welcomes the helpful comments made and acknowledged in the policy consultation paper that providing customers with access to justice at a convenient court location will always be a significant consideration. The proposals were omitted from the Bill due to the scale of drafting, time constraints and other priorities, however the Department remains committed to introducing these reforms and will be seeking to bring the provisions forward in the next appropriate legislative vehicle.

Sports law

A.12 It was suggested that the proposals would have an adverse impact on protestant males and are not Section 75 compliant.

A.13 Taking the two components in turn, in terms of undue impact on protestants, the Bill as a whole has been assessed as competent under the statutory requirements of Section 76 of the Northern Ireland Act. Indeed it would be unlawful for the legislation to be created that discriminated against a person on the grounds of their religious belief (or political opinion). Therefore the concern about a particular religious group has been fully considered and the legislation confirmed as competent. In terms of gender impact, the Department recognises that the vast majority of spectators at our three main sports are males and our screening did indicate that a small minority of males who attend sporting events might be impacted by the proposals. Crucially, however, the proposals will only impact on those who offend at those events.

A.14 In overall terms, the proposals are designed to prevent, control and tackle bad behaviour by spectators, and will therefore have a beneficial, rather than a harmful, effect on all section 75 groups. They will also help to promote good relations by tackling certain forms of behaviour which can both arise from and lead to poor community relations - racist or sectarian chanting at matches, for example, will become a criminal offence. The sports package as a whole has been designed to impact as appropriate on the three main sports which attract support from across our various communities.

Adjustments to sentencing powers

A.15 These would impact adversely in various ways on young males and/or children: deferment of sentencing could criminalise young people earlier; the increase in penalty for common assault had been screened out; and the offence of possession of a knife on school premises had an age impact (which the Department had not recognised).

A.16 For deferment of sentence, the Department believes that the extra time available for deferment will, in fact, have the opposite effect to that claimed. Deferment will create real prospects for offender behavioural issues to be addressed; sentencing decisions to be enhanced; thereby creating an increased opportunity for diversion away from further or heavier penalties.

Rather than earlier criminalisation we see increased opportunities for restitution and rehabilitation.

A.17 For the increased penalty for common assault, looking at sentencing data the new penalty would apply in only a very small number of cases involving children. Raising the maximum penalty would, however, enhance the ability of the magistrates' courts to respond to the particular circumstances of each case.

A.18 For the knife crime penalty, this provision simply corrects a drafting error in Article 90 of the Criminal Justice (NI) Order 2008 to ensure the full and consistent application of the 2008 package of maximum sentences for offences involving knives etc can be applied as the original policy intended. The change to the offence of having a knife on school premises was covered by the 2008 Order however due to an inaccurate reference number the offence of having an offensive weapon on school premises was not. The proposal is therefore not a new policy per se but the legislative correction of a previously consulted upon and approved provision.

Alternatives to prosecution

A.19 Two points were made: the need for vulnerable persons to be able to make an informed choice; and that their use should be monitored.

A.20 The Department confirms that important safeguards are in place in the Bill to ensure that offenders, particularly vulnerable individuals, are able to make an informed choice about accepting a fixed penalty or conditional caution in full knowledge of the consequences of doing so and of how to exercise their rights in relation to the disposal.

A.21 In relation to fixed penalties, the individual will have a period of 28 days after issue in which to pay or to reject a fixed penalty and request a court hearing instead. This will be explained by the issuing officer and will be fully detailed in writing on the penalty notice itself. There are two additional safeguards built in which provide that the individual can make a declaration to the court to set aside the registration of the penalty notice on default or the court can do so, of its own violation, in the interests of justice. The latter provision enables the court to deal with any case where an individual has a legitimate reason for not complying with the requirements within 28 days, for example, because of their level of comprehension or social functioning and preserves their right to a court hearing.

A.22 In relation to conditional cautions, its conditions and the consequences of non-compliance will be fully explained by the issuing officer in the presence of an appropriate adult where this is required, and provided in writing. In the case of either disposal the individual can seek the advice of a legal representative before exercising their options.

A.23 Regarding appropriate usage the Department confirms that there are adequate safeguards in place. Their use will be subject to clear Departmental guidance and PSNI have made a commitment to fully train officers in their issue prior to implementation. In terms of internal monitoring, supervisory officers will check and verify all penalty notices issued; and operational experience will also be subject to external review by inspectors from Criminal Justice Inspection Northern Ireland.

Legal Aid reform

A.24 Any reforms must include assessments of ability to pay; and must have disability considerations.

A.25 The Department confirms that any reforms will include an assessment of ability to pay – that is at the core of the policy proposals. In terms of the means test, the Department has commissioned further research regarding the actual financial level at which any new test should be set in order to ensure that access to justice is not adversely affected. The test will take account of the additional costs associated with living with a disability through the hardship review process. The hardship review process, which takes account of additional costs in exceptional circumstances, will also provide a safeguard in respect of those in need of interpreter services and inother instances where defence costs are significantly increased by some other exceptional circumstance. Should a decision be taken to proceed with the proposals to introduce a fixed means test or recovery of defence costs orders, further public consultation and accompanying equality impact assessments would be required before introducing the necessary rules.

Solicitors' rights of audience

A.26 No equality points were raised.

Bail reform

A.27 No data provided in respect of children.

A.28 We consider that the proposals relating to bail reform simply represent an opening up of the court tiers at which bail can be granted and do not in any way restrict access.

A.29 It is considered, therefore, that these limited changes to bail procedures will produce the same practical benefit for all defendants, irrespective of age, within the criminal justice system. We note the comment in relation to statistics on persons under 18 for future screenings and will work to address this through wider data collection improvements.

Funds in court

A.30 The measure must be implemented in a manner which is wholly in keeping with the requirements and safeguards of the Mental Capacity (Health, Welfare and Finance Bill).

A.31 Current mental health legislation and emerging developments in terms of proposals for a new Mental Capacity (Health, Welfare and Finance) Bill will continue to be considered as the Department continues its work to bring these provisions back into the Bill by way of amendment. A revised "Mental Capacity Bill" will not, however, be considered by the Assembly until possibly well into the next Assembly mandate period.

Supervised Activity Orders

A.32 Any SAO schemes must be accessible to people with disabilities.

A.33 The Department confirms that the Probation Board - who would administer any Supervised Activity Order scheme - already makes every effort to arrange placements which take into consideration any disability requirements of their clients.This will continue to be the case under any SAO scheme which is commenced.

Case initiation reform/PPS issue of summonses

A.34 The need for good practice in identifying defendants with learning difficulties or disabilities at an early stage in proceedings is an important consideration.

A.35 It is already police practice to identify vulnerable defendants early in any proceedings and to take steps in conjunction with the Public Prosecution Service to ensure appropriate measures are considered in the issue of a summons.

A.36 The proposal has not been included in the draft Justice Bill, however, it is intended to re-examine this proposal in the broader context of any recommendations for case initiation reform emerging from on-going work to speed up justice.

Other Miscellaneous provisions (Third party disclosure; Disclosure in family proceedings; Adjustments to Rules Committees; transfer of Judicial Review cases; POCA Appeals; Law Commission Accounts; Criminal Record Checks)

A.37 No equality issues were raised – though one policy question was posed in relation to Criminal Record Checks and is included in the main report.

Annex B

Impact Assessment for proposed Justice Bill (NI) 2010

Report on Responses

Criminal Law Branch
Massey House
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January 2011

1. Introduction

Introduction

1.1 A consultation on an Equality Impact Assessment for a proposed Justice Bill 2010 was launched on 12 August 2010. The 12-week consultation was due to close on 4 November but was extended to 24 November at the request of several stakeholders to facilitate their responses.

1.2 The consultation paper set out proposals for a Justice Bill centred around 3 key themes – victims and witnesses; community engagement and public safety; and better service delivery and system efficiency.

1.3 The EQIA consultation followed a total of 9 previous and individual policy consultation exercises conducted on the potential key component parts of a Justice Bill. This was alongside a series of consultations targeted at specific interest groups and stakeholders. Each policy area had its own screening analyses conducted and published in tandem. Reports on responses were circulated to contributors and published on the Department's or the Courts and Tribunals Service's web-sites. All were also presented to the Justice Committee. All consultation documents and reports on responses are referenced in this report; indexed; and web-links provided.

1.4 The EQIA consultation on which this report is based was published on the DOJ website alongside supporting equality screening forms for every policy proposal along with an Easy Read version. Approximately 300 bodies, organisations or individuals were contacted to advise them of the consultation and public advertisements were placed in each of the main local newspapers. Where required, additional information, briefings or meetings were provided.

1.5 This Report on Responses is also being presented to the Justice Committee; is being issued to respondents; and will be placed on the Department's and the NI Courts and Tribunals Service web-sites.

2. Responses

Respondents

2.1 A total of 14 respondents made submissions on the EQIA on the proposals for a Justice Bill ranging across a spectrum of interested parties. From statutory criminal justice agencies responses were received from the Chief Constable and Probation Service. Both supported the Bill, its contents and equality assessments.

2.2 The Equality Commission, Committee on the Administration of Justice, and the Law Society submitted their views as did voluntary sector respondents including the NI Association for the Care and Resettlement of Offenders, the Children's Law Centre, Include Youth, Extern, Disability Action, the Spiritual Assembly of the Baha'is and the NI Council for Ethnic Minorities. Others included Lisburn City Council and Omagh District Policing Partnership.

Responses

2.3 The nature of responses was varied. A number of respondents welcomed the proposals and the benefits of the proposals; other respondents were broader in their submissions commenting on criminal justice system issues generally; others addressed specific policy proposals in the draft Bill; some focused on aspects of particular relevance to their organisation and others raised questions on the process and procedures surrounding the publication of the EQIA.

2.4 Not all responses dealt with the equality aspects of the proposed Bill. Many in fact took the opportunity to comment on or seek clarification on substantive policy matters. These have also been included in this report on responses.

2.5 A number of policy proposals were included in the EQIA consultation that were not, in the end, included in the draft Bill. Two of those proposals were for a single territorial jurisdiction for magistrates' and county courts and case initiation reform. For completeness these have also been included in this report on responses though will be re-considered for future legislation. A proposal for a reform of the transfer of certain judicial review cases was also in the EQIA consultation though this has not subsequently been included in the Bill. The proposal elicited no comments in the consultation and is therefore only briefly mentioned in a final Miscellaneous section.

2.6 Three other proposals in the EQIA were not included in the Bill as published: proposals for solicitors' rights of audience; improvements to Court Funds provisions; and adjustments to sex offender notification requirements. The intention for these proposals is that, subject to Justice Committee consideration and legislative competence, they would still be brought into the Bill by way of amendment. Again for completeness these have also been included in this report on responses.

2.7 To ensure all views are fully reflected the following chapters of this report will explore the following areas; welcoming the proposals; the equality assessment process; and comments on particular policy proposals. The approach within chapters will be to provide a short background to the policy theme in hand; to identify the issues raised; and to provide a Department of Justice response. Not all proposals were commented on in the consultation.Where no comments were made no report is provided.

2.8 In accordance with the advice included in the consultation document we are including the names of the responding organisations who did not indicate that they wished their response to be treated in confidence. None of the respondents sought such confidentiality.

3. Welcoming the proposals

3.1 Five respondents welcomed the equality appraisal of the proposed Bill and agreed with the analysis particularly in terms of the Bill's overall aims.

3.2 Four stated that they recognised the policy intention was to bring significant benefits to both the justice system and those who come in contact with it – particularly victims, witnesses and vulnerable defendants - whilst ensuring monies available are spent sensibly.

3.3 All agreed on the positive outcomes for persons belonging to all the equality categories as well as the measures to mitigate possible adverse effects of some.

3.4 Two voiced particular appreciation for the significant public engagement incorporating some 9 consultations in preparation of the Bill. Each of those consultations had in themselves attracted considerable support at the policy consultation stage and have been reflected by way of policy background, as appropriate, at the relevant sections of this report.

3.5 One respondent noted that the presentation of the equality impacts of the Bill as a whole, as well in relation to s75 categories within the public, victims and offenders in turn resulted to a large extent in an accessible and useful document.

4. The Equality assessment process

4.1 A number of responses commented on the Department's overall approach to the equality assessment of the proposed Justice Bill. Issues which emerged were: the process that had been followed; the timing of the impact assessment consultation; the conclusions reached in terms of impacts on offenders and the absence of mitigating measures where proposals might impact adversely on relevant groups. There were also a number of comments on the availability of Section 75 data in the justice system and limitations this placed on assessments.

Equality assessment process

4.2 In terms of the assessment process, one respondent felt that the Department had failed in its duties with regard to Section 75 and referred to a previous challenge in 2004 to the equality assessment approach to ASBO legislation. While some respondents considered the consultation paper to be an EQIA others considered the document to be more of a screening exercise. The Equality Commission, for example, recognised the outcomes of our screenings, complimented the Department as to the quality of its publication, and in some ways questioned the need for or the status of the document as a formal EQIA. Others felt that a new and full EQIA of the Bill should now be carried out. One respondent asked which Equality Scheme was being applied – that of the Department of Justice or that of the previous NIO?

Department of Justice response

4.3 The Department's view is that it has complied fully with its Section 75 duties. It has given full and due regard to Section 75 categories in all of its Justice Bill policy proposals and has complied with all of the procedural requirements.

4.4 The Department brought forward our proposals on the basis of a full series of preceding policy consultations all of which were screened and the screening forms published as part of those consultations. The Department analysed and published the results of those consultations, adjusted some of our proposals, and brought forward further proposals for legislation.

Recognising that bringing the various proposals together into a potential single Justice Bill might require an overarching assessment – the sum having the potential to be greater than the constituent parts – the Department then completed a combined impact assessment on what was then emerging as potential legislation. That impact assessment – some 125 pages in total covering individual policy areas and collective justice system issues – was also published for full public consultation. This current report is the outcome of that consultation.

4.5 In terms of "which Equality Scheme" the assessment is made under, as a new Department the DOJ is now working on and will be developing its own Equality Scheme with the Equality Commission for Northern Ireland during the course of next year. As such a DoJ Equality Scheme does not exist on paper at this stage – however all of the changes proposed by the draft Justice (NI) Bill 2010 have been the subject of an equality screening exercise in line with the Equality Commission's guidance on the implementation of statutory duties arising from s75.

4.6 In terms of the previous experience of ASBO legislation (that the then NIO had not complied with its Equality Scheme and that it should have carried out an EQIA) it is worth noting that the challenge to the legislation was unsuccessful. Nevertheless, as the Court indicated, the Equality Commission's report on the process was important. The new Department of Justice has therefore learned from others' experiences and has undertaken considerable steps to ensure full assessments and consultations are undertaken. (The ASBO law was, for example, consulted upon for something in the region of 5 or 6 weeks; the proposals for a Justice Bill have been consulted upon by way of separate, 12 week policy and equality consultations, for almost 6 months.)

4.7 In summary, the Department has consulted on its original policy proposals, equality screened and consulted upon those screenings; mitigated its policies where appropriate; screened, impact assessed, and consulted (again) on those proposals as a collective piece for a proposed Justice Bill; consulted with and received the approval of the Executive and the Assembly for the Bill; briefed (May/June 2010) and given evidence (November/December 2010) to the Justice Committee on Bill proposals; and will be presenting its equality assessments to the Committee shortly (see below). Subject to the Bill receiving Assembly approval, the Department will monitor and address any future adverse impacts.

4.8 Department's view is therefore that it has complied with and will continue to comply with its equality duties in terms of the proposals for a Justice Bill.

Timing and parallel consultations

4.9 Three respondents commented on timing of the consultation and the fact that the closing date (4 November extended on request to 24 November) fell after the Bill had been introduced into the Assembly (5 October). How could the responses impact greatly on the any of the policy proposals? One suggested that these timings breached both the letter and spirit of the statutory duties under s75. Another noted that there were other parallel andongoing consultations which they considered related to component parts of the Bill and as such relevant parts should not have proceeded ahead of those concluding.

Department of Justice response

4.10 In terms of parallel consultations and the appropriateness of proceeding with a Bill when, for example, consultations on offender management and a review of youth justice are underway, the Department's view is threefold.

4.11 Firstly that the current proposals have significance for our justice system in service delivery terms now and therefore should be proceeded with. The time is right to improve arrangements by raising additional revenue for victim services; by creating alternatives to court prosecution; and by reforming, for example, legal aid. To hold off, for potentially up to a further two years in areas now ready for reform, would be wrong.

4.12 Secondly, the parallel consultations do not, we feel, conflict with nor would they be compromised by the policy areas addressed in the Bill. The current Bill proposals are mostly about victim services and justice system improvements. They are less focused on offenders per se - legislation in respect of whom saw a major overhaul as recently as 2008. By and large the Bill therefore excludes provisions which deal with youth justice or offender management and does not compromise current consultations.

4.13 Finally and more strategically, the proposals have a major significance in terms of the newly devolved Department quickly delivering one of its key functions - legislating in the justice field within NI for the first time in over forty years. A Justice Bill is part of the Hillsborough Castle Agreement and the time is right to be consolidating the devolution requirement.

4.14 In terms of the timing of the assessment consultation the Department recognises the overlap. Given the establishment of the new Department in April 2010; the requirement as part of the devolution of justice agreement for a Justice Bill to be delivered within the final session of the Assembly mandate; and the legislative timescales required, a short overlap was almost inevitable. However that short overlap did not mean that equality requirements were not met – given the extensive policy consultations and assessments that had already been undertaken.

4.15 Nor did it mean that final policy conclusions had been reached and the proposals settled - a Bill only becomes law if and when the Assembly approves it. There are many opportunities for a Bill to be amended as it proceeds through the Assembly and in its equality assessment timing, the Department has been fully alert to and planned for the scrutiny stages of the Bill. Given the timetable available, the assessment consultation was therefore carried out to ensure that the Justice Committee had the results of our assessments available to it during its scrutiny of the proposed Justice Bill. That stage is now underway; the Committee will consider the equality process and assessments; policies reviewed, adjusted, and finalised as appropriate. The equality timings do not, in the Department's assessment, breach the statutory duties under s75 and will be a crucial aspect in influencing and finalising the Justice Bill.

4.16 In overall terms therefore, in terms of parallel consultations andtimings, the Department's view is that whilst parallel consultations will bring added benefits in due course, it is nevertheless appropriate to proceed with the current proposals; and in terms of timings of the impact assessment consultation, equality assessments will still have a bearing as the Bill is being taken forward.

Assessment conclusions and mitigation

4.17 Several respondents disagreed with the Department's assessment of low impact on Section 75 groups pointing out that the criminal law impacts largely on males – particularly young males; some felt that children would be directly impacted upon by the Bill; and that those on low incomes or with dependents would, for example, be impacted upon. There were no proposals for mitigating measures or alternative policies. There was also a concern about the Department's comment that offenders were "self-selecting" which might imply that they are not entitled to equality and human rights protections.

Department of Justice response

4.18 Firstly, it should be remembered that much of the Bill either does not impact on offenders or in fact has a positive - not adverse - impact. Policing and Community Safety Partnerships have no direct offender impact; alternatives to prosecution (which in themselves do not create "new offenders" rather offer an alternative route) remove the acquisition of a criminal record; and live links, certain special measures, and access to bail hearings are being widened to admit more into the options.

4.19 Secondly, where the Bill does have an impact on offenders, any impacts are either low in terms of the numbers affected (sports law will see few banning orders for example); are for the broader policy aim of public protection or victim services (and therefore have positive impacts on all Section 75 groups – sectarian chanting will be banned at sports events for example); or do indeed have mitigating measures built in.

4.20 The offender levy for example – which does impact on offenders – has a whole series of mitigating features around affordability, payment management, and even remittal; offender consent is at the heart of the alternatives to prosecution provisions; and neither of these major components apply to children. (Little in the Bill proposals do – perhaps only specifically the offence of possessing a weapon on school premises, and even then this is simply correcting an error in already existing law.) Legal aid changes – which are enabling powers only at this stage and which when developed will be screened and consulted upon again – will still ensure that those on low incomes, with dependents, or on state benefits receive assistance.

4.21 Thirdly the originating impact assessment consultation reminded consultees of the considerable amount that is done to mitigate the impact of the justice system on, for example, young males. Considerable resources, services and arrangements are provided to prevent, divert and rehabilitate offenders who come into or are in danger of entering the system.

4.22 Crime prevention initiatives are designed to keep people out of the justice system; informal advice, warning and cautioning schemes divert young people away from the formal process; and a Youth Justice Agency exists providing, for example, youth conferencing arrangements alongside special youth justice system arrangements to cater specifically for young people's needs. Statutory and voluntary bodies provide a whole series of early intervention programmes. Where offenders do enter the system numerous programmes and services are provided to assist successful reintegration.

4.23 The Department's impact assessment must also be considered along with the preceding policy consultations. At that stage, alternative policy options were considered and policies selected or adjusted in appropriate circumstances. A number of policy areas did have mitigating features built in at both the policy consultation and do in the draft Bill. Both the offender levy and alternatives to prosecution were, for example, specifically applied only to adult offenders. Within their draft provisions are examples of where policies were adjusted.

4.24 In terms of the Department's comment that offenders were "selfselecting" the Department recognises that there are many reasons for offending. Reasons can indeed be linked to a myriad of social, environmental and family factors and the term "self selecting" may not fully accord the depth of causality. It would be insufficient to justify a law purely on the grounds of a choice to break it or not and that was not our intention. Equally, any suggestion which might imply that offenders are not entitled to equality and human rights protections would be of major concern. The Bill itself has been fully competence assessed and approved and the justice system as a whole operates to the highest compliance standards.

4.25 Where the Bill does have an impact on offenders, any impacts are either low in terms of the numbers affected; are for the broader policy aim of public protection (and therefore have

positive impacts on all Section 75 groups); and do indeed have mitigating measures built in, as illustrated above.

4.26 In conclusion, the Department's view is that options were fully considered as part of the policy and Bill development process; that mitigations are in place at a strategic and legislative level; and that its equality assessments are valid.

Data availability

4.27 Four respondents commented on limited data availability in the justice system including the relative absence of statistics - particularly for minority ethnic people and those from other faiths. The absence of data on impacts on children under 18 was commented upon alongside an assertion about the Department's alleged failure to produce a child accessible document for the Impact Assessment. How had children and young people been consulted?

Department of Justice response

4.28 The Department's view is that where data are available the impact assessment has sourced and used them as appropriate. The assessment drew on data from a range of sources: public experiences of crime and criminal justice; surveys and research studies providing analyses according to a number of Section 75 categories; age, gender, disability, marital status are all available and considered in the report. For victims, again similar survey material data were used. Information relating to offenders – prosecutions, convictions and sentencing – age and gender are routinely collected and have been drawn on. Religious denominations of prisoners are noted, though mainly for the purposes of assigning chaplaincy services.

4.29 In terms of the points made in relation to children and the impact the Bill will have on them two points are worth making. Firstly, and in simple procedural terms, an easy read version of the consultation paper was indeed produced and placed on the Department's web-site. It was also explicitly referred to in the main consultation paper that was issued to some 300+ consultees who included a series of youth focused organisations.

4.30 Secondly, in terms of the absence of data in relation to children, this is simply a feature of the fact that in our assessment few of the proposals will in fact apply to children. The Offender Levy; the Fixed Penalty regime; and Conditional Cautions were specifically disapplied to children. Policing and Community Safety Partnerships are structural arrangements; live links and special measures expansions are improvements to services; and a whole series of minor procedural adjustments are not age-related. Some aspects of sports law proposals will apply to all age groups and the new penalty for knives in schools will apply to children. However the limited number of convictions under the existing penalty scheme – only three in the last five years none of which received custody – indicated the low impact this is likely to have.

4.31 On data availability more generally, the Department does recognise that there is some way to go in terms of s75 data in the justice system and across the board the Department has been working to improve the information available. Equity monitoring arrangements are now in place in police custody suites covering seven of the nine s75 categories.

4.32 There are and will continue to be certain difficulties in gathering all aspects of s75 data in the justice process. In the initial period, voluntary disclosure of some aspects has been low. Requesting some aspects of such personal information in what can be a tense and stressful context can be misinterpreted and can cause other difficulties.

4.33 The Department recognises that there is not yet a full and sufficient body of data available; that it must use those sources that are best available to it; and in the meantime will work to improve data availability – though recognising that data collection in the justice field can in itself be problematic.

5. Offender Levy

Policy background

5.1 A ten week policy consultation was conducted from 18 March until 27 May 2010 setting out proposals for the introduction of a statutory offender levy system to Northern Ireland, involving the imposition of a monetary sum on certain sentences handed down by the courts and on voluntarily accepted non-court based penalties, such as fixed penalties for road traffic offences and other low-level criminal offences. It was proposed that revenue accumulated from the levy would be used exclusively to support a centralised Victims' of Crime Fund which would be used to deliver improved services to victims and witnesses of crime.

5.2 Pointing to international experience of operating similar systems, the consultation paper sought views on the principle of introducing a levy system and discussed how it might operate in practice in Northern Ireland. Twelve responses were received to the public consultation, all of which broadly supported the principle and key policy proposals of an offender levy and using the revenue exclusively to finance a Victims of Crime Fund.

5.3 There were some general concerns expressed about the potential impact of a financial levy on economically disadvantaged offenders, but respondents generally welcomed the proposals to apply the levy only to the principle offence and to provide powers for the courts to reduce the levy where the offender has insufficient means to pay. Responses were also supportive of excluding offenders under 18 years of age, and fixed penalties for non-endorsable traffic offences, from the levy scheme.

Key documents

Consultation document

Summary of Responses

Equality consultation

5.4 Six respondents commented on the proposal to introduce an offender levy. A number of issues were raised concerning: the potential for administration of the levy and the Victims of Crime Fund to outweigh the benefits it would realise; the offender's ability to pay; impacts on prisoners; the lack of statistics regarding children; and the need for mitigating safeguards to be part of the provisions.

Administration of the Victims of Crime Fund and the Levy

5.5 Two respondents considered the proposal a positive development, so long as the money raised was used for the stated reason and it did not become a more general revenue raising scheme, while one asked that a proportion of the levy should be channelled back to local government, to support the new policing and community partnerships, to ensure that a real impact could be made on local communities.

5.6 One respondent was of the view that the cost of administering the proposal would be far greater than the benefits, definitely in financial terms and very likely in outcome terms. They considered that implementation of the levy would draw scarce resources away from other services supporting vulnerable young people and adults in prison.

Department of Justice response

5.7 The principal aim of the levy is to make offenders more accountable for the harm which their actions cause, by requiring them to make a financial contribution to the delivery of support services to victims and witnesses of crime. The revenue from the levy will be used exclusively to resource a nonstatutory Victims of Crime Fund.

5.8 In terms of administration, the Victims of Crime Fund will pay for projects that support victims and witnesses during their engagement with the justice process, as well as small local initiatives working with victims in the community. The proportion of funding being provided to groups working with victims in the community will be routed through the existing Policing & Community Safety partnerships infrastructure, within existing administration costs.

5.9 The remainder of funding will be allocated according to strategic priorities agreed with the Victim and Witness Task Force, across a number of victim service policy areas: general victim and witness needs; hate crime; sexual violence; domestic violence; families of homicide victims and other vulnerable victims groups.

5.10 The Fund could be used to introduce improvements which victims themselves have highlighted in the Victim and Witness Experiential Survey, as well as those where a specific need has been identified, for example, introducing Independent Sexual Violence Advisers to assist victims of sexual violence and abuse throughout their engagement with the justice system.

5.11 The Fund will be managed centrally by the DOJ, within existing departmental financial management structures, without incurring any additional running costs. A dedicated grant scheme had been considered, but discounted, because it would be too costly to administer. The Fund will be clearly separated from other funding streams, which will provide transparency and accountability on the movement of money into and out of the Fund. The Department will be required to report regularly to DFP and Treasury on its operation and will publish data on revenue, spend and projects supported.

5.12 In terms of the levy, provision has been made in the Bill to allow the levy to be treated as a fine for the purposes of collection and enforcement. Practically, this means that for the most part, the levy will be collected and enforced by the courts, mapping onto current infrastructures which courts already operate for dealing with the administration of monetary orders. The imposition of the levy to these disposals simply increases the overall sum being pursued, rather than representing any significant additional administrative burden. The levy imposed on custodial sentences will be collected by the Northern Ireland Prison Service, with minimal additional administration.

Ability to pay

5.13 Three respondents noted some concerns regarding the introduction of the levy. One noted that the proposal did not take income level into consideration, and given that people with disabilities are more likely to experience socio-economic deprivation, this may have a disproportionate impact on them. Two highlighted the impact on offenders and their families who are almost wholly dependent on state benefits, face a range of barriers to increasing their employability, have no assets, low levels of numeracy and limited money management skills.

Department of Justice response

5.14 Regarding the offender's ability to pay, provision has been made in the draft Bill which will allow the courts to consider the issue of means in relation to the levy. The amount of the levy may be reduced (to nil if necessary) by the court in circumstances where a victim compensation order has been given, and it has been determined that the offender does not have the ability to pay both the compensation order and the levy. (This is to ensure priority is afforded to securing the payment of compensation awarded by the court to the direct victim of the offence.)

5.15 Additionally, in circumstances where it is assessed by the court that the offender does not have the means to pay a court fine and the levy, the court fine can be reduced to an appropriate level. This is a reflection of current practice in relation to the imposition of court fines. When a fine or other financial order is imposed at court, there is already statutory provision for the court to consider the offender's means and to reduce the fine if necessary to a level which it is assessed the offender is capable of paying.

5.16 As with other monetary orders imposed by the court, if the offender is unable to pay in full by the due date, he/she will be able to make an application to the court for an extension of time in which to pay, or to agree payments by instalment. This means that those who may have particular difficulties are given the appropriate assistance to help them make the payment.

Prisoner issues

5.17 One respondent noted their concern that deduction of the levy from prisoner earnings could undermine attempts to engage prisoners in work or other constructive activity, aimed at securing their rehabilitation and resettlement.

Department of Justice response

5.18 This issue was also highlighted during the initial policy consultation when concern had been expressed that deductions from prisoner earnings could potentially have an impact on a prisoner's family, or their own motivation to progress to attain enhanced regime status within the current prisoner earnings scheme.

5.19 The purpose of PREPS (the Progressive Regimes & Earned Privileges Scheme), is to encourage prisoners to engage in work and developmental activity in order to prepare them for their release. It contributes to a better controlled, safer and healthier environment for prisoners and staff within the prison. Payment is made to prisoners on a weekly basis according to their work activity and behaviour and increases in line with the regime level earned. Earnings range from £6 to £20 per week across 3 regime levels. The Northern Ireland Prison Service in particular, wished to ensure that the proposal would not diminish the ability to operate the PREPS scheme effectively.

5.20 As a result, provision has been made to deduct the levy by instalment from earnings at a consistent rate across all the regime levels (potentially £1.00 per week). The Department considers that this would be both proportionate and would provide no disincentive to prisoners to progress to higher regime levels. In doing so, they increase their earnings capacity enabling them to afford to buy non-essential items in prison without requiring financial help from families and, if they choose, to pass money to their families or save towards their resettlement.

Children

5.21 One respondent noted that in the screening data there were no statistics given regarding children. Whilst they welcomed the exclusion of children under 18 from the offender levy, they felt such data should have been provided, as the consultation could potentially have concluded that the levy should be applied to those aged 16 years and over. .

Department of Justice response

5.22 The policy consultation proposed that the levy should be restricted to adult offenders because of the statutory provisions on monetary penalties, which provide that the young offender's parent or guardian is responsible, in law, for making payment. Views were sought during the initial policy consultation about whether there were circumstances in which the levy should be imposed on offenders less than 18 years of age.

5.23 The majority of respondents were not in favour of imposing a levy on juvenile offenders, and believed it could also have a detrimental impact on low income families. Responses to the policy consultation published in June 2010 in the 'Offender Levy and Victims of Crime Fund; A Consultation: Summary of Responses and Way Forward' has concluded that the levy would only apply to those aged 18 years and over.

5.24 When considering the overarching equality impact assessment for the proposed Justice Bill, it was deemed unnecessary to assess any impact of an offender levy on children. The proposals did not extend to this category of offender with the levy only impacting on those aged 18 or over. The Department has therefore dealt with the potential impact on adults.

Mitigating safeguards

5.25 A general observation was made that there should be mitigating measures or discretionary features within each Part of the Bill to ensure fairness, discretion and to take equality factors into consideration.

Department of Justice response

5.26 Within the offender levy proposals, a number of provisions have been created to provide additional safeguards. The Department believes that the levy tariffs, as they have been set, are unlikely to place significant hardship on an offender. The levy itself is a comparatively modest amount in most cases and is to be applied at a tiered rate, rather than a flat rate, reflecting the significance of the disposal to which it is attached.

5.27 The court will also be able to take into consideration the offender's income level when imposing a levy. The levy can be reduced where a compensation order has also been imposed and the person cannot afford to pay both. Similarly when a fine is imposed along with a levy, the fine can be reduced at the discretion of the court. Existing arrangements in place to assist offenders to make financial payments to the court – i.e additional time to pay and payment by instalments – can also apply in respect of the levy amount. Where the offender is sentenced to custody the levy will be deducted from their prisoner earnings at a consistent rate of around £1 per week.

5.28 Non-payment of the levy cannot, of itself, result in imprisonment for default. The levy can be remitted, in full or in part, where the fine to which it is attached has completed default proceedings, or on full expiry of a prison sentence when an offender is no longer eligible to be recalled to custody during their licence period

5.29 Were the proposals to be approved by the Assembly, there would be a phased approach to its implementation, enabling assessment of the levy's impact on a disposal-by-disposal basis. Commencement across the disposals would be undertaken in consultation with the Justice Committee.

6. Special measures

Policy Background

6.1 A 13-week policy consultation was conducted from 21 February until 20 May 2010 to seek views from victims and witnesses, those working with victims and witnesses, and the public on a range of recommendations aimed at improving the way vulnerable and intimidated witnesses are able to give evidence in criminal proceedings. The consultation included proposals to amend "special measures" legislation and to address practical problems. Special measures are statutory provisions to assist vulnerable and intimidated witnesses give their best possible evidence in criminal proceedings.

6.2 Fifteen responses were received all of whom gave broad support for the proposals, which included raising the age limit of a young witness from 17 to 18; to provide that young witnesses' views are considered when deciding on a special measures application; formalising the presence of a supporter in the live link room when a vulnerable or intimidated witness is giving evidence; relaxing the restrictions on a witness giving additional evidence in chief after the witness's video recorded statement has been admitted; and the assistance of an intermediary when giving evidence to be made available to vulnerable defendants.

Key documents

Consultation document

Summary of Responses

Equality consultation

6.3 The Department received five responses regarding the proposal for special measures. While the proposals were generally welcomed, there were a number of points raised regarding live links for disabled people; the role of the intermediary and the ability of the offender to understand them; and the need to ensure the best interests of children. The need for mitigating safeguards to be part of the provisions was again part of the more general observations.

Responses to consultation

6.4 One respondent noted the importance of the UN Convention on the Rights of Persons with Disabilities in any special measures and the need to ensure that all decision makers undergo appropriate, effective and regular disability training.

6.5 One respondent noted the potential confusion between the role of an intermediary and the role of an interpreter in cases in which the accused's first language is not English. (Article 21 BA (3) refers to 'an interpreter' giving the impression that an interpreter can also be an intermediary.)

6.6 One respondent noted that the uptake of the intermediary provision would be dependent on the ability of offenders to understand and engage with the intermediary. Offenders have

complex needs – lack of essential skills, chaotic lifestyle, poor or no family support, addictive behaviour, poor mental and physical health – and require highly skilled and specialist support to help them understand and engage with services aimed at assisting them.

6.7 One respondent noted that responses to the pre-consultation indicated that children have different needs yet the policy was screened out. While they welcomed the inclusion of 17 year olds as vulnerable witnesses, it is important that the best interests of the child are considered as a primary factor when determining how a young witness may give evidence.

6.8 A general observation was made that there should be mitigating measures or discretionary features within each Part of the Bill to ensure fairness, discretion and to take equality factors into consideration.

6.9 Separate from the formal Equality Impact consultation, the issue was raised about the balance of provision in this area between the victim/witness and the defendant. The general observation was also made that there should be mitigating measures or discretionary features within each Part of the Bill to ensure fairness and to take equality factors into consideration.

Department of Justice response

6.10 The Department accepts that decision makers in the justice system should undergo appropriate, effective and regular disability awareness training and is aware that training on disability issues is being provided by its criminal justice partners. Training, awareness and consideration of disability issues is already part of the Department's equality strategy and is a factor in justice process decision making. The Department will however review its arrangements and remind the justice system of the continuing importance of disability issues.

6.11 The wording of Article 21BA which outlines the intermediary's function is intended to make a distinction between the role of a foreign language interpreter and an intermediary. Article 21BA provides for 'any examination of the accused to be conducted through an interpreter or other person approved by the court .... ("an intermediary"). The Department's view is that this construction is clear – the wording reflects that used in Article 17(1) (Examination of witness through intermediary) in the Criminal Evidence (NI) Order 1999 - and therefore does not consider that any amendment is required to make this distinction.

6.12 The Department acknowledges that the accused may require highly skilled and specialist support to help them understand and engage with services. It is planned that intermediaries will come from a wide background of roles and occupations, including social workers, psychologists, speech and language therapists, occupational therapist, those in the medical profession and teachers. Intermediaries will have to apply to become a 'Registered Intermediary' and, if successful at interview, will then be expected to undergo an accreditation and assessment process to provide them with the necessary knowledge and skills to meet the required standards for the role.

6.13 The Department welcomes the support for the protections being created for vulnerable witnesses and agrees that children and vulnerable adults may have different needs when they are required to attend a court hearing. The policy intention of the special measures provisions is specifically to address the fact that children and some vulnerable witnesses over 18 do need assistance to help them give their best evidence in court.

6.14 The Department confirms that the best interests of the child are always considered as a primary factor when determining how a young witness may give evidence and important safeguards have been built into the legislation to ensure this. For example responses to the pre-

policy and policy consultations on special measures raised some concern that young witnesses might not understand the consequences of indicating that they do not wish to avail of special measures' assistance.

6.15 The previous consultation has assisted in the development of appropriate safeguards to ensure the best interests of young people. The proposed amendments arose from recommendations following a study by the NSPCC and the Nuffield Foundation which explored the experiences of young witnesses aged 5 to 19 in England, Wales and Northern Ireland.

6.16 In terms of balance of provision, it is worth recalling more generally that defendants are afforded considerable safeguards in proceedings so as to ensure a fair trial. The law already provides for special procedures to be adopted when interviewing vulnerable suspects – juveniles or mentally vulnerable adults for example – and certain vulnerable accused can give evidence by live link. Intermediary assistance to the accused is also being provided in the Bill as is the expansion of live links to include mentally ill and physically disabled defendants. In terms of special measures themselves, in approving their use the court must be satisfied that they do not inhibit evidence being effectively tested.

6.17 In terms of mitigating safeguards, in expanding the availability of special measures to a wider age range and to allow additional services, the legislation itself contains a number of safeguards to ensure fairness, discretion and equality. For example, if a young witness indicates that they do not wish to avail of special measures, the court must take into consideration the age and maturity of that young witness and their ability to understand the consequences of not giving evidence by live link when considering if specials measures should be used or not.

6.18 For the future, the Department will monitor progress and has commissioned further research to gather information on the experiences of young witnesses giving evidence in NI courts. More generally, as with other proposals for the Bill, commencement of the new provisions – if approved - will be progressive and in consultation with the Justice Committee.

7. Live links

Policy background

7.1 Six areas in which live link facilities could be extended were identified in a review of current provision. Many were designed to close gaps for example where small numbers of existing case types had been previously overlooked; Others were for more substantive policy improvements. As part of the Special Measures review, that consultation also consulted however on further improvements to live link measures for vulnerable defendants. These would allow live links to be used, for example, in respect of offenders who have become patients detained in psychiatric hospitals, and to allow physical disability to be included in the definition of 'vulnerable accused'. Responses to the consultation supported the extension of live link powers in these areas.

Equality consultation

7.2 Two respondents commented on the proposal to extend the use of live links. The need for mitigating safeguards to be part of the provisions was again part of the more general observations.

7.3 One respondent supported the proposal to improve the live link facilities for vulnerable defendants including extending the facilities to individuals with a physical disability, on approved application. However they noted that this should not be used to frustrate direct access to the court.

Key documents

Consultation document

Summary of Responses

7.4 One respondent suggested that once implemented their application should be monitored to ensure that they are fairly and consistently applied across all section 75 groups.

7.5 The general observation was made that there should be mitigating measures or discretionary features within each Part of the Bill to ensure fairness and to take equality factors into consideration.

Department of Justice response

7.6 The Department welcomes the support for extending live link facilities both in general terms and specifically to individuals with a physical disability. The Department confirms that such live link directions will not be used to frustrate direct access to the court and that use will be monitored. A monitoring system has already been in place for some years following a recommendation by the Criminal Justice Inspectorate.

7.7 In terms of mitigating safeguards, the live links provisions in the Bill proposals have principles of application/representation when considering a live link and offender consent built in across the package. Where an application is refused the Court must state its reasons.

7.8 As with other proposals for the Bill, commencement of the new provisions – if approved - will be progressive and in consultation with the Justice Committee.

8. Policing and Community Safety Partnerships

Policy background

8.1 A twelve week policy consultation was conducted from 11 March until 3 June 2010 to consider how the existing functions of District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs), which currently sit side by side, could be brought together in anticipation of the changing landscape in local government. The review was not dependent on the implementation of Review of Public Administration in May 2011. The consultation paper presented three options/models to demonstrate how the amalgamation of the functions might be achieved. The paper made clear that model two was the Department's favoured model.

8.2 74 responses were received, the majority of which widely embraced the principle of a single partnership although there was no overall consensus on the detail of the partnership. Many emphasised the importance of clear accountability arrangements, and the importance of representation from councillors, independent members, voluntary groups and statutory bodies. The majority agreed that any future partnerships needed to be placed on a statutory footing and there was general consensus that none of the current CSP and DPP functions should be lost. Suggestions around partnership size fluctuated between 12 and 25 members and respondents generally agreed the words 'community' or 'safety' should be included within the title.

Key documents

Consultation document

Equality consultation

8.3 Four respondents commented on the proposals for a single community and policing partnership. All respondents noted that the creation of a single partnership would create an opportunity to ensure all s75 groups are represented, particularly people with disabilities.

8.4 One respondent was concerned that the emerging plans to operationalise this proposal will focus overly on policing matters to the detriment of community safety issues and noted it would be important to ensure organisations supporting community safety in NI will be represented in the new partnerships.

8.5 One respondent believed that the creation of a single partnership would support effective action on diversionary interventions for children and young people, the management of rehabilitation and resettlement of offenders in the community and the potential impact on communities of homelessness.

8.6 One respondent would welcome more thought on how to involve children and young people. They questioned how the policy could be screened out given that the need to be particularly mindful of the needs of young and older people and women was highlighted during a focus group meeting.

8.7 One respondent expressed concerns about the potential for weakening the accountability mechanism which DPPs provide and that any weakening was more likely to impact on young people, especially young boys. They felt that the DOJ need to find more creative ways of getting young people involved in police accountability structures.

8.8 In operational terms comments were made that new partnerships should fall under the remit of Councils' equality schemes; and that a lack of skills and resources could have a significant impact on delivery of services.

Department of Justice response

8.9 The draft legislation creates new Policing and Community Safety Partnerships (PCSPs) which will integrate all the functions of existing community Safety Partnerships and District Policing Partnerships

8.10 The membership is intended to include representation from a wide range of interests which reflects the make up of the local community, including councillors nominated by the Council, independent members appointed by the Policing Board, and representatives of delivery organisations appointed by the PCSP. There is the potential for additional bodies supporting community safety in NI to be represented in the new partnerships.

8.11 Each PCSP (and DPCSP) may set up other committees to look at specific issues and neighbourhoods and deliver specific projects. These committees would be made up of five or more members of the Partnership as well as additional delivery partners as and when required to focus on particular issues or neighbourhoods.

8.12 Within each Partnership there will be a policing committee which will perform the police monitoring functions inherited from the DPPs and will also make arrangements for obtaining co-operation of the public with the police. This Committee will report on the delivery and outcome of these functions to the Policing Board.

8.13 There should be no concern that there will be a dominance of policing issues in the Partnerships – community safety will be as important as policing in the work of the proposed PCSPs. All the functions of the existing structures will be preserved and the aim of the new partnerships being to bring these together and act as one through a single, co-operating and streamlined system.

8.14 The statutory functions of the Partnerships will reflect this and will be:

- to make arrangements for obtaining the views of the public about matters concerning the policing of the district and enhancing community safety in the district;
- to act as a general forum for discussion and consultation on matters affecting the policing of the district and enhancing community safety in the district;
- to prepare plans for reducing crime and enhancing community safety in the district;
- to identify targets or other indicators by reference to which it can assess the extent to which those issues are addressed by action taken in accordance with any such plans;
- to provide any such financial or other support as it considers appropriate to persons involved in ventures designed to reduce crime or enhance community safety in the district.

8.15 As statutory bodies in their own right the Partnerships will have their own Section 75 responsibilities under the Northern Ireland Act and cannot come under a Council's equality scheme.

8.16 It is envisaged that each PCSP will be responsible for finding out what people believe are the primary needs of the district in policing and community safety. They will then draw up a Partnership Plan which will set out what they want to achieve and by when; what has to be done; and how delivery partners will deliver the necessary interventions and actions. If necessary, the Partnership can set up working level delivery groups to support specific projects or streams of work.

8.17 It will be important that Plans reflect local needs and are broadly compatible with regional strategic priorities for policing and community safety and the priorities of delivery partners. At times funding will be available to local partnerships to deliver regional programmes or schemes. The Plan will also be costed to ensure that the actions identified are deliverable and approved by the DOJ and Policing Board to inform sponsoring authorities about the use that is being made of the funds they are providing.

8.18 Delivery of the Plan will be reported to the Council, the DOJ and the Policing Board. This will allow PCSPs to evaluate the success of different projects and use the evidence to inform future development of the Plan.

8.19 A code of practice which details the roles and functions of PCSPs and DPCSPs will be developed by the Department and the Policing Board in conjunction with Councils.

8.20 In terms of skills and service delivery, it is anticipated that many current members of DPPs and CSPs (elected, independent, statutory and voluntary group representatives) will also choose to sit on the new partnerships and as such will bring with them a wealth of experience and skills. Councils have also provided the necessary administrative support for both CSPs and DPPs and again we expect there to be continuity of support at an administrative level for the new partnerships.

8.21 While the funding of the PCSPs cannot be fully determined until the implications of the Executive's draft Budget have been considered this review has not been about reducing the overall resource but by streamlining the administration and removing any duplication of functions of CSPs and DPPs to find more efficient ways of delivering the same functions under one partnership and focusing resources on front line services.

8.22 Equality considerations will continue to be explored further as more detailed proposals are developed locally, including those in relation to membership of the partnerships and engagement structures.

8.23 Subject to the proposals being approved and passed into law, introduction of the new structures would be staged and fully planned in conjunction with relevant bodies. Commencement would be in consultation with the Justice Committee.

9. Single territorial jurisdiction / reform of court boundaries

Policy background

9.1 A 12 week policy consultation was conducted from 1 March until 28th May 2010 seeking views on proposals to reform the current statutory territorial court boundaries for county courts and magistrates' courts in Northern Ireland. Two options were consulted upon: a conventional re-alignment based on Local Government boundaries which would result from the Review of Public Administration; or the preferred option which was the establishment of a single territorial jurisdiction similar to that which already exists for the Crown Court.

9.2 12 responses were received which were broadly supportive - although a number emphasised the importance of adequate safeguards. Majority of respondents agreed that the flexibility afforded by a single territorial jurisdiction, underpinned by an administrative framework, would facilitate the more effective management of court business and that it was the correct balance between preserving access to local justice while affording this flexibility. Following consultation the single territorial jurisdiction model was selected.

Equality consultation

9.3 Five respondents commented on the proposal for a single territorial jurisdiction. Two respondents considered that the manner in which equality issues were addressed was insufficient as responses to the consultation on court boundaries in NI showed concerns relating to equality, such as the equality of opportunity of young and older people, people with disabilities and those with dependants if they were required to travel further.

Key documents

Consultation document

Summary of Responses

9.4 The importance of ensuring that the court system is fit for purpose and accessible to all, including those with disabilities, was also noted. One group noted that there was a need for more independent research on how children experience the court system.

Department of Justice response

9.5 The Department welcomes helpful comments made and acknowledged in the policy consultation paper that providing customers with access to justice at a convenient court location will always be a significant consideration. The proposals were omitted from the Bill due to the scale of drafting, time constraints and other priorities, however the Department remains committed to introducing these reforms and will be seeking to bring the provisions forward in the next appropriate legislative vehicle.

10. Sports Law

Policy background

10.1 A 19 week policy consultation was conducted from 20th July 2009 until 30th November 2009. The proposals consulted on were for new laws in Northern Ireland to help prevent misbehaviour by fans and spectators at certain major association football, GAA and rugby fixtures. These were designed to support clubs and authorities in the three sports concerned to establish a welcoming, safe environment for all spectators at major events. Their main focus was on tackling and deterring violence and disorder. They complemented the ground safety measures established by the Department of Culture, Arts and Leisure through the Safety of Sports Grounds (NI) Order 2006.

10.2 13 responses were received including responses from each of the three main sports concerned – GAA, rugby and football – with broad support for the package. The offences of offensive chanting, missile throwing and unauthorised pitch incursion were welcomed by all respondents. Respondents also supported the creation of the offence of ticket touting. Banning orders were broadly supported. A number of respondents supported the alcohol proposals whilst others such as those affiliated with rugby had reservations. A range of views were expressed on banning alcohol on private transport, though there was broad support for the proposals.

Key documents:

Consultation document

Summary of Responses

Equality consultation

10.3 Three respondents provided a response on the proposal for changes to sport law. One warmly welcomed the proposed restrictions on alcohol in circumstances where its abuse has caused much trouble; one agreed that there was no evidence from their experience that would indicate that the proposal would have an adverse impact on any equality groups; and a third suggested the provision in relation to ticket touting should apply more widely than the sports field, for example in the music industry etc.

10.4 Separate from the formal equality impact consultation, comments were made both at policy consultation and subsequent stages that it would be important to ensure that the proposals did not unfairly impact on protestant males. A survey had found that the majority of those attending football matches in Northern Ireland were males. In addition, we understand that most people who attend football matches in NI are Protestants.

10.5 The need for mitigating safeguards to be part of the provisions was again part of the more general observations.

Department of Justice response

10.6 The Department welcomes the support for the alcohol provisions and confirms that the ticket touting proposals are focused solely on public safety and crowd control at major football events and are intended to assist match organisers and police. There can be occasions when big games attract large crowds and numbers of people who might turn up outside a ground in the hope of buying a ticket. Significant numbers milling about outside a ground can create crowd management issues.

10.7 More crucially, there can also be occasions whereby supporters within grounds need to be segregated for safety and control purposes. From experience this is more likely to be a sports related issue – crowd segregation is not an issue around, for example, pop concerts.

10.8 In terms of undue impact on protestants, the Bill as a whole has been assessed as compliant with the statutory provisions against discrimination in section 76 of the Northern Ireland Act 1998. Under that section it would be unlawful for the Department to discriminate, or to help or incite someone else to discriminate, against a person on the grounds of their religious belief (or political opinion). Potential concerns about impact on a particular religious group have therefore been fully considered and the Bill confirmed as compliant. The sports package as a whole has been designed to have a beneficial impact on the three main sports which attract support from across our various communities.

10.9 In terms of impact on males, the Department recognises that the vast majority of spectators at our three main sports are males. Anyone who may be convicted of the proposed "in ground" offences (chanting, missile throwing, pitch incursion etc), touting, violence leading to them being banned from a ground etc is indeed likely to be male.

10.10 Our screening did indicate that a small minority of males, who attend sporting events, might be impacted differentially by the proposals. They are, however, designed to prevent, control and tackle bad behaviour by spectators, and they will therefore have a beneficial, rather than a harmful, effect on all section 75 groups. They will also help to promote good relations by tackling certain forms of behaviour which can both arise from and lead to poor community relations, for example racist or sectarian chanting at matches will become a criminal offence.

10.11 In terms of mitigating safeguards, in creating new sports and spectator control provisions the legislation itself will contain a number of important safeguards to ensure fairness, discretion and equality.

10.12 A number of the offences proposed – pitch incursion, firework possession, missile throwing for example, will have "lawful authority or lawful excuse" allowances to permit stewards or police to be flexible in their interpretation. Lawful authority for example would allow organisers to permit a celebratory pitch invasion if they so desired. Passing or selling on tickets to relatives or friends will not constitute "ticket touting"; and a full appeal and discharge mechanism will be available under the football banning proposals. Guidance on a number of aspects of the proposals will also be published by the Department to seek to ensure consistency in appliance.

10.13 Consultation around the commencement of aspects of the new proposals will provide important safeguards. All commencements will be in consultation with the Justice Committee and some key provisions – the controls around alcohol at sporting events for example – will have their own separate public consultation and equality screening exercises. Subject to Assembly considerations, certain commencements could be by way of affirmative resolution procedure, requiring full Assembly debate and approval.

10.14 Subject to the proposals being approved and passed into law, introduction of the new powers would be staged and fully planned in conjunction with sporting bodies along with a full publicity and announcement strategy.

11. Adjustments to existing sentencing powers

Policy background

11.1 Eight adjustments to sentencing powers were identified as gaps or oversights in existing law which needed to be addressed to improve and provide the coverage as previously or newly intended. Largely around offences of violence the changes were designed to improve safety and tackle problems facing communities. The adjustments included gaps in knife crime and public protection law; gaps in sex offender legislation; improvements to common assault powers and sentence deferment.

11.2 One policy area had a fresh policy consultation; others were founded on previous exercises. In terms of sex offender legislation, an eight week consultation was conducted from 18 March to 13 May 2010 to seek views on a proposed change to the law on notification requirements for sex offenders from jurisdictions outside the UK who come to Northern Ireland. The proposed change would make it a requirement for offenders who have been convicted of a sexual offence outside of the UK jurisdictions to notify their personal details to the police when arriving in Northern Ireland. Previous consultations had also been carried out on knife crime and improvements to public protection sentencing powers both of which resulted in the Criminal Justice (NI) Order 2008. There was overall support for the new sex offender proposals without any specific comment alongside the previous support for additional knife crime and public protection powers.

Key documents

Consultation document - Sex Offender Notification

Consultation document - Knives in Northern Ireland:

http://www.nio.gov.uk/the_law_on_knives_in_northern_ireland.pdf

Summary of responses document - Knives in Northern Ireland

Criminal Justice (Northern Ireland) Order 2008:

http://www.legislation.gov.uk/nisi/2008/1216/contents

Equality consultation

11.3 In relation to adjustments to sentencing powers, comments were made in relation to deferment of sentences, knife crime and common assault proposals. No comments were made in relation to public protection sentence proposals, financial reporting orders, or adjustments to sexual offence legislation (covering additional registration requirements and breach powers, closure orders, and other adjustments).

11.4 In general terms, one respondent noted that although some of the powers are applicable to children there is no consideration given to the potential impact on children who offend. They also noted that the Impact Assessment also recognises that there is potentially greater impact on

young males and in their view there should be a full EQIA on all the proposals which disproportionately affect children and young people.

Deferment of sentence

11.5 In relation to deferment of sentence one respondent welcomed active consideration of early and positive intervention to support lifestyle change in offenders however they suggested this approach might run the risk of criminalising young people earlier, or be perceived as minimising the impact that a forensic record can have on life opportunities. They suggest that further work is considered on the long term impact of this proposal across the equality categories.

Department of Justice response

11.6 The Department believes that the extra time will improve prospects for offender behavioural issues to be addressed and the courts' sentencing decisions to be enhanced. The change will benefit not only the offender as it would allow them more time, and motivate them, to demonstrate more fully that they have made a long term shift in their behaviour. We believe it would also be more likely to improve victim satisfaction.

11.7 Rather than earlier criminalisation we see increased opportunities for restitution, rehabilitation and diversion away from further or heavier penalties. Much will still depend on how the offender responds to deferment. The Department will monitor the use of deferment of sentence patterns and ensure that the judiciary are content with the way the new powers operate.

Knife crime

11.8 One respondent suggested that an educational outreach programme must be rolled out in local areas with all schools in relation to informing staff of amendments to the legislation proposed around the possession of a knife within school grounds. All schools should be encouraged to inform the PSNI and ensure all young people are treated the same in relation to this legislation and that it is not varied from school to school.

11.9 One respondent noted that the proposed change relates to possession of an offensive weapon on school premises yet the screening analysis did not indicate there is likely to be differential uptake on grounds of age.

Department of Justice response

11.10 The Department confirms that this provision simply corrects a drafting error in Article 90 of the Criminal Justice (NI) Order 2008 to ensure the full and consistent application of the 2008 package of maximum sentences for offences involving knives, crossbows; offensive weapons etc can be applied as the original policy intended. The change to the offence of having a knife on school premises was covered by the 2008 Order however due to an inaccurate reference number the offence of having an offensive weapon on school premises was not. The proposal is therefore not a new policy per se but the legislative correction of a previously consulted upon and approved provision.

11.11 Before and since the 2008 Order much has been done in terms of knife crime prevention – particularly with regard to young people. Following the introduction of the provisions in Order the (then) NIO and PSNI in conjunction with Crimestoppers delivered 'Choices' a drama aimed at highlighting the dangers for young people in carrying offensive weapons, most particularly

knives. During 2009 the drama was performed at various locations throughout Northern Ireland to Year 9 pupils (aged 12 to 13) from 50 schools, with an audience in excess of 3500 children and 150 teaching staff. The drama was also presented to year 12 students (15-16 year olds) during the Criminal Justice Schools Autumn Outreach event with a further 685 school children attending in venues across the country including Newry, Coleraine, Enniskillen, Ballymena and Craigavon. PSNI School Liaison officers continue to deliver an educational package in schools on the dangers of carrying a knife as part of their educational programme.

Common Assault

11.12 One respondent noted that unusually statistics regarding children are provided here yet there is no associated analysis of the issues for children aged 10-17. In the absence of such an analysis they question how the policy can be screened out.

Department of Justice response

11.13 The proposal to increase the maximum sentence for a common assault under section 42 of the Offences against the Person Act 1861 from 3 months to 6 months was considered necessary given the wide variety of circumstances which can apply to this offence.

11.14 The change will only impact on offenders who commit the most serious assaults attracting a sentence at the higher end of the scale. Presently this would apply in only a small number of cases. For example in 2006 a total of 491 people were convicted of this offence however only 27 (5%) were sentenced to immediate custody and only 6 received a sentence of 3 months. The most common disposal for this offence is a fine. In view of this the change in policy was not considered to have a significant adverse impact and it was screened out.

12. Alternatives to prosecution

Policy background

12.1 A 13 week policy consultation was conducted from 3 March until 30 May 2008 (subsequently extended on request to July 2008) which considered the context of existing diversionary approaches in Northern Ireland; looked at a range of Alternatives to Prosecution currently available in other UK jurisdictions which are principally aimed at individuals with little or no previous offending history who have committed relatively minor offences which they don't intend to deny in court; and examined their experience in implementing these measures and addressing any differential impacts. The paper recognised the benefits identified in Great Britain and identified the operational issues which require specific management to deliver those benefits for victims, offenders and the criminal justice system as a whole.

12.2 The document discussed and sought views on the potential impact of the introduction of such measures in Northern Ireland. There were 29 responses. All who responded were in favour of the development of alternative to prosecution measures. The majority were in favour of the introduction of Penalty Notices, with some agreeing subject to certain caveats and others expressing some reservations. Everyone who responded was in favour of the introduction of conditional cautions, with some respondents agreeing subject to certain conditions. Generally it was felt that any potential implementation issues could be addressed by adequate training coupled with measures to monitor, evaluate and ensure consistency and individual accountability. Respondents did not generally anticipate that the possible introduction of alternatives to prosecution would lead to any unintended impact.

Key documents

Consultation document: http://www.nio.gov.uk/alternatives_to_prosecution_-_a_discussion_paper.pdf

Summary of Responses

Equality consultation

12.3 Five respondents made specific reference to the proposals for alternatives to prosecution. While generally welcomed and considered to be in line with human right principles there were a number of issues raised. The points made included the use of the revenue generated from fixed penalties; the importance of offenders - particularly vulnerable individuals such as those with learning difficulties or the disabled - being able to make an informed choice about accepting a fixed penalty or conditional caution; and the lack of statistics relating to under 18s in assessing the impact of the new proposals. A comment was made that the proposals should be a genuine alternative to prosecution. The need for mitigating safeguards to be part of the provisions was again part of the more general observations.

Revenue

12.4 One respondent noted that revenue generated from issuing fixed penalties should be directed back to victims of crime as compensation particularly where criminal damage of property has taken place.

Department of Justice response

12.5 As is the case with fines in general, revenue from fixed penalties is returned to the Consolidated Fund. The Justice Bill separately includes the proposal for an offender levy which is intended to raise additional funds for victim services and initiatives.

Informed choice

12.6 One respondent was concerned about the introduction of additional monetary penalties given that it is estimated that approximately 20 – 30% of offenders are individuals with learning difficulties or learning disabilities who are more likely to experience socio-economic deprivation. Prior to introduction they recommend all those responsible for the implementation of this policy undergo effective, appropriate and regular disability training. In addition consideration should be given on each occasion to the assessment of offenders for learning difficulties or learning disabilities at the earliest possible stage to inform any decisions which are taken.

12.7 Another highlighted the importance of ensuring that such disposals are in actual fact used as an alternative to prosecution and not simply as an alternative sanction, with a lower burden of proof. They suggested that the application of such disposals should be closely monitored to ensure no equality issue emerges.

Department of Justice response

12.8 The Department confirms that important safeguards are in place in the Bill to ensure that offenders, particularly vulnerable individuals, are able to make an informed choice about accepting a fixed penalty or conditional caution in full knowledge of the consequences of doing so and of how to exercise their rights in relation to the disposal.

12.9 In relation to fixed penalties, the individual will have a period of 28 days after issue in which to pay or to reject a fixed penalty and request a court hearing instead. This will be explained by the issuing officer and will be fully detailed in writing on the penalty notice itself. There are two additional safeguards built in which provide that the individual can make a declaration to the court to set aside the registration of the penalty notice on default (in circumstances where he or she is not the recipient of the penalty notice or had already requested a court hearing within the 28 day period) or the court can do so, of its own volition, in the interests of justice. The latter provision enables the court to deal with any case where an individual has a legitimate reason for not complying with the requirements within 28 days, for example, because of their level of comprehension or social functioning and preserves their right to a court hearing. We believe that this adequately protects the individual's right to a fair trial.

12.10 In relation to conditional cautions, the offender will have made a PACE- compliant admission of the offence before the disposal is administered. The caution, its conditions and the consequences of noncompliance will be fully explained by the issuing officer, in the presence of an appropriate adult where this is required, and provided in writing. In the case of either disposal the individual can seek the advice of a legal representative before exercising their options.

12.11 Regarding the need for appropriate usage the Department confirms that there are adequate safeguards in place. For example fixed penalties will only be capable of being issued for the seven offences prescribed in Schedule 4 of the Bill. Their use for those limited number of offences will also be subject to clear Departmental guidance and PSNI have made a commitment to fully training officers in their issue prior to implementation. In terms of internal monitoring, supervisory officers will check and verify all penalty notices issued and operational experience will also be subject to external review by inspectors from Criminal Justice Inspection Northern Ireland.

Under 18s

12.12 One respondent reiterated the need to ensure that age appropriate processes are used to deal with children who offend. They noted that the screening for conditional cautions indicates there is a differential impact on offenders aged 18 to 29 however no information is included on under 18s. They suggest that this data needs to be collated and analysed to enable the screening to take place particularly as a majority of respondents who commented on equality issues in the consultation in March 2008 felt there were potential issues regarding children and cautions.

12.13 The Department confirms that following consultation a summary of responses was published in October 2009 confirming the policy decision that the alternatives to prosecution would only apply to adult offenders. Initial screening for the policy consultation did include statistical information on children under 18 however this was not provided when the overarching impact assessment for the proposed Justice Bill was published as the legislative provisions now limited the availability of conditional cautions to those aged 18 years and over.

Genuine alternative

12.14 A comment was made that the proposals should be a genuine alternative to prosecution and not simply an additional sanction with a lower burden of proof. Their use should be monitored.

Department of Justice response

12.15 The Department believes that the fixed penalty and conditional cautions disposals will genuinely enable suitable cases to be dealt with appropriately and proportionately without the need for a traditional court prosecution. Such cases must still meet the test for prosecution and will not operate on a lower burden of proof. The Justice Bill provides that fixed penalties will be available for a limited number of minor offences and will be subject to clear Departmental Guidance and the issue of conditional cautions subject to a strict Code of Practice. The use of these alternatives to prosecution will be statistically monitored and will be scrutinised under existing criminal justice inspection arrangements.

Mitigating safeguards

12.16 The need for mitigating safeguards to be part of the provisions was again part of the more general observations – a series of which have been built into the provisions. Perhaps most important is that consent is at the core of the provisions – a person can refuse either a fixed penalty notice or a conditional caution. Statutory safeguards are also provided which enables the penalty notice to be challenged and enables the court to void a penalty notice where it considers this to be in the interests of justice. Conditional cautions can also be varied where necessary by the prosecutor with the offender's consent.

12.17 Guidance, Codes and commencement plans will be subject to their own equality screening exercises and be taken forward in consultation with the Justice Committee.

13. Legal Aid Means Testing and Recovery of Defence Costs Orders

Policy background

13.1 The grant of criminal legal aid is governed by the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (the 1981 Order). Articles 28 to 30 of the 1981 Order provide the statutory framework for legal aid in criminal proceedings at the magistrates' court, for onward appeals to the county court and for cases before the Crown Court. There are two tests to be met to receive free legal aid in criminal proceedings, namely the means test and the interests of justice test. In terms of the means test, the legislation does not prescribe a fixed financial limit beyond which an accused person is ineligible for legal aid. Rather the legislation requires the court to determine whether or not an accused person's means are 'insufficient' to enable him to pay for his own legal representation

13.2 A 12 week policy consultation was conducted from 1 March until 28th May 2010 to consider the reform of the criminal legal aid means test. The consultation considered the possible introduction of prescribed financial eligibility limits in the magistrates' court in the first instance. The principle being consulted upon was that those who can afford to pay for their own defence should do so. Consultation on RDCO's was incorporated in a consultation exercise carried out in advance of making the Access to Justice (NI) Order 2003 and was also more recently been the subject of a targetedconsultation with the NI Human Rights Commission, the Law Society and the Bar Council.

Key documents

Consultation document

Summary of Responses

13.3 Most respondents to the legal aid consultation broadly agreed that the time was right to consider the reform of the grant of criminal legal aid. Reforming the means test would help ensure that the resources are targeted at those in greatest need - though some reservations were also expressed around access to justice. Whilst none of the respondents provided reasonsnot to introduce prescribed financial limits, it was suggested that proposedfinancial eligibility limits should not be set too low and that further research would be required.

Equality consultation

13.4 Four responses were broadly supportive of the proposals regarding legal aid means testing and recovery of defence costs orders although concern was expressed that vulnerable members of society may not avail of the service if they are faced with charges pending the outcome of their case and that the resources saved would not be diverted to those who are in most need of support.

13.5 Regarding the means test one respondent noted that it is vital that any test takes account of the full cost of living in our society with a disability. They did not consider that DLA meets the true cost and suggested this must be reflected in any means test otherwise there would be an adverse impact on disabled people.

13.6 One respondent expressed a concern that defendants who require interpretation (and possibly translation) services are going to incur significantly higher costs than those who do not require them. They express concern that the withdrawal of legal aid from some ethnic minority defendants will have an adverse impact on those just over the limit and surprise that this was not identified in the screening form. They note that the provision in the current bill is an enabling measure however this should be fully considered and taken into account when regulations are drafted under this provision.

13.7 One respondent suggests that a more prudent course of action would be to introduce the means test in tandem with the interests of justice test. They strongly advise that further consideration is given to this proposal andas a minimum on the introduction of the means test its application must be closely monitored to ensure it does not have adverse implications on any of the s75 groups.

Department of Justice response

13.8 The Department believes that particularly in the current financial situation, available resources should be targeted at those who most need it. The intention of the exercise is to ensure that those who are least well off in society are able to avail of criminal legal aid where necessary.

13.9 The Department has commissioned further research regarding the actual financial level at which any new means test should be set in order to ensure that access to justice is not adversely affected. An independent economist has been asked to examine factors affecting ability to pay in Northern Ireland such as incomes, costs of living and measure of deprivation to inform the decision regarding at what levels to set the thresholds. The test will take account of the additional costs associated with living with a disability through the hardship review process.

13.10 The Department believes that the hardship review process, which takes account of additional costs in exceptional circumstances, will also provide a safeguard in respect of those in need of interpreter services and in other instances where defence costs are significantly increased by some other exceptional circumstance.

13.11 Should a decision be taken to proceed with the proposal to introduce a fixed eligibility limit, further public consultation and accompanying equality impact assessment would be required before introducing such regulations. Any new RCDO powers will also be subject to public consultation and separate equality screening assessment.

14. Solicitors right of audience

Policy background

14.1 A four week targeted consultation was conducted from 2nd to 31st March 2010 with the Law Society, the Bar Council and the Northern Ireland Human Rights Commission on a proposal to extend solicitors' rights of audience in the High Court and Court of Appeal. These rights of audience are currently enjoyed exclusively by barristers. The Law Society will be required to put in place a system of education and quality control to ensure that any solicitor who does appear in the higher courts is suitably qualified and meets the required standards

14.2 There was overall support for the proposals, which, as a result of the consultation, were revised to include a requirement for solicitors to advise clients of the alternative of using counsel as well as solicitors with extended rights of audience in order to ensure competition for advocacy services is maintained.

Equality consultation

14.3 Two respondents welcomed the extension of solicitors'rights in the higher courts in Northern Ireland as this would give the public a wider choice of court representation and would enhance the provision of legal services in Northern Ireland. One respondent commented that the proposal would particularly enhance the chance of a disabled person to have legal representation from someone who understands their disability, including any potential relevance of the disability to their case.

Key documents

Consultation document

Summary of Responses

14.4 One respondent expressed disappointment that the proposal has not been included in the draft of the Justice Bill which received its first reading in the Assembly on 18 October and requested that appropriate amendments should be made to the Bill to introduce this provision before the Bill enters its final stages.

Department of Justice response

14.5 During the course of the consultation exercise it became apparent that the solicitors' rights of audience proposal needed further development. The conferral on solicitors of rights of audience formerly enjoyed exclusively by barristers in independent practice gave rise to concerns about the legislative competence of the Northern Ireland Assembly under section 6(2)(d) of the Northern Ireland Act 1998. The proposal was therefore not included in the draft Justice Bill as introduced into the Assembly. The Department is continuing to work on revising the provisions to address competence issues and preserve the policy. Subject to the competence issues being resolved, the intention would be to introduce the provisions into the Bill by way of amendment.

15. Bail reform

Policy background

15.1 Two proposals were made in respect of bail reform: a change in the law to allow magistrates' courts to grant defendants compassionate bail. (At present, legislation does not permit compassionate bail to be granted by a magistrates' court; instead only the High Court or Crown Court have the jurisdiction to do so); and to allow repeat bail applications to be heard by the Crown Court instead of the High Court (currently such applications are only heard by the High Court under its inherent jurisdiction).

15.2 Both proposals are aimed at allowing a more efficient and effective use of High Court resources. They have been developed with the support of the Judiciary and were the subject of targeted consultation with the Human Rights Commission, the Law Society, the Bar Council, Public Prosecution Service and the Northern Ireland Prison Service. The Human Rights Commission raised no objection and the Law Society was in broad support. The NI Law Commission (which is currently working on a project to reform bail law) indicated that given the limited nature of the proposals, and their potential practical benefits, it would not be inappropriate to proceed with them at this time.

Equality consultation

15.3 One respondent welcomed this measure in so far as it makes justice more accessible to people with disabilities. Another commented that there was a failure to provide statistical information in the equality screenings in relation to persons under 18. It was also stated that there had been no previous consultation on these proposals.

Department of Justice response

15.4 With the support of the Judiciary and the agreement of the NI Law Commission, the Department shared the proposals with the NI Human Rights Commission, the Law Society, the Bar Council, the Public Prosecution Service and the NI Prison Service. The proposals are largely procedural and are aimed at increasing the access to courts for such bail applications by widening the court tiers to which relevant applications can be made.

15.5 The Department considers that the proposals simply represent an "opening up" of court tiers at which bail can be granted and do not in any way restrict access. All irrespective of age can still apply for compassionate and repeat bail in the same way though at a wide range of venues. It is considered, therefore, that these limited changes to bail procedures willproduce the same practical benefit for all defendants within the criminal justice system.

15.6 We have noted the comments made in relation to statistics on persons under 18 for future screening exercises and will work to address this through wider data collection improvements.

16. Funds in court

Policy background

16.1 The policy proposal was that, where funds held in court are invested in accordance with advice from stockbrokers, the fees charged for such services may be deducted directly from the applicable clients' funds. This would close a gap in statutory powers to take such a charge.

16.2 Consultation took place with relevant members of the judiciary, including the Master (Care and Protection) and the Official Solicitor. A targeted consultation involving the Law Society, the Bar Council, the NI Human Rights Commission, the NI Commissioner for Children and Young People and mental health interest groups was also undertaken and closed on 18 June 2010.

16.3 Two substantive responses were received supporting the proposal. A concern was expressed about a potential adverse effect on vulnerable individuals and that the proposal would result in fees being deducted from the funds of minors and patients without judicial approval.

Equality consultation

16.4 One response noted that this measure must be implemented in a manner which is wholly in keeping with the requirements and safeguards of the Northern Ireland Mental Capacity (Health, Welfare and Finance) Bill.

Department of Justice response

16.5 The Department has been engaging with the Attorney General in respect of the shape of the necessary clause and addressing issues he has raised regarding competence. The proposal was, therefore, not included in the draft Justice Bill as introduced into the Assembly. The intention is to introduce provisions into the Bill by way of amendment.

16.6 Current mental health legislation and emerging developments in terms of proposals for a new Mental Capacity (Health, Welfare and Finance) Bill will continue to be considered as the Department continues to develop clauses for introduction by way of amendment. The Mental Capacity Bill itself will not, however, be considered by the Assembly until possibly well into the next Assembly mandate period.

17. Supervised Activity Order

Policy Background

17.1 The Supervised Activity Order (SAO) was created under the Criminal Justice (NI) Order 2008 as a non-custodial alternative to fine default. The SAO received considerable support at both the policy consultation and legislative stages. The current provision is a technical adjustment to make SAOs available to magistrates' courts for the enforcement of financial penalties imported to Northern Ireland under the EU Framework Decision on the mutual recognition of financial penalties. The purpose of the Framework Decision is to allow a financial penalty (such as a fine) imposed in one EU member state to be enforced in and by another member state.

Equality consultation

17.2 One respondent welcomed the introduction of this scheme as poverty levels are higher amongst people with disabilities so it is possible that they are more likely to default on a fine. However they note that the options available as part of community placements for work or supervision must be accessible to people with disabilities and a disabled person should never face imprisonment due to lack of availability of appropriate placements.

Key Documents

Criminal Justice Order as consulted upon:

http://www.nio.gov.uk/the_criminal_justice_(northern_ireland)_order_2007_draft_statutory_instruments.pdf

Explanatory Document and consultation response mechanism;

http://www.nio.gov.uk/proposed_draft_criminal_justice_(northern_ireland)_order_2007_explanatory_document.pdf

Statement and Summary of Representations Relating to the Proposed Draft Criminal Justice Order (Northern Ireland)

Department of Justice response

17.3 The Department confirms that the Probation Board - who will be administering any Supervised Activity Order scheme - already makes every effort to arrange placements which take into consideration any disability requirements of their clients. This will continue to be the case under any SAO scheme which is commenced.

18. Case initiation reform

Policy background

18.1 A 12 week policy consultation was conducted from 1 March until 28th May 2010 proposing that it should be possible for a Public Prosecution Service ("PPS") prosecutor to issue a summons to a defendant without recourse to a Lay Magistrate. Criminal Justice Inspection had recommended that the current arrangements for issuing summonses be reviewed and alternative arrangements considered. It was estimated that the proposal as consulted on would save up to two days in the process from decision to prosecute to the issue of a summons.

18.2 There were 25 responses to the public consultation. In addition, meetings were held with the NI Human Rights Commission and Women's Aid Federation NI. The majority of responses were broadly in favour, although some respondents opposed the proposal on the basis that the proposals remove an important level of judicial scrutiny from the summons issuing process. Ten respondents in favour of the proposal indicated that they considered that the key benefits, such as reducing delay and costs/resource savings, would be achieved. They also found that the proposed safeguards were sufficient.

Key documents

Consultation document

Summary of Responses

Equality consultation

18.3 Four respondents commented on the proposal for the PPS to issue summonses. One respondent noted the importance of the need to exercise good practice to identify defendants with learning difficulties or disabilities at the earliest possible stage in the proceedings and prior to the issuing of documents.

18.4 One respondent noted that they had previously responded to a specific consultation on case initiation reform voicing its opposition to the proposal. They noted that the function of

determining whether a summons should be issued is a judicial function and the requirement on the prosecutor to submit papers to independent scrutiny is an important safeguard for the rights of individuals in a democratic society. It was considered the this provided an additional safeguard for vulnerable persons and persons with a disability and that the proposal could have an adverse impact.

18.5 One respondent noted that a Courts and Tribunals Service consultation on the proposals closed on 28 May; the same proposal featured in the Department's EQIA consultation published on 12 August; the Courts and Tribunals Service consultation report of 1 October 2010 made clear that the proposals would not be progressed; and the proposal was not included in the text of the Bill as published on 18 October.

Department of Justice response

18.6 The need for good practice in identifying defendants with learning difficulties or disabilities at an early stage in proceedings is an important consideration. It is already police practice to identify vulnerable defendants early in any proceedings and to take steps in conjunction with the Public Prosecution Service to ensure appropriate measures are considered in the issue of a summons.

18.7 The proposal has not been included in the draft Justice Bill, however, it is intended to reconsider the matter for inclusion in another legislative vehicle. As part of its ongoing work, the Criminal Justice Board has established four project groups to re-invigorate the work to speed up justice. These groups are developing a range of initiatives which are expected to help address avoidable delay. We wish to examine the cumulate effect of these initiatives and re-examine this proposal in the broader context of any recommendations for case initiation reform emerging from the work of the project groups.

19. Other Miscellaneous matters

Policy background

19.1 A series of provisions were proposed for reform to third party disclosure; disclosure in family proceedings; adjustments to Court Rules Committees; transfer of Judicial Review cases; POCA Appeals arrangements; NI Law Commission Accounts; and changes to Criminal Record Checks.

19.2 The transfer of classes of Judicial Review cases from the High Court to the Upper Tribunal was not included in the Justice Bill. In light of the on-going programme of tribunal reform in Northern Ireland it was decided that this issue should be re-examined at a later date.

19.3 No comments were made in respect of six of these seven miscellaneous matters. Only the proposals around Criminal Record checks elicited a consultation comment in the equality consultation.

Equality consultation

19.4 One respondent noted that the proposal was unclear from an employer's perspective as it does not specify how Access NI will be informed of the current employee or person being checked on behalf of a prospective employer. In addition it also states that the criminal record is only issued to the applicant who is seeking the information i.e. an employer however the current

process under the vetting and barring scheme already requires the job applicant to receive a copy as well.

Department of Justice response

19.5 In relation to the first point above, the proposal is that when completing the Disclosure Application Form, the applicant will be invited to declare if the application is in relation to an employment (or voluntary) position. If this is that case the applicant can then indicate whether a copy of the Disclosure Certificate should go to this employer, and if so, space will be available on the Form to provide the employers name and postal details.

19.6 This proposal is in relation to Criminal Conviction Certificates (Basic Disclosures). Presently only one copy of the Disclosure Certificate is produced. The proposal provides for the production of a second certificate (when the above conditions are met) and does not change the requirement for a copy of the Disclosure Certificate to be sent to the Applicant.

20. Future undertakings

20.1 The Department fully recognises the importance of equality assessment and trusts that it has demonstrated its commitment in developing a Justice Bill for the Committee and Assembly's consideration. It also recognises that legislation is but the start of a process that must be followed up with ongoing actions and procedures.

Subordinate legislation

20.2 The Bill itself contains, for example, a number of enabling provisions that will in themselves need to be developed further before they are finalised. The Bill will also spawn a series of subordinate legislative provisions and requirements – provided separately by way of a Regulatory Powers Memorandum – which will need to be brought before the Committee.

20.3 The Department is fully committed to consulting on and equality screening those Rules, Regulations, Codes of Practice, and Published Guidances which will arise from the Bill to and bringing them, along with their equality assessments, before the Committee for consideration.

20.4 At this stage those Regulatory Powers include (excluding Court Rules and order making powers which will nevertheless still be brought to the Committee):

- Regulations with respect to the enforcement of the offender levy;
- A code of practice for Policing and Community Safety Partnerships;
- Guidance on the use of fixed penalty notices;
- A code of practice in relation to conditional cautions;
- Rules as to the eligibility for free legal aid;
- Rules to recover costs of legal aid;
- Regulations for financial eligibility for grant of right of representation.

20.5 The Department notes that there may be other requirements to be introduced as a consequence of Committee scrutiny. Potential additional requirements may be for the operation of relevant sports law provisions – the types of containers to be allowed into grounds and the selling of tickets for example.

Commencement

20.6 Subject to successful passage through the Assembly, plans for the commencement of individual provisions and subsequent commencement orders will also be brought to the Committee. At this stage commencement orders are exclusively negative resolution orders though in relation to sports law there is the potential for an affirmative resolution procedure (whereby an order cannot be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly) for the commencement of powers to control alcohol possession in grounds. As and when commencements occur they will be subject to advance justice system notice and publicity as appropriate.

Future monitoring

20.7 At various points in the equality consultation, respondents commented on the need for data and the importance of future monitoring.

20.8 The Department has a work programme in hand to improve Section 75 data availability in the justice system with Causeway at the core. It also undertakes – again subject to successful passage of the Bill – to monitoring the impact of the Bill to ensure that the provisions deliver with regard to Section 75 requirements.

20.9 The Department also undertakes to ensure that, where relevant and appropriate, evaluations are completed or inspections undertaken by the Criminal Justice Inspectorate again to ensure successful outcomes and improve practice.

20.10 Annual reports will also be prepared on certain provisions within the Bill as will the Department's annual report to the Equality Commission on its Equality Scheme now in development.

Conclusion

20.11 The Department is firmly committed to ensuring that the provisions of the Justice Bill are and will continue to be compliant with Section 75 duties.

21. Index of key documentation

Offender levy and victims of crime fund

Consultation document

Summary of Responses

Special Measures

Consultation document

Summary of Responses

Local Partnership working on Policing and Community Safety

Consultation document

Summary of Responses

Sports law and spectator controls

Consultation document

Summary of Responses

Alternatives to Prosecution consultation

Consultation document

Summary of Responses

A Proposal to Revise the Means Test for Criminal Legal Aid in Northern Ireland

Consultation document

Summary of Responses

Redrawing the Map: a consultation on Court Boundaries in Northern Ireland

Consultation document

Summary of Responses

Provision to allow the Public Prosecution Service to commence proceedings without recourse to a Lay Magistrate

Consultation document

Summary of Responses

Arrangements for notification of sex offender from jurisdictions outside the UK

Consultation document

Knives in Northern Ireland

Consultation document:

http://www.nio.gov.uk/the_law_on_knives_in_northern_ireland.pdf

Summary of responses

Criminal Justice (Northern Ireland) Order 2008

Link to the legislation online: http://www.legislation.gov.uk/nisi/2008/1216/contents

Explanatory memorandum:

http://www.legislation.gov.uk/nisi/2008/1216/memorandum/contents

Equality Impact Assessment for the proposed draft Criminal Justice (NI) Order

Criminal Justice Order as consulted upon

Explanatory Document and consultation response mechanism;

Statement and Summary of Representations Relating to the Proposed Draft Criminal

Justice Order (Northern Ireland)

Statement containing details of changes to the Proposed Draft Criminal Justice (Northern Ireland) Order

Proposed Justice Bill (NI) 2010

Equality Impact Assessment

Victims and Witnesses - Third Party Assistance

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6 January 2011

Dear Christine

Justice Bill: Victims and Witnesses

During the Justice Committee's oral evidence session on the 25th November to discuss the victims and witnesses clauses in the Justice Bill, some questions arose around training for Special Measures intermediaries and current levels of support for victims, witnesses and offenders within the Criminal Justice System.

Officials in Criminal Justice Development Division provided details of intermediary training recently and I am happy to now offer at Annex A an illustration of the types of third party assistance that is available to individuals through the various stages of the Criminal Justice system.

I should qualify that this is by no means an exhaustive list of the assistance and services available. It would be a very resource intensive exercise to attempt to catalogue all of the assistance available but I trust that the attached list will provide the Committee with a flavour of the range of help that can currently be provided, which will be enhanced by the services of the Special Measures intermediaries in future.

Jane Holmes
Departmental Assembly Liaison Officer

Annex A

Illustrative list of third party assistance available in the Criminal Justice System

Police Stage

- Foreign language interpreters
- Appropriate Adult Scheme
- Social workers (acting in role of appropriate adult for those from care homes)
- Custody Visitors Scheme (a service monitored by the Policing Board)
- Psychiatric nurses / doctors for identification of any mental health issues of those brought into police custody.
- Samaritans and related organisations contact.

Courts and Prosecution Stage

- Foreign language interpreters
- Live Link assistance
- NSPCC Witness Service to offer a court support worker for under 18 (operated by qualified social workers)
- Court Witness Service to offer court supporter for adults (operated by trained volunteers)
- Services of probation officials (trained social workers) available throughout various stages of the CJ system

- PBNI Victims Information Scheme
- Signposting to external support services depending on specific nature of each case

Prisons Stage

- Foreign language interpreters
- Independent Monitoring Board service.
- Chaplaincy services
- 'Opportunity Youth' youth advocacy services for juvenile detainees in YOC Hydebank Wood
- Signposting to external support services depending on circumstances of individual prisoner

Further information on Alternatives to Prosecution

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Dear Christine

Justice Bill: Alternatives to Prosecution

During the Committee for Justice's scrutiny of the alternatives to prosecution clauses in the Justice Bill on 9 December, officials undertook to provide additional information to the committee on two issues. Firstly, information was requested on the checks undertaken by police to ascertain the age of an alleged offender; secondly, a list of existing alternatives to prosecution was requested. This information is provided below.

Determining the age of alleged offenders.

The methods employed by police to ascertain the identity and age of an alleged offender are listed in the table below. In the event of a police issued fixed penalty notice being issued in error to an individual under 18 years old, then that ticket would be declared void as the issue of the penalty would be unlawful.

Checks Which May be Undertaken by PSNI to Ascertain Identity

- Check against the Person and Vehicle Index
- Check against the Electoral List
- Criminal Records Check
- Driving Licence
- Passport
- Bank/Credit card
- National Insurance card
- Travel/Photo card
- In relation to juveniles, parents/guardian may be contacted by phone or in person

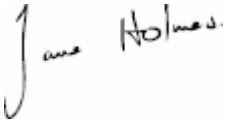
Existing alternatives to prosecution.

A number of alternatives to prosecution are available. Some alternatives to prosecution may be undertaken at the discretion of the police, others will be at the direction of the Public Prosecution Service (PPS). These alternatives to prosecution are listed in the table below;

Existing Alternatives to Prosecution

- Verbal warning. (An offender is warned not to repeat an offence, and no record is kept. This is principally deployed for low level motoring offences).
- Road Traffic Fixed Penalties. (This disposal is available for endorsable, non-endorsable, no insurance and no Vehicle Test Certificate offences).
- Driver Improvement Scheme (available for motoring offences only).
- Police Discretion. (Police may use discretion where a victim consents, and there is no significant history of offending – resolutions may include reparation to a victim).
- Juvenile and Adult Informed Warnings.
- Juvenile Restorative Caution.
- Adult Caution.
- Youth Conference order (both PPS authorised and Court-directed).
- Community-based Restorative Justice disposal (authorised by PPS).

I would be grateful if you would bring this to the attention of Justice Committee members in advance of PSNI giving evidence on the Justice Bill as this will inform discussions.



Jane Holmes

Departmental Assembly Liaison Officer

Live Links and Vulnerable Accused

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19 January 2011

Dear Christine

Justice Bill: Live Links and Vulnerable Accused

During clause by clause scrutiny of the Justice Bill on 13 January, Committee members sought the department's views on the need for a pilot study of the provisions to provide live links in cases where the accused is vulnerable (Clause 19). Officials undertook to write to the Committee with a further response.

The need for a pilot study was advocated by Include Youth in their response to public consultation on the Justice Bill:

[Clause 19]: We support the use of live link for accused under the age of 18 and aged over 18 where their ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by their level of intellectual ability or social functioning, and where the use of live link would enable more effective participation. We recommend that this be piloted to assess effectiveness.

The provisions proposed in Clause 19 will extend the scope of existing legislation which allows for the use of live links in cases where the accused is considered by the court to be vulnerable. Article 21A of the Criminal Evidence (Northern Ireland) Order 1999 already provides the court with the power to direct the use of live links is cases where:

(i) the accused is under 18 and their ability to participate effectively in proceedings is compromised by their intellectual ability or social functioning; or

(ii) the accused is over 18 and suffers from a mental disorder (as defined by the Mental Health (Northern Ireland) Order 1986), or otherwise has a significant impairment of intelligence and social functioning which prevents them from participating effectively in their trial.

Under the changes proposed in Clause 19 these provisions will be extended to include physical disabilities (where these impact on the ability to give evidence) and will also be made available in the County Court on appeal.

In operational terms, the measures have been available since the early part of 2009. Therefore, the technology and procedures around the use of live links, for evidence purposes, are well established between the courts and practitioners and are already used in Youth Courts.

As the reforms proposed seek to enhance rather than revise the existing scheme we are content that they can be incorporated into current practice without the need for a pilot study.

Jane Holmes
DALO
Department of Justice

Notice of Amendment - Clause 16

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Dear Christine

Justice Bill: Live Links Amendment - 20 January 2011 Committee Meeting -
Consideration of Parts 1 and 2 of The Justice Bill

At today's Justice Committee meeting, the Committee intends to formally consider Parts 1 and 2 of the Bill.

I am writing to advise you of a small amendment that the Department would want to bring to one of these provisions at Consideration Stage. With apologies that it comes rather late, we should like the Committee to have this short amendment before them today to ensure that the full live links package is considered.

The amendment provides an additional provision relating to two subsections which set out what happens when a live link breaks down. Currently in the Bill, Clause 16(7) and 16(8) state that:

16(7) Subject to subsection (8), if where the appellant is attending a preliminary hearing through a live link it appears to the court –

a) that the appellant is not able to see and hear the court and to be seen and heard by it, and

b) that this cannot be immediately corrected,

the court shall adjourn the hearing."

16(8) The court may proceed with the hearing if it is satisfied that it is not reasonably practicable to bring the appellant to court before the appellant ceases to be held in custody.

What the provision lacks – and what is provided for in parallel live link legislation for preliminary hearings (for example Article 80(9) of the Criminal Justice (NI) Order 2008 which also engages Clauses 14 and 15 in the Bill) - is that when this scenario under paragraph (8) occurs, there should be a limit on the length of time a person can be remanded before the matter is brought back before the court.

In normal circumstances, a remand can be for up to 28 days. However where a clause16(8) situation arises, the limit in other scenarios is for a maximum 8 day remand. We therefore wish to replicate this in Clause 16 as a new Clause 16(8A).The proposed amendment for what would be a new 16(8A) is attached at Annex A.

We view this amendment as being valuable in terms of ensuring consistency within the Bill and with other live links legislation and, more importantly, in providing a guarantee to appellants in ensuring that any rearranged hearing is held promptly.

We would welcome the Committee's consideration of this amendment tomorrow in the context of its formal review of Parts 1 and 2.

Jane Holmes
DALO
Department of Justice

Annex A

Proposed amendment to Justice Bill, Clause 16: Live links at preliminary hearing on appeals to the county court

Clause 16, page 12, line 5, at end insert—

'(8A) If the court proceeds with the hearing under paragraph (8) it shall not remand the appellant in custody for a period exceeding 8 days commencing on the day following that on which it remands him.'

Notice of Amendments - New Provisions

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26 January 2011

Dear Christine

Justice Bill - Amendments: New Provisions

As the Committee will be aware, the Minister has previously indicated his intention to bring forward provisions in the Justice Bill relating to funds in court; solicitor's rights of audience; and improvements to sex offender notification requirements. These issues had not been resolved in time for the Bill's introduction into the Assembly. The Minister advised the Committee that he proposed – subject to the Attorney General's considerations – to introduce them by way of amendment at Consideration Stage.

More recently, in a letter dated 5 January the Minister also advised the Committee of a potential legislative requirement to allow the Department to have access to and to allocate the proceeds of criminal assets currently remitted to the NI Consolidated Fund.

The Minister is pleased to advise that each of three of these proposed amendments have now been drafted for the Committee's consideration. Three separate papers are attached, one on each proposal.

The proposed amendments are:

Annex A: A proposed amendment to provide for an adjustment to Court funds legislation. This will allow a court to give the Accountant General a specific power to deduct (with the approval of the court) certain fees, charged by stockbrokers in relation to the management and investment of funds held in court, from those funds (this will be discussed on Thursday 3rd February alongside the proposed draft Solicitor Advocacy clauses).

Annex B: an amendment to correct legislative incompatibility (which exists across the UK) under Article 8 of the ECHR of indefinite notification requirements attached to certain sex offenders (this will be inserted into Part 5 – Treatment of Offenders).

Annex C: the amendment to provide the Department with the power to allocate the proceeds of criminal assets (this will be inserted into Part 8 – Miscellaneous).

Each Annex contains details of the provisions in the form of information what would be required in an Explanatory and Financial Memorandum and also provides the draft Clauses.

In terms of legislative competence, it is the Minister's view that each of the proposals is within Assembly competence. This is currently subject to the Attorney's confirmation though he has been consulted in the formulation of the Clauses. Subject to the Committee's considerations and confirmation of legislative competence, the Minister intends to table these at Consideration Stage.

Departmental officials are available to present these amendments to the Committee and answer any queries they may have. The amendments attached at Annexes B and C will be discussed at the Justice Committee meeting tomorrow afternoon; the amendment at Annex A will be discussed on Thursday 3rd February alongside the proposed draft Solicitor Advocacy clauses.

It remains the Minister's intention to bring forward amendments to provide solicitors with rights of audience in the High Court and Court of Appeal. These are now being finalised and will be with the Committee in the next few days. The Minister wished to share with the Committee the three sets of proposals that were now complete as soon as he could, with a view to completing the package shortly. I trust the Committee finds this helpful in their consideration of the Bill.

Jane Holmes
Departmental Assembly Liaison Officer
028 90 528272

Annex A

Briefing Paper for the Justice Committee: Amendment to Funds in Court Legislation

Funds in Court

Overview

A.1 The Justice Minister had previously indicated his intention to bring forward provision in the Justice Bill relating to funds in court and, specifically, to allow a court to give the Accountant General a specific power to deduct (with the approval of the court) certain fees, charged by stockbrokers in relation to the management and investment of funds held in court, from those funds.

A.2 The Department has worked closely with the Attorney General in developing this provision. Some issues had not been resolved in time for the Bill's Introduction into the Assembly. Therefore, the Minister advised theCommittee that he proposed – subject to the Attorney's considerations – to introduce provisions by way of amendment at Consideration Stage.

Background

A.3 In certain circumstances, the County Court or the High Court may order that monies are paid into court to be placed under that court's protective jurisdiction. This will occur where, for instance, a minor has been awarded a sum of money in damages for personal injuries or where a person is deemed no longer to have sufficient mental capacity to manage his or her own financial affairs.

A.4 Where funds are ordered to be paid into court, the money is paid over to the Accountant General of the Court of Judicature who, under the Judicature (Northern Ireland) Act 1978 ("the 1978 Act"), has responsibility for managing and investing such funds in court in Northern Ireland. The Director of the Northern Ireland Courts and Tribunals Service ("NICTS") acts as Accountant General and his functions are exercised by the Court Funds Office ('CFO'), which is an office within the NICTS.

A.5 The CFO manages funds in court until they are paid out (for instance, where a minor reaches the age of 18). There are approximately £260m of funds held in court on behalf of some 14,000 clients.

A.6 As part of the management of funds in court, and in order to provide an appropriate level of return, the funds may be invested (with judicial approval) in various ways prescribed in the 1978 Act. These include being placed in deposit accounts, short and long term investment accounts and investment in certain designated securities (i.e. equities or government bonds).

A.7 For investments in securities, the CFO retains the services of a stockbroker to provide advice as regards the most appropriate investments for all new funds that come into court and to review existing investments. Where the stockbroker makes investment recommendations, these are presented to the court and the court will then consider the advice and make an appropriate order directing the investment of the funds.

A.8 In return for the continuous review of the suitability of investments and the provision of investment advice to the CFO, the stockbrokers charge an annual management fee. Until recently, these fees were deducted directly from the funds of those clients whose funds were the subject of advice and management by the stockbrokers.

A.9 Legal advice suggests that there is a doubt as to whether it is permissible to deduct stockbroker management charges directly from funds in court without an express legislative power to do so.

A.10 It is important to be able to use the services of stockbrokers, as they have been instrumental in enhancing clients' investment returns. If stockbroker services were discontinued, CFO would have little alternative other than to hold funds as cash deposits only. This would incur

detriment to CFO clients as they would not have the opportunity to enhance the return on their funds. Stockbrokers have to be paid for their services and, in principle, this cost should be met by those who avail of these services rather than from the public purse.

A.11 In order to seek legal clarity on whether it is permissible to deduct stockbroker management fees directly from the funds of CFO clients in the absence of express statutory authority, it is intended to invite the High Court to make a declaration on this issue. All relevant CFO clients will, of course, be informed of the proceedings and will have an opportunity to participate. The Official Solicitor will also be invited to make representations on behalf of all such persons and the Attorney General has also indicated an intention to intervene in any proceedings before the Court.

A.12 Should the High Court find that sufficient authority already exists to deduct stockbroker management fees directly from the funds of those CFO clients who avail of the services of the stockbroker, we anticipate that this will allow the CFO to revert to such practice.

A.13 There is a possibility, however, that the Court may rule that there is no current authority for deducting stockbrokers' fees. In that situation, we would require an amendment to the 1978 Act to authorise the deduction of stockbrokers' fees. The Justice Bill provides an opportunity to create such a power and we have drafted provisions which, subject to the Committee's approval, would authorise the deduction of stockbrokers' fees directly from CFO clients (with court approval) where it is necessary and proportionate to do so.

A.14 While, if the High Court endorses previous CFO practice, it may not be necessary to commence the proposed clause, it is prudent to use this Bill to put such provision in place, should the outcome of the High Court application require a gap in the current legislative framework to be addressed.

Proposed amendment to court funds legislation

A.15 The proposed provision (j8178) will amend section 81 of the 1978 Act to create a specific power to allow the court to order the payment from court funds of any fees or expenses incurred in connection with or for the purposes of investing those funds. However, the court shall not make such an order unless it considers it necessary and proportionate to do so.

A.16 The court will also have a power to order the whole or part of any sum paid by way of fees or expenses to be refunded where it is in the interests of justice to do so.

A.17 The text of the amendment is by attachment at the end of this paper. Costs

A.18 Since the practice of deducting stockbrokers' fees directly from funds in court has ceased, these fees have been paid by the NICTS. Up to the period ending 5 October 2010, £338,096.91 has been paid. A further payment is duefor the quarter ending 5 January 2011. It is estimated that, were this to continue, the cost could amount to approximately £400,000 to £500,000 per annum.

A.19 Provision has been made in the NICTS budget for the payment of stockbrokers' fees for 2010-11 and for the first quarter of 2011-12 as the position should be resolved after that.

A.20 If the fees were to continue being paid by NICTS, then NICTS would need to identify sources of funding for this particular cost. If the proposed provision is implemented, however (or the High Court rules that previous practice under the 1978 Act was lawful), this pressure will be removed, as the fees will then be paid by the CFO clients.

A.21 If the High Court rules that previous deductions were unlawful, the NICTS may be obliged to consider reimbursing those clients from whose funds such deductions were made. Approximately £2.5m was deducted from clients between 1996 and 2010 and this is attributable to over 4,000 individual clients.

A.22 There are no additional costs associated with the implementation of this provision.

Human Rights Issues

A.23 The proposed provisions have been screened and are considered to be Convention compliant.

Equality Impact Assessment

A.24 One comment was received on the proposal, which indicated that the measure must be implemented in a manner which is wholly in keeping with the requirements and safeguards of the Mental Capacity (Health, Welfare and Finance Bill). The NICTS is committed to doing so.

Summary of Regulatory Impact Assessment

A.25 No direct costs will be created for the private or voluntary sectors.

Legislative Competence

A.26 It is the Minister's view that the proposed clauses are within the legislative competence of the Northern Ireland Assembly.

Secretary of State Consent

A.27 Not applicable.

Drafted amendment

Funds in court: investment fees or expenses [j8178]

*.—(1) Section 81 of the Judicature (Northern Ireland) Act 1978 (c. 23) (investment of funds in court) is amended as follows.

(2) The existing provision becomes subsection (1) of that section.

(3) After that subsection insert—

"(2) If the High Court or (as the case may be) the county court so orders, the power of the Accountant General under subsection (1)(a)(iii) or (iv) to invest a sum of money in the Court of Judicature or the county court in securities includes the power to pay out of that sum any fees or expenses which are —

(a) incurred in connection with, or for the purposes of, investing that sum; and

(b) of an amount or at a rate approved by the High Court or (as the case may be) the county court.

(3) A court shall not make an order under subsection (2) unless the court considers it necessary and proportionate in all the circumstances to do so.

(4) The High Court or (as the case may be) the county court may, on an application made to it, order that all or part of any sum paid by way of fees or expenses under subsection (2) be refunded where it appears to the court to be in the interests of justice to do so.".

Consequential amendments

The Judicature (Northern Ireland) Act 1978 (c. 23)

. In section 82(1) (rules as to funds in court)—

(a) in paragraphs (c) and (d) for "81(b)(ii)" substitute "81(1)(b)(ii)"; and

(b) in paragraph (k) for "81(a)(iv)" substitute "81(1)(a)(iv)".

Annex B

Briefing Paper for the Justice Committee: Sex Offender Notification

Sex offender notification amendment

Introduction

B.1 As the Committee will be aware, before the Bill was introduced a legal challenge to the Sexual Offences Act 2003 resulted in a Supreme Court ruling that the indefinite notification requirements attached to sex offenders who have been sentenced to 30 months or more imprisonment were incompatible with Article 8 of the ECHR. As a result all UK jurisdictions are under an obligation to remedy the legislative incompatibility as it applies to their own jurisdiction.

B.2 The Minister signalled that an amendment would need to be prepared for the Justice Bill to meet the Supreme Court ruling, and he wrote to the Committee in December to share the policy proposal for a legislative amendment which would provide for a review mechanism which sex offenders who have completed 15 years of notification can access.

B.3 The Committee will be aware that this amendment was previously brought to its attention as an underpinning requirement for other sex offenderproposals in relation to reporting arrangements for offenders convicted outside the UK.

Detail

B.4 In terms of the provisions we are now proposing, Section 82 of the Sexual Offences Act 2003 provides that all persons sentenced to 30 months' imprisonment or more for a sexual offence become subject to a lifelong dutyto keep the police notified of personal details such as where they are living and of travel abroad ('the notification requirements'). There is no right to a review of the necessity for the notification requirements at any time.

B.5 Two convicted sex offenders, both subject to the notification requirements for an indefinite period, brought claims for judicial review claiming that the absence of a right of review of the

requirements breached their right to privacy protected by Article 8 of the European Convention on Human Rights.

B.6 The Divisional Court granted the claims and made a declaration that s 82 (1) Sexual Offences Act 2003 was incompatible with Article 8. The Court of Appeal dismissed an appeal by the Home Secretary, who then appealed to the Supreme Court. In April that appeal was turned down and the Court held unanimously that the absence of a review mechanism under the Sexual Offences Act 2003 does render the indefinite notification requirements incompatible with Article 8 of the ECHR.

Proposed amendment to the Sexual Offences Act 2003

B.7 The proposed provision will allow an offender to apply to the police to review the notification requirements after a period of 15 years (8 years if under 18 at time of conviction) from the date the offender is released from prison following sentence for the relevant offence.

B.8 The police must review the case within a period of 12 weeks and will discharge the offender from notification unless satisfied that the offender poses a risk of sexual harm to the public. If, following a review, the police do not discharge the requirements, or if the police fail to complete the review within the time allowed, the offender can apply to the court for an order to discharge the requirements.

B.9 It will be for the applicant to prove that he no longer presents a serious risk of sexual harm to the public or any particular members of the public in the UK. If the application is unsuccessful and notification requirements remain in place, the offender can apply for a further review in 5 years time.

B.10 The text of the amendment is provided at the end of this paper.

Consultation

B.11 A targeted consultation was undertaken with key stakeholders. In particular we worked closely with the police, and in cooperation with other jurisdictions, on a legislative mechanism which will provide for a review in line with the judgement, while at the same time ensuring that there is no weakening of the protection afforded by the lifetime nature of the notification requirements.

Costs

B.12 Additional costs will be low and will be met within existing resources.

Human Rights Issues

B.13 The NIHRC have been consulted and agree with this approach to resolving the incompatibility. The proposals have been screened and are considered to be Convention compliant.

Equality

B.14 An equality screening exercise carried out by the Department did not identify any section 75 issues.

Regulatory Impact Assessment

B.15 No direct costs will be created for the private or voluntary sectors.

Legislative Competence

B.16 The Attorney General has been fully consulted about the proposed amendment to the Bill. It is the Minister's view that the proposed clauses are within the legislative competence of the Northern Ireland Assembly.

Secretary of State Consent

B.17 Not applicable.

Drafted amendment (to be confirmed)

New Clause

After clause 59 insert—

'Sexual offences: review of indefinite notification requirements

.—(1) The Sexual Offences Act 2003 (c.42) is amended as follows.

(2) In section 82 (the notification period) at the end insert—

"(7) Schedule 3A (which provides for the review and discharge of indefinite notification requirements) has effect.".

(3) After Schedule 3 insert the following Schedule—

"SCHEDULE 3A
REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS

Introductory

1.—(1) This Schedule applies to a person who, on or after the date on which section (Sexual offences: review of indefinite notification requirements) of the Justice Act (Northern Ireland) 2011 comes into operation, is subject to the notification requirements for an indefinite period.

(2) A person to whom this Schedule applies is referred to in this Schedule as "an offender".

(3) In this Schedule—

"sexual harm" means physical or psychological harm caused by an offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

"the notification requirements" means the notification requirements of Part 2 of this Act;

"relevant event", in relation to an offender, is a conviction, finding or notification order which made the offender subject to the notification requirements for an indefinite period.

Initial review: applications

2.—(1) Except as provided by sub-paragraph (2), an offender may, at any time after the end of the initial review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

(a) the offender is also subject to a sexual offences prevention order; or

(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) Subject to sub-paragraph (4), the initial review period is—

(a) in the case of an offender under the age of 18 at the date of the relevant event, 8 years beginning with the date of initial notification;

(b) in the case of any other offender, 15 years beginning with the date of initial notification.

(4) In calculating the initial review period—

(a) in a case where an offender is subject to the notification requirements for an indefinite period as a result of two or more relevant events, thecalculation to be made by reference to the later or latest of those events;

(b) in any case, there is to be disregarded any period during which the offender is, in connection with a relevant event—

(i) remanded in, or committed to, custody by an order of a court;

(ii) in custody serving a sentence of imprisonment or detention; or

(iii) detained in a hospital.

(5) The date of initial notification is—

(a) in the case of an offender who is subject to the notification requirements for an indefinite period by virtue of section 81, the date by which the offender was required to give notification under section 2(1) of the Sex Offenders Act 1997;

(b) in the case of any other offender, the date by which the offender is required to give notification under section 83(1) (or would be so requiredbut for the fact that the offender falls within an exception in section 83 (2) or (4) of that section).

(6) An application under this paragraph must be in writing and must include—

(a) the name, address and date of birth of the offender;

(b) the name and address of the offender at the date of each relevant event (ifdifferent);

(c) the date of each relevant event, and (where a relevant event is a conviction or finding) the court by or before which, the conviction or finding occurred,

(d) any information which the offender wishes to be taken into account by the Chief Constable in determining the application.

(7) The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate.

Initial review: determination of application

3.—(1) On an application under paragraph 2 the Chief Constable shall discharge the notification requirements unless the Chief Constable is satisfied, on the balance of probabilities, that the offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.

(2) In deciding whether that is the case, the Chief Constable must take into account—

(a) the seriousness of the offence or offences—

(i) of which the offender was convicted,

(ii) of which the offender was found not guilty by reason of insanity,

(iii) in respect of which the offender was found to be under a disability and to have done the act charged, or

(iv) in respect of which (being relevant offences within the meaning of section 99) the notification order was made, which made the offender subject to the notification requirements for an indefinite period;

(b) the period of time which has elapsed since the offender committed the offence or offences;

(c) whether the offender has committed any offence under section 3 of the Sex Offenders Act 1997 or under section 91 of this Act;

(e) the age of the offender at the time of the decision;

(f) the age of the offender at the time any offence referred to in paragraph (a) was committed;

(g) the age of any person who was a victim of any such offence (where applicable) and the difference in age between the victim and the offender at the time any such offence was committed;

(h) any convictions or findings made by a court in respect of the offender for any other offence listed in Schedule 3;

(i) any caution which the offender has received for an offence which is listed in Schedule 3;

(j) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the offender but have not concluded;

(k) any assessment of the risk posed by the offender which has been made by any of the agencies mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008 (risk assessment and management);

(l) any other information relating to the risk of sexual harm posed by the offender to the public, or any particular members of the public, in the United Kingdom;
(m) any information presented by or on behalf of the offender which demonstrates that the offender does not pose a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom; and

(n) any other matter which the Chief Constable considers to be appropriate.

(3) The functions of the Chief Constable under this paragraph may not be delegated by the Chief Constable except to a police officer not below the rank of superintendent.

Initial review: notice of decision

4.—1) The Chief Constable must, within 12 weeks of the date on which an application under paragraph 2 is received, comply with this paragraph.

(2) If the Chief Constable discharges the notification requirements—

(a) the Chief Constable must serve notice of that fact on the offender, and

(b) the offender ceases to be subject to the notification requirements on the date of service of the notice.

(3) If the Chief Constable decides not to discharge the notification requirements—

(a) the Chief Constable must serve notice of that decision on the offender; and

(b) the notice must—

(i) state the reasons for the decision; and

(ii) inform the offender of the effect of paragraphs 5 and 6.

Initial review: application to Crown Court

5.—(1) Where—

(a) the Chief Constable fails to comply with paragraph 4 within the period specified in paragraph 4(1), or

(b) the Chief Constable serves a notice under paragraph 4(3),

the offender may apply to the Crown Court for an order discharging the offender from the notification requirements.

(2) An application under this paragraph must be made within the period of 21 days beginning—

(a) in the case of an application under sub-paragraph (1)(a), on the expiry of the period mentioned in paragraph 4(1);

(b) in the case of an application under sub-paragraph (1)(b), on the date of service of the notice under paragraph 4(3).

(3) Paragraph 3 applies in relation to an application under this paragraph as it applies to an application under paragraph 2, but as if references to the Chief Constable were references to the Crown Court.

(4) The Chief Constable and the offender may appear or be represented at any hearing in respect of an application under this paragraph.

(5) Where an application under this paragraph is determined, the appropriate officer of the Crown Court must send a copy of the order made by the Crown Court to the offender and the Chief Constable.

Further reviews

6.—(1) Where a notice is served on an offender under paragraph 4(3) or 5(5), the offender may, at any time after the end of a further review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) A further review period is the period of 5 years beginning on the date of service of a notice (or the last notice) served on the offender under paragraph 4(3) or 5(5).

(3) Paragraphs 2(6) and (7), 3, 4 and 5 apply with appropriate modifications to an application under this paragraph as they apply to an application under paragraph 2(1); and a reference in this Schedule to a provision of paragraph 4 or 5 includes a reference to that provision as applied by this sub-paragraph.

Discharge in Scotland

7.—(1) An offender who is, under corresponding legislation, discharged from the notification requirements by a court, person or body in Scotland is, by virtue of the discharge, also discharged from the notification requirements as they apply in Northern Ireland.

(2) In subsection (1) "corresponding legislation" means legislation which makes provision corresponding to that made by this Schedule for a an offender who is subject to the notification requirements as they apply in Scotland for an indefinite period to be discharged from those notification requirements.

Annex C

Briefing Paper for the Justice Committee: Amendment to Assets Recovery Law

Assets Recovery

Overview

C.1 It is proposed to introduce an amendment to the Justice Bill at Consideration Stage to give the Department the power, with the consent of the Department of Finance and Personnel, to allocate the proceeds of criminal assets remitted to the NI Consolidated Fund by NI Courts to prevent crime and reduce the fear of crime and to support the recovery of criminal assets.

C.2 The need for this provision arose as a result of amendments made to Proceeds of Crime Act (POCA) 2002 and the Administration of Justice Act (NI) 1954 by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. Following devolution there is no longer authority for the proceeds from criminal confiscation orders imposed under POCA to be paid to the Home Office. Instead, the receipts of criminal confiscation orders are now remitted to the NI Consolidated Fund (NICF).

C.3 DFP is engaged with HMT to agree arrangements whereby DoJ may draw upon the proceeds of criminal confiscation receipts to the NICF up to a limit. This is in line with limits agreed for England and Wales and Scotland. In order to allocate these funds primary legislation is required to give the DOJ the authority to make payments from funds, remitted to the NICF. In the interim, DFP will give DoJ powers under the sole authority of the Budget Act to allocate a portion of the funds in 2010/11.

Proposed Amendment to the Justice Bill

C.4 It is proposed that a clause is now included in the Justice Bill which gives the DOJ the power to allocate criminal assets up to a limit to be agreed between DFP and HMT to prevent crime and reduce the fear of crime and to support the recovery of criminal assets.

C.5 The text of the amendment is provided at the end of this paper.

Costs

C.6 There are no additional costs associated with the implementation of this provision whereas the amendment will give the Department access to additional funds previously received by the Home Office. It is difficult to beprecise about the funds involved as the assets recovery process is unpredictable, but, it estimated that the value of criminal confiscation receipts in the current financial year will be around £2.8m. Heretofore half of any such receipts have been retained by the Home Office and the remaining half returned to agencies responsible for their recovery.

C.7 The Department of Finance and Personnel has given approval for the Department of Justice to allocate the 50% of receipts that agencies would have received under the Home Office incentivisation arrangements until suchtimes as DFP reach agreement with HMT on the funds that may be allocated to the DoJ. On current estimates this would bring £1.4m additional funding to DoJ for 2010/11.

Human Rights Issues

C.8 The proposed provisions have been screened and are considered to be Convention compliant.

Equality Impact Assessment

C.9 We have considered the possible equality impacts and the provision has been screened out. The provision has not been consulted upon outside Govt and the relevant agencies as it is a technical adjustment to ensure that a problem with existing arrangements is rectified.

Regulatory Impact Assessment

C.10 No direct costs will be created for the private or voluntary sectors.

Legislative Competence

C.11 It is the Minister's view that the proposed clauses are within the legislative competence of the Northern Ireland Assembly.

Secretary of State Consent

C.12 Not applicable.

Drafted Amendment

New clause

After clause 94 insert—

'Power of Department of Justice to make payments in relation to prevention of crime, etc

'94A.—(1) The Department of Justice may, with the consent of the Department of Finance and Personnel, make such payments or grants to such persons as the Department of Justice considers appropriate in connection with measures intended to—

(a) prevent crime or reduce the fear of crime; or

(b) support the recovery of criminal assets and proceeds of crime.

(2) A grant under subsection (1) may be made on such conditions as the Department of Justice may, with the consent of the Department of Finance and Personnel, determine.'

Clause 107, page 62, line 7, at end add 'or (Power of Department of Justice to make payments in relation to prevention of crime, etc)'

Further Information on PCSPs

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Our ref: JCP\11\26
Mrs Christine Darrah

Committee Clerk
Committee for Justice
Northern Ireland Assembly
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26 January 2011

Dear Christine,

Justice Bill – PCSPs – Information requested by Committee

On foot of the Committee evidence session relating to Policing and Community Safety Partnerships (PCSPs) held on 16 December, I am writing to provide the additional information requested by Committee members.

Please find attached the following:

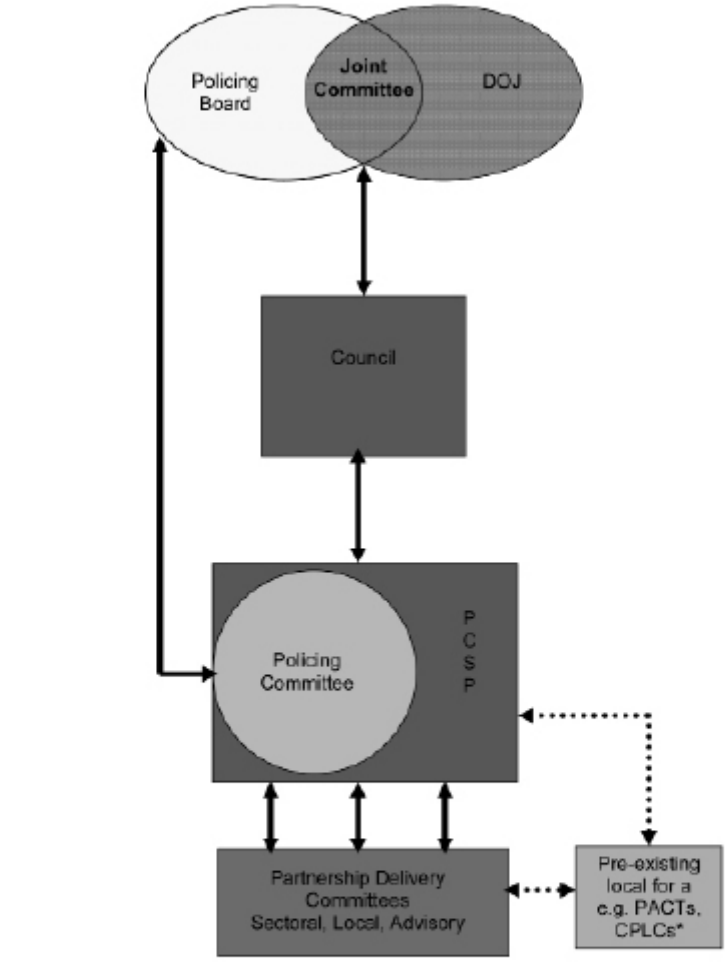
- Diagram of the local partnership working model, amended to take cognisance of the role of other pre-existing bodies, such as Partners and Communities Together (PACTs) and Community Police Liaison Committees (CPLCs) (Annex A);
- Details of allowances and expenses paid to members of DPPs (Annex B);
- Details of allowances and expenses paid to members of CSPs (Annex C); and
- Information on allowances for DPP members is broken down by elected and independent members (Annex D)

It is not possible to provide a similar breakdown on DPP member's expenses, as the information is not available.

I would be grateful if you could bring this information to the attention of the Committee.

Jane Holmes
DALO

Annex A



It is anticipated that relevant pre-existing groups/fora working at a community level will have informal linkages with PCSPs through the PCSPs' engagement activity and through the involvement of other organisations, including PSNI. Information and concerns will be fed back as appropriate.

Annex B

Allowances for DPP members in 09/10

- Political and independent members are paid the same allowances (see Annex A).
- 75% of this is paid by the Northern Ireland Policing Board (NIPB) and the remaining 25% by the relevant council.

Political	Independent
£789,000	£632,000

Expenses for DPP members in 09/10

- Breakdown of expenses by political and independent members is not available.
- Total expenditure on expenses for 2009/10 was £68,700.
- It is assumed that most of this expenditure relates to mileage claims and car parking.

Annex C

Allowances and expenses for CSP members

- The Department does not pay allowances or expenses to any CSP members.

Annex D

Standard Annual Allowances for DPP Members

All DPPs except Belfast	**Annual Allowances £**
Chair	5,040
Vice Chair	3,780
Member	2,520
Belfast DPP and Belfast Sub-Groups	
Chair	5,040
Vice Chair	3,780
Member	2,520
Enhancements for secondary role on Belfast DPP or Belfast Sub-Groups For Belfast Members who are on both the Belfast DPP and one or more Belfast Sub-Group an enhancement will be paid for their secondary role. The total DPP annual allowance should be calculated based firstly on the higher allowance then adding the enhancement for the lower allowance. Only one enhancement is payable per member.	
Chair	1,860
Vice Chair	1,400
Member	930

PCSPs - Bodies which may be considered for designation

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26 January 2011

Dear Christine

Justice Bill – Policing and Community Safety Partnerships – Bodies which may be Considered for Designation

On foot of the Committee's consideration of the schedules of the Bill relating to Policing and Community Safety Partnerships (PCSPs) held on 20 January, I am writing to provide a list of bodies that may be considered for designation onto PCSPs/DPCSPs under paragraph 7 of Schedules 1 and 2 of the Bill.

It should be noted that this list (Annex A), compiled by Departmental officials, is provisional and only intended to provide a flavour of what types of organisations may be designated. The Committee will have received a proposed amendment which provides for designation of certain bodies who will compulsorily sit on PCSPs. This allows for compulsory designation only after comprehensive consultation with all PCSPs.

Policing Policy and Strategy Division are happy to provide further information or clarity as required.

I would be grateful if you would bring this matter to the attention of the Justice Committee

Jane Holmes
DALO
Department of Justice

Annex A

Bodies which may be Considered for Designation

Suggested List Only

Most desirable

- PSNI
- NIHE
- Councils
- Youth Justice Agency

Desirable

- Education and Library Boards (e.g. Youth Service)
- Health and Social Care Trusts (e.g. Alcohol and Drug Co-ordination Teams)
- DSD (e.g. Neighbourhood Renewal)
- Probation Board

Possible

- DRD Roads Service
- NI Fire & Rescue Service

PCSPs Notice of Amendments

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Our ref: JCP\11\25
Mrs Christine Darrah

Committee Clerk
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26 January 2011

Dear Christine,

Justice Bill – PCSPs – Proposed amendments

On foot of the Committee's consideration of the schedules of the Bill relating to Policing and Community Safety Partnerships (PCSPs) held on 20 January, I am writing to provide detail on the amendments which the Minister will be putting forward for the Committee's consideration on Thursday 27th January.

Please find enclosed information for the Committee on, and drafts of, the following proposed amendments:

- Part 3, clause 34 – Duty on public bodies;
- Schedule 1, paragraph 4 (12); Schedule 2, paragraph 4 (11) – Expenses;
- Schedules 1 and 2, paragraph 7 – Representatives of designated organisations; and
- Schedules 1 and 2, paragraph 17 – Finance.

In terms of costs, the amendment making firm the commitment to the provision of funding to the partnerships will not be of additional cost as this funding has already been anticipated.

The Committee should be aware that the extension of the ability of councils to pay expenses to all members could increase costs. However, this is expected to be significantly less than is currently paid out to DPP members in allowances and expenses (£1.5 million).

These amendments have no human rights, impact assessment or competence issues.

Policing Policy and Strategy Division are happy to provide further information or clarity as required.

Jane Holmes
Departmental Assembly Liaison Officer

Briefing Paper for the Justice Committee: Amendments to Policing and Community Safety Partnerships

Part 3, clause 34 – Duty on public bodies

The Executive and the Committee had expressed a number of concerns focusing on the wide scope of this clause and the potential for legal action. We have endeavoured to address these concerns through the following amendments:

- Removal of the wider, more general, requirement for a body to '...do all that it reasonably can to enhance community safety';
- Limiting of the number of bodies impacted by the clause to those who will be prescribed by the Department through regulations; and
- Strengthening of the requirement for consultation with other Departments prior to the issue of guidance on the clause – this aims to ensure the practical implications for Departments are addressed and that they have adequate opportunity to feed into the guidance. This guidance will, amongst other things, address how the duty may be fulfilled in the most proportionate way for an organisation in the delivery of its functions.

Leave out clause 34 and insert —

'Duty on prescribed public bodies to consider crime and community safety implications in exercising functions

34.— (1) A prescribed public body must exercise its functions in relation to any community with due regard to the likely effect of the exercise of those functions on crime and other antisocial behaviour in that community.

(2) In deciding how to comply with the duty in subsection (1), a prescribed public body must have regard to any guidance which is issued by the Department.

(3) In this section—

"prescribed" means prescribed by regulations made by the Department;

"public body" means—

(a) a Northern Ireland department; and

(b) a body listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7).

(4) The Department of Justice must consult all the other Northern Ireland departments before it—

(a) issues any guidance under subsection (2); or

(b) makes any regulations under subsection (3).'

Schedule 1, paragraph 4 (12); Schedule 2, paragraph 4 (11) – Expenses

Both the Committee and stakeholders raised concerns over the provision to pay expenses to independent members of the new partnerships but not to elected members or representatives of designated organisations.

The above sub-paragraphs have now been removed and a new paragraph providing for the payment of expenses to all members of Policing and Community Safety Partnerships (PCSPs) has been inserted. This aims to give the councils scope to pay expenses to all members who do not receive them from their own organisation.

Schedule 1, page 70, line 19, at end insert –

'Expenses

16A. The council may pay to members of a PCSP such expenses as the council may determine.'

Schedule 2, page 79, line 21, at end insert –

'Expenses

16A. The council may pay to members of a DPCSP such expenses as the council may determine.'

Schedules 1 and 2, paragraph 7 – Representatives of designated organisations

Both the Committee and a number of stakeholders felt it would be useful to designate certain organisations which would be represented on all PCSPs. We are currently looking at a provisional list of organisations which could be designated and will forward this to the Committee as soon as it is available.

The amendment below reflects the desire to see certain organisations designated without this appearing on the face of the Bill, as such organisations may be subject to change.

Schedule 1, page 66, line 4, at end insert—

'(2A) The joint committee may, after consulting all PCSPs—

(a) designate organisations for the purposes of this paragraph;

(b) at any time revoke such a designation.

(2B) A designation under sub-paragraph (2A) has effect in relation to all PCSPs.'

Schedule 1, page 66, line 5, after 'PCSP' insert 'or by the joint committee'

Schedule 2, page 74, line 36, at end insert—

'(2A) The joint committee may, after consulting all DPCSPs—

(a) designate organisations for the purposes of this paragraph;

(b) at any time revoke such a designation.

(2B) A designation under sub-paragraph (2A) has effect in relation to all DPCSPs.'

Schedule 2, page 74, line 37, after 'DPCSP' insert 'or by the joint committee'

Schedules 1 and 2, paragraph 17 – Finance

As the scrutiny of the Bill has progressed, the need to clarify the means of funding for PCSPs has arisen. Therefore we propose amending this section as follows:

- Replacing 'may...make to the council a grant' with 'shall', to ensure that the Department and the Policing Board's commitment to funding the PCSPs is conveyed; and
- Including further detail on the actual mechanism for funding PCSPs – we intend to allow provision of a grant in advance of spend, rather than retrospectively.

Schedule 1, page 70, line 21, leave out paragraph 17 and insert—

'17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with PCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions, as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Schedule 2, page 79, line 23, leave out paragraph 17 and insert—

'17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with DPCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions, as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Further Information on Clause 14

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27 January 2011

Dear Christine

Justice Bill: Clause 14 – Live Links and Advocates

During the Committee's formal consideration of Part 2 of the Justice Bill, a question was posed in relation to Clause 14. The proposal was for the insertion of a statutory requirement for advocates to be present in live links involving mentally disordered offenders. Clause 14 extends existing live link provisions into hospitals for patients detained under Part 3 of the Mental Heath (NI) Order 1986. Officials undertook to provide further information on this proposal to allow the Committee to conclude its assessment of the Clause.

It may be helpful first of all to outline the arrangements that currently exist in this area. In operational terms mental health patients receive specialist support from Multi Disciplinary Teams including their personal Consultant Psychiatrist (RMO), case coordinator, assigned key worker, nurses and counsellors. Where possible the Team encourages personal support for the patient from their friends and family; views on key decisions are invited from parents or other family members; and they are always encouraged to attend case conference meetings. Shannon Clinic, for example, already has a patient advocate service who can accompany patients to court.

As a consequence of Clause 14 proposals, arrangements will also be in place for assistance to be provided at a live link. This will include the patient's nurse with the RMO also being on site. (RMOs do not typically accompany a patient to court so on site access will be an enhancement.) Shannon's advocacy service will also be available.

The patient will also be able to remain in the hospital location without the difficulties around travel and escorting to court. More generally, our letter in December advised the Committee of the wide range of third party services already provided across the justice system.

The Committee can be assured that arrangements are therefore in place for the support of mentally disordered offenders giving evidence by live links. To put a requirement for an advocate on the face of the Bill would however present a number of challenges. Clause 14 inserts text into the definitional section of live links law more generally which then applies to live links at all preliminary and sentencing hearings; the effect of this approach could be to create a statutory requirement for advocates in all live links proceedings. There are issues about the definition of "advocate" and further consultation with representative groups would be needed. We will however commit to ensuring that a letter of guidance issues to RMOs about support in live links, underpinning the arrangements described above, and to monitoring the impact of clauses 12 and 14 as they are rolled out.

I should also mention that advocacy provisions is an issue that the Bamford project led by DHSSPS has been considering with a view to legislating on behalf of mental health patients more generally. The Department has been closely engaged in that project and will continue to take the proposal forward in the wider mental health context. In closing, it may be worth recalling, alongside the benefits for patients, the considerable procedural gains of the introduction of live links to psychiatric hospitals. Typically patients are escorted to the courts normally by between 1-3 professional nurses. Hospital transport - an ambulance and a driver- is also needed and while these nurse/ambulance/driver resources are being used, they are not available to the health service for their primary roles. Including travel and waiting time at the courts, staff are often away from their place of work for 4-8 hours.

Live links into psychiatric hospital will be, we believe, an important step forward for patients, for carers, and for the justice and health systems more generally.

I trust that the Committee finds this helpful.

Jane Holmes
DALO
Department of Justice

Notice of Amendments - Sports Law

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28 January 2011

Dear Christine

Justice Bill - Sports Law Amendments

As the Committee is aware the Department has been drafting a number of amendments to the Justice Bill and I am now pleased to send you the attached paper which outlines our amendments to Part 4 (sports law).

The amendments have been put forward by the Minister following representations by the three sports and after your evidence session. The amendments make the following changes:

- reduce the period during which the powers would apply to regulated matches by half;
- provide greater clarity around missile throwing at regulated matches focusing on items that are likely to cause injury;
- include reference to "sectarian" in the chanting and disorder provisions;

- include a power of affirmative resolution to commence alcohol in grounds provisions on a sport by sport basis;
- remove the restrictions on alcohol on vehicles travelling away from a game leaving them as only offences on the way to a match;
- remove the offence of being drunk on a vehicle;
- remove the ticket touting clause; and
- remove the "stand certificate" means of engaging the provisions to GAA and rugby matches.

Annex A provides the text of these amendments.

Officials also gave the Committee an undertaking that the Minister would consider the inclusion of "laser pens" within Clause 40 (possession of fireworks, flares etc) and, arising specifically from the meeting on 25 January, that he would consider some means of reflecting "missiles" in a more specific way than a simple reference to "anything".

On laser pens our research has established that inclusion in law could be difficult to achieve. The simple insertion of "laser pen" would result in the need for a legal definition – a matter that would not fall solely or simply to Department of Justice assessment. We know that such pens are specifically graded into a range of Classes, some of which are not harmful at all, and other which are more hazardous. Classification and sales are by BSI standards with guidance from the Health Protection Agency whose Radiation and Protection Division advises the DTI. (Our own equivalents would be the Health and Safety Executive and DETI.)

Laser pen control and use is therefore quite complex; legislatively difficult; more scientific than might be assumed; and is a cross-cutting issue sitting in a wider health and safety context. The Minister does recognise however the problems these pens can cause and will take the issue forward with relevant Departments. This would permit a future and more rounded resolution. If the provisions were to be approved by the Assembly, he will also ensure that the importance of controlling such devices at sports grounds in particular is recognised. To include it in statute at this stage would however be difficult.

With regard to missile throwing we recognise the value in creating a construction that might more accurately target the type of missile thrown and have been looking at ways to sharpen things up. We are now pleased to include in our list of amendments (above) a provision in Clause 37 for missiles to be those likely to cause injury. The attached paper contains details of the draft amendments with background information. Officials will be available at the formal consideration stage on the 1st to answer any queries they may have.

I am also able to now provide you with a copy of the letter of support for the sports package and the amendments that the Minister has recently received from the Culture Arts and Leisure Minister (Annex B). I also provide a copy of the letter we received from the IFA and AONISC on the proposals as a result of a meeting Mr McCausland held with them (Annex C). The Minister has separately thanked Mr. McCausland for his help and support in developing and agreeing the legislative plans.

I trust the Committee finds this helpful in their consideration of the Bill.

Jane Holmes
DALO
Department of Justice

Briefing Paper for the Justice Committee on the Department's Amendments

1. Introduction

1.1 The Minister of Justice is now able to provide the Committee with his proposed amendments to the sports law provisions of the Justice Bill. All three sports have been included in meetings at Ministerial level (be that with the Minister of Justice or the Minister of Culture, Arts and Leisure) to discuss these provisions. A number of the amendments were also drafted following the Committee's discussions or from evidence received by the Committee.

1.2 The provisions for new sports laws are aimed at promoting safety and preventing and tackling violence and disorder at certain major sports grounds and fixtures. They complement the ground safety measures established by the Department of Culture, Arts and Leisure through the Safety of Sports Grounds (NI) Order 2006. Their main focus is on helping to support clubs and sports authorities in establishing a welcoming, safe environment for all spectators at major sports events.

1.3 These provisions have been drafted in consultation with the Department of Culture, Arts and Leisure as well as the bodies representing the three sports. These amendments build on this consultation and take into consideration further representations from the official bodies (Ulster Rugby, GAA and IFA) as well as football supports (Amalgamation of Official Northern Ireland Supporter Clubs).

2. Time period of regulated matches

2.1 Representations from the IFA and AONISC indicated they had concerns about the proposed periods around which powers would be applied to regulated matches. They thought that the "two hours before/one hour after" model should be substantially reduced. The Minister has listened to these concerns and agrees that the times should be halved. The proposed amendment drafts for the period of a regulated match to be one hour before the start and thirty minutes after the finish.

Clause 36, page 25, line 26, leave out paragraph (c)

Clause 36, page 25, line 32, leave out from 'two hours before' to end of line and insert 'one

hour before the start of the match or (if earlier) one hour'

Clause 36, page 25, line 34, leave out 'one hour' and insert '30 minutes'

Clause 36, page 25, line 38, leave out 'two hours' and insert 'one hour'

Clause 36, page 25, line 39, leave out 'one hour' and insert '30 minutes'

3. Missiles

3.1 Members of the Committee expressed concerns about the lack of detail around the Clause 37 "missile throwing". As drafted the provision included anything that could be thrown onto the pitch. In light of the Committee's views the Clause will be amended to focus more on those items likely to cause injury.

Clause 37, page 26, line 8, leave out 'anything' and insert 'any object to which this subsection applies'

Clause 37, page 26, line 13, at end insert—

'(1A) Subsection (1) applies to any object which, if thrown as mentioned in that subsection, would be likely to cause injury to any person who may be struck by the object.'

4. Sectarianism

4.1 Members of the Committee have expressed concerns that the Bill was not addressing sectarianism in sport. Whilst the drafting of the Bill covered sectarianism under its more general definition in the chanting clause it was agree that sectarianism should be more explicitly covered. Therefore the Minister proposes to add sectarianism to the "chanting" and "disorder" provisions.

Clause 38, page 26, line 22, leave out 'an' and insert 'a sectarian or'

Clause 38, page 26, line 25, leave out 'religious belief'

Clause 38, page 26, line 26, at end insert—

'(3A) For the purposes of this section chanting is of a sectarian nature if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion or against an individual as a member of such a group.'

Clause 49, page 33, line 6 after 'up' insert 'sectarian hatred or'

Clause 49, page 33, line 8, leave out 'religious belief'

Clause 49, page 33, line 14, leave out subsection (3) and insert—

'(3) For the purposes of this section sectarian hatred is hatred against a group of persons defined by reference to religious belief or political opinion.'

5. Alcohol in grounds

5.1 Ulster Rugby made particular representations about these provisions, stating that alcohol consumption at matches was not a problem in their sport and that it would affect club revenue and sponsorship. SportNI felt that these provisions should be applied in a flexible way. Whilst the clauses were always drafted to allow varying application to different sports the Minister now proposes to amend the commencement of this clause to be subject to affirmative procedure and require full Assembly consent.

5.2 This amendment is achieved by changing the commencement provisions in clause 103.

Clause 103, page 61, line 18, leave out 'and' and insert 'to'

Clause 103, page 61, line 23, at end insert—

'(3A) No order may be made under section 107(3) bringing into operation any provision of section 43 unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

6. Alcohol on vehicles

6.1 The IFA and AONISC believe that any form of vehicular transport used to carry football fans to and from regulated football matches should be removed from the totality of clause 44. They believe that sufficient deterrent already exists through current regulations. However GAA were highly supportive of these provisions hoping they would help cut down on organised "booze buses" used to transport fans to and from matches. The Minister has considered both parties points and feel that the solution is to restrict the clause to only provide for an offence of consuming alcohol on a specified vehicle for journeys to a designated match.

6.2 The offence of being drunk on specified vehicle is removed entirely.

Clause 44, page 28, line 32, leave out 'or from'

Clause 44, page 29, line 6, leave out subsection (5)

Clause 44, page 29, line 15, leave out paragraph (c)

7. Ticket Touting

7.1 The IFA and AONISC gave representations that the provisions outlined in clause 45, which are intended to deal with breaches of crowd segregation, are not appropriate to the context of Northern Ireland football and should be removed. Given the way football tickets for local matches are sold and distributed, they felt that "ticket touting" does not occur in Northern Ireland. Access to tickets is, in the main, unrestricted and they believe that the legislation will be superfluous.

7.2 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 have made 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.

7.3 Any additional segregation issues in relation to matches where there may be potential for disorder will be dealt with on a match-by-match basis by the police, football authorities and the clubs concerned.

7.4 The Minister welcomes the IFAs suggestion that they can control the sale of tickets appropriately using regulations. In light of this the Minister is withdrawing the ticket touting provisions.

Clause 45

The Minister of Justice gives notice of his intention to oppose the question that clause 45 stand part of the Bill

8. Regulated matches in grounds with a "stand certificate"

8.1 GAA requested the removal of sports grounds at which there is a stand requiring a safety certificate. Therefore the provisions would only apply to matches played at designated grounds.

This is also be a means of ensuring that in future, junior soccer would not be caught, therefore the Minister agrees and has drafted the appropriate amendment to Schedule 3.

Schedule 3, page 81, line 7, leave out from 'or' to end of line 9

Schedule 3, page 81, line 19, leave out from 'or' to end of line 21

9. Consultation, costs, impact assessments and competence

9.1 These provisions do not alter the scope of the sports law provisions. Therefore the information provided to the Committee on these clauses about cost and assessments still stands. For ease of reference the information is repeated here.

9.2 The proposals for sports and spectator controls were publicly consulted upon in 2009/10. The proposals were developed with the Department of Culture Arts and Leisure, with the assistance of DSD, DoE and DRD (in connection with specific proposals in relation to alcohol access, transport and consumption). 13 responses were received including responses from each of the three main sports concerned – GAA, rugby and football – with broad support for the package. Adjustments were made to permit flexibility in the application of the banning of alcohol in sight of pitches; simplifying the types of private hire vehicle in which alcohol would be barred; and specifically banning fireworks at matches.

9.3 In relation to costs there is likely to be a small increase to police in the administration of a small number of football banning orders – perhaps only 20 or so per annum in the short to medium term. This cost will be met from within existing budgets. In the long run the compliance of spectators with the new legislation may actual result in a saving.

9.4 In terms of equality impacts, the sports law provision have been screened out as not having an adverse impact on any of the Section 75 categories in the Northern Ireland Act 1998. From the consultation exercises however one specific issue was raised. A view was expressed that football spectators were largely from the Protestant community and would be adversely affected. Our view is that the sports package as a whole addresses each main community sport – GAA, rugby and football – and as such affects all groupings not just one.

9.5 In terms of human rights assessment the proposals have been screened and are considered to be Convention compliant and in terms of Regulatory Impact, no direct costs will be created for the private or voluntary sectors. The amendments have been shared with the Attorney for his confirmation on compliance. Secretary of State consent is not required for these provisions.

10. Conclusion

10.1 These amendments are being proposed by the Minister of Justice to Part 4 of the Justice Bill. Subject to the Committee's discussions the Minister intends to table these at Consideration Stage.

FROM THE MINISTER

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COR/25/2011

21 January 2011

David Ford MLA
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Dear David,

SPORTS LAW PROVISIONS IN JUSTICE BILL

Thank you for your letter of 18 January 2011 advising me of the way forward that you now propose to put to the Northern Ireland Assembly's Justice Committee on the sports provisions of the Justice Bill.

I was very happy to host the meeting with the IFA and the Amalgamation of Official Northern Ireland Supporters' Clubs (AONISC) that resulted in the notes and joint paper from them you mention. As you know I have always supported the introduction of appropriate sports related criminal justice legislation into Northern Ireland and was therefore delighted to receive, at my meeting with the IFA and AONISC in December, first hand confirmation from them that they support the majority of the measures proposed in the Justice Bill

It is clear from our discussions prior to Christmas, and your letter, that in taking forward the Justice Bill you are endeavouring to take account of sports' views. This is most welcome and very important in ensuring that we get suitable and effective legislation. I also think it is right that those measures, over which there is clearly no dispute within sport, should be retained in the Bill.

The way forward you now propose in relation to the outstanding issues seems sensible and pragmatic in the circumstances. I would therefore be happy to endorse the approach you outline at this stage. I also accept that the nature of the competency questions previously raised in respect to banning orders (which are not representative of sport's views) mean that it is not currently feasible for you to look to extend these to reciprocal arrangements and a civil route. I am pleased and grateful, however, to learn that you are committed to exploring what could be done in relation to this after the current Bill.

Again I am happy to support you in that process wherever possible. I am also sure that both the IFA and the AONISC will welcome this assurance.

I trust you find this helpful.

Yours sincerely,

Nelson M'Causland

NELSON McCAUSLAND MLA
Minister of Culture, Arts and Leisure

Justice Bill – Football Spectator Controls

1. The Irish Football Association (IFA) and the Amalgamation of Official Northern Ireland Supporters Clubs (AONISC) met with the Minister for Culture, Arts and Leisure, to discuss the proposed spectator legislation contained with the Justice Bill on 9th December 2010. In order to facilitate the progress of this piece of legislation, the Minister asked the IFA and AONISC to formulate an agreed position on Clause 44 (Offences in connection with alcohol on vehicles), Clause 45 (Sale of tickets by unauthorised persons) and Clause 45 (Banning Orders in relation to regulated matches). This position is outlined below and has been endorsed by the IFA and AONISC.

Clause 44 - Offences in connection with alcohol on vehicles

2. The IFA and AONISC believe that any form of vehicular transport used to carry football fans to and from regulated football matches should be removed from the totality of Clause 44.

3. The IFA and AONISC believe that sufficient deterrent already exists through *Regulation 51(1) (k) of the Public Service Vehicles Regulations (NI) 1985. No. 123 as inserted by Regulations 47 (13) (a) of the Public Service Vehicles (Amendment) Regulations (NI) 1990 No.201.* It is our understanding that under these Regulations, while a Public Service Vehicle (PSV) is standing, plying or carrying passengers for hire, any

passenger shall not consume alcohol. A PSV vehicle is defined as a vehicle carrying 9 or more passengers, not including the driver, for hire or reward, or a smaller vehicle that carries passengers where 'separate fares' are charged in the course of a passenger carrying business.

4. The IFA and the AONISC wish to ensure that all spectators attending any football match in Northern Ireland arrives at the venue in a fit state to enjoy the match. The IFA and the AONISC believe there is no place in football for any spectator who is drunk, disorderly and has the potential to be engaged in anti-social behaviour. The IFA and the AONISC unanimously believe that where alcohol is being carried on a bus, it is likely that consumption will occur; persons hoping to attend a football match and engaging in this practice are already breaking the law. Therefore, the need for a bespoke offence appears unnecessary.

5. If it is perceived that drinking on buses to and from matches is a significant issue, both parties would call on the Police Service of Northern Ireland to use the existing legislation, in order to prosecute offenders.

Clause 45 - Sale of tickets by unauthorised persons

6. The IFA and AONISC believe that the provisions outlined in Clause 45, which are intended to deal with breaches of crowd segregation, are not appropriate to the context of Northern Ireland football and should be removed. Given the way football tickets for local matches are sold and distributed, it is arguable that "ticket touting" does not occur in Northern Ireland. Access to tickets is, in the main, unrestricted and we believe that the legislation will be superfluous.

7. 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.

8. Any additional segregation issues in relation to matches where there may be potential for disorder will be dealt with on a match-by-match basis by the police, football authorities and the clubs concerned.

9. It should be noted that there is no correlation between the requirement for segregation at matches and the sale of tickets. Some matches for which tickets are sold do not involve segregation, and entrance to some matches requiring segregation is by cash and not ticket. Therefore any perceived problem in relation to segregation cannot be tackled by legislation which relates only to the sale of tickets.

Clause 45 – Banning Orders in relation to Regulated Matches

10. The IFA and the AONISC welcome the proposals to introduce Banning orders as drafted in the Justice Bill. After careful consideration and discussion, the AONISC would support the amendment suggested by the IFA to include arrangements to enforce Banning Orders imposed in England, Scotland and Wales in Northern Ireland. The IFA and the AONISC believe that any person subject to a banning order elsewhere in the UK should not be allowed to attend football matches in Northern Ireland. Likewise, if a person is subject to a banning order in Northern Ireland, the IFA and the AONISC would argue that they should not be allowed to attend matches in England, Scotland or Wales.

11. The IFA and the AONISC are aware that their may be potential incidents where persons attending football matches are involved in anti-social behaviour that does not result in a criminal conviction. Under the proposed Bill, these persons would not receive a banning order. The IFA and AONISC believe that any persons who have been engaged in any form of anti-social behaviour at football matches are not welcome at any Northern Ireland football ground.

12. The IFA have proposed to examine this issue and formulate a voluntary and reciprocal code of conduct to govern admission to the grounds of Member Clubs. The purpose of this would be to ensure that any persons who are barred from attending the home ground of a Member Club by the Club themselves are also barred from attending matches at any other Member Club.

13. The AONISC believe in the concept of self regulation and enforcement; the AONISC would support any code of conduct developed by the IFA and Clubs. However, the AONISC are mindful that the IFA see significant merit in including provisions to formulate a civil banning order route in the Justice Bill. The AONISC would therefore support the IFA's call for legislation to cover a civil banning order route. Both parties have agreed that any amended legislation covering civil banning orders should be subject to a Commencement Order and only enacted following consultation and on the basis of a clear and recognised need to utilise these powers.

January 2011

Amendments and Delegated Powers

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Christine Darrah
Committee Clerk
Committee for Justice
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Dear Christine

Justice Bill - Amendments and Delegated Powers

As the Committee will be aware, the Minister has previously indicated his intention to bring forward provisions in the Justice Bill relating to solicitor's rights of audience. This issue had not been resolved in time for the Bill's introduction into the Assembly. The Minister advised the Committee that he proposed to introduce it by way of amendment at Consideration Stage.

The Minister is now pleased to advise that this proposed amendment has been drafted for the Committee's consideration. A paper on the amendment to provide solicitors with extended rights of audience in the High Court and Court of Appeal in Northern Ireland is at Annex A. Subject to the Committee's considerations the Minister intends to table these at Consideration Stage.

There are also two other small amendments the Minister wishes to bring to the Committee's attention. These are the amendments to clauses 96 and 97 which were previously suggested by the Committee during their consideration of the Bill. The amendments would ensure that the necessary qualifications of the Attorney's nominee(s) on the rules committees were specified in similar manner to those of the other members. Further details of these amendments are at Annex B.

The Minister has also had the opportunity to consider the letter you issued on behalf of the Committee on 21 January regarding the delegated powers contained in the Justice Bill. We note the Committees request for the powers contained within clauses 82(5), 85(2) and 89(2) to be subject to draft affirmative procedure.

Clause 82 currently makes provision for the mandatory production of a Code of Practice in relation to the use of conditional cautions; provides that it may not be published or amended without the consent of the Attorney General; and, once that consent is received, provides that it will be laid before the Assembly and brought into operation by order. The Minister is content that the Code of Practice should be subject to the affirmative procedure. The draft amendment to this clause is at Annex C for your consideration.

For clauses 85(2) and 89(2) however, which contain powers around criminal legal aid regulations, the Minister would have concerns about the recommendation at this stage. Currently, legal aid regulations cover a myriad of situations, and the insertion of an affirmative procedure at this stage and in one specific context, could have wider knockon effects. Every adjustment, no matter how minor, would require debate on the floor of the House; consideration would need to be given to all other legal aid procedures; and the structure of the regulations themselves, as we understand from the draftsman, would need to be unpicked and re-written.

Given the structure of the legal aid regulations system, and the time available to us, it would be all but impossible to separate out individual strands to make them subject to a different procedure than the rest. The Minister takes the view that in the circumstances he is minded not to follow the Examiner's view on Clauses 85(2) and 89(2) at this stage.

The Minister does however undertake to consider the recommendation with a view to assessing Assembly control procedures around legal aid regulations more generally.

Departmental officials are available to present these amendments to the Committee and answer any queries they may have. I understand that this may be Thursday 3rd February.

I trust the Committee finds this helpful in their consideration of the Bill.

Jane Holmes

DALO
Department of Justice

Annex A

Briefing Paper for the Justice Committee: Solicitors' Rights of Audience

Overview

A.1 The Justice Minister had previously indicated his intention to bring forward provisions in the Justice Bill extending solicitors' rights of audience in the High Court and Court of Appeal in Northern Ireland.

A.2 Some issues had not been resolved in time for the Bill's Introduction into the Assembly. Therefore, the Minister advised the Committee that he proposed – subject to the resolution of these issues– to introduce the provisions by way of amendment at Consideration Stage.

A.3 The Department has engaged with key stakeholders and worked closely with the Attorney General in developing these provisions.

Background

A.4 Presently solicitors in Northern Ireland enjoy unlimited rights of audience in the Crown Court, County Courts, Magistrates' Courts and tribunals. There are, however, restrictions placed on solicitors appearing in the High Court and the Court of Appeal, where effectively they may only appear in an insolvency matter, in chambers or where counsel is unavailable. The Bain Report on the Regulation of Legal Services in Northern Ireland (November 2006) recommended that a

suitably qualified solicitor, who has undertaken the necessary advocacy course, should not be constrained from advocating in the higher courts. The Bain Report, however, also placed an important caveat on this recommendation, namely that a solicitor should be obliged to make clear to the client where any additional fees would be earned by that solicitor for providing such representation and that there was an alternative option of using a barrister.

A.5 The clauses are intended to give effect to the recommendation to extend solicitors' rights of audience in the High Court and the Court of Appeal. It is considered that this will give the public a wider choice in legal representation and enhance the provision of legal services in Northern Ireland.

A.6 The clauses contain provision designed to ensure that the standard of advocacy in the higher courts is maintained. They create a system of authorisation by the Law Society for solicitors wishing to exercise rights of audience in the High Court and Court of Appeal and require the Law Society to make regulations setting the education, training or experience requirements which a solicitor must meet before authorisation can be granted. In addition to the concurrence of Lord Chief Justice, these Law Society regulations will also require the concurrence of the Department, given after consultation with the Attorney General.

A.7 Solicitors have direct access to the public, while the Bar is a referral profession which relies on instructions from solicitors. The clauses, therefore, also contain a range of safeguards which are designed to ensure that competition for advocacy services is maintained, and conflicts of interest prevented. These safeguards include the creation of a duty for a solicitor to advise the client in writing of the options available for representation in the High Court and Court of Appeal; a duty to act in the best interests of the client when providing this advice and to give effect to the decision of the client; and a duty to inform the Court that the client has been advised accordingly. The Law Society is required to make regulations setting out the detail of the advice which a solicitor must provide their client. Again, in addition to the concurrence of Lord Chief Justice, these Law Society regulations will also require the concurrence of the Department, given after consultation with the Attorney General. Provision is also made to ensure that a complaint can be made to the Solicitors' Disciplinary Tribunal where there has been an alleged breach of these requirements.

Proposed Clauses: Solicitors' Rights of Audience

New Clause: Authorisation of Society conferring additional rights of audience

A.8 This clause makes various amendments to the Solicitors (Northern Ireland) Order 1976 which are related to the granting of authorisation to solicitors by the Law Society to appear in the High Court and Court of Appeal. In summary, the effect of the clause will be that:

- A solicitor may apply to the Law Society for authorisation;
- The application for authorisation shall be made in a way, and accompanied by such fee, as the Law Society may prescribe, together with such information the Society may reasonably require;
- The Law Society is required to make regulations with regard to the education, training and experience which a solicitor must possess before authorisation can be granted. These regulations may provide that a solicitor who has already completed such training, education or experience shall be taken to hold such authorisation;

- These regulations are subject not only to the concurrence of the Lord Chief Justice but also to the concurrence of the Department which must consult with the Attorney General;
- Where a solicitor meets the prescribed training, education and experience requirements, the Law Society shall grant authorisation;
- The Law Society must maintain a register of authorised solicitors.

New Clause: Rights of audience of solicitors

A.9 This clause amends the Judicature (Northern Ireland) Act 1978 to provide that a solicitor holding authorisation shall have the same rights of audience as counsel in the High Court and Court of Appeal. It also amends the Solicitors (Northern Ireland) Order 1976 to create certain duties which will apply where a solicitor is minded to engage an authorised solicitor to represent a client in the High Court or Court of Appeal or, where he is an authorised solicitor, to provide that representation himself. Specifically, in these circumstances, a solicitor will be required to:

- advise their client in writing of the advantages and disadvantages of representation by an authorised solicitor and by counsel respectively and that the decision as to representation is entirely that of the client. The detail of the matters to be covered by this advice is to be prescribed by the Law Society in regulations. These regulations are subject not only to the concurrence of the Lord Chief Justice but to the concurrence of the Department, given after consultation with the Attorney General;
- in advising a client, to act in the best interest of the client and give effect to any decision of the client;
- inform the Court, in a way and timescale provided by court rules, that they have complied with these requirements.

If a solicitor breaches any of these duties, any person may make a complaint to the Solicitors' Disciplinary Tribunal.

A.10 This clause also makes a technical amendment to the County Courts (Northern Ireland) Order 1980 to remove a restriction which prevents a solicitor being retained by another solicitor as an advocate. A solicitor may now instruct an authorised solicitor to act on behalf of a client in the County Court.

New Clause: Consequential and supplementary provisions

A.11 This clause gives the Department an order-making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. These orders will be subject to the negative resolution procedure.

Costs

A.12 Implementing the rights of audience provisions has no cost implications for the legal aid fund.

Human Rights Issues

A.13 Proposals have been screened and are considered to be Convention compliant.

Equality Impact Assessment

A.14 The equality screening exercise carried out by the Department did not identify any section 75 issues.

A.15 The proposal was also part of the Equality Impact Assessment that issued for public consultation. Two responses on the proposals were received. The respondents welcomed the extension of solicitors' rights in the higher courts in Northern Ireland as this would give the public a wider choice of court representation. One respondent (Disability Action) commented that the proposal would particularly enhance the chance of a disabled person to have legal representation from someone who understands their disability, including any potential relevance of the disability to their case.

A.16 One respondent (the Law Society) expressed disappointment that the proposal was not included in the draft of the Justice Bill which received its first reading in the Assembly on 18th October and requested that appropriate amendments should be made to the Bill to introduce this provision before the Bill enters its final stages.

Summary of Regulatory Impact Assessment

A.17 No direct costs will be created for the private or voluntary sectors.

Secretary of State Consent

A.18 The Secretary of State's consent has been granted for an amendment to the Extradition Act 2003 (an excepted matter under paragraph 8 to Schedule 2 to the NI Act 1998). This amendment, which will be made by order of the Department, will amend section 184 of the Extradition Act 2003 (grant of free legal aid: Northern Ireland) as a consequence of the extended rights of audience provisions. The amendment will be ancillary to the substantive provision (rights of audience in the Court of Judicature) which is transferred.

FROM THE OFFICE OF THE MINISTER OF JUSTICE

Department of Justice
www.dojni.gov.uk

Drafted amendment

New Clause

After clause 91 insert—

'PART 8

SOLICITORS' RIGHTS OF AUDIENCE

Authorisation of Society conferring additional rights of audience

*.—(1) The Solicitors (Northern Ireland) Order 1976 (NI 12) is amended as follows.

(2) In Article 6 (regulations as to the education, training, etc. of persons seeking admission or having been admitted as solicitors) after paragraph (1) insert—

"(1A) The Society shall make regulations with respect to the education, training or experience to be undergone by solicitors seeking authorisation under Article 9A.".

(3) After Article 9 insert—

"Authorisation of Society conferring additional rights of audience

9A.—(1) A person who is qualified to act as a solicitor may apply to the Society for an authorisation under this Article.

(2) An application under paragraph (1)—

(a) shall be made in such manner as may be prescribed;

(b) shall be accompanied by such information as the Society may reasonably require for the purpose of determining the application; and

(c) shall be accompanied by such fee (if any) as may be prescribed.

(3) At any time after receiving the application and before determining it the Society may require the applicant to provide it with further information.

(4) The Society shall grant an authorisation under this Article if it appears to the Society, from the information furnished by the applicant and any other information it may have, that the applicant has complied with the requirements applicable to him by virtue of regulations under Article 6(1A).

(5) An authorisation granted to a person under this Article ceases to have effect if, and for so long as, that person is not qualified to act as a solicitor.

(6) The Society may by regulations provide that any person who has completed such education, training or experience as may be prescribed, before such date as may be prescribed shall be taken to hold an authorisation granted under this Article.".

(4) In Article 10 (practising certificates and register of practising solicitors) after paragraph (2C) insert—

"(2D) Every entry in the register shall include details of any authorisation granted under Article 9A to the solicitor to whom the entry relates.".

[redacted]

New Clause

After clause 91 insert—

'Rights of audience of solicitors

*.—(1) In section 106 of the Judicature (Northern Ireland) Act 1978 (rights of audience in the High Court and Court of Appeal) after subsection (3) insert—

"(3A) A solicitor who holds an authorisation under Article 9A of the Solicitors (Northern Ireland) Order 1976) shall have the same right of audience in any proceedings in the High Court or Court of Appeal as counsel in those courts and any such right is in addition to any right of audience which a solicitor would have apart from this subsection.".

(2) After Article 40 of the Solicitors (Northern Ireland) Order 1976 (NI 12) insert—

"Duty to advise client as to representation in court

40A.—(1) Paragraph (2) applies where—

(a) it appears to a solicitor that a client requires, or is likely to require, legal representation in any proceedings in the High Court or the Court of Appeal;

(b) either—

(i) that solicitor is minded to arrange for another solicitor who is an authorised solicitor to provide that representation; or

(ii) that solicitor is an authorised solicitor and is minded to provide that representation; and

(c) in representing that client in the High Court or Court of Appeal, a solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978.

(2) The solicitor shall advise the client in writing—

(a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively; and

(b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client.

(3) The Society shall make regulations with respect to the giving of advice under paragraph (2).

(4) A solicitor shall—

(a) in advising a client under paragraph (2), act in the best interest of the client; and

(b) give effect to any decision of the client referred to in paragraph (2)(b).

(5) For the purposes of this Article compliance with paragraph (2) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(6) If a solicitor contravenes this Article, any person may make a complaint in respect of the contravention to the Tribunal.

(7) In this Article and Article 40B "authorised solicitor" means a solicitor who holds an authorisation under Article 9A.

Duty to inform court as to compliance with Article 40A(2)

40B.—(1) Where—

(a) a solicitor has complied with Article 40A(2) in relation to the representation of a client in any proceedings in the High Court or Court of Appeal;

(b) that client is to be represented in those proceedings by an authorised solicitor; and

(c) in representing that client in those proceedings the authorised solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978,

the solicitor shall inform the High Court or (as the case may be) the Court of Appeal of the fact mentioned in sub-paragraph (a) in such manner and before such time as rules of court may require.

(2) For the purposes of this Article compliance with paragraph (1) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(3) If a solicitor contravenes paragraph (1), any person may make a complaint in respect of the contravention to the Tribunal.".

(3) In Article 50 of the County Courts (Northern Ireland) Order 1980 (NI 3) (rights of audience) in paragraph (1)(c) omit the words ", but not a solicitor retained as an advocate by a solicitor so acting".

New clause

After clause 91 insert—

Consequential and supplementary provisions

*.—(1) In Article 75 (regulations) of the Solicitors (Northern Ireland) Order 1976 (NI 12) after paragraph (2) insert—

"(2A) Regulations under Article 6(1A), 9A(6) or 40A(3) also require the concurrence of the Department of Justice, given after consultation with the Attorney General.

(2B) The Department of Justice shall not grant its concurrence to any regulations under Article 6(1A) or 9A(6) unless regulations have been made under Article 40A(3) and are in operation.".'

(2) The Department may by order make such amendments to—

(a) the Criminal Appeal (Northern Ireland) Act 1980;

(b) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

(c) the Access to Justice (Northern Ireland) Order 2003;

(d) section 184 of the Extradition Act 2003,

as appear to the Department to be necessary or expedient in consequence of, or for giving full effect to, the provisions of this Part.'

Schedule 7, page 87, at end insert—

FROM THE OFFICE OF THE MINISTER OF JUSTICE

'PART 4

SOLICITORS' RIGHTS OF AUDIENCE

Short Title	Extent of repeal
The County Courts (Northern Ireland) Order 1980 (NI 3).	In Article 50(1)(c), the words ", but not a solicitor retained as an advocate by a solicitor so acting".

[redacted]

Annex B

Briefing Paper for the Justice Committee: Rules Committees Membership

Amendment to clauses 96 and 97

B.1 Clause 96, as originally drafted, alters the membership of the Crown Court Rules Committee by providing that it should include a public prosecutor nominated by the Director of Public

Prosecutions and a person nominated by the Attorney General. We propose to amend the clause to specify that the Attorney's nominee shall be a practising member of the Bar or a practising solicitor.

B.2 Clause 97, as originally drafted, alters the membership of the Court of Judicature Rules Committee by providing that it should include the Attorney General or his nominee. We propose an amendment to the clause to specify that the Attorney's nominee shall be a practising member of the Bar or a practising solicitor.

B.3 These clauses have previously been considered by the Committee and the amendments are being proposed as a result of a suggestion made during that consideration that the status of the Attorney's nominee should be clarified. The amendments would ensure that the necessary qualifications of the Attorney's nominee(s) on the rules committees were specified in similar manner to those of the other members.

B.4 The clauses, as amended, do not raise any equality issues and there are no financial implications.

Drafted amendments

Clause 96, page 54, line 39, after 'Committee)' insert 'in paragraph (g) for "one other" substitute "a" '

Clause 96, page 55, line 1, leave out 'person' and insert 'practising member of the Bar of Northern Ireland or a practising solicitor'

Clause 97, page 55, line 5, after 'Committee)' insert 'in paragraph (d) for "one other" substitute "a" '

Clause 97, page 55, line 7, leave out 'person' and insert 'practising member of the Bar of Northern Ireland or a practising solicitor'

Clause 97, page 55, line 12, leave out 'person' and insert 'barrister or solicitor'

Annex C

Briefing Paper for the Justice Committee: Amendment to Conditional Cautions

Clause 82: Conditional Cautions Code of Practice

Overview

C.1 Clause 82 of the draft Justice Bill requires the Department to produce a Code of Practice in relation to conditional cautions. It specifies the provisions which it may contain and provides that the Code must be published in draft to enable representations to be made but cannot be published or amended without the consent of the Attorney General for Northern Ireland. The agreed draft must then be laid before the Assembly before being brought into force by order.

C.2 The Examiner of Statutory Rules has suggested to the Justice Committee that the order making power provided in clause 82(5) of the draft Justice Bill should be subject to the

affirmative resolution procedure, rather than the negative resolution procedure as currently drafted.

C.3 The Department had initially considered that, as the draft Code would be subject to consultation - including taking the views of the Committee - and could not be published without the consent of the Attorney General, the negative resolution procedure might provide the appropriate level of control without placing an additional burden on Assembly time. However, given the Committee's views the Minister is content that the Code of Practice should be subject to the affirmative procedure and will table an amendment to that effect.

Proposed amendment to clause 82

C.4 The proposed amendment would provide that the order which brings the Code of Practice into operation must be laid before and approved by an affirmative resolution of the Assembly. The effect of this would be to enable the Assembly to suggest possible amendments to the Code of Practice on conditional cautions rather than accepting, or praying against, the Code in its entirety.

Costs

C.5 There are no additional costs associated with the implementation of this provision but it will require additional time set aside in the Assembly's legislative programme.

Human Rights Issues

C.6 There are no human rights implications and the clause remains Convention compliant.

Equality Impact Assessment

C.7 There is no impact on equality issues.

Summary of Regulatory Impact Assessment

C.8 No costs will be created for the private or voluntary sectors.

Drafted amendment*

Clause 103, page 61, line 18, leave out 'and' and insert 'to'

Clause 103, page 61, line 23, at end insert—

'(3A) No order may be made—

(a) under section 82(5); or

(b) under section 107(3) bringing into operation any provision of section 43, unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

* This includes the amendment to the assembly control for the Sports alcohol provisions

Information on Paragraph 6 of Schedule 6

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Your ref:
Our ref: JCP\11\35

Ms Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX 1 February 2011

Dear Christine,

Justice Bill: Requested information on paragraph 6 of Schedule 6

During its meeting on 27 January the Committee queried the effect of paragraph 6 of Schedule 6 which amends Article 15(5)(a)(i) of the Criminal Evidence (Northern Ireland) Order 1999 (the 1999 Order).

Article 15(5)(a) sets out the exceptions to the general rule that where video recorded evidence has been admitted, the witness in question must be called to give evidence at court. Article 15(5)(a)(i) states a witness need not be called where they are subject to special measures direction which allows them to be cross-examined 'otherwise than by testimony in court'.

The recording of cross-examinations is provided for by Article 16 of the 1999 Order. The amendment contained in paragraph 6 of Schedule 6 replaces the wording highlighted above with a specific reference to 'any recording admissible under Article 16.'

The intention of this amendment is to clarify the law in order to make it easier to interpret and apply. Article 16 applies to both cross-examination and re-examination. However, only cross-examination is currently referred to in Article 15(5)(a)(i) which creates the potential for doubt as to whether video recorded re-examination qualifies for the exemption.

Therefore, the amendment proposed in paragraph 6 of Schedule 6 seeks to clarify the law and to put the matter beyond doubt by specifying that the exemption applies to any recording made under Article 16.

For ease of reference, the two versions are attached as an Annex.

I trust the Committee finds this helpful in their consideration of the Bill.

JANE HOLMES
DALO

Annex

The Criminal Evidence (Northern Ireland) Order 1999 Amendment to Article 15(5)(i)(a)

Article 15(5)(a)(i) – current version (emphasis added)

(5) Where a recording is admitted under this Article—

(a) the witness must be called by the party tendering it in evidence, unless —

(i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court.

Article 15(5)(a)(i) – as amended (emphasis added)

(5) Where a recording is admitted under this Article—

(a) the witness must be called by the party tendering it in evidence, unless —

(i) a special measures direction provides for the witness's evidence on cross-examination to be given in any recording admissible under Article 16.

Proposed Amendments to Assembly Procedures Applicable to Court Rules

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Your ref:
Our ref: JCP\11\28

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Dear Christine,

Justice Bill – Proposed Amendments to Assembly Procedures Applicable to Court Rules

I refer to your letter of 21 January 2011.

The Minister has had the opportunity to consider the issue raised by the Committee in relation to Assembly scrutiny of court rules and agrees it would be preferable for the same level of scrutiny to be applied to all court rules.

The proposal does, however, have implications for rules dealing with excepted matters for which the Lord Chancellor continues to exercise responsibility. The Minister has asked that the matter be raised with officials in the Ministry of Justice with a view to bringing forward the necessary changes. Given the progressed state of the Justice Bill, and timescales for the remaining stages, it is unlikely that the necessary provision can be included in that vehicle. The changes will, however, be brought forward in the next available Bill after consultations are complete.

In the interim, the Committee will wish to be assured that notwithstanding the absence of legislative provision, Magistrates' Courts and County Court rules have in practice complied with the conventions applicable to rules subject to negative resolution procedure. The Secretariat to the Rules Committee is also mindful that Departmental Committees may consider any rule dealing with a transferred matter whether or not it is subject to Assembly procedure. It has, therefore, ensured Justice Committee consultation on County Court and Magistrates Courts rules through the Rules Committee forward work programme. The Secretariat will ensure that those administrative arrangements continue until the necessary legislative provision can be made.

I trust the Committee will find this satisfactory.

Jane Holmes

DALO

Formal Consideration of Clause 34

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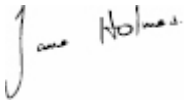
Dear Christine,

Justice Bill – PCSPs – Formal Consideration of Clause 34

I am writing to confirm that in relation to clause 34, departmental officials are currently considering the Committee's continuing concerns and intend to bring forward further proposals to address these. These will be made available to the Committee prior to its session on Tuesday 8 February, when I understand they will consider the clauses relating to Policing and Community Safety Partnerships (PCSPs).



JANE HOLMES
DALO

Consideration of an Amendment to Schedule 1, Paragraph 10

FROM THE OFFICE OF THE MINISTER OF JUSTICE

Department of
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Our ref: JCP\11\39

The Lord Morrow of Clogher Valley MLA
Chair
Committee for Justice
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BELFAST, BT4 3XX

3 February 2011

Dear Maurice

JUSTICE BILL – AMENDMENT TO PARAGRAPH 10

During the course of the consideration of Part III of the Bill (PCSPs) on 27 January, Paul Givan suggested an amendment to paragraph 10 of Schedule 1 (Chair and Vice-Chair).

My officials agreed to take away this suggestion. Given the Committee's preference for the Department instructing on amendments, they also agreed to pursue the drafting of amendment around Paul's proposal. It was not, however, their intention to indicate that the Department necessarily agreed to advancing the amendment before it had been given proper consideration.

[redacted]

FROM THE OFFICE OF THE MINISTER OF JUSTICE

Department of Justice
www.dojni.gov.uk

In light of consideration within the Department, I am not minded to pursue this particular proposal. I do not believe that the statutory exclusion of independent members would be acceptable to the public at large – nor to the many current independent members of DPPs in particular. It is not necessary to ensure the success of the PCSPs, and may be seen to impede the discretion of the new Partnerships to manage their affairs to best effect, which is one of my key principles in establishing the new partnerships.

While I have taken the views of the Committee into account, I do not intend that the Department should seek to make an amendment effecting the proposals discussed at the Committee last week in respect of paragraph 10.

I hope this clears up some confusion on this point.

DAVID FORD MLA
Minister of Justice

[redacted]

Notice of Amendments - Legal Aid etc.

Department of Justice
www.dojni.gov.uk

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Your ref:
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Ms Christine Darrah
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BT4 3XX 3 February 2011

Dear Christine

Justice Bill Part 7 Legal Aid Etc.

At the Justice Committee meeting on 1 February Committee Members decided they wanted to see an Assembly affirmative procedure engaged in Clauses 85 (means testing) and 89 (financial eligibility). The Examiner of Statutory Rules had recommended that Clause 85(2) Rules for the determination of Legal Aid and 89(2) Regulations for the determination of right to representation should be by affirmative procedure. This was supported by the Committee.

Officials advised that the complexities of inserting a full and enduring affirmative procedure into legal aid regulations might have unintended consequences at this late stage and of the Department's desire to take this proposal forward in a wider review of Assembly procedures and legal aid. Another of our reasons for not plunging into this solution at this stage was a concern to avoid unduly burdening the Assembly with any ongoing requirement for affirmative procedure in cases where, for example, a change in state benefit regulations necessitated a change to the legal aid Rules or Regulations - hence our proposal at this stage for only an initial affirmative procedure to be followed by negative.

Committee Members did not agree and decided that the Committee itself would bring forward an amendment. Our Minister, therefore, asked us to look again to find a solution that might be helpful to the Committee and to address its concerns at this stage.

We have consulted urgently with the draftsman and are in a position to offer a draft Clause to the Committee which might be of assistance. The proposed amendment (Annex A) would engage, similar to what is currently provided in Clause 89, an affirmative procedure when the Rules in Clause 85 are being considered for the first time. This is the option Robert Crawford suggested to the Committee as a potential solution.

The effect of this would be that the first time both of these new and key powers were being brought forward there would be full public and Justice Committee consultation followed by full Assembly debate. We acknowledge that it would in the interim leave any future adjustments to

be made by the negative resolutions process. Our Minister, however, recognises the Committee's concerns in this area and undertakes to make this a key aspect of his wider review of legal aid rule making. Proposals for such a review would be brought to the Committee and the review would be concluded before any substantive proposals emerge to amend Rules 85 and 89 by what would be a negative procedure as currently provided.

We would suggest, therefore, that the affirmative procedure as proposed for both Clauses 85 and 89 will achieve the important effect required by the Committee at this stage whilst leaving open the opportunity for the wider review to assist in any future adjustments. In the circumstances, and with the intention of assisting the Committee to deliver the desired effect in the time available, we therefore offer Members the attached amendment to Clause 85 (Annex A).

We trust that the effect of an initial affirmative procedure coupled with the Minister's undertakings for an early review and its outworkings will allow the Committee to agree his proposals. Given the Bill timetable it would be greatly appreciated if the Committee could consider this draft amendment as part of its formal consideration of Part 7 at its meeting this afternoon.

I trust that the Committee finds this helpful.

Jane Holmes

Departmental Assembly Liaison Officer
028 90 528272

Annex A

Proposed amendment to Clause 85

Clause 85, page 49, line 34, at end insert¾

'(4) In Article 36 (rules as to legal aid in criminal cases) for paragraph (4) substitute—

"(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.

(5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before and approved by a resolution of the Assembly.

(6) This paragraph applies to the first rules under this Article which are—

(a) made after the coming into operation of section 85 of the Justice Act (Northern Ireland) 2011;

and

(b) contain any provision made by virtue of Article 31, as substituted by that section.".'

Clause 103, page 61, line 18, leave out 'and' and insert 'to'

Clause 103, page 61, line 23, at end insert¾

'(3A) No order may be made¾

(a) under section 82(5); or

(b) under section 107(3) bringing into operation any provision of section 43, unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

Letter from the Office of the Minister of Justice to Christine Darrah 4 February 2011

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Our ref: JCP\11\43

Christine Darrah
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Committee for Justice
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BT4 3XX 4 February 2011

Dear Christine

Justice Bill – PCSPs – Further amendments and definition of anti-social behaviour

On foot of the Committee session held on 27 January, I am writing to provide the Committee with a number of amendments to Part 3 being proposed by the Department – these are attached as an annex – and with a definition of anti-social behaviour as it may be interpreted within the Justice Bill.

The amendments to clauses 21(d) and 22(d) (Functions of PCSPs and DPCSPs) follow the Committee's preference to include reference to the full consideration of the views of the public, once obtained under the existing clauses 21(d) and 22(d).

The amendments to clause 34 (Duty on Public Bodies) seek to provide further assurances to the Committee around the application of the proposed statutory duty.

We have proposed an amendment to require the Department to secure the approval of the Attorney General before issuing any guidance as to how a public body should comply with the duty. We hope that this should offer sufficient reassurance that the guidance will be effective and authoritative, that it will help prescribed public bodies to fulfil this duty without its becoming burdensome, and that it will serve to mitigate the legal vulnerabilities that the Attorney General has flagged.

Some questions have also arisen around the reference to the exercise of functions 'in any community'; we have sought to rephrase this for the sake of clarity – it now refers to the exercise of functions 'in any locality'.

On Schedules 1 and 2, para 7 (designated organisations) we have provided two possible amendments for the Committee to consider.

At (Alternative A) we have provided an amendment as we understand the Committee has sought. It requires a list of specified organisations for inclusion on every PCSP to be made by affirmative resolution.

We have always held the view that a particular value of local partnership working rests in the capacity of people locally to take decisions for themselves. This principle underpins our policy on the chairing of the partnerships and on the paying of expenses. We have continuing reservations about limiting the flexibility of the partnerships to designate the most appropriate members of the partnership in their area. This is not a matter into which the Department feels it ought to intervene so decisively. We would also question the use of a relatively cumbersome mechanism for agreeing and, from time to time, changing such a list.

For that reason we would prefer to make an alternative amendment (Alternative B) which we hope might address the Committee's concerns as we understand them but which we believe will protect the necessary flexibility of the new partnerships to designate those organisations that are best placed to meet identified local issues. This amendment requires the Joint Committee to issue a list of organisations which the PCSPs must actively and seriously consider for inclusion before designating organisations to be represented on the partnership. (This proposed amendment supersedes that previously forwarded to the Committee.)

It is worth noting that the Minister and Department cannot foresee circumstances under which the Probation Board would not be included in the list issued by the Joint Committee under this provision.

I would, finally, draw the Committee's attention to the definition of anti-social behaviour contained within the Anti-social Behaviour (NI) Order 2004, which is behaving:

'...in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household [as the offender].'

I trust that the Committee will find this information useful.

Jane Holmes

Departmental Assembly Liaison Officer
Department of Justice

Enc amendments

PCSP Amendments 4 February 2011

Clause 21, page 17, line 26, at end insert 'to consider fully any views so obtained'

Clause 22, page 18, line 21, at end insert 'and to consider fully any views so obtained'

Leave out clause 34 and insert—

'Duty on prescribed public bodies to consider crime and anti-social behaviour implications in exercising functions

34.— (1) A prescribed public body must exercise its functions in relation to any locality with due regard to the likely effect of the exercise of those functions on crime and other anti-social behaviour in that locality.

(2) In deciding how to comply with the duty in subsection (1), a prescribed public body must have regard to any guidance which is issued by the Department with the approval of the Attorney General for Northern Ireland.

(3) In this section—

"prescribed" means prescribed by regulations made by the Department;

"public body" means—

(a) a Northern Ireland department; and

(b) a body listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7).

(4) The Department must consult all the other Northern Ireland departments before it—

(a) issues any guidance under subsection (2); or

(b) makes any regulations under subsection (3).'

Schedule 1, page 65, line 9, leave out sub-paragraph (12)

[*Alternative A*]

Schedule 1, page 66, line 4, at end insert—

'(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless—

(a) the Department has consulted each PCSP; and

(b) a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 1, page 66, line 5, after 'PCSP' insert 'or by an order under sub-paragraph (2A)'

[*Alternative B*]

Schedule 1, page 66, line 4, at end insert—

'(2A) The joint committee shall issue to PCSPs a list of organisations appearing to the joint committee to be appropriate for designation under sub-paragraph (1).

(2B) The joint committee may revise and re-issue that list.

(2C) In making any designation under sub-paragraph (1) a PCSP must take into consideration any organisation for the time being on a list issued under sub-paragraph (2A) or (2B).'

Schedule 1, page 70, line 19, at end insert—

'Expenses

16A. The council may pay to members of a PCSP such expenses as the council may determine.'

Schedule 1, page 70, line 21, leave out paragraph 17 and insert—

'17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with PCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions,

as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Schedule 2, page 73, line 36, leave out sub-paragraph (11)

[*Alternative A*]

Schedule 2, page 74, line 36, at end insert—

'(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless—

(a) the Department has consulted each DPCSP; and

(b) a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 2, page 74, line 37, after 'DPCSP' insert 'or by an order under sub-paragraph (2A)'

[*Alternative B*]

Schedule 2, page 74, line 36, at end insert—

'(2A) The joint committee shall issue to DPCSPs a list of organisations appearing to the joint committee to be appropriate for designation under sub-paragraph (1).

(2B) The joint committee may revise and re-issue that list.

(2C) In making any designation under sub-paragraph (1) a DPCSP must take into consideration any organisation for the time being on a list issued under sub-paragraph (2A) or (2B).'

Schedule 2, page 79, line 21, at end insert—

'Expenses

16A. The council may pay to members of a DPCSP such expenses as the council may determine.'

Schedule 2, page 79, line 23, leave out paragraph 17 and insert—

'17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with DPCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions,

as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned.'

Notice of amendments - Court Funds

Department of Justice
www.dojni.gov.uk

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Our Ref: JCP\11\45

Christine Darrah
Committee Clerk
Committee for Justice
Room 242 Parliament Buildings
Stormont
Belfast
BT4 3XX 07 February 2011

Dear Christine

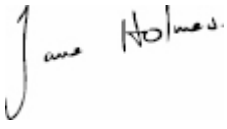
Meeting of Justice Committee – Court Funds

As you are aware, the Justice Committee heard presentations on 3rd February regarding the proposed amendment to the Justice Bill to introduce at Consideration Stage provisions that would allow a court to give the Accountant General a specific power to deduct (with the approval of the court) certain fees, charged by stockbrokers in relation to the management of funds held in court, from those funds.

Following the discussion, the Committee requested a copy of the provisions in the Judicature (Northern Ireland) Act 1978 which are to be amended.

Accordingly, I attach at Annex A section 81 of the 1978 Act, which is the main provision to be amended, together with section 82 to which some consequential amendments of a purely referential nature are proposed.

I trust that the Committee finds these helpful. We would be happy to provide any further information or advice as required.



Jane Holmes

DALO
Department of Justice

Annex A

Judicature (Northern Ireland) Act 1978

81 Investment of funds in court

Save in a case in which it is provided by an order of the court that it shall not be placed or invested as mentioned in the following provisions of this section, and subject to any provision to the contrary made by rules made under the next following section, a sum of money in the Court of Judicature or in the county court—

(a) may, if the High Court or the county court (as the case may be) so orders, be dealt with in such of the following ways as may be specified in the order, namely—

(i) it may be placed, in accordance with rules so made, to a deposit account or a short-term investment account (that is to say, to an account of one or other of two kinds such that, in the case of an account of either kind, there will, under rules so made, but subject to any exceptions thereby prescribed, fall to accrue on moneys placed thereto interest derived from the transfer to, and investment by, the National Debt Commissioners of the moneys placed to all the accounts of those kinds);

(ii) it may be placed to a long-term investment account for transfer, under rules so made, to such one of the funds established by schemes made under section 42 of the Administration of Justice Act 1982 as may be so specified;

(iii) it may be invested by the Accountant General in such of the securities designated for the purposes of this paragraph by rules made under section 55 of this Act or Article 47 of the County Courts (Northern Ireland) Order 1980 as may be so specified;

(iv) it may be invested by the Accountant General in accordance with directions given by an advisory committee appointed by the Department of Justice in accordance with rules made under the next following section;

(b) shall, if no order is made with respect to it under the foregoing paragraph, be dealt with as follows—

(i) except in a case in which it was paid in under section 63 of the Trustee Act (Northern Ireland) 1958, it shall be placed, in accordance with rules made under the next following section, to a deposit account;

(ii) in the said excepted case, it shall be invested by the Accountant General in such manner as may be prescribed by rules so made.

82 Rules as to funds in court

(1) The Department of Justice, with the concurrence of the Treasury, may make rules regulating, subject to the provisions of section 80, the deposit, payment, delivery and transfer in, into and out of the Court of Judicature and the county court of money, securities and effects which belong to suitors or are otherwise capable of being deposited in, or paid or transferred into, the Court of Judicature or the county court or are under the custody of the Court of Judicature or the county court, and regulating the evidence of such deposit, payment, delivery or transfer and, subject to the provisions of section 81, the manner in which money, securities and effects in court are to be dealt with, and in particular—

(a) providing (subject to any exceptions prescribed by the rules) for the accruer of interest on moneys placed to deposit accounts and short-term investment accounts and prescribing the rate

at which interest on moneys placed to deposit accounts and the rate at which interest on moneys placed to short-term investment accounts is to accrue;

(b) requiring the Accountant General—

(i) to transfer to the National Debt Commissioners all money paid into the Court of Judicature or the county court which is not required by him for meeting current demands, except money placed to a long-term investment account or ordered to be invested in securities;

(ii) to transfer money placed to a long-term investment account to that one of the funds established by schemes made under section 42 of the Administration of Justice Act 1982 specified in the order pursuant to which it was so placed;

(c) prescribing for the purposes of section 81(b)(ii) the manner of investment of money by the Accountant General and regulating the investment, pursuant to an order under that section, of money in securities;

(d) regulating the crediting of interest accruing on moneys placed to deposit accounts and on moneys placed to short-term investment accounts and the crediting of dividends accruing on shares in funds established by schemes made under section 42 of the Administration of Justice Act 1982 which have been allotted in consideration of the transfer of money in compliance with such provision of the rules as has effect by virtue of paragraph (b)(ii) and of interest or dividends accruing on securities in which money has been invested by the Accountant General pursuant to an order of the High Court or county court or to section 81(b)(ii) and on other securities in court;

(e) providing—

(i) that, in such cases as may be prescribed by the rules, no sum of money (whatever its amount) shall be placed to a deposit account or a short- or long-term investment account or be invested in securities;

(ii) that, in no case, shall a sum of money of an amount less than such as may be so prescribed be placed to, or remain in, a deposit account, be placed to a short- or long-term investment account or be invested in securities;

(f) prescribing the time at which money which falls to be placed to a deposit account or short-term investment account is to be so placed and the times at which interest on money so placed is to begin and cease to accrue and the mode of computing any such interest;

(g) providing that, in such circumstances as may be prescribed by the rules, interest and dividends such as are mentioned in paragraph (d) shall be placed to deposit accounts or short- or long-term investment accounts;

(h) providing for dealing with accounts or effects which, subject to such, if any, exceptions as may be prescribed by the rules, have not been dealt with for such period (not being less than fifteen years) as may be so prescribed;

(i) prescribing the manner in which money is to be furnished to the Accountant General by the National Debt Commissioners and the investment manager of a common investment scheme made under section 42 of the Administration of Justice Act 1982 respectively for the purpose of enabling him to comply with orders of the High Court and county court as to the payment of money out of court;

(j) providing for the discharge of the functions of the Accountant General under the rules by deputy;

(k) providing for the constitution and procedure of the advisory committee referred to in section 81(a)(iv) and for the remuneration of its members;

(l) providing for such matters as are incidental to, or consequential on, the foregoing provisions of this subsection or are necessary for giving effect to those provisions.

(2) Rules under subsection (1) may make different provision in relation to the Court of Judicature and the county court.

Solicitors' rights of audience

From the Office of the Minister of Justice
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Our ref: JCP\10\169

Ms Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX 8 February 2011

Dear Christine,

Meeting of Justice Committee – Solicitors' Rights of Audience

As you are aware, the Justice Committee heard presentations on 3rd February regarding the proposed amendments to the Justice Bill to be introduced at Consideration Stage, which would extend solicitors' rights of audience in the High Court and Court of Appeal and make specific legislative provision to permit the deduction of stockbrokers' management fees directly from the funds in court of relevant clients of the Court Funds Office.

In relation to the former, representatives from the Law Society gave evidence at the meeting in which they stated they were of the view that it was not clear in Article 40A(1)(a) that the term 'legal representation' refers only to orally arguing matters before the Court. They suggested that perhaps a definition of 'legal representation' may be needed to ensure that the duty to advise only arises in this context and not in relation to other matters such as lodging documents in Court which may also be regarded as representation.

Officials advised the Committee that they were of the view that the clause, when read as a whole, makes it clear the duty to advise only arises where a solicitor was exercising new rights of audience in the High Court and Court of Appeal. They undertook, however, to seek clarification from Legislative Counsel on this point.

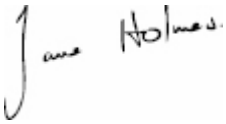
First Legislative Counsel has advised that Article 40A(1) sets out the circumstances in which the new duty to advise is engaged. Article 40A(1)(c) makes it clear that the duty to advise only applies to representation which involves the exercise of the extended rights of audience in the High Court and Court of Appeal and, therefore, a definition of 'legal representation' in the clause is unnecessary.

In relation to court funds, the Committee wished to know whether provision had been made in the Departmental budget for the possible payment of refunds in respect of previous deductions of stockbrokers' fees from the funds of relevant CFO clients.

I can confirm that a provision has been taken in the NICTS accounts for 2010/11 in respect of the potential restitution to clients. The provision is only an estimate at this stage and may be subject to change. This provision has been taken in advance of the decision of the court, as it is considered prudent to recognise the potential liability at this stage. As the provision has already been taken in 2010/11, it has not been necessary to include it within the budget for 2011/12.

The Department of Justice is aware of this potential liability and it will be taken forward as a Departmental issue if it were to crystallise.

I trust that the Committee finds this helpful. We would be happy to provide any further information or advice as required.



Jane Holmes

DALO

Justice Bill - Offender Levy

From the Office of the Minister of Justice
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Our ref: JCP\11\46

Ms Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings
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BT4 3XX 9 February 2011

Dear Christine,

Justice Bill: Offender Levy

During the Justice Committee's scrutiny of the offender levy clauses in the Justice Bill on 20 January, officials undertook to provide additional information to the Committee in relation to an issue raised on Clause 5 – specifically on the number of speed detections made by the police. Information on the number of fixed penalties issued as a result of safety camera detection and those detected by individual officers is provided below.

The Committee also expressed an interest in the new speed awareness and young driver training programmes introduced by PSNI, which can be offered as an alternative to fixed penalties in appropriate cases.

Speed detections

Excess speed can be detected by police remotely, through the employment of fixed or mobile safety cameras, or by operational officers using handheld or mounted speed measuring equipment or in-car devices.

Where a speeding offence has been detected by a fixed or mobile safety camera, and the person is eligible under the 'conditional offer of fixed penalty scheme', an offer will be made to the identified driver by correspondence. The offender is given the opportunity to accept the offer as an alternative to being prosecuted for the offence.

In the event that a speeding offence has been detected by an operational police officer, and the driver is eligible under the 'endorsable fixed penalty scheme', an offer will be made to the driver at the roadside, where a notice will be issued by the officer on-the-spot. As with the conditional offer scheme, the offender, can, of course, refuse the offer and the case will be considered for prosecution.

A conditional offer of fixed penalty and an endorsable fixed penalty notice normally comprises a £60 fine, with 3 penalty points being endorsed on the offending driver's licence.

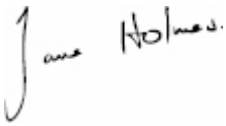
During 2009, a total of 18,793 conditional offers of fixed penalties and 10,903 endorsable fixed penalty notices were issued by police for speeding offences.

Speed awareness programmes

On 1 June 2010, PSNI introduced speed awareness programmes: the Speed Awareness Scheme for those aged 25 years and over, and; the Young Drivers Scheme for those under the age of 25. Both programmes aim to generate a better understanding of the consequences of speeding and the importance of not exceeding speed limits. Eligible drivers, i.e. those committing a speeding offence for the first time within a 3 year period, will be required to meet the cost of the programme, £86, but will not acquire any penalty points on their licence.

Since their introduction, some 24,128 referrals were made to the awareness schemes during 2010.

I would be grateful if you could bring this to the attention of Justice Committee members.



Jane Holmes

DALO

Appendix 6

Memoranda and Papers from Other Organisations

20 October 2010	The Law Society of Northern Ireland	Solicitor Advocacy
12 November 2010	The Law Society of Northern Ireland	Solicitor Advocacy
7 December 2010	The Law Society of Northern Ireland	Further Observations on the Justice Bill
7 December 2010	The NI Human Rights Commission	Request to give evidence on the Justice Bill
27 January 2011	The Attorney General for Northern Ireland	The Justice Bill
2 February 2011	The Law Society of Northern Ireland	Solicitor Advocacy

The Law Society of NI - Solicitor Advocacy

THE LAW SOCIETY
OF NORTHERN IRELAND

Our Ref: CC/AH

From: The Chief Executive

Your Ref:

20th October 2010

Ms Christine Darrah
Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Christine

RE: JUSTICE BILL (NI)

I refer to the Justice Bill (NI) as introduced by the Minister for Justice, David Ford MLA to the Northern Ireland Assembly on 18th October 2010.

The Committee will be aware that it was anticipated that the Justice Bill (NI) would introduce extended rights of audience for solicitor advocates in the higher courts, namely the High Court and Court of Appeal. It was also anticipated that provision would be made for solicitor advocates to provide advocacy services to legally aided defendants in the Magistrates Court, where a case has been certified for a solicitor advocate.

The Society has been in detailed discussions with officials within the Ministry of Justice in relation to the content of the relevant clauses.

The Minister for Justice on 7th October 2010 informed the Society that following advice from the Attorney General the draft solicitor advocacy clauses, in respect of solicitor advocates' rights of audience, would be removed from the Bill. The Attorney General advised the Minister that the draft clauses making provision for higher rights of audience, may be in breach of Community Law (in particular Article 25 of the EU Service Directive 2006/123) and therefore be outside of the legislative competence of the Assembly.

The Society is disappointed that the Justice Bill (NI) will not contain clauses as expected relating to solicitor advocacy. The Society considers that clients in this jurisdiction should have the same degree of choice as their counterparts in England & Wales, Scotland and the South of Ireland.

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www.lawsoc-ni.org info@lawsoc-ni.org

The Society hopes that amendments to the Bill will be brought forward to give effect to the proposal. Clients in Northern Ireland requiring advocacy services in the higher courts in currently do not have a choice of service providers and must be represented by a barrister. This is in contrast to England & Wales, Scotland and the South of Ireland where clients have freedom to choose depending on their particular preferences.

The Society respectfully requests that the Committee give this matter detailed consideration. A fundamental matter of principle must arise in circumstances in which the devolution of justice is prevented from being fully effective to consider our local circumstances. The Society also queries the point arising so late in our discussions, which resulted in the clauses included in the draft being removed immediately prior to the Bill's introduction. This gives the Society little time to consider the issue and to seek a resolution.

I enclose a copy of the Minister's letter to the President relating to this matter dated 7th October 2010.

Yours sincerely

Alan Hunter
CHIEF EXECUTIVE

Enc.

THE LAW SOCIETY
OF NORTHERN IRELAND

Our Ref: CE/letters/misc/nov10

12 November 2010

From: The Chief Executive

Ms Christine Darrah
Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Christine

RE: JUSTICE BILL (NI): SOLICITOR ADVOCACY

I am writing further to my previous correspondence to the Committee.

As you are aware and as members of the Committee are aware following intervention by the Attorney the solicitor advocacy clauses which were to have been included within the Justice Bill were withdrawn on the grounds that the Attorney considered that the Assembly was not competent to deal with the issue. The draft clauses were potentially incompatible with Community law.

I am writing to inform you that the Society has taken its own legal opinion from eminent Counsel in Brick Court Chambers London (Sir Sydney Kentridge QC and Martin Chamberlain BL).

I enclose a copy of their opinion.

The Society invites the Committee on foot of the definitive legal opinion which I enclose to consider introducing the clauses by way of amendment to the Bill.

The President and I would be available to discuss this matter with the Chairman and Deputy Chairman of the Committee or with the Committee at large as they see fit.

Yours sincerely

Alan Hunter
CHIEF EXECUTIVE

Enc

The Law Society of Northern Ireland, 96 Victoria Street, Belfast BT1 3GN T: 028 9023 1614 F: 028 9023 2606 Library Fax: 028 9031 1323
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The Law Society of Northern Ireland

Re: Extension of the rights of audience of solicitor advocates in Northern Ireland

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NOTE

Introduction and summary

1 Solicitor advocates in Northern Ireland currently enjoy rights of audience in the Crown Court only. We are asked to advise the Law Society of Northern Ireland **(LSNI)** on the powers of the Northern Ireland Assembly **(the Assembly)** to extend rights of audience to solicitor advocates in all Northern Ireland courts. We are asked in particular to consider draft clauses of the Justice Bill **(the draft clauses)**, drafted by the Office of Legislative Counsel and sent to the LSNI, but then withdrawn by the Minister of Justice **(the Minister)** on the advice of the Attorney General for Northern Ireland **(the Attorney)** before the Bill was introduced in the Assembly on 18 October 2010.

2 We are not members of the Bar of Northern Ireland. However, the issues on which our advice is sought concern European Union law and statutory construction, the approach to which would not be likely to differ as between the constituent jurisdictions of the United Kingdom.

3 In summary:

(a) The Minister's letter of 7 October 2010 to the LSNI indicates that the draft clauses were withdrawn because the Attorney considered that they may be in breach of Community law (and in particular Article 25 of Council Directive 2006/123/EC **(the Services Directive)**) and, for that reason, outside the legislative competence of the Assembly. It also makes it clear that, but for the Attorney's advice, the Minister would have introduced the clauses.

(b) We can see no basis on which it could be argued that the draft clauses contravene Article 25 of the Services Directive, given that the draft clauses:

(i) do not oblige any provider to exercise a given specific activity exclusively, nor to restrict the exercise jointly or in partnership of different activities (and so do not engage Article 25(1));

(ii) do not authorise multidisciplinary activities between different providers or regulated professions (and so do not engage Article 25(2)); and

(iii) in any event, do not prevent the United Kingdom from complying with its obligations under Article 25(2) (and so are not in breach of Article 25(2), even if, contrary to our view, that provision were engaged).

(c) The current draft clauses require the LSNI to "make regulations requiring solicitors to provide clients in prescribed circumstances with prescribed information as to the availability of counsel". This goes further than the equivalent legislation in England & Wales and Scotland. We can see no legal reason why any more stringent requirement should be imposed (for example prescribing the precise mode by which the discharge of the duty to advise a client about his right to instruct a barrister should be recorded).

(d) We can see no other basis on which it could be argued that the draft clauses, which confer on solicitor advocates in Northern Ireland the same rights as their equivalents have enjoyed in England & Wales and in Scotland since 1990, are in breach of EU law or otherwise outside the legislative competence of the Assembly.

(e) Accordingly, it appears to us that the Minister's decision to withdraw the draft clauses from the Bill proceeded from an error of law.

The current position of solicitor advocates in England & Wales, Scotland and Northern Ireland

4 In England & Wales, rights of audience in the higher courts were restricted to barristers until the coming into force of s. 27 of the Courts and Legal Services Act 1990. That provision enabled rights of audience to be granted in relation to any court by the General Council of the Bar, the Law Society or "any professional or other body which

has been designated by Order in Council as an authorised body for the purposes of this section" provided that the body's qualification regulations and rules of conduct had been approved for the purposes of that section, in relation to the granting of rights of audience.

5 In Scotland, rights of audience in the Court of Session, House of Lords, Judicial Committee of the Privy Council and High Court of Justiciary were extended to solicitor advocates by ss. 24 and 25 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. The power to make rules governing the exercise by solicitor advocates of their rights of audience was vested in the Council of the Law Society of Scotland, but these rules are subject to the approval of the Lord President of the Court of Session and of the Secretary of State.

6 In Northern Ireland, solicitor advocates have rights of audience in the Crown Court. Under s. 106 of the Judicature (Northern Ireland) Act 1978, they are permitted to appear in the High Court and Court of Appeal in limited circumstances. Essentially, except in certain bankruptcy and insolvency matters, they are entitled to appear in the High Court and Court of Appeal only in emergency situations where it is not possible to instruct counsel or where counsel already instructed is unable to appear. In *R v Bothwell* [2006] NICA 35, [2007] NI 58, the Court of Appeal was invited to confer rights of audience on a solicitor advocate in the exercise of its inherent power to regulate its own procedure. It declined, holding that to do so would undermine or dispense with restrictions expressly imposed by the statute.

7 Meanwhile, a Legal Services Review Group was established under the chairmanship of Sir George Bain. In its report, *Legal Services in Northern Ireland: Complaints, Regulation, Competition*, the Group noted that solicitor advocates have rights of audience in the higher courts of England & Wales and the Republic of Ireland. It made the following recommendation:

> "We can see no reason why a suitably qualified solicitor, who has undertaken the necessary advocacy course, should be constrained from advocating in the higher courts. It happens in all other parts of these Islands, and it is time for the government to consider a similar legislative change in Northern Ireland. But we attach an important caveat to this proposal: a solicitor advocate should be obliged to make clear to the client the issue of additional fees that would be earned by that solicitor (i.e. additional advocacy fees) and the alternative option (i.e. the use of a barrister). We consider that this recommendation should be implemented

by the appropriate government department working in conjunction with the Law Society and the Bar Council."

The devolution of policing and justice powers

8 When the Northern Ireland Act 1998 **(the 1998 Act)** was first enacted, all matters relating to court procedure in the courts of Northern Ireland (though not "the regulation of the profession of solicitors") were, under paragraph 15 of Schedule 3, "reserved matters". They therefore could not be the subject of legislation by the Assembly without the consent of the Secretary of State under s. 8.

9 On 31 March 2010, the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 **(the 2010 Amendment Order)** was made by Her Majesty in Council under powers conferred by s. 4(4) of the 1998 Act. The purpose of that Order was to devolve to the Assembly a number of policing and justice matters. It achieved that by amending Schedule 3, omitting paragraph 15 in its entirety. The consequence was that court procedure, not being an "excepted matter" and no longer being a "reserved matter", became a "transferred matter", i.e. one which may be the subject of legislation by the Assembly without the consent of the Secretary of State.

10 The Department of Justice Act (Northern Ireland) 2010 established the Department of Justice, which came into existence on 12 April 2010. Mr David Ford MLA was nominated and approved as Minister of Justice.

The Justice Bill

11 A Justice Bill was prepared and drafted. Draft clauses 97-99 related to solicitor advocates. They were sent to the LSNI before the Bill was published. Those clauses would have amended the Solicitors (Northern Ireland) Order 1976 **(the 1976 Order)** by inserting provisions enabling the LSNI to make regulations with respect to the education, training or experience to be undergone by those seeking authorisation as solicitor advocates (draft clause 97(2)) and authorising LSNI to recognise applicants as solicitor advocates if they have complied with the relevant requirements (draft clause 97(3)). A new Article 26(2A) would have been inserted into the 1976 Order requiring LSNI to "make regulations requiring solicitors to provide clients in prescribed circumstances with prescribed information as to the availability of counsel". Draft clause 98 would have extended rights of audience in all Northern Ireland courts to

solicitor advocates recognised as such by LSNI. Draft clause 99 would have made certain consequential amendments.

The Minister's letter to the LSNI and the introduction of the Justice Bill

12 On 7 October 2010, the Minster wrote to the LSNI in these terms:

> "This is to inform you that, having received advice from the Attorney General for Northern Ireland, the solicitor advocate provisions, in their current form, have been withdrawn from the Justice Bill.
>
> The Attorney General has advised me that the current draft clauses may be in breach of Community Law (in particular Article 25 of the EU Services Directive 2006/123) and would therefore be outside the legislative competence of the Assembly.
>
> I realise that this will be a significant disappointment to the Law Society, as it is to me. I have asked that we consider the issue which has been raised with a view to addressing the Attorney's concerns. I hope therefore that it may be possible to bring forward revised clauses to be tabled as an amendment to the Bill. This will, however, ultimately depend on the Attorney General's willingness to advise that the provisions are within the competence of the NI Assembly.
>
> I have asked Laurene McAlpine from NICTS to liaise with you about possible options."

13 Three matters appear from this letter. First, the Attorney reached the view that the "solicitor advocate provisions" (which we understand to be draft clauses 97-99) are outside the legislative competence of the Assembly because he believed those clauses may be in breach of Community law (and in particular Article 25 of Services Directive). Secondly, the Minister does not suggest that the Attorney had any other reason for concluding that the clauses were outside the legislative competence of the Assembly; no such reason has been suggested to us; nor are we aware of any. Thirdly, but for the Attorney's advice, the Minister would have introduced the draft clauses.

14 The Bill was introduced, without the solicitor advocate provisions, on 18 October 2010.

15 Although the Attorney has not said so publicly, we are instructed that he may consider an extension of the rights of audience in the High Court and Court of Appeal acceptable if there were a legislative requirement that, whenever a solicitor advocate

appears, he states in open court that he has advised his client of his right to be represented by a barrister.

The Services Directive

16 The Services Directive was adopted on 12 December 2006. It was adopted under powers conferred by the first and third sentences of what was then Article 47 and Article 55 EC (now Article 53 TFEU).

17 The Services Directive "establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services" (Article 1(1)). "Service" is defined as "any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty". "Provider" is defined as "any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service". "Requirement" is defined as "any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy..." (see Article 4(1), (2) and (7)).

18 So far as multidisciplinary services and activities are concerned, the Directive must be read in the light of the previous case law of the European Court of Justice (ECJ) on this issue. In Case C-309/99, *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten* [2002] ECR I-1577, the ECJ considered a complaint by Dutch advocates about the decision of the Netherlands Bar to uphold decisions of the Supervisory Boards of the Amsterdam and Rotterdam Bars, taken under a national regulation adopted by the Netherlands Bar in 1993, prohibiting them from practising as members of the Bar in full partnership with accountants. The ECJ held that the Netherlands Bar was an "association of undertakings" for the purposes of what was then Article 85 EC (now Article 101 TFEU) (paragraph 71); and that the relevant regulation had an adverse effect on competition and may affect trade between members states (paragraph 86). However, it went on to say that there were good reasons to impose the restriction:

> "105. The aim of the 1993 Regulation is therefore to ensure that, in the Member State concerned, the rules of professional conduct for members of

the Bar are complied with, having regard to the prevailing perceptions of the profession in that State. The Bar of the Netherlands was entitled to consider that members of the Bar might no longer be in a position to advise and represent their clients independently and in the observance of strict professional secrecy if they belonged to an organisation which is also responsible for producing an account of the financial results of the transactions in respect of which their services were called upon and for certifying those accounts.

106. Moreover, the concurrent pursuit of the activities of statutory auditor and of adviser, in particular legal adviser, also raises questions within the accountancy profession itself, as may be seen from the Commission Green Paper 96/C/321/01 'The role, the position and the liability of the statutory auditor within the European Union' (OJ 1996 C 321, p. 1; see, in particular, paragraphs 4.12 to 4.14)."

It followed that there was no breach of Article 85(1) EC (paragraph 110). The Court was invited to say whether the prohibition on multi-disciplinary partnerships might also constitute a breach of the provisions freedom of establishment and/or freedom to provide services. It did not have to decide that point because, even if those provisions did apply, the measure would be considered justified (paragraph 122).

19 As regards multidisciplinary activities, the Services Directive's objective can be taken from paragraph 101 of the recitals:

"It is necessary and in the interests of recipients, in particular consumers, to ensure that it is possible for providers to offer multidisciplinary services and that restrictions in this regard be limited to what is necessary to ensure the impartiality, independence and integrity of the regulated professions. This does not affect restrictions or prohibitions on carrying out particular activities which aim at ensuring independence in cases in which a Member State entrusts a provider a particular task, notable in the area of urban development, nor should it affect the application of competition rules."

20 Article 25 provides as follows:

"Multidisciplinary activities

1. Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

However, the following providers may be made subject to such requirements:

(a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality;

(b) providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.

2. Where multidisciplinary activities between providers referred to in points (a) and (b) of paragraph 1 are authorised, Member States shall ensure the following:

(a) that conflicts of interest and incompatibilities between certain activities are prevented;

(b) that the independence and impartiality required for certain activities is secured;

(c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

3. In the report referred to in Article 39(1), Member States shall indicate which providers are subject to the requirements laid down in paragraph 1 of this Article, the content of those requirements and the reasons for which they consider them to be justified."

The compatibility of the draft clauses with Article 25 of the Services Directive

21 Before analysing the effect of Article 25, it is necessary to say a word about terminology. Article 25(1) refers not to "multidisciplinary services" but to "multidisciplinary activities". It might be thought that the difference in language connotes a difference in meaning, but in our view it does not. As we have noted, "service" is defined in terms of "any self-employed economic activity..." Moreover, paragraph 101 of the recitals makes clear that the purpose of the provisions on "multidisciplinary activities" is "to ensure that it is possible for providers to offer multidisciplinary services and that restrictions in this regard be limited to what is necessary to ensure the impartiality, independence and integrity of the regulated professions". The terms "service" and "activity" appear, therefore, to be used interchangeably.

22 The primary purpose of Article 25(1), as appears from its language, is to impose a general prohibition on "requirements which oblige providers to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities". From this general prohibition, limited exceptions are permitted. The one which could in principle be applicable here is that which permits the regulated professions to be subject to such requirements "in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality".

23 It is clear that the draft clauses would not have imposed any requirement which obliges a provider to exercise a given specific activity exclusively. If anything, they would have removed such a requirement. If the relevant "activity" for these purposes is advocacy, the draft clauses would have brought about a situation in which that activity was no longer being exercised exclusively by one regulated profession.

24 Equally, we do not consider that the draft clauses can be understood as restricting the exercise jointly or in partnership of different activities. They are silent on the question whether and in what circumstances a solicitor advocate may be involved in the provision of different activities "jointly or in partnership".

25 It follows that it is clear that the draft clauses do not contravene the general prohibition in Article 25(1). No question of justifying any exception to that general prohibition therefore arises.

26 Article 25(2) applies where "multidisciplinary activities between providers referred to in points (a) and (b) of paragraph 1 are authorised". In those circumstances, Member States are subject to the duty to ensure (a) that conflicts of interest and incompatibilities between certain activities are prevented; (b) that the independence and impartiality required for certain activities is secured; and (c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

27 The opening words of Article 25(2) are important. They indicate that the Article applies where a Member State chooses to authorise multidisciplinary activities "between providers" including members of the regulated professions. This would encompass the situation where a Member State chooses to authorise partnerships (e.g.)

between lawyers and accountants or between lawyers and management consultants. It does not apply to the situation envisaged by the draft clauses, in which a Member State chooses to allow an activity which has previously been the exclusive preserve of one profession to be undertaken in addition by another.

28 It follows that Article 25(2) is inapplicable to the circumstances of the present case.

29 We have nonetheless considered the position on the footing (unlikely as it may seem) the draft clauses do engage Article 25(2) (for example because advocacy is an activity which, by virtue of the draft clauses, would have become "multidisciplinary" in that it could be performed by more than one discipline). Even in this case, we do not see how it could be said that the draft clauses are contrary to Article 25(2).

30 We can see nothing impermissible about leaving to the Law Society the task of making regulations governing the conduct of solicitors and solicitor advocates. In *Wouters*, the ECJ found no fault with the system in the Netherlands in which "Article 28 of the Advocatenwet entrusts the Bar of the Netherlands with responsibility for adopting regulations designed to ensure the proper practice of the profession", governing "the duty to act for clients in complete independence and in their sole interest, the duty, mentioned above, to avoid all risk of conflict of interest and the duty to observe strict professional secrecy" (see paragraph 100). Against that background, we consider that it is open to Member States to leave to the established professional regulators the task of designing the precise rules by which these objectives are fulfilled.

31 In any event, we note that the draft clauses would have gone considerably further than the legislation in either England & Wales or Scotland, in requiring the LSNI to make regulations requiring solicitors to provide clients in prescribed circumstances with prescribed information as to the availability of counsel. If the suggestion is that compliance with Article 25(2) requires that the circumstances and/or information must be prescribed in primary legislation, we can see no warrant for it in either the language of the Directive or the case law which preceded it.

32 We understand that a proposal has been made that solicitor advocates should be required to confirm their compliance with the obligation to inform their clients of their right to instruct a barrister either in open court or by handing a document to the judge. Such a proposal would go far beyond what is required of solicitor advocates in England

& Wales and Scotland. Whatever its policy merits we can see no basis at all for the suggestion that it is required by EU law.

33 We can see no other basis on which it could be argued that the draft clauses, which confer on solicitor advocates in Northern Ireland the same rights as their equivalents have enjoyed in England & Wales and in Scotland since 1990, are in breach of EU law or otherwise outside the legislative competence of the Assembly.

Conclusion

34 In the light of the above, it appears to us that the Minister's decision to withdraw the draft clauses from the Bill proceeded from an error of law.

S. Kentridge

SIR SYDNEY KENTRIDGE QC

Mark Chamberlain

MARTIN CHAMBERLAIN

11 November 2010

The Law Society of NI - Further observations

THE LAW SOCIETY
OF NORTHERN IRELAND

From: The Chief Executive

7 December 2010

Christine Darrah
Clerk, Committee for Justice
Room 242, Parliament Buildings,
Stormont
Belfast
BT4 3XX
By email to: Christine.Darrah@niassembly.gov.uk

Dear *Christine*

RE: JUSTICE BILL (NI)
LAW SOCIETY PRESENTATION

I am writing further to the presentation to the Committee on 2 December 2010 and to thank you and members of the Committee for the opportunity to speak with you on these important matters.

One point occurred to me which I thought I might bring to your attention, although I am sure you will already have picked up upon it. At the conclusion of my presentation, I queried whether the Department had conducted any full resource analysis of the overall costs and income arising from policy proposals being brought forward in the Bill. By way of example, has the Department costed properly the offender levy administration procedures? I have a sense that some work has in fact been done on that particular area but I query whether in terms of the enforcement procedures and default of payment, those factors have been taken into account? I simply do not know but I do think that in these difficult economic circumstances, the Assembly should be made fully aware of the overall cost implications to the public purse and be able to make an assessment of whether or not to proceed with a policy objective, depending upon its overall affordability and priority.

I have long been remarking that part of the reason for the increase in the legal aid bill annually is the fact that new offences are continually created which means inevitably a higher legal aid bill, as people are brought before the courts for matters which were not previously criminal activity. There is an inbuilt connection between creating new offences and increasing the legal aid bill because prosecutions etc will take place for matters which previously did not.

That means not only court time and PSNI and PPS time, but also defence criminal solicitors' time in terms of providing the defence. As the number of cases and prosecutions grow more therefore there will inevitably be an additional burden on the legal aid fund. Additionally as I understand it, there has historically been no real acceptance or practice of identifying the likely number of prosecutions, the need for funds to be set aside for the legal aid fund in order to pay for the defence, but instead there has been a growing disapproval of defence solicitors who are called upon to defend their clients in accordance with due process of law and our systems. I regard it therefore as extremely important that this assessment is carried out and that funds are set aside and identified as part of the government programme. It may well be that on this occasion an assessment has in fact been made of the likely number of cases and likely costs but it would be interesting to know also whether additional funds have been secured for these purposes or whether money has been removed from other budgets in order to increase the legal aid bill to the extent required.

I may well have missed the answers to these questions which were raised in my presentation when Mr. Johnston and Mr. Crawford spoke yesterday, following our own presentation, but if not I would invite you to consider the matter further.

With best wishes

Yours sincerely

Alan Hunter

ALAN HUNTER
Chief Executive

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NI Human Rights Commission - Victims' Rights Work

NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Lord Morrow, MLA
Chair
Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

7 December 2010

Dear Lord Morrow

Members of Commission staff have briefed me on the informal event organised by the Justice Committee held on 29 November in the Long Gallery in Parliament Buildings. I understand that the focus of this meeting centred primarily on the Justice Bill and my staff expressed their appreciation at having the opportunity to discuss this legislation with you and the other members of the Committee.

While this brief meeting was beneficial, I trust that this will not be the sole opportunity afforded to the Commission to discuss areas of concern regarding the Justice Bill as it progresses through the legislative process. As you know the Commission has a statutory function which includes providing advice on legislative and other measures which ought to be taken to protect human rights and advising on whether a Bill is compatible with human rights.[1] I would therefore like to request a meeting with the Committee at which our concerns can be discussed in greater detail and given the tight schedule attached to the listings of the Justice Bill oral evidence sessions I would appreciate an early reply to this request.

[1] Northern Ireland Act 1998, s.69(3) and s.69(4)

Chief Commissioner: Professor Monica McWilliams ■ Chief Executive: Peter O'Neill

[redacted]

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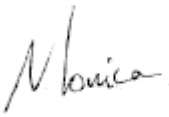
On another related matter, I was concerned to learn from a member of staff that in the course of the discussion on the Justice Bill you made a remark which implied that the Commission prioritised the rights of the offender – presumably as opposed to victims' rights - in its work. This was a somewhat surprising comment to make given the Commission's long standing interest in promoting the human rights of victims. As such, I would like to apprise you of our work on victims' rights which you will find listed in the attached appendix.

I wish you and the Justice Committee well in fulfilling your important role on the Justice Bill and look forward to hearing from you.

Yours sincerely



Professor Monica McWilliams
Chief Commissioner

Cc Deputy Chair, Committee for Justice, Mr Raymond McCartney, MLA

APPENDIX

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Examples of work which address victims rights

PUBLICATIONS

1. Human Rights and Victims of Violence, NIHRC, 2003
2. A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, NIHRC, December 2008. In particular, 'The rights of victims', p43; witness protection and support, p75.
3. The Nature and Extent of Human Trafficking in Northern Ireland: A Scoping Study by Institute for Conflict Research, NIHRC/ECNI, 2009

POLICY CONSULTATION RESPONSES

a. Response to the OFMDFM Consultation on Services for Victims and Survivors of the Troubles and Establishment of a Commissioner for Victims and Survivors, July 2005
b. Response to draft Criminal Justice (NI) Order 2005
c. Response to Northern Ireland Court Service on The Youth Court in Northern Ireland, 2005
d. Response to consultation on Draft Protocol for Community-based Restorative Justice Schemes - December 2006
e. Response to the NIO Consultation on Sexual Offences Legislation - October 2006
f. Response to the Victims and Survivors (NI) draft Order 2006 - September 2006
g. Response to DHSSPS proposed regional strategy for addressing sexual violence - May 2007

h. Response to proposals for law reform in cases of murder, manslaughter and infanticide - October 2008
i. Response to OFMdFM's consultation on an 'Outline Draft Strategic Approach for Victims and Survivors' - October 2008
j. Submission to the Northern Ireland Policing Board's Human Rights Thematic Inquiry on Domestic Violence - August 2008
k. Response to draft Sexual Offences (NI) Order 2007 - February 2008
l. Response to the draft Criminal Justice (NI) Order 2007 - January 2008
m. Criminal legal aid reform: Response to Northern Ireland Court Service's consultation on remuneration of defence representation in non crown court proceedings (letter) - January 2009
n. Response to the Home Office on 'Together We can End Violence against Women and Girls: A Consultation Paper' - June 2009
o. Response to the Northern Ireland Office consultation on the Report of the Consultative Group on the Past – September 2009
p. Response to consultation by the Northern Ireland Courts and Tribunal Service on In-Court Interpretation Services - April 2010
q. Response to the Department of Justice consultation on Best Practice Guidance for Practitioners: Achieving best evidence in criminal proceedings (letter) – November 2010

Attorney General - The Justice Bill

Attorney General
for Northern Ireland

The Lord Morrow of Clogher Valley MLA
Chairman, Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Our Ref: AGNI/11/016

January 27 2011

Dear Chairman

Thank you for your letter of January 24 2011 and for your kind words about my attendance at the Justice Committee meeting of January 18 2011. You also raise the issue of my views on clauses 41, 42 and 43 of the Justice Bill.

As you know the well established Westminster convention is that the Attorney General's advice, or indeed the fact of whether the Attorney General's advice has been sought at all, will not normally be disclosed, save in exceptional circumstances. While we are, of course, in a position to develop our own approach over time it is probably better that we do so slowly and cautiously.

My attendance at the January 18 2011 Committee meeting was prompted by an invitation from the Justice Minister that I set out my views on the legal policy issues arising from Clause 34. In the circumstances my attendance at the Committee on that occasion did not run counter to the applicable convention. I think that this would not be the case with the invitation contained in your letter and I should, therefore, decline it.

In addition to the type of attendance that took place on January 18 2011 there are other instances where it would be also be entirely appropriate for an Attorney General to meet with the appropriate Assembly Committees. I think that examples of these are (1) for the purpose of advising on legal matters relating directly to the House or the relevant Committee, (2) to speak about matters relating to the operation of the Office of the Attorney General, (3) and to offer views on general matters of legal policy where this is not at variance with the Attorney's traditional duties.

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www.attorneygeneralni.gov.uk

You might also think, as I do, that it might be helpful if you, the Deputy Chair and I were to meet informally from time to time.

Yours sincerely,

John F Larkin QC
Attorney General for Northern Ireland

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www.attorneygeneralni.gov.uk

The Law Society of NI - Solicitor Advocacy

From: The Chief Executive
Our Ref: CE/letters/misc/feb11

2 February 2011

Christine Darrah
Clerk, Committee for Justice

Room 242, Parliament Buildings
Stormont
Belfast
BT4 3XX
By email to: Christine.Darrah@niassembly.gov.uk

Dear Christine

Re: Solicitor Advocacy: Justice Bill (NI)

The Society received from the Minister draft clauses late afternoon on 28 January 2011.

There is very little time to give consideration to the draft clauses which of course creates a difficulty for us since we have made it clear that we would wish to make representations on the contents. However I enclose a short paper which sets out the key issues which have arisen and reserve our position to bring other matters to your attention upon closer examination of the clauses and discussion within the Society.

One point of immediate concern which I would wish to highlight is that we were given to understand that the Legal Aid Advice and Assistance (NI) Order 1981 would be amended so as to provide that when a District Judge may grant a certificate in an unusually grave or difficult case for Counsel to conduct the matter that the Magistrate may similarly grant such a certificate to a solicitor who has completed the relevant training education or experience as set out in Regulations made by the Society.

Otherwise there is a lacuna in the sense that an authorised solicitor may appear and be paid in the Court of Appeal but not in the Magistrates Court. Because this is a power given to the District Judge it seems to us that an amendment is required to extend the power to include to authorised solicitors which may presently only be certified for Counsel.

We have asked the Department for early clarification on this point.

In the meantime I would ask you to invite the Committee to consider also the various points made in the enclosed paper.

Yours sincerely

Alan Hunter

Chief Executive
Enc

Law Society of Northern Ireland
Justice Bill (NI)

Part 8 : Solicitors Rights of Audience

New Article 9A

1. It is not clear what is meant by 'legal representation'. Solicitors currently routinely enter an appearance and lodge documents in Court in their own name. It may be that a definition of legal

representation is required in the draft legislation to make clear that representation means orally arguing matters before the Court, submitting skeleton arguments and other documents but not those matters routinely undertaken at present which may also be regarded as representation.

New Draft Article 40 A (2) (a) of the Solicitors (NI) Order 1978

2. The "advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively" may be difficult to determine. Obviously each case will turn on its own merits but this is quite a subjective judgment. The Society wishes it to be noted that this is a vague and general requirement and must therefore be a matter for the subjective judgment of the solicitor concerned in the particular circumstances of the case at that point in time.

New Draft Article 40 A (4) (a) of the Solicitors (NI) Order 1978

3. The requirement for a solicitor to act in the best interests of his client is a requirement of professional conduct already and therefore this provision is unnecessary (see Regulation 12 (b) of the Solicitors Practice Regulations 1987 as amended – copy enclosed).

New Draft Article 40 B

4. The requirement to inform the High Court or the Court of Appeal that a solicitor has complied with the legislation appears to the Society to be unnecessary. There are a range of matters which a solicitor must inform his client of generally in the conduct of proceedings before a Court and it appears to the Society to be irregular to single out this particular issue and highlight it in primary legislation in this way so as to place the obligation on the High Court to supervise this particular piece of advice given by the solicitor to his client.

5. Solicitors are officers of the Court and as such comply with a range of requirements without having to certify to the Court that they have done so.

6. Further the Society notes that Rules of Court are to prescribe the manner in which such verification is to be given to the High Court and the time limit which shall apply. The Society notes that the Bill also contains a provision to extend the membership of the Supreme Court Rules Committee (which shall make these Rules) to include new representatives (by way of example the Attorney General for Northern Ireland) and other Committees.

New Draft Paragraphs (2 A) (2 B) of Article 75 of the Solicitors' (NI) Order 1976

7. Regulations to give effect to practicalities with respect to-

(a) the education training or experience to be undergone by a solicitor seeking an authorisation to exercise rights of audience in the Higher Courts

(b) regulations in respect of persons who have completed such training as prescribed before such date as has been prescribed and

(c) regulations setting out the advice to be given to the client are all now to be subject to the concurrence of the Department of Justice and the Department must consult the Attorney General. Further the Department of Justice may not concur in the regulations unless regulations have already been made by the Society and are in operation in relation to what advice must be given.

8. The effect of these provisions is to engage the Department of Justice in the regulation of the profession with regard to these matters. This is a significant departure in terms of the regulation of the legal profession. The Solicitors Order presently requires the Lord Chief Justice of Northern Ireland to concur in regulations made by the Society and this has hither to been regarded as the entirely appropriate governance both in order to ensure and maintain the independence of the profession from political or Government interference and to ensure oversight. The Society strongly considers that it is entirely inappropriate that the Department concurs in such Regulations.

9. The requirement to consult the Attorney General although not without precedent is inappropriate. The Attorney General is advisor to the Executive and the Head of the Department of Justice is the Minister for Justice. The Society considers that it is unnecessary to prescribe in these circumstances that the Minister must consult with his legal advisor. It is irregular for the Attorney General to be consulted about Law Society regulations which is presently the responsibility of the Lord Chief Justice.

10. The Society shall be making observations about the role of the Attorney General in Northern Ireland generally when a suitable opportunity arises.

Magistrates Courts

11. Article 28 (2) of the Legal Aid Advice and Assistance (NI) Order 1981 enables a District Judge (Magistrates Court) to certify that in an indictable case which is unusually grave or difficult both solicitor and counsel are required. The Society had been led to believe that the powers of the District Judge would be rationalised so that the District Judge might also award such a legal aid certificate for a solicitor authorised to appear in the Higher Courts. Otherwise the absurd situation arises in which an authorised solicitor advocate may appear and be paid for doing so in the Crown Court or Court of Appeal or the High Court but may not appear and be paid in the lower court in those complex cases which require the additional services of an authorised advocate.

12. This anomaly the (Society had been led believe) was to be addressed in the legislation but the draft legislation presently appears to be silent on the matter. The Society understands however that the Department remains committed to addressing this situation in this Bill. The Department indicated that correspondence would issue to us to explain the position but at the time of release of this submission it has not arrived.

13. The Society therefore proposes that the Committee propose that an additional clause be inserted to the following effect -

"Article 28 of the Legal Aid Advice and Assistance (NI) Order 1981 is amended as follows:-

a) In paragraph (1) (b) after the word "counsel" insert "or an authorised solicitor"

b) In paragraph (2) after the word "counsel" insert the words "or an authorised solicitor".

c) After paragraph (7) insert the following paragraph:-

`"(8) In this Article an authorised solicitor means a solicitor who holds an authorisation under Article 9 A of the Solicitors (Northern Ireland) Order 1976".

Appendix 7

List of Witnesses

Chris Andrews Amalgamation of Official Northern Ireland Supporters Clubs

Gary McAlister Amalgamation of Official Northern Ireland Supporters Clubs

Alison Allen Antrim Community Safety Partnership, District Policing Partnership and Borough Council

John Larkin QC Attorney General for Northern Ireland

Claire Duffy Attorney General's Office

Cathy Watson Ballymoney Community Safety Partnership

Suzanne Wylie Belfast City Council

Ian Creswell Coleraine Community Safety Partnership
Maura Hickey Coleraine District Policing Partnership

Sarah Wilson Craigavon Community Safety Partnership

Ciaran Mee Department of Culture, Arts and Leisure

Paul Black Department of Justice
Robert Crawford Department of Justice
Nichola Creagh Department of Justice
Geraldine Fee Department of Justice
Tom Haire Department of Justice
John Halliday Department of Justice
David Hughes Department of Justice
Gareth Johnston Department of Justice
Chris Matthews Department of Justice
Laurene McAlpine Department of Justice
David Mercer Department of Justice
Dan Mulholland Department of Justice
Janice Smiley Department of Justice

Claire Linney Dungannon and South Tyrone Borough Council

Liz Cuddy Extern

Adrian Colton QC General Council of the Bar of Northern Ireland
Dermot Fee QC General Council of the Bar of Northern Ireland
Brendan Garland General Council of the Bar of Northern Ireland

Edel Quinn Include Youth
Paula Rogers Include Youth
Koulla Yiasouma Include Youth

Stephen Grange Irish Football Association
Patrick Nelson Irish Football Association

Terry Pateman Irish Football Association
Hugh Wade Irish Football Association

Wendy Carson Larne Borough Council

Norville Connolly Law Society of Northern Ireland
Alan Hunter Law Society of Northern Ireland
Brian Speers Law Society of Northern Ireland

Bridget McCaughan Limavady Borough Council

Michael McCrory Magherafelt Community Safety Partnership and District Policing Partnership

Stanley Booth MindWise
Anne Doherty MindWise
Bill Halliday MindWise
Laura McKay MindWise

Bridgeen Butler Moyle Community Safety Partnership
Philip McKeown Moyle District Policing Partnership
Campbell Dixon Newtownabbey Borough Council

Pat Conway NIACRO
Olwen Lyner NIACRO
David Weir NIACRO

Ann Jemphrey Northern Ireland Human Rights Commission
Professor Monica McWilliams Northern Ireland Human Rights Commission
Ciarán Ó Maoláin Northern Ireland Human Rights Commission

Jack Beattie Northern Ireland Local Government Association
Helen Richmond Northern Ireland Local Government Association

Mary McKee Northern Ireland Policing Board
Rosaleen Moore Northern Ireland Policing Board
Amanda Stewart Northern Ireland Policing Board

Assistant Chief Constable Will Kerr Police Service Northern Ireland
Chief Superintendent Stephen Martin Police Service Northern Ireland
Superintendent Chris Noble Police Service Northern Ireland
Superintendent Alastair Wallace Police Service Northern Ireland

Louise Cooper Probation Board for Northern Ireland
Paul Doran Probation Board for Northern Ireland
Hugh Hamill Probation Board for Northern Ireland
Brian McCaughey Probation Board for Northern Ireland

Nick Harkness Sport NI
Paul Scott Sport NI

Derek Hussey Strabane Community Safety Partnership
Jeff Barr Strabane District Policing Partnership

Ryan Feeny Ulster GAA
Stephen McGeehan Ulster GAA
Danny Murphy Ulster GAA

Robin Cole Ulster Rugby
Joe Eagleson Ulster Rugby
Lindsey Irwin Ulster Rugby

Iain Campbell Ulster Rugby Supporters Club

Geraldine Hanna Victim Support Northern Ireland
Susan Reid Victim Support Northern Ireland

Gillian Clifford Women's Aid Federation Northern Ireland
Noelle Collins Women's Aid Federation Northern Ireland
Sonya Lutton Women's Aid Federation Northern Ireland
Patricia Lyness Women's Aid Federation Northern Ireland