



**Northern Ireland
Assembly**

COMMITTEE FOR JUSTICE

MINUTES OF PROCEEDINGS

WEDNESDAY 11 MARCH 2015
Room 21, Parliament Buildings

Present: Mr Alastair Ross MLA (Chairman)
Mr Raymond McCartney MLA (Deputy Chairman)
Mr Stewart Dickson MLA
Mr Sammy Douglas MLA
Mr Tom Elliott MLA
Mr Paul Frew MLA
Mr Chris Hazzard MLA
Mr Seán Lynch MLA
Mr Alban Maginness MLA
Mr Patsy McGlone MLA
Mr Edwin Poots MLA

In Attendance: Mrs Christine Darrah (Assembly Clerk)
Mr Keith McBride (Senior Assistant Assembly Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Ms Marianne Doherty (Clerical Officer)
Ms Anna McDaid (Bursary Student)

Apologies: None.

The meeting commenced at 2.00 p.m. in public session.

1. Apologies

None.

2. Draft minutes of the meeting held on 4 March 2015

The Committee approved the draft minutes of the meeting held on 4 March 2015.

3. Matters Arising

- i. The Committee considered a request from the British Association for Shooting and Conservation to make a joint presentation with Gun Trade Guild NI and Countryside Alliance Ireland on the Department of Justice proposed changes to the banded system for firearms and the age of young shooters.

Agreed: The Committee agreed to schedule the briefing into the Forward Work Programme.

- ii. The Committee considered correspondence from the Northern Ireland Deer Society on the oral evidence session with departmental officials on proposed changes to the banded system for firearms and the age of young shooters that took place at the meeting on 4 March 2015.

Agreed: The Committee agreed to invite representatives of the Northern Ireland Deer Society to brief the Committee on the issues.

4. Reform of the Scope of Civil Legal Aid – Results of the Consultation and Proposed Way Forward

Mark McGuckin, Deputy Director, Mark McGuicken, and Deirdre McDaid, Public Legal Services Division, Department of Justice joined the meeting at 2.03 p.m.

Mr Raymond McCartney joined the meeting at 2.03 p.m.

Mr Alban Maginness joined the meeting at 2.03 p.m.

Mr McGuckin outlined the results of the consultation on the Reform of the Scope of Civil Legal Aid and the Department's proposed way forward in relation to this issue.

Mr Tom Elliott joined the meeting at 2.09 p.m.

Mr Patsy McGlone joined the meeting at 2.14 p.m.

Mr Edwin Poots joined the meeting at 2.27 p.m.

A detailed question and answer session followed covering issues including: the wider context for the need for savings in legal aid costs; the estimated savings that would result from the Department's proposals; the proposed change of scope in relation to the Children's Order proceedings; the impact of taking cases out of scope of civil legal aid; the rationalisation of the green form system and the impact on the voluntary advice sector if scope is reduced; the ability of the advice sector to take on additional work without additional resources; how cases will be signposted to the voluntary and community sector; whether the Department of Justice had consulted with other Departments on the likely impact and cost of the proposals to reduce scope; the proposed removal of education cases (apart from special educational needs cases) from scope and the impact on children; whether Judicial Reviews will still be included in scope for education cases; if there had been any evaluation of the proposals within the context of Articles 6 & 8 of the European Convention on Human Rights and the UN Convention on the Rights of the Child in relation to changing the scope of Children's Orders; the need to look at efficiencies in relation to the administration of legal aid; removal of ancillary relief and the effect of removal in relation to the statutory charge; the speed of legal aid reforms; how 'prospect of success' will work in practice; the need for full Equality Impact Assessments as papers on individual policies are brought forward; and the timescale for the presentation of the papers on the individual projects to the Committee.

The Department agreed that when presenting the detailed papers to the Committee on each individual policy change they will clearly set out current provision, current cost, proposal, projected savings, number of cases affected and where they expect the cases/advice to move to.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and Mr McGuicken and Ms McDaid left the meeting.

5. Civil Legal Aid Reform – Proposals for Money Damages Cases

Mark McGuckin, Deputy Director was joined by Richard Cushnie, Public Legal Services Division, Department of Justice at 3.23 p.m.

Mr McGuckin outlined the Department of Justice’s proposed way forward in relation to funding money damages cases.

Mr Chris Hazzard left the meeting at 3.36 p.m.

Mr Raymond McCartney left the meeting at 3.44 p.m.

Mr Edwin Poots left the meeting at 3.51 p.m.

A question and answer session followed covering issues including: the total number of cases that would be affected by the proposed change; the proposals to retain certain categories of cases, such as clinical negligence and industrial disease; the options for an alternative approach to funding money damages cases; the lack of consensus on an alternative approach to money damages; the intention of the Department to continue to explore possible alternative funding approaches; the percentage of cases that receive legal aid that are successful; the need to set criteria for what will be in scope in relation to clinical negligence and industrial disease and how decisions can be appealed; and the need to improve the administration of legal aid.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

6. The Justice Bill – Formal Clause by Clause Consideration

The Committee commenced its formal clause-by-clause consideration of the Justice Bill.

Part 1 – Single Jurisdiction for County Courts and Magistrates’ Courts

The Committee considered Clauses 1 to 6 as drafted.

Agreed: The Committee agreed to group Clauses 1 to 6 for the purpose of putting the question.

Question: “That the Committee is content with Clauses 1 to 6, put and agreed to”.

Part 2 – Committal for Trial

The Committee noted additional information provided by the Director of Public Prosecutions.

The Committee considered Clauses 7 to 16 as drafted and amendments proposed by the Department of Justice to enable the direct transfer of a co-defendant who has been charged with a non-specified offence so that all defendants can be tried at the same time.

Agreed: The Committee agreed to group Clauses 7 to 12 and Clauses 15 and 16 for the purpose of putting the question.

Question: “That the Committee is content with Clauses 7 to 12, put and agreed to”.

Question: “That the Committee is content with new Clause 12A, as proposed by the Department to allow for the direct committal of any co-defendants who are charged with an offence which is not a ‘specified offence’ put and agreed to.”

Question: “That the Committee is content with Clause 13, put and agreed to”.

Question: “That the Committee is content with the proposed amendments by the Department which are a consequence of the introduction of new Clause 12A to Clause 14, put and agreed to.”

Question: “That the Committee is content with Clause 14, subject to the Department’s proposed amendments, put and agreed to”.

Question: “That the Committee is content with Clauses 15 and 16, put and agreed to”.

Part 3 – Prosecutorial Fines

The Committee considered Clauses 17 to 27 as drafted.

Agreed: The Committee agreed to group Clauses 17 to 27 for the purpose of putting the question.

Question: “That the Committee is content with Clauses 17 to 27, put and agreed to”.

Part 4 – Victims and Witnesses

The Committee considered Clauses 28 to 35 as drafted and amendments proposed by the Department of Justice to enhance Victims Statements and create information sharing powers.

Agreed: The Committee agreed to group Clauses 28 to 32 and 34 and 35 for the purpose of putting the question.

Question: “That the Committee is content with Clauses 28 to 32, put and agreed to”.

Question: “That the Committee is content with the proposed amendments by the Department to Clause 33, to allow a victim or a bereaved family member to include, in a victim statement, the impact a crime has had on other family members, put and agreed to.”

Question: “That the Committee is content with Clause 33, subject to the Department’s proposed amendments, put and agreed to”.

Question: “That the Committee is content with Clauses 34 and 35, put and agreed to”.

Question: “That the Committee is content with new Clause 35A and new Schedule 3A as proposed by the Department to create information sharing powers to provide for a more effective mechanism through which victims can automatically be provided with timely information about the services available to them in the form of Victim Support Services; witness services at court; and access to post-conviction information release schemes, put and agreed to.”

Part 5 – Criminal Records

The Committee considered Clauses 36 to 43 as drafted and five amendments proposed by the Department.

Agreed: The Committee agreed to group Clauses 36 to 38 and 41 and 42 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 36 to 38, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 39 to make it clear that the Code of Practice provided for in the clause must be published, put and agreed to."

Question: "That the Committee is content with Clause 39, subject to the Department's proposed amendment, put and agreed to".

Question: "That the Committee is content with new Clause 39A and new Schedule 3B as proposed by the Department to create a review mechanism for the scheme to filter certain old and minor convictions and other disposals, such as cautions, from Standard and Enhanced criminal record certificates, which came into operation in Northern Ireland in April 2014, put and agreed to."

Question: "That the Committee is content with the proposed amendment by the Department to Clause 40 to prevent potential Data Protection Act breaches by excluding a small number of applicants for enhanced checks for home based positions from the Update Service, where third party personal information could potentially be disclosed unintentionally, put and agreed to."

Question: "That the Committee is content with Clause 40, subject to the Department's proposed amendment, put and agreed to".

Question: "That the Committee is content with Clauses 41 and 42, put and agreed to".

Question: "That the Committee is content with new Clause 42A as proposed by the Department to facilitate the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes, put and agreed to."

Question: "That the Committee is content with new Clause 42B as proposed by the Department to give statutory cover for the storage of cautions and other diversionary disposals on the criminal history database, put and agreed to."

Question: "That the Committee is content with Clause 43, put and agreed to".

Part 6 – Live Links for Criminal Proceedings

The Committee considered Clauses 44 to 49 as drafted and an amendment proposed by the Department to ensure a consistency of approach with respect to safeguarding arrangements.

Agreed: The Committee agreed to group Clauses 44 and 45 and 47 to 49 for the purpose of putting the question.

Question: "That the Committee is content with Clauses 44 and 45, put and agreed to".

Question: "That the Committee is content with the proposed amendment by the Department to Clause 46 so that the same safeguard as provided for in Clauses 44 and 45 which places a responsibility on the court to adjourn proceedings where it appears to it that the accused is not able to see and hear the court and be seen and heard by it and this cannot be immediately corrected applies, put and agreed to."

Question: “That the Committee is content with Clause 46 subject to the Department’s proposed amendment, put and agreed to”.

Question: “That the Committee is content with Clauses 47 to 49, put and agreed to”.

Part 7 – Violent Offences Prevention Orders

The Committee considered Clauses 50 to 71 as drafted and amendments proposed by the Department.

Agreed: The Committee agreed to group Clauses 50 to 64 and 66 and 67 for the purpose of putting the question.

Question: “That the Committee is content with Clauses 50 to 64, put and agreed to”.

Question: “That the Committee is content with the proposed amendment by the Department to Clause 65 relating to verification of identity and retention of fingerprints and photographs, put and agreed to.”

Question: “That the Committee is content with Clause 65, subject to the Department’s proposed amendments, put and agreed to”.

Question: “That the Committee is content with Clauses 66 and 67, put and agreed to”.

Mr Raymond McCartney re-joined the meeting at 4.09 p.m.

Question: “That the Committee is content with the proposed amendments by the Department to Clause 68 which provide a framework restricting the retention of information to the duration of the VOPO, put and agreed to.”

Question: “That the Committee is content with Clause 68, subject to the Department’s proposed amendments, put and agreed to”.

Question: “That the Committee is content with Clause 69, put and agreed to”.

Question: “That the Committee is content with the proposed amendment by the Department to Clause 70 relating to power of search of third party premises, put and agreed to.”

Question: “That the Committee is content with Clause 70, subject to the Department’s proposed amendment, put and agreed to”.

Question: “That the Committee is content with Clause 71, put and agreed to”.

Part 8 – Miscellaneous

Jury Service

The Committee considered Clauses 72 to 76 as drafted and noted further information provided by the Department on exemptions from jury service.

Agreed: The Committee agreed to group Clauses 72 to 76 for the purpose of putting the question.

Question: “That the Committee is content with Clauses 72 to 76, put and agreed to”.

Early Guilty Pleas

The Committee considered Clauses 77 and 78 as drafted and an amendment proposed by the Department to remove a regulatory making power.

Question: “That the Committee is content with Clause 77, put and agreed to”.

Question: “That the Committee is content with the proposed amendment by the Department to Clause 78 to remove a regulatory making power in sub-section (3) of the clause, identified as being of no practical benefit, put and agreed to.”

A number of Members expressed reservations in relation to Clause 78.

Question: “That the Committee is content with Clause 78 subject to the Department’s proposed amendment, put and agreed to”.

Avoiding Delay in Criminal Proceedings

The Committee considered Clauses 79 and 80 as drafted and amendments proposed by the Department to reflect comments and advice from the Examiner of Statutory Rules, following his scrutiny of the Delegated Powers.

Question: “That the Committee is content with the proposed amendments by the Department to Clause 79, put and agreed to.”

Question: “That the Committee is content with Clause 79, subject to the Department’s proposed amendments, put and agreed to”.

Question: “That the Committee is content with the proposed amendment by the Department to Clause 80, put and agreed to.”

Question: “That the Committee is content with Clause 80, subject to the Department’s proposed amendments, put and agreed to”.

Public Prosecutor’s Summons

The Committee considered Clause 81 as drafted.

Question: “That the Committee is content with Clause 81, put and agreed to”.

Defence Access to Premises

The Committee considered Clause 82 as drafted and an amendment proposed by the Department to adjust the threshold for an order.

Mr Edwin Poots re-joined the meeting at 4.14 p.m.

Question: “That the Committee is content with the proposed amendment by the Department to Clause 82 to adjust the threshold for an order allowing access to property to ensure proportionality and greater clarity in the use of the power, put and agreed to.”

Question: “That the Committee is content with Clause 82, subject to the Department’s proposed amendment, put and agreed to”.

Powers of Court Security Officers

The Committee considered Clause 83 as drafted.

Question: “That the Committee is content with Clause 83, put and agreed to”.

Youth Justice

The Committee considered Clauses 84 and 85 as drafted.

Question: “That the Committee is content with Clause 84, put and agreed to”.

Question: “That the Committee is content with Clause 85, put and agreed to”.

New Provisions

Sexual Offences Against Children

The Committee considered amendments proposed by the Department to provide for a new offence of communicating with a child for sexual purposes and to make an adjustment to the existing offence of meeting a child following sexual grooming.

Question: “That the Committee is content with new Clause 78A as proposed by the Department to reduce the evidence threshold for the existing offence of meeting a child following sexual grooming, put and agreed to.”

Question: “That the Committee is content with new Clause 78B as proposed by the Department to provide for a new offence of communicating with a child for sexual purposes, put and agreed to.”

Offence of Causing or allowing Serious Physical Harm to a Child or Vulnerable Adult

The Committee considered amendments proposed by the Department to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult.

Question: “That the Committee is content with new Clause 83A and new Schedule 4A as proposed by the Department to create a new offence of causing or allowing serious physical harm to a child or vulnerable adult, put and agreed to.”

Lands Tribunals Salaries

The Committee considered an amendment proposed by the Department to change the affirmative resolution procedure for the annual determination of Lands Tribunal salaries.

Question: “That the Committee is content with new Clause 85A as proposed by the Department to change the affirmative resolution procedure for the annual determination of Lands Tribunal Salaries, put and agreed to.”

New Policy Amendments relating to PACE - Retention of Fingerprints and DNA Profiles

The Committee considered amendments proposed by the Department to address shortcomings identified through early experience of operating the corresponding provisions in England and Wales and add a new article to PACE to reflect the introduction in Northern Ireland of Prosecutorial Fines.

Question: “That the Committee is content with new Clause 76A as proposed by the Department to allow police to retake fingerprints and a DNA sample in particular circumstances, put and agreed to.”

Question: “That the Committee is content with new Clause 76B as proposed by the Department to correct a gap identified in new Article 63G of PACE to provide that a conviction in Great Britain for a recordable offence will be reckonable for the purposes of determining the period of retention of material taken in Northern Ireland, put and agreed to.”

Question: “That the Committee is content with new Clause 76C as proposed by the Department to provide for the retention of fingerprints or DNA profiles relating to persons given a prosecutorial fine, put and agreed to.”

Question: “That the Committee is content with new Clause 76D as proposed by the Department to provide for the retention of DNA profiles on the basis of a conviction irrespective of whether that conviction is linked to the offence for which the material was first obtained, put and agreed to.”

Question: “That the Committee is content with new Clause 76E as proposed by the Department to disapply the normal destruction rules for samples in cases where the sample is or may become disclosable under the 1996 Criminal Procedure and Investigations Act, put and agreed to.”

Schedules

The Committee considered Schedule 1 as drafted and amendments proposed by the Department primarily to remove references in existing legislation.

Question: “That the Committee is content with the proposed amendments to Schedule 1 primarily to remove references to ‘petty sessions district’ and ‘county court division’ in existing legislation, put and agreed to”.

Question: “That the Committee is content with Schedule 1, subject to the Department’s proposed amendments, put and agreed to.”

The Committee considered Schedule 2 as drafted.

Question: “That the Committee is content with Schedule 2, put and agreed to”.

The Committee considered Schedule 3 as drafted and amendments proposed by the Department as a consequence of the proposed new Clause 12A.

Question: “That the Committee is content with the proposed amendments to Schedule 3 which are a consequence of proposed new Clause 12A, put and agreed to”.

Question: “That the Committee is content with Schedule 3, subject to the Department’s proposed amendments, put and agreed to.”

The Committee considered Schedule 4 as drafted.

Question: “That the Committee is content with Schedule 4, put and agreed to”.

The Committee considered Schedule 5 as drafted and amendments proposed by the Department which are a consequence of proposed new Clauses 76D, 78A and 83A and new Schedule 4A.

Question: “That the Committee is content with the proposed amendments to Schedule 5 which are a consequence of proposed new Clauses 76D, 78A and 83A and new Schedule 4A, put and agreed to”.

Question: “That the Committee is content with Schedule 5, subject to the Department’s proposed amendments, put and agreed to.”

The Committee considered Schedule 6 as drafted and amendments proposed by the Department which are consequential to the proposed amendments to Schedule 1.

Question: “That the Committee is content with the proposed amendments to Schedule 6 which are consequential to the proposed amendments to Schedule 1, put and agreed to”.

Question: “That the Committee is content with Schedule 6, subject to the Department’s proposed amendments, put and agreed to.”

Part 9 – Supplementary Provisions

The Committee considered Clauses 86 to 92 as drafted and amendments proposed by the Department to Clause 91 which are a consequence of the introduction of new Clauses 35A, 78A and 78B and new Schedule 3A.

Agreed: The Committee agreed to group Clauses 87 to 90 for the purpose of putting the question.

Question: “That the Committee agreed that it is not content with Clause 86, as drafted”.

Question: “That the Committee is content with Clauses 87 to 90, put and agreed to”.

Question: “That the Committee is content with the proposed amendments to Clause 91 which are a consequence of proposed new Clauses 35A, 78A and 78B and new Schedule 3A, put and agreed to.”

Question: “That the Committee is content with Clause 9, subject to the Department’s proposed amendments, put and agreed to”.

Question: “That the Committee is content with Clause 92, put and agreed to”.

Long Title

The Committee considered the Long Title of the Bill as drafted.

Question: “That the Committee is content with the Long Title put and agreed to”.

Other Proposed Amendments

Provision for Rights of Audience for Lawyers working in the Office of the Attorney General

The Committee considered the Attorney General’s proposal for legislative provision for rights of audience for lawyers working in his office.

The Committee noted further correspondence from the Director of the Public Prosecution Service requesting similar provisions for a number of staff in the Public Prosecution Service.

Some Members indicated that they were minded to support the Attorney General’s proposal on the grounds that it was a modest change that would provide rights of audience for a small, discrete number of lawyers in his office working in a fairly restrictive area of law which would lead to a more cost-effective system. Concerns were

however raised regarding the wider implications in relation to creating a precedent or a situation where it would be difficult to refuse other requests.

Agreed: The Committee agreed that, as there was no consensus on the proposal, the Committee would not bring forward an amendment on this issue.

Attorney General's Proposed Amendment to the Coroners' Act (NI) 1959

The Committee agreed to move into closed session to receive advice from the Assembly Bill Clerk.

The Committee moved into closed session at 4.36 p.m.

The Committee received advice from the Bill Clerk in relation to possible amendments to the Attorney General's proposed amendment to the Coroners' Act (NI) 1959.

The meeting moved into public session at 4.51 p.m.

The Committee discussed the Attorney General's proposed amendment and options to amend it. Some Members supported the proposal viewing it as an additional safeguard while others had concerns regarding its possible impact on and implications for the Health Service, transparency and record keeping.

Mr McCartney proposed that the Committee took forward the Attorney General's proposed amendment to the Coroners' Act (NI) 1959 with the addition of provision for a sunset clause/review mechanism as a Committee amendment.

The Committee divided: Ayes 5; Noes 5

Ayes:

Mr Elliott
Mr Lynch
Mr Maginness
Mr McCartney
Mr McGlone

Noes:

Mr Dickson
Mr Douglas
Mr Frew
Mr Poots
Mr Ross

The proposal fell.

Agreed: The Committee agreed to seek clarification as to what information could be withheld in civil proceedings that could be disclosed in criminal proceedings.

Mr Jim Wells MLA Proposed Amendment

The Committee considered the proposed amendment by Mr Jim Wells MLA in relation to restricting abortions to NHS premises and changing the criminal penalty.

Mr Poots proposed that the Committee took forward the proposed amendment as a Committee amendment.

The Committee divided: Ayes 7; Noes 3

Ayes:

Mr Douglas
Mr Elliott
Mr Frew

Noes:

Mr Dickson
Mr Lynch
Mr McCartney

Mr Maginness
Mr McGlone
Mr Poots
Mr Ross

Agreed: The Committee agreed to take forward Mr Jim Wells MLA amendment as a Committee amendment.

The Chairman advised the Committee that the draft report on the Bill would be prepared for consideration and approval at the meeting on 25 March 2015.

7. SL1: Proposals for a refresh of PACE Codes of Practice A – H

The Committee considered a proposed Statutory Rule that provides for a general refresh of the Police and Criminal Evidence (NI) Order 1989 (PACE) Codes of Practice. The Rule will revise aspects of the relevant codes to bring them up to date with current policing procedures and practices and make formal provision for EU Directive 2010/64 on the right to interpretation and translation in criminal proceedings.

Agreed: The Committee agreed that it was content with the proposed Statutory Rule.

8. Proposals for the Reconstitution of the Northern Ireland Policing Board

The Committee considered correspondence from the Minister of Justice outlining his intention to adopt a rolling appointment model for independent members for the reconstitution of the Policing Board and to reduce the rates of remuneration.

Some Members re-iterated their concerns regarding the intention to adopt a rolling appointment model, while others indicated they supported that approach. Concern was also expressed regarding the proposed remuneration levels.

Agreed: The Committee agreed to write to the Minister to request further clarification on and how decisions will be made in relation to who will be appointed for a three year period and who will be appointed for a four year period.

9. Review of the Registered Intermediaries Schemes Pilot and Way Forward

The Committee noted information provided by the Department of Justice on the outcome of the Review of the Registered Intermediaries Schemes Pilot project and the recommendation accepted by the Minister to implement a 12 month 'Phase II' pilot from 1 April 2015 which would extend the scope to include hybrid cases at Crown Court to better evaluate the effectiveness of the Registered Intermediaries Schemes at Court stage.

10. Update on the new draft Domestic and Sexual Violence and Abuse Strategy

The Committee noted an update paper from the Department of Justice on the new draft Domestic Violence and Abuse Strategy which indicated that the timescale for publication is now estimated to be June 2015.

11. Correspondence

- iii. The Committee noted a copy of correspondence from the Department of Justice to the Committee for Finance and Personnel in relation to the Association of Personal Injury Lawyers and the Level of Bereavement damages.

- iv. The Committee noted correspondence from David McIlveen MLA providing a copy of the consultation document on his Private Member's Bill on the Protection of Property.

12. Chairman's Business

The Chairman advised Members that he intended to hold a series of Seminars from Easter onwards to provide a forum to discuss and exchange views and ideas on innovative changes that could be made to the justice system. The first seminar is scheduled to take place on Thursday 23 April 2015 and the Lord Chief Justice will speak on Youth Justice.

Agreed: The dates for the seminars will be circulated to all Committee Members.

13. Any Other Business

The invitation from the NI Judicial Appointments Commission to attend its Plenary meeting on flexible working was discussed.

14. Date and Time of next meeting

The next meeting will take place on Wednesday 18 March 2015 at 2.00 p.m. in the Inn of Court, Royals Courts of Justice, Belfast.

The meeting was adjourned at 5.13 p.m.

Mr Alastair Ross MLA
Chairman, Committee for Justice