



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (No. 2) Bill: Amendments Proposed
by Lord Morrow MLA and Basil McCrea MLA

7 January 2016

NORTHERN IRELAND ASSEMBLY

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MLA

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alban Maginness
Ms Bronwyn McGahan
Mr Patsy McGlone

The Chairperson (Mr Ross): The relevant papers were circulated by email yesterday. They are at pages 18 to 89 of the tabled pack. A copy of the draft text of Basil McCrea's proposed amendments was received late yesterday, and that can be found at pages 90 to 94 of the tabled pack.

Lord Morrow has not provided the final text of his proposed amendment, which makes it slightly more difficult for us, but a response from the Department of Health, Social Services and Public Safety on that proposed amendment and the proposal that Mr Poots made about on-the-spot fines has been received today. Copies of that are in members' tabled packs. The Health Minister has expressed some concern over both, laid out in detail in that letter if members want to read it.

Mr McCrea is proposing amendments to regulate the flying of flags on lamp posts, and the views of the Department of Justice and the PSNI on them are included in the papers. The Department does not believe that the Justice (No. 2) Bill is the appropriate legislative framework to bring the measures forward in. It has highlighted the fact that the flying of flags is a cross-departmental issue involving OFMDFM, the Department for Social Development, the Department for Regional Development and the DOE, with local councils and other statutory authorities all playing a part. It is of the view that the most suitable way forward is through the commission on flags, identity, culture and tradition, which is to be established by March this year, as set out in the Stormont House Agreement and reaffirmed in the 'A Fresh Start' document.

The PSNI acknowledges the need for a resolution to the flags issue and would support any legislation that can provide a solution. It has, however, pointed out that it is a very complex issue that is difficult to comment on in depth without seeing detailed amendments and suggested that it would be appropriate to wait for the publication of research on this issue by Dr Nolan and Dr Bryan, which is due in early 2016.

We had an opportunity to meet Mr McCrea about his amendments. I am not sure that any member was particularly enthused by the proposal. We commended what he was trying to do, but I do not think that the way that he was going about it would actually achieve the desired outcome. However, I throw it open to members and seek views on Mr McCrea's amendments.

Mr McCartney: We see the commission as the basis for exploring this issue, rather than trying to deal with it through this method.

The Chairperson (Mr Ross): If members are generally agreed with that view, we can reflect that in the report. I think that is probably the most sensible way forward on it.

Members indicated assent.

The Chairperson (Mr Ross): Let me just remind the Committee that Lord Morrow proposes an amendment to section 66(1) of the Police (Northern Ireland) Act, which currently relates to assaults on members of the Police Service, so that it specifically covers assaults and/or attacks on members of the emergency services — police, fire and ambulance service staff — so that they are protected by the law to the same extent as a police officer. During the oral evidence session with Lord Morrow, discussions took place regarding the potential for the proposed amendment to also cover a range of other staff, including front-line medical staff in accident and emergency departments, nursing staff and social workers undertaking home visits, and those in voluntary organisations such as Lagan Search and Rescue, which we visited towards the end of last year.

During the oral evidence session, as I mentioned earlier — it was on 3 December — Mr Poots raised the issue of on-the-spot fines in hospitals for less violent, low-level behaviour, such as verbal abuse or a push, and asked what potential there is for amendments to this Bill to have a fixed penalty notice imposed on people at the time of the incident and administered in hospitals or by emergency services to support people providing front-line services from being abused by individuals in those areas.

The views of the Department and the Public Prosecution Service (PPS) are included in the papers. The Department highlighted the fact that assaults on Fire and Rescue Service personnel are already covered under article 57 of the Fire and Rescue Services (Northern Ireland) Order 2006, which provides:

"Any person who assaults, resists, obstructs or impedes—

(a) a fire and rescue officer in the execution of his duty; or

(b) a person assisting ...

shall be guilty of an offence."

Assaults on other public servants, including paramedics, can be prosecuted under existing legislation. Attacks on public servants, or which damage emergency equipment, may already be treated as aggravating factors when sentencing occurs. The Department has indicated that the issues may be complex and they engage the interests of the Department of Health. It has raised the matter with Health officials and intends to meet them to discuss the matter in further detail when they have had an opportunity to consider the issues.

The PPS has commented on the practical implications of Lord Morrow's amendment and has highlighted the complexities with the existing legislation, which would transfer if applied to the emergency services. The PPS has also confirmed that, where the victim is someone who is serving the public, prosecutors are advised to consider this as an aggravating factor in making prosecuting decisions. Sentencing guidelines for the Magistrates' Court on aggravating factors also cover the situation where the victim was engaged in providing a service to the public and include a wide range of occupations, including emergency services personnel, doctors, nurses and other hospital staff.

In relation to legislating for on-the-spot fines for less violent behaviour in hospital premises, the DOJ is discussing it in detail with Health officials. The Department's initial view was that the use of fixed penalties in Northern Ireland is currently restricted to a range of low-level, non-violent offences and that fixed penalties are not appropriate in circumstances where the use or threat of violence is a factor. It also believes that, where behaviour amounts to the commission of a criminal offence, it should be a matter for the consideration of the PPS.

In the letter that we have tabled today, the Health Minister has indicated that there will be a reluctance among staff in A&E to actually have that power. The issue of whether nursing staff would want to have that power is one that I raised previously. It is an almost quasi-judicial role for them. He has outlined that in his letter that was sent to us today.

I suppose that, as we do not have the text of Lord Morrow's amendment, it is virtually impossible for us to take a view on it. If members are content, I suggest that we reflect in our report that we had an evidence session with Lord Morrow and are broadly sympathetic with what he is trying to do — if that is the view of the Committee. However, we recognise that there may be some difficulties with it — there is existing legislation — and will reflect the information that has been given to us by the Department, the PPS and the Health Minister. Are members content with that approach?

Members indicated assent.

The Chairperson (Mr Ross): We will do the same with Edwin Poots's proposals, because, again, I think that members were broadly sympathetic with what he is trying to do, but we have identified difficulties with it. We will reflect that in our report as well.

Members indicated assent.