



Northern Ireland  
Assembly

Committee for Justice

# Report on the Justice No.2 Bill (NIA 57/11-16)

Together with the Minutes of Proceedings, Minutes of Evidence, Written Submissions and Other Memoranda and Papers relating to the Report

Ordered by the Committee for Justice to be printed on 14 January 2016

## Powers and Membership

### 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 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has the 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 inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister of Justice.

### Membership

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

The membership of the Committee during the current mandate has been as follows:

Mr Alastair Ross (Chairman) <sup>1</sup>

Mr Raymond McCartney (Deputy Chairman)

Mr Stewart Dickson

Mr Sammy Douglas<sup>2,3,4</sup>

Mr Paul Frew<sup>6</sup>

Mr Danny Kennedy<sup>5,11,13</sup>

Mr Séan Lynch

Mr Alban Maginness

Ms Bronwyn McGahan<sup>7,8,12</sup>

Mr Patsy McGlone<sup>9</sup>

Mr Edwin Poots<sup>2,10</sup>

- <sup>1</sup> With effect from 10 December 2014 Mr Alastair Ross replaced Mr Paul Givan as Chairman.
- <sup>2</sup> With effect from 1 October 2012 Mr William Humphrey and Mr Alex Easton replaced Mr Peter Weir and Mr Sydney Anderson.
- <sup>3</sup> With effect from 16 September 2013 Mr Sydney Anderson replaced Mr Alex Easton.
- <sup>4</sup> With effect from 6 October 2014 Mr Sammy Douglas replaced Mr Sydney Anderson.
- <sup>5</sup> With effect from 23 April 2012 Mr Tom Elliott replaced Mr Basil McCrea.
- <sup>6</sup> With effect from 6 October 2014 Mr Paul Frew replaced Mr Jim Wells.
- <sup>7</sup> With effect from 10 September 2012 Ms Rosaleen McCorley replaced Ms Jennifer McCann.
- <sup>8</sup> With effect from 6 October 2014 Mr Chris Hazzard replaced Ms Rosaleen McCorley.
- <sup>9</sup> With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Colum Eastwood.
- <sup>10</sup> With effect from 6 October 2014 Mr Edwin Poots replaced Mr William Humphrey.
- <sup>11</sup> With effect from 30 June 2015 Mr Neil Somerville replaced Mr Tom Elliott
- <sup>12</sup> With effect from 15 September 2015 Ms Bronwyn McGahan replaced Mr Chris Hazzard
- <sup>13</sup> With effect from 30 November 2015 Mr Danny Kennedy replaced Mr Neil Somerville

# Table of Contents

<b>List of abbreviations and acronyms used in the Report</b>	<b>5</b>
--	----------

## Report

Executive Summary .....	7
Introduction.....	29
Consideration of the Provisions in the Bill .....	35
Consideration of other proposed Provisions for inclusion in the Bill.....	73
Clause by Clause Consideration of the Bill .....	92
Links to Appendices.....	135

Minutes of Proceedings

Minutes of Evidence

Written Submissions

Memoranda and Correspondence from the Department of Justice on the Provisions of the Bill and its Proposed Amendments

Correspondence relating to the Proposed Amendments by the Department of Justice to Firearms Legislation

Correspondence relating to the Proposed Amendments by the Department of Agriculture and Rural Development to the Welfare of Animals Act (NI) 2011

Correspondence relating to a Proposed Amendment by Lord Morrow MLA

Correspondence relating to the Proposed Amendments by Basil McCrea MLA

Correspondence relating to Possible Legislative Changes to Improve On-Line Protection for Children

Northern Ireland Assembly Research Papers

List of Witnesses

---

**List of abbreviations and acronyms used in the report**

<b>AG</b>	Attorney General
<b>BASC</b>	British Association for Shooting and Conservation
<b>CAI</b>	Countryside Alliance Ireland
<b>CAT</b>	Committee Against Torture
<b>CFREU</b>	Charter of Fundamental Rights of the European Union
<b>CLC</b>	Children's Law Centre
<b>DBS</b>	Disclosure and Barring Service
<b>DHSSPS</b>	Department of Health, Social Services and Public Safety
<b>DE</b>	Department of Education
<b>DoJ</b>	Department of Justice
<b>DSD</b>	Department for Social Development
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ESR</b>	Examiner of Statutory Rules
<b>EQIA</b>	Equality Impact Assessment
<b>GTGNI</b>	Gun Trade Guild NI
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICO</b>	Information Commissioner's Office
<b>JCHR</b>	Joint Committee on Human Rights
<b>JJC</b>	Juvenile Justice Centre
<b>LCJ</b>	Lord Chief Justice
<b>NDPB</b>	Non Departmental Public Body
<b>NICS</b>	Northern Ireland Civil Service
<b>NIACRO</b>	Northern Ireland Association for the Care and Resettlement of Offenders
<b>NICTS</b>	Northern Ireland Courts and Tribunals Service

---

<b>NIHRC</b>	Northern Ireland Human Rights Commission
<b>NIO</b>	Northern Ireland Office
<b>NIPB</b>	Northern Ireland Policing Board
<b>NIPS</b>	Northern Ireland Prison Service
<b>NIPSO</b>	Northern Ireland Public Services Ombudsman
<b>PAC</b>	Public Accounts Committee
<b>PPS</b>	Public Prosecution Service
<b>SAO</b>	Supervised Activity Order
<b>SEHSCT</b>	South Eastern Health and Social Care Trust
<b>UNCEDAW</b>	United Nations Committee on the Elimination of Discrimination against Women
<b>UNCRC</b>	United Nations Convention on the Rights of the Child

# Executive Summary

1. This report sets out the Committee for Justice's consideration of the Justice No.2 Bill.
2. The Justice No.2 Bill consists of 47 clauses and 3 schedules covering a range of policy areas and its purpose is to improve current arrangements for the collection and enforcement of financial penalties, improve the provision of prison services in Northern Ireland, improve upon current statutory provision in relation to certain sex offending and extend lay visiting arrangements in police stations.
3. In addition to the main clauses of the Bill, the Committee considered a range of proposed amendments brought forward by the Department primarily relating to Part 1 of the Bill – The Collection and Enforcement of Financial Penalties and Part 2 – Prison Ombudsman. The proposed amendments covered a range of new policy proposals relating to the main aims of the Bill and addressed issues raised by the Attorney General for Northern Ireland at the time of the Bill's introduction. They also included a number of minor drafting amendments.
4. The Committee also considered a range of other proposed provisions for inclusion in the Bill brought to its attention by the Department of Justice, the Department of Agriculture and Rural Development, the NI Human Rights Commission, Lord Morrow MLA and Basil McCrea MLA and a number of possible legislative changes to improve online protection for children following its conference on 'Justice in a Digital Age' in October 2015.
5. The Committee requested evidence from interested organisations as well as the Department of Justice, the Department of Agriculture and Rural Development and the Department of Health, Social Services and Public Safety as part of its deliberations on the Bill and the proposed amendments. The Committee for Agriculture and Rural Development and the Committee for Social Development also assisted the Committee in considering proposals specific to their respective Departments.

6. Twenty one written submissions were received and the Committee held nine oral evidence sessions with interested organisations as well as exploring the issues raised in the written and oral evidence with Department of Justice officials both in writing and in oral briefings. The Committee considered the provisions of the Bill and the proposed amendments at 16 meetings.

## **Delegated Powers in the Bill**

7. The Committee sought advice from the Assembly Examiner of Statutory Rules on the delegated powers within the Bill to make subordinate legislation and the choice of Assembly control provided for each power.
8. The Examiner considered that most of the delegated powers were appropriate but drew the attention of the Committee to the regulation-making powers in Clause 18 (6) (b). The Examiner indicated that subsection 6(b) of Clause 18 was either intended to cover a matter of substance and import, in which case it should probably be fully set out on the face of the Bill, or it should simply be left to the discretion of the court by omitting the regulation-making power from the Bill entirely.
9. The Committee referred the Examiner's analysis to the Department of Justice and it confirmed that, in response to the issue raised, it would bring forward an amendment to address the matter.

## **Key Issues Relating to the Clauses and Schedules in the Bill**

10. At its meeting on 7 January 2016 the Committee undertook its formal clause by clause consideration and agreed the clauses in the Bill as drafted or as drafted with proposed departmental amendments apart from Clause 45 which enables the Department by order to make any supplementary, incidental, consequential, transitional or other provision necessary to give full effect to the provisions of the Act and which the Department had already indicated it intended to remove from the Bill.



11. Some Members however expressed reservations about the wider impact of the means testing and deductions from benefits proposals, the proposed interim bank account orders and bank account orders and the vehicle seizure powers in the fine collection and enforcement provisions and about Clause 38 which requires the Prison Ombudsman to have regard to guidance issued by the Secretary of State in relation to any matter connected with national security. They also highlighted their intention to bring forward an amendment to Clause 36 to provide the Ombudsman with the power to compel witnesses and outlined their support for the views expressed by one organisation in the evidence submitted to the Committee that the criterion in Schedule 3 that states that the Ombudsman may be removed from Office if that person has been convicted of a criminal offence should be removed from the Bill.
12. The Committee also agreed to bring forward two amendments at Consideration Stage. The first relates to the fine collection and enforcement provisions and will provide an enabling clause to allow the Department to provide the Court with powers to require offenders to satisfy a fine by undertaking a rehabilitative course to address the causes of offending behaviour such as drug or alcohol addiction as an alternative to Supervised Activity Orders. The second will create a new offence of disclosing private sexual photographs and images with intent to cause distress.
13. The Committee also supported a range of amendments proposed by the Department to introduce provisions on issues unrelated to the content of the Bill and a Department of Agriculture and Rural Development amendment to increase penalties for animal welfare offences.

### **Part 1 and Schedules 1 and 2 - The Collection and Enforcement of Financial Penalties**

14. Part 1 and Schedules 1 and 2 of the Justice No.2 Bill will create an entirely new regime for the collection and enforcement of financial penalties. It will create collection officers whose function it will be to operate and enforce collection orders as imposed by courts. Collection officers will be designated in law by the Department with a series of powers, provided by way of the collection order, which will be designed to, by and large, replace the current police role in

collection and enforcement. The provisions also aim to avoid people going to prison for non-payment of fines wherever possible.

15. Respondents were generally supportive of the primary aims of the provisions to improve the fine collection system and prevent fine default occurring and in particular the creation of a more civilian based collection service with civil servants as collection officers as an alternative to police officers and the move away from custodial sentences for fine default.
16. A number of specific issues, particularly in relation to the options available to secure the payment of fines through deductions from benefits, attachment of earnings orders, interim bank account orders, bank account orders and vehicle seizure orders and the potential impact on families and dependents of fine defaulters; the arrangements for information access and sharing; and Supervised Activity Orders were however raised.
17. A judgement delivered by the Divisional Court in March 2013 in five judicial reviews relating to the arrangements for imposing and enforcing fines and other monetary penalties in Northern Ireland ruled that the long established practice for dealing with non-payment of fines and other monetary penalties was unlawful and that a fine defaulter must be brought back to court for a further 'default' hearing before any penalty for default could be imposed. As a result revised arrangements had to be adopted to address the defects.
18. A Public Accounts Committee (PAC) report published in January 2015 on the NI Courts and Tribunals Service Trust Statement for the year ended 31 March 2013 also outlined that the value of unpaid financial penalties is significant and the Comptroller and Auditor General had raised concerns about the fine collection and enforcement measures and the system for dealing with fine defaulters. The PAC found that, despite the significant levels of outstanding debt, the Department of Justice had failed to coordinate a joined up approach to fine collection and as a result governance arrangements were unacceptable. This had contributed to a number of failings including 6,682 paper warrants with a value of £1.1 million going missing and suspected fraud.

- 
19. Figures provided by the Department to the Committee for Justice in early 2015 indicated that the total outstanding debt at 31 March 2014 was £22.684 million of which it estimated that £7.335 million is impaired and unlikely to be collected. The costs associated with enforcing the current system are also significant, as it takes up substantial police time and results in a large number of very short terms of imprisonment with the associated costs to the prison service.
20. In these times of financial constraint this is wasted funds that could be put to very good use and is unacceptable. It was within this context, and recognising the necessity to address as soon as possible the ongoing issues in the current system, particularly in relation to the levels of outstanding fines, the amount of money not being collected and the time and resources required to operate the system that the Committee considered the provisions of Part 1 and Schedules 1 and 2 of the Bill and the proposed amendments.
21. The Committee welcomed the improvements the Department anticipates following implementation of the new fine collection and enforcement arrangements which include an increase in the current level of payment rates from 70% to closer to 80% and a reduction in the committal rate to prison as a result of the non-payment of fines.
22. While the Committee agreed that it was content with clauses 1 to 27 and Schedules 1 and 2 of the Bill and the proposed departmental amendments some Members expressed reservations about the wider impact of the means testing and deductions from benefits proposals, the proposed interim bank account orders and bank account orders and the vehicle seizure powers and indicated that they would be seeking further assurances and commitments from the Minister of Justice at Consideration Stage regarding safeguarding and protecting dependents and vulnerable people.
23. The Committee also considered extending the powers of the court to enable offenders to be required to satisfy a fine by undertaking appropriate courses to address offending behaviour such as drug or alcohol treatment as an alternative to Supervised Activity Orders. The Committee viewed the proposal, which represents the problem solving model of justice, as helpful to the Department's stated aim of addressing offending behaviour and preventing reoffending. Noting that the Department was willing to give an undertaking to do further work in
-

relation to the proposal with a view to potentially enhancing the fine collection arrangements in the future, it agreed that it would take forward an amendment at Consideration Stage to include an enabling clause in the Bill that would allow the Department to provide such powers to the Court in due course when suitable arrangements are in place.

### **Part 2 and Schedule 3 – Prison Ombudsman**

24. Part 2 and Schedule 3 of the Bill creates the Office of Prison Ombudsman for Northern Ireland and sets out the main functions of the office which are to deal with complaints, death in custody investigations and investigations requested by the Department. These functions are currently carried out by the Prisoner Ombudsman on a non-statutory basis. Detailed in the Bill are conditions for the eligibility of complaints, the circumstances in which an investigation may be initiated or deferred, reporting arrangements and provision for regulations to be made in relation to these matters.
25. While there was widespread support for placing the functions of the Prisoner Ombudsman on a statutory footing, there was a divergence of views on the key provisions relating to the creation of the Office of Prison Ombudsman with some respondents, including the current Prisoner Ombudsman for Northern Ireland supporting the proposals and other respondents, including the NI Ombudsman, raising issues regarding the proposed model, appointment arrangements and remit. Other issues raised also included the Ombudsman's proposed powers in relation to gathering information and calling witnesses.
26. The Committee, having considered the evidence received including the views of the current Prisoner Ombudsman on how the office operates in its current form, agreed that it was content with clauses 28 to 40 and Schedule 3 of the Bill.
27. Some Members however outlined reservations regarding Clause 38 and the guidance from the Secretary of State to the Prison Ombudsman in relation to matters connected with national security on the basis that the current Prisoner Ombudsman had stated that it has never been used and it is therefore unnecessary to legislate for it and indicated that they intended to oppose this clause at Consideration Stage of the Bill. They also outlined their support for the

view expressed by NIACRO in its evidence that the criterion in Schedule 3 that states that the Ombudsman may be removed from Office if that person has been convicted of a criminal offence is illogical and incompatible with a desistance approach and should be removed from the Bill.

28. Some Members also highlighted their intention to bring forward, at Consideration Stage, an amendment to Clause 36 to provide the Ombudsman with the power to compel witnesses.
29. The Committee also discussed a proposal that the Ombudsman should have the power to initiate his own investigations and noted that under the current provisions the Prison Ombudsman has to receive a complaint or a request from the Minister of Justice before he can undertake an investigation. The Committee agreed that it was appropriate for the Prison Ombudsman to be able to initiate investigations of his own volition which would emphasise his independence and it would support an amendment to be brought forward by the Department to make this change.
30. The Committee also supported proposed departmental amendments to enhance the provisions and enable the Ombudsman to defer investigations where he/she considers it necessary to do so, standardise the requirement for the Ombudsman to inform police of a suspected criminal offence as part of any investigation he is conducting (rather than just as part of an investigation into a death in custody), place a duty on the Minister of Justice to request the Ombudsman to conduct an investigation in cases of near-death and add the Attorney General for Northern Ireland to the list of bodies to which protected information may be disclosed.

### **Part 3 – Miscellaneous**

31. Part 3 of the Bill includes provisions relating to extending the scope of the statutory custody visitor scheme to include lay visitors to all police stations, an offence of possession of extreme pornographic images and a scheme for the early removal of prisoners liable to removal from the United Kingdom.
32. No particular issues were raised in relation to these provisions and the Committee agreed that it was content with clauses 41 to 44 of the Bill.

**Part 4 - General**

33. Part 4 of the Bill makes a number of general provisions dealing with regulation and order making, commencement and short title, and ancillary provision.
34. The main issues raised in the evidence on Part 4 of the Bill related to the breadth and scope of Clause 45 and, in relation to Clause 47, a request by firearms stakeholders that the proposed firearms amendments should commence immediately the Act receives Royal Assent.
35. The Committee, when scrutinising the previous Justice Bill, raised substantial concerns about a similar Clause (Clause 86) to Clause 45 and the wide ranging powers it provided. The Committee was of the view that powers should be provided for an exact purpose rather than be broad and general in nature and agreed to oppose the inclusion of the Clause in that Bill. During the passage of that Bill through the Assembly the Clause was removed and replaced with one providing much narrower and more specific powers.
36. In light of the Committee's position in relation to such clauses the departmental officials, when briefing the Committee on the principles of the Justice No.2 Bill in June 2015, advised that they intended to revisit Clause 45 with a view to bringing forward an amendment to reduce its scope.
37. The Department subsequently indicated that it intended to remove Clause 45 from the Bill in its entirety and replace it with a power to make ancillary provisions under more restricted circumstances limited to Part 1 of the Bill. This would replicate the model developed in the Justice Bill to address the Committee's concerns with this type of clause. The Department provided the text of an amendment to Clause 23 and several consequential amendments to Clauses 46 and 47.
38. Given its opposition to such clauses the Committee welcomed and supported the Department's intention to remove Clause 45 from the Bill and, having clarified the extent of the powers to be provided by the proposed amendment to Clause 23

and examples of when the Department was likely to need to use such powers, agreed that it was content with the proposed amendment.

39. The Committee also agreed that it was content with clauses 46 and 47 and a number of departmental consequential amendments and noted the confirmation provided by the Department that the proposed provisions relating to changes to firearms legislation provide for commencement the day following Royal Assent.

### **Consideration of other proposed provisions for inclusion in the Bill**

40. Six proposals for new provisions unrelated to the areas currently covered in the Justice No.2 Bill were brought to the attention of the Committee during the Committee Stage of the Bill. Three were proposed by the Department of Justice, one was proposed by the Department of Agriculture and Rural Development, one was proposed by Lord Morrow MLA and one was proposed by Basil McCrea MLA.
41. The Committee also considered a proposal by the NI Human Rights Commission for a new offence relating to 'revenge porn' and possible legislative changes to improve online protection for children following its conference on 'Justice in a Digital Age' in October 2015.

#### **New offence relating to 'Revenge Porn'**

42. The NI Human Rights Commission, in its written submission to the Committee on the Justice No.2 Bill, highlighted that, while the Criminal Justice and Courts Act 2015 created the new offence of disclosing private sexual photographs and films with intent to cause distress (known as 'revenge porn') in England and Wales, no such offence existed in Northern Ireland. A person found guilty of such an offence is liable on conviction on indictment to a term not exceeding 2 years or a fine or both and on summary conviction to imprisonment for a term not exceeding 12 months, or a fine or both. The Commission recommended that consideration should be given to introducing an amendment to the Bill to provide for such an offence in Northern Ireland which would bring the law into line with England and Wales and give due regard to the Optional Protocol to the CRC and CEDAW.

43. In its written response to the proposal the Department of Justice indicated that, given time constraints and other pressing issues, it was not possible to give appropriate policy consideration to the matter in time to include it in the Justice No.2 Bill. The Department therefore intended to include the proposal in a policy consultation for future legislative change as part of a wider review into a number of related areas covering certain sexual offences and child protection.
44. At its meeting on 10 December 2015 the Committee discussed the proposal. The Committee is aware of the increasing incidence of this behaviour and the distress it can cause to individuals and is of the view that it is important to provide the same level of protection in Northern Ireland as that provided in England and Wales. It therefore agreed to take forward an amendment at Consideration Stage to create a new offence of disclosing private sexual photographs and films with intent to cause distress and subsequently agreed the text of the amendment.

### **Possible Legislative Changes to Improve Online Protection for Children**

45. On 15 October 2015 the Committee for Justice held a conference on 'Justice in a Digital Age' during which Jim Gamble, Chief Executive of INEQUE, gave a presentation on social media and internet protection and highlighted a number of areas where he believed the legislation could be changed to improve on-line protection for children.
46. The Committee subsequently invited Mr Gamble to give oral evidence on his proposed legislative changes at its meeting on 5 November 2015 after which it intended to consider whether to take them forward as amendments to the Justice No.2 Bill. The proposals cover the following:
- An amendment to the current law so that a child or young person under the age of 18 who takes, makes, distributes or possesses an image of themselves will commit no criminal offence unless it is done with malicious intent.
- The Protection of Children (Northern Ireland Order) 1978 as amended by the Sexual Offences (Northern Ireland) Order 2008 currently makes it an offence for a person below the age of 18 to take, make, show, distribute or



possess an image of themselves. The proposed amendments would result in:

- A child or young person under the age of 18 who takes, makes, shows, distributes or possesses an image of themselves will commit no criminal offence.
- A child or young person under the age of 18 who takes, makes, shows, distributes or possesses an image of another child under the age of 18 with malicious intent does however commit a criminal offence.
- An amendment to existing law or the creation of a new law to deal with harassment and the anonymity provided by the internet.

The proposal is to amend the Protection from Harassment (Northern Ireland) Order 1997 or create a new law to deal with the aggravated impact when an individual or individuals use the anonymity provided by the Internet and/ or the ability to create multiple online accounts to harass another person.

- The creation of a new law relating to circumstances where a person of 18 or above, masquerades as a person below that age.

The proposal is to create a new law to prohibit an individual 18 or above, who masquerades as someone below that age and engages online with an individual they know or believe to be, under the age of 18. An individual who did so would commit a criminal offence unless they can prove that they did so with reasonable cause or lawful authority. In reasonable cause defenses, the burden of proof will shift to the alleged offender.

47. Following the evidence session the Committee agreed to seek the written views of the Department of Justice, the PSNI, the Public Prosecution Service and the NI Human Rights Commission to assist its consideration of the proposals.

48. The Committee considered the proposed legislative changes and the responses from the organisations, which highlighted a range of issues that would need to be taken account of if any legislative changes were being considered, at its meeting on 7 January 2016.

49. The Committee is very aware that the development of the internet has created challenges for the law and believes that it is essential that the law responds and adapts to these challenges and provides the law enforcement agencies with sufficient and proper tools to tackle new and emerging types of criminal behaviour. The Committee Conference on 'Justice in a Digital Age' very successfully provided a forum to discuss these issues and identify possible solutions.
50. The Committee is supportive of the proposals but recognises that this is a complex area of law and any changes will require careful consideration to ensure that there are no unintended consequences.
51. The Committee noted that the Minister of Justice was concerned that bringing forward amendments at this stage would result in changes being made to this important area of the law without the benefit of proper policy consideration and consultation and had asked it to support the inclusion of the proposals in a policy consultation for future legislative change, as part of a wider review into a number of related areas covering certain sexual offences and child protection, rather than pursuing them as part of the Justice No.2 Bill.
52. The Committee agreed that it is content for the proposals to be included in the proposed policy consultation but indicated that it wishes to see them progressed as soon as possible and therefore wants to receive a briefing on the proposed consultation at the earliest opportunity.

### **Court Funds Office**

53. In December 2015 departmental officials attended the Committee to outline the results of a consultation on fee options to enable the Northern Ireland Courts and Tribunals Service to introduce a new full cost recovery charging model in 2016 to ensure the cost of administering the Court Funds Office is met by fees charged to service users rather than the general taxpayer. The officials also outlined that recent legal advice had raised doubts regarding whether there was sufficient authority to apply the proposed charges under the provision of Section 116 of the Judicature (NI) Act 1978. The Department was therefore proposing to introduce the required authority by changing the necessary legislation by way of an

amendment to the Justice No.2 Bill and provided the text of the proposed amendment.

54. The Committee noted the results of the consultation and the proposed fee structure for the Court Funds Office and agreed that it was content with the proposed amendment.

### **Direct Committal for Trial**

55. The Department advised the Committee in written correspondence of a proposed amendment to close a lacuna in the direct committal for trial provisions in Section 9 of the Justice Act (Northern Ireland) 2015.

56. The Department outlined that Section 9(3)(b) of the 2015 Act provides that the direct committal arrangements do not apply where the court is to proceed summarily with an offence under Article 45 of the Magistrates' Courts (NI) Order 1981 or under Article 17 of the Criminal Justice (Children) (NI) Order 1998. It had received advice from the Departmental Solicitor's Office that suggested that section 9 of the Act may not be sufficiently explicit to enable offences which are caught by Article 45 of the 1981 Order and Article 17 of the 1998 Order to attract the direct committal arrangements where the prosecution decides to proceed on indictment.

57. The Department stated that the policy intention was that these cases should be capable of being directly transferred where it is decided to proceed on indictment and the Minister of Justice believes that there is merit in amending Section 9 of the Justice Act (Northern Ireland) 2015 to put this matter beyond doubt.

58. The Committee agreed that it was content with the proposed amendment.

## Changes to Firearms Legislation

59. The Committee has been considering proposals by the Department of Justice to increase firearms licensing fees and make a range of other amendments to firearms legislation since May 2012.
60. In June 2015 amendments in relation to firearms fees, the age of young shooters and the banded system were tabled by several MLAs at Further Consideration Stage of the Justice Bill. Officials subsequently advised the Committee that, following further discussions, a level of agreement had been reached between the Department and the main firearms stakeholders on fees and bands which meant that the Department would bring forward legislation in its next Bill (the Justice No.2 Bill) depending on the outcome of the amendments tabled for the Justice Bill. As a result of the agreement reached the Members did not move the amendments at Further Consideration Stage of the Justice Bill to enable the Department to bring forward the legislative changes in the Justice No.2 Bill.
61. Following introduction of the Justice No.2 Bill, the Department advised the Committee of the Minister's intention to table amendments to the Firearms (NI) Order 2004 at Consideration Stage of the Bill. The amendments would:
- introduce a system to enable firearms dealers to exchange a firearm, for a licence holder, within a band as long as certain conditions are met. A licence holder would also be permitted to trade in a firearm without replacing it. Dealers would be authorised or conditioned to carry out such transactions.
  - permit a person of 12 years of age or older to be in possession of a shotgun in a police approved clay target range while under the supervision of a person who has held a shotgun certificate for at least 5 years. The Minister also proposed to permit a person from the age of 16 to engage in all shotgun activities – sporting and vermin uses – under existing supervision requirements.
  - Make changes to fee types – changes to current fees would be made by subordinate legislation.

62. The Committee sought written and oral evidence from key stakeholders on the proposals. When representatives from the British Association for Shooting and Conservation (BASC), Countryside Alliance Ireland (CAI) and Gun Trade Guild NI (GTGNI) attended the on 17 November 2015 they raised a number of issues regarding the proposals and lack of engagement by the Department on the amendments. They also indicated that they were suggesting a compromise proposal regarding the age of young shooters which they hoped the Minister and the Committee would support.
63. Departmental officials subsequently briefed the Committee on several occasions on the detail of the proposed amendments to the Firearms (NI) Order 2004 and provided the text of the amendments. They confirmed that the Minister remained of the view that the age reduction to 12 should be for clay target shooting only and not for shooting live quarry including vermin and he was not therefore willing to accept the compromise proposal put forward by BASC/CAI/GTGNI. He believed the amendments were appropriate to deliver his policy objective and highlighted that this is accepted by a number of other stakeholders.
64. The Committee has invested a lot of time and effort in scrutinising the proposals to amend the firearms legislation going back as far as 2012 and during that time has taken oral evidence from a wide range of key stakeholders and interested parties. From the outset the Committee encouraged the Department to engage with the key stakeholders and undertake dialogue with a view to presenting an agreed set of changes. While some organisations remain opposed to the proposals relating to young shooters the Committee is pleased that an accommodation appears to have been reached regarding the banded system and fees.
65. The Committee agreed that it is content with the proposed amendments to the Firearms (NI) Order 2004 but noted that the Department had undertaken to provide clarification that the wording of 50A(6) of the proposed new Schedule which refers to a firearms certificate will not exclude a person from outside Northern Ireland undertaking supervision if they hold a shotgun certificate. If the clarification indicates that this is not the case an amendment will be necessary at Consideration Stage.

---

## Penalties for Animal Welfare Offences

66. In November 2015 the Committee for Agriculture and Rural Development wrote to the Committee advising of the intention of the Department of Agriculture and Rural Development (DARD) to increase the statutory maximum penalties in the Welfare of Animals Act (NI) 2011. The proposal arose out of a joint DARD and Department of Justice review into the implementation of the 2011 Act following an Assembly debate on animal cruelty. While DARD had policy responsibility for animal welfare it did not currently have a suitable legislative vehicle to bring forward the necessary amendments. Given the importance of this matter and to avoid unnecessary delay, the Agriculture Minister was therefore proposing to make the amendments in the Justice No.2 Bill.
67. The proposed amendments will increase the maximum prison term to five years in the case of indictable offences; amend certain offences so that they become hybrid offences; and increase the maximum penalty available on summary conviction for two of the more serious hybrid offences to twelve months imprisonment and a £20,000 fine. The aim of the amendments is to reflect the serious nature of such offences and to provide some of the toughest penalties for animal cruelty of any jurisdiction in these islands.
68. To assist its consideration of the proposals the Committee sought the views of the Department of Justice. The Minister of Justice responded outlining that he had considered the proposed amendments in the context of the wider sentencing framework and the penalties that are available in neighbouring jurisdictions for animal welfare offences and believes that, in light of some of the extreme cases of animal cruelty that have occurred since the introduction of the 2011 Act, increasing the maximum penalties in this way is appropriate and will send out the message that animal cruelty will not be tolerated. The Justice Minister indicated that he was therefore supportive of the proposed amendments and was content that they should be made in the Justice No.2 Bill. The Minister also advised that he had agreed in principle to add animal cruelty offences to the Unduly Lenient Sentencing Scheme to further strengthen the law around animal cruelty.
69. The Committee for Agriculture and Rural Development confirmed that Members welcomed the increase in penalties, but had ongoing concerns about

enforcement, the possibility that some individuals – those disqualified from keeping animals and farmed animals in particular, may be circumventing the Act and the need to keep a register of those with disqualification or deprivation orders under the Act.

70. The Committee is very aware of public concern about some sentences handed down for convictions for animal welfare offences under the Welfare of Animals Act (Northern Ireland) 2011. It therefore welcomed the intention of the Department of Agriculture and Rural Development to bring forward amendments that will ensure tougher penalties for such offences and supported the proposed amendments.

### **Enhanced Protection for the Emergency Services**

71. At the invitation of the Committee Lord Morrow MLA attended the meeting on 17 November 2015 to outline his proposed amendment to the Justice No.2 Bill. The proposal is to amend Section 66(1) of the Police (Northern Ireland) Act 1998 which currently relates to assaults on members of the Police Service so that it specifically covers assaults and/or attacks on all members of the emergency services i.e. police, fire and ambulance service staff thus ensuring wider protection for all members of the emergency services working in the community in order that they are protected by the law to the same extent as a police officer.

72. During his oral evidence Lord Morrow stated that emergency service personnel are often placed in a high risk and vulnerable position in carrying out their duties and that they should be afforded the same protection as police officers. He outlined that, while it is a stand-alone offence in its own right to assault a police officer, if the assault is on ambulance or fire crews it is simply recorded as assault although it is accepted that, depending on the nature of the incident and the injuries sustained, it is likely to be a higher end offence and in the consideration of sentencing attract aggravated factors.

73. During the oral evidence session 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 voluntary organisations such as Lagan Search and Rescue.

74. Subsequently, when officials briefly outlined the position of the Department of Justice on Lord Morrow's proposed amendment when they attended to give evidence on the Bill on 3 December 2015, Mr Edwin Poots MLA 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 was through amendments to the Justice No.2 Bill to have a fixed-penalty notice imposed on people at the time of the incident and administered in hospitals or by the emergency services to support people providing front-line services from being abused by individuals who take them for granted. He also asked what the opportunities there are for elevating the more serious incidents/aggravated circumstances.
75. Following the oral evidence sessions the Committee agreed to seek the written views of the Department of Justice and the Department of Health, Social Services and Public Safety on the proposed amendment by Lord Morrow and the proposal by Mr Poots and requested information from the Public Prosecution Service regarding the prosecution of offences against emergency services personnel.
76. In its response the Department of Justice highlighted that both Lord Morrow's proposed amendment and the proposal by Mr Poots engages interests beyond the Department of Justice and the issues may be complex. It advised that it had raised the matters with colleagues in the Department of Health, Social Services and Public Safety (DHSSPS) and intended to meet with them to discuss it in further detail once they had had an opportunity to consider the issues. While the Department appreciated the intention behind Lord Morrow's amendment it noted that assaults upon fire and rescue personnel are already covered by Article 57 of the Fire and Rescue Services (Northern Ireland) Order 2006 which provides that any person who assaults or obstructs a fire and rescue officer or a person assisting commits an offence and outlined that assaults upon other public servants, including paramedics, are capable of being prosecuted under existing legislation such as the Offences Against the Person Act 1861. Attacks on public servants or which damage emergency equipment also may already be treated as aggravating factors when sentencing. It highlighted that definitional problems may



---

arise in terms of extending the proposed offence specifically to a range of other categories of profession.

77. In relation to legislating for on the spot fines for less violent behaviour on hospital premises 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 fixed penalties are not appropriate in circumstances where the use or threat of violence is a factor.
78. The Public Prosecution Service response highlighted that legislative reform is a matter for the relevant Department and the Legislature and it had therefore focused on the practical implications of Lord Morrow's amendment. The PPS stated that the law around the existing offence in Section 66(1) of the Police (Northern Ireland) Act 1998 can be more complex than first appears and explained that the current provision includes the offences of resisting, obstructing or impeding a constable or a person assisting a constable as well as assaulting and that the constable must be acting in 'execution of his duty'. One issue around this existing offence has been what is meant by the execution of an officer's duty and if the provision was extended to other classes of victims it is likely that this same consideration could occur.
79. The PPS also outlined that where there is evidence of an assault on an emergency worker it can prosecute under existing assault offences without the need to prove the victim was acting in execution of their duty. Where the victim is someone who is serving the public, prosecutors are advised to consider this an aggravating factor and it would be a consideration when deciding whether, for example, an offender should be prosecuted in the Crown Court where greater sentencing is available to the Court. It was also aware that Judges will treat the fact that a victim is performing a public service as an aggravating factor when passing sentence in such cases.
80. The Minister of Health, Social Services and Public Safety also wrote to the Committee on both Lord Morrow's proposed amendment and the proposal by Mr Edwin Poots MLA. The Minister advised that previous consideration had been given to the introduction of legislation that would create a specific offence of assaulting or impeding a healthcare worker whilst that worker was carrying out their duties and which would provide that anyone found guilty would be liable to

possible imprisonment or a fine. He indicated that those considerations had identified a number of practical problems with such legislation including the fact that it was already an offence to assault or abuse a health and social care worker; decisions on whether or how to prosecute any individual for a criminal offence are matters for the PPS; the individuals who would be protected by the legislation would have to be clearly identified and there would have to be decisions taken about who would be covered by the legislation; and clear decisions would be required on where, in terms of physical location, the protection afforded would have affect. He also stated that it was not apparent how an additional offence would increase the protection afforded to health staff and it was considered unlikely that an assailant would be deterred by a separate criminal offence related specifically to the assault or abuse of such staff. The Minister outlined that, in light of the practical difficulties with drafting specific legislation, a working group was set up to examine in further detail what measures could be undertaken to improve the effectiveness of existing legislation.

81. The Minister also indicated that any proposal to impose on the spot fines was unlikely to be welcomed by health staff who were likely to see that as possibly inflaming any situation rather than providing a solution and he outlined the Zero Tolerance policy that each Health and Social Care Trust has in place. In addition there is a joint Memorandum of Understanding between the PSNI, the PPS and the Department of Health aimed at promoting communication and establishing a framework for the exchange of information at local level and provide a clear statement on prosecution policy.
  
82. The Committee considered the proposed amendment by Lord Morrow MLA and the proposal by Mr Edwin Poots MLA at its meeting on 7 January 2016. While Members recognised and were sympathetic to the intention of both proposals they acknowledged that these are difficult and complicated matters, as illustrated by the responses received and in particular the correspondence from the Minister of Health, Social Services and Public Safety, that raise a number of complex issues that would require further detailed consideration.

## Regulation of the Flying of Flags on Lampposts

83. At the invitation of the Committee Basil McCrea MLA attended the meeting on 17 November 2015 to outline his proposed amendments to the Justice No.2 Bill to regulate the flying of flags on lampposts. He subsequently provided a written paper outlining the background to and main elements of the proposed amendments which include:

- To introduce regulations regarding the flying of flags on lampposts. It is deliberately narrow in scope.
- The amendments will create a licensing authority to regulate such matters. The Licensing Authority will establish a protocol on the flying of flags, promote and facilitate mediation as a means of resolving disputes and liaise with the PSNI and communities to remove unlicensed flags.
- The Licensing Authority will be independent of the enforcement body such as the PSNI.
- The legislation will draw from the erection of election posters in planning regulations.
- Police powers should be clarified and strengthened to ensure that any illegal flags i.e. flags of prescribed organisations are removed promptly.

84. Following the oral evidence session the Committee agreed to seek the written views of the Department of Justice and the PSNI on the proposals.

85. In its response the Department of Justice stated that it does not believe that the Justice No.2 Bill is an appropriate legislative framework to bring the measures forward and highlighted that the flying of flags is a cross-departmental issue with OFMDFM, DSD, DRD, DOE, local councils and other statutory authorities all playing a part. In its view the most suitable way forward is through a Commission on Flags, Identity, Culture and Tradition to be established by March 2016 to focus on flags and emblems and broader issues of identity, culture and tradition as set out in the Stormont House Agreement and reaffirmed in the Fresh Start document.

86. The PSNI acknowledged the need for a resolution to the flags issue and is supportive of any legislation that could provide a solution. It also recognised the dissatisfaction with the current arrangements and believes that the solution does not lie primarily with policing but predominantly within the political arena and a wider societal approach. It supports the position that the best way of resolving such issues is by looking at the context within which conflict arises and transforming that context. The PSNI indicated that it was difficult to comment 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 Paul Nolan and Professor Dominic Bryan which is due in early 2016.
87. The Committee considered the proposals by Basil McCrea MLA at its meeting on 7 January 2016. While Members recognised and acknowledged the aim of the proposals and what Mr McCrea was trying to achieve through his proposed amendments, Members were not convinced that they would have the desired outcome.
88. The Committee agreed that the best approach to this issue is for the Commission on Flags, Identity, Culture and Tradition, to be established by March 2016 as set out in the Stormont House Agreement and reaffirmed in the Fresh Start document, to consider the matter.
89. At its meeting on 14 January 2016 the Committee agreed its report on the Justice No.2 Bill and ordered that it should be published.

# Introduction

## Background to the Bill

1. The Justice No.2 Bill was introduced to the NI Assembly on 30 June 2015 and was referred to the Committee for Justice for consideration in accordance with Standing Order 33 (1) on completion of the Second Stage of the Bill on 8 September 2015.
2. At introduction the Minister of Justice made the following statement under section 9 of the Northern Ireland Act 1998:

*'In my view the Justice No.2 Bill would be within the legislative competence of the NI Assembly.'*

3. The purpose of the Bill is to:
  - improve current arrangements for the collection and enforcement of financial penalties;
  - improve the provision of prison services in Northern Ireland;
  - improve upon current statutory provision in relation to certain sex offending; and
  - extend lay visiting arrangements in police stations.
4. The Bill has **4 Parts** and **3 Schedules** covering a range of policy areas:
  - **Part 1 and Schedules 1 and 2** of the Bill will create an entirely new regime for the collection and enforcement of financial penalties. It will create collection officers whose function it will be to operate and enforce collection orders as imposed by courts. Collection officers will be designated in law by the Department with a series of powers, provided by way of the collection order, which will be designed to, by and large, replace the current police role in collection and enforcement. The provisions also aim to avoid people going to prison for non-payment of fines wherever possible.

- **Part 2 and Schedule 3** of the Bill creates the office of Prison Ombudsman for Northern Ireland and sets out his main functions which are to deal with complaints, death in custody investigations and investigations requested by the Department. These functions are currently carried out by the Prisoner Ombudsman on a non-statutory basis. Detailed in the Bill are conditions for the eligibility of complaints, the circumstances in which an investigation may be initiated or deferred, reporting arrangements and provision for regulations to be made in relation to these matters.
- **Part 3** of the Bill creates additional provisions in terms of lay visiting arrangements for police stations, an offence of possession of extreme pornographic images, and a scheme for the early removal of prisoners.
- **Part 4** of the Bill makes a number of general provisions dealing with regulation and order making, commencement and short title, and ancillary provision.

## Committee Approach

5. The Committee received a briefing by Department of Justice officials on the principles of the Bill on 23 June 2015, prior to its introduction to the Assembly.
6. Following the introduction of the Bill on 30 June 2015 the Department of Justice advised the Committee of its intention to bring forward a range of amendments at Consideration Stage as follows:
  - Part 1 of the Bill - Proposals for a police power of arrest in relation to Fine Default Hearings and provisions to improve information access and sharing in the fine collection process
  - Part 4 of the Bill - Amendments to clause 45 to reduce its scope
  - Amendments to current Firearms legislation
7. At its meeting on 2 July 2015, the Committee agreed arrangements to seek written evidence on the provisions of the Bill and the Department's proposed

---

amendments. While it is not normal practice to seek evidence before the commencement of Committee Stage of a Bill, the Committee agreed to adopt this approach given the limited time until the end of the mandate for the Bill to complete its passage through the Assembly.

8. In addition to publishing a media sign posting notice in the Belfast Telegraph, Irish News and Newsletter seeking written evidence on the Bill, the Committee wrote to a wide range of key stakeholders inviting views. In response to its call for evidence the Committee received 21 written submissions. Copies of the written submissions can be found [here](#).
9. During the period covered by this report the Committee considered the Bill and related issues at 16 meetings. The Minutes of Proceedings can be found [here](#).
10. The Committee had before it the [Justice No.2 Bill \(NIA 57/11-16\)](#) and the [Explanatory and Financial Memorandum](#) that accompanied the Bill.
11. At its meeting on 24 September 2015, the Committee agreed a motion to extend the Committee Stage of the Bill to 15 January 2016 to provide sufficient opportunity to take oral evidence and carry out robust scrutiny of the detail contained in the clauses and schedules of the Bill while still ensuring there was time for the Bill to complete its passage before the end of the mandate. The motion to extend was supported by the Assembly on 12 October 2015.
12. The Department subsequently advised the Committee of a range of further amendments it proposed to bring forward at Consideration Stage relating to the provisions covering fine enforcement and collection and the creation of the Office of Prison Ombudsman and two issues not covered in the Bill, namely the Court Funds Office and direct committal for trial. The Committee for Agriculture and Rural Development also informed the Committee of the intention of the Department of Agriculture and Rural Development to bring forward an amendment to the Welfare of Animals Act (NI) 2011 to increase maximum penalties for animal cruelty offences by way of the Justice No.2 Bill.
13. The Committee held 9 oral evidence sessions with a range of key stakeholders and organisations including the Prisoner Ombudsman, the NI Ombudsman, the

---

PSNI and the NI Human Rights Commission. The Minutes of Evidence can be found [here](#) and a list of witnesses who gave oral evidence is [here](#).

14. The written and oral evidence raised a number of issues and concerns, particularly in relation to Parts 1 and 2 of the Bill and the proposed amendments to firearms legislation.
15. The key issues raised in relation to the collection and enforcement of fines provisions included the options available to secure the payment of fines through deductions from benefits, attachment of earnings orders, interim bank account orders, bank account orders and vehicle seizure orders and the potential impact on families, dependents and vulnerable people and the arrangements for information sharing and access.
16. In relation to the provisions to create the Office of the Prison Ombudsman there was a divergence of views with the current Prisoner Ombudsman for Northern Ireland supporting the proposals in the Bill but other respondents including the NI Ombudsman raising issues regarding the proposed remit of the Prison Ombudsman and whether the proposed model and appointment arrangements would provide the necessary independence required of the office.
17. With regard to the proposed amendments to current firearms legislation the key issue raised related to the intention to reduce the minimum age for supervised shooting with a shotgun to 12 years of age for clay target shooting only in a club approved by the PSNI with a number of the stakeholders indicating they wished to see this changed to also cover the shooting of other lawful quarry.
18. The Committee explored the issues with the Department both in writing and in oral evidence sessions. Memoranda and correspondence from the Department of Justice on the Provisions of the Bill and proposed amendments can be found [here](#). Correspondence relating to the proposed amendments to current Firearms legislation is available [here](#) and correspondence relating to the proposed amendments by the Department of Agriculture and Rural Development to the Welfare of Animals Act (NI) 2011 can be found [here](#).
19. The Lord Morrow MLA and Basil McCrea MLA also advised the Committee of their respective intentions to bring forward amendments to the Bill. Lord Morrow



MLA was proposing an amendment to Section 66(1) of the Police (Northern Ireland) Act 1998 to provide the same protection in law in relation to assaults on all members of the emergency services including paramedics as that provided to police officers. Mr McCrea was proposing amendments to regulate the flying of flags on lampposts. To assist its consideration of these proposals the Committee heard oral evidence from both Members and also sought written views from relevant statutory bodies including the Department of Health, Social Services and Public Safety, the Department of Justice, the PSNI, and the Public Prosecution Service. Correspondence relating to Lord Morrow's proposed amendment can be found [here](#) and the correspondence relating to Mr McCrea's proposed amendment can be found [here](#).

20. Following the Committee's Conference on 'Justice in a Digital Age' in October 2015 the Committee explored a number of possible legislative changes covering three specific areas to improve on-line protection for children. The papers relating to the proposals can be found [here](#) and an Assembly Research Paper the Committee commissioned on "Online Risks and Children" can be found [here](#).
21. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered that most of the delegated powers were appropriate but drew the attention of the Committee to the regulation-making powers in Clause 18 (6)(b). The Examiner indicated that subsection 6(b) of Clause 18 was either intended to cover a matter of substance and import, in which case it should probably be fully set out on the face of the Bill, or it should simply be left to the discretion of the court by omitting the regulation-making power from the Bill entirely.
22. The Committee referred the issue raised by the Examiner to the Department of Justice and the Department subsequently provided an amendment to address the matter.
23. The Committee carried out informal clause by clause deliberations at its meetings on 3 and 10 December 2015 and 7 January 2016 and also undertook its formal clause by clause scrutiny of the Bill on 7 January 2016.

24. At its meeting on 14 January 2016 the Committee agreed its report on the Justice No.2 Bill and ordered that it should be printed.

---

# Consideration of the Provisions in the Bill

25. In response to its call for evidence the Committee received 21 written submissions and held 9 oral evidence sessions with key stakeholder organisations.
26. Respondents welcomed the provisions in Part 1 of the Bill to create a new regime for the collection and enforcement of financial penalties which aim to address the problems with the current system, however a number of issues were raised relating to the provisions to secure the payment of fines through deductions from benefits, attachment of earnings orders, interim bank account orders, bank account orders and vehicle seizure orders.
27. Part 2 of the Bill which places the Prisoner Ombudsman on a statutory footing by creating the office of the Prison Ombudsman for Northern Ireland and sets out the main functions which are to deal with prisoner complaints, death in custody investigations and investigations requested by the Department of Justice was supported by the current Prisoner Ombudsman and a number of other respondents. The NI Ombudsman, the Ombudsman Association, the Scottish Public Services Ombudsman and NIACRO however raised a number of issues about the proposed model and remit with the NI Ombudsman expressing the view that the new NI Public Service Ombudsman could undertake the function of dealing with prisoner complaints.
28. The main issue raised in relation to Parts 3 and 4 of the Bill which cover a range of miscellaneous and ancillary provisions was the breadth and scope of the powers provided to the Department by Clause 45 to amend the Bill, once passed, by way of secondary legislation.
29. The Committee explored the issues in further detail with the Department of Justice both in writing and in oral evidence sessions.

## Part 1 and Schedules 1 and 2

### The Collection and Enforcement of Financial Penalties

30. Part 1 and Schedules 1 and 2 of the Justice No.2 Bill will create an entirely new regime for the collection and enforcement of financial penalties. It will create Collection Officers whose function it will be to operate and enforce collection orders as imposed by courts. Collection Officers will be designated in law by the Department with a series of powers, provided by way of the collection order, which will be designed to, by and large, replace the current police role in collection and enforcement. The provisions also aim to avoid people going to prison for non-payment of fines wherever possible.
31. In June 2015 the Department advised the Committee of its intention to bring forward two amendments in relation to Part 1 of the Bill. The first would provide a police power of arrest in relation to Default Hearings and the second was to improve information access and sharing in the fine collection process. The Committee sought views on both proposals when requesting written evidence on the Bill.
32. The Department subsequently advised the Committee in November 2015 of a range of other amendments it was proposing to make to Part 1 of the Bill. These covered:
- Vehicle Seizure Orders - Provisions to specify the issues that the court should take into account before making a vehicle seizure order on the face of the Bill and to provide that a vehicle seizure order should only be made if the value of the vehicle, if sold, would discharge the sum owed including the likely charges and costs of the sale.
  - Default Hearings – Provisions to create a power for the recovery of the fee for the cost of personal service by a summons server from the defaulter in appropriate circumstances where the postal service is unsuccessful.

- 
- Prosecutorial Fines – An amendment to ensure that prosecutorial fines can be treated in the same way as the fixed penalties and penalty notices already included in Schedule 2 of the Bill
  - Warrant of Commitment – an amendment to ensure that a warrant of commitment for default under the Bill is treated the same as a similar warrant under the Magistrates’ Courts (Northern Ireland) Order 1981.
  - Confiscation Order – an amendment to ensure that a Supervised Activity Order cannot be considered as an option in default of a confiscation order given that under Clause 3(2) a Confiscation Order does not fall within the proposed new collection and enforcement arrangements.
  - Minor and technical amendments – a range of minor and technical amendments to correct and improve the drafting of the Bill.

33. Organisations that commented on this part of the Bill included the NI Association for the Care and Resettlement of Offenders (NIACRO), the NI Human Rights Commission (NIHRC), Women’s Aid, the PSNI, the Information Commissioner’s Office (ICO), Mid and East Antrim Borough Council, the British Parking Association, the NI Policing Board and the Assembly Committee for Social Development.

34. Respondents were generally supportive of the primary aims of the provisions to improve the fine collection system and prevent fine default occurring with, for example, NIACRO supportive of a more civilian based collection service with civil servants as Collection Officers as an alternative to police officers and the move away from custodial sentences for fine default. The PSNI and NI Policing Board also welcome the provisions with the Policing Board noting that, according to the Department of Justice, it is anticipated that fine warrants issued to police will drop by as much as 90% and stating that, in a time of economic austerity and increasing pressure on policing budgets, the civilianising of fine collection and enforcement has the potential to make more PSNI officers available to tackle other strategic priorities and make better use of police resources. Mid and East Antrim Borough Council also highlighted that a fine collection service which is cost effective and successful will allow for resources

---

to be targeted in those areas where they can be of real benefit to communities and to the safety and well-being of its people.

35. A number of specific issues, particularly in relation to the options available to secure the payment of fines through deductions from benefits, attachment of earnings orders, interim bank account orders, bank account orders and vehicle seizure orders and the potential impact on families and dependents of fine defaulters; the arrangements for information access and sharing; and Supervised Activity Orders were however raised.

### **Deductions from Benefits, Attachment of Earnings Orders, Interim Bank Account Orders and Bank Account Orders**

36. Clauses 9 to 17 of the Bill provide courts with a range of options to secure the payment of fines on default of a collection order including through deductions from benefits, attachment of earnings orders, interim bank account orders and bank account orders.
37. NIACRO, in its written evidence, recommended that a full means test should be carried out to assess the impact of deductions from benefits or an attachment of earnings order not just on the debtor but on any dependents. NIACRO is concerned that the deduction or freezing of such monies could negatively impact partners and children, particularly in the case of an interim bank account order, where there is no requirement to inform the debtor of this action in advance, and it wants any financial assessment to take account of all of the individual's responsibilities including his/her dependents and relevant financial commitments. NIACRO also believes that there is a need to consider the impact on a person's existing Standing Orders and Direct Debits if implementing an attachment of earnings order or deduction from benefits as utility providers may withdraw services if payment is not maintained which could increase the incidence of default.
38. Women's Aid also has a number of concerns about the proposal to deduct court imposed fines or debts from benefits, particularly if any of these benefits are replaced by Universal Credit in the future. In its view if a court fine was deducted

---

from benefits which were allocated per household instead of per individual, this could amount to collective punishment of an entire family or household for the actions of an individual. Women's Aid is also concerned that such a measure may result in victims of financial abuse being pushed even further into poverty and stated that this could leave victims with fewer options, for example being unable to afford even a bus or taxi fare to enable them to physically leave an abusive relationship.

39. The NIHRC recommends that any financial assessment by the court under Clause 12(1) should include the debtor's outgoings and potential hardship and caring responsibilities in addition to personal details and details of any relevant benefits received. While the Commission acknowledges that the hardship payment order in Clause 16 will provide a safeguard against destitution, it recommends that regulations made regarding interim bank account orders should ensure a detailed assessment of income and outgoings takes place at the time such an order is being considered to prevent the risk of destitution in the first instance. It also recommends that a requirement to notify the debtor of the possibility of an interim bank account order is inserted into Clause 15 which would help fulfil the State's obligations under ECHR, Article 3 and ICESCR, Article 11. Alternatively, it suggests that an assurance should be provided by the Department that relevant regulations and guidance will provide for claimants to be informed of the possibility of a hardship payment.
40. The British Parking Association supports reasonable and fair means of recovering unpaid debts including monies being withdrawn from a debtor's bank account but expressed the view that such actions need to be carefully managed and a set of rules and procedures put in place to protect vulnerable persons.
41. The Department of Social Development supports the proposal for deductions to be made from benefits and indicated that it continues to engage with the Department of Justice to discuss issues of concern and agree a way forward on the development of policies, processes, systems and legislation to facilitate the recovery of fines and a financial package to account for the set up and running costs as well as debt recovery displacement.
42. The Committee for Social Development noted that, in the first instance, any deductions from benefits must be by consent of the individual who is subject to

---

the fine and recognised that this approach makes the process of payment easier for an individual on benefits. The Committee also noted that deductions could be made from benefits without the individual's consent where there has been default on the payment schedule and where agreement on how to re-establish payment fails and supports early engagement by the Collection Officer with the customer to discuss options in these circumstances before the Collection Officer seeks an order to deduct payments.

43. The Social Development Committee is concerned about deductions from benefits possible adversely affecting others in the household, particularly children, but acknowledges the safeguards provided in the legislation in respect of the sequencing of collection options and the fact that under current legislation a maximum of 15% of the benefit can be deducted by the Department of Social Development. Where a customer is already having deductions made from benefits e.g. to pay rent or electricity arrears, the Department may not be able to make further deductions as it would break the 15% ceiling and, noting that under these circumstances an individual could be imprisoned, the Committee urges the Department to consider the possibility of no further action until a previous debt has been cleared and deduction from benefit at a later date could take place.
44. In its written evidence the Department of Justice clarified that information sought by the Collection Officer will be by way of completion of a Means Enquiry Form. The Means Enquiry Form will request information on a debtor's financial circumstances including income, outgoings and dependents which will help inform any collection measures. Article 53 of the Magistrates' Court (Northern Ireland) Order 1981 and Article 29 of the Criminal Justice (NI) Order 1996 requires a court to take into consideration the means of the offender when fixing the amount of a fine to be imposed on conviction.
45. The Department confirmed that guidance will be produced for Collection Officers in relation to the use of Deduction from Benefits, Attachment of Earnings and Bank Account Order powers to ensure the most appropriate collection method is adopted in response to the debtor's specific circumstances.
46. Deductions from benefits will be operated by the Department of Social Development under their existing Third Party Deduction Scheme and the



---

Department indicated that it will continue to work with DSD to develop the operational arrangements. The Scheme includes safeguards in relation to protecting the vulnerable and an appeal system in relation to the amount of the deduction being made through the Social Security Appeals Tribunal. Department of Social Development controls include a limit on the number of deductions that can be in place at any one time and a maximum amount for total deductions that can be taken. The Bill does not change those controls - collection of a fine would sit sixth in the priority list for collection – e.g. housing or fuel arrears would be collected before a fine – and essential living expenses will be protected.

47. The Department also clarified that deductions for fine payment will also be restricted to Income Support, Jobseeker's Allowance, State Pension Credit and Employment and Support Allowance only and benefits provided to the vulnerable cannot be accessed, nor can disability benefits, carer benefits, child benefit or child tax credit payments. In the Department's view the available safeguards that prioritise and protect essential living expenses should provide reassurance that the entire family or household will not be punished for the actions of an individual.
48. The Department indicated that it continues to work with Department of Social Development colleagues in relation to how the existing Third Party Deduction Scheme will operate when Universal Credit is introduced in Northern Ireland and to ensure that the safeguards proposed in the Bill can be replicated under any new scheme.
49. The Department does not consider it appropriate to hold further collection or enforcement options in abeyance if deductions from benefits are not possible under the Third Party Deduction Scheme because the debtor already has three priority deductions in place. In that scenario the Collection Officer will consider other options to secure payment and if no other option is appropriate or successful the matter will be referred back to the judge to consider the range of enforcement options available with custody being the final option under Default Hearing proceedings.
50. In response to the concerns raised regarding the Interim Bank Account Order, the Department stated that it will only freeze the amount of the fine and the Bank

Account Order, which can only be made at a judicial hearing, will only be made for bank accounts held solely in the debtor's name. Joint bank accounts will not be frozen or accessible. A requirement to notify the debtor of the possibility of an Interim Bank Account Order will be covered in Regulations and in guidance and the option for the debtor to make an application for a hardship payment will also be included in correspondence sent from the Collection Officer to the debtor.

### **Vehicle Seizure Orders**

51. Clause 18 of the Bill provides for the court to make a vehicle seizure order whereby a vehicle may be seized pending payment if the Collection Officer is satisfied that the debtor has funds available to pay the sum due, the vehicle in question is registered to the debtor and the sale of the vehicle would discharge the sum owing. The Collection Officer may not request a vehicle seizure order without first informing the debtor of his intentions and affording the debtor an opportunity to pay the sum owing.
52. The British Parking Association is of the view that the seizure of vehicles for non-payment of fines is acceptable providing there is a set of regulations in place to maintain the integrity of the scheme and protect vulnerable people. It also agrees that it is important that the Collection Officer informs the debtor of the intention to seize a vehicle as this transparency will ensure a high standard of behaviour is maintained and can prevent a high volume of complaints being reported from motorists by providing the debtor with an opportunity to pay the sum owing. It highlights that its members have found it of benefit to apply a level 2 fine if the debtor, having been informed of a possible application for a vehicle seizure, attempts to hide or dispose of the vehicle.
53. The NIHRC recommends that regulations made under Clause 18(6)(b) should provide that the responsible court takes into account the impact of a vehicle seizure order on an individual's employment to ensure that an individual is not deprived of their source of income in order and to comply with ECHR, Article 1, Protocol 1, ICESCR, Article 6 and CFREU, Article 15 in relation to the right to work and an individual's right to employment and protection of income.

54. The Assembly Examiner of Statutory Rules also drew the attention of the Committee to the regulation-making powers in Clause 18 (6)(b). He indicated that subsection 6(b) of Clause 18 was either intended to cover a matter of substance and import, in which case it should probably be fully set out on the face of the Bill, or it should simply be left to the discretion of the court by omitting the regulation-making power from the Bill entirely.
55. The Committee referred the Examiner's analysis to the Department and it confirmed that, in response to the issues raised by the Examiner and by the NIHRC, it would bring forward an amendment to Clause 18 to specify, on the face of the Bill, the issues that the court should take into account before making a vehicle seizure order.
56. The Department also outlined in its written response that regulations in relation to Vehicle Seizure Orders under Clause 18 (6) will be made and will be supported by detailed guidance setting out the scheme and the built-in protections for vulnerable people.

### **Supervised Activity Orders**

57. Clause 24 provides for the imposition of a Supervised Activity Order (SAO) when a person is in default of payment or for an SAO to be made when the person makes an application for one, default not yet having occurred. The amount in respect of which an order may be made will increase from £500 to £1,000 and will also include other financial penalties as well as fines. The SAO will require an individual to attend at a place for a period specified in the order to carry out activities as specified by the order.
58. Respondents including NIACRO and the Committee for Social Development generally welcomed the ability of the Court to impose SAOs instead of custodial sentences.
59. NIACRO highlights that SAO's are a more appropriate alternative to imprisonment. NIACRO is opposed to using prison as a punishment for fine default for minor offences. Given that Clause 19 states that the provisions in this chapter relate to fines amounting to less than £500, it believes it is inappropriate

---

and unnecessary to imprison those who default on sums of this value, particularly given the high cost of imprisonment and lasting impact to the person and their family, and therefore recommends that SAOs are a more appropriate measure for those who default on such fines.

60. NIACRO also recommends that the option to complete an SAO should not just be an alternative to custody for a judge passing sentence, but should also be an alternative to the fine itself. NIACRO also recommends that completing an SAO should be purposeful and relevant to the individual's situation and it should contribute to desistance from future offending behaviour e.g. a Managing Money Matters accredited programme for those experiencing difficulty managing money or an Alcohol Awareness programme for those fined for an alcohol related offence.
61. The Committee for Social Development recommends the Department explores other options before making deductions from benefits and/or imprisonment of an individual and agrees that community service is an appropriate alternative.
62. Mid and East Antrim Borough Council however believes that the ability for people to clear their fine through community based opportunities should not be pursued as it may encourage non-payment.
63. The NIHRC stated that clarification regarding how the Department of Justice will ensure that imprisonment is used as a measure of last resort, in order to reflect the language and spirit of CoE Recommendation 1469, and of the concluding observations of UNCEDAW and CAT Committees would be helpful and should be addressed in guidance.
64. The PSNI stated that there should be no incentive for persistent offenders to elect for prison and noted that currently persistent offenders can serve a fine sentence concurrently with other unrelated sentences which is of negligible deterrent value. It indicated that it would be helpful if there was a presumption that fine sentences of imprisonment are to be served consecutively rather than concurrently stating that this would act as a more significant deterrent to offenders considering not paying, breaching SAOs or electing for prison. SAOs should also be treated similarly.

- 
65. The Department, in its written evidence, outlined that the focus of the Bill is to provide additional ways by which financial penalties can be paid and collected so as to avoid default in the first instance, supported by a more expansive range of default options which the Collection Officer and subsequently the judge will consider in a priority order e.g. an SAO will be considered after time extension, instalment order, deductions from benefits or attachment of earnings, bank account order and vehicle seizure order and will be prioritised over imprisonment. The Department does not believe that requiring a fine to be cleared by an SAO in lieu of a prison sentence will encourage non-payment.
66. It highlighted that there would be an emphasis on community based alternatives to imprisonment ahead of custody for those who remain in default after all collection options have been exhausted. SAOs may be imposed in respect of financial penalties up the value of £1000. Committal to prison may, however, be imposed where all other approaches have failed or are considered inappropriate. This will be a judicial decision and where custody is determined by a judge to be the most appropriate default option the Bill provides for the removal of remission for sentences of imprisonment for fine default and for the breach of a SAO to act as an additional deterrent to those who might consider custody preferable to payment. The Collection Officer report will show all attempts to secure payment before referral to a Default Hearing and operational guidance will address this issue. It also stated that the proposal to have default periods served consecutively was the subject of public consultation previously with the majority of respondents opposing it.
67. The Department confirmed that the Bill contains provisions that will allow the court to consider representations and impose the SAO forthwith (i.e. at point of sentence instead of waiting for default to occur). The debtor can also apply to the court for a SAO at any subsequent time without default having yet occurred.
68. The Department outlined that the imposition of an SAO, in lieu of custody, would require individuals to complete activities, tailored to their individual needs and based on a personal assessment carried out by the Probation Service. The introductory sessions will include citizenship and money management modules It also indicated that an SAO is by no means considered to be a 'soft option' and that the evaluation of two pilot exercises included interviews with participants
-

who confirmed that having completed their duties they would be minded to pay any future fines that they might incur rather than undertake another SAO. In light of this, and in recognition of a gap in the existing SAO legislation, the Bill now includes provisions to allow a debtor to pay off the remaining balance of their fine after an SAO has been initiated.

69. The Department also outlined that breach proceedings for non-conformity of the requirements of an SAO can result in a longer period of imprisonment being imposed – also without remission – than would have been the case if the debtor had been imprisoned for non-payment of the fine in the first place.

### **Children in Fine Default**

70. Clause 25 of the Bill amends the Criminal Justice (Children) (Northern Ireland) Order 1998 to provide that a child shall not be detained in custody for fine default unless that child is already in custody or has been ordered to be detained in custody for a period which has not yet begun.
71. While NIACRO welcomes the removal of custody as an option for children who default on fines it does not believe fines are an appropriate disposal for children. It states that fines do not address the underlying causes of offending behaviour at any age and, in the case of children, the impact of this disposal is more likely to be felt by the young person's parents and family. This view is supported by the Children's Law Centre.
72. NIACRO believes that diversionary measures for children should be promoted for young people involved in minor offences as such measures will do more than a fine to address the offending behaviour, prevent its further development, and divert young people away from the criminal justice system and the lasting negative impact of criminal records.
73. The Department's written response outlined that the Bill does not seek to change sentencing policy but rather seeks to improve collection rates and reduce instances of non-payment where the Court considers the fine to be the appropriate sentencing disposal. In terms of diversionary disposals, the

---

Department agrees that children should, as far as possible, be diverted from the formal criminal justice system and that custody should be used as a last resort.

74. The Department outlined that, in recent years, implementation of this policy has led to the introduction of police discretion, Youth Engagement Clinics and diversionary youth conferencing, all of which provide the opportunity for diverting children at the earliest possible stage and providing support to help address their offending or anti-social behaviour. It stated that a current Scoping Study on Children in the Justice System will build still further on this approach by taking an end-to-end look at the system with the aim of simplifying it and ensuring the delivery of more focused interventions at the earliest possible stage to improve longer-term outcomes for children by diverting them away from formal court adjudication wherever appropriate.

### **Information Access and Sharing in the Fine Collection Process**

75. In June 2015 the Department advised the Committee of its intention to bring forward an amendment to the Bill to enhance information access and sharing in the fine collection process. While the Bill as currently drafted requires offenders to provide the necessary earning and income information to Collection Officers, to avoid the situation whereby a Collection Officer is frustrated in his/her attempts to secure income details by non-compliance, the Department wishes to ensure that Collection Officers and courts have access to employment, earnings or benefits information including, in cases of non co-operation, in the absence of the offender. The Department indicated that access to benefits information with regard to local claimants is a matter for the Social Development Minister who it would be liaising with ahead of publishing proposals in this area, and access to employment and earnings information is a matter for HM Revenue and Customs (HMRC) and therefore a reserved matter. An amendment at Westminster would be required to enable HMRC to share financial information with a court or Collection Officer for the purposes of an attachment of earnings order.
76. The Department of Social Development subsequently confirmed that, while it supports the process for application for deductions from benefits, it continues to engage with the Department of Justice to discuss issues of concern and agree a way forward on the level of access required by Department of Justice staff to its benefits system.

77. The Information Commissioner's Office (ICO) indicated that the proposal to allow data sharing arrangements for Collections Officers to verify an individual's employment, earnings or benefit information highlights some data protection concerns. It stated that although the Bill suggests that this access will only be permitted in the event of non-co-operation with an offender, it is also suggested this will be permitted in certain circumstances in the absence of an offender. The Data Protection Act requires that personal data be processed fairly and lawfully, and although the Bill may provide a legal provision to facilitate this, the Department should review any appropriate fair processing notices to reflect this provision. The ICO indicated that any disclosures should be considered on a case by case basis and should be proportionate and strongly advised that a privacy impact assessment is conducted with respect to this provision to assist with the identification of any potential intrusion on privacy. The ICO states that the Department will also need to be content that this activity will also take account of the Human Rights Act.
78. The Committee for Social Development noted that the proposal for the Department of Social Development to share benefits data with the Department of Justice appeared necessary to facilitate the operation of the Bill but emphasised the need for safeguards to be agreed so that only the information required to inform a decision regarding fine repayment is released and data access and release are conducted in accordance with the Data Protection Act 1998.
79. The PSNI stated that it is important that Collection Officers have access to information both from HMRC and for benefit claimants via the Department of Social Development in order not to have collection options frustrated. It also indicated that such information may also assist when devising strategies to serve details of Default Hearings.
80. In its written evidence, the Department confirmed that guidance would include the appropriate circumstances in which a Collection Officer or court should seek social security information from the Department of Social Development and that an individual assessment of the appropriateness of this will be carried out in



each case. It will also be an offence for a person to whom that information has been disclosed to disclose it to another person or use it for another purpose.

81. The Department also stated that it is engaging with the Departmental Information Manager and a full review will be completed of the new provisions including a review of any appropriate fair processing notices. A privacy impact assessment will also be completed and a full privacy impact assessment conducted if required.
82. In light of the above the Department is satisfied that all data sharing arrangements and all personal data processing will be made in accordance with the Data Protection Act 1998 and will be compliant with Human Rights Act requirements.

### **Police Power of Arrest in relation to Fine Default Hearings**

83. The Department also advised the Committee of its intention to bring forward an amendment to strengthen attendance at Fine Default Hearings by providing a police power of arrest in circumstances of non-attendance. While the number of non-attenders at Fine Default Hearings following the implementation of the new collection process is expected to be low the Department believes such a power is important to maintain the integrity of the fine collection and Default Hearing process as a deterrent to those who might seek to ignore the call back to court. The power would enable the police to arrest an offender whom they know to be in default if they encounter them and either bring them to court forthwith or bail them for a future Default Hearing appearance.
84. The Department indicated that it is mindful of proportionality considerations and wished to ensure that no defaulter is detained for any longer than is necessary. The proposed warrant will therefore allow the defaulter to be released without attending a police station if he or she signs a recognizance to appear at the Default Hearing and will not include a PSNI power of entry and search in relation to such arrests.

---

85. While in its written submission the PSNI expressed the view that such a power may be disproportionate and unnecessary, following further discussions with the Department and confirmation that a power of entry and search in relation to such arrests was not being considered, the PSNI indicated in its oral evidence to the Committee on 5 November 2015 that it was content that there was a need for the proposed power in the limited circumstances envisaged.

### **Committee Consideration of Part 1 and Schedules 1 and 2 of the Bill and related amendments**

86. During the oral evidence session with departmental officials on this Part of the Bill, the Committee sought clarification regarding the application of the police powers of arrest and a number of issues relating to the vehicle seizure provisions and amendments including whether the services of an assessor will be required when assessing the value of a vehicle being considered for seizure which would add to the cost and whether checks would be carried out regarding any debts owed on the vehicle.

87. The Committee also explored how deductions from benefits would operate in practice, the safeguards in place to ensure dependents are not adversely affected, whether further legislative amendments will be required when Universal Credit is introduced, any data protection issues with sharing benefits information and whether there was a mechanism to review how the fine was being repaid if an individual's circumstances changed.

88. The Committee raised the possibility of extending the powers of the court to enable offenders to be required to satisfy a fine by undertaking appropriate courses to address offending behaviour such as drug or alcohol treatment as an alternative to Supervised Activity Orders and what consideration the Department had given to this.

89. The officials indicated that they envisaged some difficulties at this level of disposal with mandatory health solutions but agreed to consider the issue further.

90. The Department subsequently provided further information on its position in relation to the proposal in correspondence dated 17 December 2015. The

---

Department stated that, unlike community based sentences by which a court may include requirements as to treatment for drug or alcohol dependency or as to mental condition, the imposition of a fine by a court is a pecuniary penalty and not designed to have a rehabilitative aspect. It noted that the arrangements in New South Wales, Australia, as highlighted in the research paper commissioned by the Committee, are unique in the sense that they can engage persons who are suffering from mental health or drug or alcohol addiction problems in certain courses or treatment as a means of satisfying the fine, which is not an aspect associated with fine enforcement arrangements elsewhere in Great Britain or the Republic of Ireland.

91. The Department indicated that in its view considerable policy development would be required to evaluate the merits of this approach and identify any resource implications. It stated that it would be happy, in principle, to consider the proposal in more detail. As this would not be possible within the timescale for this Bill, it was willing to give an undertaking to do further work in relation to the proposal with a view to potentially enhancing the fine collection arrangements in the future.
92. **A judgement delivered by the Divisional Court in March 2013 in five judicial reviews relating to the arrangements for imposing and enforcing fines and other monetary penalties in Northern Ireland ruled that the long established practice for dealing with non-payment of fines and other monetary penalties was unlawful and that a fine defaulter must be brought back to court for a further 'default' hearing before any penalty for default could be imposed. As a result revised arrangements had to be adopted to address the defects.**
93. **A Public Accounts Committee (PAC) report published in January 2015 on the NI Courts and Tribunals Service Trust Statement for the year ended 31 March 2013 also outlined that the value of unpaid financial penalties is significant and the Comptroller and Auditor General had raised concerns about the fine collection and enforcement measures and the system for dealing with fine defaulters. The PAC found that, despite the significant levels of outstanding debt, the Department of Justice had failed to coordinate a joined up approach to fine collection and as a result governance arrangements were unacceptable. This had contributed to a**

---

number of failings including 6,682 paper warrants with a value of £1.1 million going missing and suspected fraud.

94. Figures provided by the Department to the Committee for Justice in early 2015 indicated that the total outstanding debt at 31 March 2014 was £22.684 million of which it estimated that £7.335 million is impaired and unlikely to be collected. The costs associated with enforcing the current system are also significant, as it takes up substantial police time and results in a large number of very short terms of imprisonment with the associated costs to the prison service.
95. In these times of financial constraint this is wasted funds that could be put to very good use and is unacceptable. It was within this context, and recognising the necessity to address as soon as possible the ongoing issues in the current system, particularly in relation to the levels of outstanding fines, the amount of money not being collected and the time and resources required to operate the system that the Committee considered the provisions of Part 1 and Schedules 1 and 2 of the Bill and the proposed amendments.
96. The Committee welcomed the improvements the Department anticipates following implementation of the new fine collection and enforcement arrangements which include an increase in the current level of payment rates from 70% to closer to 80% and a reduction in the committal rate to prison as a result of the non-payment of fines.
97. While the Committee was broadly content with clauses 1 to 27 and Schedules 1 and 2 of the Bill some Members expressed reservations about the wider impact of the means testing and deductions from benefits proposals, the proposed interim bank account orders and bank account orders and the vehicle seizure powers and indicated that they would be seeking further assurances and commitments from the Minister of Justice at Consideration Stage regarding safeguarding and protecting families, dependents and vulnerable people.
98. The Committee also discussed the proposal to extend the powers of the court to enable offenders to be required to satisfy a fine by undertaking

---

**appropriate courses to address offending behaviour such as drug or alcohol treatment as an alternative to Supervised Activity Orders. The Committee viewed the proposal, which represents the problem solving model of justice, as helpful to the Department's stated aim of addressing offending behaviour and preventing reoffending. Noting that the Department was willing to give an undertaking to do further work in relation to the proposal with a view to potentially enhancing the fine collection arrangements in the future it agreed that it would take forward an amendment at Consideration Stage to include an enabling clause in the Bill that would allow the Department to provide such powers to the Court in due course when suitable arrangements are in place.**

99. **The Committee agreed that it was content with clauses 1 to 27 and Schedules 1 and 2 of the Bill subject to the amendments proposed by the Department and subject to the Committee's own amendment.**

## **Part 2 and Schedule 3 – Prison Ombudsman**

100. Part 2 and Schedule 3 of the Bill creates the Office of Prison Ombudsman for Northern Ireland and sets out the main functions of the office which are to deal with complaints, death in custody investigations and investigations requested by the Department. These functions are currently carried out by the Prisoner Ombudsman on a non-statutory basis. Detailed in the Bill are conditions for the eligibility of complaints, the circumstances in which an investigation may be initiated or deferred, reporting arrangements and provision for regulations to be made in relation to these matters.

101. In November 2015 the Department advised the Committee of its intention to bring forward three substantive amendments and several minor amendments to Part 2 and Schedule 3 of the Bill.

102. The first amendment would create a general power to defer investigations where the Ombudsman considers it necessary to do so, the second amendment would standardise the requirement of the Ombudsman to inform police of a suspected criminal offence as part of any investigation he is conducting rather than just as part of an investigation into a death in custody and the third would add the

---

Attorney General for Northern Ireland to the list of bodies to which protected information may be disclosed. The tidy-up amendments would change references in the Bill to the NI Public Services Ombudsperson to Ombudsman.

103. The Department subsequently advised the Committee of two further amendments it was proposing to make. One would allow the Prison Ombudsman to initiate certain investigations in defined circumstances and would apply to those matters within the Ombudsman's complaints remit. It would allow him/her to investigate of his/her own volition where the number or frequency of events of a similar nature requires investigation. The investigations would not be limited to cases where an eligible complaint had been made to the Ombudsman.

104. The other amendment would allow for arrangements to provide for investigations in cases of near-death which meet agreed criteria. The intention is to place a duty on the Minister of Justice to request the Ombudsman to conduct an investigation in defined circumstances which will be set out in Regulations subject to the affirmative resolution procedure.

105. Respondents on this part of the Bill included the Prisoner Ombudsman for NI, the NI Ombudsman, the Ombudsman Association, NIACRO and the NI Human Rights Commission and there was a divergence of views on the key provisions. The current Prisoner Ombudsman for Northern Ireland supports the provisions which will place the Prison Ombudsman on a statutory footing for the first time but the NI Ombudsman, the Ombudsman Association and NIACRO raised issues regarding the proposed model, appointment arrangements and remit. Other issues raised included the Ombudsman's proposed powers.

106. The Committee explored the issues in further detail with the Prisoner Ombudsman for Northern Ireland, NIACRO and the NI Ombudsman during oral evidence sessions and with the Department of Justice both in writing and in an oral evidence session with departmental officials.

---

## The Proposed Model, Remit and Appointment Arrangements

107. The NI Ombudsman, the Ombudsman Association and NIACRO all raised concerns regarding whether the Office of the Prison Ombudsman as currently proposed meets the required standards of independence.
108. While the NI Ombudsman supports placing the Prison Ombudsman on a statutory footing he suggests that the office should be created under separate statutory arrangements which ensure the appointment is not made by a member of the Executive. He believes that the fact that the Minister of Justice will appoint the office holder, the salary of the new office holder will be paid by the Department of Justice and the Department has a role in approving the terms and conditions of staff of the new body all undermine the independence of the office. The NI Ombudsman also suggests that, in order to ensure independence from the Department that is responsible for the NI Prison Service, the new office holder should lay his/her report on the functions of the office before the Assembly (rather than the Department laying it as currently provided for in the Bill).
109. The NI Ombudsman also raised concerns regarding the cost implications of establishing the office as a separate entity, particularly when there is already a proposal for a new office of NI Public Service Ombudsman (NIPSO) which he believes would be an appropriate and cost effective legislative instrument for the establishment of a Prison Ombudsman i.e. through the NI Public Service Ombudsman Bill. He also believes that, given the relatively small size of the Prisoner Ombudsman's Office, it will always be a challenge to recruit and retain the level of expertise required to investigate the health aspects of deaths in prison custody and this also supports the argument for combining the Prison Ombudsman role with that of the proposed new office of NIPSO.
110. The Ombudsman Association is also concerned that the office as currently proposed would not meet internationally recognised standards of independence and would not meet the Ombudsman Association's criteria for independence or the criteria of the International Ombudsman Institute. The Association's position is that with regard to Ombudsman schemes that cover public services they should be appointed by, and accountable to, a democratically elected body not a

---

Government Minister or official. The Ombudsman Association suggests a number of solutions including subsuming the role into the soon to be established NIPSO.

111. NIACRO is also of the view that, contrary to the appointment process outlined in Schedule 3 of the Bill, the Prison Ombudsman role should be subject to an appointment process that is distanced from the Department of Justice to ensure independence.

112. The Department, in its written response, indicated that the new Prison Ombudsman will continue to operate completely separately from the prisons structure and the Bill provides him/her with formal statutory independence. The Office will operate independently of government interference or control and will be recruited via an openly advertised process, based on the merit principle, for a period not exceeding seven years. The Department highlighted that, similar to the proposed arrangements for the Office of the Prison Ombudsman, the Police Ombudsman for Northern Ireland and the Chief Inspector of Criminal Justice Inspection receive grant-in-aid from the Department of Justice and are also appointed by members of the Executive. There are also a number of operational protocols in place defining the precise nature of the relationship between the Prisoner Ombudsman and the Department of Justice which help to maintain the independent operation of the Ombudsman and the Department is satisfied that the proposed arrangements will provide the requisite independence.

113. The Department believes that the current staffing model in the Office works well and, in terms of efficiency, considers that the proposed arrangements will provide value for money. In its view combining the remit of the Prison Ombudsman with that of NIPSO may lead to slower timeframes or a dilution in the focus of dealing with prisoner complaints, which would be undesirable.

### **Deaths in Custody Investigations**

114. The Prisoner Ombudsman and NIACRO welcomed the fact that the Bill will provide, for the first time, a statutory basis to investigate deaths in custody. NIACRO also welcomes the inclusion of investigating deaths in custody in the stated main functions of the Ombudsman.



115. The NI Ombudsman, however, does not accept that the investigation of deaths in custody is a suitable role for the Prison Ombudsman and believes that the dual role of investigating maladministration and deaths in custody requires broad skills which can be difficult to establish and retain in a small office. He therefore suggested that the Scottish model should be considered where there are two separate functional areas with the Scottish Public Services Ombudsman dealing with prisoner complaints and the Procurator Fiscal with deaths in prison custody and proposes that prisoner complaints should be dealt with by NIPSO to enable expertise to be developed and deaths in custody should be dealt with by the Police Ombudsman or the Coroner's Office.

116. The NI Ombudsman outlined his role to investigate complaints of maladministration (including those which involve clinical judgement) in relation to the actions of all health and social care bodies etc. including staff who provide prison healthcare. He stated that it is essential to avoid any ambiguity or confusion on the part of the prisoner, prison staff and Health Trust staff by making the process of investigation of a prisoner complaint about the actions of the South Eastern Health and Social Care Trust (SEHSCT) health professionals absolutely clear.

117. NIACRO welcomed the inclusion of investigating deaths in custody in the stated main functions of the Ombudsman and recommends that, as has been recent practice, the scope should be extended to include investigations into near deaths in custody. It is also of the view that the Prison Ombudsman should handle complaints and investigate issues or deaths relating to the Youth Justice Agency, Juvenile Justice Centre and Probation Board.

118. The NI Human Rights Commission highlighted that the Bill currently does not allow for the Ombudsman to perform a pro-active role in investigating matters of systematic concern and, noting that the Public Services Ombudsperson Bill proposed a power for the Public Services Ombudsperson to investigate on his or her own initiative, proposed that this Bill should be amended to provide the Prison Ombudsman with the power to carry out investigations on his or her own initiative.

---

119. The Prisoner Ombudsman, in his written evidence, stated that there is invariably a healthcare dimension to be considered in death in custody investigations. He indicated that the Bill does not propose to change the existing arrangements whereby the Ombudsman investigates healthcare matters in such cases on a non-statutory basis under the provisions of a protocol with the SEHSCT. He outlined that the Trust regards the Ombudsman's role as a duplication of its Serious Adverse Incident process which has a statutory basis and this arrangement poses considerable challenges for his Office at operational level – essentially it delays access to healthcare information and to Trust staff for interview. The Ombudsman is in ongoing discussion with the Trust about the arrangement and it is expected to be addressed in greater detail in the Regulations that will underpin the Bill.

120. The Department, in its written response, highlighted that since the establishment of the Prisoner Ombudsman in 2005, feedback on the office's death in custody reports from coroners, families and their representatives has been mostly positive.

121. The Department agreed that it is important to avoid any confusion or ambiguity around who investigates the various types of complaints and outlined the arrangements in place to provide information to prisoners on the complaints processes which include access to the Prisoner Ombudsman's Office via a Freephone service and colour-coded complaints forms for both the Prisoner Ombudsman and the Healthcare Trust. It believes that the ongoing discussions between the Prisoner Ombudsman and the South-Eastern Trust are essential to progress important operational aspects but these do not require legislation. Work is also on-going to review the current protocols for information sharing in place for Death in Custody Investigations.

122. With regard to extending the remit of the Prison Ombudsman to handle complaints and investigate issues or deaths relating to the Youth Justice Agency, Juvenile Justice Centre and Probation Board the Department stated that there are already complaints mechanisms in place for these bodies and that complaints can ultimately be made to the NI Ombudsman. The Safeguarding Board's Case Management review process within juvenile custody also includes procedures for investigation of deaths in the Juvenile Justice Centre. The Bill will

---

also provide for the Minister to request the Ombudsman to undertake additional investigations if he considers it necessary.

123. The Department also highlighted that the Prisoner Ombudsman currently investigates near deaths in custody at the Department's request under the arrangements detailed in the 'Northern Ireland Prison Service Suicide and Self Harm Prevention Policy' and considered that such investigations can be addressed in the future by a request from the Minister to the Prison Ombudsman to carry out an investigation under Clause 34.

124. The Department subsequently advised the Committee that, having considered the issue further, it was proposing to bring forward an amendment at Consideration Stage to allow for arrangements to provide for investigations in cases of near-death which meet agreed criteria. The intention is to place a duty on the Minister of Justice to request the Ombudsman to conduct an investigation in defined circumstances which would be set out in Regulations subject to the affirmative resolution procedure.

### **Timeliness and Handling of Complaints**

125. Both NIACRO and the NIHRC highlighted that there is no requirement to initiate an investigation into a death in custody within a certain timeframe. NIACRO also highlighted that this requirement does not exist for general complaints and that there should be a mechanism to ensure the principle of timeliness is upheld and that time sensitive complaints are addressed quickly and appropriately.

126. The Department outlined in its written response that Clause 28(4)(a) requires that matters are dealt with efficiently and effectively and considers this addresses the issue. It also pointed out that the regulations made under Clause 30(13) will also make provision for the timelines within which complaints must be handled and guidance on timeliness is provided in the Ombudsman's Terms of Reference for Investigations.

127. NIACRO was also concerned that some complaints may be disregarded without due consideration and stated that, in determining if a complaint is "frivolous, vexatious or raises no substantial issue", there must be robust accountability to

ensure subjective views do not prevent complaints from being taken seriously. It suggested that this could include clear guidelines for the Prison Ombudsman, developed in consultation with relevant stakeholders including voluntary and community organisations and service users and an independent monitor for a selection of cases. NIACRO also recommended that a list of types of complaints disregarded is kept and published in the annual report, and that this is made publically available.

128. In response the Department stated that the Prisoner Ombudsman currently has included, in his Terms of Reference, guidance on how to deal with complaints which are “frivolous, vexatious or raises no substantial issue” and noted that, since June 2013, the Ombudsman has not determined a complaint as such.

129. The NIHRC outlined that International Human Rights law requires that prisoners be treated with dignity and have access to an effective remedy where their human rights have been abused. It noted that the Bill does not place a specific obligation on the Ombudsman to ensure the accessibility of the complaints procedures and recommended the inclusion of an additional function within Clause 29 to provide that the Ombudsman must promote understanding and awareness of its complaints procedures to ensure they are accessible to all prisoners.

130. In response the Department indicated that, in its view, it is not necessary to include such an obligation in the primary legislation.

### **Power to Compel Witnesses**

131. The NIHRC, whilst acknowledging that, under Clause 36(4) it is a criminal offence for an individual to intentionally obstruct the Ombudsman in the carrying out of an investigation, considered that the effectiveness of the Ombudsman’s investigations would be augmented by empowering the office to compel witnesses for interview. It suggested that this would be an easier way to ensure co-operation rather than having to pursue the matter through the courts. The Commission recommends, in light of the emphasis the Committee of Ministers have placed on investigation having the power to compel witnesses to ensure an effective investigation, that consideration should be given to providing the Prison

---

Ombudsman with a specific power to compel witnesses to assist in its investigations.

132. In its written response the Department stated that it was legislating for an 'as is' position and that a power to compel witnesses would give the Ombudsman a power he does not currently have and would be a significant department from what is currently exercised by the Office. In its view Clause 36(4), which provides that 'a person who intentionally obstructs the Ombudsman in the carrying out of an investigation under this Part commits an offence' strengthens the power and independence of the Office.

### **Information gathering powers**

133. The NI Ombudsman and the NIHRC both outlined concerns regarding the proposed powers of the Prison Ombudsman in relation to gathering information.

134. The NI Ombudsman is concerned that the proposed information gathering powers are incomplete and inadequate and suggests that there should be explicit and comprehensive powers to obtain and disclose information equivalent to those in the NI Public Service Ombudsman Bill.

135. The NIHRC stated that, to ensure compliance with its Article 2 investigation obligation, the Ombudsman must be able to secure relevant evidence concerning the incident leading to the death and it does not appear from Clause 36 that the Ombudsman will have powers to interview individuals who may have information relevant to an investigation.

136. The ICO noted the provisions relating to powers of entry and access to documents relating to any prescribed investigations and indicated that it would welcome further clarity on the arrangements for information sharing and disclosure in these circumstances, particularly relating to access to any Juvenile Justice Centre.

137. In response to the issues raised the Department stated that it recognised that the new Office of Prison Ombudsman will not have as wide-ranging powers in relation to information gathering as have been proposed for the NIPSO. Instead

it has sought to model the powers of the new Office on those available to the Criminal Justice Inspection Northern Ireland. It also highlighted that the current position will be strengthened in that Clause 36(4) provides that 'a person who intentionally obstructs the Ombudsman in the carrying out of an investigation under this Part commits an offence' and the Ombudsman may require that documents be produced for the purposes of an investigation.

138. The NIHRC also highlighted that where circumstances emerge that a prisoner has been seriously ill-treated by a prison officer these should be addressed by way of a criminal investigation and noted that Clause 37 (1) empowers the Ombudsman to disclose information for the purposes of a criminal investigation. The Commission advised that consideration should be given to inserting a clause into the Bill modelled on Section 58 of the Police (NI) Act 1998 requiring the Prison Ombudsman to disclose to the PSNI where a report indicates that a criminal offence may have been committed.

139. The Department indicated that it accepted this suggestion and subsequently provided the text of a proposed amendment to standardise the requirement of the Ombudsman to inform police of a suspected criminal offence as part of any investigation he is conducting rather than just as part of an investigation into a death in custody.

140. The NIHRC also suggested an amendment to Clause 37 to permit disclosure of protected information to the Commission for the purposes of the exercise of any function of that office given it is empowered to carry out investigations and to enter places of detention with respect to an investigation and has carried out a number of investigations relating to the human rights of prisoners and regularly engages with the Prison Ombudsman.

141. The Department however indicated that it considered the provisions in clause 37(2)(j) sufficient to allow the Ombudsman to share relevant information, should he so consider it, with the NIHRC.

---

## **Committee Consideration of Part 2 and Schedule 3 of the Bill and Related Amendments**

142. The Committee took the opportunity to explore a range of issues further with the Prisoner Ombudsman when he attended the meeting on 1 October 2015 to give oral evidence on Part 2 of the Bill.
143. The Prisoner Ombudsman stated that he strongly welcomed the proposals to place the office on a statutory footing and outlined the benefits as removing the office from prisons legislation which is very important to demonstrate the independence and impartiality of the office and which will increase the confidence of other statutory bodies such as the PSNI and the South Eastern Health and Social Care Trust in relation to sharing information with the Prison Ombudsman's office.
144. When questioned regarding whether the proposed model, remit and appointment arrangements were appropriate the Prisoner Ombudsman noted that the Bill legislated for the "as is" position which, in his view, was the correct approach and confirmed that he did not have any concerns that the proposed arrangements by which the Department of Justice would be responsible for the appointment of the Prison Ombudsman and providing financial resources would have any impact on the independence of the office. He outlined that the post is advertised through open competition and the appointment made on merit and that would continue to be the case; the Ombudsman is appointed as a corporation sole, which is an independent appointment, for a seven-year tenure which copper-fastens the independence of the post; and the terms of reference require the Ombudsman to be wholly independent. In his experience since he took up post over two years ago no one had ever tried to interfere with his independence and stated that he was pragmatic rather than purist about the arrangements. He also viewed the name change from 'Prisoner Ombudsman' to 'Prison Ombudsman' important in emphasising the impartiality of the office. He also highlighted that as far as he was aware the arrangements were not much different from ombudsman offices in the UK and other western European jurisdictions.

- 
145. The Committee also sought assurances that the necessary resources were currently being provided to carry out the functions of the office and this would carry over into the new office. In response the Prisoner Ombudsman indicated that, while all public offices are facing financial reductions, he was content that he had the right number of staff with appropriate competencies to fulfil his functions and he outlined the approach adopted to identify suitable staff. He also confirmed that the staff will transfer to the new Prison Ombudsman office.
146. Upon being asked if a power to compel witnesses, which was currently not included in the Bill, would assist his investigations the Prisoner Ombudsman responded that, in his view, it would be a cosmetic change and would affect very few situations that he investigated, either deaths in custody or complaints. He outlined that 99% of Prison Service staff have voluntarily assisted with his investigations and indicated that if he had the power a person could turn up and say nothing or nothing of value. When pressed regarding whether, because there is no compulsion to attend, that could limit investigations in the future the Ombudsman stated that he did not think the power was necessary at present but it may be useful in the future and he would not resist having it. He also confirmed that the powers to obtain and disclose information as provided for in the Bill were rigorous given the office would have the statutory authority to obtain documents, enter premises and require people to co-operate.
147. The Committee also explored Clause 38 and what powers it would provide the Secretary of State for Northern Ireland. The Prisoner Ombudsman confirmed that he did not envisage the Secretary of State being provided with powers to prevent him carrying out an investigation and stated that, while national security guidance had been in place since the devolution of justice powers in 2010 it had never been invoked in any way. He indicated that he was content with the guidance and noted that he must have regard to it but, in his view, it does not impede or shackle him or any future Ombudsman in relation to carrying out any investigation.
148. In response to concerns raised by the Committee about potential confusion for prisoners given that healthcare complaints are not eligible for investigation by the Prisoner Ombudsman and must be raised with the SEHSCT and ultimately the NI Ombudsman, the Prisoner Ombudsman agreed that it was important to
-



---

ensure that information was readily available on the various complaints processes and highlighted that the Patient and Client Council was already involved in helping to promote understanding amongst prisoners.

149. During the oral evidence session with departmental officials on Part 2 of the Bill the Committee sought further clarification on the same issues.

150. The Department stated that when consideration was being given to placing the Prisoner Ombudsman on a statutory footing a number of options were contemplated including bringing the Prison Ombudsman into the Office of the Northern Ireland Public Services Ombudsperson (NIPSO). The Minister was however aware that when the issue was discussed at the Committee for the Office of the First Minister and deputy First Minister, which is responsible for the legislation to create the NIPSO, there was a lack of support for the proposal. The Department also highlighted that the NIPSO will have very wide-ranging responsibilities including health and education and there was a concern that this could potentially dilute or impact on timeliness and timescales when dealing with responses to prisoner issues. The Prisoner Ombudsman role is also wider than complaints handling, which is what the current NI Ombudsman and the future NIPSO focuses on.

151. The Department confirmed that the proposed name change is intended to reinforce and emphasise the impartiality of the Ombudsman. In its view, given the role of the Prison Ombudsman in the justice system, it was appropriate for the Minister of Justice to make the appointment and officials emphasised that he/she would enjoy the same independence as others appointed by the Minister of Justice such as Members of the Policing Board and the Chief Inspector of Criminal Justice Inspection Northern Ireland.

152. In relation to staffing of the Prison Ombudsman's Office the Department confirmed that the office would be the same size as it is currently and indicated that the current Prisoner Ombudsman was content that he had access to the range of skills and expertise needed to carry out his functions.

153. The Committee also sought clarification of the powers to be provided to the Prison Ombudsman. Officials outlined that there is a duty on those who are a party to an investigation to cooperate with the Prison Ombudsman and the

---

legislation creates an offence to intentionally obstruct an investigation and confirmed that the current Prisoner Ombudsman does not believe a power to compel witnesses is required.

154. Regarding Clause 38 the Department confirmed that it was part of the “as is” arrangement and the current Prisoner Ombudsman has no concerns with it and does not view it as inhibiting him in any way from carrying out his functions. Officials highlighted that the clause makes specific reference to “have regard to” and indicated that the national security information the Prisoner Ombudsman would be exposed to was minimal.

155. The Department also indicated that the Minister would welcome the views of the Committee on the proposal that the Ombudsman should have the power to initiate his own investigations.

**156. The Committee discussed Part 2 and Schedule 3 of the Bill at its meeting on 3 December 2015 and, having considered the evidence received, including the views of the current Prisoner Ombudsman on how the office operates in its current form, Members indicated that they were generally content with the provisions that will place the Prisoner Ombudsman on a statutory footing by creating the Office of the Prison Ombudsman for Northern Ireland and setting out the main functions which are to deal with complaints, death in custody investigations and investigations requested by the Department.**

**157. Some Members however outlined reservations regarding Clause 38 and the guidance from the Secretary of State to the Prison Ombudsman in relation to matters connected with national security on the basis that the current Prisoner Ombudsman had stated that it has never been used and it is therefore unnecessary to legislate for it and indicated that they intended to oppose this clause at Consideration Stage of the Bill. They also outlined their support for the view expressed by NIACRO in its evidence that the criterion in Schedule 3 that states that the Ombudsman may be removed from Office if that person has been convicted of a criminal offence is illogical and incompatible with a desistance approach and should be removed from the Bill.**

158. **Some Members also highlighted their intention to bring forward, at Consideration Stage, an amendment to Clause 36 to provide the Ombudsman with the power to compel witnesses.**
159. **The Committee discussed the proposal that the Ombudsman should have the power to initiate his own investigations and, noting that under the current provisions the Prison Ombudsman has to receive a complaint or a request from the Minister of Justice before he can undertake an investigation, agreed that it was appropriate for the Prison Ombudsman to be able to initiate investigations of his own volition which would emphasise his independence. The Committee indicated that it would support an amendment to make this change.**
160. **The Committee also supported the proposed departmental amendments to enable the Ombudsman to defer investigations where he/she considers it necessary to do so, to standardise the requirement for the Ombudsman to inform police of a suspected criminal offence as part of any investigation he is conducting (rather than just as part of an investigation into a death in custody), to place a duty on the Minister of Justice to request the Ombudsman to conduct an investigation in cases of near-death and to add the Attorney General for Northern Ireland to the list of bodies to which protected information may be disclosed.**
161. **The Committee agreed that it was content with Clauses 28 to 40 and Schedule 3 of the Bill subject to the amendments proposed by the Department.**

## Part 3

### Miscellaneous

162. Part 3 of the Bill includes provisions relating to lay visiting arrangements for police stations, an offence of possession of extreme pornographic images and a scheme for the early removal of prisoners.

163. No particular issues were raised in relation to this Part of the Bill.

#### **Clause 41 - Lay Visitors for all police stations**

164. Clause 41 will extend the scope of the statutory custody visitor scheme to include lay visitors to all police stations. Currently only those stations designated by the Chief Constable fall within the remit of the scheme.

165. The NI Policing Board highlighted that its Performance Committee has commented in consecutive Human Rights Annual Reports that it believes the Board's Custody Visitors should visit non-designated places of detention. The Committee also agreed in May 2013 with the recommendation made by the UK's National Preventative Mechanism that the Minister of Justice should bring non-designated police stations within the statutory remit of the Custody Visiting Scheme. The Policing Board therefore welcomes the extension of the remit of the Board's Custody Visiting Scheme to include non-designated police stations by way of clause 41. NIACRO also supports this provision.

166. **The Committee agreed that it is content with Clause 41 as drafted.**

#### **Clause 42 - Possession of Pornographic Images of Rape and Assault by Penetration**

167. Clause 42 extends the scope of the current offence of possession of extreme pornographic material to include the possession of extreme images of rape and certain other non-consensual acts.

168. Women's Aid welcomes this provision which will bring the law in Northern Ireland into line with the rest of the United Kingdom.

---

169. The NIHRC also welcomes the provision, stating that it follows developments made in the rest of the UK. The NIHRC advised that the clause engages ECHR, Article 8 (which provides for the right to respect for private and family life) and Article 10 (which provides for the right to receive and impart information) and any interference with these rights must be for a legitimate aim, “in accordance with the law” and “necessary in a democratic society.”

170. The NIHRC highlighted that in the ECtHR case, *Opuz v Turkey*, the Court held that interference with private and family life of individuals may be necessary to protect the health and rights of others or to prevent the commission of criminal acts. The Commission noted that the Joint Committee on Human Rights (JCHR) welcomed a similar provision in the Criminal Justice and Courts Bill and agrees with the conclusion of the JCHR that such an approach is a proportionate restriction of ECHR, Articles 8 and 10.

**171. The Committee noted that Clause 42 will extend the scope of the current offence of possession of extreme pornographic material to include possession of extreme images depicting rape and certain other non-consensual acts and agreed that it is content with the clause as drafted.**

### **Clauses 43 and 44 - Early Removal from Prison of Prisoners Liable to Removal from the United Kingdom**

172. Clause 43 of the Bill makes general provision for a prisoner removal scheme to allow Foreign National Prisoners, already subject to compulsory removal from the UK and nearing the end of their sentence, to have their sentence reduced to facilitate removal from the UK. Clause 44 provides for how a prisoner removed early from prison is to be treated should they return to Northern Ireland at a later date.

173. NIACRO welcomes the provision that a prisoner can only be removed from the UK in the circumstances outlined with his/her agreement and recommends that appropriate translation services are provided where necessary and that the family of the prisoner is engaged with regarding any proposed move to ensure there is full understanding of the consequences of consenting to removal.

NIACRO also states that legal professionals must be trained in and informed of this provision.

174. The Department of Justice, in its written and oral evidence, outlined that translation services and training are matters for the Home Office's Immigration Service who will be undertaking the actual removal. The Department also highlighted that the changes are not introducing removal but are simply allowing removals, upon which decisions have already been taken, to be brought forward by up to 135 days with the prisoner's agreement.

**175. The Committee noted that the Early Removal Scheme will be a voluntary scheme requiring the prisoner's agreement and will not cover prisoners serving extended, indeterminate or life sentences and agreed that it was content with Clauses 43 and 44 as drafted.**

## **Part 4**

### **General**

176. Part 4 of the Bill makes a number of general provisions dealing with regulation and order making, commencement and short title, and ancillary provision.

177. The main issues raised in the evidence on Part 4 of the Bill related to the breadth and scope of Clause 45 and, in relation to Clause 47, a request by the main firearms stakeholders that the proposed firearms amendments should commence immediately the Act receives Royal Assent.

### **Clause 45 - Ancillary Provision**

178. Clause 45 enables the Department by order to make any supplementary, incidental, consequential, transitional or other provision necessary to give full effect to the provisions of the Act.

179. The British Association for Shooting and Conservation (BASC), the Gun Trade Guild NI (GTGNI), Countryside Alliance Ireland (CAI) and Hollow Farm Shooting Grounds Ltd. all expressed concerns that the breadth and scope of Clause 45 is too wide and believe that it provides the Department with too much power to

amend the Bill, once passed, by way of secondary legislation without the same level of Assembly scrutiny that applies to the primary legislation. They wished to see Clause 45 removed from the Bill.

180. The Committee, when scrutinising the previous Justice Bill, raised substantial concerns about a similar Clause (Clause 86) and the wide ranging powers it provided. The Committee was of the view that powers should be provided for an exact purpose rather than be broad and general in nature and agreed to oppose the inclusion of the Clause in that Bill. During the passage of that Bill through the Assembly the Clause was removed and replaced with one providing much narrower and more specific powers.

181. In light of the Committee's position in relation to such clauses the departmental officials, when briefing the Committee on the principles of the Justice No.2 Bill in June 2015, advised that they intended to revisit Clause 45 with a view to bringing forward an amendment to reduce its scope.

182. The Department subsequently indicated that it intended to remove Clause 45 from the Bill in its entirety and replace it with a power to make ancillary provisions under more restricted circumstances limited to Part 1 of the Bill. This would replicate the model developed in the Justice Bill to address the Committee's concerns with this type of clause. The Department provided the text of an amendment to Clause 23 and several consequential amendments to Clauses 46 and 47.

183. During the oral evidence session with departmental officials on this Part of the Bill the Committee sought clarification of the extent of the powers provided by the amendment to Clause 23 and examples of when the Department was likely to need to use such powers. Officials confirmed that the amendment would provide the power to make consequential, incidental and supplementary changes to Part 1 of the Bill only and would not enable the Department to bring in anything new or different. Examples of when the Department may use the power included the amendments to the Bill currently being proposed relating to Prosecutorial Fines and ensuring that a Supervised Activity Order cannot be considered as an option in default of a Confiscation Order. If the Department had not identified the need for these amendments before the Bill had completed

its passage through the Assembly the proposed order-making power would have provided a mechanism to make the necessary changes afterwards.

**184. Given its opposition to such clauses the Committee welcomes and supports the Department's intention to remove Clause 45 from the Bill and agreed that it is content with the proposed amendment to Clause 23 which will introduce a much narrower power to make ancillary provisions restricted to Part 1 of the Bill only.**

#### **Clause 46 - Regulations and Orders**

185. Clause 46 provides for regulations under the Act to be made by the Department of Justice, except that the Department for Social Development will be responsible for making regulations under Clause 11(1) which relates to deduction from benefits orders. Clause 46(3) and (4) provides for the Assembly control of regulations, while Clause 46(5) and (6) provides for the Assembly control for orders.

**186. The Committee agreed that it is content with Clause 46 subject to a number of consequential amendments, the text of which had been provided by the Department.**

#### **Clause 47 - Commencement and Short Title**

187. Clause 47 provides for the short title of the Act and for commencement.

188. Both BASC and CAI wished to see the proposed firearms clauses commenced immediately the Act receives Royal Assent and the Department confirmed that the proposed provisions provide for commencement the day following Royal Assent.

**189. The Committee agreed that it is content with Clause 47 subject to a number of consequential amendments, the text of which had been provided by the Department.**



---

# Consideration of other proposed Provisions for inclusion in the Bill

## Consideration of other proposed Provisions for inclusion in the Bill

190. Six proposals for new provisions unrelated to the areas currently covered in the Justice No.2 Bill were brought to the attention of the Committee during the Committee Stage of the Bill. Three were proposed by the Department of Justice, one was proposed by the Department of Agriculture and Rural Development, one was proposed by Lord Morrow MLA and one was proposed by Basil McCrea MLA.

191. The Committee also considered a proposal by the NI Human Rights Commission for a new offence relating to 'revenge porn' and possible legislative changes to improve online protection for children following its conference on 'Justice in a Digital Age' in October 2015.

### **New offence relating to 'Revenge Porn'**

192. The NI Human Rights Commission, in its written submission to the Committee on the Justice No.2 Bill, highlighted that, while the Criminal Justice and Courts Act 2015 created the new offence of disclosing private sexual photographs and films with intent to cause distress (known as 'revenge porn') in England and Wales, no such offence existed in Northern Ireland. A person found guilty of such an offence is liable on conviction on indictment to a term not exceeding 2 years or a fine or both and on summary conviction to imprisonment for a term not exceeding 12 months, or a fine or both.

193. The Commission noted that a number of instruments are relevant in this context including ECHR, Articles 8 and 10, the Istanbul Convention and General Recommendation 19, CEDAW. The Commission stated that there is a duty on the State to ensure that, regardless of intent, Article 3(c) of the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography is not violated. Article 3(c) requires State parties to ensure the offences of producing, distributing, disseminating,

---

importing, exporting, offering, selling or possessing child pornography are fully covered under the criminal law.

194. The Commission also highlighted that Article 10(1) of the Optional Protocol to the CRC also requires State parties to take all necessary steps to strengthen international co-operation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving child pornography.

195. It therefore recommended that consideration should be given to introducing an amendment to the Bill to provide for such an offence in Northern Ireland which would bring the law into line with England and Wales and give due regard to the Optional Protocol to the CRC and CEDAW.

196. In its written response to the proposal the Department of Justice indicated that, given time constraints and other pressing issues, it was not possible to give appropriate policy consideration to the matter in time to include it in the Justice No.2 Bill. The Department therefore intended to include the proposal in a policy consultation for future legislative change as part of a wider review into a number of related areas covering certain sexual offences and child protection.

197. During the oral evidence session with departmental officials on Part 3 of the Bill on 3 December 2015 the issue was raised by the Committee and officials reiterated the position that there may be a need to undertake a broader review of sexual offences generally and it could be considered within that context.

**198. At its meeting on 10 December 2015 the Committee discussed the proposal. The Committee is aware of the increasing incidence of this behaviour and the distress it can cause to individuals and is of the view that it is important to provide the same level of protection in Northern Ireland as that provided in England and Wales. It therefore agreed to take forward an amendment at Consideration Stage to create a new offence of disclosing private sexual photographs and films with intent to cause**

---

**distress and subsequently agreed the text of the amendment at the meeting on 7 January 2016.**

## **Possible Legislative Changes to Improve Online Protection for Children**

199. On 15 October 2015 the Committee for Justice held a conference on 'Justice in a Digital Age' during which Jim Gamble, Chief Executive of INEQA, gave a presentation on social media and internet protection and highlighted a number of areas where he believed the legislation could be changed to improve on-line protection for children.

200. The Committee subsequently invited Mr Gamble to give oral evidence on his proposed legislative changes at its meeting on 5 November 2015 after which it intended to consider whether to take them forward as amendments to the Justice No.2 Bill.

201. Following the evidence session the Committee agreed to seek the written views of the Department of Justice, the PSNI, the Public Prosecution Service and the NI Human Rights Commission to assist its consideration of the proposals.

202. The Committee considered the proposed legislative changes and the responses from the organisations, which highlighted a range of issues that would need to be taken account of if any legislative changes were being considered, at its meeting on 7 January 2016.

203. The first proposal relates to an amendment to the current law so that a child or young person under the age of 18 who takes, makes, distributes or possesses an image of themselves will commit no criminal offence unless it is done with malicious intent. The Protection of Children (Northern Ireland Order) 1978 as amended by the Sexual Offences (Northern Ireland) Order 2008 currently makes it an offence for a person below the age of 18 to take, make, show, distribute or possess an image of themselves. Mr Gamble expressed the view that the current law discourages young people from coming forward quickly when they have shared an image of themselves with another and fear it may be shared

---

with others and believes that decriminalising will encourage children who find themselves in circumstances of crisis to come forward. The proposed amendments would result in:

- a) A child or young person under the age of 18 who takes, makes, shows, distributes or possesses an image of themselves will commit no criminal offence.
- b) A child or young person under the age of 18 who takes, makes, shows, distributes or possesses an image of another child under the age of 18 with malicious intent does however commit a criminal offence.

204. In their written responses both the Department of Justice and the PSNI highlighted that the public interest test applied by the PPS provides a large degree of protection against the unnecessary and inappropriate criminalisation of a young person for distributing a self-image and such a set of circumstances would rarely, if ever, result in a decision to prosecute. The PSNI however indicated that it believes the proposal is worthy of further discussion to ensure that all agencies continue to have the best legal framework for safeguarding of young people. The PPS believes that the current law works well and to decriminalise the offences around self-images would allow for young people to distribute images of themselves unsolicited to others which can be distressing. All three organisations had concerns about requiring the prosecution to prove a malicious intent as this would present an evidential hurdle which could prove difficult to overcome. The NIHRC outlined that international human rights law has realised that in certain circumstances children should not be criminalised for sharing images of themselves for private use with consent but highlighted that this is a complex area and there may be other ways to address the issue through guidance from the Director of Public Prosecutions.

205. The second proposal relates to an amendment to the existing Protection from Harassment (Northern Ireland) Order 1997 or the creation of a new law to deal with the aggravated impact when an individual or individuals use the anonymity provided by the Internet and/ or the ability to create multiple online accounts to harass another person. In Mr Gamble's view the law as currently configured and the policies as currently applied are not working and this is illustrated by the fact that there is not a substantial number of individuals being prosecuted for harassment.

206. The Department of Justice, the PSNI and the PPS all expressed the view that the current law on harassment is already sufficient to protect against this type of behaviour and there is no need for further legislation in this area. The PPS also highlighted that if a court found that further distress had been caused to a victim by the use of anonymity or multiple accounts this could be considered an aggravating factor when passing sentence. The NIHRC also noted that the Judicial Studies Board Sentencing Guidelines on offences within the Protection from Harassment (NI) Order 1997 recognises 'creating email/website accounts purporting to the victim' as an aggravating factor and suggests that the issue could be addressed through the Sentencing Guidelines.

207. The third proposal would create a new law to prohibit an individual of 18 or above, who masquerades as someone below that age and engages online with an individual they know or believe to be, under the age of 18. An individual who did so would commit a criminal offence unless they can prove that they did so with reasonable cause or lawful authority. In reasonable cause defences, the burden of proof will shift to the alleged offender.

208. The Department of Justice, the PSNI and the PPS indicated that there is no offence that would currently directly cover this situation and wished to consider it in more detail. The PSNI was of the view that the scope of the offence should be defined as per offences under the Sexual Offences Order 2008 in terms of the ages of those involved and the nature of the offences arising. The PPS stated that careful consideration would need to be given to guard against overlapping or causing confusion with the 'grooming offences' contained within the Sexual Offences Order 2008. The NIHRC stated that the proposal would reverse the burden of proof and criminally penalise the act of masquerading as an 18 year old to an under 18 year old regardless of whether it results from criminal intent or from negligence. Such departures from the presumption of innocence, as protected by ECHR Article 6(2) are permissible in certain circumstances but ECtHR has held that departures from the presumption of innocence must be confined within reasonable limits which take account of the importance of what is at stake while maintaining the rights of the defence (*Salabiaku v France (1988) para 28*).

209. **The Committee is very aware that the development of the internet has created challenges for the law and believes that it is essential that the law responds and adapts to these challenges and provides the law enforcement agencies with sufficient and proper tools to tackle new and emerging types of criminal behaviour. The Committee Conference on ‘Justice in a Digital Age’ very successfully provided a forum to discuss these issues and identify possible solutions.**
210. **The Committee is supportive of the proposals but recognises that this is a complex area of law and any changes will require careful consideration to ensure that there are no unintended consequences.**
211. **The Committee noted that the Minister of Justice was concerned that bringing forward amendments at this stage would result in changes being made to this important area of the law without the benefit of proper policy consideration and consultation and had asked it to support the inclusion of the proposals in a policy consultation for future legislative change, as part of a wider review into a number of related areas covering certain sexual offences and child protection, rather than pursuing them as part of the Justice No.2 Bill.**
212. **The Committee agreed that it is content for the proposals to be included in the proposed policy consultation but indicated that it wishes to see them progressed as soon as possible and therefore wants to receive a briefing on the proposed consultation at the earliest opportunity.**

---

## Court Funds Office

213. At the Committee meeting on 3 December 2015 departmental officials attended to outline the results of a consultation on fee options to enable the Northern Ireland Courts and Tribunals Service to introduce a new full cost recovery charging model in 2016 to ensure the cost of administering the Court Funds Office is met by fees charged to service users rather than the general taxpayer. The officials also outlined that recent legal advice had raised doubts regarding whether there was sufficient authority to apply the proposed charges under the provision of Section 116 of the Judicature (NI) Act 1978. The Department was therefore proposing to introduce the required authority by changing the necessary legislation by way of an amendment to the Justice No.2 Bill and provided the text of the proposed amendment.

**214. The Committee noted the results of the consultation and the proposed fee structure for the Court Funds Office and agreed that it is content with the proposed amendment.**

## Direct Committal for Trial

215. The Department advised the Committee in written correspondence of a proposed amendment to close a lacuna in the direct committal for trial provisions in Section 9 of the Justice Act (Northern Ireland) 2015.

216. The Department outlined that Section 9(3)(b) of the 2015 Act provides that the direct committal arrangements do not apply where the court is to proceed summarily with an offence under Article 45 of the Magistrates' Courts (NI) 1981 or under Article 17 of the Criminal Justice (Children) (NI) Order 1998. It had received advice from the Departmental Solicitor's Office that suggested that section 9 of the Act may not be sufficiently explicit to enable offences which are caught by Article 45 of the 1981 Order and Article 17 of the 1998 Order to attract the direct committal arrangements where the prosecution decides to proceed on indictment.

217. The Department stated that the policy intention was that these cases should be capable of being directly transferred where it is decided to proceed on indictment

---

and the Minister of Justice believes that there is merit in amending section 9 of the Justice Act (Northern Ireland) 2015 to put this matter beyond doubt.

**218. The Committee agreed that it is content with the proposed amendment.**

### **Changes to Firearms Legislation**

219. The Committee has been considering proposals by the Department of Justice to increase firearms licensing fees and make a range of other amendments to firearms legislation since May 2012.

220. In June 2015 amendments in relation to firearms fees, the age of young shooters and the banded system were tabled by several MLAs for Further Consideration Stage of the Justice Bill. Officials subsequently attended the meeting of the Committee on 18 June 2015 and indicated that, following further discussions, a level of agreement had been reached between the Department and the main firearms stakeholders on fees and bands which meant that the Department would bring forward legislation in its next Bill (the Justice No.2 Bill) depending on the outcome of the amendments tabled for the Justice Bill. As a result of the agreement reached the Members did not move the amendments at Further Consideration Stage of the Justice Bill to enable the Department to bring forward the legislative changes in the Justice No.2 Bill.

221. Following introduction of the Justice No.2 Bill the Department advised the Committee of the Minister's intention to table amendments to the Firearms (NI) Order 2004 at Consideration Stage of the Bill. The amendments would:

- introduce a system to enable firearms dealers to exchange a firearm, for a licence holder, within a band as long as certain conditions are met. A licence holder would also be permitted to trade in a firearm without replacing it. Dealers would be authorised or conditioned to carry out such transactions.
- permit a person of 12 years of age or older to be in possession of a shotgun in a police approved clay target range while under the supervision of a person who has held a shotgun on certificate for at least



---

5 years. The Minister also proposes to permit a person from the age of 16 to engage in all shotgun activities – sporting and vermin uses – under existing supervision requirements.

- Make changes to fee types – changes to current fees would be made by subordinate legislation.

222. Representatives from the British Association for Shooting and Conservation (BASC), Countryside Alliance Ireland (CAI) and Gun Trade Guild NI (GTGNI) attended the meeting of the Committee on 17 November 2015 to give oral evidence on the proposed firearms amendments during which they raised a number of issues regarding the proposals and lack of engagement by the Department. They also indicated that they were suggesting a compromise proposal regarding the age of young shooters which they hoped the Minister and Committee would support.

223. Departmental officials subsequently attended the meeting of the Committee on 26 November 2015 to outline the detail of the proposed amendments to the Firearms (NI) Order 2004. They provided the near final text of the proposed amendments and outlined that, in relation to the age of young shooters, the Minister remained of the view that the age reduction to 12 should be for clay target shooting only and not for shooting live quarry including vermin and he was not therefore willing to accept the compromise proposal put forward by BASC/CAI/GTGNI.

224. Following the oral evidence session officials met with a number of Committee Members to discuss and clarify specific issues relating to the proposed amendments. The officials subsequently attended the Committee meeting on 7 January 2016 to outline the views received by key stakeholders on the final text of the amendments. They indicated that BASC, CAI and GTGNI remained opposed to the proposal to reduce the minimum age for supervised shooting with a shotgun to 12 years of age for clay target shooting only in a club approved by the PSNI and wished to see this changed to “clay target and any other lawful quarry”. They also considered the proposed introduction of shotgun clubs as creating a totally unnecessary level of bureaucracy.

225. The Minister however believes the amendments are appropriate to deliver his policy objective and has highlighted that this is accepted by a number of other stakeholders.

**226. The Committee has invested a lot of time and effort in scrutinising the proposals to amend the firearms legislation going back as far as 2012 and during that time has taken oral evidence from a wide range of key stakeholders and interested parties. From the outset the Committee encouraged the Department to engage with the key stakeholders and undertake dialogue with a view to presenting an agreed set of changes. While some organisations remain opposed to the proposals relating to young shooters the Committee is pleased that an accommodation appears to have been reached regarding the banded system and fees.**

**227. The Committee agreed that it is content with the proposed amendments to the Firearms (NI) Order 2004 but noted that the Department had undertaken to provide clarification that the wording of 50A(6) of the proposed new Schedule which refers to a firearms certificate will not exclude a person from outside Northern Ireland undertaking supervision if they hold a shotgun certificate. If the clarification indicates that this is not the case an amendment will be necessary at Consideration Stage.**

### **Penalties for Animal Welfare Offences**

228. In November 2015 the Committee for Agriculture and Rural Development wrote advising of the intention of the Department of Agriculture and Rural Development (DARD) to increase the statutory maximum penalties in the Welfare of Animals Act (NI) 2011. The proposal arose out of a joint DARD and Department of Justice review into the implementation of the 2011 Act following an Assembly debate on animal cruelty. While DARD has policy responsibility for animal welfare it does not currently have a suitable legislative vehicle to bring forward the necessary amendments. Given the importance of this matter and to avoid unnecessary delay, the Agriculture Minister proposed to make the amendments in the Justice No.2 Bill.

---

229. The proposed amendments will increase the maximum prison term to five years in the case of indictable offences; amend certain offences so that they become hybrid offences; and increase the maximum penalty available on summary conviction for two of the more serious hybrid offences to twelve months imprisonment and a £20,000 fine. The aim of the amendments is to reflect the serious nature of such offences and to provide some of the toughest penalties for animal cruelty of any jurisdiction in these islands.

230. To assist its consideration of the proposals the Committee sought the views of the Department of Justice. The Minister of Justice responded outlining that he had considered the proposed amendments in the context of the wider sentencing framework and the penalties that are available in neighbouring jurisdictions for animal welfare offences and believes that, in light of some of the extreme cases of animal cruelty that have occurred since the introduction of the 2011 Act, increasing the maximum penalties in this way is appropriate and will send out the message that animal cruelty will not be tolerated. The Justice Minister indicated that he was therefore supportive of the proposed amendments and is content that they should be made in the Justice No.2 Bill. The Minister also advised that he had agreed in principle to add animal cruelty offences to the Unduly Lenient Sentencing Scheme to further strengthen the law around animal cruelty.

231. The Committee for Agriculture and Rural Development took oral evidence on the proposed amendments on 10 November 2015 following which it advised the Committee that, while Members welcomed the increase in penalties, they had ongoing concerns about enforcement, the possibility that some individuals – those disqualified from keeping animals and farmed animals in particular, may be circumventing the Act and the need to keep a register of those with disqualification or deprivation orders under the Act. The Agriculture Committee also provided further information it had received on the number of cases taken under the Welfare of Animals Act (NI) 2011 from April 2012 to date, the number of convictions secured and the number of prison sentences imposed.

232. Officials from the Department of Justice and the Department of Agriculture and Rural Development attended the Committee meeting on 26 November 2015 to give oral evidence on the proposed amendments and Members took the

---

opportunity to explore a range of issues including whether stronger enforcement measures are required; whether there are clear sentencing guidelines available in relation to the offences; and whether the proposed amendments are adequate or whether consideration should be given to minimum sentences.

233. The Department subsequently provided further information on the number and length of custodial sentences handed down in respect of cases brought under the 2011 Act.

**234. The Committee is very aware of public concern about some sentences handed down for convictions for animal welfare offences under the Welfare of Animals Act (Northern Ireland) 2011. It therefore welcomes the intention of the Department of Agriculture and Rural Development to bring forward amendments that will ensure tougher penalties for such offences and supports the proposed amendments.**

### **Enhanced Protection for the Emergency Services**

235. At the invitation of the Committee Lord Morrow MLA attended the meeting on 17 November 2015 to outline his proposed amendment to the Justice No.2 Bill. The proposal is to amend Section 66(1) of the Police (Northern Ireland) Act 1998 which currently relates to assaults on members of the Police Service so that it specifically covers assaults and/or attacks on all members of the emergency services i.e. police, fire and ambulance service staff thus ensuring wider protection for all members of the emergency services working in the community in order that they are protected by the law to the same extent as a police officer.

236. During his oral evidence Lord Morrow MLA stated that emergency service personnel are often placed in a high risk and vulnerable position in carrying out their duties and that they should be afforded the same protection as police officers. He outlined that, while it is a stand-alone offence in its own right to assault a police officer, if the assault is on ambulance or fire crews it is simply recorded as assault although it is accepted that, depending on the nature of the incident and the injuries sustained, it is likely to be a higher end offence and in the consideration of sentencing attract aggravated factors.

---

237. During the oral evidence session 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 voluntary organisations such as Lagan Search and Rescue.

238. Subsequently, when officials briefly outlined the position of the Department of Justice on Lord Morrow's proposed amendment when they attended to give evidence on the Bill on 3 December 2015, Mr Edwin Poots MLA 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 was through amendments to the Justice No.2 Bill to have a fixed-penalty notice imposed on people at the time of the incident and administered in hospitals or by the emergency services to support people providing front-line services from being abused by individuals who take them for granted. He also asked what the opportunities are for elevating the more serious incidents/aggravated circumstances.

239. Following the oral evidence sessions the Committee agreed to seek the written views of the Department of Justice and the Department of Health, Social Services and Public Safety on the proposed amendment by Lord Morrow and the proposal by Mr Poots and requested information from the Public Prosecution Service regarding the prosecution of offences against emergency services personnel.

240. In its response the Department of Justice highlighted that Lord Morrow's proposed amendment engages interests beyond the Department of Justice and the issues may be complex. It advised that it had raised the matter with colleagues in the Department of Health, Social Services and Public Safety (DHSSPS) and intended to meet with them to discuss it in further detail once they had had an opportunity to consider the issues.

241. The Department stated that it appreciated the intention behind the amendment but noted that assaults upon fire and rescue personnel are already covered by Article 57 of the Fire and Rescue Services (Northern Ireland) Order 2006 which provides that any person who assaults or obstructs a fire and rescue officer or a person assisting commits an offence. The penalty for this offence is six months

---

imprisonment and/or a maximum fine of £5,000 on summary conviction, or two years imprisonment and an unlimited fine on conviction on indictment. The Department also outlined that assaults upon other public servants, including paramedics, are capable of being prosecuted under existing legislation such as the Offences Against the Person Act 1861 and attacks on public servants or which damage emergency equipment may already be treated as aggravating factors when sentencing. It highlighted that definitional problems may arise in terms of extending the proposed offence specifically to a range of other categories of profession.

242. In relation to legislating for on the spot fines for less violent behaviour on hospital premises raised by Edwin Poots MLA, the Department advised that it was discussing the detail of this with DHSSPS 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 fixed penalties are not appropriate in circumstances where the use or threat of violence is a factor. The Department is also of the view that where behaviour amounts to the commission of a criminal offence this should be a matter for consideration by the PPS and indicated that it should be possible to impose a prosecutorial fine for lower-level behaviour when these provisions are commenced, with more serious incidents or aggravated circumstances being referred to the PPS for a decision to prosecute.

243. The Public Prosecution Service response highlighted that legislative reform is a matter for the relevant Department and the Legislature and it had therefore focused on the practical implications of Lord Morrow's amendment. The PPS stated that the law around the existing offence in Section 66(1) of the Police (Northern Ireland) Act 1998 can be more complex than first appears and explained that the current provision includes the offences of resisting, obstructing or impeding a constable or a person assisting a constable as well as assaulting and that the constable must be acting in 'execution of his duty'. The PPS highlighted that one issue around this existing offence has been what is meant by the execution of an officer's duty. Many cases both here and in England and Wales have considered the circumstances in which assaults on police officers occurred and whether the officers were acting in execution of their

---

duty. The PPS was of the view that should this provision be extended to other classes of victims it is likely that this same consideration could occur.

244. The PPS also outlined that where there is evidence of an assault on an emergency worker it can prosecute under existing assault offences without the need to prove the victim was acting in execution of their duty. Where the victim is someone who is serving the public, prosecutors are advised to consider this an aggravating factor and it would be a consideration when deciding whether, for example, an offender should be prosecuted in the Crown Court where greater sentencing is available to the Court. The PPS applies this approach to a range of people serving the public including bus drivers and those working with the public in benefit offices as well as those in the emergency services.

245. The PPS highlighted that it was also aware that Judges will treat the fact that a victim is performing a public service as an aggravating factor when passing sentence in such cases and the Judicial Studies Board for Northern Ireland produces Sentencing Guidelines for the Magistrates' Court on aggravating factors which covers the situation where the victim was engaged in providing a service to the public. The guidance recognises that people providing a public service can often be in vulnerable positions by the nature of their job and states that "where an offence is committed against such a person the courts will treat this as a substantial aggravating factor when determining the seriousness of the offence." The guidance states that persons considered to be providing a public service include (but is not limited to) emergency services personnel; doctors, nurses and other hospital staff; teachers and other school staff; taxi drivers and bus drivers; traffic wardens; and shop staff.

246. The Minister of Health, Social Services and Public Safety also wrote to the Committee on both Lord Morrow's proposed amendment and the proposal by Mr Edwin Poots MLA. The Minister advised that previous consideration had been given to the introduction of legislation that would create a specific offence of assaulting or impeding a healthcare worker whilst that worker was carrying out their duties and which would provide that anyone found guilty would be liable to possible imprisonment or a fine. He indicated that those considerations had identified a number of practical problems with such legislation including the fact that it was already an offence to assault or abuse a health and social care

worker; decisions on whether or how to prosecute any individual for a criminal offence are matters for the PPS; the individuals who would be protected by the legislation would have to be clearly identified and there would have to be decisions taken about who would be covered by the legislation; and clear decisions would be required on where, in terms of physical location, the protection afforded would have affect. He also stated that it was not apparent how an additional offence would increase the protection afforded to health staff and it was considered unlikely that an assailant would be deterred by a separate criminal offence related specifically to the assault or abuse of such staff.

247. The Minister outlined that, in light of the practical difficulties with drafting specific legislation, a working group was set up to examine in further detail what measures could be undertaken to improve the effectiveness of existing legislation. The Minister also highlighted that, while physical assaults on Accident and Emergency staff and on paramedics attract considerable media attention, the majority of attacks on health service staff are carried out by patients with mental health issues and it would not be appropriate to impose fines or other sanctions on such patients.

248. The Minister also indicated that any proposal to impose on the spot fines was unlikely to be welcomed by health staff who were likely to see that as possibly inflaming any situation rather than providing a solution and he outlined the Zero Tolerance policy that each Health and Social Care Trust has in place. In addition there is a joint Memorandum of Understanding between the PSNI, the PPS and the Department of Health aimed at promoting communication and establishing a framework for the exchange of information at local level and provide a clear statement on prosecution policy.

**249. The Committee considered the proposed amendment by Lord Morrow MLA and the proposal by Mr Edwin Poots MLA at its meeting on 7 January 2016. While Members recognised and were sympathetic to the intention of both proposals they acknowledged that these are difficult and complicated matters, as illustrated by the responses received and in particular the correspondence from the Minister of Health, Social Services and Public Safety, that raise a number of complex issues that would require further detailed consideration.**



---

## Regulation of the Flying of Flags on Lampposts

250. At the invitation of the Committee Basil McCrea MLA attended the meeting on 17 November 2015 to outline his proposed amendments to the Justice No.2 Bill to regulate the flying of flags on lampposts. He subsequently provided a written paper outlining the background to and main elements of the proposed amendments which include:

- To introduce regulations regarding the flying of flags on lampposts. It is deliberately narrow in scope.
- The amendments will create a licensing authority to regulate such matters. The Licensing Authority will establish a protocol on the flying of flags, promote and facilitate mediation as a means of resolving disputes and liaise with the PSNI and communities to remove unlicensed flags.
- The Licensing Authority will be independent of the enforcement body such as the PSNI.
- The legislation will draw from the erection of election posters in planning regulations.
- Police powers should be clarified and strengthened to ensure that any illegal flags i.e. flags of prescribed organisations are removed promptly.

251. Following the oral evidence session the Committee agreed to seek the written views of the Department of Justice and the PSNI on the proposals.

252. In its response the Department of Justice stated that it does not believe that the Justice No.2 Bill is an appropriate legislative framework to bring the measures forward and highlights that the flying of flags is a cross-departmental issue with OFMDFM, DSD, DRD, DOE, local councils and other statutory authorities all playing a part. In its view the most suitable way forward is through a Commission on Flags, Identity, Culture and Tradition to be established by March 2016 to focus on flags and emblems and broader issues of identity, culture and tradition as set out in the Stormont House Agreement and reaffirmed in the Fresh Start document. The Department did not believe that the level of consultation to date, and the absence of any draft clauses at the stage of it

---

submitting its response, will allow for an appropriate legislative framework to be developed during the passage of the Justice No.2 Bill.

253. The PSNI acknowledged the need for a resolution to the flags issue and is supportive of any legislation that could provide a solution. It also recognises the dissatisfaction with the current arrangements and believes that the solution does not lie primarily with policing but predominantly within the political arena and a wider societal approach. It supports the position that the best way of resolving such issues is by looking at the context within which conflict arises and transforming that context. The PSNI indicated that it was difficult to comment 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 Paul Nolan and Professor Dominic Bryan which is due in early 2016.

254. The PSNI considered that the proposed amendments could potentially lead to an improvement in the situation concerning the flying of flags but highlighted that the key issue with any legislation is enforcement. It states that establishing the identity of those erecting flags is essential to taking any enforcement or regulatory action. Any regulations would need to make clear how flags erected outside the regulatory framework would be dealt with and the consequences if a person or group of persons did not comply with the provisions, either by leaving flags beyond a permitted time or by placing them on other street furniture.

255. The PSNI emphasised that it should in no way be part of the proposed licensing authority. It sees its role as supportive of the relevant authorities and to ensure the preservation of order. The PSNI outlined that there is currently no bespoke legislation which gives the police a general power to either prevent flags of any type being erected or to remove them once they are flying. It also does not have the technical capacity to take flags down from lampposts. It views flags as a very complex issue and highlighted that, while it will do all that it can to assist in resolving flags disputes, it must adopt a human rights based approach that demands its actions are proportionate and necessary.

**256. The Committee considered the proposals by Basil McCrea MLA at its meeting on 7 January 2016. While Members recognised and acknowledged the aim of the proposals and what Mr McCrea was trying to achieve**

**through his proposed amendments, Members were not convinced that they would have the desired outcome.**

**257. The Committee agreed that the best approach to this issue is for the Commission on Flags, Identity, Culture and Tradition, to be established by March 2016 as set out in the Stormont House Agreement and reaffirmed in the Fresh Start document, to consider the matter.**

## Clause by Clause Consideration of the Bill

258. Having considered the written and oral evidence received on the Bill, the Committee deliberated on the clauses and schedules of the Bill at its meetings on 3 and 10 December 2015 and 7 January 2016 and undertook its formal clause by clause consideration at its meeting on 7 January – see Minutes of Proceedings available [here](#) and Minutes of Evidence available [here](#).

259. Some Members expressed reservations about the wider impact of the means testing and deductions from benefits proposals, the proposed interim bank account orders and bank account orders and the vehicle seizure powers in the fine collection and enforcement provisions and indicated that they would be seeking further assurances and commitments from the Minister of Justice at Consideration Stage regarding safeguarding and protecting families, dependents and vulnerable people.

260. Some Members also expressed reservations about clause 38 which requires the Prison Ombudsman to have regard to guidance issued by the Secretary of State in relation to any matter connected with national security and indicated their intention to oppose the clause at Consideration Stage. They also highlighted their intention to bring forward an amendment to Clause 36 to provide the Ombudsman with the power to compel witnesses and outlined their support for the views expressed by one organisation in the evidence submitted to the Committee that the criterion in Schedule 3 that states that the Ombudsman may be removed from Office if that person has been convicted of a criminal offence should be removed from the Bill.

261. The Committee supported a number of departmental amendments to various clauses and schedules to address issues raised by the Attorney General at the time of the Bill's introduction, bring forward new policy proposals within the core themes of the Bill and address an issue raised by the Examiner of Statutory Rules regarding the regulation making powers in the Bill.

262.The Committee also agreed to bring forward two amendments at Consideration Stage. The first relates to the fine collection and enforcement provisions and will provide an enabling clause to allow the Department to provide the Court with powers to require offenders to satisfy a fine by undertaking a rehabilitative course to address the causes of offending behaviour such as drug or alcohol addiction as an alternative to Supervised Activity Orders. The second will create a new offence of disclosing private sexual photographs and images with intent to cause distress.

263.The Committee also supported a range of amendments proposed by the Department to introduce provisions on issues unrelated to the content of the Bill and a Department of Agriculture and Rural Development amendment to increase penalties for animal welfare offences.

264.Information on the Committee's deliberations on the individual clauses and schedules in the Bill and additional provisions can be found in the previous sections of this report.

## **PART 1: FINES AND OTHER PENALTIES: ENFORCEMENT**

### **CHAPTER 1**

#### **COLLECTION OF FINES ETC.**

##### **Clause 1 - Application of Chapter**

265.Agreed: the Committee is content with Clause 1 subject to the Department of Justice's proposed amendment which is a consequence of the introduction of new Clause 12A relating to information access and sharing by collection officers as follows:

***Clause 1, Page 2, Line 1***

*Leave out subsection (3).*

**Clause 2 - Collection officers**

266.Agreed: the Committee is content with Clause 2 as drafted.

**Clause 3 - Collection order**

267.Agreed: the Committee is content with Clause 3 as drafted.

**Clause 4 - Additional powers where collection order made**

268.Agreed: the Committee is content with Clause 4 subject to the Department of Justice's proposed minor drafting amendments as follows:

**Clause 4, Page 3, Line 32**

*Leave out "sum due" and insert "outstanding amount"*

**Clause 4, Page 3, Line 33**

*Leave out "sum due" and insert "outstanding amount"*

**Clause 5 - Collection officer to contact debtor in default**

269.Agreed: the Committee is content with Clause 5 subject to the Department of Justice's proposed technical amendment as follows:

**Clause 5, Page 4, Line 34**

*After "applies" insert "or which is treated by a provision of that section as if it were a benefit to which that section applies"*

**Clause 6 - Powers of collection officer in relation to debtor in default**

270.Agreed: the Committee is content with Clause 6 subject to the Department of Justice's proposed amendment regarding making a vehicle seizure order only if satisfied that the value of the vehicle, if sold, would discharge the sum owed including the likely charges and costs of the sale and a minor drafting amendment as follows:

**Clause 6, Page 5, Line 20**

*Leave out "(2)(a) or (b)" and insert "(2)"*

**Clause 6, Page 5, Line 39**

*Leave out “is sufficient to discharge the outstanding amount” and insert “(if sold) would be sufficient to discharge the outstanding amount and the amount of any charges likely to be imposed and costs likely to be incurred in connection with executing a vehicle seizure order in relation to the vehicle”.*

**Clause 7 - Referral to the court: collection officer’s report etc.**

271. Agreed: the Committee is content with Clause 7 subject to the Department of Justice’s proposed amendment which is a consequence of the introduction of the new clauses to provide for police power of arrest in circumstances of non-attendance at fine default hearings as follows:

**Clause 7, Page 6, Line 34**

*At end insert—*

*“(3) The collection officer’s report is admissible in proceedings before a court as evidence of the facts stated in it; and a court may, for example, take the report into account in deciding whether to issue a warrant under section 9A.”*

**Clause 8 - Referral to the court in case where no collection order made**

272. Agreed: the Committee is content with Clause 8 as drafted.

**Clause 9 - Powers of court on referral of debtor’s case**

273. Agreed: the Committee is content with Clause 9 subject to the Department of Justice’s proposed amendment relating to the introduction of the police power of arrest in circumstances of non-attendance at fine default hearings and the Committee’s proposed amendment to provide for an enabling clause which would allow the Department to provide the Court with powers to require offenders to satisfy a fine by undertaking a rehabilitative course to address offending behaviour such as drug or alcohol treatment as an alternative to Supervised Activity Orders as follows:

**Clause 9, Page 8, Line 20**

*At end insert—*

*“(8A) Where the court issues a warrant of committal under subsection (1)(i), the length of the period of committal as pronounced by the court is to be reduced by the length of any period during which the debtor has, in the case to which the*

*hearing under this section relates, been remanded or committed in custody under section 9C (but not under subsection (7) of that section).”*

**Clause 9, Page 7, Line 33,**

*At end insert-*

*‘if the debtor is an individual with a drug or alcohol addiction, make an a Work Development and Rehabilitation of Debtors order that the debt shall be satisfied by attendance on an addiction course or programme of counselling;’*

**Clause 9, Page 7, Line 33,**

*At end insert-*

*‘if the debtor is an individual with a mental health condition, make an a Work Development and Rehabilitation of Debtors order that the debt shall be satisfied by attendance on a programme of psychiatric counselling;*

**Clause 9, Page 7, Line 33,**

*At end insert-*

*‘if the debtor is a homeless person, make an a Work Development and Rehabilitation of Debtors order that the debt shall be satisfied by attendance on a period of unpaid community service.*

**Clause 9, Page 7, Line 35,**

*At end insert-*

*‘(2) The Department may by regulations provide for a Work Development and Rehabilitation of Debtors scheme under which a debtor referred to court may be required to undertake a course, counselling or community work in accordance with paragraphs (i), (j) and (k) above; the scheme to include appeal and consent mechanisms and the provision of supporting documentation by a relevant professional person.*



## **New Clause**

274. The Department proposes to insert new Clauses 9A, 9B and 9C to provide for police power of arrest in circumstances of non-attendance at fine default hearings.

### ***Power of arrest for Default Hearings***

*After Clause 9 insert—*

#### ***“Power to issue arrest warrant where debtor fails to attend hearing referral of case***

*9A.—(1) This section applies where, in the case of a debtor who is an individual—*

*(a) a summons is issued under section 6(10) or 8(3), but*

*(b) the debtor does not appear before court as required by the summons.*

*(2) The court before which the debtor was required to appear may issue a warrant for the debtor’s arrest if—*

*(a) it is not satisfied that the summons was served on the debtor or that the debtor is evading service, but*

*(b) it is satisfied that the debtor is aware of the liability to pay the sum due and of the possible consequences of defaulting on the payment, and*

*(c) it is considering the possibility of issuing a warrant to commit the debtor to prison under section 9(1)(i).*

*(3) On issuing a warrant under this section, the court must endorse the warrant for bail so as to direct that, once arrested, the debtor must be released on entering into the recognizance specified in the endorsement.*

*(4) A warrant under this section may be executed only by a constable.*

*(5) A warrant under this section is not to be regarded for the purposes of Article 19(1)(a)(i) of the Police and Criminal Evidence (Northern Ireland) Order*

1989 as a warrant issued in connection with or arising out of criminal proceedings.”

After **Clause 9** insert—

**“Arrest under warrant under section 9A**

9B.—(1) This section applies where a debtor is arrested in reliance on a warrant issued under section 9A.

(2) If the debtor enters into the recognizance specified in the endorsement to the warrant, it is not necessary for the debtor to be taken to a police station; and if the debtor is taken to a police station without having entered into the recognizance, he or she must be released from custody on entering into it.

(3) If the debtor enters into the recognizance, the hearing of the debtor’s case under section 9 on the referral under section 6 or 8 is to take place at the time and place specified in accordance with provision made in the recognizance.

(4) If the debtor does not enter into the recognizance, the debtor must as soon as is practicable be brought before either a magistrates’ court or the Crown Court, whichever is next sitting; and, pending that, the debtor may be kept in custody at a police station.

(5) If the debtor is brought before a magistrates’ court and it is the responsible court in the debtor’s case, it—

(a) must at that sitting hear the debtor’s case under section 9 on the referral under section 6 or 8, or

(b) if it not possible for the court to do so at that sitting, must adjourn the hearing on the referral to such time and place as it specifies and must remand the debtor in accordance with section 9C.

(6) If the debtor is brought before a magistrates’ court but the Crown Court is the responsible court in the debtor’s case, it must commit the debtor to the Crown Court in accordance with section 9C.

(7) If the debtor is brought before the Crown Court and it is the responsible court in the debtor’s case, it—

---

*(a) must at that sitting hear the debtor's case under section 9 on the referral under section 6 or 8, or*

*(b) if it not possible for the court to do so at that sitting, must adjourn the hearing on the referral to such time and place as it specifies and must remand the debtor in accordance with section 9C.*

*(8) If the debtor is brought before the Crown Court but it is not the responsible court in the debtor's case, it must remit the debtor's case to the magistrates' court which is the responsible court and must remand the debtor in accordance with section 9C.*

*(9) Where a debtor has entered into the recognizance, the outstanding amount may, before the hearing on the referral of the debtor's case, be paid to the police or the court; and on the payment being made, the warrant ceases to have effect.*

*(10) Where the debtor has not entered into the recognizance, the outstanding amount may, before the debtor is brought before the court under this section, be paid to the police or the court; and on the payment being made, the warrant ceases to have effect.*

*(11) Where the debtor has been dealt with as mentioned in subsections (5) to (8) pending the hearing on the referral of the debtor's case, the outstanding amount may, before the hearing on the referral, be paid to the court.*

*(12) The police, on receiving a payment under subsection (9) or (10), must send it to the court.*

*(13) If, at the time of the commencement of this section, Part 1 of the Justice Act (Northern Ireland) 2015 (single jurisdiction for county courts and magistrates' courts) has yet to come into force, this section, pending the commencement of that Part, has effect as if after subsection (5) there were inserted—*

*“(5A) If the debtor is brought before a magistrates' court but another magistrates' court is the responsible court in the debtor's case, it must adjourn the hearing on the referral to that other court at such time and*

*place as it specifies and must remand the debtor in accordance with section 9C.”.”.*

After **Clause 9** insert—

**“Remand or committal under section 9B**

9C.—(1) *For the purposes of the remand or committal of a debtor under section 9B(5) to*

*(8), the court must either—*

*(a) remand or commit the debtor in custody, by committing the debtor to custody to be brought before the responsible court at the end of the period specified by the court (but see also subsection (7)), or*

*(b) remand or commit the debtor on bail, by remanding the debtor on bail subject to such conditions as the court may specify for the debtor’s subsequent appearance before the responsible court.*

*(2) A reference in this section to being remanded or committed in custody is to be read in accordance with subsection (1)(a); and a reference in this section to being remanded or committed on bail is to be read in accordance with subsection (1)(b).*

*(3) If the debtor is remanded or committed in custody, the court may give its consent to the debtor being remanded or committed on bail.*

*(4) The period for which the debtor may be remanded or committed in custody must not exceed—*

*(a) in a case where the debtor consents, 28 days;*

*(b) in any other case, 8 days.*

*(5) The period for which the debtor may remanded or committed on bail must not exceed 28 days.*

*(6) If the debtor is aged under 18, he or she may not be remanded or committed in custody.*

---

(7) *If the debtor is aged 21 or over, the remand or committal of the debtor in custody may, on an application made by a police officer not below the rank of inspector, be made by—*

*(a) committing the debtor to detention at a police station, or*

*(b) committing the debtor to the custody of a constable (otherwise than at a police station).*

(8) *The period for which the debtor may be committed under subsection (7)(a) must not exceed 3 days beginning with the day following that on which the debtor was committed.*

(9) *The debtor may not be committed to detention at a police station under subsection (7)(a) unless there is a need for him or her to be so detained for the purposes of inquiries into a criminal offence; and if the debtor is committed to such detention—*

*(a) the debtor must, as soon as that need ceases, be brought back before the court;*

*(b) the debtor is to be treated as a person in police detention to whom the duties under Article 40 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (responsibilities in relation to persons detained) relate, and*

*(c) the detention of the debtor is to be subject to periodic review at the times set out in Article 41 of that Order.*

(10) *The debtor may not be committed to the custody of a police officer under subsection (7)(b) unless there is a need for him or her to be kept in such custody for the purposes of inquiries into a criminal offence; and if the debtor is committed to such custody, he or she must, as soon as that need ceases, be brought back before the court.*

(11) *The court may order the debtor to be brought before it at any time before the expiration of the period for which the person has been remanded or committed.*

*(12) Once the debtor has been remanded or committed pending the hearing on the referral of the debtor's case, the outstanding amount may, before the hearing on the referral, be paid to the court."*

275. Agreed: the Committee is content with the new clauses proposed by the Department.

### **New Clause**

276. The Department proposes to insert new Clause 9D to create a power for the recovery of the fee for the cost of default hearings.

After **Clause 9** insert—

#### **"Costs relating to referral of debtor's case**

*9D.—(1) The costs of the hearing of a debtor's case under section 9 (including any costs incurred in connection with any matter preliminary or incidental to the hearing, but not including any costs incurred by the debtor) are to be defrayed in the first instance by the Department of Justice.*

*(2) The costs to be defrayed under subsection (1) are to be such rates or such amounts as may be generally or specifically approved by the Department of Finance and Personnel.*

*(3) The court hearing the debtor's case under section 9 may, in addition to any other order which it may make at the hearing, order the debtor to pay the whole or any part of the costs referred to in subsection (1); but, if the debtor is an individual aged under 18, the amount of any costs ordered under this subsection may not exceed the outstanding amount.*

*(4) The payment of an amount imposed by an order under subsection (3) is enforceable in the same manner as a fine or other sum adjudged to be paid by or imposed on a conviction of the court (and this Chapter applies in relation to that amount accordingly).*

*(5) The costs of any proceedings under section 9B involving the debtor are to be regarded for the purposes of this section as costs of the hearing of the debtor's case under section 9."*

277.Agreed: the Committee is content with the new clause proposed by the Department.

**Clause 10 - Application for deduction from benefits**

278.Agreed: the Committee is content with Clause 10 as drafted

**Clause 11 - Deduction from benefits: further provision in regulations**

279.Agreed: the Committee is content with Clause 11 subject to the Department of Justice's proposed amendment that provides for the Regulations to make further provision about applications for deductions from benefits as follows:

**Clause 11, Page 9, Line 15**

*After "make" insert "further provision about applications for deductions from benefits; and the regulations may in particular make"*

**Clause 12 - Enquiries into debtor's means**

280.Agreed: the Committee is content with Clause 12 as drafted.

**New Clause**

281.The Department proposes to insert new Clause 12A relating to information access and sharing.

*After **Clause 12** insert—*

***"Disclosure of information***

*12A.—(1) The Department for Social Development, or a person providing services to that Department, may disclose social security information to a court or a collection officer for the purpose of—*

*(a) facilitating a decision by the court or officer whether or not to make an application for deduction from benefits, or*

*(b) facilitating the making of the application by the court or officer.*

*(2) In subsection (1), "social security information" means—*

*(a) information which is held by the Department for the purposes of functions relating to social security,*

(b) *information which is held by a person providing services to the Department in connection with the provision of those services, or*

(c) *information which is held with information of the description given in paragraph (a) or (b).*

(3) *The reference in subsection (2)(a) to functions relating to social security includes a reference to functions relating to—*

(a) *statutory payments as defined in section 4C(11) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;*

(b) *maternity allowance under section 35 or 35B of that Act.*

(4) *A person to whom information is disclosed under this section commits an offence if the person—*

(a) *discloses the information to another person, or*

(b) *uses the information for a purpose other than a purpose referred to in subsection (1).*

(5) *It is not an offence under subsection (4)—*

(a) *to disclose any information in accordance with a statutory provision or with an order of a court or of a tribunal established by or under a statutory provision or for the purposes of any proceedings before a court,*

(b) *to disclose or use any information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it, or*

(c) *to disclose or use any information which has previously been lawfully disclosed to the public.*

(6) *It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed that the disclosure or use was lawful.*

(7) *A person guilty of an offence under subsection (4) is liable—*



*(a) on summary conviction, to a fine not exceeding the statutory maximum;*

*(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.*

*(8) Nothing in this section authorises the making of a disclosure which contravenes the Data Protection Act 1988.*

*(9) In this section, "information" means information held in any form."*

282.Agreed: the Committee is content with the new clause proposed by the Department.

**Clause 13 - Attachment of earnings order**

283.Agreed: the Committee is content with Clause 13 subject to the Department of Justice's proposed drafting amendment as follows:

**Clause 13, Page 10, Line 32**

*Leave out "regarded" and insert "treated"*

**Clause 14 - Statement of earnings**

284.Agreed: the Committee is content with Clause 14 as drafted.

**Clause 15 - Interim bank account order**

285.Agreed: the Committee is content with Clause 15 as drafted.

**Clause 16 - Hardship payments**

286.Agreed: the Committee is content with Clause 16 as drafted.

**Clause 17 - Bank account order**

287.Agreed: the Committee is content with Clause 17 as drafted.

**Clause 18 - Vehicle seizure order**

288.Agreed: the Committee is content with Clause 18 subject to the Department of Justice's proposed amendments relating to the introduction of the police power of arrest in circumstances of non-attendance at fine default hearings and to

specify the issues that the court should take into account before making a vehicle seizure order as follows:

**Clause 18, Page 14, Line 14**

*After “require” insert “(even though the collection officer’s report is, by virtue of section 7(3), admissible at the hearing)”.*

**Clause 18, Page 14, Line 14**

*At end insert—*

*“(3A) Before making a vehicle seizure order, the responsible court must, in satisfying itself that the order would be justified, reasonable and proportionate in all the circumstances of the case, have particular regard to the likely effect of the order on the debtor’s ability to earn a living.”*

**Clause 18, Page 14, Line 36**

*Leave out paragraph (b).*

**Clause 19 - Offences**

289.Agreed: the Committee is content with Clause 19 as drafted.

**Clause 20 - Appeals**

290.Agreed: the Committee is content with Clause 20 as drafted.

**Clause 21 - Guidance**

291.Agreed: the Committee is content with Clause 21 as drafted.

**Clause 22 - Interpretation etc.**

292.Agreed: the Committee is content with Clause 22 subject to the Department of Justice’s proposed consequential amendment as a result of the introduction of the new clause relating to information access and sharing as follows:

**Clause 22, Page 16, Line 27**

*At end insert—*

*““statutory provision” has the same meaning as in the Interpretation Act (Northern Ireland) 1954;”.*

### **Clause 23 - Minor and consequential amendments**

293. Agreed: the Committee is content with Clause 23 subject to the Department of Justice's proposed amendment to provide a power to make ancillary provisions to Part 1 of the Bill as follows:

**Clause 23, Page 17, Line 9**

*At end insert—*

*“(2) The Department of Justice may by order make such consequential, supplementary or incidental provision as it considers appropriate in consequence of, or for giving full effect to, this Chapter.*

*(3) An order under subsection (2) may amend, repeal, revoke or otherwise modify any statutory provision.”*

## **CHAPTER 2**

### **OTHER ENFORCEMENT PROCEDURES**

#### **Clause 24 - Supervised activity orders**

294. Agreed: the Committee is content with Clause 24 subject to the Department of Justice's proposed amendment to ensure that a Supervised Activity Order cannot be considered as an option in default of a confiscation order and minor drafting amendments as follows:

**Clause 24, Page 17, Line 19**

*Before “either” insert “the individual”*

**Clause 24, Page 18, Line 25**

*At end insert—*

*“(10A) But the references in this Article to a sum adjudged to be paid by or imposed on a conviction do not include a reference to an amount payable under a confiscation order under Part 4 of the Proceeds of Crime Act 2002.”*

**Clause 24, Page 18, Line 26**

*Leave out from “officer” to end of line 28 and insert “, in relation to a supervised activity order, means a probation officer with responsibility for supervising the carrying out of the requirements of the order”*

**Clause 25 - Restriction on detention of children for default in paying fines, etc.**

295. Agreed: the Committee is content with Clause 25 subject to the Department of Justice’s proposed technical amendment as follows:

**Clause 25, Page 20, Line 22**

*At end insert—*

*“(5A) In section 5(3) of the Treatment of Offenders (Northern Ireland) Act 1968 (power of court to detain young person in youth offenders centre for default), for “Article 47” substitute “Article 46C”.*”

**Clause 26 - Distress in default**

296. Agreed: the Committee is content with Clause 26 as drafted.

**Clause 27 - Limitations on remission**

297. Agreed: the Committee is content with Clause 27 subject to the Department of Justice’s proposed minor amendment to correct a date as follows:

**Clause 27, Page 21, Line 23**

*Leave out “1998” and insert “2008”*

**PART 2:**

**THE PRISON OMBUDSMAN FOR NORTHERN IRELAND**

**Clause 28 – The Prison Ombudsman for Northern Ireland**

298. Agreed: the Committee is content with Clause 28 as drafted.

**Clause 29 - Main functions of Ombudsman**

299. Agreed: the Committee is content with Clause 29 subject to the Department of Justice's proposed consequential amendment as a result of new clauses 35A and 35B as follows:

**Clause 29, Page 22, Line 14**

*At end insert 'or on the Ombudsman's own initiative (see sections 35A and 35B).'*

**Clause 30 – Complaints**

300. Agreed: the Committee is content with Clause 30 subject to the Department of Justice's proposed amendments to create a power to defer investigations where the Ombudsman considers it necessary to do so and to require the Ombudsman to inform the police of a suspected criminal offence as part of any investigation he is conducting as follows:

**Clause 30, Page 23, Line 11**

*Leave out from 'at the request' to end of line 19 and insert 'at any time if it appears to the Ombudsman that-*

*(a) a criminal investigation might be adversely affected by the Ombudsman's investigation;*

*(b) the exercise of functions under the Health and Safety at Work (Northern Ireland) Order 1978 might be adversely affected by the Ombudsman's investigation;*

*(c) it is appropriate to do so because of any proceedings for judicial review; or*

*(d) it is appropriate to do so for any other reason.'*

**Clause 30, Page 23, Line 39**

*At end insert-*

*'(15) At any time in the course of an investigation under this section the Ombudsman may—*

*(a) draw to the attention of the police any matter which in the Ombudsman's opinion is relevant to any criminal investigation;*

*(b) draw to the attention of any body or person any matter which in the Ombudsman's opinion calls for action to be taken by that body or person.'*

---

### **Clause 31 - Report of investigation of complaint**

301.Agreed: the Committee is content with Clause 31 as drafted.

### **Clause 32 - Investigations into deaths in custody**

302.Agreed: the Committee is content with Clause 32 subject to the Department of Justice's proposed amendment to create a power to defer investigations where the Ombudsman considers it necessary to do so as follows:

#### **Clause 32, Page 25, Line 3**

*Leave out from 'at the request' to end of line 11 and insert 'at any time if it appears to the Ombudsman that-*

*(a) a criminal investigation might be adversely affected by the Ombudsman's investigation;*

*(b) the exercise of functions under the Health and Safety at Work (Northern Ireland) Order 1978 might be adversely affected by the Ombudsman's investigation;*

*(c) it is appropriate to do so because of any proceedings for judicial review; or*

*(d) it is appropriate to do so for any other reason.'*

### **Clause 33 - Report on investigation into death**

303.Agreed: the Committee is content with Clause 33 as drafted.

### **Clause 34 - Investigations requested by the Department**

304.Agreed: the Committee is content with Clause 34 subject to the Department of Justice's proposed amendment to require the Ombudsman to inform the police of a suspected criminal offence as part of any investigation he is conducting and to place a duty on the Minister of Justice to request the Ombudsman to conduct an investigation in cases of near-death as follows:

#### **Clause 34, Page 26, Line 9**

Leave out subsection (1) and insert –

'(1) The Department –

- (a) shall request the Ombudsman to investigate any custody related matter if any of the events to which it relates is of such a nature or description, or occurs in such circumstances, as may be prescribed;*
- (b) may request the Ombudsman to investigate any other custody-related matter which is specified in the request.*

*(1A) Before making any request under subsection (1) the Department shall consult the Ombudsman.'*

**Clause 34, Page 26, Line 17**

*At end insert—*

*'(2A) Before making any regulations under subsection (1)(a) the Department shall consult—*

- (a) the Ombudsman; and*
- (b) such other persons as the Department thinks appropriate.'*

**Clause 34, Page 26, Line 26**

*At end insert*

*'(6) At any time in the course of an investigation under this section the Ombudsman may—*

- (a) draw to the attention of the police any matter which in the Ombudsman's opinion is relevant to any criminal investigation;*
- (b) draw to the attention of any body or person any matter which in the Ombudsman's opinion calls for action to be taken by that body or person.'*

**Clause 35 – Report on investigation under section 34**

305. Agreed: the Committee is content with Clause 35 as drafted.

**New Clauses**

306. The Department of Justice proposes to insert new Clauses 35A and 35B to enable the Prison Ombudsman to initiate investigations on his own volition.

*'Own initiative investigations'*

*After **clause 35** insert—*

***Own-initiative investigations***

35A.—(1) *The Ombudsman may carry out an investigation under this section into a matter if—*

*(a) the matter relates—*

*(i) to the way in which a prisoner has been treated by a prison officer;*

*(ii) to the way in which a person visiting a prison has been treated by a prison officer;*

*(iii) to the facilities available to a person at a prison (including, in the case of a prisoner, facilities for the welfare of the prisoner);*

*(iv) to the cleanliness and adequacy of a prison; and*

*(b) the Ombudsman has reasonable grounds for believing that, in relation to the matter—*

*(i) a number of events of the same or a similar nature have occurred; and*

*(ii) the number or frequency of the events requires the matter to be investigated under this section.*

*(2) Before commencing an investigation under this section, the Ombudsman must—*

*(a) consult the Department; and*

*(b) inform the Department of the matter proposed to be investigated and of the grounds referred to in subsection(1 )(b).*

*(3) It is for the Ombudsman to determine the procedures to be applied to an investigation under this section.*

*(4) This section applies to a matter whether or not a complaint has been, or could be, made about the matter under section 30.'*

*After **clause 35** insert—*

***'Report on investigation under section 35A***

*35B.—(1) Where the Ombudsman has carried out an investigation under section 35A, the Ombudsman must report in writing on the outcome of the investigation to—*

*(a) the Department; and*

*(b) any other person the Ombudsman considers should receive the report.*

*(2) In a report to the Department the Ombudsman may make recommendations about any matter arising from the investigation.*



*(3) Where such recommendations are made in a report, the Department must, within the required period, respond in writing to the Ombudsman setting out (with reasons) what it proposes to do about the recommendations,*

*(4) The required period is the period of 28 days commencing with the day on which the Department receives the report or such longer period as the Ombudsman may in the case of any report allow.*

*(5) The Ombudsman may report on that response to such persons as the Ombudsman may think fit.*

*(6) Regulations may make provision as to the procedures to be followed in relation to reports under this section and may in particular include provision—*

*(a) enabling the Ombudsman to show any person a draft of the whole or any part of a report;*

*(b) enabling the Ombudsman to publish the whole or any part of a report;*

*(c) restricting or prohibiting the identification of prescribed persons or person sofa prescribed description in a report or the inclusion of information of a prescribed description.'*

307.Agreed: the Committee is content with the new clauses proposed by the Department.

### **Clause 36 - Powers of Ombudsman**

308.Agreed: the Committee is content with Clause 36 as drafted.

### **Clause 37 - Disclosure of information**

309.Agreed: the Committee is content with Clause 37 subject to the Department of Justice's proposed amendments to change the reference to the NI Public Services Ombudsperson to Ombudsman and to add the Attorney General to the list of bodies to which protected information may be disclosed as follows:

### **Clause 37, Page 28, Line 2**

*At end insert-*

*'(ca) to the Attorney General for Northern Ireland for the purposes of the exercise of any functions of that office;'*

**Clause 37, Page 28, Line 3**

*Leave out 'Ombudsperson' and insert 'Ombudsman'*

**Clause 38 - Guidance to Ombudsman in relation to matters connected with national security**

310.Agreed: the Committee is content with Clause 38 as drafted.

**Clause 39 - Interpretation**

311.Agreed: the Committee is content with Clause 39 as drafted.

**Clause 40 - Transitional provision: the Prisoner Ombudsman for Northern Ireland**

312.Agreed: the Committee is content with Clause 40 subject to the Department of Justice's proposed consequential amendment which is as a result of the introduction of new Clause 35A as follows:

**Clause 40, Page 30, Line 12**

*At end insert—*

*'(6A) In applying section 35A(1)(b) the Ombudsman may take into account events occurring in the period of 12 months immediately preceding the appointed day (as well as events occurring on or after that day).'*

### **PART 3**

#### **MISCELLANEOUS**

##### **New Clause**

313.The Department of Agriculture and Rural Development proposes to insert a new Clause 40A to increase penalties for animal welfare offences in the Welfare of Animals Act (NI) 2011.

*Before **Clause 41** insert—*

***"Penalties for animal welfare offences***

40A.—(1) *In section 31 of the Welfare of Animals Act (Northern Ireland) 2011 (penalties), in subsection (1) (summary-only offences), omit “8(3),” and “, 33(9), 40(7)”.*

(2) *After that subsection insert—*

*“(1A) A person guilty of an offence under section 4 or 8(1) or (2) shall be liable—*

*(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding £20,000, or both;*

*(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or both.”*

(3) *In subsection (2) of that section (hybrid offences)—*

*(a) omit “4,” and*

*(b) for “and 8(1) and (2)” substitute “, 8(3), 33(9) and 40(7)”.*

*(4) In that subsection, in paragraph (b), for “2 years” substitute “5 years”.*

*(5) In each of the following provisions of that Act, for “8(1) and (2)” substitute “8”—*

*(a) section 32(1) (deprivation);*

*(b) section 33(10) (disqualification);*

*(c) section 36(1) (destruction in interests of animal).*

*(6) In each of the following provisions of that Act, for “8(1) or (2)” substitute “8”—*

*(a) section 36(6) (destruction in interests of animal);*

*(b) section 37(1) (destruction of animals involved in fighting offences);*

*(c) section 38(1) (reimbursement of expenses relating to animals involved in fighting offences).*

*(7) In Article 29(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 (right to claim trial by jury subject to exceptions), after sub-paragraph (o) insert—*

*“(p) section 4 or 8(1) or (2) of the Welfare of Animals Act (Northern Ireland) 2011 (unnecessary suffering; fighting).”.*

314. Agreed: the Committee is content with the new clause proposed by the Department of Agriculture and Rural Development.

#### **Clause 41 – Lay visitors for all police stations**

315. Agreed: the Committee is content with Clause 41 as drafted.

---

**Clause 42 - Possession of pornographic images of rape and assault by penetration**

316. Agreed: the Committee is content with Clause 42 as drafted.

**New Clause**

317. The Committee agreed to insert new Clauses 42A, 42B and 42C to create a new offence of disclosing private sexual photographs and images with intent to cause distress as follows:

After **Clause 42** insert

**'Disclosing private sexual photographs and films with intent to cause distress**

42A.— (1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—

(a) without the consent of an individual who appears in the photograph or film, and

(b) with the intention of causing that individual distress.

(2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).

(3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(4) It is a defence for a person charged with an offence under this section to show that—

(a) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and

(b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.

---

(5) It is a defence for a person charged with an offence under this section to show that—

(a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person, and

(b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).

(6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—

(a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

(7) For the purposes of subsections (1) to (5)—

(a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and

(b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.

(8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.

(9) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).’

---

After **Clause 42** insert

**‘Meaning of “disclose” and “photograph or film”**

42B.—(1)The following apply for the purposes of section 42A, this section and section 42C.

(2)A person “discloses” something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person.

(3)Something that is given, shown or made available to a person is disclosed—

(a) whether or not it is given, shown or made available for reward, and

(b) whether or not it has previously been given, shown or made available to the person.

(4)“Photograph or film” means a still or moving image in any form that—

(a) appears to consist of or include one or more photographed or filmed images, and

(b) in fact consists of or includes one or more photographed or filmed images.

(5) The reference in subsection (4) (b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(6) “Photographed or filmed image” means a still or moving image that—

(a) was originally captured by photography or filming, or

(b) is part of an image originally captured by photography or filming.

(7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(8)References to a photograph or film include—

(a) a negative version of an image described in subsection (4), and

(b) data stored by any means which is capable of conversion into an image described in subsection (4).’

After **Clause 42** insert

**‘Meaning of “private” and “sexual”**

42C.—(1) The following apply for the purposes of section 42A.

(2)A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.

(3)A photograph or film is “sexual” if—

(a) it shows all or part of an individual’s exposed genitals or pubic area,

(b) it shows something that a reasonable person would consider to be sexual because of its nature, or

(c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(4)Subsection (5) applies in the case of —

(a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way,

(b) a photograph or film that combines two or more photographed or filmed images, and

(c) a photograph or film that combines a photographed or filmed image with something else.

(5)The photograph or film is not private and sexual if—

(a) it does not consist of or include a photographed or filmed image that is itself private and sexual,

(b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4), or

(c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 42A(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.

**Clause 43 - Early removal from prison of prisoners liable to removal from United Kingdom**

318. Agreed: the Committee is content with Clause 43 as drafted.

**Clause 44 - Re-entry into Northern Ireland of offender removed under section 43**

319. Agreed: the Committee is content with Clause 44 as drafted.

**New Clause**

320. The Department proposes a new clause 44A to provide the required authority to introduce a fee structure for the Court Funds Office to deliver full cost recovery.

*After Clause 44 insert—*

***“Costs of Accountant General in administering funds in court***

*44A. In section 116 of the Judicature (Northern Ireland) Act 1978 (fees), after subsection (1A) insert—*

*“(1B) The provision made by section 39 of the Administration of Justice Act 1982 in relation to the costs of administering funds in court does not prevent an order under subsection (1) from fixing fees to be taken by the Accountant General for the recovery of such costs (whether the order is made in addition to or instead of reliance on the provision made by section 39 of that Act for that purpose).”.*

321. Agreed: the Committee is content with the new clause proposed by the Department.

**New Clause**

322. The Department proposes a new clause after Clause 44 relating to the direct committal for trial provisions in Section 9 of the Justice Act (Northern Ireland) 2015.

*After clause 44 insert-*

***‘Direct committal for trial: indictable offence triable summarily***



44A.-(1) *Section 9 of the Justice Act (Northern Ireland) 2015 (cases where direct committal provisions may apply) is amended as follows.*

(2) *In subsection (1) for “either” substitute “one”.*

(3) *In subsection (2) after paragraph (a) insert -*

*“(aa) that the offence is an indictable offence to which Article 45 of the Magistrates Courts (Northern Ireland) Order 1981 or Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies; or” .’*

323. Agreed: the Committee is content with the new clause proposed by the Department.

### **New Clause**

324. The Department proposes new clauses after Clause 44 to amend the Firearms (NI) Order 2004, repeal the Unlawful Drilling Act 1819 and introduce a new Schedule covering the authorisation of shotgun clubs to allow use of shotguns by minors for limited purposes, variation of firearms certificates and fees.

After Clause 44 insert –

### **‘Firearms’**

#### **Amendments of Firearms (Northern Ireland) Order 2004, etc.**

44A.-(1) The Firearms (Northern Ireland) Order 2004 has effect subject to the amendments contained in Schedule 4.

(2) The following provisions of the Justice Act (Northern Ireland) 2011 are repealed-

section 103 (variation of firearm certificate);

section 104 (restrictions on use of shotguns by young persons), and

section 105 (restrictions on possession of air guns by young persons).’

After Clause 44 insert –

### **‘Repeal of Unlawful Drilling Act 1819’**

#### **Repeal of Unlawful Drilling Act 1819**

**44B.**-(1) The Unlawful Drilling Act 1819 is repealed.

(2) In consequence of subsection (1) the following provision are repealed

(a) Article 49(4) of the Firearms (Northern Ireland) Order 2004;

(b) paragraph 1 of Schedule 1 to the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007.’

## **New Schedule**

After Schedule 3 insert-

### **NEW SCHEDULE**

Section {j}

#### **AMENDMENTS OF FIREARMS (NORTHERN IRELAND) ORDER**

2004

[S10]

#### **PART 1**

#### **FIREARMS—PERSONS UNDER 18**

*Authorisation of shotgun clubs to allow use of shotguns by persons under the age of 16*

1.—(1) *In Article 2(2) (interpretation), after the definition of “shotgun certificate” insert—*

*““shotgun club” means a club established for the purpose of promoting and practising skill in the use of shotguns;”.*

(2)*In the heading to Part 6, add at the end “AND SHOTGUN CLUBS”.*

(3)*After the heading to Part 6 add—*

*“Firearms clubs”.*

(4)*After Article 50 insert—*

*“Shotgun clubs****Authorisation of shotgun clubs to allow use of shotguns by minors for limited purposes***

50A.—(1) *If the Chief Constable is satisfied that there will not be a danger to public safety or to the peace, the Chief Constable may, on payment of the appropriate fee, grant an authorisation for a shotgun club to allow persons under the age of 16 who have attained the age of 12 to use shotguns under appropriate supervision in accordance with the authorisation.*

2) *An authorisation must state that it is limited to the use of shotguns for clay target shooting or for such other purposes as may be prescribed.*

(3) *The Chief Constable may at any time by notice in writing—*

*(a) attach conditions to an authorisation;*

*(b) vary or revoke conditions attached under this Article.*

(4) *An authorisation shall continue in force for a period of five years from the date on which it is granted but if the Chief Constable is satisfied that there is a danger to public safety or to the peace, the Chief Constable may revoke the authorisation.*

(5) *Any person who—*

*(a) operates a shotgun club which allows a person under the age of 16 to use a shotgun except in accordance with an authorisation, or*

*(b) contravenes any condition of an authorisation,*  
*shall be guilty of an offence.*

(6) *In this Article—*

*“appropriate supervision” means under the supervision of a person who has attained the age of 21 and has held a firearm certificate for a shotgun for at least five years;*

*“authorisation” means an authorisation granted under this Article;*

*“prescribed” means prescribed by regulations made by the Department of Justice.*

(7) *The Department of Justice may make regulations substituting a different age for the lower age mentioned in paragraph (1) and paragraph 11(4) of Schedule 1.*

(8) *The Department of Justice shall not make regulations under this Article unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.”.*

(5) *Before the heading to Article 51 insert—*

*“Power of entry”.*

(6) *In Article 51 (power of entry), in paragraph (1)—*

(a) *in sub-paragraph (a), after “club” insert “or a shotgun club”;*

(b) *after “Article 49” insert “or 50A”.*

(7) *In Schedule 1 (firearm certificates - exemptions), in paragraph 11, after subparagraph (3) add—*

*“(4) A person who is under the age of 16 but has attained the age of 12 may, without holding a firearm certificate, use a shotgun in accordance with an authorisation under Article 50A.”.*

(8) *In Schedule 5 (table of punishments), after the entry relating to Article 49(5)*

*(b) insert—*

<i>“Article 50A(5)(a)</i>	<i>Operating a shotgun club which allows unauthorised use of shotguns</i>	<i>(a) Summary</i>	<i>1 year or a fine of the statutory maximum or both</i>
		<i>(b) Indictment</i>	<i>3 years or a fine or both</i>
<i>Article 50A(5)(b)</i>	<i>Contravention of conditions of authorisation</i>	<i>(a) Summary</i>	<i>1 year or a fine of the statutory maximum or both</i>
		<i>(b) Indictment</i>	<i>3 years or a fine or both”.</i>

*(9) In Schedule 5, in the second column of the entry relating to Article 51(2), after “club” insert “or shotgun club”.*

*Other amendments relating to persons under 18*

*2.—(1) Article 7 (purposes for which young person may acquire and have in possession certain firearms and ammunition), in paragraph (3)(b)(i), after*

*“sporting purposes” insert “or for the purpose of pest control”.*

*(2) In Schedule 1 (firearm certificates—exemptions)—*

*(a) in paragraph 9 (air guns and ammunition), in sub-paragraph (3)(b), (person under 18 may not purchase air gun without a certificate unless the person has attained the age of 17), the words “unless he has attained the age of 17” are repealed;*

*(b) in paragraph 11 (shotguns), in sub-paragraph (3), at the end add “unless the person has attained the age of 16 and is under the supervision of a person who has attained the age of 21 and has held a firearm certificate for a shotgun for at least three years”.*

## PART 2

### FIREARM CERTIFICATES AND OTHER CERTIFICATES

#### *Variation of firearm certificate*

*3.—(1) In Article 11 (variation of firearm certificate), for paragraphs (3) to (5) substitute—*

*“(3) If a person—*

*(a) sells a firearm (“the first firearm”) to the holder of a firearms dealer’s certificate (“the dealer”); and*

*(b) as part of the same transaction purchases from the dealer another firearm (“the second firearm”); and*

*(c) paragraph (4) applies,*

*the dealer may, on payment of the appropriate fee, vary that person’s firearm certificate by substituting the second firearm for the first firearm.*

*(4) This paragraph applies—*

- (a) if both the first firearm and the second firearm are shotguns; or
- (b) if—
- (i) the second firearm is of the same type and calibre as the first firearm; and
- (ii) neither firearm is a prohibited weapon or a shotgun; or
- (c) if—
- (i) the first firearm is a rifle of a description mentioned in the first column of Schedule 1A; and
- (ii) the second firearm is a rifle of a calibre specified in relation to the same Band of Schedule 1A as the calibre of the first firearm; and
- (iii) neither firearm is a prohibited weapon, a muzzle-loading firearm as defined in Article 45(9) or a shotgun; and
- (iv) the second firearm will not be of the same calibre as any other firearm to which the firearm certificate relates; and
- (v) the firearm certificate is not held subject to a condition that the first firearm may be used only for the purposes of target shooting.
- (5) If a person—
- (a) sells or transfers a firearm to the holder of a firearms dealer's certificate ("the dealer"); and
- (b) does not as part of the same transaction purchase or acquire from the dealer another firearm, the dealer may, on payment of the appropriate fee (if any), vary that person's firearm certificate by deleting that firearm.
- (6) Where the holder of a firearms dealer's certificate ("the dealer") varies a firearm certificate under this Article, the dealer shall—
- (a) notify the Chief Constable of the variation within 72 hours of the variation being made; and
- (b) where the dealer receives the fee for varying the certificate, pay it to the Chief Constable.
- (7) A person who fails to comply with paragraph (6)(a) shall be guilty of an offence.
- (8) Schedule 1A (relevant firearms for Article 11(4)(c)) shall have effect.
- (9) The Department of Justice may make regulations amending Schedule 1A if a draft of the regulations has been laid before, and approved by resolution of, the Assembly."

(2)After Schedule 1 insert—

“SCHEDULE 1A

Article 11(8).

RELEVANT FIREARMS FOR ARTICLE 11(4)(C)

<i>BAND</i>	<i>CALIBRE</i>
1. <i>Small quarry air rifles</i>	<i>.177</i>
	<i>.20</i>
	<i>.22</i>
	<i>.25</i>
2. <i>Small quarry</i>	<i>.17 Mach 2</i>
	<i>.17 HMR (Hornady Magnum Rimfire)</i>
	<i>.22 LR (Long Rifle)</i>
	<i>.22 WMR (Winchester Magnum Rimfire)</i>
3. <i>Medium quarry</i>	<i>.17 Hornet</i>
	<i>.17 Remington</i>
	<i>.17 Remington Fireball</i>
	<i>.22 Hornet/5.6x36Rmm</i>
	<i>.222 Remington</i>
	<i>.204 Ruger</i>
	<i>.223 Remington/5.56x45mm</i>
	<i>.220 Swift</i>
	<i>.22-250</i>
	4. <i>Large quarry</i>
<i>.25-06</i>	
<i>6.5mm x 55/.256</i>	
<i>7mm x 08 Remington</i>	
<i>.270</i>	
<i>7.62 x 51mm/.308 Winchester</i>	
	<i>.30-06”</i>

(3)In Schedule 5 (table of punishments), after the entry relating to Article 10(3) insert—

<i>“Article 11(7)</i>	<i>Failure of firearms dealer to notify Chief Constable of variation of firearm certificate</i>	<i>Summary</i>	<i>Level 3”.</i>
-----------------------	---	----------------	------------------

*Variation of firearms dealer’s certificate*

*4. In Article 29(6) (variation of firearms dealer’s certificate), at the end add “on payment of the appropriate fee”.*

*Updated certificates*

*5.—(1) In Article 5 (grant of firearm certificate)—*

*(a) in paragraph (5), after “duplicate certificate” insert “or an updated certificate”;*

*(b) after paragraph (5) add—*

*“(6) In paragraph (5)—*

*“duplicate certificate” means a copy of the firearm certificate as granted; and*

*“updated certificate” means the firearm certificate revised up to such date as may be specified on the certificate.”.*

*(2) In Article 26 (grant of firearms dealer’s certificate)—*

*(a) in paragraph (7)—*

*(i) after “duplicate certificate” insert “or an updated certificate”;*

*(ii) the words “(if any)” are repealed;*

*(b) after paragraph (7) add—*

*“(8) In paragraph (7)—*

*“duplicate certificate” means a copy of the firearms dealer’s certificate as granted;*

*“updated certificate” means the firearms dealer’s certificate revised up to such date as may be specified on the certificate.”.*

*Certificates granted in Great Britain*

*6.—(1) The following provisions of Article 17 (firearm certificate or shotgun certificate granted in Great Britain has effect in Northern Ireland if Chief Constable grants certificate of approval) are repealed—*

*(a) in paragraph (1), the words from “if” to the end;*



(b) paragraphs (2) and (3);

(c) in paragraph (4)—

(i) in the definition of “applicable conditions” the words from “, subject” to the end;

(ii) the definitions of “certificate of approval” and “modifications”.

(2) In Article 18 (air guns held without a firearm certificate in Great Britain)—

(a) in paragraph (1)—

(i) after “an air gun” insert “to which paragraph (3) applies”;

(ii) in sub-paragraph (c) after “issued to him by the Chief Constable” add “on payment of the appropriate fee”;

(b) after paragraph (2) add—

“(3) This paragraph applies to an air gun which is capable of discharging a missile so that the missile has, on being discharged, a kinetic energy in excess of one joule.”.

### PART 3

#### SUPPLEMENTARY

##### Fees

7.—(1) For Schedule 6 (fees) substitute—

##### “SCHEDULE 6

Article 75.

##### FEES

###### Firearm certificate

1. Grant of firearm certificate	£98
2. Variation by Chief Constable	£30
3. Variation by firearms dealer under Article 11(3) to substitute firearm	£15
4. Variation by firearms dealer under Article 11(5) to delete firearm	No fee
5. Duplicate certificate	£14
6. Updated certificate	£14

###### Museum firearms licence

7. Grant of museum firearms licence by Department of Justice £110
8. Extension to additional premises £75

*Visitor's firearm permit*

9. Grant of visitor's firearm permit (except where paragraph 10 applies) £16
10. Grant of six or more permits (taken together) on a group application £80

*Certificate of approval for air gun for resident in Great Britain*

11. Certificate of approval for air gun for resident in Great Britain £11

*Firearms dealer's certificate*

12. Grant of firearms dealer's certificate £300
13. Duplicate certificate £14
14. Updated certificate £14

*Firearms clubs and shotgun clubs*

15. Authorisation of firearms club £71
16. Authorisation of shotgun club to allow use of shotgun by persons 12 or over but under 16, except where the shotgun club is also a firearms club and an authorisation under Article 49 is granted at the same time £71".

*Consequential amendment*

8. In Article 80(5) (regulations and orders made by the Department of Justice), after "Order" insert ", except regulations under Article 11(9) or 50A,".

325. Agreed: the Committee is content with the new clauses and Schedule proposed by the Department.

---

## **PART 4**

### **GENERAL**

#### **Clause 45 - Ancillary provision**

326.Agreed: the Committee agreed that it is not content with Clause 45.

#### **Clause 46 - Regulations and orders**

327.Agreed: the Committee is content with Clause 46 subject to the Department of Justice's proposed amendments which are as a consequence of the removal of Clause 45 and the amendment to Clause 23 and as a result of the amendment to Clause 34 to place a duty on the Minister of Justice to request the Ombudsman to conduct an investigation in cases of near-death as follows:

##### **Clause 46, Page 33, Line 3**

Leave out 'or 30(5) and insert ',30(5) or 34(1)(a)'

##### **Clause 46, Page 33, Line 9**

*At end insert—*

*“(aa) an order under section 23(2) containing provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation;”.*

##### **Clause 46, Page 33, Line 11**

*Leave out paragraph (c).*

#### **Clause 47 - Commencement and short title**

328.Agreed: the Committee is content with Clause 47 subject to the Department of Justice's proposed amendments which are consequential to the amendment to Clause 23 and the amendments relating to penalties for animal welfare offences as follows:

##### **Clause 47, Page 33, Line 19**

*Before “Part 3” insert “Section 23(2) and (3),”.*

##### **Clause 47, Page 33, Line 19**

*After “Part 3” insert “(other than section 40A)”.*

## SCHEDULES

### Schedule 1 - Attachment of earnings orders

329. Agreed: the Committee is content with Schedule 1 subject to the Department of Justice's proposed minor drafting amendments as follows:

**Schedule 1, Page 37, Line 17**

*After "court" insert "in the first and third places it appears"*

**Schedule 1, Page 37, Line 20**

*Leave out "each place" and insert "the first, third and fourth places"*

**Schedule 1, Page 37, line 35**

*Leave out from second "debtor" to "by" in line 36 and insert "whose earnings are paid by the body as principal and who is accordingly treated by virtue of section 13(5) as being employed"*

### Schedule 2 - Collection orders: minor and consequential amendments

330. Agreed: the Committee is content with Schedule 2 subject to the Department of Justice's proposed amendments to ensure that a warrant of committal for default under the Bill is treated the same as a similar warrant under the Magistrates' Courts (NI) Order 1981 and prosecutorial fines can be treated in the same way as the fixed penalties and penalty notices already included in Schedule 2 and a minor drafting amendment as follows:

**Schedule 2, Page 39, Line 25**

*At end insert—*

*"Police and Criminal Evidence (Northern Ireland) Order 1989*

*4A. In Article 19(1) (power of constable to enter and search), in sub-paragraph (a), after paragraph (ii) insert "; or*

*(iii) a warrant of commitment issued under section 9(1)(i) of the Justice (No. 2) Act (Northern Ireland) 2015 (default by debtor);".*

**Schedule 2, Page 40, Line 26**

Leave out “clerk of petty sessions” and insert “fixed penalty clerk”.

**Schedule 2, Page 40, Line 40**

At end insert—

*“Justice Act (Northern Ireland) 2015*

6A.—(1) *In section 24 (prosecutorial fines: registration of sum payable in default), in subsection (2)(a), for “21 days” substitute “28 days”.*

(2) *After section 24(3) insert—*

*“(3A) The fines clerk must refer the case to a district judge (magistrates’ courts) for the judge to consider whether to make a collection order; and the order may be made without a court hearing.*

*(3B) Where a collection order is made in that case, the date specified in the order as the date by which the sum due must be paid must, unless the court directs otherwise, be the same as the date specified in the notice of registration under subsection (2)(a).”*

(3) *In section 25 (challenge to notice), in subsection (7), after “enforcing payment of that sum” insert “(including the making of a collection order)”.*

(4) *In section 26 (setting aside of sum enforceable under section 24), in subsection (3), after “enforcing payment of that sum” insert “(including the making of a collection order)”.*

(5) *In section 27 (interpretation), at the appropriate place insert—*

*““collection order” means an order under section 3 of the Justice (No.2) Act (Northern Ireland) 2015;”.*”

**Schedule 3 - The Prison Ombudsman**

331.Agreed: The Committee is content with Schedule 3 subject to the Department of Justice’s proposed amendments to change the references to the NI Public Services Ombudsperson to Ombudsman as follows:

**Schedule 3, Page 43, Line 5**

*Leave out 'Ombudsperson' and insert 'Ombudsman'*

**Schedule 3, Page 43, Line 6**

*Leave out 'Ombudsperson' and insert 'Ombudsman'*

**Long title**

332.Agreed: the Committee agreed the Long Title of the Bill, subject to the Department of Justice's proposed consequential amendments as a result of the new firearms clauses as follows:

**Long Title**

Leave out "and" after "images" [Printing?]

After "United Kingdom" insert "and firearms; and to repeal the Unlawful Drilling Act 1819"

## Links to Appendices

Minutes of Proceedings can be viewed [here](#)

Minutes of Evidence can be viewed [here](#)

Written Submissions can be viewed [here](#)

Memoranda and Correspondence from the Department of Justice on the Provisions of the Bill and its Proposed Amendments can be viewed [here](#)

Correspondence relating to the Proposed Amendments by the Department of Justice to Firearms Legislation can be viewed [here](#)

Correspondence relating to the Proposed Amendments by the Department of Agriculture and Rural Development to the Welfare of Animals Act (NI) 2011 can be viewed [here](#)

Correspondence relating to a Proposed Amendment by Lord Morrow MLA can be viewed [here](#)

Correspondence relating to the Proposed Amendment by Basil McCrea MLA can be viewed [here](#)

Correspondence relating to Possible Legislative Changes to Improve On-Line Protection for Children can be viewed [here](#)

Northern Ireland Assembly Research Papers can be viewed [here](#)

List of Witnesses can be viewed [here](#)

The information contained in this document is available online at:

[www.niassembly.gov.uk](http://www.niassembly.gov.uk)

This document can be made available in a range of alternative formats including large print, Braille etc. For more information please contact:

Committee for Justice

Christine Darrah

Clerk to the Committee for Justice

Northern Ireland Assembly

Parliament Buildings

Ballymiscaw

Stormont

Belfast BT4 3XX

Tel: 028 90 521629

Email: [committee.justice@niassembly.gov.uk](mailto:committee.justice@niassembly.gov.uk)

ISBN 978-1-78619-124-3

© Copyright Northern Ireland Assembly Commission 2015



