



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Criminal Justice Bill: Clause-by-clause  
Consideration

6 December 2012

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

### Criminal Justice Bill: Clause-by-clause Consideration

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Alex Easton  
Mr Tom Elliott  
Mr William Humphrey  
Mr Seán Lynch  
Mr Alban Maginness  
Ms Rosaleen McCorley  
Mr Patsy McGlone

**Witnesses:**

Mr Tony Kavanagh                      Department of Justice

**The Chairperson:** We will now have the formal clause-by-clause consideration of the Criminal Justice Bill. A paper setting out the final position in relation to the deliberations that have taken place on the Bill has been circulated to members. For ease of reference, the amendments to the Bill have been considered by the Committee and are attached to this briefing paper. This morning, the Department has provided details of an amendment that it intends to bring forward to rectify a possible incompatibility with the European Convention on Human Rights (ECHR) concerning licence arrangements relating to the release of young offenders who are convicted of certain serious crimes. That letter is item 2 of your tabled pack. Given that we have only received it, the Committee will note the intended amendment and not form any view if members feel that we are not able to form a view. We will look at that amendment shortly.

Do members wish to look at the amendment rather than just note it? We have officials with us who can talk to us about it. If members feel that we can get an agreed position now, we could go ahead and do that. Or do members feel that, procedurally, because of the late notice, they prefer to note it?

**Mr Elliott:** It might be better to at least hear from the officials.

**The Chairperson:** Let us have the officials forward quickly then, please, and we will run through it. It is very late for us to be getting it. We are meant to be agreeing things by this point

**Mr Tony Kavanagh (Department of Justice):** Thank you, Chair, and I apologise for the late submission of the amendment. I will explain the circumstances as to why it worked out like that. I am Tony Kavanagh from the youth justice unit in the Department. I have been responsible for taking this issue forward and drafting the instructions for counsel. Briefly, the background of this is that article 45(2) detention orders are used for particularly serious crimes that children commit. They are rarely

used. We have had about five in the past 10 or 12 years. We have not had one in the past four years, but they do come around from time to time. We have two young people serving detention orders at the moment.

The way the legislation works is that, at any point during the period of detention, the Minister of Justice can release the individual on licence and, if necessary, recall them from licence if they break the conditions. One of the young people has taken a judicial review in relation to how we operate that particular order. Although that case has not been completed yet — the hearing is on 17 December — counsel's advice to us is that there is a serious risk that the current arrangements are not compatible, in that they provide a Minister rather than an independent judicial body with powers to determine release and recall. That makes it incompatible in general with aspects of the ECHR, but also inconsistent with the operation of other orders that are similar, such as the public protection orders and even life sentences.

What we have done to correct that in the amendment is to remove the Minister from the decision-making process and tie it in to the standard way of dealing with this, through the Parole Commissioners. What will happen now is that if we have any more of those orders, the judge will set a period of custody that the person must serve before being considered for release on licence. At that point, that case must be referred to the Parole Commissioners for them to consider whether the individual should be released on licence. If they are released on licence, they are also responsible for the recall. Previously, it was down to officials in the Department and the Minister; now, it will be a matter for the judge setting the effective tariff on these orders, and the Parole Commissioners will decide on the same basis that they decide to release or recall adult prisoners who are subject to public protection orders. The key consideration in this is the protection of the public. That is what it is there for. It is because we have these two cases, and we need to address the law because it is at serious risk of an incompatibility case.

**The Chairperson:** Are members content with the amendment that is before the Committee?

*Members indicated assent.*

**The Chairperson:** Members, let us go through the clauses. Feel free to stop me at any point if you want to make a comment, not agree to things, or abstain. First, we will deal with the sex offender provisions.

**Clause 1 (Review of indefinite notification requirements)**

**The Chairperson:** No issues were highlighted in relation to this clause. Keep the briefing paper beside you. The first couple of pages have a quick description of each of the clauses. Clause 1 is around the review of indefinite notification requirements. No issues were highlighted.

*Question, That the Committee is content with the clause, put and agreed to.*

*Clause 1 agreed to.*

*Clause 2 agreed to.*

**Clause 3 (Offences committed in an EEA State other than the United Kingdom)**

**The Chairperson:** The Committee has agreed that clause 3 should be amended as proposed by the Department, and the amendments are at tab 1 of the briefing paper. Are members still content with how the Bill is being amended by the Department?

*Members indicated assent.*

**The Chairperson:** OK, just to keep the procedure right, first of all, we need to agree the amendments as proposed, and then the clauses. So, are members content with the amendments proposed by the Department?

*Members indicated assent.*

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

*Clause 3 agreed to.*

*Clause 4 agreed to.*

**Schedule 1 (Schedule 3A to the Sexual Offences Act 2003, as inserted)**

**The Chairperson:** No issues have been highlighted on schedule 1. Is the Committee content with schedule 1 as drafted?

**Mr McCartney:** What page are we on now?

**The Chairperson:** This is schedule 3A to the Sexual Offences Act 2003.

**The Committee Clerk:** Page 9.

**Mr McCartney:** On page 7 of the Bill is clause 7, which deals with the retention of fingerprints and DNA profiles.

**The Committee Clerk:** We have not dealt with that yet. The Chairman has put the questions on the sex offenders clauses and then the schedule that is related to the sex offenders clauses. We will return to that.

**Mr McCartney:** That is OK.

*Question, That the Committee is content with the schedule, put and agreed to.*

*Schedule 1 agreed to.*

**New Clause**

**The Chairperson:** Human trafficking, then. Let us go to those clauses. There are two of them, and then we will go to the retention of fingerprints. There is an additional amendment that the Department has brought forward with regard to sex offender notification. I will let Christine talk us through that.

**The Committee Clerk:** Members, we have now been through the clauses that relate to the sex offender notification requirements and the schedule related to those. There is also a new proposed additional amendment from the Department in relation to sex offender notification. That is the clause that we are going to consider now, because, depending how you agree these clauses, there may be knock-on amendments to later clauses. Members should turn to tab 5 in their folders. There you see the wording of the additional sex offender notification provision. It is intended to address the gap in current legislation concerning details and information to be provided to the PSNI by offenders who travel within the UK. The Department intends to introduce this amendment at Consideration Stage, and members indicated, at the meeting on 4 December, that they are content with the wording of the amendment. The Chairman will now put the question on that additional provision.

**The Chairperson:** We agreed to it on 4 December.

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

**Clause 5 (Trafficking people for sexual exploitation)**

**The Chairperson:** Though the Committee is content to support the introduction of the new human trafficking offences covered in clauses 5 and 6, concern has been expressed that a summary conviction in relation to those offences could attract a sentence of less than six months or a fine. In response, the Minister is considering the implications of making offences triable on indictment only. However, that work has not yet been completed. The report on the Bill will reflect the Committee's

concerns and its agreement to review the position. Therefore, members, there is no amendment before us, so we are considering clauses 5 and 6 as they stand.

*Question, That the Committee is content with the clause, put and agreed to.*

*Clause 5 agreed to.*

*Clause 6 agreed to.*

**Schedule 2 (Articles 63B to 63O of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted)**

**The Chairperson:** Clause 7 gives effect to schedules 2 and 3 to the Bill, and inserts the new retention framework for fingerprints and DNA profiles in the Police and Criminal Evidence (Northern Ireland) Order 1989 and makes consequential amendments. Some members have indicated that they have concerns in relation to the new retention framework. As members' view of clause 7 may depend on the decisions reached in relation to schedules 2 and 3, I will put the questions regarding schedules 2 and 3 before dealing with clause 7.

The Department has informed the Committee of three areas in relation to schedule 2 where it intends to bring forward amendments at Consideration Stage. The first amendment relates to article 63C of the 1989 Order, to clarify the provision by linking retention to the perceived utility of the material rather than to the conclusion of the investigation. The amendment is at tab 2 of the briefing paper. Is the Committee content with the proposed departmental amendment relating to article 63C?

*Members indicated assent.*

**The Chairperson:** The next three amendments relate to article 63D of the 1989 Order and set out on the face of the Bill the prescribed circumstances. Those amendments are also at tab 2 in the briefing paper. Do members want to comment on any aspects of that?

**Mr McCartney:** I suppose that, at this stage, in a broad sense, I want to deal with the DNA and fingerprints aspects of it. Throughout the process, we have raised the point that the legislation is obviously the result of a European Court of Human Rights decision in the Marper case. That case was basically about the blanket nature of the retention, particularly for people who are not convicted. We have some concerns that this may not be compliant with the standard required by the court, particularly around the presumption of innocence. We have severe reservations. For today's purposes, we are just notifying you and the Committee that it will be our intention to table a number of amendments at Further Consideration Stage to outline that concern.

**Mr A Maginness:** I share those concerns with my colleague here. We will obviously consider any amendments that are tabled, with a view to supporting them.

**The Chairperson:** Is that commentary around all this aspect just to do with the DNA? Are you going to abstain on pretty much all the areas to do with this element of the Bill?

**Mr McCartney:** There are areas, obviously, where rules around destruction are straightforward. The area of disagreement is for people not convicted.

**The Chairperson:** I will try to walk us through this and make sure that we record that where you want it recorded.

In respect of article 63D, is the Committee content with the proposed departmental amendments? They are all in tab 2. It is in respect of the prescribed circumstances that would be on the face of the Bill.

**Mr McCartney:** We have reservations. This is also around the use of caution and the penalty notice under section 60 of the Justice Act 2011.

**The Chairperson:** In terms of that —

**Mr Elliott:** Sorry, Chair. For the purposes of clarification, is that around the retention of DNA for those who have been cautioned?

**Mr McCartney:** Yes. It will treat them as a recordable offence.

**Mr Elliott:** So, it was what we discussed on Tuesday.

**Mr McCartney:** Yes.

**The Chairperson:** Can I record Sinn Féin and SDLP abstention and DUP and Ulster Unionist assent?

**The Committee Clerk:** You need to put the Question.

**The Chairperson:** For the second time, is the Committee content with the proposed departmental amendments relating to article 63D?

*Question put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

**The Chairperson:** The fifth amendment relates to an additional provision permitting limited retention in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. That amendment, again, is at tab 2 of the briefing paper. This is around the penalty notice issue. I will again assume that the SDLP and Sinn Féin will want to abstain, but I need to put the Question formally. Is the Committee content with the new provision as proposed by the Department?

*Question put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

*Question, That the Committee is content with schedule 2, subject to the proposed amendments, put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Schedule 2, as amended, accordingly agreed to.*

**Schedule 3 (Amendments: fingerprints, DNA profiles, etc.)**

**The Chairperson:** The Department has informed the Committee of two amendments to schedule 3 that it intends to bring forward at Consideration Stage. The first amendment relates to bringing completion of the diversionary youth conference within the framework on the same basis as a caution. The amendment is at tab 3 of the briefing paper. Is the Committee content with the new provision as proposed by the Department?

*Question put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

**The Chairperson:** The second amendment is to correct a drafting error in paragraph 6 and can also be found at tab 3 of the briefing paper. Is the Committee content with the proposed departmental amendment relating to paragraph 6?

*Members indicated assent.*

**The Chairperson:** Those were the two amendments, so now let us agree schedule 3.

*Question, That the Committee is content with schedule 3, subject to the proposed amendments, put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

**Clause 7 (Retention of fingerprints, DNA profiles, etc.)**

**The Chairperson:** Do members have any other proposed amendments to clause 7? There are no amendments being brought forward at this stage.

**Mr McCartney:** Clause 7 is back to page 7?

**The Chairperson:** I am assuming that you want to abstain.

*Question put, That the Committee is content with the clause.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

*Clause 7 agreed to.*

**New Clause**

**The Chairperson:** Now, we need to deal with the new amendment that was brought forward. If members have no issues with it, I will put the Question. Is the Committee content with the new provision the departmental official outlined earlier in relation to licence arrangements relating to the release of young offenders convicted of certain serious crimes?

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

**New Clause**

**The Chairperson:** Hopefully, you are bearing with us, members. It is a little bit higgledy-piggledy, I know, but we will get there. At this stage, we will deal with the departmental amendment to provide additional provision in relation to the registered intermediary scheme, as there is a consequential amendment to clause 9 that is linked to this. The Department informed the Committee of an amendment that it intends to bring forward at Consideration Stage to make additional provision in relation to the registered intermediary scheme. The amendment is at tab 4 of the briefing paper. The Committee agreed that it was content with the proposal and wording of the amendment at the meeting on 22 November.

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

*Clause 8 agreed to.*

**Clause 9 (Commencement and transitional, etc. provisions)**

**The Chairperson:** As a consequence of a proposed new provision to make additional provision in relation to the registered intermediary scheme, the Department has provided an amendment to clause

9. That is at tab 4. You can refer to your tabled pack as well. On the very last page of it, there is another amendment to clause 9.

**The Committee Clerk:** Members, there are two consequential amendments to clause 9. One relates to the new clause to do with the registered intermediaries. The other relates to the new clause that you agreed today. The departmental official briefed you on that earlier. Clause 9 will now have two consequential amendments as a result of agreeing the two new provisions. You are being asked to agree clause 9 as amended in two places. One is in your pack; the registered intermediaries scheme at tab 4. The other is in your tabled pack, on the very last page. There are two consequential amendments because you are adding two new provisions into the Bill.

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

*Clause 9 agreed to.*

*Clause 10 agreed to.*

#### **Schedule 4 (Repeals)**

**The Chairperson:** The Department is proposing an amendment to schedule 4. The amendment is required as a result of the amendment to clause 3. The amendment is at tab 1. It is a consequential amendment.

**The Committee Clerk:** Yes, it is a consequential amendment, because you have agreed an amendment to clause 3.

**The Chairperson:** Is the Committee content with the proposed departmental amendment?

*Members indicated assent.*

*Question, That the Committee is content with schedule 4, subject to the proposed amendment, put and agreed to.*

*Schedule 4 agreed to.*

#### **New Clause**

**The Chairperson:** The Committee agreed at the meeting on 4 December to table an amendment to abolish the offence of scandalising the court. The report on the Bill will reflect that the Committee will write to the Speaker to seek his views on the admissibility of the amendment prior to tabling it. That will decide whether it is within the scope of the Bill.

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

**The Chairperson:** Obviously, we will await the Speaker's ruling on the admissibility of it.

#### **Long Title**

**The Committee Clerk:** Members, we are now at the end of clause-by-clause consideration of the Bill. The Committee must now consider the long title of the Bill. As a consequence of other amendments that have been agreed, there is the proposed new provision to make additional provision in relation to the registered intermediary scheme, and the proposed new provision that you agreed earlier after the briefing from departmental officials. There are now two amendments to the long title. The first amendment is at tab 4 in your packs. It is at the bottom of appendix A, where it says, "Long title". It is adding in:

*"and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999."*

That is a consequential amendment because you are adding in the new clause on the registered intermediary scheme.

On the back page of your tabled pack, there is another amendment to the long title. Again, it is a consequential amendment to the new provision that you have agreed today. It reads:

*"and to provide for the release on licence of persons detained under article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998."*

**The Chairperson:** Is the Committee content with the proposed departmental amendment to the long title of the Bill?

*Members indicated assent.*

*Question, That the Committee is content with the long title, subject to the proposed amendment, put and agreed to.*

*Long title agreed to.*

**The Chairperson:** We will get the final report for next week.