



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Human Trafficking and Exploitation (Further  
Provisions and Support for Victims) Bill:  
Department of Justice

6 March 2014

# NORTHERN IRELAND ASSEMBLY

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

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Stewart Dickson  
Mr Tom Elliott  
Mr William Humphrey  
Mr Seán Lynch  
Mr Alban Maginness  
Ms Rosaleen McCorley  
Mr Jim Wells

**Witnesses:**

Mr Gareth Johnston	Department of Justice
Ms Amanda Patterson	Department of Justice
Mr Simon Rogers	Department of Justice
Ms Julie Wilson	Department of Justice

**The Chairperson:** From the Department of Justice, I formally welcome Simon Rogers, the deputy director of the protection and organised crime division; Gareth Johnston, the director of the criminal justice policy and legislation division; Julie Wilson from the protection and organised crime division; and Amanda Patterson from the criminal justice policy and legislation division. The meeting will be recorded by Hansard and published in due course. I will now hand over to you, and then we will take up the issues.

**Mr Simon Rogers (Department of Justice):** The Department has been asked to brief members on the Minister's response to the Committee's evidence sessions on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill.

In October last year, the Department provided a written paper in response to the Committee's call for evidence. The paper indicated that the Minister supported the motivation and sentiment behind the Bill and welcomed its positive impact in raising public awareness. The Minister supported many provisions but also highlighted areas of concern.

Since then, the Minister and Lord Morrow have engaged on the content of the Bill in order to agree amendments to resolve, when possible, those areas of concern. We think that good progress has been made, and the Minister and Lord Morrow jointly wrote to members on 14 January, setting out the

areas on which they had reached agreement, where engagement was ongoing, and one issue on which agreement was not reached.

The written paper provided for today's session sets out the Department's detailed clause-by-clause response to the Bill. It highlights the areas in which the Department intends to table amendments and to what effect. From contact with Lord Morrow, we understand that he also intends to table amendments, and we have also sought to highlight those.

I do not intend to repeat in depth the points in the letter, but it may be helpful to draw out some areas for the Committee. The first of those is to remind members of the Minister's consultation on new measures to add to the Bill and to strengthen further our response to human trafficking and slavery. We briefed the Committee on those measures in January, and the proposals that are out to consultation will simplify the legislative framework, increase the maximum sentence, introduce new court orders to protect the public, provide effective oversight of government and law enforcement actions and enhance our understanding of the extent of offences in Northern Ireland through data capture.

Subject to the consultation and the Committee views on that, and to timing, our preference, as we explained previously, is to legislate for these proposals, if possible through amendments. Lord Morrow indicated that he is sympathetic to that approach, and we are confident that the proposals that I outlined will complement and strengthen the Bill.

As we explained, some will have a direct impact on the Bill. We think that that is why it is preferable to amend the Bill rather than having to amend a subsequent Act. Clauses 1, 5 and 14, in particular, would require amendment.

I want to focus on three main areas that remain of concern to the Department. Clause 4 deals with minimum sentences. In summary, it provides for a mandatory minimum sentence of two years for human trafficking and slavery offences. The Minister intends to oppose its inclusion in the Bill on the basis that judges should be free to take full account of the potentially broad scope of circumstances of each case in delivering a sentence. Nonetheless, he recognises that the clause may be supported by the majority in the Assembly. It is, therefore, important to highlight our most serious concern about the clause, which is that, as drafted, it would apply to children as well as adults. The Minister's strong view is that children should not be subject to the same sentencing framework as adults.

Lord Morrow has acknowledged the Minister's concern, and we understand that he intends to table an amendment to disapply the provision in clause 4 to children.

Clause 8 concerns the non-prosecution —

**The Chairperson:** Simon, we will get to clause 8 as we go through the Bill. I will ask you to comment on each clause, so if you are happy, that is the approach that I will take to try to keep members from jumping from clause to clause.

**Mr Simon Rogers:** I was trying to help the Committee by highlighting the three areas that, from the Department's perspective, cause concern. I am happy to pass on, if that is better.

**The Chairperson:** That would be great. I understand that the Committee staff advised the Department to go through each clause rather than highlight particular clauses. We will get to all the clauses, so we will avoid repetition, and it will help us be more efficient.

Will you start with clause 1, which is the definition of human trafficking and slavery offences?

**Mr Simon Rogers:** We do not propose any amendments to clause 1. The consultation that we are undertaking has a bearing on it, but, as it stands, we have no concerns about clause 1.

**The Chairperson:** In your original submission, you indicated a recommendation to amend clause 1(b) to include other relevant offences under sections 12 and 13 of the Gangmasters (Licensing) Act 2004, but you are not doing that now. Why?

**Ms Julie Wilson (Department of Justice):** We had another look at it, and we took legal advice. We did not think that the nature of those offences was relevant to the other provisions that clause 1 and the offences under it would capture. They are linked in nature to exploitation, but the level of the

offence is different, and we did not think that it would attract those other provisions under Parts 2 and 3 of the Bill.

**The Chairperson:** Thank you. If members have no questions on clause 1, we will move on to clause 2.

**Mr Simon Rogers:** Clause 2 specifies the circumstances in which a victim's consent to any action related to being a victim of human trafficking or slavery should be deemed to be irrelevant. Again, we have no comments on it, and we are certainly not proposing any amendments.

**The Chairperson:** If members have no questions on clause 2, we will move on to clause 3.

**Mr Simon Rogers:** Clause 3 deals with aggravating factors. It would require a court to treat a range of specified factors as aggravating factors when sentencing for human trafficking or slavery offences. Our position had been that sentencing guidance was already available through the Crown Court, but we have looked at the weight of opinion that is coming through the Committee on the clause, and the Minister has reflected on that. He wants to highlight the fact that, strictly speaking, aggravating factors did not need to be expressed in statute, but he will not propose any amendments to clause 3 or, indeed, oppose it.

**The Chairperson:** I am assuming that the Department will support clause 3.

**Mr Simon Rogers:** Yes.

**Mr Elliott:** I recall a question about clause 3 on more flexible sentencing guidelines or the use of sentencing guidelines. Has the Department moved away from that?

**Mr Simon Rogers:** Our view is that aggravating factors are better dealt with by the court. In the case of *R v Pis*, the recorder at the time, Judge Burgess, set out the aggravating and mitigating factors for this offence, but the Department is trying to show a spirit of cooperation and support for the Bill rather than to look as if it is being negative about it. If the general view is that people would like to see aggravating factors included, we will not stand against those.

**Mr Elliott:** You still think that it is wrong, but you will not object to it.

**Mr Simon Rogers:** We are not saying that it is wrong. The normal form for stating aggravating and mitigating factors is through sentencing guidance rather than statute. That is not always the case. Some statutes cover aggravating factors, and, in this instance, the Minister has taken the view to work with clause 3 as it stands.

**The Chairperson:** Do you want to recap on clause 4?

**Mr Simon Rogers:** Clause 4 would introduce a compulsory minimum custodial sentence of at least two years for any human trafficking or slavery offence under the Bill, unless a court was of the opinion that there were exceptional circumstances to justify it in not doing so.

As I said, the Minister's view is that judges should be free to take account of the potentially broad scope of circumstances in each case in delivering a sentence. He does not support clause 4 for that reason. He has, however, indicated to and agreed with Lord Morrow that the provision should not extend to children, and Lord Morrow has indicated that he proposes to table an amendment to that effect, which the Minister would support.

**Mr A Maginness:** I want to clarify something. It seems to me that this is not, strictly speaking, a compulsory minimum custodial sentence. Clause 4(2) states:

*"unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so."*

Is that not sufficient qualification to permit sufficient judicial discretion on sentencing?

**Mr Simon Rogers:** It is, and sentencing guidelines will often give that option in cases. The view of the Department is that it is better not to have a raft of statutory provisions that will then have an exception in them and that it would be better to leave this discretion entirely in the hands of the judiciary. We have already set out — for example, in the case that I mentioned of *R v Pis* — the aggravating and mitigating factors. Almost as a matter of principle, the Department does not favour minimum sentences, which are quite a rare occurrence in statute at the moment.

**Mr A Maginness:** I agree with that position, and I do not believe that there should ordinarily be mandatory sentences, but I think that this is sufficiently qualified in that it does not fit into the category of being strictly a mandatory sentence because of the exceptional circumstances aspect of the clause. Does the Department agree?

**Mr Simon Rogers:** The Minister's intention is to oppose clause 4, because he does not think that it is a good principle to have a minimum sentence in this case or, indeed, to start extending minimum sentences across other criminal offences.

**Mr A Maginness:** You are saying, to all intents and purposes, that this is a mandatory minimum sentence?

**Mr Simon Rogers:** Yes. The difficulty is that, if every case becomes an exception because the judiciary thinks that two years is too grave because of a guilty plea or the circumstances of a case, our concern is that the exception becomes the rule.

**Mr McCartney:** How rare are minimum sentences?

**Mr Simon Rogers:** The only one that I am aware of, in a statutory situation, is in a firearms order that dates back to the 1970s. I am looking at Gareth because he might know whether there is another one. That is the only one that we could turn up.

**Mr Gareth Johnston (Department of Justice):** There is an extent to which, with murder, a life sentence follows, but there is discretion in the tariff that is awarded.

**Mr McCartney:** I accept that, but for Alban's contention for it not to be seen as a mandatory or minimum sentence, "exceptional" would have to be defined. My only concern is that everybody will find an exception.

**The Chairperson:** We will move on to clause 5.

**Mr Simon Rogers:** Clause 5 makes amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 on the definition of trafficking and exploitation.

We do not have concerns about the intended effect of the clause, but our consultation would introduce a new consolidated offence that would have an impact on clause 5 if, through the consultation, that proposal is accepted. At least one minor technical amendment is set out in our paper around positions of trust, and we think that that needs to be tidied up. We have been working with Lord Morrow on that, and he agrees that it should be tidied up.

**The Chairperson:** If members have no questions on clause 5, we will move on to clause 7.

**Mr Simon Rogers:** Clause 7 would place a statutory duty on the Department to ensure that appropriate training is provided to those responsible for investigating and prosecuting offences of human trafficking and slavery and that effective investigative tools are made available. Although we recognise the importance of training and of resources being provided for front line professionals — that is reflected in our action plan to a great extent, in which priority is given to training in investigation and prosecution — our concern is that clause 7(1) places a duty solely on the Department that it is not able to deliver, since the organisations and agencies that the clause is intended to cover are wider than the authority of the Department.

The Minister has discussed the matter with Lord Morrow, and they have agreed that the clause 7(1) issue would be best addressed by an amendment to clause 15, which is to do with prevention, to require the strategy under that clause to include training in investigation and prosecution. We would

seek an amendment to omit clause 7(1) and amend clause 15. We have no concerns with clauses 7(2) and 7(3).

**The Chairperson:** Is Lord Morrow content with that approach?

**Mr Simon Rogers:** Yes, he is.

**Mr Elliott:** I am sorry; which clause do you intend to remove?

**Mr Simon Rogers:** It is clause 7(1).

**The Chairperson:** It is the statutory duty for training. The Department also wishes to amend clause 15.

**Mr Elliott:** OK.

**The Chairperson:** If members have no further questions on clause 7, we will move on to clause 8.

**Mr Simon Rogers:** Clause 8 would provide immunity from prosecution for victims of human trafficking when they have been compelled to commit a criminal act as a direct result of being subjected to threats, abduction, fraud, deception, the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, or when the victim is a child. This is one of the areas about which the Minister has expressed significant concerns because he feels that it would fetter the Director of Public Prosecution's (DPP) current obligations under the Justice (Northern Ireland) Act 2002 to review each case received in accordance with the code for prosecutors in order to determine whether criminal proceedings should be instigated or continued.

Clause 8 would go beyond our obligations under the EU directive in that it does not require member states to ensure immunity but rather to ensure that prosecutors are entitled not to prosecute or impose penalties on victims; that is already the case here. Obviously, under the test for prosecution, the DPP would consider whether the public interest calls for prosecution and punishment. We are aware, from the DPP's office, that there have been no prosecutions in cases in which the person concerned was a victim of human trafficking.

In addition, as the Committee is aware from evidence put to it, the Attorney General's draft human rights guidance for the Public Prosecution Service (PPS) also deals specifically with the issue. Our concern is that clause 8 does not provide a proportionate or appropriate response in that it would introduce a less-nuanced and fact-specific approach to the crimes than is presently available. The Minister has discussed this with Lord Morrow, and he has confirmed that it is not his policy intention to provide a mechanism for blanket immunity but rather to ensure that victims are protected from prosecutions that are not in the public interest in cases in which they have been compelled to commit offences.

The Minister shares that view, but the Department believes that the protections are already available. Therefore, we do not support the clause; it is an area on which we will continue to have discussions with Lord Morrow. We are also in discussions with the PPS to see whether the guidance that it has issued could be strengthened in some way. In short, the Department would not support clause 8.

**The Chairperson:** Do members have any questions on clause 8?

**Mr Elliott:** I have a specific interest in clause 8. Although the Department does not support it, you said that there are ongoing discussions with Lord Morrow. Are you coming any closer to a resolution? I assume — it is only an assumption — that he plans to keep the clause. Perhaps he will make amendments. Is that right?

**Ms J Wilson:** Lord Morrow has said that he also wants to be informed by any recommendations from the Joint Committee in Westminster that is looking at the modern slavery Bill and is also considering this issue. We share the same policy intent in that we want to avoid victims of human trafficking being prosecuted when that is not in the public interest. We think that there may be issues around awareness in the criminal justice system. We have already begun to do things with that. We have written to stakeholders across the criminal justice system to highlight the issue. One issue that we

have considered is whether raising awareness across the criminal justice system could be covered under the annual strategy in clause 15 and whether we could perhaps amend the clause to require that strategy to look at those kinds of issues.

We are also aware that the Crown Prosecution Service has issued more detailed guidance on the issue. We have written to the Director of Public Prosecutions to seek his view as to whether similar guidance would also be helpful here.

**Mr A Maginness:** I must say that I have a lot of sympathy with the Department on the issue. If blanket immunity were granted, there could be people who were originally victims of human trafficking but who have gone over to support criminal activity and have carried out serious offences. You could find that those people are guilty of criminal offences, but immunity could be exercised in circumstances in which it is totally *[Inaudible.]* We heard some good evidence on that during a session in the Long Gallery. Perhaps we should revisit some of that evidence to see whether there is a way forward. It seems to me that the best way to deal with that is probably to look at the prosecutorial guidance and, if that is weak, to strengthen it in order to safeguard genuine victims of human trafficking.

**The Chairperson:** We can do that.

**Mr Simon Rogers:** Chief Superintendent Roy McComb, in an evidence session here, highlighted the risk of all defendants arguing that they are victims of human trafficking to open up a new line of defence, which is another concern. We fully support the objective that Lord Morrow seeks, which is that victims of human trafficking who, as a result of that, have committed an offence should not be prosecuted. The PPS is at one with us on that. The risk of clause 8 is that it goes much further than that objective.

**Ms McCorley:** I have similar concerns about creating blanket immunity. It is difficult to cover every single eventuality. In circumstances in which people might be arrested for an offence and who then say that they are victims of human trafficking, are they automatically put into the national referral mechanism (NRM), which can take up to 90 days? Will that prosecution be pursued while such a person is in the referral system?

**Ms J Wilson:** There are two stages in the national referral mechanism. Before you get to the 45-day recovery and reflection period, you first need to satisfy the test of reasonable grounds, which has a lower threshold of proof. However, some evidence would still be required to satisfy the competent authorities in those cases that there are reasonable grounds that that individual is potentially a victim of human trafficking. The actual recovery and reflection period does not begin until that reasonable grounds test is carried out, which is supposed to be within five days. There is then the longer 45-day-plus period until a conclusive determination can be made as to whether that person is an actual victim. The two-stage process helps and identifies those people who may be making a claim that they are a victim when there is no evidence to suggest that there are reasonable grounds.

**Ms McCorley:** Has it ever happened that someone has claimed to be a victim of human trafficking, and a decision was made against that, and he or she has gone on to be prosecuted for an offence?

**Mr Simon Rogers:** I do not think that we know the answer to that. We would need to ask the Public Prosecution Service. We know that it has not prosecuted individuals who were involved in sexual and labour exploitation, so it has examples. We did not ask for too much detail on that, but we know that that is the case.

**The Chairperson:** Let us move on to clause 9.

**Ms J Wilson:** Clause 9 provides a definition of a victim of human trafficking for the purposes of Parts 2 and 3 of the Bill. In effect, we support the clause, but we think that it needs some amendment. The current definition provided under clause 9 would encompass potential victims of human trafficking and those who had been referred into the national referral mechanism and received a reasonable grounds decision and are in the recovery and reflection period, as well as confirmed victims who have gone through the NRM process and received a positive conclusive determination.

The Department is satisfied that the effect of the definition in clause 9 is appropriate for the requirements set out for assistance and support under clause 10 and the clause 12 requirement about

the appointment of a child trafficking guardian. However, we have some concerns that the current definition would not have the appropriate effect for other clauses under Parts 2 and 3. Although we agree that the provisions in clauses 10 and 12 should be available to potential victims under the NRM and to confirmed victims, we think that clause 11, which relates to compensation, should apply only to confirmed victims since not all potential victims may receive a positive conclusive determination confirming them to be victims. The Department will seek an amendment that would set out separate definitions for potential victims and confirmed victims under the NRM. We have discussed that with Lord Morrow and his team, and he is content, in principle, with the intended amendment.

**The Chairperson:** How would the outworkings of that help with compensation for victims?

**Ms J Wilson:** We think that the clause on compensation should apply only when someone has been confirmed as a victim rather than to people who are still going through that process and who may receive a negative conclusive determination. It is about defining those two groups of people who will be entitled to supports, but our view is that those supports should be different, according to their status.

**Mr A Maginness:** Who will give compensation to victims of trafficking? Will the Bill rely on the criminal injuries compensation scheme? Under that scheme, is there provision for compensating victims of human trafficking?

**Mr Simon Rogers:** Yes, there is. There are cases in which victims have been compensated. Julie said that it would apply to confirmed victims rather than to what I might call "speculative" claims from people who have not been defined as a victim. Clause 11 deals with compensation. Chair, do you want us to wait until we come to that?

**Mr A Maginness:** Maybe we will wait. I would like to know a bit more about the compensation.

**The Chairperson:** OK. Let us move on to clause 10.

**Mr Simon Rogers:** Clause 10 would place requirements on the Department of Justice and the Department of Health, Social Services and Public Safety to provide support for victims and potential victims of human trafficking. The Minister has already signalled that he is proposing to bring forward secondary legislation in this area and is, obviously, therefore content with the policy objective behind clause 10. However, we think that some clarification is needed about the respective responsibilities of the Department of Justice and the Department of Health. We also need to look at the language of the clause. We are liaising with officials in the Department of Health with a view to seeking some amendments to clarify that. We have been discussing the position with Lord Morrow, who is happy in principle, subject to seeing the detail.

**The Chairperson:** Are members OK with that?

We will move on to clause 11.

**Mr Simon Rogers:** Clause 11 takes us back to compensation. It requires the DOJ to set out by order the procedures under which a victim of human trafficking can apply for such compensation. The current arrangements are set out in the criminal injuries compensation scheme 2009. Lord Morrow and the Minister discussed this, and they agreed that clause 11 could be amended to require the Department to bring forward statutory guidance, as opposed to an order. We are seeking an amendment to that effect. In addition, since there is no requirement for an applicant to be resident in Northern Ireland to be eligible to apply for compensation, Lord Morrow has agreed that clause 11(b)(ii), which deals with leave to remain in the United Kingdom to claim compensation, should be removed. So, we propose to bring forward an amendment on that.

**Mr A Maginness:** Where the level of compensation is concerned, what would the victim of trafficking be compensated for?

**Mr Simon Rogers:** We do not have figures, I am afraid, but we can certainly provide them.

**Mr A Maginness:** Currently, if I were a victim of human trafficking, for example, I could apply to the criminal injuries compensation scheme and receive a payment from it.

**Mr Simon Rogers:** That has happened.

**Mr A Maginness:** Is that for being trafficked?

**Ms J Wilson:** I think that it is for the level of injury against you.

**Mr A Maginness:** Do you see the point that I am making? Are you being compensated for injuries received, as the scheme is arranged for? If I were locked up and beaten up and that sort of thing and suffered an injury, would the compensation be for circumstances such as those?

**Ms J Wilson:** My understanding is that that is what the compensation is for.

**Mr A Maginness:** So, you would not be compensated for being trafficked per se.

**Mr Simon Rogers:** No, you would not per se. It is down to injury, which you are alluding to.

**Mr A Maginness:** There are lots of rules for receiving compensation. You have to see a doctor in certain circumstances, you have to have repeat visits to doctors, and you have to show a degree of injury that reaches a certain level of gravity that merits compensation. All those rules would still apply to people who are unaware of the scheme and the various hurdles that they would have to get over and so on.

**Mr Johnston:** There is, however, a degree of flexibility in the various rules. For example, one principle is that the matter should be reported promptly to police. In the case of someone who has been held and imprisoned as a trafficked person, as it were, compensation services will have a degree of latitude in when the matter is reported to police. You are not going to expect that of someone who is not in a position to report. So, there is a degree of flexibility in those rules that allows an equitable approach to be taken in such cases.

**Mr A Maginness:** I am not aware of such flexibility shown by the —

**The Chairperson:** In the evidence that we received, Victim Support indicated all those hurdles and said that it was very problematic for victims of human trafficking to meet the criteria.

**Mr A Maginness:** I will just make the point that, although I understand that the Department is trying to be helpful, I am not so certain that the scheme as it is presently operated is friendly towards victims of human trafficking. That is because there are so many different hurdles, such as evidential hurdles, hurdles about the level of injury and medical reports, etc. Perhaps that should be looked at to some extent to see whether amendments could be made to the compensation scheme so that those who are trafficked can benefit from the scheme.

**Mr Simon Rogers:** We were all about to say the same thing.

**Mr Johnston:** There is to be statutory guidance, and that is the position that was agreed with Lord Morrow. So, those sorts of issues could be covered in that guidance.

**Ms J Wilson:** A review of compensation legislation that focuses on criminal damage has begun. However, it is also going to look at criminal injuries. I understand that Victim Support has said that that review is the appropriate place to be looking at those issues, and the review can consider the definition of criminal violence and such things and how trafficking victims can apply for compensation. So, there is a review process, and it will allow those issues to be looked at.

**Mr A Maginness:** This might be too radical a step to take, but it might be appropriate to look at trafficking being regarded as a criminal injury that is compensable to a certain degree. That might be a helpful suggestion.

**Mr Simon Rogers:** We will certainly feed that into the review team. The other thing, which I want to mention very quickly, is that you would be signposted in the support mechanism. Women's Aid and Migrant Help signpost victims to compensation and a whole range of other services, but that is one of the things on which they could get advice, etc.

**The Chairperson:** We will now move on to clause 12.

**Mr Simon Rogers:** Clause 12 sets out a requirement that:

*"each child who might be a victim of trafficking in human beings shall have a child trafficking guardian appointed to represent the best interests of that child"*

in specified circumstances. The Department of Health has overall responsibility for child protection, and this clause is really outside the Department of Justice's remit. However, we understand that the Health Minister is supportive in principle of and is engaging on this clause. From the Department of Justice's perspective, there is no opposition to it, but it really falls to the Department of Health to take it forward.

**The Chairperson:** We will now move to clause 13.

**Mr Simon Rogers:** Clause 13 would place a statutory duty on the police to prevent secondary victimisation during police interviews by avoiding unnecessary repetition of those interviews, visual contact between the victim and the accused and unnecessary questioning concerning the victim's private life. Again, this is an area where the Minister previously indicated his intention to bring forward legislation, and it is again no surprise that he would agree with the effect of the provision. There is a slight adjustment, in that we have suggested to Lord Morrow that it is advisable that he make an amendment to replace the word "victim" with the word "complainant" to maintain consistency with terminology that is used elsewhere. Lord Morrow has indicated that he proposes to make an amendment to that effect.

**The Chairperson:** OK. Clause 14 is next.

**Mr Simon Rogers:** Clause 14 is about special measures in court and is in a similar category. It would amend the Criminal Evidence (Northern Ireland) Order 1999 to ensure that victims are automatically entitled to special measures in court. At the minute, that would apply in cases of sexual exploitation, but not generally. Again, the Minister had intended to legislate. The clause has the same issue with the words "victim" and "complainant", and Lord Morrow has indicated again that he intends to introduce an amendment to resolve that. This is another area where the current consultation that we are doing might bite in, but, as it stands, we certainly support clause 14.

**The Chairperson:** OK. We will move on to clause 15.

**Mr Simon Rogers:** Clause 15 would place a statutory duty on the Department to publish, in cooperation with non-governmental organisations and other relevant organisations, an annual strategy on raising awareness of and slavery offences and reducing trafficking in human beings. In effect, it would replace the Department's current non-statutory commitment to produce an annual human trafficking action plan, and, as such, the Department has no difficulty with the intended effect. I will just mention again that, in connection with clause 7, we have agreed that the strategy should cover training, investigation and prosecution. As a result, we need to seek an amendment to that effect.

**The Chairperson:** OK, members. We will move on to the next clause, which is clause 16.

**Mr Simon Rogers:** Clause 16 is Lord Morrow's proposal for a Northern Ireland rapporteur. That is one of the areas that were covered in our recently published consultation. Clause 16, as it stands, would require the Department to establish an independent rapporteur to report to the Assembly on the performance of the Act in Northern Ireland and on related matters. The Minister has acknowledged the need for effective monitoring of and accountability in human trafficking. His current view, subject to the consultation that we are running, is that a more effective approach would be to extend to cover Northern Ireland the remit of the United Kingdom-wide anti-trafficking commissioner, which is provided for in the Modern Slavery Bill.

As a result, he will oppose clause 16 but in the hope of getting support for a wider commissioner. Lord Morrow has acknowledged that the broader commissioner may be a more effective approach, but he is seeking assurances about the nature of that body and appointments etc before he will draw his own proposal about a local rapporteur.

**The Chairperson:** OK. Do members have questions on clause 16?

**Mr A Maginness:** Is it surely not more appropriate that we have our own rapporteur who has a specific role in those matters? I understand that, in the context of the anti-slavery Bill, there is going to be some sort of super-rapporteur for the UK, but surely it would be worthwhile having our own here.

**Mr Simon Rogers:** I think that the Minister's concern is that a number of the bodies that are integral to the organised crime strategy and task force are UK-wide bodies, such as the border force, HMRC and others. His view is to capture all those references and to have the broader commissioner. However, he has made it clear to the Home Office that he would expect to have a role in the appointment of that commissioner and in setting their terms of reference — in other words, the areas that they are looking at — and that any reports would have to be made to the Assembly and the Minister here. So, I think that his concern would be not to have two bodies doing it, both a local and a UK-wide one. That is not least bearing in mind that there are a lot of other bodies that can trample on that ground, such as the Criminal Justice Inspection, HMIC, the Police Ombudsman, the Justice Committee, dare I say, and others. So, I think that his view would be that, on balance, between a UK-wide commissioner and a national rapporteur, the breadth of the issue, which is really a global rather than a local issue, points to the UK-wide commissioner.

**The Chairperson:** OK. We will move on to clause 17.

**Mr Simon Rogers:** Clause 17 is a general interpretation provision. As we highlight in our paper, we think that a few minor amendments to it are required. Clause 17(3), for example, provides:

*"If the age of the person is uncertain and there are reasons to believe the person is a child, the person shall be presumed to be a child."*

This is a small point in one sense, but it is important. We believe that it would be helpful to clarify that they should be presumed to be a child, pending verification of their age, and we will seek an amendment to that effect.

Although clause 9 seeks to define a victim for the purposes of Parts 2 and 3, the Bill does not include an overarching definition of a victim of human trafficking, and we think that it would be useful to put that in clause 17. We are looking at amendments to change that.

**The Chairperson:** Clause 18 just deals with the orders. That is straightforward.

**Mr Simon Rogers:** Yes. They will be subject to affirmative rather than negative resolution.

**The Chairperson:** There are no changes to the title.

**Mr Simon Rogers:** No.

**The Chairperson:** We will move on to clause 6.

**Mr Johnston:** Clause 6 concerns regulating prostitution. The paper to the Committee sets out the Department's position. We are not arguing with the proposition that demand for sexual services may have a bearing on the supply of trafficked victims, and we note the support for clause 6. However, the Department still has concerns, which others share, about legislating in that way without taking cognisance of the possibility of creating adverse impacts on an already vulnerable group. That is why we commissioned research to provide us with more targeted evidence to use as a base for developing policy in this complex area. The paper provides more detail on the precise nature of those concerns.

The Department recognises the cohort of evidence that has been put forward in favour of criminalisation, as illustrated by the Swedish or the Nordic model, but it is also aware that much of that evidence is contested. The research is intended to address how such a change would sit in the criminal justice framework here in Northern Ireland. The paper acknowledges that the Department carried out previous research in 2010, and it looks at the context of that research. It also acknowledges the evidence that the police gave to the Committee just recently.

In concluding, the paper states that the Minister intends to oppose the clause to allow him time to consider the outcome of the research that we are commissioning.

**Mr Humphrey:** Thank you very much for your presentation. Mr Johnston, you mentioned the research. Has it gone out to tender?

**Mr Johnston:** The research has gone out to tender, and the intention is to award a tender by the end of this month.

**Mr Humphrey:** So, the person has not yet been selected. When will the research be completed?

**Mr Johnston:** The intention is to complete it in the autumn, so there is about a six-month timescale.

**Mr Humphrey:** Does that mean early or late autumn?

**Ms Amanda Patterson (Department of Justice):** It will probably be towards the end of October and the beginning of November.

**Mr Humphrey:** OK.

**The Chairperson:** Has the Department ever used Graham Ellison for research?

**Mr Johnston:** In the context of who has applied for the research and has submitted tenders, as that is a running process, that information is confidential to the tender evaluation panel.

**The Chairperson:** Heretofore, has Graham Ellison ever provided any official research to the Department?

**Mr Johnston:** Sorry, Chair, I did not quite hear that.

**The Chairperson:** Up to this point, has the Department ever engaged with Graham Ellison on this issue?

**Mr Johnston:** There was a request from Mr Ellison to meet the Minister, and that meeting took place. He briefed the Minister on the research that he had been undertaking.

**The Chairperson:** I take it that it would be open to him, then, to apply for this exercise.

**Mr Johnston:** There is no reason why anybody could not apply to the process, provided that they were suitably qualified.

**The Chairperson:** If he is selected, you can bear in mind what he said to the Committee and what he said about individuals on the Committee when it comes to considering the credibility of any evidence that is provided. That is a comment that you can note.

**Mr Humphrey:** You will be aware that the PSNI has changed its position on clause 6, Mr Johnston. How does the Department view or assess that change in position?

**Mr Johnston:** The PSNI has said that it is not opposed to clause 6. It qualified that by expressing some concerns about the impact that it might have and about the risk of unintended consequences. One area that was highlighted was that it is difficult to assess how much impact the threat of prosecution could have on behaviour. There was some discussion about the risk that, once you start to legislate and regulate in an area, the prostitutes themselves might feel further ostracised and removed from police. Obviously, the police are very keen to keep those links and relationships with sex workers and to assure them that any offences against them will be properly investigated and dealt with. There were some points, too, about the flow of information. We want to get a grip on all those points through the research before coming to conclusions on the appropriate policy response.

**Mr Humphrey:** Nevertheless, you will accept that the police have changed their position.

**Mr Johnston:** Yes.

**Mr Humphrey:** Is the Department aware of the report of the European Parliament's women's rights committee?

**Mr Johnston:** Yes.

**Mr Humphrey:** How does the Department respond to the support across the European Parliament for the motion based on that report? I am not sure about Mr Nicholson's position, but two of our MEPs supported it. It promotes the criminalisation of the purchase of sexual services. What is the Department's view on that?

**Mr Johnston:** It is all a contribution to the debate. We have looked at that report and will obviously want to study it further. It is worth acknowledging that it is a non-binding resolution from the women's rights committee.

The other interesting point is its wider recommendations on, for example, how you support people coming out of prostitution. Again, it all points to the research, because we want to get a handle on the wider impacts that are not part of the proposals in clause 6.

**Mr Humphrey:** You said that it is non-binding, but, at the end of the day, a clear majority of Members of the European Parliament supported that view. They obviously represent the vast bulk of continental Europe. Will the research be unbridled? Those who the Department selects will be allowed to carry out the research without direction or interference from the Department, I assume.

**Mr Johnston:** The direction that is given is the terms of reference on the scope of the research, and that is in the specification. I know that the Committee has seen the terms of reference, and the full specification was published as part of the tender documents. It is a wide specification, and it is entirely up to the researchers to choose who to talk to. We may make some suggestions. For example, I was asked whether it would be open to the researchers to talk to former prostitutes who had exited prostitution and who might have a particular view. I am perfectly happy for the researchers to do that, but, ultimately, it will be their decision.

**Mr Humphrey:** You mentioned how the Minister is minded on clause 6. His and the Department's view on clause 6 will not in any way steer the research that the researcher who is chosen will carry out.

**Mr Johnston:** No. The question of the potential impact of the criminalisation of paying for sexual services on reducing the levels of human trafficking in Northern Ireland is one of the highlighted areas that we want the research to cover. The background that we put into our specification refers to the fact that the Minister has made a public commitment to commission research. It does not go into the particular views that the Minister has expressed.

**Mr Humphrey:** Does that mean that it will not?

**Mr Johnston:** I want the research to consider and establish facts about the nature and extent of prostitution in Northern Ireland. That will then give us a factual base onto which we can project the Nordic model or any other policy options and assess them. So, we want the researchers to establish facts and for that not be constrained in any way by the concerns that we have expressed.

**Mr Humphrey:** I welcome that reassurance. If there were to be those constraints or some sort of narrowing, I think that that would irreparably damage the piece of work and undermine it entirely.

**Mr Johnston:** It is intended to be a high-quality academic, properly conducted piece of research.

**Mr Humphrey:** OK.

**Ms Patterson:** If I could just add to that that the specification demonstrates the very factual nature of the information that the Department is seeking to collect and that it is not based on any sort of wish to consider a particular ideology. It will consider what can be found out about prostitution and the framework that is in place in Northern Ireland.

**Mr Humphrey:** If ideology, someone's opinion or the Department's collective opinion came into play, frankly, it would be an opportunity missed. In my opinion, the piece of work would be completely without value.

**The Chairperson:** It also depends on the academic. Most of us know what the research is really about.

**Mr A Maginness:** Arising from Mr Humphrey's questions, can we take it that the Department's position on clause 6, or, at least, the Minister's, is now one of neutrality rather than opposition? Is the Minister awaiting the completion of the research before making his mind up?

**Mr Johnston:** Yes. The Minister is not taking a position on the Swedish model. He feels that we need to do the research so that we can see what the impacts of any policy option would have in Northern Ireland, whether it is the Nordic model or another option.

**Ms McCorley:** Go raibh maith agat, a Chathaoirigh. I welcome the progress that has been made on the research. I feel that it is important that we get clear evidence and relevant information about what it means for people who are clearly very vulnerable. Some of the most powerful testimony that we have heard came from those who have been involved in that work. So, I really think that it is important to hear that at first hand before you make legislation.

Under what context would you legislate for prostitution?

**The Chairperson:** And when?

**Mr Johnston:** That would happen in the context of having an evidence base and having seen the extent and nature of prostitution in Northern Ireland and what the needs are and the best options for moving forward.

**Ms Patterson:** If I could add, as you said, it is very important to look at all the impacts in the period before any policy decisions are made on the legislation that might follow. Part of that is to look at the current law on how prostitution is regulated and how that ties in or conflicts with any desire to make the purchase of sexual services a criminal act.

**Ms McCorley:** Say the current proposal were to proceed, how do you feel that would impact on what already exists in law?

**Ms Patterson:** Again, that is one of the areas that we need to look at once we have the research and once we are looking at the policy. The law as it stands does not create a criminal offence around the exchange of money in a transaction between two consenting adults. It creates criminal offences surrounding prostitution that, if clause 6 were to go ahead, would still be in place. The criminal offence of soliciting in a public place would still be there, so there would still be criminal activities attached to the seller of sexual services and, even more so, to sexual services in a brothel. Criminal offences would still be attached to the seller of sexual services in a brothel. There are areas that are quite complex and quite conflicting if you criminalise the purchase of sex.

**Mr Johnston:** It is worth noting that, in the Swedish model, the underlying law about prostitution differs. It is not just the difference that is brought about by clause 6; they do not have the offence of persistently soliciting, and the legislation around brothels is different. There is a bigger picture on legislation that we want to keep in mind.

**Ms McCorley:** Last week, the PSNI referred to unintended consequences. What are your concerns about unintended consequences?

**Mr Johnston:** It all stems from the fact that we are dealing with extremely vulnerable people, and I know that a number of those who have given evidence to the Committee have emphasised that. Therefore, the particular concern with unintended consequences is about anything that risks compromising people's safety when they are already vulnerable. One area that I mentioned is the impact on access to police, and a couple of weeks ago Assistant Chief Constable Harris noted that prostitutes are susceptible to crime and that there was a qualification in his mind about, if you were to legislate, would that, by virtue of the general fact that you were doing more about the whole area of

crime, law and policing, serve to put any greater barrier between police and sex workers? He was anxious to avoid that.

A second area is about pathways out of prostitution. If you were to take the step of enacting clause 6 and people wanted to exit prostitution, what would be the economic impact on them and their families, and what pathways out would be available? The French, in considering the Nordic model, have been focusing quite a bit on providing financial support and practical help.

A third area is about the impact on those who would choose not to exit prostitution. If you were dealing in a situation where clients were not just taking the risk of discovery but were taking a risk of criminalisation, would clients who are greater risk-takers pose any greater threat to prostitutes?

Then there is the impact on pathways into prostitution. If people are exiting, you want to understand why people get involved in prostitution in the first place so that you can prevent others from going in and simply taking their place.

**Mr A Maginness:** I read — I think that it was yesterday — that a House of Commons Committee had some opinion on this issue. I am not aware of the name of the Committee, but is the Department aware of it?

**Mr Johnston:** It is the all-party parliamentary group on prostitution and the global sex trade, which is one of a number of unofficial groups that exist in Parliament across the two Houses of Parliament. It has published a report with a number of recommendations, which include, interestingly, removing the soliciting offences that we have just talked about, a financial assessment of the social cost of prostitution, and programmes to reduce entry into and promote exit from prostitution. Ultimately, at recommendation 9, it comes round to supporting:

*" a general offence for the purchase of sexual services."*

It is not an official body, and the Home Office has not responded to the report, nor are we expecting there to be an official Home Office response. However, it is certainly a report that we have been studying.

**The Chairperson:** To pick up on one of Ms McCorley's questions, if the Department were to get the elusive evidence that it needs to justify clause 6, when would it be possible for the Department to bring forward legislation, given that the Minister has already indicated to me that he certainly will not legislate in this mandate?

**Mr Johnston:** We would have to look at the legislative programme. A number of pieces of legislation are already stacked up for this programme. It would depend on what sort of legislative change you intended to make. If it were relatively small, we would have to discuss it with the Minister, but we would not necessarily rule it out in this mandate. However, I think that we need to do the research and come to some conclusions on the way forward, and then we will be able to assess the timetable.

**Mr Wells:** For the record, Martina Anderson, the Sinn Féin MEP for Northern Ireland, and Diane Dodds, the DUP MEP, voted for the report in the European Parliament. It is a highly significant development that two ladies with very opposing political viewpoints supported it.

Mr Johnston, have you ever met Lucy Smith or Mark McCormick?

**Mr Johnston:** I do not believe that I have, no.

**Mr Wells:** I believe that you have, Mr Johnston. I believe that you met them on 31 October 2013. I have the minute; I have the information. You met Lucy Smith and Mark McCormick on 31 October 2013.

**Mr McCartney:** Ask for your solicitor before you answer the next question.

**Mr Wells:** I advise you to answer that truthfully, Mr Johnston, because there is a section of questions coming about that meeting.

**Mr Johnston:** I am honestly not aware of it, but, if you can give me more details, that might prompt something.

**Mr Wells:** You are aware of who Lucy Smith is. She is the lady who gave us evidence.

**Mr Johnston:** Yes.

**Mr Wells:** On her blog, she is claiming that she met you —

**Mr McCartney:** That is a different thing altogether.

**Mr Wells:** And several other blogs are claiming that they met you. They also met Amanda Patterson.

**Mr McCartney:** There is an individual here telling lies.

**Mr Johnston:** She was here, sitting in the Public Gallery, when we were giving evidence.

**Mr Wells:** So neither you nor Ms Patterson has any recollection of meeting Lucy Smith or Mark McCormick?

**Mr Johnston:** No.

**Mr McCartney:** I think that there is an apology coming here.

**Mr Wells:** Why, then, would they have posted that they had in their respective blogs on 1 November?

**Mr McCartney:** Ask them.

**Mr Johnston:** I am not aware —

**Mr A Maginness:** Chair, with respect, this line of questioning is a bit unfair.

**The Chairperson:** I am content for Mr Wells to continue.

**Mr Wells:** In the report of that meeting, Lucy Smith, in referring to the two of you, said to Douglas Fox, who is the leading prostitute organiser/pimp in the north-west of England:

*"They hate the DUP more than us and will be opposing the Bill."*

You do not recall saying any of that. Is this entirely fictitious?

**Mr A Maginness:** Chair, on a point of order, that is hearsay. It is not something that is appropriate to be put. It is on a blog: I could put anything on a blog.

**Ms McCorley:** I agree.

**The Chairperson:** The refusals are on the record in terms of the denials, and that record will stand.

**Mr Wells:** I will not take it any further, but I have to say that if it transpired that what several people wrote was true, that would be quite a serious issue, would it not?

**Mr Johnston:** I think, Chairman, that I would want —

**Mr McCartney:** If it is not true, it is [*Inaudible.*] for someone like you to put yourself in the position —

**Mr Wells:** I would be the first to say that a series of people made a false accusation that they had met you.

**Mr Dickson:** It started with an accusation in the first place.

**Mr Johnston:** Chairman, if Mr Wells wants to share the text of the blog with us, we will certainly look at it. If there are inaccuracies, we will seek to have those corrected.

**Mr Wells:** Right, OK. We might have to revisit that. I would be surprised if the informant who has been, up to now, absolutely accurate is wrong on that issue; I would be very surprised.

Why is the reducing offending unit not here today?

**Mr Dickson:** Chair, with respect, that leaves the record of this meeting sounding very difficult for me. Those are remarks that I wish to disassociate myself from. I find it very uncomfortable that somebody is saying that their source has always been accurate up to now.

**Mr Wells:** It has been.

**Mr Dickson:** We have had a clear denial from the parties concerned that they have not had the conversation that was outlined. I think that we should leave the matter there. I feel extremely uncomfortable about being associated with those remarks.

**The Chairperson:** I assume that Mr Wells is leaving it at that point.

**Mr Wells:** Yes. We will check our sources. Unless there is another Gareth and Amanda working in this office —

**Mr Dickson:** The damage has already been done, Chair.

**Mr Wells:** This information came from a source that also gave me the information on another secret email that I quoted at a previous Justice Committee meeting, and that was entirely accurate. I accept your point, Mr Johnston. You are saying that you have never met anybody of that description, ever.

**Mr Johnston:** No.

**Mr Wells:** Well, I accept that. I still have other questions to ask you, I can assure you. Why is the reducing offending unit not here today?

**Mr Johnston:** We are allowed only four people at the table.

**Mr Wells:** Why is the only unit that has been directly involved in this not one of the four here today?

**Mr Johnston:** We have been having discussions with the reducing offending unit outside of this meeting. Indeed, there was a meeting, Amanda —

**Ms Patterson:** Two weeks ago.

**Mr Johnston:** Two weeks ago, when all three of our divisions were represented.

**Mr Wells:** Why are they not here today?

**Ms Patterson:** It is largely because what we are looking at today is a change to the criminal law, which is the responsibility of the division that I work for.

**Mr Wells:** I quoted from some of the material at the meeting two weeks ago. There is quite clearly a split between the criminal justice unit and the reducing offending unit. The reducing offending unit is very clear on its view about the nature of prostitution and the vulnerability of the women taking part in it, while the criminal justice unit seems to have a rather different view. Is the DOJ split down the middle on this issue?

**Mr Johnston:** No, I do not believe that there is a different view. Different parts of the Department have specific responsibilities. One of the responsibilities of the reducing offending division is in

supporting people who have been caught up in offending. One of their responsibilities was the production of the women's strategy. Flowing from all of that, certain actions are being taken, including guidance for the criminal justice bodies in dealing with people involved in prostitution whom agencies may come across. That is a very positive development that complements, rather than being in conflict with, the discussions that we are having today.

**Mr Wells:** Given the fact that you have not read the report from the reducing offending unit, I cannot see how it complements your view as articulated today. I just cannot see it. They are the folk at the coalface. They are the folk who are advising. They are being gagged by the Department of Justice. They are being gagged.

**Mr Johnston:** Chairman, I have to refute that. Action is being taken across different parts of the Department and, as I say, it all aims to complement each other. It would be very regrettable if the good work that the reducing offending division is doing, including in this guidance, were held back in any way.

**Mr Wells:** The Minister issued a press release on 27 January 2011 that spoke about the Department wishing to help people to leave prostitution. How many people has the Department helped out of prostitution?

**Mr Johnston:** The responsibility there lies with the particular agencies, both criminal justice and health agencies, that are involved. I do not have particular statistics.

**Mr Wells:** Has anybody been helped out of prostitution by any of those agencies?

**Mr Johnston:** As I say, the responsibility lies with the agencies rather than with the Department centrally. That is something that I would have to check.

**Mr Wells:** It would be very useful if you would come back to us on that.

After the first hearing, a Mrs Laura Lee made a complaint to the Minister of Justice about questions that I and the Chair asked her. Where did that complaint go?

**Mr Johnston:** Chair, I am a little uneasy with answering questions about individuals who may or may not have written to the Minister. I am conscious that there are data protection issues —

**Mr Wells:** She told the press that she had made a complaint to the Minister. Your Department has seen that.

**Mr Johnston:** Maybe, Chairman, I could deal with it in general terms. If we were to receive a complaint from someone about something that had happened in the Committee, the Department is not the appropriate body to receive that complaint. All we would be able to do would be to point them in the right direction.

**Mr Wells:** And that is all you did.

**Mr Johnston:** As I said, I do not want to get into individual cases, because I think that there are data protection implications. However, in general terms, if we were to get a complaint, that is what we would do; we would point them to the appropriate —

**Mr Wells:** And there would be no question of you assisting the complainant with their case before it was sent on to Standards and Privileges.

**Mr Johnston:** No.

**Mr Wells:** Would you be surprised if the complainant had a different view?

**Mr Johnston:** Yes.

**Mr Wells:** You are giving me a categorical assurance that you would act as a postbox and would not assist the complainant.

**Mr Johnston:** The Department receives a great many complaints about the actions of various independent agencies, some of which have no connection with the Department. There are fairly settled forms of correspondence that go out in those cases to point people to the appropriate agency to deal with those complaints.

**Mr Wells:** I think there is a second letter to go to DOJ about that.

There is constant reference to the Swedish model. How many times have you been to Sweden, Mr Johnston and Mrs Patterson?

**Mr Johnston:** The Minister intends to visit Sweden in the very near future, and an official will be going with him.

**Mr Wells:** Right. I suggest that more than one official goes with him. It is vital that you receive the maximum amount of information about the Swedish model.

**Mr Johnston:** We will discuss that with the Minister.

**Mr Wells:** When you say "in the near future", what do you mean? Before Easter? Before St Patrick's day?

**Mr Johnston:** Before Easter.

**Mr Wells:** That is good. To some extent, you are the only player in this who has not been to Sweden. I think that you need to go.

The Minister was in Westminster this week giving evidence on human trafficking. Why was he there?

**Mr Simon Rogers:** I can answer that; I was with the Minister. He was invited by the Chair of the Joint Committee at the Houses of Parliament, Frank Field, to attend and give evidence on the Modern Slavery Bill, which the Home Secretary is taking through Parliament.

**Mr Wells:** OK. Has he released a draft of what he said? Is that in the public domain?

**Mr Simon Rogers:** I believe that it was reported and will be available in the same way —

**Mr Wells:** It will be in Hansard. OK.

The Swedes, the Icelanders, the Norwegians, the French, the European Parliament, Martina Anderson, Diane Dodds and now the Westminster all-party group on prostitution have all come to the same conclusion on the equivalent to clause 6. Why are they all wrong and the Department right?

**Mr Johnston:** We are not saying at all that they are all wrong. However, the different countries that you mentioned have reached a conclusion on the right way forward in the particular circumstances that they are in. One could equally mention countries such as Germany or Canada, which have reached extremely different conclusions. I repeat that we are not taking a position on the Swedish model at this stage. We are not ruling it in and we are not ruling it out. However, we believe that we need the research to understand fully the impact that it would have in Northern Ireland.

**Mr Anderson:** Thank you for coming along today.

Mr Wells touched on a number of points, and I want to follow up on a couple. He gave a long list of those in support of clause 6. The Northern Ireland Human Rights Commission stated in its evidence to us that it welcomed the principle of clause 6 and did not believe that it was incompatible with human rights standards. Considering the Department's opposition to the introduction of clause 6, do you believe that the Human Rights Commission is wrong?

**Mr Johnston:** The Human Rights Commission has expressed its views very much in terms relating to the protection of vulnerable people. Obviously, that is a criterion that we are equally keen to ensure is satisfied. Let us do the research and come up with a settled policy position on whether it is right or wrong.

**Mr Anderson:** In light of your comments, do you not think that it would have been wise to have made contact with and sought advice from the Human Rights Commission in respect of this clause?

**Ms Patterson:** We have met the Human Rights Commission.

**Mr Anderson:** Have you discussed the issues around vulnerable adults, which Gareth was talking about?

**Ms Patterson:** The response is what we are giving here: that the Minister has not yet reached a position and wants us to undertake further research.

**Mr Johnston:** In the course of moving forward, I would certainly expect to keep in touch with the commission and be informed by anything further, and I am open to that. We have its response, but we will be informed by anything further that it wants to say.

**Mr Anderson:** Do you agree that the commission is a body that you should give a good listening ear to?

**Mr Johnston:** I am quite happy to accept that, yes.

**Mr A Maginness:** I am pleased that the DUP is saying that.

**Mr McCartney:** This is all written down. *[Laughter.]*

**Mr Anderson:** It is on this particular issue.

**Mr McCartney:** It is right one day, but wrong the next.

**Mr Dickson:** It is just a selective ear, Mr Chairman, is it?

**Mr McCartney:** Be careful who you call as a witness.

**Mr Anderson:** If we are getting support for clause 6, we have to listen to everyone who supports it. My colleague Mr Wells has given a long list of people. I think that the greatest opposition is probably coming from the Department. I think that we have to take on board all of those people who will support those victims. That is where I am coming from.

**Mr Johnston:** The Committee's report will certainly be a very significant document in the ongoing consideration of the Department.

**Mr Anderson:** We have talked a number of times about the Swedish model, and you clarified for my colleague Mr Wells that officials have made contact. Did I pick that up?

**Mr Johnston:** Yes.

**Mr Anderson:** The Minister is taking himself off to Sweden quite soon. We have clarified that he is going before Easter. Gareth, you also mentioned the fact that the Minister was neutral in his opinion on this, is that right?

**Mr Johnston:** Yes, he is not ruling it out or in.

**Mr Anderson:** So he has not set his face against the Swedish model.

**Mr Johnston:** That is correct.

**Mr Anderson:** He is going to Sweden with an open mind on this.

**Mr Johnston:** He is certainly very keen to speak to people at the front line and to speak to Swedish commentators, to see for himself the evidence and to find out the range of views.

**Mr Anderson:** I ask that because, in the lead-up and in all the discussions that have taken place, someone's mind or views could be tainted before they go somewhere. When the Minister goes there, I hope that he has an open mind — I know that his colleague is sitting here — and comes back with the facts that have been well presented by others.

**Mr Johnston:** I can assure Mr Anderson that getting at facts is very much what the Minister wants to do.

**Mr Anderson:** OK. Thank you.

**Mr Elliott:** Thank you very much for the presentation. I have two questions. I know that, at this stage, the Department is opposing clause 6 in this form. Mr Wells has highlighted a number of groups and organisations that are in support of clause 6. Coming from a fairly objective position, I know that a huge number are opposing it and a huge number are supporting it. That is an issue that we have got to get our head round and establish who is right and who is wrong. Does the Department see any amendments that would help clause 6 or make it more practical or better to implement, as opposed to total rejection?

**Mr Johnston:** At this stage, given what we have said about the importance of research and about having an evidence map on which to project any policy, our position is very much that we should move ahead without clause 6 and then come back to all of these issues in the light of the research.

**Mr Elliott:** That answers that quite clearly. My second question is about the Swedish model. We have heard quite a bit about it in the Committee. Even today, it has been referred to. What do you see the Swedish model bringing to the legislation, either in positives or negatives? Do you see it as a help or a hindrance in this case?

**Mr Johnston:** As I say, we have an open mind and we want to do the research. We are conscious, as the discussion on clause 6 has been ongoing, that there have been both pros and cons expressed about the Swedish model. We have read in Hansard the evidence presented to the Committee and we are aware of other comments on the Nordic model, including in the reports which have been mentioned. So we are really conscious of —

**Mr Elliott:** Gareth, we are all well aware of what others have said about it. I am interested in what you are saying about it.

**Mr Johnston:** Really, where we are is wanting to get more information about the possible impacts and maybe the unintended impacts. They are, as I set them out to Ms McCorley, around impacts on access to the police. That is something that the police raised a couple of weeks ago. There are also economic impacts and how people could be enabled to exit prostitution. There would also be impacts on those who choose not to exit, and about how pathways into prostitution would need to be affected. And also there is the fact that clause 6 or its equivalent does not sit on its own in the Swedish situation; there are other differences between the Swedish law and ours which we need to be clear on and whose impact we need to assess.

**Mr Elliott:** I would like you to expand on that, if you can. You say that clause 6 does not sit on its own in the Swedish model. Are you saying that it is built into a wider piece of legislation?

**Mr Johnston:** Yes.

**Mr Elliott:** OK.

**Ms Patterson:** The legal framework in Northern Ireland is not the same as it is in Sweden, and there are issues to do with that. Earlier, I talked about the current criminal law offences to do with prostitution, and where clause 6 sits with that. There are also enforcement issues which the police referred the Committee to in its evidence, such as the differences between how the Swedish police might approach it and how it would be approached here.

**The Chairperson:** If clause 6 were to go through, it would be open to the Department to bring forward the legislation after the research and make amendments. If the unintended consequences — as

people say — were negative, would we be able to amend the legislation at a later stage through a proposal from the Department?

**Mr Johnston:** We do not believe that that is the right approach. Often, when I am sitting here proposing various pieces of legislation, I am asked about what the impacts are — the equality impacts, the practical impacts and so on. The Department's position is very much that it is important to understand and take account of those before going into legislation.

**The Chairperson:** I understand that you think it might not be the best approach. However, for members who think that the current framework does not work or is not effective enough, we have evidence, we are satisfied that the evidence warrants a change, and we will legislate for that change. However, if some of the unintended consequences are negative, can we amend that by way of legislation, through a Bill that the Department could bring to the Assembly?

**Mr Johnston:** I would rather that we went into this knowing more about what the consequences were going to be and dealing with them up front, rather than having to come in behind with some very rushed legislation to deal with problems that we had only just identified.

**The Chairperson:** It would not be rushed in the sense that someone is tagging on an amendment to a Bill. It is a private Member's Bill that has been in the ether for well over a year. It is going through the proper scrutiny processes that are required of legislation, so I would not put this into the category of "rushed".

**Mr Johnston:** Sorry, Chairman, I meant that you might have to rush in with amending legislation to deal with the problems.

**The Chairperson:** I picked you up wrong on that. I apologise.

I assume that the answer, in a purely legal sense, is that we can legislate for it and that we can amend. It is a simple procedural thing that can be done. It may not be the approach that you think is necessarily the best, but for Members, who are the ones who have to decide, I assume that the answer is yes.

**Mr McCartney:** Have you agreed a timeline with Lord Morrow on how this should be taken forward?

**Mr Simon Rogers:** We sent instructions to counsel on our amendments, and we hope to get them back as soon as we can so that we can share them with Lord Morrow and the Committee. We do not have a specific timescale for that, because we are in the hands of counsel, who have many Bills et cetera to manage. As soon as we get them, we will share them with Lord Morrow and the Committee. We are alive to the fact that time is of the essence.

**Ms J Wilson:** The only other element would be the tabling of further amendments, if that were possible, on the back of our consultation. We have discussed it with Lord Morrow, and the earliest we could do it would be Consideration Stage, which could be towards the end of September. We have discussed that with Lord Morrow, and he has indicated that he is content to defer, in principle, until that time.

**Mr McCartney:** Have you discussed the timeline for the proposed research, which is due to be done by the end of October? Given the Chair's point that if there is something in the research that will inform us, that seems like a long gap. Is there anything that you can do to bring forward the outcome of the research so that you do not end up with a situation where, as the Chair mentioned, something comes out of the academic research and people say, "I would change my mind on that aspect" but we have no provision to change the import?

**Mr Johnston:** It is a substantial piece of research that will involve talking to a lot of people, including people who are personally involved. We cannot telescope the timetables anymore. I am not aware that we have communicated with Lord Morrow specifically on the timescale for the research, but the Minister has answered Assembly Questions on it, so the information is in the public domain.

**Mr McCartney:** You are saying that Lord Morrow has shown patience by saying that he willing to wait until the end of September. The end of October does not seem to be too much of a push further. That is why I am asking you whether you have discussed that particular aspect.

**Ms Patterson:** There would be too much coming out of the research to make a decision in a short time, because we would have to consider its findings. There may be recommendations that involve other people and having to consult other people. I do not think that it would work.

**Mr McCartney:** When you receive the academic research, will it be a closed document for a period, or will you release it to inform the Committee for the next stage of the Bill?

**Mr Johnston:** We would want to release it as soon as we could.

**Mr McCartney:** Are the terms of reference set before the tender?

**Mr Johnston:** Yes, they are set before the tender; that is the basis on which you tender.

**Mr McCartney:** Are the terms of reference open or closed?

**Ms Patterson:** We sent the terms of reference to the Committee. They are no longer available on the Central Procurement Directorate website because they come off at the end of a certain period. However, we have sent them to you.

**The Chairperson:** We hope to do clause-by-clause scrutiny of the Department's proposed amendments on 20 March. Will you have them with us by then?

**Mr Simon Rogers:** We have our instructions with counsel. The honest answer is that I cannot tell you to-day. We will talk to counsel again and see what timescale they can work to. They are under a great deal of pressure. With your permission, we will let the Committee Clerk know the position.

**The Chairperson:** We need to complete our report, so we will be going through the legislation; however, we have only a couple of weeks to do that. I would appreciate it if we could have that information as soon as possible.

Let me formally thank you, and also Julie, who has persevered with a cough throughout. Thank you for coming to the Committee.

**Mr Simon Rogers:** May I come back for just one moment? One of the areas that Mr Wells raised was the work that the Department is doing on prostitution. We did not express all the areas that we are working on, and there are many of them. I want to put it on record that we are working on several areas and, if it would help the Committee, we could send you a note setting out the initiatives that we are taking in the Department. They cut across various divisions: community safety units look after the domestic and sexual violence aspects; Gareth's side does legislation; and our side does reducing offending. I would not want to leave you thinking that our answer showed that there is no work going on. There is a great deal of such work, and I would like to put that before the Committee.

**The Chairperson:** That is appreciated. Thank you all very much.