



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Human Trafficking and Exploitation (Further
Provisions and Support for Victims) Bill:
Informal Clause-by-clause Consideration

20 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 William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

The Chairperson: At this point, I will ask members to indicate what clauses they are content with, what clauses they are not content with, what clauses they have no comment on and what clauses they require more information on. That will allow us to try to filter through the clauses and to get whatever information may be needed for next week. We can then try to home in on trying to get to the formal clause-by-clause stage of the Committee process, which will start on 3 April.

You have the pack for this. I thank the Committee staff, who have put a lot of work into gathering this information. It has been challenging for them, but they have been able to do it. You have copies of each clause with the amendments that Lord Morrow proposed. How it will appear in the Bill is shown in red with lines deleted. We are still awaiting some of it, and Lord Morrow has referred to a number of proposed amendments for which we have not been able to do that. By and large, however, it has been made as helpful as possible for members' consideration.

You have been provided with a folder that gives a summary of the evidence that the Committee has received over the past number of months. Hopefully, that has consolidated a lot of the information and has allowed members to recap on what they said. You have your folders or, if you are really impressing people, you are going with your computers. You will need both of them beside you as we discuss clause 1. The information highlights what some of the groups said, and the amendments are in the pack. So, you will need two pieces of paper to do this. I will go through each clause, and it would be appreciated if members were then able to make their comments.

Clause 1 sets out what the Bill means by a human trafficking offence and a slavery offence.

The Committee Clerk: Lord Morrow said that he has no amendments to this clause, but it is likely to be subject to changes following the ongoing consultation. Again, the Department indicated that it will table no amendments, but the consultation proposals could directly impact on the clause. At the

minute, apart from that one very small proposed amendment to be clarified by Lord Morrow, the clause is as it stands. However, it may be affected in due course by the outcome of the consultation.

The Chairperson: Lord Morrow's proposed amendment was to clause 2, so we are content that there is no more information to be sought. Obviously, if there is a slightly revised amendment of a technical nature, we will deal with that, but there is nothing in principle that members have an issue with.

The Committee Clerk: It is really a question of whether members are content with clause 1 as it stands while recognising that it may be subject to changes later as a result of the consultation that the Department is undertaking on the Modern Slavery Bill.

The Chairperson: No member has indicated that they wish to speak, so I will take it that they are content with that.

Clause 2 is entitled "Consent irrelevant for victim of human trafficking or slavery offences". Lord Morrow is tabling a technical amendment to this clause. Are members content?

Members indicated assent.

Clause 3 deals with aggravating factors. Those are laid out in the Bill, and Lord Morrow and the Department have each proposed some amendments to the clause. Are members content with clause 3 and with the proposed amendments?

Members indicated assent.

Clause 4 relates to the minimum sentence for human trafficking and slavery offences. You can see the proposed amendments that Lord Morrow is seeking to table. The Attorney General also suggested an amendment to this clause.

Having checked that, I can see that this is the issue about preventing the court from imposing a suspended sentence and making it immediate. Lord Morrow is addressing that through the second amendment on his list of amendments to clause 4. Clause 4, page 2, line 41 addresses it. It seems to be dealing with the same objective.

The Committee Clerk: The Attorney General was pointing out that he felt that the clause was worded in such a way that meant that the court could impose a suspended sentence. He wanted it to be immediate.

Mr McCartney: He wanted it to be classed as custodial.

The Committee Clerk: Yes. Lord Morrow seems to be addressing that point, but in a different way, through the amendment that he proposes for page 2, line 41. He suggested that it read:

"the court shall not exercise its power under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences) in relation to a sentence which it is required to impose under subsection (2)."

The Chairperson: Are we content with clause 4, as it would be amended by Lord Morrow?

Mr A Maginness: The addition of wording that would prevent the court exercising power to suspend a sentence is something that I could not agree with at this stage. I agree with and welcome the suggested amendment to clause 4(3), which states that:

"If the court decides not to impose a custodial sentence under subsection (2), the court must state the exceptional circumstances of the offence or the offender."

I do not think that the element that would be added to clause 4(2) is necessary. If there is a power not to impose a two-year sentence, I think the court should have the full power not to impose it instead of being obstructed or prevented from imposing a suspended sentence.

Mr Wells: Did Lord Morrow's olive branch not meet you halfway on that?

Mr A Maginness: I do not think that it has with that amendment. It would have to be clarified. You might be correct, but I think that —

Mr Wells: If I was correct, would that meet your concerns?

Mr A Maginness: If you were, yes. If it allowed full discretion at that point and if a judge thought that it was exceptional —

Mr Wells: So, does that mean that you do not object to the principle of forcing the judge to make known the reasons why?

Mr A Maginness: No, I do not object to that.

The Chairperson: The issue is whether clause 4(2) contradicts clause 4(3).

Mr A Maginness: Yes. I am not certain that clause 4(2) is necessary. Anyway, we can look at that later; I am just flagging it up.

Mr McCartney: We have the general reservation about minimum sentences, but we will come back to it.

Mr Dickson: It probably goes without saying that I have reservations about both.

Mr Wells: Could you live with the court still having the discretion, provided that it explains the reasons?

Mr McCartney: That would be for exceptional circumstances. I think that the sentencing guidelines as they are laid out allow the judge to look at the circumstances and to impose the appropriate sentence rather than compelling them to say that it has to be "two years, unless".

Mr A Maginness: I could be helpful here. The way that I view it is that this clause would be persuasive on the court to impose a two-year sentence but not binding on the court to impose a two-year sentence.

Mr McCartney: One of the reservations is that an appeal could be lodged on the severity of the sentence. I think that you would open it up to appeal on whether the judge gave appropriate weight to the exceptional circumstances that the person puts forward. So, it gives the judge more latitude and less of an opportunity for an appeal. The sentence should be appropriate, but it should not be left open to the extent that you have a conviction and then there is an appeal that is based solely on whether the judge put proper weight on the exceptional circumstances. You can make an assumption that everybody will say, "My circumstances were exceptional."

The Chairperson: We will come back to that next week. I would like some clarity on clause 4(3) and the exceptional circumstances if it means that agreeing clause 4(2) means that you cannot implement clause 4(3). The exceptional circumstance would then preclude a suspended sentence.

Clause 5 concerns amendments to the Asylum and Immigration Act. We are waiting on the Department for those amendments, which will be technical. I do not have any issues with this clause as it is drafted.

Mr Wells: Is it in order to clear all the clauses and come back to clause 6?

The Chairperson: No. I am taking us through the Bill clause by clause. *[Laughter.]* I am taking the clauses as they come.

Mr A Maginness: Good try.

The Chairperson: Mr Wells, I will take your position on clause 6 first.

Mr Wells: As Lord Morrow said, I have never seen a clause in any Bill in the House that has ever been subject to such scrutiny. That is about the only thing that we will probably agree on today. We have seen huge support for the clause from some very disparate groups, such as Women's Aid, the Northern Ireland Human Rights Commission (NIHRC), the Irish Congress of Trade Unions (ICTU), and various Christian Church groups, including the Church of Ireland and the Catholic bishops. We have had a huge range of support for it. Through our various discussions with witnesses, I think that our views have been well articulated. I think that the Bill without clause 6 is severely weakened. Unless you cut off demand for sexual services, you will still have trafficking. I know that people have very profound views on the subject. I notice that Lord Morrow has moved a long way on many clauses to meet the Department, and, to be fair to it, apart from this clause, the Department has moved a very long way as well. I think that we need to record that the them-and-us situation that we faced at the start of this process has very much become people working together on every issue except this. The evidence that we received from those who had come out of the industry was absolutely compelling, and they were some of the most difficult arguments that I have had to listen to.

I also thought that the Oireachtas hearing was extraordinarily helpful, because TDs went in with a very cynical view on the equivalent legislation, and, as one Donegal TD told us, he went on a personal journey and was convinced by the weight of the argument in the Republic on the issue. I think that anyone who listened to the evidence that was given here could not be persuaded that this has to be the way forward. I notice that France is also about to follow the example.

I think that the evidence from police, social workers, etc in Sweden was overwhelmingly in support of it. So, I will be saying that clause 6 is absolutely essential, subject to the amendments that Lord Morrow outlined. We need to see all those amendments on one piece of paper and get time to read them. However, apart from that, I think the clause should stay in the Bill.

The Chairperson: Let me just add to Mr Wells's comment. There is an aspect that I want more clarity on. The Attorney General (AG) was explicit that the term "person" should be kept and not replaced with the term "prostitute". Obviously, Lord Morrow's amendments will replace the word "person" with the word "prostitute". The AG's comment at the time was that, if the clause becomes legislation, it is better to retain the term "person" to make it prosecutorial, because it is more difficult to prosecute with the word "prostitute". So, I would like to ask the Attorney General for his opinion on the terms "person" and "prostitute" and to have that opinion for next week. Lord Morrow indicated that he used the term on the basis of what the Public Prosecution Service (PPS) said, and that is why he proposes this amendment. However, I just want to make absolutely certain that, if this clause is passed, it will be an effective tool for the prosecution service. So, I would like to bottom out that particular aspect of clause 6.

Mr A Maginness: I am content with the clause. Certainly, I am content with its intention and with the amendments that have been proposed. I am happy with that. I actually prefer the use of the term "prostitute" to "person". It might be a better way of expressing this clause. I recall what the PPS said. However, if there is further advice on the matter, either from the Attorney General or the PPS, it would be helpful. At this point, though, I am content.

Mr Dickson: I very strongly welcome Lord Morrow's comments about the cooperation that there has been between him and the Department on the Bill. I think that there is more work to be done, and they can achieve more. I do not think that, at this stage, we should come to a final conclusion on clause 6, because we should wait to see the final outcome of those deliberations.

I hope and believe, Lord Morrow, that trafficking is a great deal more than just paying for sexual services. If we are genuinely trying to tackle that, this Bill is important. I think that clause 6 has been very difficult for everyone on the Committee to deal with; however, I feel that the Bill is much bigger than clause 6 and that it deals with a very important issue.

Lord Morrow made a comment about the length of time that the Department has taken to come to conclusions with research on some of these matters. At least we should be content that the Minister has accepted Lord Morrow's and the Committee's suggestion that he should travel to Sweden. I understand that he is going in the last few days of March to, as I understand it, undertake an investigation similar to that which we undertook as a Committee. That may also assist him and departmental officials, who, presumably, will be travelling with him, to confirm or alter their view on a number of items that clause 6 very firmly sits around.

I note that Mr Wells made a comment about France. Although that was a headline in the news, I understand that the upper house in France, whatever it is called, has not seen fit to move the legislation forward and that that may be where it sits — not moved forward. I also think that the Minister for Justice in the Republic has not intimated particular enthusiasm for moving forward the Committee's views on similar legislation there.

These are genuinely not delaying tactics. This is about getting the best possible information and research. I listened to Lord Morrow, and I understand his concerns about the time that it takes civil servants to get the game into play and to undertake these things. However, if we are genuinely to legislate to improve the lot of citizens in Northern Ireland, it is important that we get this right. On that basis, I am not prepared to indicate full support for clause 6 at this point.

Mr McCartney: I have a number of points to make. First, we still require more evidence, and we welcome the fact that the Department is doing research. Lord Morrow made a point earlier about delay, and we should report that back to the Department. My understanding is that there is a stretch in the timeline and that Lord Morrow cannot introduce his Bill until the Modern Slavery Bill proceeds, so he has given the Department a few months.

We have no issue with trying to deal with human trafficking and vulnerable people who are in prostitution but we are not, at this stage, in a position to support clause 6 as the appropriate way to do that.

Mr Wells: You were in Dublin with us and you heard the very powerful comments of Pádraig Mac Lochlainn TD. He started from a similar position but is now extremely supportive. Indeed, he was almost a cheerleader for what Maurice Morrow is trying to do. Do you not see that there is a discrepancy between the view that he clearly espouses, that of your party on the Turn Off The Red Light campaign and your view here?

Mr McCartney: Not particularly. That came up during the discussion in Dublin and Pádraig articulated his position. He went through all the sessions in the Oireachtas and came to his conclusion. We are doing the same thing here. That is the process of scrutiny. Lord Morrow himself said today that some of the evidence that he has heard allowed him to change his mind on particular aspects. We certainly want to deal with the issues. We could go into the warnings about the two issues being legislated for at the same time. We will take a view on that, as did the Oireachtas Committee, which recommended that the two issues be treated separately. We are not convinced that this is the best way of doing it, and we will ensure that, whatever mechanism is used to deal with human trafficking and sexual exploitation, it will be the best vehicle possible.

Mr Wells: As the only all-Ireland party, what do you see as the major difference between prostitution in the Irish Republic as opposed to Northern Ireland that makes us so radically different that we cannot follow suit with what the rest of Ireland is doing?

Mr McCartney: Well, as Stewart said, the Minister there has not seen fit to move the legislation. You could make the argument that William made earlier: should we all park it and do it at the same time, considering that we have a porous land border?

Mr Wells: I am not talking about the Minister; I am talking about the very powerful stand that your party has taken on this issue in the Republic by supporting the Turn Off The Red Light campaign and the Oireachtas Committee report. As an all-Ireland party, what do you perceive to be so fundamentally different here in what you would call the Six Counties as opposed to the Irish Republic?

Mr McCartney: There would be no difference, but Sinn Féin has accepted that people in our party are entitled to scrutinise this legislation as it comes in front of us and make up our mind accordingly. We will be informed, as we were —

Mr Wells: You are saying that you are opposing clause 6.

Mr McCartney: No. I never said that.

The Chairperson: I also have issues with clause 6 that I need to bottom out. We will come back to it next week. I have heard what you have said — you can correct me — but, at this stage, you have not

formally decided on how to vote on this when it comes to the Committee's formal scrutiny and that of the Assembly.

Mr McCartney: We have not.

The Chairperson: OK. We will move on to clause 7, which deals with requirements and resources for investigation or prosecution. There are amendments from the Department. Are members broadly content with the clause, as amended?

Members indicated assent.

The Chairperson: We will move on to clause 8, which deals with non prosecution of victims of trafficking in human beings. Obviously, you heard what Lord Morrow had to say; he has not yet reached a decision on this clause. I will not press members to decide on it today. Hopefully, we will be in a better position to know how Lord Morrow intends to proceed by next week, or at least the following week. Do members wish to comment?

Mr A Maginness: I will make a comment for the record. It may well be that the clause is not necessary, given the assurances that the PPS gave to the Committee on the exercise of public interest test in not prosecuting bona fide victims of human trafficking. It could well be that we do not need a statutory provision in relation to that matter.

Mr McCartney: The prosecutor will be in a good position to make that decision when assessing a case. If it is legislated for, you could see a courtroom battle over whether or not a person committed a crime as a direct result of trafficking. The Public Prosecution Service can deal with that as part of its process of formulating charges.

The Chairperson: Clause 9 deals with victims of trafficking in human beings. Lord Morrow is to table some amendments, as is the Department. I think that we will need to come back to this clause next week when, hopefully, things will be a bit clearer by way of those amendments. If members are content, we will deal with that next week.

Clause 10 deals with requirements for assistance and support. Lord Morrow spoke about an amendment to this clause at the Committee meeting this afternoon. Are members content with what was in clause 10 and the addition of clause 10A, which is Lord Morrow's amendment? I am certainly keen to get a response from the Health Department, if it is able to provide that. In principle, I am in favour of it as outlined, but I am keen to hear from the Department of Health.

Mr McCartney: Lord Morrow also said that he had written to the Department of Education. It would be interesting to know the legal position on access to education for child victims and the children of victims.

The Chairperson: We will contact the Department of Education about that.

Mr A Maginness: Just for completeness, I think the Department for Social Development has also been written to, so we need its response as well.

The Chairperson: Maybe I should not make this assumption, but I am assuming that support is provided from Departments when victims are identified, although they may not be branded as victims of prostitution. I am happy to ask for that clarification. The Department has also indicated that it may propose some amendments to clause 10.

Clause 11 deals with compensation for victims of trafficking. The Department has proposed an amendment to that. Are members content with clause 11, as amended?

Mr A Maginness: Yes, Chair, I am content, but I am not altogether convinced that guidance alone is sufficient to make it an effective provision, because I think that there will be no compensation per se for being trafficked. It may well be that that is not desirable or is not the intention of the statute, but I think that, if somebody is trafficked, they should be compensated for that, not simply for the abuse or misuse that they have physically or, indeed, mentally suffered. I leave that point with you.

The Chairperson: The Department indicated to the Committee that that issue could be looked at as part of a broader review of compensation legislation. That was the response that they provided to the Committee.

Mr A Maginness: That is a long shot, is it not? I am not certain that that is the happiest result that we are looking for. We need to be reassured that people in such circumstances will receive adequate compensation. As I see the criminal injuries scheme at the moment, there are several difficulties that would prevent people from getting adequate compensation. There are a number of hurdles that may be difficult for the victims of human trafficking to overcome.

Mr Humphrey: Alban, who do you see paying the compensation, given the hurdles that you are talking about? Could there not be provision, effectively, for assets that are seized?

Mr A Maginness: No, you need some sort of statutory scheme.

Mr Humphrey: Yes, I accept that, because that is the ultimate protection for someone if assets cannot be seized because it is so shady and so many people are removed from it. However, if assets can be seized, moneys that are seized should go to —

Mr A Maginness: It is not a matter, Chair, of the money not being available. The state has sufficient money to pay compensation. It is the different boxes that have to be ticked. Perhaps that is the wrong analogy; it is the different stages that the applicant in those circumstances — the victim of human trafficking — will have to go through. For example, the law and the scheme are very strict as to what type of medical evidence is presented to the compensation agency, including how many times the person has gone to his or her GP. I would assume that a victim of human trafficking would not have a GP or access to a doctor. There are certain criteria, for example the reporting of the injury that a person received and when it was reported. Was it reported to the police? If not, is that person entitled to compensation? There are all sorts of difficulties, without going through the whole scheme. All that I am saying to the Committee is that, if we want to compensate these unfortunate people, we have to have a scheme that is flexible enough to ensure compensation.

Mr Humphrey: I am not disagreeing with you.

Mr A Maginness: I understand that.

Mr Humphrey: I am just saying that, where there are assets that can be seized, those should be used to augment compensation funds. The other difficulty that we have to be clear about is that there are minorities in the former Baltic states who do not have official status, so they do not have passports and so on. There is also the situation that Women's Aid discussed with us about people from China or the subcontinent who are trafficked.

Mr A Maginness: Stateless people.

Mr Humphrey: Yes. Which state pays the compensation? That could well draw those people into long and tedious legal battles. We need to get European Union countries to sign up to these things.

Mr A Maginness: In conclusion, Chair, all I would say is that we need to look at that issue and satisfy ourselves that we can compensate people properly and adequately in such circumstances. I am not certain that the scheme as it is presently arranged is in a position to do that properly, even with guidance.

The Chairperson: We will look at whether there is way in which we could do something to give this place a bit more control over that. I certainly have no difficulty with the amendments that the Department has brought forward because, unlike what was previously drafted, its amendment specifically references victims of human trafficking. It states that guidance shall be issued as to:

"the grounds on which compensation may be awarded under that Order".

I am not sure whether there can be some recourse to the Assembly in the guidance process so that we have a role in looking at the grounds on which compensation could be awarded. We will see whether we can do something by way of an amendment to facilitate that.

Mr A Maginness: Thank you, Chair.

The Chairperson: Clause 12 deals with the child trafficking guardian. There is one amendment from Lord Morrow. Are members content with the clause, as amended? We will chase up the Health Department, which indicated that it may have some issues with it. Subject to anything that the Health Department may say, I take it that the Committee is content with the clause, as amended by Lord Morrow's proposal.

Clause 13 deals with the protection of victims in criminal investigations. Some technical amendments have been brought forward by Lord Morrow, and the Department is to come back to the Committee with some further amendments. Are members content with the clause as proposed, with the current amendments? We will await the Department's further amendments. Are members content?

Members indicated assent.

The Chairperson: Clause 14 deals with amendments to the Criminal Evidence (Northern Ireland) Order 1999. There is a technical amendment from Lord Morrow. Are members content with clause 14, as amended?

Members indicated assent.

The Chairperson: Clause 15 deals with prevention. The Department has proposed an amendment. Lord Morrow touched on this issue, and they are pretty close to getting agreement on it. I think that we are content with the direction of travel, but we will finalise the position next week, if members are content with that approach.

Members indicated assent.

The Chairperson: Clause 16 deals with the national rapporteur. We heard what Lord Morrow said about the anti-slavery commissioner. He is hoping to get more clarity on that issue. I am content to wait for a final outcome on that. If members have no comments on the national rapporteur clause, we will wait until next week.

Clause 17 deals with general interpretation. Lord Morrow has drafted consequential amendments. The Department has also proposed an amendment. Are members content with clause 17, as amended?

Members indicated assent.

The Chairperson: Clause 18 refers to orders. Again, amendments have been proposed by Lord Morrow. The Department has suggested some further amendments. Are members content with clause 18, as amended by Lord Morrow, and that we await further amendments from the Department?

Members indicated assent.

The Chairperson: Clause 19 deals with the short title and commencement. In our discussion with the Attorney General, an issue came up around the powers of commencement. He indicated that we may wish to consider that the commencement be immediate upon receipt of Royal Assent, although Lord Morrow has not touched on that or brought forward an amendment. I will seek to bring forward an amendment so that, if the Bill is passed, commencement would be immediate. Are members content with that and that we look at the wording of amendments drafted in respect of that next week?

Members indicated assent.

The Chairperson: We will pull together a summary of what we have discussed and agreed and what we need to come back to next week.

Ms McCorley: Chair, Lord Morrow said earlier that he was not invited to a meeting that was part of the Swedish trip. Was that an oversight?

The Chairperson: Let me take responsibility for that. Lord Morrow indicated that he wanted to come along to the Committee meeting when we heard evidence from the police. I indicated that I did not

have a problem with that. He did not become aware that there was a secondary aspect until we were travelling to it. I made him aware of what he initially indicated he wanted to be present for. That is how it happened. It was not deliberate or intentional not to invite him to come to that particular session.

Ms McCorley: So he chose not to go when he was made aware of it.

The Chairperson: We were travelling to it; it was spontaneous. I made him aware that we had another meeting to do with the Committee. There is nothing more to it. There is no conspiracy, if you are after one.

Ms McCorley: It was his loss, I think.

The Chairperson: It was a Committee visit, and Lord Morrow made his own way there by way of expense and so on. He was not part of the official Committee delegation. He wanted to hear the evidence that we were hearing from the government authorities. The Committee agreed to go to the second meeting, and I did not make Lord Morrow aware of that until there was very short notice.