



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

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

27 March 2014

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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 Seán Lynch
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

The Chairperson: We will move on to the next item of business, which is the consideration of the clauses of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, which we commenced last week. Members were content with a number of the clauses that we went through, and more discussion was to be sought on some others. I note that some of the members who were not here last week are not here again this week to shed some light on their thinking, so I do not know how beneficial this will be.

There has been some movement on those clauses that we put back to deal with today. One of those is clause 4, which is titled "Minimum sentence for human trafficking and slavery offences". The issue with that was on the wording of the amendment that Lord Morrow sought to table. The Attorney General suggested that the term "immediate" should be used, but Lord Morrow had an alternative wording. Some members indicated their views about the general principle behind clause 4, but, from my party's perspective, Lord Morrow's proposed amendment to that clause is the one that we would go with, as opposed to the Attorney General's.

Ms McCorley: I am not completely clear. What is the difference? What difference would the term "immediate" make?

The Chairperson: Both are trying to achieve the same objective about what would happen at sentencing, that is, there would not just be a suspended sentence. Lord Morrow's wording and the Attorney General's wording tried to deal with the same issue, but we are advised that Lord Morrow's wording is the better version, as opposed to the Attorney General's.

Ms McCorley: So, does the Attorney General's proposed amendment rule out a suspended sentence?

The Chairperson: They both do, but we were advised that, technically, Lord Morrow's amendment is better worded to achieve that objective.

The Committee Clerk: I think that some members last week were not sure whether they were both doing exactly the same thing. The intent is the same, but they are just worded differently.

Ms McCorley: Yes, it was only when I was reading over it myself that I could not remember what the distinction was.

The Committee Clerk: I think that that was all. Members were not sure whether there was any distinction or whether they were trying to do the same thing but just with different wording. We have clarified that they would both do the same thing, but Lord Morrow's wording refers back to the legislation, so it is a better form of words.

The Chairperson: Certainly, from a DUP point of view, we will support Lord Morrow's version of the amendment to that clause. We will have to come back to that.

There is still an issue with the wording of clause 6 beyond whether you agree with the principle behind it. The issue is between the use of the words "person" or "prostitute". In reaching my own view about what wording we should use, I am still not satisfied with the issue that the Attorney General raised. We will have to seek some further advice on that.

Beyond parties' outstanding views on the principles, did you have any views on the wording of that clause? If clause 6 were passed, should it refer to "person" or to "prostitute"?

Ms McCorley: I was thinking about what the Attorney General said, and he seemed to be making the case that it would be easier to convict if the term "prostitute" was used, as it would present an additional burden of proof.

The Chairperson: That is certainly my reading of what he said, which was that, to make it a more prosecutorial piece of legislation, the term "person" was his preferred wording. Lord Morrow indicated that he was going with the word "prostitute". We have contacted him about this, and we are trying to get a bit more advice from him about his view, given what the Attorney General advised him subsequent to last week's meeting. We have a copy of that. Hopefully, we can get a bit more clarity on Lord Morrow's thinking on that before I ask the Committee formally what the view is.

Mr Wells: I think that it is somewhat easier to prove that someone is a person as opposed to a prostitute. What he is saying here is that you are putting up another hurdle. It will be interesting to hear Lord Morrow's view on that.

The Chairperson: The Public Prosecution Service (PPS) seemed to indicate in some of its evidence to the Committee that there may be an issue with the "person" or "prostitute" terminology, and Lord Morrow's amendment seemed to be based on that. The Attorney General has given a very different opinion. We will come back to that issue.

Ms McCorley: Chair, an issue was raised last week about whether an equality impact assessment (EQIA) had been considered for clause 6. There was a response, but I am not sure how clear it was. Can we write to Lord Morrow to get a clearer answer on whether he would consider doing an EQIA?

The Chairperson: I am happy for us as a Committee to contact him to ask about that. My take on his evidence was that he had not carried out an EQIA.

Ms McCorley: Was he not required to?

The Chairperson: He was not required to. I think that Dr Boucher indicated that he did not feel that the clause required one, because it is trying to help vulnerable people. However, I am happy to get clarity on the EQIA thinking.

Ms McCorley: It just might be useful to have that.

The Chairperson: Clause 8, which deals with the non-prosecution of victims of trafficking in human beings, was the other clause for consideration. We noted that that clause may not be necessary, if the assurances that the PPS gave on prosecutorial guidance that deals with human trafficking cases address Lord Morrow's concerns about the non-prosecution of victims of trafficking in human beings.

Lord Morrow also indicated that he is minded to await the recommendations of the Joint Committee in Westminster, which, as part of its scrutiny of the draft Modern Slavery Bill, is considering how non-prosecution of victims should be dealt with.

Obviously, we are waiting on Lord Morrow to identify whether he will move the clause in the light of the other information. Next week — or when we look at this — we have to either agree or disagree with the principle behind clause 8, although we can put in a caveat that that position is subject to what is happening elsewhere. The DUP agrees with the principle behind clause 8, but, as Lord Morrow indicated, we are awaiting the outcome of what is happening.

The principles behind clause 8 are in paragraph 20 of the letter that Lord Morrow sent in at the time. Will members look at those principles for next week, because we need to either agree or disagree with the clause? We can affirm that we agree with the principle behind it.

The Committee agreed to a further consideration of clause 9 on the wording of the Department of Justice's proposed amendments that had been received. The Department is continuing to engage with Lord Morrow and the Office of the Legislative Counsel (OLC) on the wording of further proposed amendments. However, it is not yet in a position to forward them to the Committee. In the absence of the draft amendments, the Committee may wish to agree that it is content with clause 9, subject to DOJ preparing draft amendments to clarify the definition of human trafficking victims in relation to the distinct roles and responsibilities of DOJ and the Department of Health. This is about dealing with how the Department of Justice and Department of Health decide which is ultimately responsible for dealing with it. Certainly, I am content that we should agree clause 9, subject to the amendments that are to be brought by the Department, which will give clarity on which Department is ultimately responsible. Are members content that we will agree clause 9, subject to the proposed amendments?

Members indicated assent.

The Chairperson: Clause 10 relates to the requirements for assistance and support. The Department is currently liaising with officials in the Department of Health with a view to agreeing a comprehensive set of instructions for amendments to the wording of clause 10 to include setting out the respective functions and responsibilities of each Department. However, officials have indicated that it is unlikely that the amendments will be available for consideration before the end of the Committee Stage. The Committee agreed to write to the Department of Justice, the Department of Education, the Department of Health and the Department for Social Development, enclosing a copy of the Women's Aid proposal for a focused support system, to request their views on the proposed new clause 10A, which was subject to conversation at the previous Committee meeting. The amendments to clause 10, as it is currently worded — excluding proposed new clause 10A — are again about dealing with which Department will be responsible for providing the support. That is to be worked out between two Departments.

Clause 10A is Lord Morrow's new proposal, and the Committee will ultimately not need to decide on it, because it is a new clause. The Committee has only to agree or disagree on the existing clauses and the amendments to them. This is a new clause, so, from a technical point of view, we do not formally need to agree or disagree on it.

The Committee Clerk: We can reflect our view of it in the Committee's report. We can state that Lord Morrow has brought forward the proposal and that the Committee has asked the various Departments for more information to assist in its consideration. However, we do not have to put the Question formally, because the clause is not in the Bill at the minute. Members can indicate their views on it and that they are getting further information to assist their assessment of it.

Ms McCorley: OK.

The Chairperson: I am going to assume that members are content with the clause 10 that is in the Bill, subject, again, to those amendments, which will decipher whether the Department of Health or the Department of Justice is responsible. Members will be able to indicate whether they are supportive of the proposed new clause 10A, but, ultimately, we do not need to give a formal opinion on it.

Clause 11 relates to compensation for victims of trafficking. We agreed to consider this clause further. Concern was expressed that the guidance may not ensure that adequate compensation can be paid. We agreed to seek advice on the options that are available to provide the Assembly with a degree of control over the content of the guidance. So, some advice has been sought. We could use an

affirmative resolution procedure to approve the guidance, we could use the negative resolution procedure again to deal with the advice, or we could ask the Minister to give us a commitment, either in the House or in writing, that the Committee will be fully consulted before the guidance is determined and that he will take full account of our deliberations. So, those are the three options.

Mr Maginness has raised this as an issue that he wants to pursue. Certainly, I want to make sure that the Committee's views will be taken into account in drawing up the compensation guidance. The Committee has been advised that the legislation on the whole issue of compensation will be reviewed, and that will be an area that we can consider. The issue is whether we want to use this legislative tool or to seek a formal commitment from the Minister in the House that he will properly consult with the Committee and take our views fully into account when the guidance is determined.

Affirmative and negative resolution procedures would be unusual for determining guidance because the compensation order puts into legislation the areas that deal with compensation. The guidance subsequently flows from it through the relevant Department. That is the case for all forms of compensation that the legislation covers. So, it would be unusual for us to legislate for a regulation for guidance. It is not to say that we cannot do it, but it would be unusual. I am happy to wait for Mr Maginness to give a view on that, but he will not be here today. I want to at least get the Minister's commitment in the House that he will take the Committee's views on board when dealing with the guidance.

Clause 12 is on the child trafficking guardian. The Committee agreed that it would be content with clause 12 as amended, subject to the Department of Health's views. The Department has indicated that it does not intend to propose any amendments to clause 12. I assume that the Committee will be content with clause 12, as amended by Lord Morrow's proposed amendment.

Members indicated assent.

The Chairperson: Clause 15 is on prevention. The Committee agreed to give further consideration to a proposed amendment to clause 15 when the Department provided the final wording of that amendment. The Department is continuing to engage with Lord Morrow and the OLC on the wording of the final amendment. However, it is not yet in a position to forward that to the Committee for consideration. We had indicative wording of the amendment to clause 15 and are waiting for the final exact wording. I am content with the indicative wording. Is the Committee content with clause 15, subject to the final exact detail of the wording of the proposed amendment?

Members indicated assent.

The Chairperson: Clause 16 is on the Northern Ireland rapporteur. There is a proposal for the remit of the anti-slavery commissioner, which the draft Modern Slavery Bill would create, to be extended to Northern Ireland. Again, Lord Morrow touched on that, but, at this stage, his Bill still includes clause 16. We can formally agree the clause when we do that, or we can indicate that we do not agree with the clause, subject to the deliberations of an anti-slavery commissioner. If there is failure to have an anti-slavery commissioner, you would need to revisit that if you want a Northern Ireland rapporteur to do that. That is the question that people need to consider. I am content with the principle of a rapporteur, but if we have an anti-slavery commissioner doing the same work, and if Northern Ireland is to be included in that, it seems that we could take that approach. However, we still need to formally agree or disagree the clause.

Ms McCorley: I would lean towards a rapporteur rather than the other option. When do we need to formally decide? Will that have to happen next week?

The Chairperson: We have to formally agree or disagree all the clauses, and I suspect that the issue of the anti-slavery commissioner will not be dealt with in time for us to do that. We will need to take a view on that when we are agreeing or not agreeing the clause.

Clause 19 is the short title and commencement. We agreed to request a draft amendment to clause 19 to make provision for the Bill to commence on Royal Assent, giving further consideration to the matter when the wording of the amendment is available. The Bill Office has advised that, at present, the provisions of the Act come into force by order of the Department. If the Committee wishes to commence the whole Act on Royal Assent, that can be achieved by an amendment to remove clause 19(2), which would remove the part of the Bill relating to commencement. Under the Interpretation Act (Northern Ireland) 1954, if a Bill is silent on commencement, its provisions come into force upon Royal

Assent. Alternatively, we could build in some flexibility to allow anyone involved in the implementation of the Bill to have some time after the Bill becomes law. The commencement could be set with a very short time frame in mind.

As things are currently worded, the Bill will come into force only when the Department, by order, does it. I am certainly not content for the Department to hold that power, but I am prepared to look at having some flexibility, because, obviously, if the proposed new clause 10A that Lord Morrow wants to introduce is passed, some Departments may indicate that they need some time to develop those measures and to get them done. Work could start on a lot of that, but, nevertheless, giving effect to the Bill on immediate receipt of Royal Assent may create some difficulty for some Departments being prepared for its implementation.

We can give some thought to setting a time frame for when the Bill's coming into effect. I certainly want to see whether we can take that forward. Whether the Bill takes effect two months or three months after Royal Assent, it will hopefully give enough time for Departments to be prepared for its implementation.

Are members content that we will set a time frame, as opposed to seeking immediate commencement on Royal Assent?

Mr Wells: I agree, Mr Chairman. The Department has been less than enthusiastic and has had to be dragged the whole way along on the Bill. So, we do not want to give it the power to put this on the long finger.

The Chairperson: We will think about the time frame and about whether it should be two months or three months. We will finalise that when we do the formal consideration of the Bill.

I am conscious that Mr Elliott has not been here for been here for either session. We had planned to do the formal clause-by-clause consideration of the Bill next Thursday, and we have a very tight time frame to get the Bill put through.

I suggest that we try to do the formal clause-by-clause consideration of those clauses that have been dealt with. We are still seeking clarity on a number of the clauses, but I propose that, next Thursday, we do the formal clause-by-clause consideration of those clauses that the Committee's view has been settled on and that are not controversial. We will then try to meet on the following Tuesday during the break in Assembly proceedings between 12.30 pm and 2.00 pm to do the formal clause-by-clause consideration of those clauses that we have been unable to deal with on Thursday.

Next Thursday, we will also have some more discussion about some of the clauses for which we are awaiting amendments. Hopefully, that might give the Department an opportunity to bring forward some of the amendments that it is working on. We will take that approach. I know that that will make it difficult for the Committee support staff to pull it together, because the following Thursday we will need to agree the final report to meet the deadline for publication to the Assembly that the rules require us to achieve. We will consider the draft report at the start of the meeting. If there are any changes to that report, we will come back to it later in that meeting and agree the final report. That will keep things interesting, that's for sure. Are members happy enough with that approach?

Members indicated assent.