



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

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

3 April 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 Stewart Dickson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Jim Wells

The Chairperson: I will take members through the Bill clause by clause. We have had two weeks in which we have had some discussions about it. This is the third week, and we will put most of the clauses formally to members, then, on Tuesday, we will put the remaining clauses formally to members. Hopefully, the papers have highlighted in advance of this meeting the ones that we need to formally agree or disagree. I will take you through each clause, and we can have discussions on them.

Mr A Maginness: What document are we working from?

The Chairperson: There is a tabled pack, commencing at page 13. You will see the Clerk's memo on page 13, and page 15 starts with clause 1. That is what I will be going through.

Mr A Maginness: Thank you, Chair.

Clause 1 (Definition of human trafficking and slavery offences)

The Chairperson: The Committee agreed that it was content with clause 1 as drafted at this stage. However, depending on the results of the Department of Justice's consultation on its proposals to simplify and consolidate the legislative framework around human trafficking and slavery offences, some changes may be required. They will all be very technical in nature; therefore, we agreed that we were content to go with clause 1.

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

Mr Elliott: Chair, can I just make a point at the start? I have not been here for the last two weeks — my apologies for that; I had apologies in for both. I am happy in principle to accept the Bill as it is going through. However, we reserve our judgement to make amendments, as any party does, at a

later stage or to oppose something. There are a couple of clauses that I have specific issues with, and I have raised some of them here in Committee, but that will be for a later stage. I am content at this stage.

Mr A Maginness: On a point of order, Chair. When we express that we are content with clauses, we are not saying in absolute terms that we agree with every dot and comma in the clause.

The Chairperson: No. I think that is standard for Committee consideration. From a Committee point of view, at this stage of a Bill, we have to agree or disagree with each clause, but we can also put commentary around the clause. Then, as Chair of the Committee, I can reflect where there has been discussion and where members have some issues. It would be useful if members would indicate — some have done so already — where their current thinking is on the clauses. That will obviously go into the Committee report, but that does not preclude parties putting down further amendments. Indeed, the Department and Lord Morrow have not been able to provide us with the final amendments to the Bill, so they will have to do it as well.

Clause 2 (Consent irrelevant for victim of human trafficking or slavery offences)

The Chairperson: The Committee agreed that it was content with clause 2 as amended by Lord Morrow to make it clear that consent is irrelevant. Members also noted that a consequential amendment may be needed to the clause if proposed clause 2(2) of the Modern Slavery Bill is enacted in a similar way in Northern Ireland following the Department of Justice's consultation. The Question will be put on the clause as amended by Lord Morrow, and the text of the report will reflect the context of the Committee's position.

Is the Committee content with Lord Morrow's proposed amendment?

Members indicated assent.

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

Clause 3 (Aggravating factors)

The Chairperson: The Committee has agreed that it is content with clause 3 as amended by Lord Morrow and the Department of Justice. The Committee noted that the Department was still looking at the definition of "vulnerable adult". The Department is seeking to agree two further amendments with Lord Morrow and has indicated that it should be able to give us those for Tuesday's meeting. I know that members had indicated that we were content with the direction of travel, but, for the sake of completeness, if we can get the exact wording of the amendments, that is better. So, clause 3 will be formally put at Tuesday's meeting.

Clause 4 (Minimum sentence for human trafficking and slavery offences)

The Chairperson: Last week, the Committee considered advice provided by the Bill Office on the amendments proposed to clause 4(2) by Lord Morrow and the Attorney General. That indicated that the amendments have the same objective, which is to avoid a suspended sentence being imposed under clause 4. In the Committee's deliberations, we erred towards Lord Morrow's amendment, which is what the Bill Office indicated was the most appropriate to use. The Question on clause 4 will be formally put on Tuesday. Previously, some members had indicated some concern about the general concept of a minimum sentence in legislation. Other members indicated that they did not have a difficulty with that, and some members indicated that they felt that the exceptionality element to the amendment meant that it was not a minimum sentence because there was an exceptional clause to it. At the moment, that has been the general conversation around this clause. I am happy for some members to comment on it, and we will formally deal with it on Tuesday.

Mr Elliott: Obviously, the Department raised the issue of the minimum sentence. Are there ongoing discussions with the Department and Lord Morrow on the clause? I am not sure whether you highlighted that? Are those discussions exhausted?

The Chairperson: My understanding is that those are exhausted and that the Department will oppose clause 4 because of the view around the minimum sentence concept. Lord Morrow indicated that he had had discussions with the Attorney General and that the exceptional element meant that it was not

a blanket minimum sentence and there could be exceptionality to it. Therefore, Lord Morrow has put it forward that this is not a blanket minimum sentence, and that has been the discussion.

Mr McCartney: I think that you have summed it up. Our position is in and around the concept of minimum sentences, but we are willing to listen to how people explain exceptionality, where the onus lies and what the latitude is for a presiding judge.

Mr A Maginness: To reiterate what I have said on previous occasions, I believe that there should be judicial discretion. This narrows the judicial discretion to some extent but does not exclude it with the exceptionality clause.

The Chairperson: OK. We will put the Question on the clause formally on Tuesday.

Mr Elliott: Chair, can I ask for clarification?

The Chairperson: Yes.

Mr Elliott: The print in red in the papers: what is that?

The Chairperson: The papers highlight the clause as originally conceived in black, and the amendments are in red.

Mr Elliott: Those could be the Department's amendments, the Committee's amendments or Lord Morrow's amendments.

The Committee Clerk: It should say on it.

The Chairperson: If you look at, for example, clause 3, which we were discussing and is on page 23, you will see at the bottom, immediately after the writing in red, "Clause 3 - Aggravating factors" and "Lord Morrow's proposed amendments". That gives you the exact wording, which is then translated above into the Bill. You have the line going through what was originally there.

Mr Dickson: Chair, are those the accepted changes?

The Committee Clerk: No.

The Chairperson: They are the proposed amendments.

Mr Elliott: Sorry, Chair, I follow. That gives clarification. Thanks.

The Committee Clerk: It is just trying to let you see how the new clause would look.

Mr Dickson: I see.

Clause 5 (Amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004)

The Chairperson: The Committee agreed that it was content with clause 5 as drafted, recognising that, subject to the results of the Department of Justice's consultation on a proposal for a new consolidated offence of human trafficking, which would result in the repeal of section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, clause 5 could become redundant. Members also noted that, if clause 5 remains, technical amendments would be necessary. So, the Committee previously agreed that it was content with this.

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

Clause 6 (Paying for sexual services of a person)

The Chairperson: As agreed at last week's meeting, clarification was sought from Lord Morrow on his thinking about his amendments to change the word "person" to "prostitute" and whether that remains his position in light of the Attorney General's letter, which indicated that, in his view, using the word

"prostitute" goes further than is necessary to limit the scope of clause 6 and will create a hurdle to prosecution that could be avoided. Clarification was also sought from Lord Morrow on whether he will carry out an equality impact assessment on the Bill.

We await a formal response from Lord Morrow on that. I had some informal conversations with him, and he has indicated that he has engaged with the Attorney General and is moving towards leaving it as "person". However, he has not reached a final view. I hope that, by Tuesday, we will be clear on the "person" or "prostitute" argument and that the formal Question can be put.

The current position of the parties that I am aware of is as follows: my party indicated its support for clause 6, and we have raised the issue of the use of "person" or "prostitute" and are still trying to bottom that out; Mr Dickson indicated that his party had not yet reached a definitive view on clause 6; Mr Maginness indicated that his party was content to support it; and Mr McCartney had indicated that Sinn Féin had not reached a definitive view on it. That is my understanding of where we are at. Is anyone able to elaborate at this point? Do anyone wish to elaborate?

Mr A Maginness: The PPS gave evidence to the Committee. I have not checked the transcript of their evidence, but I thought that they supported the idea of using the term "prostitute" rather than "person". I think that that was their position.

The Chairperson: That was why Lord Morrow proposed the amendments. My understanding from speaking to Lord Morrow is that the amendments were proposed partly to try to deal with the unintended consequences of telephone conversations, webcams and things like that, which were not in the design of the clause but would be captured by it. The PPS raised that as a concern. Lord Morrow is trying to see whether keeping the word "person" but amending the clause as the Attorney General suggested would work. It would mean that the clause was focused only on the real reason behind it and would not capture lap dancing, telephone services and those aspects. Hopefully, on Tuesday, we will be clearer on the issue of the use of "person" or "prostitute", but we will have to formally consider it then.

Mr Elliott: I just want to say that we reserve our position on clause 6 at the moment. We will take a definitive decision in the near future.

The Chairperson: Then, on Tuesday I will put the formal Question on the matter.

Clause 7 (Requirements and resources for investigation or prosecution)

The Chairperson: The Committee agreed that it was content with clause 7 as amended by the Department of Justice to remove subsection (1) and cover training in clause 15, thus omitting unnecessary words in clause 7(2). Is the Committee content with the Department of Justice's proposed amendments?

Members indicated assent.

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

Clause 8 (Non prosecution of victims of trafficking in human beings)

The Chairperson: Clause 8 may not be necessary if assurances given by the PPS in relation to its prosecutorial guidance, which deals with human trafficking cases, address Lord Morrow's concern on the non-prosecution of victims of trafficking in human beings. Lord Morrow also indicated that he was awaiting recommendations from the Joint Committee in Westminster that is considering the question of how the non-prosecution of victims should be dealt with as part of its scrutiny of the draft Modern Slavery Bill.

We agreed to give further consideration to whether we support the principles underlying clause 8 as outlined by Lord Morrow in his letter. My sense of where the Committee was going with this was that, while disagreeing with the clause, it was supportive of the principles behind it. So, we would formally disagree with the clause but support the principles, which would allow us to withhold judgement pending the outcome of the work of the Joint Committee at Westminster. However, for the purposes of next Tuesday, we need to agree a position, but that was my sense of where we were going.

Mr Elliott: I have always had problems with clause 8; it has exercised my mind probably more than clause 6. I understand the reasoning and the sentiments behind it. Again, I can accept the principle; it is just the specifics that I do not agree with. There are probably mechanisms and ways to deal with that. I spoke to CARE on the matter, and they gave advice to Lord Morrow on it in some depth. CARE anticipates significant amendments to it or maybe its removal.

Mr A Maginness: The PPS had concerns about clause 8 but gave a reassurance, I thought, at the time, that the prosecutorial code would meet the ostensible objective of clause 8 as outlined by Lord Morrow, so I think that the necessity for the clause is probably in doubt. If Lord Morrow is reassured, this clause will not go forward.

The Chairperson: OK. We will prepare the formal Question on the basis of that position, which is that we can formally disagree with the clause but support the principles behind it, with a further caveat that it does not preclude anyone from doing something if they do not feel that the other avenues that Lord Morrow is awaiting bear fruit. For the purposes of next Tuesday, we will prepare a Question on that basis.

Clause 9 (Victim of trafficking in human beings)

The Chairperson: The Committee agreed that it is content with clause 9 as amended by Lord Morrow, subject to the Department of Justice's proposed amendments to clarify definitions of victims of human trafficking in relation to the distinct roles and responsibilities of the DOJ and the Department of Health in providing support to victims and potential victims of human trafficking. The definitions are connected to the proposed amendments to clause 10. The wording will not be available before the end of Committee Stage. Nevertheless, the Committee was of the view that the amendments were technical and was content to support the clause.

Is the Committee content with Lord Morrow's proposed amendments?

Members indicated assent.

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

Clause 10 (Requirements for assistance and support)

The Chairperson: The Committee has agreed that it is content with clause 10 subject to the Department of Justice and the Department of Health's proposed amendments, which, again, set out the respective functions and responsibilities of each Department in relation to the assistance and support to be provided to victims of human trafficking. Officials indicated that the wording of the amendments will not be available for consideration before the end of Committee Stage. That is the argument that was used for the previous clause. The amendments are technical, and the Committee had agreed that it was content with where it was with this clause.

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

Clause 11 (Compensation for victims of trafficking)

The Chairperson: Concern was expressed that the guidance proposed by the Department's amendment to clause 11 may not ensure that adequate compensation could be paid to victims of trafficking. The Committee agreed that it would consider options available to provide the Assembly with a degree of control over the content of the guidance. The Bill Office prepared draft amendments that include a regulation and guidance that would be subject to the affirmative or negative resolution procedure. However, it was highlighted that it is usual to see regulation-making powers or duties to issue guidance in legislation but not usually together.

An alternative option, which would not require an amendment to the Bill, is to seek a commitment from the Minister either in writing or on the Floor of the Assembly at Consideration Stage that the Department will consult the Committee on its draft guidance and take full account of its views. We discussed this briefly last week, and I indicated that I wanted to bring it back. Mr Maginness, I know that you raised this: do you want to comment before the Committee takes a final view on how it will handle this?

Mr A Maginness: I am not sure of the technical approach. However, it could well be that, at the end of the day, the Minister will state on the Floor of the Assembly that the Department will consult the Committee about the draft guidance. That might be a better way of doing it. There are so many obstacles in the compensation scheme that, no matter what way you do it procedurally, it might be difficult to get the desired result, which is actual compensation for the victims of trafficking. So long as there is a commitment on the part of the Department to try to resolve the issue, we should be content.

The Chairperson: OK; well, I am certainly content to push the Minister to give a commitment on the issue on the Floor of the Assembly. We will take it forward on that basis. Are Members content with that approach?

Members indicated assent.

The Chairperson: I will put the formal Question on clause 11 next Tuesday.

Clause 12 (Child trafficking guardian)

The Chairperson: The Committee agreed that it was content with clause 12 as amended by Lord Morrow. The Committee noted that the Department of Health had advised that it did not intend to bring forward any amendments to the clause. The Minister of Health has communicated with us. I have not had an opportunity to read that yet, so just give me a minute. It does not tell me a lot. The Minister of Health continues to liaise with Lord Morrow on this, but there does not seem to me to be any indication that it will be completed by Tuesday. On that basis, I will put the formal Question today.

Is the Committee content with Lord Morrow's proposed amendment?

Members indicated assent.

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

The Chairperson: If there are technical amendments from the Minister of Health, we will have to deal with them as they arise. However, as they are not here in time, we cannot deal with them.

Clause 13 (Protection of victims in criminal investigations)

The Chairperson: The Committee agreed that it was content with clause 13 as amended by Lord Morrow and the Department of Justice. We noted that the Department may need to bring forward a further technical amendment. The Department has now indicated that it does not plan to bring forward any further amendments.

Is the Committee content with Lord Morrow and the Department of Justice's proposed amendments?

Members indicated assent.

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

Clause 14 (Amendments to the Criminal Evidence (Northern Ireland) Order 1999)

The Chairperson: The Committee agreed that it was content with clause 14 as amended by Lord Morrow and notes that the results of the Department of Justice consultation may have a bearing on the clause.

Is the Committee content with Lord Morrow's proposed amendment?

Members indicated assent.

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

Clause 15 (Prevention)

The Chairperson: The Committee agreed that it was content with clause 15 subject to the final wording of the Department's proposed amendment. The Department provided an indicative draft of the wording of the amended clause and is seeking to agree the final wording with Lord Morrow and the Office of Legislative Counsel. They have indicated that they should have that with us for Tuesday's meeting. I know that we are agreeing clause 15, but, for the sake of completeness, it would be more beneficial to have the exact wording. Hopefully that will be here on Tuesday, and I will then put the Question on that clause formally.

Clause 16 (Northern Ireland Rapporteur)

The Chairperson: The Committee noted that the remit of the anti-slavery commissioner that would be created by the draft Modern Slavery Bill could be extended to Northern Ireland. Members agreed to consider whether they wanted to indicate that they supported clause 16 but wished to consider the position further when there is clarity on the position regarding the anti-slavery commissioner or, alternatively, indicate that they did not support clause 16 at this time. We could consider the matter further when there is clarity on the position regarding the anti-slavery commissioner. Some of us may be content to agree the inclusion of that but, if the anti-slavery commissioner will do this work, it will be likely that we would not see the need for duplication.

Some members indicated that they supported a Northern Ireland rapporteur being created. Lord Morrow indicated that he wanted to see what the anti-slavery commissioner's role would be, and he is in discussions with those who are responsible for that to see if it will happen. However, for Tuesday, we need to decide how we will deal with it. My party will agree to the clause, subject to what happens with the anti-slavery commissioner's position. We would withhold a definitive position if that were to develop. Are members content that a Question to agree it will be put with the commentary that members' views are subject to how the anti-slavery commissioner role is handled?

Members indicated assent.

Clause 17 (General interpretation)

The Chairperson: We agreed that we are content with clause 17 as amended by the Department of Justice. Is the Committee content with the Department of Justice's proposed amendment?

Members indicated assent.

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

Clause 18 (Orders)

The Chairperson: We agreed that we were content with clause 18 as amended by Lord Morrow. We noted that the Department was working on minor technical amendments that it hoped to forward to the Committee before the end of the Committee Stage. The Department has indicated that the further amendments are subject to clause 16 falling from the Bill and, as the position will not be settled before the end of Committee Stage, the wording of any necessary amendments is not available.

Is the Committee content with Lord Morrow's proposed amendment?

Members indicated assent.

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

Clause 19 (Short title and commencement)

The Chairperson: We considered the draft amendments prepared by the Bill Office to make provision for the Bill to commence on Royal Assent or, alternatively, a short time after Royal Assent, to build in some flexibility for the Departments and other organisations that would be involved in the implementation of the Bill. Members indicated a preference to set a time frame for commencement of the Bill. We agreed to give further consideration to whether that should be two months or three

months. I am content to go with three months, if members are content that that is the exact wording of the amendment. If members are content, we will put that Question formally on Tuesday.

That concludes that element of the Bill. The remaining Questions will be put formally on Tuesday. Thank you for your forbearance.