Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice Bill: Department of Justice Briefing

18 June 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 Patsy McGlone
Mr Jim Wells

Witnesses:

Mr Tom Clarke	AccessNI
Ms Maura Campbell	Department of Justice
Mr Chris Matthews	Department of Justice
Ms Amanda Patterson	Department of Justice

The Chairperson: I welcome Maura Campbell, deputy director in the criminal justice development division; Chris Matthews, Bill manager; and Amanda Patterson and Tom Clarke from the Department and Access NI. As usual, this session will be recorded by Hansard and then published in due course. Maura, I hand over to you to take us through the Bill.

Ms Maura Campbell (Department of Justice): Thank you very much, Chairman. As you said, we are here to take you through the key principles of the Justice Bill, which was introduced in the Assembly on Monday. We are very pleased to have got to this point, which marks an important new stage in a large and ambitious programme of work to create a faster, fairer justice system.

The main purpose of the Bill is to reshape the system to improve victims' experiences and improve the general effectiveness of the justice process. We aim to do that by improving services and support for victims and witnesses, speeding up criminal case progression, enhancing public protection and safeguarding arrangements, and streamlining the criminal records disclosure regime.

As you can see, this is a substantial Bill which runs to 92 clauses, is split into nine parts and has six schedules. I will give a very short overview of each section, and we can provide further detail, as required, during questions.

Part 1 will create a single jurisdiction for County Courts and Magistrates' Courts. That will allow us to be more flexible in how court business is administered and distributed, and it should assist our efforts to speed up justice and help meet the needs of victims by, for example, providing for the use of special measures. Part 2 will enable us to reform the committal process. That was identified by victims' groups as a key area for change to avoid victims having to undergo the ordeal of giving evidence twice. This section should also speed up the process by allowing for the direct transfer of certain cases, starting with those where there is an early guilty plea and also murder and manslaughter cases, with our ultimate aim being to remove committal in its entirety.

Part 3 will create the new disposal of prosecutorial fine, which will help us to divert appropriate business from court and provide a more proportionate response to offending. These new fines will be used for low-level summary offences by non-habitual offenders who admit responsibility in cases that would currently go to court and, most likely, result in a fine in any event.

Part 4 responds to the Committee's call for a statutory victim and witness charter, which was a key recommendation in the report of your inquiry into services for victims and witnesses, which was published in June 2012. We intend to bring forward separate charters for victims and witnesses, and the Bill sets out what they must contain. The detail of the charters will be in the charter documents themselves, which will be secondary legislation. We recently shared with you the draft victim charter, which we have now issued for public consultation.

This part of the Bill also gives a legal entitlement to victims to make a statement about the impact the crime has had on them. You might recall that we introduced new administrative arrangements for personal statements by victims in December, and our intention is to build on those by giving victims legal rights.

Part 5 of the Bill will improve the arrangements for criminal record disclosures. Most notably, it provides for the introduction of portable disclosures, as recommended by Mrs Sunita Mason in her part 1 report on the criminal records regime. It also makes the disclosure regime more efficient and transparent.

Part 6 will allow us to expand the use of live links, which will speed up criminal proceedings and let us make more efficient use of capacity within the system.

Part 7 will introduce violent offences prevention orders (VOPOs), which are new civil orders, similar to the existing sexual offences prevention orders. They are intended to help protect the public from the risk of serious violent harm. Having extended the scope of the public protection arrangements to encompass violent offenders as well as sex offenders, we want to equip those who are tasked with protecting the public with the same range of preventative measures.

Part 8 encompasses a range of miscellaneous reforms to improve the operation of the justice system. First, it abolishes the upper age limit for jury service and replaces it with an automatic right of excusal for those over 70. It also contains three further new measures to speed up the justice system. The first of those is in relation to encouraging earlier guilty pleas and requires the court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity. It also places a duty on defence solicitors to advise their clients about the benefits of an early guilty plea. You might recall that that came about from a suggestion made by the Committee during an evidence session on our consultation exercise into these provisions.

The second speeding-up-justice measure relates to the introduction of statutory case management of criminal cases. Again, that was another issue highlighted in your inquiry report. These provisions will allow the Department to build on existing practice directions from the Lord Chief Justice by imposing duties through regulation on the prosecution, the defence and the court. That should help ensure that cases come to court in a state of readiness and allow us to avoid unnecessary adjournments, which are another source of frustration for victims of crime.

Thirdly, we are removing the requirement for lay magistrates to sign summonses. Public prosecutors will do that instead. That should also reduce the time taken from the decision to prosecute to the first appearance in court.

Part 8 also includes a power to allow defence solicitors to apply to the court to gain access to premises. It extends the powers of court security officers to court grounds and amends the aims of the youth justice system to place the requirement to meet the best interests of the child on a clear statutory footing. Finally, it contains a number of other minor and consequential provisions.

We thought that it might also be useful today to highlight some amendments that we may wish to bring forward during the passage of the Bill. The first of these is to allow the exchange of information between Access NI and the Disclosure and Barring Service in GB. This was part of the policy intent of the criminal records provisions that are already in the Bill. The Minister has given a commitment to apply a fix to a problem that was identified by colleagues after the Bill had been finalised for introduction. In addition, as advised by the Attorney General and accepted by the Minister, we propose to introduce a mechanism to enable those whose convictions or diversionary disposals have not been filtered from Access NI checks to ask for a review of such decisions.

The Attorney General also raised a point with us on the provisions relating to defence access to premises. He has suggested amending the threshold for granting an order, so that it would be made only where access to premises is necessary to ensure a defendant's right to a fair trial. We see merit in this suggestion and have agreed to consider it.

We also hope to bring forward an amendment to provide for the sharing of victim information for the purposes of offering victims access to services. You may recall that this was highlighted as an issue in your inquiry report and that we agreed to look at the scope for moving from opt-out to opt-in arrangements for certain victim support services.

On VOPOs, we would like to mention a couple of points that we may wish to raise with you during Committee Stage. First, we may wish to look at minor amendments to cover possible European Convention on Human Rights (ECHR) compliance issues on the retention and destruction of information collected by the police under the current draft provisions. There is also a similar point on entry and search provisions. Secondly, we are aware of concerns raised by organisations representing children on the availability of the order in respect of offences committed by under-18s. We are likely to want to take the Committee's mind on that point also. Given the size of the Bill, of course, there may well be other potential amendments that we will wish to consider with you, including as a result of your scrutiny of the Bill.

In conclusion, as you will have seen, the content of the Bill overall has been strongly influenced by the Committee, especially in relation to the provisions that respond to your inquiry report on victims' services. The provisions have also been shaped by extensive engagement with stakeholder organisations through a series of consultation exercises, and you will have received a number of briefings on the core policy content on various occasions. We commend the Bill for your consideration and we are happy, as I said earlier, to elaborate on any particular areas of interest.

The Chairperson: Maura, thank you very much. We are certainly pleased to be starting the process, and we look forward to the next six or seven months of detailed work. It strikes me that you plan to bring a considerable number of departmental amendments. There is no problem with that, although it would usually be for members to bring amendments as opposed to the Department. Once a Bill is on its journey, the Department would usually go through the Executive to put amendments in a Bill. Why were the amendments that you talk about the Department wanting to bring not put into the Bill in the first instance?

Ms M Campbell: There are a number of reasons for it. In some cases, it is just that new issues have arisen, and given that we have the legislative vehicle available and that they are issues that fit with the theme of the Bill. For instance, the sharing of victim information is something that the Committee indicated was desirable and the Department thinks that if there is an opportunity to do that, it would like to. We did not have the detail of that worked through in advance of the Bill being introduced, but we thought that we could try to pick it up at Consideration Stage. The alternative is to wait for the next legislative vehicle, which will be the Fines and Enforcement Bill. However, that is also going to be a substantial Bill, so, as a Department, we need to take a view on whether we do things now or wait until later.

A couple of the points, as well, were issues that, when we were seeking approval for introduction, the Attorney General had raised with us. Having considered those, we thought that we should indicate now that we were minded to accept those.

The Chairperson: The Attorney General raised an issue with the Committee during the Legal Aid and Coroners' Courts Bill. Given how broad this Bill is, I am going to assume that this one would be within his scope to bring that amendment again, which would allow us to do the detailed scrutiny work that the Committee felt it could not do in that short time frame. So that was one aspect, and he mentioned rights of audience as well. I know that there are a number of amendments that he has been flagging

up to the Committee that he would be keen on. From a Committee perspective, we will obviously go out to public consultation. If you are minded that a range of amendments are going to come forward, it would be helpful if we were able to put as much information in that as possible. If we consulted solely on the Bill, we would not be consulting on the amendments — you would just bring them forward at Consideration Stage. It would be useful if we had a little bit more information about the nature of the amendments so that, at least, we can invite some initial commentary from interested stakeholders in the public during our consultation process.

Ms M Campbell: Certainly, we would be happy to write with more detail on those amendments. We thought it best, since we had the opportunity today, to at least flag up that there were some issues that we were considering, not all of which will necessarily come forward by way of amendment. We thought that if there were a likelihood that it would, we should indicate that now. Certainly, we can write with more detail on that. It would provide a good opportunity to test views on them as part of the consultation. There may have been consultation on some of them already; for instance, on the information-sharing provisions, which were included in the consultation on the victims' strategy. Certainly, we are happy to say more about that in writing.

The Chairperson: OK. Well, obviously, we will scrutinise that, so I will not get into too much detail today. At this stage, I want to welcome in particular what has been incorporated from the Committee's inquiry, the victims' charter and those issues. It has been an example of where the Department had a plan — a strategy to take forward, allowed the Committee to do a piece of work and has now put it into legislation. It has been a good example of when the Committee and the Department have worked well. I will be particularly keen to get that issue over the line. I appreciate the relationship that we have been able to develop to do that.

Mr A Maginness: Thank you very much for your presentation. I agree with the Chair that a lot of what the Committee has suggested has been incorporated into the Bill. That is to be welcomed. I have a couple of very quick questions. One is about the single jurisdiction for County Courts and the Magistrates' Court. Does that meet with the approval of the judiciary?

Mr Chris Matthews (Department of Justice): Yes.

Mr A Maginness: There are no problems with that? In relation to committal for trial — it is a point of detail and you may not be able to answer it now — is there any indication of how many actual preliminary inquiries take place to go through the evidence, as opposed to being a paper exercise of serving the papers at committal stage?

Mr Matthews: We have some figures for the past few years. In 2013, there were 42 preliminary investigations, 31 mixed committals and over 1,600 preliminary inquiries.

Mr A Maginness: There were 1,600 preliminary inquiries. That really is a paper exercise, is it?

Mr Matthews: Yes. Primarily, it is paper-based.

Mr A Maginness: Yes. So the other two categories that you identified would have been looking at the evidence in court or hearing some of the —

Mr Matthews: Taking oral evidence.

Mr A Maginness: Yes, OK. I think that the committal procedure needs to be reformed. However, I am not certain that the absolute abolition of committal is the right way to deal with that. That matter will obviously be open to discussion further on.

Ms M Campbell: Taking out committal and leaving the existing process untouched in terms of what happens up to the point of committal would be risky. That is why, under the speeding-up-justice programme, we have been looking at what procedural improvements we can also make in anticipation of the removal of committal so that we can reduce the risk that cases end up in the Crown Court that are not in a state of readiness. Some of the Bill's provisions will help with that as well, obviously — things like statutory case management. The reason we are taking a staged approach to taking out offences that would be subject to committal is to allow us to build the capacity within the system to manage that.

Mr A Maginness: I suppose this is really a technical question in a sense. At chapter 2 you have:

"Direct committal for trial: guilty pleas",

at clause 11 you have:

"Direct committal: indication of intention to plead guilty"

and then, further on, at clause 77, you have "Early guilty pleas". Why is that not taken as a whole within the Bill? Is there some reason for that?

Mr Matthews: Ultimately, it is down to the draftsmen who decide what bits run together. As Maura said, we see a lot of the provisions on speeding up justice running together as part of an overall strategy that we have, but in terms of committal, I guess that it is because those provisions will obviously only apply to cases going to the Crown Court, whereas the guilty pleas will apply to sentencing in any case. I guess there is a sort of separation of jurisdictions between the different court tiers. I think you are right that, in practice, a lot of those measures are going to run together, but the structure of the Bill is essentially the way that the draftsmen saw the provisions going together.

Mr A Maginness: So there is no great significance in it.

Mr Matthews: They are connected in the sense that they come out of the same discussion. The provisions on committal are probably more fundamental and more complex. It probably makes sense to consider them as a piece because they are very complicated. The guilty pleas provisions in the miscellaneous part of the Bill are relatively minor. There is not actually a great deal of new law in them. They are new duties, one on the judge and one on the defence, and they are quite small at a clause each. So, in that sense it could possibly complicate discussions around committal to bring those in, but you are quite right that, in practice, those things will often run together. Think about the advice given by the defence to their client: if they are in a case that could proceed through committal to the Crown Court, it is obviously going to be a very relevant consideration if you say that you can be directly transferred and have your case heard earlier if you admit your guilt at that stage. Obviously there is a link between those two. In Committee we would like to discuss a lot of those speeding-up-justice provisions as a piece and make clear the linkages between them, even though they have not necessarily been put together in the draft.

Mr A Maginness: OK. Just one final point, Chair, with your indulgence. The victims' charter and the witness charter are to be welcomed. On persons being afforded the opportunity to make a victim statement, I know that that is happening at the moment, but this is putting it on a statutory basis. Can you inform the Committee what effect that might have on the judge's consideration of sentence?

Ms M Campbell: I do not think whether the entitlement to make a statement is statutory or not will change the extent to which a judge will place weight on the statement, because I think that will vary from one case to another depending on the circumstances in any event. The reason for making the entitlement is just to try to ensure that victims are given that opportunity in the first instance to participate in the proceedings by indicating to the court the impact that a crime has had on them. It will help us to publicise and promote the availability of that if victims choose to do it — we do not want them to feel under any compulsion to do that, either — and also to make them aware of the support that is available to them in doing that.

Mr A Maginness: So the weight of the statement is dependent on the judge's assessment of it.

Ms M Campbell: It is entirely up to the judge to decide what weight he will place on that statement. As I said, it is going to have to be case-specific and it is going to depend on the circumstances in that particular case.

Mr Elliott: Thank you for the presentation. I just have one quick question as someone who perhaps does not know their way around the courts system so well. Explain a wee bit to me about the single jurisdiction for County Courts and Magistrates' Courts.

Mr Matthews: It is really to bring them into the same position as the Crown Court and the High Court, which is essentially that there is a single jurisdiction and all business can be heard equally in any court. In practice, what that means is more flexibility about where business will be heard depending

on the needs of justice. So, for example, if you have five witnesses who live in Belfast and the offender lives in some other part of Northern Ireland, it could be that the business is moved for the convenience of the witnesses, or if you have special equipment in one courtroom you might move the hearing to there. In all cases, it is up to the judge to decide what is in the interests of justice and what the needs of the case demand. It is to move away from the situation where the case has to be heard in the specific jurisdiction of the event. That can cause issues, albeit not in all cases. It is just to give the Magistrates' Court the same flexibility as the Crown Court to move business around.

Mr Elliott: So it gives more flexibility, but the decision is still in the hands of the judge.

Mr Matthews: Yes. The provisions relate to how the boundaries will be set and how the LCJ will administer the business. The judges will have complete control over that aspect of it. It is to give them more flexibility to manage their business.

Mr McGlone: Clause 84 deals with the aims of the youth justice system. There appears to be a doubt about its compliance with the terms and proposals of the youth justice review and, indeed, with the United Nations Committee on the Rights of the Child (UNCRC). Have you done any read-across on that? Have you done any cross-referencing to see whether it is compliant?

Ms M Campbell: I think that there will be further provisions in the fines and enforcement Bill, so this will not be the limit of what we do legislatively in response to the review. This provision simply reinforces the centrality of the best interest principle, which we see as enhancing the implementation of the UNCRC. I do not think that there would be particular concerns on the part of children's organisations about this provision. Any issues raised by them might be about how they would like other aspects of the review to be implemented.

Mr McGlone: May I take you back and quote Kathleen Marshall of the youth justice review team? Her rights analysis of the recommendation on the aims of the youth justice system and the UNCRC states:

> *"Compliance with the convention requires that article 3.1 is reflected in legislation as a principal aim with the same status as the current aim rather than a second level concern restricted to welfare."*

Will you reflect on that and possibly come back to us at a later stage? I am not 100% clear whether there will be compliance or whether it is consistent with the reflections of the youth justice review team.

Ms M Campbell: We will certainly check that with policy colleagues before coming back to you, but our reading of it is that it comes very close to the intention of the UNCRC.

Mr Lynch: On persons being afforded the opportunity to make victim statements, have you considered including impact statements?

Ms M Campbell: We have been referring to those as victim personal statements, but it was the draftsman's view that it was better to refer to victim statements. Outside of the legislation, in practice and in the guidance that we use, we refer to them as victim personal statements to clarify their purpose.

Mr Lynch: Have community statements been included?

Ms M Campbell: We decided at an earlier stage that we would not put community impact statements on a legislative footing because it could be quite challenging to try to define in legislation what we mean by "community". It would be a much more difficult proposition to define that than to define what we mean by "victim".

Mr Dickson: Briefly, Chair, I want to go back to the point that you made.

Thank you very much for the explanation of all Parts of the Bill. With the Committee going out to consultation, many of the amendments that you propose are positive and will, I think, be welcomed by stakeholders and others who wish to comment. So I join the Chair in encouraging you to provide as much clarity as you can on those in the consultation. That would be very helpful.

Ms M Campbell: We will undertake to do that, yes.

Mr A Maginness: There was a report in the media that there might be a House of Lords decision on access to convictions. Has that been delivered?

Mr Tom Clarke (AccessNI): Yes, the Supreme Court judgement delivered this morning said two things. First, it reaffirmed the Court of Appeal judgement on the disclosure of costs and convictions, in that they should not always be disclosed forever. It also upheld the Home Office's appeal against the Court of Appeal's finding that the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 was ultra vires. It upheld the Department's appeal.

Mr A Maginness: I do not know where that leaves us. On the latter point —

Mr Tom Clarke: What we did recently, by introducing a filtering scheme, reaffirms that and means that we are ahead of that game. If we had not done so, we would definitely have been in breach of the court's findings on costs and convictions. Introducing that increases the chances of our current legislation being more compliant with the Supreme Court judgement. The amendment that we are considering, on the advice of the Attorney General, is to introduce a review mechanism for people unhappy with what has been disclosed. So, even after we have applied the filtering rules, there will be an opportunity to ask for a review, which probably puts us in a better position than our counterparts in England and Wales.

Ms M Campbell: I understand, Tom, that the judgement will not have an impact on the specific provisions on criminal records in the draft Bill.

Mr A Maginness: Thank you very much.

The Chairperson: Thank you very much, and I look forward to seeing a lot more of you. *[Laughter.]*