



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

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

10 September 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 Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

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

The Chairperson: I welcome Simon Rogers, deputy director of the protection and organised crime unit; head of human trafficking unit, Julie Wilson; and Amanda Patterson, head of criminal policy branch. As always, you are all welcome to the Committee meeting. The session will be recorded by Hansard. To get a bit of structure to this session, I advise members that I will invite officials to provide a brief update on the work that has been taking place regarding the Bill. I then intend to go through the Bill clause by clause.

Mr A Maginness: Is that on the basis of the memorandum?

The Chairperson: Yes. We will refer to the table of information and go through each clause. If members have a question on clause 1, we will deal with it in that order to try to have some structure. So, Simon, I hand over to you at this point, and we will then get into clause-by-clause consideration.

Mr Simon Rogers (Department of Justice): Thank you, Chair. The Department is grateful for the opportunity to brief the Committee on the proposed amendments to the Human Trafficking etc Bill that the Minister and Lord Morrow intend to table, in effect, jointly. They believe that these will add markedly to the value of the Bill. We will also take the opportunity, as you mentioned, to update you on the anti-slavery commissioner.

The Committee is aware that the Minister and Lord Morrow have been working closely, and, aside from clauses 4 and 6, they have reached agreement on nearly all the provisions in the Bill that are

before the Committee. We are still discussing the detail on the new clause 12A. Our written paper provides the proposed amendments, as well as setting out in detail how they would impact on the structure and substance of the Bill.

I will draw out a couple of overview points for the Committee's attention. During Committee Stage of the Bill, we provided the Committee with draft amendments jointly agreed by the Minister and Lord Morrow, and indicated that further amendments were likely to follow on a number of areas that were still to be resolved. At the time, we also noted the Department's consultation on the new measures relating to human trafficking and slavery through our consultation document, on which we had reported.

Since then, we have been working with Lord Morrow and legislative counsel on amendments. These will introduce the additional provisions that were set out in the consultation, and would significantly alter the structure of the Bill. Lord Morrow has, helpfully, agreed to these additional measures. He and the Minister agree that they provide more robust and effective legislation, while retaining the Bill's fundamental purpose and intent.

At this stage, one thing to highlight is that, given the comprehensive nature of the additional proposed amendments — there are quite a lot of changes to the structure of the Bill, which we will work through — legislative counsel, in particular, has suggested that, if accepted, the amendments would mean that the existing title of the Bill would need to be adjusted. Lord Morrow and the Minister support that proposal, and you will see that it has the new title of:

"Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill".

Briefly, the other issue that you mentioned was the continuing engagement between the Minister and Home Secretary on the anti-slavery commissioner, which is a provision included in Westminster's Modern Slavery Bill. There have been developments on that since we wrote to the Committee, in that the Home Secretary has written to the Minister and to his Scottish counterpart offering to add provisions to the Bill in respect of the extension of the commissioner's role. We have sent details of these through. I think that that is probably the letter, Chair, to which you referred. Should you so wish, we can come back to the detail of that later.

The Minister believes that the additional measures put forward by the Home Secretary would provide appropriate cover for Northern Ireland interests and, as such, would intend to seek the Assembly's consent to Westminster legislation to achieve the changes. If the Assembly consents to this, we understand that Lord Morrow would agree to remove clause 16, which relates to the Northern Ireland rapporteur.

In addition, as you mentioned, the Home Secretary and the Minister have been exchanging on issues concerning criminals involved in human trafficking and slavery and who operate at sea. At the minute, there is a gap in the provisions in that area that we propose to try to fill. Having consulted the Chief Constable, Policing Board and Police Ombudsman, the Minister intends to seek Assembly consent to introduce, within the Modern Slavery Bill, appropriate provision covering Northern Ireland waters. We will obviously provide the Committee with further briefing on the proposed legislative consent memorandum in due course.

To conclude in summary, we believe that we have made very good progress with Lord Morrow on the provisions in the Bill. The Minister is grateful for, in particular, as I would like to record, the cooperation and partnership with Lord Morrow and his team in shaping and agreeing the proposals. We are obviously happy to go through those in detail with members.

The Chairperson: That is helpful. We will start going through the Bill clause by clause. Just for the members' benefit, obviously, we concluded our report on this and took positions on the various clauses. Once we have teased out some of the issues, it will be helpful to go through the Bill, next week, from clause 1 to see whether we are happy with the revised clauses. I intend to go through it next week, just so that we can update the Assembly of the Committee's position when the Bill gets to Consideration Stage. We will be able to say, for example, that we were supportive of clause 1 and whether we are still supportive of the revised clause 1. I intend to do that next week, if members are agreeable. I am not looking for parties' definitive views at this stage, but now would be the time to take any questions that members have.

Simon, please talk to us about clause 1.

Mr Simon Rogers: In the papers before members, appendix 1 to the letter from the departmental Assembly liaison officer (DALO), sets out the amendments clause by clause, and it might be useful to have that to hand.

Clause 1 of the original Bill would now be opposed by Lord Morrow and the Minister on the grounds that new clauses 1A to 1D replace it. It might therefore be useful to say what new clauses 1A to 1D do. In effect, they seek to bring together human trafficking and slavery-related offences in a single piece of legislation in a form of consolidation. Consistent with previously-agreed amendments that have come to the Committee, the new offences clarify that a victim's consent to any act that forms part of an offence of human trafficking or slavery, servitude and forced or compulsory labour, is irrelevant.

New clause 1A concerns slavery, servitude and forced or compulsory labour. It is significant in that it is triable on indictment only, which would bring it into line with the changes which the Committee has previously approved to human trafficking, and it is also worth noting that the maximum sentence would be increased from 14 years to life.

New clause 1B is a mirror image of new clause 1A, but it deals with human trafficking as opposed to slavery, and it would cover any type of exploitation. That was one of the issues that were raised with us, and we have sought to define exploitation. Also, by bringing trafficking into one offence, we are trying to address a concern that has been raised with us that greater priority is often given to human trafficking involving sexual exploitation rather than other forms of trafficking. The other thing I want to highlight is that the new offence would cover all elements of human trafficking, that is: arranging or facilitating, for example, travel, recruiting, transporting, transferring, harbouring, receiving or transferring control for the purpose of exploitation. Again, the sentence we propose is life, not 14 years as at present. It would also be triable on indictment.

New clause 1C defines exploitation for the purposes of the new trafficking offence in clause 1B, and, as I mentioned, it consolidates the range of exploitation types. It also incorporates additional elements that have previously been agreed, for example, clarifying that forced begging and forced criminality fall within the range of relevant exploitation.

Finally, new clause 1D deals with preparatory offences. That would apply where a person commits an offence such as aiding and abetting with the intent of committing a slavery or trafficking offence. An offence under clause 1D would attract a maximum sentence of 10 years on indictment and six months or a fine on summary conviction. There are some exceptions to that, where an offence of kidnapping or false imprisonment is involved, where the sentence would be life. That is the first set covered.

The Chairperson: We all know that opposing the original clause does not mean opposing the original intent of the Bill. It is just a technical procedure, which is a better way of doing what was originally intended, and where the Department and Lord Morrow have found agreement. No one, in one sense, is going to oppose it, it is just —

Mr Simon Rogers: It is a device to take it out so that we can replace it.

The Chairperson: Do members have any particular questions on clause 1? No. Ok.

Mr Simon Rogers: We would oppose clause 2, again, for the reason you stated, Chair. That is because it deals with consent and, as I have described, that is already covered or will be covered in the new clauses 1A and 1B. There is probably not much on clause 2.

Clause 3 deals with aggravating factors —

Ms Julie Wilson (Department of Justice): Sorry, you have missed one out.

Mr Simon Rogers: Sorry: there is a new clause 2A.

Ms J Wilson: I will speak to clause 2A, which relates to sentencing and would bring the new offences under the new clauses 1A and 1B under the ambit of the public protection sentencing framework in the Criminal Justice (Northern Ireland) Order 2008. That means that, where the court considered it necessary to protect the public, it could propose a life sentence, an indeterminate custodial sentence or an extended custodial sentence. Individuals who are subject to those sentences would also be subject to the relevant release, licence and recall arrangements.

To do that would amend the 2008 Order to specify the new offences. Both new offences would be specified under schedule 1 as "serious offences". It would also amend schedule 2 of that Order so that human trafficking and slavery-like offences would both be specified as "violent offences", and appropriate human trafficking offences with an element of sexual exploitation would also be specified as "sexual offences" under that schedule.

The Chairperson: Do members have any questions?

Mr Elliott: There was an indication, at an early stage, from the Department that there was duplication with other legislation with regards to clauses 1 and 2. Has that now been resolved?

Mr Simon Rogers: Yes: the purpose of clauses 1A through to 1D is to bring all of these offences into one place to consolidate it.

Mr Elliott: OK. That is fine.

Ms J Wilson: Clause 3 relates to aggravating factors. We had already shared with the Committee a number of amendments to clause 3 that had been agreed with Lord Morrow, and we are not proposing any substantive changes to those. However, there are a few technical amendments: for example, there was a term used in clause 3 that was interpreted in clause 3 and now appears at several points throughout the Bill. Those interpretation provisions are now included in the general interpretation clause, which is the new clause 17A, so the effect is still the same; it has not changed.

The Chairperson: Right. Clause 4.

Mr Simon Rogers: Clause 4 provides for a two-year minimum custodial sentence for human trafficking and slavery offences. The Minister has opposed this particular clause throughout, although he has welcomed the fact that Lord Morrow has drafted an amendment to ensure that it would not apply to children. He will continue to oppose the extension of the clause to adults. His view is that it fetters judicial discretion in what can be complex and difficult cases, and the Minister believes that the judiciary is better placed to weigh up all the evidence and decide on the most appropriate sentence on a case-by-case basis. There are no amendments from us, as such, on clause 4.

Ms J Wilson: Clause 5 is another clause that the Minister and Lord Morrow would seek to oppose, mainly because clause 5 currently amends the section 4 of the Asylum and Immigration Act 1996, which creates the offence of human trafficking for exploitation. That offence under section 4 would now be repealed and would be replaced by the new clause 1B. That is the rationale for opposing it.

Clause 5A deals with the confiscation of assets. It would amend the Proceeds of Crime Act 2002 to specify the new offences under new clause 1A and 1B as criminal lifestyle offences. The Proceeds of Crime Act sets out the chronology for making confiscation orders, and the question of whether a person has a criminal lifestyle is central to the process. If someone is convicted of a lifestyle offence, which is specified under the Proceeds of Crime Act (POCA), the courts can find that they have obtained the benefit of general criminal conduct, and that allows the court to undertake an inquiry beyond the normal six-year limitation period for prior criminal activities. Essentially, by specifying the offences as lifestyle offences, we improve the court's ability to confiscate criminal assets related to this type of offence and undermine the economic motivation for perpetrators.

Mr Simon Rogers: Clause 5B exists already, in effect, in respect of human trafficking. Through clause 5B, we are seeking to bring a consolidated provision covering human trafficking and forced or compulsory labour and slavery. In brief, it would enable the courts to order the forfeiture of land vehicles — that is one thing — ships or aircraft that were used or intended for use in connection with human trafficking or slavery-like offences.

Mr Elliott: I want to go back quickly to clause 5A. Is that a totally new aspect in the Bill? Was it not dealt with before?

Ms J Wilson: It was not included in the original Bill. It is informed by provision in the Modern Slavery Bill, so it mirrors the approach that has been taken there.

The Chairperson: Does the legislative consent motion (LCM) on the anti-slavery commissioner come into play here with regard to clause 5B to do with those operating at sea?

Mr Simon Rogers: The LCM covers the anti-slavery commissioner, and then there is a separate bit in which we are looking to cover maritime powers. Do you want me to deal with that now?

The Chairperson: Is that connected to that?

Mr Simon Rogers: No, it is not really connected. There is an existing power which we are extending. There is an indirect connection. The maritime powers, at the moment, are quite a complicated area in that the police can operate in sea ports and can detain, but they cannot operate as effectively in our Northern Ireland territorial waters, and they cannot operate at all in international waters. We are seeking to give greater flexibility so that where there are boat-bound trafficking victims, the police can stop vessels and detain and arrest etc.

Likewise, the LCM would be reciprocal between different jurisdictions. If someone is coming across from England or Scotland, for example, the UK Border Agency could continue to pursue them into our waters, if that is what the Assembly consents to. As I mentioned earlier, we have consulted the board, the police and the Police Ombudsman about that to check that they are content for the police and to check the arrangements, for example, for hot pursuit inbound. It is quite a complicated area, which we will unpack through the legislative consent motion.

Ms J Wilson: One key distinction is that the power under this clause is about forfeiting vehicles or vessels or detaining with a view to forfeiting them, whereas the power that we are talking about in the proposed LCM is about enforcement and catching people and intercepting them while they are in the process of committing the offence.

The Chairperson: So, clause 5B is all about what you do with what you have got. I have a few more questions on the LCM, but I will come to that later.

Mr McCartney: I will leave it until later.

The Chairperson: Do members have any more questions on clause 5B? We will move on to clause 5C.

Ms J Wilson: New clause 5C would introduce schedule 2, which makes provision for slavery and trafficking reparation orders. Those would allow courts in Northern Ireland to require perpetrators of offences under clauses 1A and 1B or the preparatory offence under clause 1D to pay reparation to their victims. The model that we have used is broadly equivalent to the one that already exists in respect of compensation orders under the Criminal Justice (Northern Ireland) Order 1994. Courts would be required to consider making one of those reparation orders. We believe that that may help to enhance the awareness that this means of redress for victims exists.

Paragraphs 2 and 3 of the schedule set out the effect of the order and enforcement arrangements for breach, and they make provision for appeals and variations.

Mr Simon Rogers: New clause 5D would bring in new civil prevention orders that are intended to help protect the public or specific individuals from the harm caused by offenders involved in slavery and trafficking. Those orders can be imposed by courts when sentencing an individual for one of those offences or following an application by the police against a relevant offender who has committed an offence in one of those areas. The detail of provisions, including the effect, is set out in a schedule which provides for variation, renewal, discharge, etc, as well as appeals. Breach of one of those orders would be a criminal offence and would attract a sentence of up to five years on indictment or six months and/or a fine on summary conviction. These orders dovetail in with what is happening in England, Wales and Scotland. So, we will be seeking to ensure that all that is here is enforceable across other jurisdictions and vice versa.

Ms J Wilson: New clause 5E is intended to replace the existing clause 15. It incorporates the earlier amendments to clause 15 that had been shared with the Committee. There are no substantive changes to what was in clause 15. The reason for rebadging it as new clause 5E relates to restructuring so that it sits more logically with the preceding group of clauses. It would place a statutory duty on the Department to produce an annual strategy after consultation with other relevant organisations.

Mr Simon Rogers: Clause 5F is one of the areas that we consulted on. It is a new provision, and it is aimed at improving understanding of the scale and nature of trafficking and slavery and, therefore, tailoring our response to the offences. It would place a statutory duty on specified public authorities, including the police or health trusts, to notify the UK Human Trafficking Centre of any cases where there is reason to believe that an individual may be a victim of slavery or trafficking offences. Cases in which there is a potential victim are, obviously, referred at the minute, but this is to fill a gap where there is a suspected victim and no record is kept. From the consultation that we carried out, it was clear that this information would help government and law enforcement to target resources more effectively, support victims better, help law enforcement to identify and recover victims, and target and disrupt perpetrators.

Ms J Wilson: Clause 5G is a new clause. It effectively replicates the effect of clause 7 and takes into account the earlier amendments to clause 7 that we had shared with the Committee. We have included one additional revision. The existing clause 7(3) provides that criminal proceedings may continue even if the victim has withdrawn their statement. We have proposed a revision to that to clarify that criminal proceedings may be commenced or continued even where a victim has withdrawn their statement. It is to add a bit of additional cover. Again, we have done it as a new clause in order to facilitate restructuring so that it sits with that first group.

Ms Amanda Patterson (Department of Justice): I think the Committee is aware that the Minister remains opposed to the provisions at clause 6. The Department has commissioned research from Queen's University in order to gather evidence on prostitution in Northern Ireland. If clause 6 does not stand part of the Bill, the Department will table clause 6A, which would allow for the statutory bar on prosecutions after six months to be removed from the offence of paying for the sexual services of prostitutes subjected to force. Proceedings could then be taken for any offence of that nature up to a period of three years from the commission of the offence.

Ms McCorley: Go raibh maith agat, a Chathaoirigh. What stage is the research at, and what is the timeline?

Ms Patterson: The timeline is that the research report will be presented to the Department before 31 October, and a draft report will be with the Department by the end of September. We will then have two weeks to consider whether the report is within the contractual requirements. The researchers will then have two weeks to finalise the report and get it back to us. As far as I know, we intend to publish the report very shortly after it is received by the Department.

Ms McCorley: Thanks for that. You said that, if clause 6 were to fall, the Minister would introduce clause 6A. Why would you just not introduce clause 6A in any case?

Ms Patterson: The reasons for clause 6A are mainly because prosecutions that have an element of trafficking involved often need the prosecution on those proceedings to have been completed before you can go after the people who have bought sex from trafficked women, so the timeline is longer, and it is much more difficult to pursue prosecutions. Clause 6 concerns the criminalisation of paying for sex with a prostitute or a person, so there would be no requirement to extend the time when offences could be pursued.

Mr Wells: This is important: this is clearly an attempt to head clause 6 off at the pass, which, I can assure you, is doomed to failure. If clause 6 is instigated, why is clause 6 and your proposal mutually exclusive? Why can you not have clause 6 and your proposal running in tandem? It is a slightly different question to Ms McCorley's. Why can we not have both? Why can we not have clause 6 and your —

Ms Patterson: Clause 6A.

Mr Wells: Yes. I cannot see how they are mutually exclusive.

Ms Patterson: It is simply because there would not be the justification to remove the statute bar from the offence of paying for sex with a person, because you would not have had to have gone through any proceedings to ensure that the person from whom the person bought sex was a trafficked victim.

Mr Wells: Yes, but there are two offences: there is the offence — hopefully, it will stay in — that clause 6 makes it illegal to purchase sexual services, and there is also the purchase of sexual services from someone you knew to be trafficked, which I see as even more serious.

Ms Patterson: No —

Mr Dickson: Once you have had sex with —

Mr Wells: Yes, but if that person is trafficked, it is an even more serious offence, in my opinion.

Ms Patterson: With the existing clause, however, there is no need for the person to have or have not been aware that the person was trafficked. Therefore, clause 6 would repeal or take over from article 64.

Mr Wells: Do you not see it as being more serious? It is one thing to buy the services of a woman or a man who has given their "consent"; it is a more serious offence to buy the sexual services of someone who has been trafficked.

Ms Patterson: Yes. For the offence where it is proved that the person knew that the person was under duress, there are a vast number of sexual offences in the Sexual Offences Order that would apply, including the offence of rape and sexual assault.

The Chairperson: OK. We move on to clause 7.

Mr Simon Rogers: Clause 7 would fall from the Bill because it is dealt with under clause 5G on the investigation and prosecution of offences, which Julie covered.

The Chairperson: OK, members? We will move on to clause 8.

Mr Simon Rogers: Clause 8 deals with the non-prosecution of victims of human trafficking. I mentioned in my opening remarks that Lord Morrow and the Minister have agreed that clause 8 should fall from the Bill. We will deal later with clause 12A, which is designed to replace it. We are still working with Lord Morrow, his team and, indeed, others to try to resolve that. My perception is that we are nearly there, but there is still a little bit of work to do, and we can perhaps come back to that when we get to clause 12A.

The Chairperson: OK. We will look at that under clause 12A, unless you want to do it now. I am happy to take it now.

Mr Simon Rogers: OK.

Ms J Wilson: I will speak to clause 12A. What we are proposing to do is to introduce a statutory defence for victims of slavery and trafficking who have been compelled to commit certain offences. The clause that we are proposing clarifies that compulsion can be as a result of another person compelling you to do something, but it can also be as a result of your circumstances.

We are proposing a number of more serious offences to which the defence would not apply. However, even in the case of more serious offences to which this defence would not apply, it would still be open to prosecutors to exercise their discretion in not prosecuting cases when they consider that prosecution is not in the public interest.

We think that bringing forward the defence will provide greater protection for victims whose exploitation involves forced criminality in cases in which the nature of the offence means that prosecution would not be in the public interest. We believe that it may also provide greater reassurance to victims to encourage them to come forward, seek help and give evidence against their traffickers without fear of being prosecuted in the case of certain offences.

Simon mentioned that we are still looking at some of the detail. Specifically, we are looking at how the defence should apply when the victim is a child. We are looking at various options, first, to see whether there is a need for a different threshold when the victim is a child and what that threshold should be. We want to avoid any unwanted consequences. Where someone has voluntarily come to

engage in criminal activity, for example, but is subsequently trafficked, we want to make sure that the defence will be relevant in all cases. So, we are just trying to put a bit of extra consideration in to make sure that we have the right model.

The Chairperson: OK. Any questions, members?

Mr A Maginness: The effect of that is twofold. The Public Prosecution Service (PPS) retains its discretion — that is the safety net, as it were — for all this, because it might be contrary to the public interest if all the other things are exhausted. It might still be contrary to the public interest if a prosecution were to take place.

Mr Simon Rogers: That is right.

Mr A Maginness: So that is the safety net. This legislative change, which reflects what is in the Modern Slavery Bill in Britain, really restricts the scope of prosecution. Am I right in that?

Mr Simon Rogers: That is correct. It is to do with the concern that a number of people who commit offences are forced to do it by the circumstances in which they have been put through trafficking. One option was to leave it all to the discretion of the prosecution, but the overwhelming support was for a provision whereby being compelled to commit more minor offences would be an automatic defence. The bit that we have not quite solved yet is whether there should be an extra hurdle for the prosecution in respect of children. The Minister is not opposed in principle to providing special measures around children, but we do not want to come up with a measure that, as Julie said, has unintended consequences for either us or the prosecution.

Mr A Maginness: Yes, but where are we for serious offences?

Mr Simon Rogers: The compulsion would not apply. Another concern was that, if someone committed, let us say, murder to escape from a trafficker, that should not be a bar to a prosecution. They would argue that they were compelled to commit the offence to escape, so, theoretically, the defence might trigger in. We are saying, "No, not in the more serious cases". However, you are right: the safety net could still come in, even in that case. It seems unlikely, but it would be an option for the PPS not to prosecute in any case.

Mr A Maginness: In any event, a blanket immunity, as it were, for the victims of trafficking is not part and parcel of this statute.

Mr Simon Rogers: There is immunity where they are compelled, unless it is a serious offence. It is not a blanket —

Mr A Maginness: It is a limited immunity.

Mr Simon Rogers: Yes, that is the way to put it.

Mr A Maginness: For non-serious offences.

Mr Simon Rogers: Correct.

The Chairperson: Right. Clause 9.

Mr Simon Rogers: Lord Morrow and the Minister feel that clause 9 should fall from the Bill. It is largely around definitions, and the relevant portions of it fall into the new clause 9A.

Ms J Wilson: Clause 9 has effectively been replaced by new clause 9A and new clause 10A taken together. Some of what clause 9 was trying to do was to define those persons to whom clauses 10, 11 and 12 would apply. We have provided a general interpretation provision at new clause 9A that, in particular, would define what a conclusive determination is under the national referral mechanism (NRM) and who a competent authority is. That then allows us, in new clause 10A, to say who is eligible for support and assistance under new clause 10A.

If we look at clauses 9, 9A, 10 and 10A together, we are proposing that clause 9A sets the relevant definitions and that clause 10A would effectively replace clause 10. It sets out the requirements on the Department of Justice in respect of providing assistance and support to adult potential victims of human trafficking who have been referred into the NRM. Any potential victims who are children would fall under the responsibilities of the Department of Health, Social Services and Public Safety (DHSSPS).

The support under clause 10A would be available from the point that a referral is made or is about to be made. We wanted to include "about to be made" as a safety net. If, for example, a police operation happened at night, and a referral could not be made until the next day, that will mean that there is statutory cover in place to allow us to start that support from the point at which a victim is first encountered. Our responsibilities under the EU directive are that the assistance and support should be in place from the point at which a reasonable grounds decision is made, but we are backdating that to the first encounter with the victim.

The support would remain in place until it is established that there were no reasonable grounds to believe that that person was a victim or that there had been a conclusive determination either that the individual was or was not a victim. In the case of a negative determination, the requirement to provide support would stop. In the case of a positive determination, when that person has been determined to be a victim, the DOJ would be required to keep that support in place throughout the 45-day recovery and reflection period. That period starts at the point at which a reasonable grounds decision is made, and we would continue to provide support until the end of that. Beyond that, individuals who have been determined to be victims would again fall under the responsibilities of the DHSSPS, subject to their leave to remain in the country.

The rest of the clause looks at how that support is to be provided and what that support is. We have also taken some discretionary powers that we wanted to have in place to cover situations in which, for example, an individual had to be moved to another jurisdiction because of police advice that they were at risk. We want to be able to maintain that provision of support in those situations. There is also a discretionary power to allow the support to continue beyond the point at which it would otherwise stop; for example, in a case in which new arrangements need to be in place once a determination has been made to allow for transitional periods. We are trying to provide end-to-end support for the time that they sit underneath our responsibilities.

The Chairperson: OK. We will move on to clause 11.

Mr Simon Rogers: Clause 11 has not changed since the last time that we were at the Committee. It is about compensation for victims of trafficking, and we have nothing to mention on it.

The Chairperson: OK. We will move on to clause 12.

Mr Simon Rogers: Clause 12 concerns a child trafficking guardian and is an area that Lord Morrow is still engaging in with the DHSSPS. It is not adequate to be dealt with by only this Department.

The Chairperson: OK.

Mr Simon Rogers: We have dealt with clause 12A.

The Chairperson: Yes. We will move on to clause 13.

Ms J Wilson: Clause 13 relates to the protection of victims in criminal investigations. It is intended to avoid secondary victimisation of victims of these offences. We previously shared draft amendments with the Committee, and there have not been any substantive changes since then.

The Chairperson: OK. We will move on to clause 14.

Mr Simon Rogers: Clause 14, as it stands, would fall and be replaced by clause 14A. In effect, clause 14 requires a sizeable number of changes because of other amendments that we had made. Counsel's advice was to create a new clause 14A that, in effect, provides for special measures for victims in court. In a sense, it is the same as clause 14 but repackaged because of changes elsewhere.

The Chairperson: OK, members? We will move on to clause 15.

Mr Simon Rogers: We have dealt with clause 15 under new clause 5E, which is about the Department producing a strategy.

The Chairperson: OK. We will move on to clause 16.

Ms J Wilson: Clause 16 relates to the Northern Ireland rapporteur. As Simon mentioned, we have written to the Committee signalling the Minister's intention to bring forward an LCM in respect of a UK-wide commissioner under the Modern Slavery Bill. As for the anticipated timescale, we intend to seek Executive approval in principle later this month with a view to laying a legislative consent memorandum next month. Our intention is for the LCM to be debated in the Assembly before Further Consideration Stage. Subject to Assembly consent, the Minister and Lord Morrow would at that time seek to oppose the inclusion of clause 16.

The Chairperson: So you are hoping that the LCM comes after Consideration Stage but before Further Consideration Stage: is that the plan?

Ms J Wilson: That is what we are working towards.

The Chairperson: Powers are going to come over, and I understand that the Home Office has appointed an interim commissioner.

Mr Simon Rogers: There is a process ongoing.

The Chairperson: What has been the DOJ's involvement in that appointment?

Mr Simon Rogers: We were involved in the sift, which was yesterday, and we are on the interview panel, which is next week. We expect the recommendations to go not just to the Home Secretary but to the Minister and the equivalent Scottish Minister.

The Chairperson: Where has the focus been in that appointment to ensure that Northern Ireland will be included?

Ms J Wilson: The job description and the recruitment for the designate anti-slavery commissioner has been drafted to reflect the current provisions in the Modern Slavery Bill on the understanding that it will then be revised, subject to agreement on Northern Ireland's and Scotland's position in respect of the commissioner. So whilst the current job description and functions relate purely to the role under the Modern Slavery Bill, they will be revised, and we will be involved with that.

The Chairperson: Were you involved in the appointment of the interim anti-slavery commissioner?

Mr Simon Rogers: That is the current process.

The Chairperson: This is what I am trying to get at: at what point were you involved in the process, because I understand that it has been somewhat secondary and that the Home Office has not really involved the Department of Justice in the work that it has been doing. I raise that point because of concerns that, if that is how it has treated your Department until this point, how seriously can we believe that Northern Ireland will be important to it.

Mr Simon Rogers: We accept that the consultation on the process on the appointment was not as fulsome as it should have been. From the Home Office perspective, that was because we had not all signed up to having the UK-wide commissioner because we had not agreed the terms of that. There has been extensive engagement on that. However, when it told us that the Home Secretary's plan was to bring in an interim commissioner, we then involved ourselves. The Home Office agreed to that, and we have been involved. So, I will not sit here and say that we are delighted with the way the process has gone — we are not — but it has involved us and, first, being on the sift and on the interview panel is, frankly, an important part of that, and, secondly, we now have correspondence from the Home Secretary to the Minister, which is why we have been able to write to the Committee about the actual provisions.

The Chairperson: I certainly see the merits in having a UK-wide commissioner and being more effective, but if, up until this point, the Home Office has not been treating us in the way that I think it should have, that raises questions that I think need to be properly addressed so that we can have confidence that, if we go down this route, it will be effective. Why does the Minister need to consult the Home Secretary before he can request an ad hoc report on Northern Ireland matters? If you go down this route, he cannot just ask for an ad hoc report; he is tied into having to consult.

Mr Simon Rogers: The reason is that the Minister is involved in setting the strategic direction for the commissioner as part of a triumvirate of jurisdictions, if you like. Clearly, if several ad hoc requests come in, a person, as commissioner, could be derailed from their primary focus, so consultation across, in effect, the three jurisdictions seems not unreasonable to us. We would underpin that with a memorandum of understanding. We have said that if, for example, we are asking for a specific report, we will naturally expect to have to pick up the bill for any work such as research that has to be done. The memorandum of understanding would also cover that. We do not regard that as an unachievable hurdle; it is designed to stop the situation whereby so many requests come in for ad hoc reports that the commissioner cannot fulfil his strategic function that all three have agreed at the outset.

The Chairperson: How much confidence is there that Northern Ireland will get the proper focus that it will need under a UK-wide system?

Mr Simon Rogers: We are confident, because we will engage with the commissioner. Human trafficking is international, so the commissioner must consider us, our border and the routes in and out. It will be up to us to develop that working relationship when the interim commissioner is in place.

I think that the Minister feels that the proposals that the Home Secretary has put back satisfy the test that he was setting. Obviously, the Justice Committee may take a different view, but, from his engagement, and he has discussed this with the Home Secretary, the Minister felt that the arrangement was satisfactory.

Ms J Wilson: That was one of the reasons that he was insisting on the power to request ad hoc reports. That was an important safeguard in ensuring that Northern Ireland gets the appropriate attention.

The Chairperson: What would be the financial difference between having a Northern Ireland rapporteur and having a UK-wide commissioner? It does not come down just to finance. The most important factor will be what the most effective system is, as opposed to finance, but we are living in difficult times.

Mr Simon Rogers: Our assessment is that the commissioner would probably cost us around £20,000 to £30,000, depending on whether we ask for ad hoc reports. The anti-slavery commissioner, I think, would cost around £95,000 overall. We were not convinced that we needed a full-time post, but it would cost upwards of £50,000 for a local rapporteur, if you think that you need an individual with support, an office, and so on. There will be some significant differential in there from our perspective.

The Chairperson: Critically, which would be more effective? Would it be the £20,000 UK-wide commissioner or the more expensive local rapporteur? What would be the most —

Mr Simon Rogers: Our sense is that, because many of the bodies are UK-wide and because this is an international issue not bespoke to Northern Ireland, the reach of a commissioner covering the whole jurisdiction is greater. Certainly, 30 of the 34 consultees favoured a UK-wide commissioner over a local rapporteur. We think that the reach that you would get and the fact that someone was full-time would be beneficial to us. The Minister said at the outset that, if he was not satisfied with where we went on an anti-slavery commissioner, he would rather have a local commissioner than none. However, his position is that there are distinct advantages in having the broader reach, in the focus and in being able to hold to account UK-wide bodies in a way that a local rapporteur could not under our legislation.

The Chairperson: OK. I will bring other members in now. You touched on the issue to do with those involved in human trafficking at sea and the maritime issues involved. Will those issues form part of the same LCM?

I know that other members will want to ask about the rapporteur issue . Do any other members have any questions about having a UK commissioner as opposed to a local rapporteur?

Mr McCartney: Let us assume that there will be an LCM and that it will go through. What is the alternative if it does not go through, however? There is no proposition in front of us for what would replace it. How would the gap be filled?

Mr Simon Rogers: If we did not succeed with an anti-slavery commissioner, the Minister's fallback would be to try to keep a national rapporteur. We said in early stages of engagement with the Committee that we think that that provision needs to be amended, but we have not done that because we are aiming at securing the anti-slavery commissioner. The Minister's fallback would be to have a commissioner, certainly.

Mr McCartney: If the Bill goes to Further Consideration Stage, and the LCM does not go through, how then do we fill the gap?

Mr Simon Rogers: We would have to come back to the Assembly in due course with the next Bill. It has to be done through legislation, so we would be looking at another legislative opportunity.

Mr McCartney: As with clause 6, and the provision for a clause 6A, is there not a need for a separate provision here? There is a massive assumption that the LCM will go through.

Mr Simon Rogers: We are not taking the Assembly for granted, but the Minister's strong preference is to try to get an anti-slavery commissioner in place. Meanwhile, in the background is Lord Morrow's clause 16, to which we would try to make some amendments if the LCM did not go through.

Mr McCartney: I accept that you are not taking the Assembly for granted, but for clause 6, if that clause falls, there is a fallback position to cover a gap. I do not see any provision here for a gap if the LCM does not succeed.

Mr Simon Rogers: On the rapporteur?

Mr McCartney: On clause 16. Clause 16, in my opinion, is based on the LCM going through, which is fine. That is a fair assumption to make. However, the alternative is that it does not go through, and I think there should be something on paper to spell out what happens if there is a gap.

Mr Simon Rogers: Clause 16 is a local provision, so it would be the fallback.

Ms J Wilson: We can look at what amendments would be needed to that clause.

Mr Simon Rogers: We have not done that yet, but we could certainly do so.

The Chairperson: Do you want to touch on the maritime issue?

Mr Simon Rogers: We can do, yes. For such a small issue, in some ways, because this should almost never arise as a problem, one hopes, it is extremely complicated for us to get our heads around. I apologise if this is not as clear as it should be.

At the moment, the police do not have powers to seize and detain a vessel in Northern Ireland waters. They have other powers that they could use, but they would not have those powers in connection with the human trafficking offence. We could legislate for those locally, but we are also looking at broader powers. If for example, the PSNI wished to take its vessel to the 12-mile limit in pursuit of a vessel with slavery or human trafficking victims on it, we would need to get a legislative consent motion to enable us to do that, because the power to do so is not devolved.

Likewise, if a Scottish or English police service were pursuing a vessel towards us, it could not bring a power into our territorial waters. Rather than us pick up the 12-mile limit seize and detain power, the proposal is that we fix the problem by having everybody have the power to seize and detain human trafficking or slavery victims whom they come across on the high seas, no matter from which jurisdiction you are coming. Our concern about that was that we could have inbound law enforcement agencies coming into our jurisdiction that may do something for which we wish to hold them to

account. We have made it clear, therefore — a bit like mutual aid with police officers coming here — that there should be some accountability mechanism to the Police Ombudsman, and that has been agreed.

That is a very light way of describing that. I am sorry, but it is a complicated area. Is there anything that I have not touched on, Julie?

Ms J Wilson: A range of powers is anticipated, but those powers are intended as a package specifically aimed at tackling the offences when they occur at sea. It has been prompted by a specific case that I know of — there may be other cases as well — where a vessel was anchored outside the 12-mile area off the coast of Scotland. The police were not able to stop and detain the vessel or board it until it came within the 12-mile territorial boundary. That is what has prompted the package of powers.

Simon mentioned one of the specific powers intended for the PSNI that would be within the legislative competence of the Assembly. Currently, the PSNI has powers to stop and detain vessels in inland waters — in ports — but once it goes into the wider 12-mile limit, still within Northern Ireland territorial waters but outside the ports, it does not have the express powers. The police can use those other powers — for example, to secure a crime scene and detain a vessel — but we want to clarify the legislation and give them that express power.

There would be a range of other powers, which are primarily pursuit powers. Where the PSNI is in pursuit of a vessel in connection with a slavery or trafficking offence, and it goes outside Northern Ireland territorial waters, either into international waters or those of another UK jurisdiction, because it is currently in pursuit, its powers to stop and detain would continue with it even as it crossed the 12-mile boundary. The Home Secretary is proposing that there be equivalent powers for GB enforcement officers where they are in pursuit of a vessel that crosses into Northern Ireland waters. She is proposing that their powers continue with them until the vessel is apprehended. Where GB forces were going into international waters, the same powers would apply.

The final proposal from the Home Secretary is that the UK Border Force, which is already effectively policing the seas for immigration offences — it is already there and looking for those types of offences — is best placed to identify and apprehend vessels that are suspected of being connected to trafficking and slavery. She is proposing a power for the UK Border Force that would not be limited to pursuit situations. If it were going about its immigration duties and came across a slavery or trafficking offence, it would have the stop and detain powers. We have consulted the Chief Constable, the Policing Board and Office of the Police Ombudsman for Northern Ireland (OPONI) on all the proposals. However, and particularly with the UK Border Force power, we want to maintain PSNI primacy. Therefore, it would need to be supported with a memorandum of understanding (MOU). We have not worked out the detail, but that is the intention.

It is a package of powers that would be limited to that type of offence only and, for the most part, would apply in pursuit situations only, either inward to or outward from Northern Ireland territorial waters.

The Chairperson: That is interesting.

Mr Elliott: As clear as mud. *[Laughter.]*

Mr Wells: There is a serious issue here, because some trafficking of young Filipinos and other foreign nationals happens on trawlers. I have come across it in Kilkeel on several occasions. Therefore, this is not as academic as it sounds. If the trawlermen take the boat outside the 12-mile limit, we cannot chase them, and they get away scot-free. Therefore, the power will be used.

Mr Elliott: As a matter of interest, is there any legislation around that at the moment?

Mr Simon Rogers: No, there is not, and not for the PSNI. The UK Border Force has powers around immigration already, so it is patrolling but not for the specific offences that we are talking about. There is a limit on what our police can do.

Mr Elliott: So, there are some powers, but not for those specific offences.

Mr Simon Rogers: They are not sufficient.

The Chairperson: We move on to clause 17.

Mr Simon Rogers: Clause 17 will effectively be replaced by new clause 17A, which deals with the interpretation aspects of the Bill.

New clause 17B and the related new schedules 4 and 5 deal with amendments and repeals.

The Chairperson: OK. Clause 18.

Ms J Wilson: We are proposing that clause 18 be replaced by new clause 18A, relating to orders and regulations. The amendments that we are proposing would introduce significantly more order-making and regulatory powers. New clause 18A makes provision for those powers. A lot of the order-making powers are about future-proofing the Bill in the light of the fact that Scotland, England and Wales are intending to bring forward new legislation with new offences, so the new clause is intended to pick up on those.

The Chairperson: OK. Clause 19.

Ms J Wilson: Clause 19 is the short title and deals with the commencement provisions. In his opening remarks, Simon mentioned the proposed change to the title of the Bill, which is to reflect the fact that we are proposing to repeal the existing legislation to bring it all together in one piece of legislation. Therefore, it is no longer appropriate to refer to "Further Provisions", so the proposed alternative is the "Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill. Lord Morrow and the Minister support that change.

Clause 19 also sets out the commencement arrangements.

The Chairperson: OK. The proposed amendments do not deal with the Committee's amendment about commencement. The Committee has its own amendment to remove any power that the Department would have to choose when it implements the Bill. That is a matter for the Committee.

Mr McCartney: Paragraph 3 of the Department's briefing document describes this as a "major restructuring" of the Bill. Do you feel that the Department should be carrying out an equality impact assessment (EQIA) on that restructuring? The Bill's sponsor, Lord Morrow, said that, because it is a private Member's Bill, there is a different route through the process and so an EQIA was not required. With the restructuring, has the Department a view on the need for an EQIA?

Ms J Wilson: We did an EQIA in respect of the consultation. We have added a number of new provisions, but we do not think that those would trigger a need for an EQIA. When we did the consultation, we had no issues.

Mr Simon Rogers: No issues were raised with us.

The Chairperson: The major restructuring is not a departure from what were the Bill's general principles. Those are pretty much still there. You have moved clauses, and there are now new clauses 5A, 5B, 5C, 5D, 5E, 5F and 5G, for example. So, it is that type of restructuring as opposed to departing from the fundamental principles behind what was originally there.

Mr Simon Rogers: Yes.

The Chairperson: There are no more questions. Thank you very much.