



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Clause-by-clause Scrutiny

17 October 2012

NORTHERN IRELAND ASSEMBLY

Committee for the Office of the First Minister and deputy First Minister

Inquiry into Historical Institutional Abuse Bill: Clause-by-clause Scrutiny

17 October 2012

Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Colum Eastwood
Ms Megan Fearon
Mr Paul Givan
Mrs Brenda Hale
Mr John McCallister
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr George Robinson

Witnesses:

Mr Michael Harkin	Office of the First Minister and deputy First Minister
Mrs Cathy McMullan	Office of the First Minister and deputy First Minister
Ms Maggie Smith	Office of the First Minister and deputy First Minister

The Chairperson: Members should have copies of the amendments bundle, which was e-mailed to you this morning. Those amendments have been provided mostly by the Department, and we have seen those before. They are at annexes 1, 2, 3 and A. Colum Eastwood wishes to propose draft amendments. They have been labelled annex Y. Annex Z on page 13 of your bundle contains a possible Committee amendment, which is designed:

"to make explicit the Inquiry's power to make recommendations ... to prevent future abuse".

We also have the three amendments from the Department that we discussed in closed session. There, you will find the Department's response to the Committee's request to explicitly provide the inquiry — by way of a further bullet point in its terms of reference — with the power to make recommendations about changes to the law, procedure and practice to prevent future abuse. It states:

"Ministers are of the view that the Terms of Reference already have considerable scope. They consider that the Committee's proposed amendment would take the inquiry well beyond the scope of what it was set up to do, and so they will not adopt it."

Mr Lyttle: May I make a quick comment on that?

The Chairperson: Yes.

Mr Lyttle: It seems a bit contradictory to say that the scope of the inquiry is already sufficient but that this short clarifying comment would take it "well beyond the scope". Perhaps we can draw that out in our discussions, but I found that quite strange.

The Chairperson: I welcome John McCallister to the Committee.

Mr McCallister: Thank you, Chair.

The Chairperson: Do members have any comments?

Mr Eastwood: I agree with Chris. I still think that, if nothing else, it does no harm to have it in the report. I know that the Children's Law Centre has not sent us much information about what they talked about, but if there are issues that should be dealt with, and if there are proposals that could be made by the inquiry, I do not see what problem there would be in doing that. I, like Chris, would still like to see an additional bullet point.

The Chairperson: OK; I think that it would be fair to say that the Department had previously offered to amend the terms of reference, rather than the Bill, to address this issue. On page 8 of the amendment bundle, there is a reference to inserting:

"Bearing in mind the need to prevent future abuse".

So, the option is to accept that line in red in the proposed amended terms of reference or to consider a Committee amendment at page 13, annex Z.

Ms McGahan: I am not sure how that suggestion can prevent abuse.

The Chairperson: I think that it is a question of whether the chairperson and his panel want to explicitly say, "We make the following recommendations to minimise the prospect of future abuse".

Ms McGahan: I would be cautious about that, because I do not know how we can prevent future abuse. We can certainly put mechanisms in place, but I do not feel that we can prevent future abuse. I just think that we need to —

The Chairperson: To whom do you refer when you say, "we"?

Ms McGahan: I mean that I cannot prevent future abuse; maybe somebody could explain to me how we do that. I am open to suggestions, but —

Mr Eastwood: I do not think that what this does is say that we can, in all cases, definitely prevent any future abuse. This says that the inquiry should be allowed to make recommendations that ensure that the state does everything in its power to fulfil its responsibility to prevent future abuse. I think that that makes sense.

Mr Givan: Chairman, did you say that the Department had sent a written response to this issue somewhere? I may have missed it, and I am trying to find it.

The Chairperson: Have you got a line in red on page 8 of the amendment bundle?

Mr Givan: Yes; but I mean a response to our letter to the Department last week, asking whether that was something that we could put in the Bill or the terms of reference. Did it officially come back to us?

The Committee Clerk: I think that that is in members' tabled items.

The Chairperson: Yes; it is the second-last document in your tabled items, Paul. It is dated 16 October and came from the departmental liaison officer.

Mr Givan: I indicated last week that my view was that the terms of reference would cover this. I think that we all agree that the purpose of all of this is, yes, to deal with what happened in the past but also to do what we can to make sure that something like this does not happen again. So, there is no division among us about what we want the outcome of all of this to be.

There is a difference on which mechanism best deals with it. Would that be by putting the bullet point in the inquiry's terms of reference or through the legislation that cites the terms of reference, which can be amended much more readily and quickly than legislation ever can? My view is that the terms of reference will allow us to deal with all of this. I think that the legislation will pinpoint:

"Bearing in mind the need to prevent future abuse".

That will be cited. We have that covered in the terms of reference. So, this is more a difference of opinion on mechanism than principle, and, on this side, our view is that the terms of reference will cover that, as opposed to the proposed Committee amendment.

The Chairperson: We are all agreed, I think, that Paul's analysis applies; we are all agreed on the outcome and the question is one of the mechanism.

Mr Eastwood: That is right. It would have been more helpful of the Department to say that it would change the terms of reference, but it has not and that is its view.

The Chairperson: But it is changing the terms of reference.

Mr Eastwood: Not to what we wanted.

Mr Lyttle: The Department had crafted a concise, neat phrase that could have been inserted into the terms of reference. It put that in writing in its submission to the Committee. I read that submission in the record last week, but I do not have that to hand this week. To me, that did not take the scope of the inquiry "well beyond" that originally intended. It merely clarified that it is not precluded from making recommendations. I think that it was a very balanced phrase that could have gone into the terms of reference. I agree that this does not have to be done by way of amendment per se, but many people who gave evidence to the Committee were concerned that there was an omission or a lack of clarity around the scope for making recommendations. Indeed, they went as far as to ask for the 1995 barrier to be removed for that very reason. As far as I can see, we are not changing that 1995 limit, but nor are we going even that slight bit further to clarify that recommendations can be made. I think that the request was reasonable, so I am surprised by the response.

Mr Givan: I disagree with Chris's analysis because the terms of reference clearly cite, prior to the recommendations in bullet points:

"Bearing in mind the need to prevent future abuse",

and then it states that it will make recommendations and findings on "the following". So, it puts the issue of preventing future abuse upfront. Whether in the legislation or the terms of reference, it will have the same impact. We are in danger of arguing over technical mechanisms when the same objective will be achieved, and the terms of reference are a much more flexible mechanism. If we need to amend other aspects, the terms of reference will be the place to do it, as opposed to amending primary legislation, which, as we all know, will take much longer. So, I caution members —

The Chairperson: Before you come back in, Chris; there is one other factor that we must bear in mind, and that is that we have had testimony from Sir Anthony Hart, who will chair the inquiry, saying that he is content that the current framework will allow him to make recommendations, and I have no doubt that he will do so if he sees fit.

Mr Lyttle: I agree with a fair amount of what Mr Givan said about not needing an additional legislative mechanism, but my point was about seeking straightforward clarification. Also, there is concern that the terms of reference state:

"Bearing in mind the need to prevent further abuse, the report will make recommendations and findings on the following matters".

It then restricts the types of recommendations that it will make. I understand the concern to clarify that there is scope for making recommendations, if necessary, given the weight of evidence requesting that clarification. That is my opinion.

The Chairperson: The officials are with us again. We welcome Cathy McMullan, Michael Harkin and Maggie Smith. Maggie, can you add anything on that specific issue?

Ms Maggie Smith (Office of the First Minister and deputy First Minister): We sent through amended terms of reference in recognition of that point. Ministers have taken on board that it is important that the inquiry has the necessary scope and that this does not prevent it from making recommendations for the future. By putting in the sentence beginning "Bearing in mind the need", the Ministers recognise that it is important that the inquiry bears in mind the need to safeguard children in the future and prevent future abuse. However, the scope of the inquiry is to focus on the four issues set out in the bullet points. The inquiry was designed to do that, and the planning for the legislation and the whole set-up are focused on those four areas. The bullet point that you suggested would require going much further than that. It would require an in-depth inquiry into how things operate now, which would be a different exercise entirely.

The Chairperson: Maggie, I propose that, if you are agreeable, you will speak to the amendments, particularly the ones that arrived with the Committee today. Colum will then propose some amendments of his own. If you can stay on, we will let Colum speak to those, and we might ask for an opinion or clarity from you. Then, when we go to the clause-by-clause scrutiny, perhaps you would withdraw but remain in the room in case we need to seek further clarity. Is that OK?

Ms Smith: Certainly. We sent you some new amendments. I am conscious that the version that we have is slightly different from yours. We will start with the first of the amendments dated 17 October, which are at annex B.

The Chairperson: Are those the amendments dealing with the privacy of the acknowledgment forum and making it an offence to convene a restriction order?

Ms Smith: Yes. These amendments are about protecting the people who come forward to the acknowledgement forum. Clause 7 concerns the scope of the forum chairman to allow the proceedings of the inquiry to be public. Clearly, it would be completely inappropriate for any aspect of the acknowledgement forum to be held in public. So the amendment ensures that the part of clause 7(1) that makes the proceedings public does not apply to the acknowledgement forum.

The Chairperson: Are members happy?

Members indicated assent.

Ms Smith: I will move on to the contravention of a restriction order. A restriction order is an order that the chairperson can make to restrict access either to the proceedings of the inquiry or to evidence. Clause 13 had been drafted in a way that it would be an offence not to comply with a restriction order. The amendment simply tightens that up. It broadens the scope by stating that, if people contravene a restriction order, that is also an offence. It is an additional safeguard. An example of that might be where a restriction order is in place and a journalist gets access to information, by whatever means, and puts it in the paper. That would be a contravention, and it was not covered in the original wording. This amendment makes it stronger.

The Chairperson: Are members content?

Members indicated assent.

Ms Smith: Next is a rule-making power to protect —

The Chairperson: Sorry to interrupt, Maggie, but is there not an amendment to clause 14?

Ms Smith: Yes, I beg your pardon. Still at annex B, the amendment to clause 14 is about enforcement against the offence. It states that, if the order is contravened, that can be enforced through the High Court.

The Chairperson: Are members content?

Members indicated assent.

Ms Smith: The next amendment is to clause 18 and concerns powers to protect documents. Again, that is to do with the acknowledgement forum and reflects the chairman's concern that we ensure that there is maximum protection for records of the inquiry, particularly those generated by the acknowledgement forum. The Department is taking rule-making powers to make rules stating that the papers generated during the inquiry will be available only to the chairman, who can then decide whether they are made available to other parts of the inquiry or made public. They would be made public only in circumstances required under the Human Rights Act 1998.

The Chairperson: Are members content?

Members indicated assent.

Ms Smith: I turn now to clause 11, which is to do with the payment of expenses. By expenses, we mean legal and other expenses associated with attending the inquiry, or otherwise in relation to the inquiry. As I have mentioned to the Committee a couple of times before, we will set out in regulations — subordinate legislation that will come to you — the parameters for the way in which expenses are dealt with. That includes the rate of expenses, the criteria against which decisions will be made and the administrative arrangements for the payment of expenses. As drafted, clause 11 did not make it entirely clear that OFMDFM will, of course, pay the expenses but the decisions will be made by the chairperson of the inquiry. What had been drafted as "OFMDFM", and appears as such a number of times, should correctly be "the chairperson of the inquiry".

We also have an amendment to clause 11 as a result of some of the amendments already discussed. Last time, we discussed an amendment that would allow the chairperson to take evidence via live TV links from outside Northern Ireland. So we are broadening the wording of clause 11(3)(a) so that not only people attending the inquiry to give evidence will be eligible for an award but those who give evidence by whatever means. So they do not need to be in the room but, clearly, they still need legal advice.

As a consequence of that, we also make it clear in clause 12 that OFMDFM must pay any amounts awarded under clause 11. That makes it crystal clear that, of course, OFMDFM will pay those bills.

Then we come to the rules that OFMDFM is making. They will be made not under clause 11 but under clause 18. So we have a small amendment to clause 18 to clarify that it is the chairperson making the decision.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: Three points arise. Is the chairperson, Sir Anthony, content with all this?

Ms Smith: He is, yes.

The Chairperson: Is the protection of documents only for the acknowledgement forum, or does it cover everything?

Ms Smith: Its original purpose was to protect the documents that emerge from the acknowledgement forum. However, as you can see, it now refers to documents "of the inquiry".

The Chairperson: So it becomes global.

What about clause 19?

Ms Smith: That is as far as we have got.

The Chairperson: So there will be something?

Ms Smith: This is all we have at the moment.

The Chairperson: You are still looking at clause 19?

Ms Smith: Yes.

The Chairperson: Colum, you are proposing an amendment, are you not?

Mr Eastwood: I will not take up too much time. We have been through all these points in quite a bit of detail already.

My first amendment relates to the possibility of an interim report on redress. We have had fairly compelling evidence from victims that they would like something on that, because many of the victims are quite elderly. The proposed amendment would not compel Justice Hart to provide an interim report, but it would allow him to do so if he felt that the circumstances were correct and that it would not get in the way of his work. So I do not think that there is any harm in it. I do not want it to be exhaustive, but I think that it is a good idea, and victims would be fairly happy with it.

My second amendment covers a number of technical changes, but the final bit is the important bit. It means that, if the inquiry were terminated, there would have to be a draft of the Order laid before and approved by resolution of the Assembly. It is just an extra safeguard. We talked about that last week as well.

Those are the two amendments.

The Chairperson: Maggie, have you any comments from a departmental point of view?

Ms Smith: We discussed the second amendment previously. We came back from one of the previous discussions and said that that was not an amendment that the Ministers were planning to take on.

As to the first amendment, our position has been that we would not ask Sir Anthony to produce an interim report on redress.

The Chairperson: Have members any comments on Colum's proposed amendments?

Mr Givan: I explained last week why we were not supporting either of the proposed amendments, and that remains our position.

Mr Lyttle: I think that his proposals are made in good faith, and I would have supported them, Chair.

The Chairperson: It remains open to Colum to propose them as we go through the Bill clause by clause.

Maggie, thank you very much. Please stay with us, but take your ease.

Members, before we begin our formal clause-by-clause consideration, I want to clarify whether we want to stick with the page 8 amendment to the terms of reference or go with the possible Committee amendment at annex Z. I think that members seated to my right were in favour of the terms of reference. Is there any contrary view from those on my left?

Mr Eastwood: I would support the Committee amendment.

Ms Fearon: We are happy with the page 8 amendment to the terms of reference.

Mr Lyttle: The sensible option would have been to insert a brief bullet point into the terms of reference, but that has not been done. I take it that there is no longer time for that to happen. The Department has said that there is not. However, I agree that the legislative proposal may not be the ideal option.

The Chairperson: The fact that Sir Anthony is content that what is proposed gives him sufficient scope makes me content that the proposal on page 8 is good enough. Unless you want a recorded vote —

Mr Eastwood: I know that we will probably not win, but, for the record, I propose the Committee amendment.

The Chairperson: We will come to that at the time, if that is OK, Colum. First, do members agree to proceed to the clause-by-clause decision-making phase?

Members indicated assent.

The Chairperson: As we proceed, members, please indicate if you have any other amendments or clauses that you would like to insert. The purpose of the session is to work our way through the Bill, clause by clause, and take decisions. You have a copy of the Bill and explanatory memorandum, and you will want to have them to hand as we consider the clauses. You should also have to hand the amendment bundle and the additional three amendments provided today.

The Bill has 23 clauses. Each clause and the long title will need to be considered in turn, in conjunction with the Department's proposed draft amendments and Colum's draft amendment. In relation to decision-making on each clause, the Committee has four options. The first is to agree that the Committee is content with the clause as drafted. The second option is to agree that the Committee is content with the clause, subject to an amendment proposed by the Department. That could be an amendment that the Committee requested from or agreed with the Department or one that the Department produced of its own volition. Members will remember that, at last week's meeting, we said that we were largely content with the Department's proposed amendments. In the absence of agreement with the Department, the third option is to recommend a Committee amendment, which members can propose as we move through the clauses. Finally, the Committee may agree that it is not content with the clause as drafted, and, although the Committee may not be proposing an amendment, it can actively oppose the inclusion of such a clause by tabling opposition to its standing part of the Bill.

We can reach a decision on each clause by consensus or by division. Members will have the opportunity to consider any amendments to each clause following the reading of that clause. We will first take a decision on any proposed draft amendments. If the Committee is content with a proposed amendment or amendments to a clause, the question put will be whether the Committee is content with the clause, subject to the proposed amendments at annex 1 or annex A, and so forth. Where there are no amendments, the question will be whether the Committee is content with the clause as drafted. If members are content, shall we proceed with clause-by-clause scrutiny?

Members indicated assent.

Clause 1 (The inquiry)

The Chairperson: The explanatory and financial memorandum states:

"This clause authorises the First Minister and deputy First Minister acting jointly to set up an inquiry into historical institutional abuse between 1945 and 1995, the terms of reference for which were announced to the Assembly on 31 May 2012 and which the Ministers acting jointly may amend."

There were a number of areas where the Committee was minded that changes be made to the Bill, and most would impact on clause 1 and the terms of reference, namely, changing 1945 to 1922; the inquiry's right to make recommendations on changes to the law to prevent future abuse; and Ministers' powers to amend the terms of reference to control by way of draft affirmative order. The Department's proposed amendments to clause 1 are in annexes 1 and 2. Are members content with those amendments?

Members indicated assent.

The Chairperson: We have put forward a Committee amendment, and we have Colum Eastwood's proposed amendment.

Mr Eastwood: I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 5, leave out

"subject to this section,".

The Chairperson: Are you proposing the Committee's amendment?

Mr Eastwood: The possible Committee amendment.

The Chairperson: As I understand it, we can vote in favour or against, or members can abstain, which is an active abstention, rather than simply not voting. Those are the four options.

Question put.

The Committee divided:

Ayes 2; Noes 7.

AYES

Mr Eastwood, Mr Lyttle.

NOES

Mr G Robinson, Mr Givan, Mr McCallister, Mr Moutray, Mrs Hale, Ms Fearon, Ms McGahan.

Question accordingly negated.

Mr Eastwood: I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 16, insert

"(6) Without prejudice to any finding it may make in its final report, the inquiry panel may publish an interim report on the requirement or desirability for redress to be provided by the Executive to victims of historical institutional abuse."

Question put.

The Committee divided:

Ayes 2; Noes 7.

AYES

Mr Eastwood, Mr Lyttle.

NOES

Mr G Robinson, Mr Givan, Mr McCallister, Mr Moutray, Mrs Hale, Ms Fearon, Ms McGahan.

Question accordingly negated.

Question put, That the Committee is content with the clause, subject to the Department's proposed amendments.

The Committee divided:

Ayes 8; Noes 0; Abstentions 1.

AYES

Mr G Robinson, Mr Givan, Mr Lyttle, Mr McCallister, Mr Moutray, Mrs Hale, Ms Fearon, Ms McGahan.

NOES

No members voted no.

ABSTENTIONS

Mr Eastwood.

Question accordingly agreed to.

Clause 1 agreed to.

Clause 2 (Appointment of members)

The Chairperson: As stated in the explanatory memorandum, clause 2 enables the Ministers, acting jointly, after consulting the presiding member, to make further appointments, either to fill vacancies that arise or, if necessary, to increase the number of panel members. Members raised no issues during Committee deliberations on 3 October. The Department's proposed amendments are to leave out "presiding member" and insert "chairperson" at five points in the clause, which have been listed for members.

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

Clause 2 agreed to.

Clause 3 (Duration of appointment of members)

The Chairperson: This clause deals with the duration of an inquiry member's appointment, including the Ministers' power to terminate appointment. Members will recall that officials emphasised the reasonableness of the grounds needed for Minister's to exercise their power. Members raised no issues when the clause was discussed on 3 October. The Department's proposed amendment, at annex 2, changes "presiding member" to "chairperson" in a couple of places. Are members happy with the proposed amendments?

Members indicated assent.

The Chairperson: If there are no other amendments, I will put the Question.

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

Clause 3 agreed to.

Clause 4 (Assessors)

The Chairperson: Clause 4 allows for the assessors to be appointed to provide the inquiry with the expertise needed to fulfil the terms of reference. Members raised no issues. The Department's proposed amendments are at annex 2 and change "presiding member" to "chairperson" on three occasions. Are members content with the amendments?

Members indicated assent.

The Chairperson: If there are no other amendments, I will put the Question.

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

Clause 4 agreed to.

Clause 5 (End of the inquiry)

The Chairperson: Clause 5 provides that the inquiry ends when its report has been submitted and its terms of reference fulfilled. It further provides that Ministers acting jointly after consulting the presiding member, may bring the inquiry to a close. The Department's proposed amendments change all instances of "presiding member" to "chairperson". Are members content with those?

Members indicated assent.

The Chairperson: Do members have any more amendments?

Mr Eastwood: My amendments are at annex Y.

The Chairperson: I will give members a moment to read Mr Eastwood's seven proposed amendments to clause 5. Are members content with those amendments?

Members indicated dissent.

The Chairperson: So, Colum Eastwood and Chris Lyttle are in favour, and everybody else is against. If there are no other amendments, I will put the Question.

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

Clause 5 agreed to.

The Chairperson: Colum Eastwood abstained; everybody else voted in favour.

Clause 6 (Evidence and procedure)

The Chairperson: Clause 6 deals with evidence and procedure, in particular how the chair must act with fairness and with regard to the need to avoid any unnecessary cost, whether it is to public funds, witnesses or others. A concern was raised that the requirement to give regard to the need to avoid any unnecessary cost might impact on the requirement on the chair to act with fairness in so far as that touched on legal representation. However, most members were broadly content with clause 6.

There are proposed departmental amendments at annex A on the use of live television links to hear evidence from victims. That will facilitate the hearing of evidence from witnesses who, because of age, infirmity, distance or whatever, would have difficulty attending the inquiry in person. It also provides for the Perjury (Northern Ireland) Order 1979 to apply in such cases. Members discussed those proposed amendments with officials last week and raised no issues with them. Are Members content with those amendments?

Members indicated assent.

The Chairperson: There are also amendments at annex 2, once again, changing all references to "presiding member" to "chairperson". Are members content with those amendments?

Members indicated assent.

The Chairperson: As there are no other proposed amendments, I will put the Question.

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

Clause 6 agreed to.

Clause 7 (Public access to inquiry proceedings and information)

The Chairperson: Subsections (1) and (2) require the presiding member to take whatever steps he judges reasonable to ensure that the public can attend the inquiry, or see and hear a transmission of it, and can access evidence available to it. Members raised no issues in relation to the clause.

The Department's proposed amendments are at annex 2: once again, changing "presiding member" to "chairperson". This is the first clause for which there are also amendments in today's correspondence at annex B. There are two proposed amendments to clause 7. Members have had time to consider those. Are Members content with those amendments?

Members indicated assent.

The Chairperson: As there are no other proposed amendments, I will put the Question.

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

Clause 7 agreed to.

Clause 8 (Restrictions on public access, etc.)

The Chairperson: Subsections (1) to (8) enable the presiding member, during the course of the inquiry, to issue restriction orders. The purpose of such orders is to restrict attendance at all or part of the inquiry, or to restrict disclosure of information in the context of the inquiry, or to restrict disclosure by those who have received information only by virtue of it being given to the inquiry.

During our consideration of clause 8, members were content with the clarification provided by officials that normal legal principles would require anybody affected by an order to be given an opportunity to make a case before an order restricting access was made.

The Department's proposed amendments are at annex A, in relation to protecting witnesses' identities, and at annex 2, once again, changing "presiding member" to "chairperson".

In relation to the proposed amendment at annex A on orders restricting the disclosure or publication of the identity of any person, at our deliberations last week, there was some discussion on that. Officials advised that the inquiry chairperson had sought that amendment. Paul, I think that you raised that issue.

Mr Givan: I am content.

The Chairperson: Officials also advised that OFMDFM would make rules so that the chairperson could, in turn, make orders, and that the rules would come before the Committee for consideration.

Members indicated last week that they were broadly content with the Department's proposed amendments to clause 8. Are Members content with those amendments?

Members indicated assent.

The Chairperson: As there are no other proposed amendments, I will put the Question.

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

Clause 8 agreed to.

Clause 9 (Powers to require production of evidence)

The Chairperson: Subsections (1) and (2) give the presiding member powers to compel by notice witnesses and evidence. Subsection (4) enables the presiding member to vary or to revoke a notice. Members raised no issues in relation to the clause. The Department's proposed amendments are at annex 2, once again, changing all references to "presiding member" to "chairperson". Are members content?

Members indicated assent.

The Chairperson: As there are no other proposed amendments, I will put the Question.

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

Clause 9 agreed to.

Clause 10 (Privileged information, etc)

The Chairperson: Subsection (1) ensures that witnesses before the inquiry have the same privileges, in relation to requests for information, as witnesses in civil proceedings.

Members raised no issues and there are no proposed departmental amendments. As there are no other proposed amendments, I will put the Question.

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

Clause 10 agreed to.

New Clauses

The Chairperson: We come to new clauses that the Department has brought forward in response to the Committee's request that the inquiry chairperson's role in publishing the report be made explicit. These are at Annex A, pages 9 and 10, and they deal with the delivery of the report to Ministers two weeks before publication, to make it clear that the chairperson must publish the report in full, but providing certain limited grounds for withholding certain material from publication. They also deal with the laying before the Assembly of the inquiry report by the First Minister and the deputy First Minister.

Members indicated at last week's meeting that they were content with these new clauses. Members have had a chance to read annex A.

Question, That the Committee is content with Department's proposed amendment to insert a new clause after clause 10, "Submission of reports", as set out at annex A, put and agreed to.

Question, That the Committee is content with the Department's proposed amendment to insert a new clause after clause 10, "Publication of reports", as set out at annex A, put and agreed to.

Question, That the Committee is content with the Department's proposed amendment to insert a new clause after clause 10, "Laying of reports before the Assembly", as set out at annex A, put and agreed to.

Clause 11 (Expenses of witnesses, etc.)

The Chairperson: Subsections (1) to (4) enable OFMDFM to award reasonable amounts to cover witness costs. These include the legal costs of certain witnesses called to the inquiry. This was discussed at our meeting on 3 October, and my sense was that most members were broadly content with it. There will be rules dealing with expenses, which will come before the Committee in due course.

There are proposed departmental amendments, which came to us today, and are at annex D. There are no other proposed amendments, so I will put the Question.

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

Clause 11 agreed to.

Clause 12 (Payment of inquiry expenses by OFMDFM)

The Chairperson: Subsections (1) to (5) require the Department to meet the expenses of the inquiry and delineates the circumstances in which these will not be paid. We heard from officials on this provision on 3 October, and members indicated that they were content with the clause. Before today, the Department had proposed one amendment, which is at annex 2, changing "presiding member" to "chairperson", but we now have further amendments, which are outlined at annex D.

There are no other proposed amendments, so I will put the Question.

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

Clause 12 agreed to.

Clause 13 (Offences)

The Chairperson: Subsections (1) to (8) make non-compliance with notices served under clause 9 or clause 8 an offence. The clause also deals with evidence and privileged information. Members raised no issues in relation to this clause.

As members are aware, the Department's proposed amendments are at annex 2, again, changing "presiding member" to "chairperson". The Department has drafted further proposed amendments at annex B. There are no further proposed amendments, so I will put the Question.

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

Clause 13 agreed to.

Clause 14 (Enforcement by High Court)

The Chairperson: Subsections (1) and (2) provide that, where a person breaches a restriction order or a notice issued under section 9, or threatens to do so, the presiding member may certify the matter to the High Court, which can then take steps to enforce the order.

Members raised no issues in relation to clause 14. The Department's proposed amendment at annex 2 is, again, to change "presiding member" to "chairperson". There is also a proposed amendment to clause 14 at annex B.

There are no other proposed amendments, so I will put the Question.

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

Clause 14 agreed to.

Clause 15 (Immunity from suit)

The Chairperson: Subsections (1) to (3) provide immunity for the inquiry panel, the inquiry's legal advisers, assessors, staff, and anyone else engaged to assist it, from any civil action for anything done or said in the course of carrying out their duty to the inquiry. Members raised no issues. There are no proposed departmental amendments.

As there are no other proposed amendments, I will put the Question.

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

Clause 15 agreed to.

Clause 16 (Time limit for applying for judicial review)

The Chairperson: Subsections (1) to (4) provide for a time limit for judicial review of 14 days, subject to the 14 days being extended by the High Court. The explanatory and financial memorandum states:

"The time limit of two weeks in this section runs from the date on which the applicant becomes aware of the decision, not from the date on which the decision was made."

In light of the advice to the Committee and the view of the inquiry chair, no issues were raised in relation to clause 16 when the Committee considered it on 3 October. There were no proposed departmental amendments.

As there are no other proposed amendments, I will put the Question.

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

Clause 16 agreed to.

Clause 17 (Power to make supplementary, etc. provision)

The Chairperson: Subsections (1) and (2) provide that OFMDFM may, by order, make such supplementary, transitional, incidental or consequential provision as it considers appropriate, subject to negative resolution. We discussed clause 17 on the 3 October, when members were content.

As there are no proposed amendments, I will put the Question.

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

Clause 17 agreed to.

Clause 18 (Rules)

The Chairperson: Subsections (1) to (3) enable OFMDFM to make rules, subject to negative resolution, in relation to evidence and procedure; to the return or keeping of documents; and, in particular, to the award of witness expenses. Members raised no issues at our meeting on 3 October. The Department's proposed amendment to clause 18 is at annex C, and it supersedes the previous proposed amendment. There are further proposed departmental amendments at annexes C and D, members.

As there are no other proposed amendments, I will put the Question.

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

Clause 18 agreed to.

Clause 19 (Application to the Crown)

The Chairperson: It is worth bearing in mind, Clerk, that the Department has indicated the likelihood that it will bring forward an amendment to clause 19.

The Committee Clerk: That is correct, Chairman, but I think that we have to consider the clause as currently drafted.

The Chairperson: With that in mind, we will stick to what we have in front of us.

This clause binds the Crown so that the powers conferred by the Bill can be exercised in relation to Departments. Members raised no issues in relation to clause 19.

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

Clause 19 agreed to.

Clause 20 (Consequential amendments)

The Chairperson: Subsections (1) to (3) provide detail of consequential amendments. Members raised no issues. There are no departmental amendments, and, as there are no other amendments, I will put the Question.

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

Clause 20 agreed to.

Clause 21 (Interpretation)

The Chairperson: Members raised no issues in relation to clause 21, other than, again, the change in terminology from “presiding member” to “chairperson”. The Department’s proposed amendments at annex 2 provide for that change.

Annex 2 also provides for the insertion of the following definition on page 10, line 11:

"chairperson' means chairperson of the inquiry".

Annex 2 also provides for another insertion on page 10, line 15: "member' includes chairperson".

Also, on page 10, annex 2 makes provision to leave out line 18, which was the definition of presiding member.

Finally, annex 2 proposes, on page 10, line 22, to leave out "presiding member" and insert "chairperson".

In annex 1, there is another proposed departmental amendment to clause 21. It proposes to insert, on page 10, line 12, this definition of harm: "'harm' includes death or injury". With officials on 10 October, we discussed that definition and how it related to clause 8, in particular. It was inserted at the request of the inquiry chair. Members indicated that they were broadly content with all the annex 1 amendments at the conclusion of that meeting.

Are Members content with those departmental amendments to clause 21?

Members indicated assent.

The Chairperson: As there are no other proposed amendments, I will put the Question.

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

Clause 21 agreed to.

Clause 22 (Commencement, etc.)

The Chairperson: Subsections (1) and (2) provide detail of when the Bill comes into effect, which is on the day after the day on which it receives Royal Assent. Members raised no issues.

As there are no other amendments, I will put the Question.

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

Clause 22 agreed to.

Clause 23 (Short title)

The Chairperson: This Act may be cited as the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2012. Members raised no issues. There are no departmental amendments.

As there are no other proposed amendments, I will put the Question.

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

Clause 23 agreed to.

Long title

The Chairperson: The long title of the Bill is:

"A Bill to make provision relating to an inquiry into institutional abuse between 1945 and 1995".

The Department's proposed amendment to the long title is to leave out "1945" and insert "1922", as set out in annex 1. Are members content with that amendment?

Members indicated assent.

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

Long title agreed to.

The Chairperson: That concludes our clause-by-clause scrutiny of the Bill. I thank the officials.