



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Clause-by-clause
Scrutiny

12 February 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Sydney Anderson
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mr Michael Copeland
Mr Mark Durkan
Mr David McClarty

Witnesses:

Ms Martina Campbell	Department for Social Development
Ms Jane Corderoy	Department for Social Development
Mr Michael Pollock	Department for Social Development

The Chairperson: Members are aware that today we enter into the formal clause-by-clause scrutiny of the Welfare Reform Bill. The Committee Stage of the Bill started on 11 October 2012. The Committee received some 50 written responses and considered oral evidence from 18 key stakeholder organisations and, of course, the Department for Social Development. Given the Committee's extensive consideration of evidence and responses from the Department, we agreed that the formal clause-by-clause scrutiny can commence today.

Members have previously set out their interim positions on the Bill's clauses, which we went through last week. During the clause-by-clause scrutiny, members will be asked to set out their final positions, subject to the report of the Examiner of Statutory Rules and any consequential amendments. If members do not feel that they can agree a clause, that must be clearly stated during this session. If that happens, the member will be asked to set out his or her proposed recommendation, opposition or amendment.

This is the countdown to our final consideration of the Bill, and the formal clause-by-clause scrutiny is important. The departmental officials — Jane, Martina and Michael — are here this morning to assist the Committee on any issues that we are not sure about or that we did not conclude on. Last week, we had quite a discussion on, first, trying to get a consensus report, and, secondly, agreeing the number of clauses that members determined that they did not wish to support at this time. There will be a caveat in so far as the report's preface will state that there are a number of outstanding issues — for example, universal credit, which is out to consultation — and members felt that they could not support the relevant clauses as they are currently drafted because a consultation is under way. In addition, the Minister is deliberating with Westminster on flexibilities or variances on, for example,

sanctions and other issues. The Executive may also wish to take some mitigating measures, over which the Committee has no control.

Last week, members agreed the clauses that they would not currently support. That does not prevent members either changing their mind this morning and voting for or against an amendment or a proposed clause, or tabling amendments now or at Consideration Stage. In other words, we understand, and it is written into our report, that members will be voting at Committee Stage on the clauses, bearing in mind how deliberations may continue when the Bill leaves the Committee, with the Minister seeking either other flexibilities or Executive support. That is the basis on which members adopt their position at Committee Stage, which is not in any way prejudicial to how members may or may not vote, or table relevant amendments that they think are appropriate or necessary, in the Assembly at Consideration Stage.

If members are satisfied with that approach, the Committee Clerk and his staff have gone through the Committee's discussions and identified a number of clauses, based on last week's positions, that the Committee may or may not support as they are currently drafted. That does not mean that members will not be able to table amendments or vote in a different way at Consideration Stage. Members will be guided by the outworkings of consultations, Executive deliberations and any mitigating measures that may be taken to alleviate our concerns. At any time, members are free to table amendments or be guided by parity issues or costs in the way in which they finally vote on the Bill.

Members have the Bill, the explanatory and financial memorandum, the clause-by-clause summary table and advice from the Examiner of Statutory Rules.

Before we commence the formal clause-by-clause scrutiny, I welcome Sydney Anderson.

Mr Anderson: Thank you, Chair.

The Chairperson: He replaces Sammy Douglas. We have written to Sammy expressing our gratitude for his work on the Committee. We wish him well.

Are members content that that is the position that we have adopted before we start our formal clause-by-clause scrutiny?

Members indicated assent.

The Chairperson: Some clauses are grouped because of their relevance to one another. I will go through the clauses one by one or in their little groups. We will note whether or not members support clauses. I remind members to refer to their recommendations paper, which contains the clauses on which the Committee has retained its position; they are the clauses that members will not support. For the most part, the recommendations are well qualified and prefaced. We intend to go through the clause-by-clause scrutiny today and then have our next Committee meeting on Thursday morning, at which we will finalise our report on the Committee Stage of the Welfare Reform Bill. It will, obviously, include the results of our clause-by-clause scrutiny and other elements on which we agreed, and it will also refer to the Ad Hoc Committee's recommendations. Members are still free to raise individual matters today or on Thursday.

If members are content, we will now go through the clauses. It is entirely up to members to raise any issue that they wish to during today's discussions. The purpose of doing business in the way in which we did, which is the normal procedure for Committee Stage, is that we have more or less had all our discussions and probably do not need much more, if any, discussion. I intend to go through the clauses, but members are free to raise any issues.

Clauses 1 to 3 agreed to.

Clause 4 (Basic conditions)

The Chairperson: Clause 4 is included in the recommendations paper. Based on our discussions, it was decided that the Committee was not agreed to clause 4 as drafted.

Mr G Campbell: Can we take your opening caveat as read, rather than repeating it ad nauseam?

The Chairperson: That is even better. Thank you.

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

Clause 4 disagreed to.

Clauses 5 to 9 agreed to.

Clause 10 disagreed to.

Clause 11 agreed to.

Clause 12 disagreed to.

Clauses 13 to 25 agreed to.

Clause 26 disagreed to.

Clauses 27 to 32 agreed to.

Ms P Bradley: Chair, may I interrupt? I am looking back at clause 26, "Higher level sanctions". The recommendations paper states:

"In this context the Committee was content to agree the clause as drafted."

Am I reading this correctly? We have disagreed clause 26.

The Committee Clerk: The Committee was interested in exploring with the Minister the possibility of varying the sanction regime. If that is the case, you cannot support the sanction regime if you want to ask the Minister to review it.

Ms P Bradley: OK.

The Chairperson: Remember that, because the Minister is in discussions about trying to vary the sanctions.

Mr G Campbell: With the Department for Work and Pensions (DWP).

The Chairperson: With DWP.

The Committee Clerk: If the Committee is then of a mind of not being content to agree it rather than asking the Minister to go and review it, that is the approach.

The Chairperson: Are members content?

Members indicated assent.

Clauses 33 to 51 agreed to.

Clause 52 disagreed to.

Clause 53 agreed to.

Clause 54 disagreed to.

Clauses 55 to 68 agreed to.

Clause 69 disagreed to.

Clauses 70 to 98 agreed to.

Clause 99 disagreed to.

Clauses 100 to 102 agreed to.

Clause 103 (Recovery of benefit payments)

The Chairperson: I want to draw members' attention to this clause because the recommendations paper states that the Committee was not content to agree it. There was a bit of discussion on this, and members talked about the de minimis level of £65. The Department gave us rising figures for the cost of increasing the de minimis figures. When we reflected on this, I am not entirely sure what the Committee was minded to do. I think that we were asking the Minister to consider it; I do not know that we were actually opposing the clause per se. So, I am not sure whether members want to agree the clause and ask the Minister to review it.

Ms P Bradley: I think that that was the general feeling.

The Chairperson: Are members content to agree the clause and to ask the Minister to look at the de minimis levels?

Mr Durkan: Is it similar to the other clause? If we agree it, can the Minister still look into it?

The Chairperson: This is not one of the clauses concerning the cautions; those are a little complex and interrelated. This clause is saying that a figure of £65 at the moment would be non-recoverable and that anything above that would be recoverable. We were given a list of statistics that showed what the difference might be in the cost for non-recovery to the Department if the rates were raised to £70, £75 or £80. I think that the bulk of the money that would not be captured would be in the £70 or £75 range. Is that not right, Martina?

Ms Martina Campbell (Department for Social Development): I think that that is right. I do not have the figures at the moment.

Mr Michael Pollock (Department for Social Development): Something like 22,000 incidences of overpayments were affected. I think that the figures in the table represented 22,000 multiplied by the difference between £65 and £75.

Ms M Campbell: We have agreed to look at the guidance again to give decision-makers a better flavour of when they would apply the de minimis level.

The Chairperson: So, are we content to agree the clause as drafted?

Mr Brady: Can I just check something, Martina? I suppose a lot of the smaller ones would maybe apply when somebody died or there was a delay in the reporting and that kind of thing.

Ms M Campbell: Yes, or if people did not get notification of their change in on time or something like that.

The Chairperson: Are members happy enough?

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

Clause 103 agreed to.

Clauses 104 to 108 agreed to.

Clauses 109 and 110 disagreed to.

Clauses 111 to 114 agreed to.

Clause 115 disagreed to.

Clauses 116 to 132 agreed to.

Clause 133 (Commencement)

The Chairperson: Are members content with clause 133?

Ms Jane Corderoy (Department for Social Development): I just want to make the Committee aware that the Government amendment that we will table at Consideration Stage for the new discretionary social scheme will become clause 133. I think that the officials who are leading on that hope to have that amendment with you at some point this week so that you can look at the enabling clause before Consideration Stage.

The Chairperson: Are you saying that clause 132 will become clause 133?

Ms Corderoy: No. Clause 133 will become clause 134, and clause 134 will become clause 135. There will be a new clause 133, which will be the enabling clause for bringing forward the new discretionary social scheme.

The Clerk of Bills: That is fine. That is a new clause, so at the end of the clause-by-clause scrutiny, you may want to put the Question on that to the Committee.

The Chairperson: I just want to make sure that we get this right. So, clause 133 will become clause 134. Are members content with that? Are there are no objections to the numerical change?

Members indicated assent.

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

Clause 133 agreed to.

Clause 134 (Short title)

The Chairperson: Clause 134, which is the short title, will now become clause 135. Are members content with that clause and with its numbering?

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

Clause 134 agreed to.

New Clause

The Chairperson: We will now discuss new clause 133. Do we have the wording for that?

Ms Corderoy: We do, but I do not know whether it has been cleared with the Minister yet. I think that that is what we are waiting for.

The Chairperson: Can we take guidance on it?

Ms Corderoy: I know that the Committee may have heard from the departmental officials who are leading on the policy, and Leo McLaughlin and Brian Doherty from the agency may have been up to talk about the details. I think that it is out to public consultation at the moment. I can give you a general overview of it, if you are happy with that.

The Chairperson: You gave us an explanation, so it might just be that the best that we can do is acknowledge that the Department has indicated that it will bring forward a new clause 133, the purpose of which is as you articulated it a minute ago. Is that fair enough? I think that we are probably generally content with the explanation that we were given, so, subject to that, members are content.

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

New clause agreed to.

Schedules 1 to 12 agreed to.

The Committee Clerk: I just want to clarify two issues about some of the clauses. In his report, the Examiner of Statutory Rules recommended that the regulation-making powers under clause 33 and clause 91 should be subject to the confirmatory procedure. I know that, at the previous meeting, there was some discussion about how far those recommendations went along with the Department and the Office of the Legislative Counsel (OLC). So, I want to be sure that the Committee has made the right decision on recommending that, following the guidance of the Examiner of Statutory Rules, that would be the case.

The Clerk of Bills: Making clause 33 subject to the confirmatory procedure would require an amendment to clause 44, which was grouped with another two clauses. Making clause 91 subject to the confirmatory procedure would require an amendment to clause 93. If the Committee is of the view that it will be moving in that direction, you may want to revisit those two clauses to say that, "The Committee is content, subject to regulations — *[Inaudible.]* — amendment to come forward."

The Chairperson: Do you want to read that into the record? I think that that is what members agreed.

The Clerk of Bills: I think that you agreed clause 44 and clause 93.

The Chairperson: The Committee Clerk has reminded me that the Department has been in discussions with OLC, so you may have something further to add.

Ms M Campbell: Sorry; I have nothing more to report.

The Committee Clerk: It would be unusual for a Committee not to follow the guidance of the Examiner of Statutory Rules on recommendations on regulation-making powers. If we are thinking about amendments, it was my error; I should have pointed that out earlier. The issue is really whether the Committee is content for an amendment to clause 44 to be tabled.

The Chairperson: We have an amendment for regulation-making powers in clause 33, subject to the confirmatory procedure. If you remember, we had a discussion about recommendations from the Examiner of Statutory Rules about getting a higher level of accountability by the Assembly. This is really just to give effect to that and to accept the recommendations of the Examiner of Statutory Rules.

The Committee Clerk: The Examiner of Statutory Rules was — *[Inaudible.]* — and really the only points that he made were about how clause 33 and clause 44 should be subject to the confirmatory procedure. The Department indicated that it was in discussions with the OLC about that. If the Committee were to agree those clauses as drafted, it would not be following the advice of the Examiner of Statutory Rules. So, it is a case of proposing amendments to ensure that the advice of the Examiner of Statutory Rules is followed in respect of the confirmatory procedure.

The Chairperson: Can we just read that into the record?

The issue is how we procedurally formalise that.

The Clerk of Bills: Members may want to look at the report, which is in the papers.

The Chairperson: It involves only two clauses: clause 33 and clause 34.

The Clerk of Bills: Not 33 and 34.

The Committee Clerk: It relates to clause 33 and clause 91. It is a case of revisiting clause 44 and clause 92 and amending them in accordance with the recommendations of the Examiner of Statutory Rules. So, the amendment reads:

"Clause 44, page 21, line 25

At end insert -

(c) regulations under clause 33"

Question put and agreed to.

The Committee Clerk: Similarly, the amendment to clause 93 reads:

"Clause 93, page 65, line 26

At end insert -

(c) regulations under clause 91"

Those amendments are then following the Examiner's recommendations.

Question put and agreed to.

Mr Brady: Can I ask about the talk about the confirmatory and the affirmative procedures? Which will apply?

The Chairperson: It will make the provision subject to the confirmatory procedure?

On that basis, are members agreed?

Members indicated assent.

Long title agreed to.

The Chairperson: That concludes the formal clause-by-clause scrutiny. Michael, did you want to say something?

Mr Pollock: Just for our purposes, when we were going through the clause-by-clause scrutiny, I thought that clause 33 and clause 44 were agreed as drafted. Are we now saying that they are in the recommendations paper?

The Chairperson: We will revisit them because we had neglected to remind ourselves about the recommendations of the Examiner of Statutory Rules. If you remember, the Department is in discussions with OLC about that to resolve the issue. So, it is just about raising the level of accountability through the confirmatory procedure.

Mr Pollock: Is it the same for clause 93?

The Clerk of Bills: Can I just clarify that, to change the regulation-making power in clause 33, clause 44 has to be amended. So, clause 44 was revisited. To make the regulation-making power in clause 91 subject to the confirmatory procedure, clause 93 needs to be amended, so it was also revisited. So, this applies to clauses 44 and 93.

The Chairperson: Are members happy with that? Thank you, Michael.

On that basis, we have concluded the formal clause-by-clause scrutiny. The Committee will return on Thursday morning for our normal Committee business, after which we will recommence the final deliberations on the Welfare Reform Bill, when we will agree the full report.

Mr G Campbell: Just on a general point and going back to our discussion on the previous meeting, the recommendations paper had a series of issues arising from a number of clauses about which either the Minister was in discussions about variations or he was going to discuss them with Executive colleagues with a view to trying to get resources. I take it that the Committee is clear that, at some

point in the Bill's progress, those questions will receive answers. We will then get the very clear picture both about what we would like and the response to that.

The Chairperson: As you know, we have made it very clear that this is the view that members here, who have had long deliberations on the Bill, have adopted and that it will not prejudice how members may have to vote, either because of parity or cost reasons or because they may have got an answer that satisfied them. Parties and their members and those from non-parties will consider all this in the round when the Bill reaches Consideration Stage.

I thank the departmental officials for being very helpful and patient with the Committee.

Ms M Campbell: You are very welcome.