



Northern Ireland  
Assembly

## Research and Information Service Bill Paper

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# Criminal Justice (Committal Reform) Bill

**NIAR 387-2020**

This paper has been prepared to inform consideration of the Criminal Justice (Committal Reform) Bill, which completed its second stage on 16 November 2020.

The Bill has 6 clauses and one Schedule. It contains two predominant policy objectives – the abolition of oral evidence at committal stage, and the introduction of direct transfer of cases to the Crown court for all indictable offences. An additional objective includes the removal of the provision for the use of oral evidence in applications to dismiss.

The briefing should not be relied upon as legal or professional advice (or as a substitute for these) and a suitably qualified professional should be consulted if specific advice or information is required.

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## Glossary of Key Terms

### *Summary Offences*

Certain types of offences are only triable summarily, for example, driving without insurance and driving without due care and attention. They are heard before a District Judge in the Magistrates' Court sitting without a jury. The sentencing powers afforded to District Judges in the Magistrates' Court mostly permit a maximum custodial sentence of 12 months<sup>1</sup> and/or a maximum fine of £5,000.

### *Indictable Offences*

Certain offences are only triable in the Crown Court and heard by a Judge sitting with a jury. They are known as indictable offences and examples include murder, attempted murder and serious sexual offences. The maximum sentence for such offences are laid down by the statutory instruments governing the offence. However, the Courts have some discretion to impose sentences lower than the maximum tariffs based on mitigating factors.

### *Triable Either Way Offences*

Certain offences are triable either way where legislation has provided for penalties in respect of those offences for both summary and indictable convictions. It is up to the prosecutor to decide the mode of trial for such offences. However, under Article 29 of the Magistrates' Court Order (NI) 1981, a defendant has the right to elect to have their trial heard by a Judge sitting with a jury provided that the offence carries a custodial sentence of more than 6 months and they are aged over 14.<sup>2</sup>

### *Committal Proceedings*

Committal hearings are a procedural part of the criminal court process. They are used to determine whether there is sufficient evidence to support putting a defendant accused of an indictable offence, or one that may be tried either way, on trial in the Crown Court. The statutory test to be applied at committal is contained in Article 37(1) of the Magistrates' Courts (Northern Ireland) Order 1981 which states:

*“Subject to this Order, and any other enactment relating to the summary trial of indictable offences, where the court conducting the preliminary investigation is of opinion after taking into account any statement of the accused and any evidence given by him or on his behalf that the evidence is sufficient to put the accused upon trial by jury for any indictable offence it shall commit him for trial; and, if it is not of that opinion, it shall, if he is in custody for no cause other than the offence which is the subject of the investigation, discharge him.”<sup>3</sup>*

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<sup>1</sup> Criminal damage has a maximum custodial sentence of 2 years imprisonment. Judiciary NI *Sentencing Guidelines, Magistrates' Court*: <https://www.judiciaryni.uk/sites/judiciary-ni.gov.uk/files/media-files/Criminal%20Damage.pdf>

<sup>2</sup> Magistrates' Court Order (NI) 1981, Article 29: <https://www.legislation.gov.uk/nisi/1981/1675/article/29>

<sup>3</sup> Ibid, Article 37: <https://www.legislation.gov.uk/nisi/1981/1675/article/37>

## Key Points

- The Bill has been introduced to give effect to the commitment made by the Executive in the Fresh Start Agreement of 2015 to implement further measures to speed up the criminal justice system and support victims to give evidence.
- The Bill is also reflective of recommendations to reform committal proceedings made in recent reports by the Criminal Justice Inspection Northern Ireland, the Gillen Review - Report into the law and procedures in serious sexual offences in Northern Ireland, the Northern Ireland Audit Office and the Independent Reporting Commission. The reports indicated that committal proceedings provide minimal value whilst imposing onerous demands upon victims and witnesses.
- The Bill contains two predominant policy objectives – the abolition of oral evidence at committal, and the introduction of direct transfer of cases to the Crown court for all indictable offences.
- The Justice Act (NI) 2015 provided for the abolition of committal proceedings for murder and manslaughter cases. The Bill seeks to extend the number of offences which are directly committed to the Crown Court to include all offences which can be tried solely on indictment. The Department has concluded that 'extending the roll out of direct committal to offences which are triable only on indictment provided the best basis for tackling delay in the Crown Court'.
- A previous attempt by the Department of Justice to abolish the use of oral evidence at committal stage, by way of the Justice Bill in 2014/15, was unsuccessful. The current Bill aims to repeal the amendments that were accepted by the Northern Ireland Assembly in 2015, which retained the use of oral evidence where the court deems it necessary in the interest of justice.
- In 2012, the Department of Justice conducted a 12 week consultation regarding the two key policy elements of committal reform. The Department is relying on the feedback from that consultation, as it remains satisfied that the policy proposals represent the most appropriate approach to delivering committal reform. The consequential elements of the Bill have not been subject to any public consultation. However, the Department states that it has 'consulted extensively with key criminal justice partner organisations'.
- England and Wales have abolished committal proceedings for indictable and either way offences on the basis that they were costly and that the matter would go to the Crown Court in any event. Some states in Australia have also ended the committal process. Subsequent analysis of these legislative changes has indicated that reforms to the committal process have not necessarily reduced delays but rather shifted delays to the higher court.
- There appears to be competing views as to whether abolishing committal hearings will have the desired impact in Northern Ireland. In 2015, the Public Prosecution

Service deemed the committal process as a luxury and a historical anomaly that no longer exists in other parts of the UK, but noted that robust case management would be required. On the other hand, the Law Society NI did not think removing a step in the process would necessarily lead to cost savings. Although it indicated that it understood the concerns expressed about vulnerable witnesses, it highlighted that special rules already exist to ensure that they are not unduly subjected to the stress of having to give evidence

- An additional objective of the Bill aims to remove the use of oral evidence during applications to dismiss. In contrast, comparable arrangements in England and Wales allow for the inclusion of oral evidence.

# 1. Introduction

The Criminal Justice (Committal Reform) Bill<sup>4</sup> aims to ‘improve the operation of the criminal justice system’ by delivering committal reform. It builds on the provisions in the Justice Act (NI) 2015, which provided for the abolition of committal proceedings for murder and manslaughter cases.

Committal hearings are a procedural part of the criminal court process. They are used to determine whether there is sufficient evidence to support putting a defendant accused of an indictable offence, or one that may be tried either way, on trial in the Crown Court.

The Bill has been introduced by the Department of Justice to give effect to the commitment made by the Executive in the Fresh Start Agreement to implement further measures to speed up the criminal justice system and support victims to give evidence. Reforming the committal process is also a priority in the New Decade, New Approach Deal, published in January 2020, which formed the basis for the restoration of the devolved institutions. The Bill is also reflective of recommendations to reform committal proceedings made in recent reports by the Criminal Justice Inspection Northern Ireland, the Gillen Review, the Northern Ireland Audit Office and the Independent Reporting Commission.

The Intelligence and Security Committee of the UK Parliament recently recommended that the Northern Ireland Assembly should consider proposals to improve criminal justice outcomes. Since the publication of the Bill, the Independent Reporting Commission has reiterated its disappointment about the additional time taken for criminal cases to be disposed of in Northern Ireland as a result of the committal process, but noted the commitment by the Justice Minister to progress legislation to that end. These issues are discussed further at the appropriate sections in the paper.

The paper is divided into the following sections:

- Section 1 is a brief introduction.
- Section 2 provides an overview of committal proceedings in Northern Ireland.
- Section 3 provides background and context to the Bill.
- Section 4 summarises the contemporary commitments and recommendations.
- Section 5 looks at comparable arrangements in the other UK legislatures.
- Section 6 provides Bill and clause commentary.

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<sup>4</sup> Criminal Justice (Committal Reform) Bill: <http://www.niassembly.gov.uk/globalassets/documents/legislation/examiner-statutory-rules/2019-2020/criminal-justice-committal-reform-bill-as-introduced---full-print-version.pdf>

## 2 The Committal Process in Northern Ireland

Committal proceedings take place in the Magistrates' Court with the defendant present. They are conducted as either a Preliminary Inquiry or a Preliminary Investigation.

The vast majority of committal hearings proceed as **Preliminary Inquiries** which require the prosecution to demonstrate sufficient evidence against the defendant, on the basis of written statements. Generally, a defendant has a right to have witnesses called at the committal hearing, if it is deemed to be in the interest of justice by the court. If they exercise that right, the case will likely be adjourned so that the prosecution can arrange for witness attendance. Witnesses must give evidence under oath and are liable to be cross-examined. If witnesses are called to give oral evidence during the course of the hearing then it becomes known as a 'mixed committal'. A mixed committal is sometimes used where the defence wishes to raise a specific issue, for example, calling a medical witness or the injured party in an assault case.

**Preliminary Investigations** rarely occur in practise and only when it is deemed appropriate in the interest of justice by the court. They take the form of full oral hearings before the District judge. Witnesses attend to give oral evidence and may be cross examined by the defence. A Preliminary Investigation will generally take more time than that of a Preliminary Inquiry and can typically last 1- 2 days.

The following figures give an indication of the infrequent inclusion of oral evidence for sexual offences at committal stage:

- In 2015, there were 171 committals for sexual offences; there was a mixed committal in two cases and a Preliminary Investigation in three cases;
- In 2016, there were 171 committals for sexual offences; there was a mixed committal in four cases and a Preliminary Investigation in six cases; and
- In 2017, there were 127 committals for sexual offences; there was a mixed committal in seven cases and a Preliminary Investigation in three cases.<sup>5</sup>

The recent case of *Hamill, Re Judicial Review No.2* examined the function of committal hearings in relation to witness credibility.<sup>6</sup> It noted the limited impact of an assessment of credibility at committal which was emphasised by the Privy Council in *Brooks v DPP* [1994] when Lord Woolf stated that: "*Questions of credibility, except in the clearest of cases, do not normally result in a finding that there is no prima facie case. They are usually left to be determined at the trial.*"<sup>7</sup> Therefore, whilst credibility can be taken into account at committal, it will not necessarily result in a finding that there is insufficient evidence against the defendant. The test for sufficiency of evidence at committal means that cases can be left to the jury with

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<sup>5</sup> Gillen Review *Report into the law and procedures in serious sexual offences in Northern Ireland* pg 281-282 Statics provided by the Northern Ireland Courts and Tribunals Service

<sup>6</sup> *Hamill, Re Judicial Review No.2* ( 2017) NIQB 118

[https://www.judiciaryni.uk/sites/judiciary/files/decisions/Hamill's%20\(Jessica\)%20Application.pdf](https://www.judiciaryni.uk/sites/judiciary/files/decisions/Hamill's%20(Jessica)%20Application.pdf)

<sup>7</sup> *Ibid*

suitable directions even if “*the witness is shown to have lied, to have made previous false complaints or to bear the defendant some grudge*”.<sup>8</sup>

In 2019, the average waiting time between committal and the start of the trial was 118 days. Average waiting times were previously higher at 168 days between 2015 and 2016, which was partly due to the cases delayed by the legal aid dispute in 2015<sup>9</sup> beginning to progress through the Crown Court in 2016. The average waiting time has subsequently decreased as that backlog has cleared.<sup>10</sup>

1,781 defendants were committed to the Crown Court in 2019. 1749 of these were committed from the Magistrates’ Court. A total of 1,587 defendants were disposed of during 2019.<sup>11</sup>

**Table 1. Crown Court defendants disposed of by charge type in 2019**

All Offences Against the Person	210
All Sexual Offences	174
All Burglary Offences	43
All Robbery Offences	14
All Theft Offences	70
All Fraud and Forgery Offences	85
All Criminal Damage Offences	15
All Offences Against the State	12
All Other Offences	86
All Drug Offences	180
All Motoring Offences	59
All Non-Police Offences	2
Combination of Charges	637
Total	1587

<sup>8</sup> Ibid, para 43

<sup>9</sup> The introduction of new rules in May 2015 in relation to legal aid remuneration resulted in a number of solicitors and counsel withdrawing their representation from a range of court cases.

<sup>10</sup> NISRA Judicial Statistics 2019 <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/judicialstatistics2019.pdf>

<sup>11</sup> Ibid

## 4 Background and Context

### 4.1 Legislative Passage of the Justice Act (NI) 2015

A previous attempt was made by the Department of Justice in 2014 to abolish the use of oral evidence at committal stage by way of the Justice Bill 2015, which proved unsuccessful. The Justice Committee considered the Bill at the time and observed that:

*There was a divergence of views in the evidence received on these proposals with the Public Prosecution Service and Victim Support NI supporting the changes but ultimately wanting to see committal proceedings abolished altogether and the Law Society believing the proposal to remove the use of Preliminary Investigations and the use of oral evidence at Preliminary Inquiries is flawed.<sup>12</sup>*

In particular it noted that:

*The Public Prosecution Service said the changes were more limited that it would like. It remained of the view that they should be abolished altogether. The PPS highlighted that the proposed changes only removes the cross-examination of witnesses. It still leaves in place the committal procedure which, now that the right to call witnesses will be removed, in its view makes that stage of the trial process even more unnecessary. The PPS views the committal process as a luxury and a historical anomaly that no longer exists in other parts of Great Britain and which is expensive to the public purse, not only through the extra cost to legal aid but also the burden that it places on the Public Prosecution Service.<sup>13</sup>*

*[...]The Law Society did not support the assertion that committal proceedings slow down the process. Although it indicated that it understood the concerns expressed about vulnerable witnesses, it highlighted the point that special rules already exist to ensure that they are not unduly subjected to the stress of having to give evidence. It expressed the view to the Committee that a more measured approach would be for district judges to have limited discretion to allow the calling of key witnesses where they believe that it would be in the interests of justice to do so.<sup>14</sup>*

Ultimately, the Committee agreed that it was largely content with the Bill's proposals:

*While one Member indicated that they had some concerns regarding these provisions the Committee agreed to support Clauses 7 to 16 and Schedules 2 and 3 and the amendment proposed by the Department to allow for the direct committal of any co-defendants who are charged with an offence which is not a 'specified offence' so that, in the interests of justice, all defendants can be tried at the same time.<sup>15</sup>*

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<sup>12</sup> NIA Committee for Justice Report on the Justice Bill (NIA 37/11-15) Volume 1 Para 13:

<http://www.niassembly.gov.uk/globalassets/documents/reports/justice/report-on-the-justice-bill-volume-1.pdf>

<sup>13</sup> Ibid, para 50

<sup>14</sup> Ibid, para 48

<sup>15</sup> Ibid, para 15

### *Amendments to Clause 7 and 8 of the Bill*

Upon consideration of the Bill, the Assembly made amendments to the Bill's original clauses which retained the use of oral evidence at committal proceedings where the court deems it to be in the interest of justice<sup>16</sup>:

Clause 7 of the Bill concerning Preliminary Investigations was amended to include:

*Article 30 of the Magistrates' Courts (Northern Ireland) Order 1981 (which enables a magistrates' court to conduct a preliminary investigation of an indictable offence) shall apply only when the court is satisfied that a preliminary investigation is required in the interests of justice; and accordingly in all other cases committal proceedings in a magistrates' court shall be by way of preliminary inquiry under that Order.'*

Clause 8 in relation to mixed committals was amended to include:

*Article 34(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (which enables witnesses to give evidence on oath at a preliminary inquiry) shall apply only when the court is satisfied that such is required in the interests of justice.'*

The amendments were proposed by Mr. Jim Allister MLA, who stated that:

*There are a minority of cases, however, which are of themselves inherently weak, very often because they rely on a flawed witness — a broken reed. You will never read in a set of committal papers anything that indicates to you that this is a flawed witness. The statement will always read persuasively. I do not think I have never read a set of committal papers where it jumps out of the page that this is a witness that you could not believe. The defence might well know matters about that witness which, if they were before the magistrate, would cast that evidence in a very different light. The only way they can ever get that before the court in committal proceedings is to ask for that witness to be called and cross-examined to demonstrate that that witness is not a witness of truth. There are cases where that is the only evidence — of course, in most cases it is more than one — and if that is the only evidence then the magistrate, as in these 18 cases out of 56, will quite properly say that he cannot return the accused for trial because it does not reach the standard even of a prima facie case, and that the proceedings need to end. In doing that, the public purse makes a saving.*

*It is to preserve that facility for that tiny number of cases that I move these amendments.*

*I move them in the context of accepting the general premise of what the Bill wants to do on committal proceedings. The general mode of progress should be PE — no*

<sup>16</sup> NIA Annotated Marshalled List of Amendments Consideration Stage (June 2015)

<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2013-2014/justice-bill--as-introduced-/aml---2.6.15.pdf>

*evidence, just the written committal papers. I accept that premise, but why would you want to exclude something that is not exploited, as we have seen from the numbers, and can save money in the longer term? More importantly, it can deliver justice at the earliest possible stage. Why would you want to deny that to those we represent: our citizens? If they are charged with a criminal offence, surely they are entitled to expect that we will have protected that facility.<sup>17</sup>*

### *Direct Committal*

Section 10 and 11 of the 2015 Act also introduced powers to allow the direct transfer of cases to the Crown Court in which there is the indication of a guilty plea, and for the specified offences of murder and manslaughter. Under direct transfer, committal proceedings do not take place.

The Act also included a provision whereby the Department of Justice could amend the list of specified offences at a future date.<sup>18</sup>

- (3) For the purposes of this Chapter a specified offence is—
- (a) murder;
  - (b) manslaughter;
  - (c) an offence—
    - (i) of aiding, abetting, counselling, procuring or inciting the commission of an offence specified above;
    - (ii) of conspiring to commit an offence so specified;
    - (iii) of attempting to commit an offence so specified;
    - (iv) under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence specified above.
- (4) The Department may by order amend subsection (3).

The PPS welcomed the provision for very serious cases to be directly transferred to the Crown Court but noted that robust case management would be required. It also suggested that other serious offences would benefit from direct transfer. After giving evidence to the Justice Committee, the Director of Public Prosecutions subsequently wrote to it to clarify that the PPS was not seeking to dilute the fundamental right of an accused to confront his accuser and to cross examine any witness against him. He believed that the proposal

<sup>17</sup> NIA Official Report: Tuesday 02 June 2015:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/06/02&docID=236057#1267718>

<sup>18</sup> Justice Act (Northern Ireland) 2015, Section 11: <https://www.legislation.gov.uk/niu/2015/9/section/11>

reasonably confined the right to cross examine to trial and was a proportionate reform in the context of a changing criminal justice environment with a greater understanding and recognition of the experiences of victims and witnesses.<sup>19</sup>

The Law Society NI thought the proposals were flawed and that removing a step in the process would not necessarily lead to cost savings. It believed that the Bill should have focused on a duty to balance the needs of vulnerable witnesses with the requirement to ensure efficient committals. It felt that a fundamental review of the justice system was required to identify how to maximise efficiency and access to justice which would avoid short-term policymaking.<sup>20</sup>

## Section 4 - Contemporary Commitments and Recommendations

This section provides a brief overview of the Executive's commitments and independent recommendations that have informed the Department's policy objectives since the introduction of the Justice Act (Northern Ireland) 2015.

### ***The Fresh Start Agreement***

A Fresh Start - The Stormont Agreement and Implementation Plan, also known as the Fresh Start Agreement, was published by the Executive and the British and Irish Governments in November 2015.<sup>21</sup> It set out a wide range of proposals for addressing challenging issues that impact upon communities, including commitments to tackle paramilitarism and organised crime. In December 2015, a three person Panel was appointed by the Northern Ireland Executive to produce a report by the end of May 2016 with 'recommendations for a strategy to disband paramilitary groups'. The Panel reported in 2016 and specifically recommended that:

*The Department of Justice should bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial.*

*The Department of Justice should also use the measures already available to it to abolish committal proceedings in respect of those offences most frequently linked*

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<sup>19</sup>NIA Committee for Justice Report on the Justice Bill (NIA 37/11-15) Volume 1, March 2015, Para 62:

<http://www.niassembly.gov.uk/globalassets/documents/reports/justice/report-on-the-justice-bill-volume-1.pdf>

<sup>20</sup> Ibid, Para 49

<sup>21</sup> A Fresh Start – The Northern Ireland Agreement and Implementation Plan November 2015

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479116/A\\_Fresh\\_Start\\_-\\_The\\_Stormont\\_Agreement\\_and\\_Implementation\\_Plan\\_-\\_Final\\_Version\\_20\\_Nov\\_2015\\_for\\_PDF.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf)

*to paramilitary groups, including terrorist offences and offences which tend to be committed by organised crime groups.*<sup>22</sup>

### ***New Decade New Approach***

The New Decade, New Approach document was published in January 2020 and formed the basis for the restoration of the devolved institutions. It contained a commitment that the Northern Ireland Executive would deliver committal reform to help speed up the criminal justice system, benefiting victims and witnesses.

It also said that the Executive would address:

- the findings in recently published reports from Criminal Justice Inspection Northern Ireland and the report of Sir John Gillen on the handling of serious sexual offences cases; and
- will deliver the necessary changes in case conduct and management.<sup>23</sup>

### ***Independent Reporting Commission***

Further to the Fresh Start Agreement in 2015, the Independent Reporting Commission was established in 2017, to report on progress generally towards ending paramilitary activity, and the implementation of measures by the UK and Irish Governments and the Northern Ireland Executive.<sup>24</sup> The Commission published its Third Report on progress towards ending paramilitary activity in November 2020. In the Report, the Commissioners reiterated their view that ending paramilitarism requires a Twin-Track Approach, combining policing and criminal justice responses alongside measures to address the systemic socio-economic challenges facing communities where paramilitaries operate:

*We are disappointed about the additional time taken for criminal cases to be disposed of in Northern Ireland as a result of the committal process, but note the commitment by the Justice Minister to progress legislation to that end.*<sup>25</sup>

The Commission noted the Director of Public Prosecutions' view that:

*[...]in addition to the introduction of the proposed new legislative provisions, it will be important to bring significant cultural change to the criminal justice system in order to*

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<sup>22</sup> The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland (2016): <https://www.northernireland.gov.uk/sites/default/files/publications/newnigov/The%20Fresh%20Start%20Panel%20report%20on%20the%20disbandment%20of%20paramilitary%20groups.pdf>

<sup>23</sup> New Decade New Approach (2020), pg 7-8: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>24</sup> Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016: <https://www.legislation.gov.uk/ukpga/2016/13/crossheading/the-independent-reporting-commission/enacted>

<sup>25</sup> Independent Reporting Commission (2020), *Third Report*, pg 21: [https://www.ircommission.org/sites/irc/files/media-files/IRC%20Third%20Report\\_0.pdf](https://www.ircommission.org/sites/irc/files/media-files/IRC%20Third%20Report_0.pdf)

*deliver successful committal reform. Collaborative working, early engagement between police and prosecution and between the prosecution and defence, and active case management are all important elements of the cultural shift needed to ensure the effectiveness of committal reform in Northern Ireland.*<sup>26</sup>

### **Criminal Justice Inspection Northern Ireland**

The Criminal Justice Inspection Northern Ireland is an independent inspectorate with responsibility for inspecting all aspects of the criminal justice system in Northern Ireland apart from the Judiciary. In November 2018, it produced an inspection report entitled *Without Witness – A thematic Inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*.<sup>27</sup>

It identified that 98% and 99% of exclusive sexual offences cases were transferred to the Crown Court from the Magistrates' Court in 2016 and 2017, respectively. It concluded that:

*These figures demonstrate that there are limited risks involved in abolishing the committal proceedings in these types of cases, as the vast majority will be transferred anyway. Direct committal would also reduce the anxiety for victims and should reduce delays in case progression.*<sup>28</sup>

It recommended:

*Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015.*<sup>29</sup>

### **The Gillen Review - Report into the law and procedures in serious sexual offences in Northern Ireland**

In 2018, the Criminal Justice Board commissioned a review of the law and procedure in prosecutions of serious sexual offences. The Review was led by a former Lord Justice of Appeal, the Right Honourable Sir John Gillen. In his report, published in May 2019, he made sixteen key recommendations, supplemented by more than two hundred and fifty supporting recommendations.<sup>30</sup>

<sup>26</sup> Ibid, pg 64

<sup>27</sup> Criminal Justice Inspection Northern Ireland (2018), *Without Witness – A thematic Inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland*: <http://cjini.org/getattachment/5193b4b4-6351-4987-bdfb-03bace145c7e/report.aspx>

<sup>28</sup> Ibid, pg 70

<sup>29</sup> Ibid, pg 71

<sup>30</sup> Gillen Review (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

In his key recommendations, Sir John called for: '*Radical steps to combat excessive delay in the criminal justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time-limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives.*'<sup>31</sup>

To support this recommendation, he made a further twenty-six recommendations aimed at tackling delay in the criminal justice system, including that '*The Department of Justice should make provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process pursuant to the affirmative resolution procedure under section 11(4) of the Justice Act (Northern Ireland) 2015.*'<sup>32</sup>

Elaborating further, he explained:

*I am in favour of the present steps already enshrined in statute to reform the committal system for complainants. The paucity of cases where any material benefit is achieved for the defendant is completely outweighed by the disproportionate cost of and stressful nature of such hearings. More importantly is the fact that precisely the same issues of liability can be dealt with by the Crown Court at an equally early stage. I can see no justification, therefore, for continuing with the present system, which is wasteful of time, costs and resources in circumstances where the vast majority of cases will be transferred anyway to the Crown Court.*

*[...] I am bewildered as to why serious sexual offences are not part of the committal reform and why it is currently confined to murder and manslaughter. I can think of no other area of crime, where the stress caused by adjournments when the case is ready for hearing and the prospect of, and the giving of, evidence 28 s14 of the Justice Act (Northern Ireland) 2015 permits a person who is committed for trial on any charge, at any time after that person is served with copies of the documents containing the evidence on which the charges are based and before that person is arraigned, can apply orally or in writing to the Crown Court sitting at the specified place of the trial for the charge in the case to be dismissed.*<sup>33</sup>

### **The Northern Ireland Audit Office**

In March 2018, the Northern Ireland Audit Office published a report entitled *Speeding up Justice: avoidable delay in the criminal justice system*.<sup>34</sup> The review focused on the collective performance of the four main justice organisations; the Police Service of Northern Ireland, the Public Prosecution Service, the Northern Ireland Courts and Tribunals Service,

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<sup>31</sup> Ibid, Recommendation 7

<sup>32</sup> Ibid, Recommendation 110

<sup>33</sup> Ibid, pg 304

<sup>34</sup> Northern Ireland Audit Office (2018) *Speeding up Justice: avoidable delay in the criminal justice system*: <https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Speeding%20up%20Justice.pdf>

and the Department of Justice in their role of providing oversight of the entire system. It noted that:

*‘a key feature of how the system in Northern Ireland has operated has been a failure to complete cases within reasonable timescales. Crown Court cases in Northern Ireland typically take more than 500 days from the date an offence is reported until a verdict is delivered in court, twice as long as in England and Wales. Around 12 per cent of Crown Court cases in Northern Ireland take in excess of 1,000 days to complete.’<sup>35</sup>*

It concluded that:

*Currently the criminal justice system in Northern Ireland does not deliver value for money. The cost of criminal justice in Northern Ireland is significantly higher than in England and Wales, with no additional benefit arising. Cases take considerably longer to complete than in England and Wales.’<sup>36</sup>*

The report commented that the committal process is ‘widely considered as providing minimal value whilst imposing onerous demands upon victims and witnesses’. It noted the development made in the 2015 Act to remove the process, and ultimately made the recommendation that ‘The Department should establish an action plan and timetable for the eradication of the committal process.’<sup>37</sup>

### **Intelligence and Security Committee of the UK Parliament**

In October 2020, the Intelligence and Security Committee of Parliament published a report entitled *Northern Ireland-related terrorism* which was the outcome of an Inquiry conducted by the previous Committee between 2017 and 2019.<sup>38</sup> While it ‘found that there are systemic delays to the judicial process it did not appear to find any single cause behind this’. However, it noted that the ‘use of oral committal hearings (which require multiple magistrates’ court hearings before a case is sent to a higher court) and an absence of rules covering case management do seem to be contributory factors’.

In evidence to the committee, MI5 said ‘their aim is to replicate as far as possible, the kind of criminal justice led approach that [they] take with terrorist cases in Great Britain’ and are working ‘to support new legislation which would improve aspects of the criminal justice system, including by removing committal hearings from the criminal justice process in Northern Ireland’.

<sup>35</sup> Ibid, pg 2

<sup>36</sup> Ibid, pg 3

<sup>37</sup> Ibid, pg 44

<sup>38</sup> Intelligence and Security Committee (2020) *Northern Ireland-related terrorism*:

<https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&srcid=aW5kZXBlbnRlbnQuZ292LnVrfGlzY3xneDo3ZDY5ZThhOTNhNTk1Nzc5>

The Committee concluded that it had found evidence ‘of systemic delays and lenient sentencing’ and noted that work to explore legislative solutions was stalled during the absence of a functioning Executive. It recommended that ‘it is imperative that, now the Executive has been restored, the Executive and Assembly consider proposals to improve criminal justice outcomes’.

## 5 Comparable arrangements in other UK and International Legal Systems

### 5.1 England and Wales

In England and Wales, the Crime and Disorder Act 1998 abolished committal proceedings for indictable-only offences, on the basis that they were costly and that the matter would go to the Crown Court in any event.<sup>39</sup> In May 2013, the phased abolition of committal hearings for triable either way or hybrid offences was introduced, with Magistrates’ courts now allocating either way offences to be tried in the Magistrates’ courts or the Crown Court, depending on the seriousness of the individual offence.<sup>40</sup>

Defendants charged with an indictable-only offence must be sent for trial ‘forthwith’ to the Crown Court by the magistrates’ court where they first appear.<sup>41</sup> The ‘sending’ is an administrative act, involving only a determination as to whether the defendant faces an indictable-only or related offence. The Magistrates’ court is not concerned with evidential sufficiency but will consider whether the defendant should be sent on bail or in custody.

The procedure for sending indictable only cases to the Crown Court is governed by the Criminal Procedure Rules 2015. When sending the defendant to the Crown Court for trial, the Magistrates’ court must ask whether the defendant intends to plead guilty. If the answer is “yes”, the court must make arrangements for the Crown Court to take the defendant’s plea as soon as possible, or if the defendant does not answer, or the answer is “no”, make arrangements for a case management hearing in the Crown Court.<sup>42</sup>

Subsequent analysis of these legislative changes demonstrated that reforms to the committal process have not necessarily reduced delays but rather shifted delays to the superior court. In March 2016, the National Audit Office observed that:

*Initiatives to improve efficiency in one area may have unforeseen consequences. For example, abolishing committal hearings, which reduced pressures in magistrates’*

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<sup>39</sup> Crime and Disorder Act 1998, Section 51: <https://www.legislation.gov.uk/ukpga/1998/37/section/51>

<sup>40</sup> Ministry of Justice Press Release ( May 2013): <https://www.gov.uk/government/news/faster-justice-as-unnecessary-committal-hearings-are-abolished>

<sup>41</sup> Crime and Disorder Act 1998, Section 51

<sup>42</sup> Criminal Procedure Rules 2015, Rule 9.7: <https://www.legislation.gov.uk/ukSI/2015/1490/article/9.7/made>

*courts, was followed by a significant increase in delays in the Crown Court, which did not have the resources to absorb the increase.*<sup>43</sup>

It concluded that the increase in duration of Crown Court cases was likely to be caused in part by the abolition of committal hearings in May 2013:

*Before committal hearings were abolished, in the year to September 2012, cases spent an average of 31 days in magistrates' courts, and a further 100 days waiting to be heard in Crown Court. In the year ending September 2015, cases spent just 5 days in the magistrates' court on average, but then waited a further 134 days for a Crown Court hearing. While the abolition of committal hearings has reduced waste in the system by getting rid of a hearing that added little value, it increased pressure on the Crown Courts as cases now arrive more quickly, adding to the existing backlog. HMCTS and CPS did not have any additional resource to accommodate the increase in cases.*<sup>44</sup>

### 5.1.2 International Comparisons

Comparable outcomes were identified by the Tasmanian Director of Public Prosecutions<sup>45</sup> and the Chief Judge in Western Australia<sup>46</sup> following the abolition of committals in those states. They noted the transfer of delays from the magistrates' court to the higher court. Western Australia Chief Judge Antoinette Kennedy explained:

*Progressing matters from the Magistrates' Court into the District Court is not the answer to delays if all it means is that there is then a bottle-neck in the District Court and the District Court cannot deal with the matters in a timely way or the matters are not yet ready to be dealt with once they get to the District Court ... The abolition of preliminary hearings therefore has had a small impact on moving people through the system more quickly.*<sup>47</sup>

## 5.2 Scotland

Scotland has a distinctive three-tier criminal court system. These are, in order of precedence, the High Court of Justiciary (the High Court), the sheriff courts and justice of the peace courts. Criminal procedure in Scotland is largely governed by the Criminal Procedure

<sup>43</sup> National Audit Office(2016) *Efficiency in the criminal justice system*, pg 27: <https://www.nao.org.uk/wp-content/uploads/2016/03/Efficiency-in-the-criminal-justice-system.pdf>

<sup>44</sup> Ibid, pg 15

<sup>45</sup> Tasmania, Director of Public Prosecutions, Annual Report 2007 –2008 (2008) 1

[http://www.crownlaw.tas.gov.au/data/assets/pdf\\_file/0018-111636/ar2007-08.pdf](http://www.crownlaw.tas.gov.au/data/assets/pdf_file/0018-111636/ar2007-08.pdf)

<sup>46</sup> Kennedy A, Getting Serious about the Causes of Delay and Expense in Criminal Justice, presented at the 24<sup>th</sup> AIJA Conference (Adelaide, 15-17 September 2006) cited in Magistrates' Court of Victoria's Response to the Victorian Law Reform Commission Committals Issues Paper,

[http://lawreform.vic.gov.au/sites/default/files/Sub\\_14\\_Magistrates%27%20Court%20of%20Victoria\\_27Aug19.pdf](http://lawreform.vic.gov.au/sites/default/files/Sub_14_Magistrates%27%20Court%20of%20Victoria_27Aug19.pdf)

<sup>47</sup> Ibid

(Scotland) Act 1995, as amended.<sup>48</sup> There are two types of procedure under which an individual can be tried: solemn and summary procedure. Solemn procedure involves the most serious cases.

Solemn proceedings generally commence with the defendant appearing in court "on petition".<sup>49</sup> The petition is the initiating document which, among other things, sets out the criminal allegations. When the defendant first appears at court, s/he will usually be "committed for further examination". The defendant will then either be released on bail or remanded in custody to allow further enquiries to be carried out. The next appearance at court by the defendant is at the first diet<sup>50</sup>.

In the meantime, the case is allocated to a case preparer in preparation for court. This is referred to as the precognition process whereby any additional lines of inquiry deemed necessary can be obtained such as forensic analysis, examination of mobile phones and additional statements. Once the case preparer has completed their investigation, the case is then reported to the High Court Unit at Crown Office. The High Court provides a quality assurance role and will make a final decision whether to prosecute. Cases of sexual crimes are considered by the National Sexual Offences Unit, a body of Crown Counsel specialising in the investigation and prosecution of sexual crimes.

In some cases no further proceedings may be instructed due to, for example, insufficient evidence. Other cases may be prosecuted by way of summary procedure – known as a reduction to summary – and others may resolve with an early plea of guilty.

Following an instruction to prosecute in the sheriff solemn court, the indictment is prepared. It is a document listing the charges, the witnesses and productions for the case. The prosecution is required to serve the indictment on defendant 29 days before the first diet. Additional witnesses can be added at a later stage by means of a written notice, referred to as a Section 67 notice.

The purpose of the first diet is to ascertain, for those cases that cannot be resolved, the state of preparation of the prosecutor and defence for trial and the extent to which they have complied with their duty to agree evidence.<sup>51</sup> If both parties are prepared, the sheriff will fix a trial diet.

Scotland has implemented some form of time limits in the pre-trial process with a view to reducing the length of the criminal justice process. The Criminal Procedure (Scotland) Act 1995 provides that a preliminary hearing to set the trial date in the High Court of Justiciary must be held within 11 months of the full committal for a defendant on bail, and the trial must take place within 12 months.<sup>52</sup> The accused is discharged if these time limits are not met.

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<sup>48</sup> Criminal Procedure (Scotland) Act 1995: <https://www.legislation.gov.uk/ukpga/1995/46/contents>

<sup>49</sup>The Society of Solicitors in the Supreme Courts of Scotland (2019) A Lay Person's Guide to Scottish Solemn Criminal Procedure: <https://www.ssclibrary.co.uk/forum-1/ssc-society/a-lay-person-s-guide-to-scottish-solemn-criminal-procedure>

<sup>50</sup> Court hearings are referred to as diets

<sup>51</sup> Criminal Procedure (Scotland) Act 1995, Section 71: <https://www.legislation.gov.uk/ukpga/1995/46/section/71>

<sup>52</sup> Ibid, Section 65 <https://www.legislation.gov.uk/ukpga/1995/46/section/65>

## 7 Bill and Clause Commentary

### 7.1 Bill Consultation

In 2012, the Department of Justice conducted a 12 week consultation regarding the two key policy elements of committal reform – the abolition of oral evidence and the introduction of the direct transfer of cases to the Crown Court.<sup>53</sup> Of the 11 substantive responses received, eight respondents supported the objective of the proposals and agreed that Preliminary Investigations and mixed committals should be abolished.<sup>54</sup>

Four respondents specifically commented that the existing arrangements contributed to delay, were traumatic for victims and witnesses and placed an unnecessary burden on the criminal justice system. Five respondents suggested that the proposal contained adequate arrangements to safeguard the defendant's interests.

The three respondents opposed to abolition thought that the proposal failed to consider the impact upon the defendant and suggested that it would be damaging to the criminal justice system.<sup>55</sup>

The Explanatory Memorandum for the Criminal Justice (Committal Reform) Bill states that the Department of Justice is relying on the original feedback from the 2012 consultation:

*After revisiting the 2012 consultation within the context of the current criminal justice arrangements, the Department remains convinced that the proposals brought forward in 2012 represent the most appropriate approach to delivering the recommendation.*

The consequential elements of the Bill have not been subject to any public consultation. However, the Department states that it has '*consulted extensively with key criminal justice partner organisations including Office of the Lord Chief Justice [], the Public Prosecution [], the Police Service of Northern Ireland, the Northern Ireland Courts and Tribunals Service (NICTS) and the Prison Service.*'<sup>56</sup>

### 7.2 Financial Effects of the Bill

The Explanatory Memorandum indicates that the introduction of the Bill will require significant changes to the existing processes across key criminal justice organisation including the PPS, the PSNI, Northern Ireland Courts and Tribunal Service and Northern Ireland Prison Service. A Committal Reform Programme has been set up, with representatives from the relevant

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<sup>53</sup>DOJ, Reform of Committal Proceedings: A Department of Justice Consultation (2012): [https://wayback.archive-it.org/11112/20150928081747/http://www.dojni.gov.uk/index/public-consultations/archive-consultations/speeding\\_up\\_justice\\_consultation\\_on\\_reform\\_of\\_committal\\_proceedings.pdf](https://wayback.archive-it.org/11112/20150928081747/http://www.dojni.gov.uk/index/public-consultations/archive-consultations/speeding_up_justice_consultation_on_reform_of_committal_proceedings.pdf)

<sup>54</sup> DOJ, Encouraging Earlier Guilty Pleas: and Reform of Committal Proceedings: Report on Responses and Way Forward: <https://wayback.archive-it.org/11112/20150928081420/http://www.dojni.gov.uk/index/public-consultations/archive-consultations/early-guilty-pleas-and-committal-reform-report-on-responses-and-way-forward-report.pdf>

<sup>55</sup> Ibid

<sup>56</sup>Criminal Justice (Committal Reform) Northern Ireland Bill Explanatory Memorandum, pg 6-7: <http://www.niassembly.gov.uk/globalassets/documents/legislation/examiner-statutory-rules/2019-2020/efm---criminal-justice-committal-reform-bill---as-introduced---full-print-version.pdf>

criminal justice organisation, to deliver the necessary changes The Department has also invited the Law Society and the Bar Council to sit on a stakeholder forum.<sup>57</sup>

The Department indicates that a business case is being prepared to capture the costs for these organisation and costs will be factored into plans for future budgets.

The capital expenditure relating to IT development is '*largely complete and any remaining costs will be met from existing capital budgets*'.<sup>58</sup> During the Bill's second stage the Justice Minister confirmed:

*Department of Finance approved a business case for £1.3 million in November 2017 for the capital cost associated with the IT changes required to implement direct committal. That expenditure is largely complete, and any remaining costs will be met from existing capital budgets. The main aim of direct committal is to transfer cases to the Crown Court more quickly than at present and, therefore, shorten the overall time that it takes to complete the cases. In effect, there will be a rebalancing of resources: less work will be done in the lower-court tier — the Magistrates' Court — but more work will be done in the higher-court tier — the Crown Court.*

*A business case that is being prepared will capture the relative rebalancing of costs and resources between criminal justice organisations. It is not expected that the changes will have a negative impact on costs, including legal aid costs, and should therefore be affordable. On that basis, any resulting costs will be prioritised by my Department in future budget periods.*<sup>59</sup>

### 7.3 Analysis of Key Clauses

This section provides short commentary on the key clauses of the Bill. Clauses 3, 5 and 6 are largely self-explanatory.

#### *Clause 1 - Abolition of preliminary investigations*

1. Article 30 of the Magistrates' Courts (Northern Ireland) Order 1981 (which enables a magistrates' court to conduct a preliminary investigation of an indictable offence) is repealed; and accordingly all committal proceedings in a magistrates' court shall be by way of preliminary inquiry under that Order.

This clause removes the provision for Preliminary Investigations altogether. It repeals the amendment that was made by the Northern Ireland Assembly to the Justice Act (Northern Ireland) 2015, which allowed them to be held where the court deemed it appropriate in the interest of justice.

<sup>57</sup> NIA Committee for Justice Meeting 5 November 2020:

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=24064&eveID=12381>

<sup>58</sup> Explanatory Memorandum pg 12

<sup>59</sup> NIA OR 16 November 2020:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020/11/16&docID=315840#3071401>

*Clause 2 -Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry*

2. Article 34(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (which enables witnesses to give evidence on oath at a preliminary inquiry) is repealed.

The clause allows for only paper based evidence to be considered at committals. This provision similarly removes the amendment made by the Northern Ireland Assembly to the Justice Act (Northern Ireland) in 2015, which allowed witnesses to give evidence if it was deemed appropriate in the interest of justice by the court.

*Clause 4- Direct Committal for trial: miscellaneous amendments*

Clause 4 Subsection 3 repeals Section 10 of the Justice Act 2015 which provides the process for a defendant to be directly committed to the Crown Court from the Magistrates Court where they intend to enter an early guilty plea to any indictable offence. The Department states in the Explanatory and Financial Memorandum *'that a number of risks have been identified in relation to the implementation of the direct committal of an accused to the Crown Court following an indication of a guilty plea'* but does not elaborate any further in detail. Instead, it summarises that:

*'Despite efforts to mitigate those risks, concerns remain around the operational out-workings of section 10 which could potentially have a detrimental impact on the criminal justice system. Upon implementation, section 10 would have introduced a new feature into the criminal justice system , which would allow cases to be returned from the Crown Court to the magistrate's court if a defendant did not ultimately enter a plea at the arraignment hearing'.<sup>60</sup>*

However, during evidence to the Justice Committee in November 2020, the Department explained:

*Section 10 provided that, if a defendant indicated an intention to plead guilty, regardless of the offence type — so, regardless of whether it was one of those murder/manslaughter cases — that offence would also be remitted directly to the Crown Court. However, section 10 also included a provision that, if the defendant subsequently decided not to plead guilty, they would be returned to the Magistrates' Court; that is the dashed red line that you see in your slide.*

*As we have spent a lot of time working with criminal justice organisations through that section 10 process, the Bill will seek to repeal section 10. That is for a number of reasons. It presents significant operational complexities and risks, including the risk of false release or imprisonment. It is an interim measure. Once direct committal applies*

<sup>60</sup> Criminal Justice(Reform) Northern Ireland Bill, Explanatory and Financial Memorandum:

<http://www.niassembly.gov.uk/globalassets/documents/legislation/examiner-statutory-rules/2019-2020/efm---criminal-justice-committal-reform-bill---as-introduced---full-print-version.pdf>

*to all offence types, section 10 would be obsolete, so we would have spent a lot of time and resource implementing something that is short term. Although it is not possible to quantify with any certainty, section 10 would also apply to a relatively small number of cases. For those and a host of other reasons, we have decided to seek to repeal section 10 in the Bill and instead focus our efforts on a more expansive roll-out that provides a better and less complex basis on which to implement the changes. Through what we have proposed, we think that we will get more cases to the Crown Court more quickly, regardless of an intention to plead guilty. However, we recognise the benefits to witnesses and victims of fast-tracking cases where the accused wants to plead guilty, so the Bill also includes powers to allow the Magistrates' Court to order the necessary reports in advance of a Crown Court trial.<sup>61</sup>*

Clause 4 Subsection 4 amends sections 11 and 12 of the 2015 Act to extend the number of offences which are directly committed to the Crown Court to include all offences which can be tried solely on indictment. The Department has concluded that *'extending the roll out of direct committal to offences which are triable only on indictment provided the best basis for tackling delay in the Crown Court'*. The subsection also makes provision for the Department to designate additional offences for direct committal:

(b)the offence is—

(i)an offence which, in the case of an adult, is triable only on indictment, or

(ii)any other offence which is for the time being designated for the purposes of this subsection by an order made by the Department, the court shall forthwith commit the accused to the Crown Court for trial for the offence.

During the second stage of the Bill, the Justice Minister clarified the reason for the inclusion of the power to designate additional offences by the Department:

*The reason we are allowing for additional offences to be added by affirmative resolution is because we may create additional offences over the next couple of years that would fall into the same category of offence as those that we are putting on the schedule now. Rather than having to wait until the next tranche of the roll out, we will be able, by affirmative resolution of the House, to add those. I am thinking, for example, of some of the more serious cases around stalking and the more serious end of offences that we will be dealing with.*

*It would be by way of an affirmative order, and it would give people the opportunity to scrutinise and have a say in what happens. It is not about trying to take power for the Department; it is about trying to ensure that we are responsive in the justice system*

<sup>61</sup> NIA OR 5 November 2020:

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=24064&evelD=12381>

*and have looked ahead and scoped out what may be necessary over the next weeks and months.*<sup>62</sup>

This subsection also amends section 11 of the 2015 Act, to incorporate the process provided for in section 12 of the Act, which allows a defendant, charged with a non-direct committal offence, to be directly committed to the Crown Court if the offence is related to an offence for which a co-defendant has been directly committed.

#### *Clause 4 Subsection 8*

Section 14 of the 2015 Act prescribes the process to allow a defendant who has been directly committed to the Crown Court for a charge under sections 11 and 12, to apply to have the charge dismissed. The Judge can dismiss a charge where it appears that the prosecution evidence would not be sufficient for the defendant to be properly convicted. At present, oral evidence may be included in an application to dismiss, if the judge thinks that it is required in the interest of justice. Specifically subsection 4 states:

4) Oral evidence may be given on such an application only with the leave of the judge or by order of the judge; and the judge shall give leave or make an order only if it appears to the judge, having regard to any matters stated in the application for leave, that the interests of justice require it.

Specifically subsection 8 of the Bill amends Section 14 of the 2015 Act as follows:

In section 14 (application to dismiss)—

(a) for the heading substitute “Application to dismiss”;

(b) in subsection (1) for “section 11 or 12” substitute “this Chapter”;

(c) for subsections (4) and (5) (which permit oral evidence to be given in limited circumstances) substitute—

“(4) Oral evidence may not be given on an application under subsection(1).”.

The Department explains that it has introduced this provision ‘*to maintain consistency with the Department’s commitments to remove the option for victims and witnesses to be called to provide oral evidence on oath in advance of trial.*’<sup>63</sup> Therefore, under the extension of direct committal to all indictable only offences, there will be no opportunity to introduce oral evidence during an application to dismiss.

#### *Comparable provisions*

The English and Welsh Criminal Procedure Rules 2015 specify that for an application to dismiss, both the defendant and the prosecution may ask for a hearing if they want one, and

<sup>62</sup> NIA OR 16 November 2020:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020/11/16&docID=315840#3071401>

<sup>63</sup> Criminal Justice (Committal Reform) Bill, Explanatory and Financial Memorandum

explain why it is needed. Specifically, they can identify any witness they want to call to give evidence in person, with an indication of what evidence the witness can give.<sup>64</sup>

Clause 4 contains a number of other subsections containing outworking for the introduction of direct committal:

- Clause 4 subsection 6 provides powers for the magistrate's court to order inquiries and reports relating to the sentencing of the defendant, should they indicate an intention to plead guilty to the offence in the Crown Court. Reports such as a Pre-Sentence Report can help the court to make a decision about the most suitable type of sentence for the defendant.
- Responsibility for continuing with or terminating criminal proceedings lies with the PPS. Clause 4 subsection 7 provides new powers for the Director of Public Prosecution to discontinue proceedings to which the direct proceedings provisions apply, between the case being committed to the Crown Court and the time that an indictment has been presented in the Crown Court. These powers aim to address situations where there is substantial change in circumstances of the case which means that the test for prosecution is no longer met or that the decision of the original prosecutor was wrong. This provision replicates similar powers given to prosecutors in England and Wales under Section 23A of the Prosecution of Offences Act 1985.<sup>65</sup>

#### *Clause 5: Commencement and transitional provisions*

Clause 5 provides that provisions relating to the abolition of oral evidence and the introduction of direct committal will not apply retrospectively to proceedings instituted before the relevant provisions have been introduced.

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<sup>64</sup> The Criminal Procedure Rules 2015, Rule 9.16: <https://www.legislation.gov.uk/uksi/2015/1490/article/9.16/made>

<sup>65</sup> Prosecution of Offences Act 1985, Section 23: <https://www.legislation.gov.uk/ukpga/1985/23/section/23A>