



Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

Safeguarding Board Bill

4 November 2010

NORTHERN IRELAND ASSEMBLY

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HEALTH, SOCIAL SERVICES
AND PUBLIC SAFETY**

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Members present for all or part of the proceedings:

Mr Jim Wells (Chairperson)
Mrs Michelle O'Neill (Deputy Chairperson)
Mr Mickey Brady
Dr Kieran Deeny
Mr Alex Easton
Mr Tommy Gallagher
Mr Sam Gardiner
Mr Paul Girvan

Witnesses:

Mr Craig Allen)
Ms Patricia Nicholl) Department of Health, Social Services and Public Safety
Ms Isobel Riddell)

The Chairperson (Mr Wells):

I welcome back the team. We have with us Patricia Nicholl, Isobel Riddell and Craig Allen; Patricia and Isobel are from the Department's child care directorate, and Craig Allen is from the legislation and equality branch. Apparently, Fergal Bradley, who has been with us many times, is unwell. I hope that there is no relationship between his being unwell and the fact that he was to come before us today. I am sure that there is not. We will go through what has happened in the past two weeks, and, hopefully, we can get the matter out of the way fairly quickly.

We received a letter from the Minister indicating that he is prepared to make a statement to the House at Consideration Stage to give assurances on clauses 3(10) and 12. I am very happy with his response. In the second paragraph, he states that he took advice from the Office of the Legislative Counsel. I did not know that there was such a thing. Nevertheless, he was advised:

“that Clause 3(10) as drafted gives the SBNI the power to do anything else that facilitates or is conducive to the achievement of its objective.”

Furthermore, his letter confirms that he is prepared to say that in his statement on the Floor of the House, which will be recorded by Hansard. That is exactly what we asked for, so I am very pleased, because it more than covers our concerns. If there is any future dissension, people will be able to refer to the Hansard report to see clearly what the Minister’s intention was in his statement. Therefore, unless anybody feels greatly exercised, we can safely put the entire issue to rest and save about half an hour’s discussion. Are members content with that assurance?

Members indicated assent.

The Chairperson:

The Minister goes on to say:

“Clause 12 requires that core member agencies must make arrangements to safeguard and promote the welfare of children. I intend to develop guidance for member agencies regarding this clause, similar to that developed by Department for Children Schools and Families (now Department of education) for Section 11 of the Children Act 2004. The guidance will set out the SBNI’s expectations for member agencies in relation to this duty. Again, to provide assurance and clarity I will make a statement to the House”.

That gets round our problems there. We got all that we asked for; we cannot ask for more than that. Are members content that that deals with clause 12?

Members indicated assent.

The Chairperson:

We were greatly concerned about clause 3(9)(c), which deals with SBNI publications. We had a major problem with the SBNI’s having to seek “the approval” of the Department before it can publish. That has been changed: the SBNI will now have to “consult” the Department before it publishes. There is a world of difference between “consult” and “seek approval”; the latter would give the Department the power to veto SBNI publications. “Consult” means that the SBNI will be at liberty to take on board the Department’s views or do otherwise.

I understand that the departmental officials have a form of words on which to consult the Committee; we could sort the issue out immediately.

Mr Craig Allen (Department of Health, Social services and Public Safety):

We propose that clause 3(9)(c) now read:

“subject to consultation with the Department”.

We hope that that will allay any concerns that the Committee raised about the apparent power of veto of the Department. We did not think that that was necessary, but we accept your concerns and hope that those words will meet your request.

The Chairperson:

Are members content with the change of wording in clause 3(9)(c)?

Members indicated assent.

The Chairperson:

That will save another half-hour's discussion. That wording is what the Committee was asking for. If everyone is happy, we will move on to the Minister's letter, which was tabled at the meeting of 21 October; it sets out various amendments, and I refer you to the proposed wording of clause 6(1). Members were concerned that all directions given by the Department to the Safeguarding Board for Northern Ireland should be published in an annual report. The Department proposes to amend clause 1 so that the content of the annual report is set out in regulations. The Minister states in the letter that the annual report must include details of all directions issued by the Department. The proposed amended clause therefore reads:

“A Safeguarding Board must, within such period after the end of each financial year as the Department may direct, prepare and send to the Department a report in such form, and containing such information, as may be prescribed.”

That is probably the one remaining difference between us, because the proposed amendment to clause 6(1) does not specifically mention the need for the directions to be published in the annual report. The assurance that you gave us the last time was that if the Department had come down hard and heavy on the board and directed it to do something, the safeguard would be that when the annual report is published, specific requirement would have been listed and published and the public would be made aware of it. There is nothing in what you suggest that would compel that to happen.

Ms Patricia Nicholl (Department of Health, Social Services and Public Safety):

Our legislative advice is that it is best dealt with in regulations. The Committee will see the statutory rules. Officials' intent to ensure that the publication of all directions will be covered in the annual report has been placed on public record, and we will ensure that that is enshrined in the regulations.

The Chairperson:

I have two problems with that: first, there is an element of trust — we have to believe that it will happen; secondly, if it is done through regulations, will we not be left in a situation where we can reject or accept all the regulations but not be able to amend them if we are unhappy with the wording that you suggest for that clause? Would we not have to chuck out the whole lot if we are not happy? Should we not have the option of something that is amendable?

Ms Nicholl:

Our intention has been to ensure that the regulations will state the requirement on the SBNI's annual report to contain in its format a publication of all directions issued and all publications made.

The Chairperson:

Where was the great legal problem about including that in the Bill?

Mr Allen:

We could end up making a very long list of provisions. We might start by putting in directions, but where would it end? What will we include and what will we leave out?

Mr Girvan:

We want to ensure that the Bill does not give the Department any wriggle room to interfere; one could drive a coach and horses through the present wording. It could be phrased in such a way that the report has to be submitted and reported on but without interference from the Department. That is my layman's reading of "the Department may direct" in clause 6(1). There is a great deal of ambiguity there.

The Chairperson:

I like the phrase "wriggle room", although am always too polite to use it; however, that is what

we feel.

Mr Easton:

I take it that the word “may” is causing the problem.

Mr Allen:

We had a discussion about “shall” and “may” during the Sunbeds Bill. As Patricia said, we resolved that by going on public record that the requirement will go into the report. You will see the regulation when it is prepared; if not, you will want to know why.

The Chairperson:

Can I offer a compromise? Would the Minister be prepared to say that in his statement to the House?

Mr Allen:

We can certainly raise it with him.

The Chairperson:

If, before we come to our clause-by-clause consideration, we get the same positive response that we got to the other two issues, we may look upon that favourably, and the issue will lie; if, however, the Minister refuses to do that, we will get very suspicious.

Mr Girvan:

Chairperson, if we leave it at that, will we not be left waiting for the Minister to make his statement in the House? We will not see the statement until it is presented.

The Chairperson:

If the Minister made those three promises only to renege on them, there would be no Bill.

Mr Girvan:

Has that never happened?

The Chairperson:

It would be a major problem for the Committee; it would be highly irregular. We have the

Minister's promise in writing; it is in the public domain. We would like confirmation that the Minister will include those measures in his statement before we agree the clause-by-clause consideration.

Ms Nicholl:

We can certainly arrange that.

The Chairperson:

The Hansard report has a legislative basis; it can be used in court proceedings to demonstrate a Department's intent behind legislation. That is a tried-and-tested use of Hansard. That is why it is significant that the Minister include those promises in his statement to the House; their inclusion in Hansard is even stronger than in a letter to the Committee. If the Minister says on the Floor of the House that he will observe those promises, the Department will have very little wriggle room. We would like that within the week. If the Minister says no, we will have to address the issue again.

Ms Nicholl:

We will ensure that it is addressed.

The Chairperson:

Are members content to wait a week to see whether that commitment is met?

Members indicated assent.

The Chairperson:

The Minister outlines various other amendments in his letter of 1 November. Some are procedural and others technical; some we did not call for at all. Could you talk the Committee through the intent behind them?

Ms Nicholl:

Some arose through what Ms Ramsey called a need for officials to consider when taking forward an amendment whether consequential amendments would be necessary to other clauses. Having suggested amendments to clauses 5(1), 10(1) and 11(6), we looked at the other clauses. The amendments relate to the SBNI, but they have a knock-on effect; therefore we have introduced

mirror-image amendments as they refer to the committees and sub-committees. Any amendment to the SBNI now also reflects the powers to prescribe for committees and sub-committees. The amendments are for the clarification of those three elements.

The Chairperson:

Therefore they have no real import for the legislation; they are simply a tidying-up exercise.

Ms Nicholl:

Yes.

The Chairperson:

In his letter, the Minister said that the Department for Social Development is seeking an update on whether the Northern Ireland Housing Executive could be included in the Bill as a statutory member. Has there been any comeback on that?

Ms Nicholl:

I think that the meeting between officials of the Department of Health, the Department for Social Development and the Housing Executive takes place to-morrow. We will be better able to inform the Committee after to-morrow, which we will do as soon as we can.

The Chairperson:

Are members content to agree those minor technical amendments?

Members indicated assent.

The Chairperson:

I do not think that members have any further concerns on the legislation, although there remains one issue, which, we hope, will be sorted out. I think that we are almost home and dry, although I hate saying that as it always pre-empts a crisis.

I signed a letter requesting the Department to halt the appointment process for the chairperson designate of the SBNI and to re-advertise the post at a higher salary. We are all aware why we had that debate: we were concerned that neither the status nor the salary reflected the importance of the post as laid out in the legislation. I understand that the Minister has agreed to halt the

process. I am surprised but delighted.

People often ask whether Committees have any real input into departmental policy and decision making; in this case we can say that we certainly have. That is exactly what we wanted, and I thank the Department for its flexibility. We want the best person possible for the crucial position of chairperson of a board that will supervise child protection. It was a wise decision of the Department's. Do the witnesses wish to explain the background to the decision?

Ms Nicholl:

We will take forward, on the advice of the public appointments unit in the Department of Finance and Personnel, a further exercise to consider a revised recruitment competition for the chairmanship, including its remuneration.

The Chairperson:

Thank you. The Committee was split on the issue; indeed, mine was the deciding vote.

Mr Easton:

I proposed it.

The Chairperson:

Success has many friends; failure is a widow. Do members have any thoughts on our success in changing the Department's view?

Mrs O'Neill:

The Department's decision is welcome. Can we consult among ourselves before the post goes to public advertisement? Our issue the last time was that the post was advertised on the same day that we received it. Consulting on the post first might pre-empt any problems further down the line.

Ms Nicholl:

We would need to take the advice of the public appointments unit. We gave an undertaking that, at an appropriate juncture, we would share our thoughts on the new pack with the Committee.

The Chairperson:

In his letter of 3 November the Minister says that only two suitable candidates came forward for interview. Why would I miss the opportunity to say I told you so? Our concern was that we would not get sufficient high-quality candidates for a suitable shortlist; that is exactly what happened. However, the Department has recognised that and has taken the correct decision. We cannot criticise the Department when it does the right thing, even if only at our behest.

Mrs O'Neill:

A cynic might say perhaps that is why the process was halted rather than because the Committee requested it. Nevertheless, we will claim the credit. *[Laughter.]*

The Chairperson:

We will take the credit, as we seldom get the opportunity to do so.

Mr Gardiner:

We must also note that the Minister listens.

The Chairperson:

We accept that. He listened on this occasion, and we are thankful that he did. Although the Committee was split on the matter, it is relatively content with the decision. We hope that the new process will appoint the person whom we want for this crucial position. We can put that on our scoreboard.

I thank the witnesses for their co-operation. This has been a much smoother and more pleasant experience than I had expected. Both on this issue and on the Sunbeds Bill co-operation between the Committee and the Department has borne fruit. We are very pleased.