



Northern Ireland
Assembly

Committee for Justice

Report on the Criminal Justice (Committal Reform) Bill

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Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Justice.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows

- Mr Paul Givan MLA (Chairperson)
- Ms Linda Dillon MLA (Deputy Chairperson)
- Mr Doug Beattie MLA
- Ms Sinéad Bradley MLA¹
- Ms Jemma Dolan MLA²

¹ With effect from 26 May 2020, Ms Sinéad Bradley replaced Mr Patsy McGlone

² With effect from 16 March 2020, Ms Jemma Dolan replaced Mr Pat Sheehan

Report on the Criminal Justice (Committal Reform) Bill

- Mr Gordon Dunne MLA
- Mr Paul Frew MLA
- Ms Emma Rogan MLA^{3,4}
- Ms Rachel Woods MLA

³ With effect from 17 February 2020, Ms Martina Anderson replaced Mr Raymond McCartney

⁴ With effect from 9 March 2020, Ms Emma Rogan replaced Ms Martina Anderson

List of Abbreviations and Acronyms used in the Report

Abbreviation/Acronym	Full explanation of Abbreviation/Acronym
the Bar	The Bar of Northern Ireland
CJINI	Criminal Justice Inspection Northern Ireland
DCSDC	Derry City and Strabane District Council
ECHR	European Convention on Human Rights
ICP	Indictable Cases Process
NIAO	Northern Ireland Audit Office
NSPCC	National Society for the Prevention of Cruelty to Children
PBNI	Probation Board for Northern Ireland
PCSP	Policing and Community Safety Partnership
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland

Executive Summary

1. This report sets out the Committee for Justice's consideration of the Criminal Justice (Committal Reform) Bill.
2. The Criminal Justice (Committal Reform) Bill consists of 6 Clauses and one Schedule and its purpose is to improve the operation of the criminal justice system by reforming committal proceedings. The Bill expands the list of offences that will be directly committed to include all offences that are triable only on indictment and ensures related offences can be transferred together with specified offences. It also removes the need for victims and witnesses to give oral evidence at committal stage and in the 'Application to Dismiss' process for those cases directly committed to Crown Court.
3. In addition, the Bill provides new powers for the Public Prosecution Service to discontinue proceedings which will enable charges to be withdrawn where there is a material change in the circumstance of the case and the prosecution determines that the test for prosecution is no longer met. Section 10 of the Justice Act (Northern Ireland) 2015, which provides that a magistrates' court will directly commit an accused to the Crown Court if they indicate an intention to plead guilty, will be repealed.
4. The Committee requested evidence from interested organisations and individuals as well as the Department of Justice as part of its deliberations on the Bill.
5. Sixteen written submissions were received and the Committee held three oral evidence sessions with organisations as well as exploring the issues raised in the written and oral evidence with Department of Justice. The

Committee also sought the views of the Lord Chief Justice on the committal process and the changes proposed in the legislation and commissioned two research papers to assist consideration of specific issues.

6. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory and Financial Memorandum and was satisfied with the rule making powers provided for in the Bill.

7. The Committee considered the provisions of the Bill at 17 meetings.

Key Issues Relating to the Clauses in the Bill

8. At its meeting on 6 May 2021, the Committee undertook its formal Clause by Clause consideration and agreed the Clauses and Schedule in the Bill as drafted.

Clause 1 - Abolition of preliminary investigation, Clause 2 - Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry and Clause 3 - Consequential amendments and repeals

9. Clauses 1 and 2 provide for the abolition of preliminary investigations where proceedings are conducted via the calling of witnesses and mixed committals which use both the calling of witnesses and written evidence, thereby abolishing oral evidence at committal stage. Clause 3 gives effect to the Schedule which makes provision for consequential amendments and repeals.

10. There was a large degree of support for the removal of oral evidence at committal stage which is considered by many to cause additional stress and anxiety for victims and witnesses and to be a source of unnecessary delay in the criminal justice system. A specific issue was raised on whether there is a need to completely abolish oral evidence or instead apply the interests of justice test provided for in the Justice Act (Northern Ireland) 2015. Concerns were also raised about the impact of the abolition of oral evidence on the right to a fair trial, the removal of Preliminary Investigations and mixed committals as a filter for weak or vexatious prosecutions and whether in fact the Bill will contribute towards reducing delay in the criminal justice system.
11. The Committee explored the issues raised in more detail during the oral evidence sessions with organisations and in writing and during oral evidence sessions with Department of Justice officials. The Committee also took account of the comments provided by the Lord Chief Justice.
12. The Committee also noted the recommendations from a number of reviews and reports which indicate that direct committal should be fully implemented to reduce avoidable delay in the justice system and to prevent victims and witnesses from having to give oral evidence twice.
13. The Committee is not convinced that the legislation will speed up the justice system, one of its stated objectives as outlined by the Minister, departmental officials and in the Explanatory and Financial Memorandum.
14. It has also not been possible for the Committee to assess the validity of the assertions in the evidence received that the interests of justice test as provided for in the 2015 Act would appropriately safeguard the rights of all parties as those provisions have not been enacted by the Department. However, while the numbers of cases that go through preliminary

investigation or mixed committal are small, the Committee recognises that it can nonetheless be a traumatic experience for those who may be required to give oral evidence pre-trial. Removal of oral evidence at committal stage will provide victims and witnesses with the reassurance that they will not have to give oral evidence or be subject to cross-examination twice.

15. The Committee therefore agreed that it was content with Clauses 1, 2 and 3 as drafted.

Clause 4 - Direct committal for trial: miscellaneous amendments

16. Clause 4 makes a number of amendments to the direct committal provisions of the 2015 Act. It repeals Section 10 of that Act, extends the list of offences to which direct committal will apply and provides the magistrates' court with powers to order inquiries and reports relevant to the sentencing of an accused should person(s) indicate an intention to plead guilty to offence(s) to be directly transferred to the Crown Court. It also provides new powers for the Director of Public Prosecutions to discontinue proceedings directly transferred to the Crown Court and amends the process for the accused or their representative to apply to dismiss charges on which they have been directly committed for trial.

17. The Clause makes provision in relation to documentation for cases that are directly committed. Other changes are made which are minor or consequential in nature, such as amending existing legislation to define a timeframe under which a prosecutor must disclose to the defence copies of, or provide access to, material which could reasonably be considered to undermine the prosecution case or assist the case of the accused directly transferred.

18. One of the issues raised in respect of Clause 4 is that, with the repeal of Section 10 of the 2015 Act, and regardless of an indication from the defence of an intention to plead guilty, the legislation will provide for a potential application to dismiss. The Public Prosecution Service advised that this is a potential risk to the prosecution but believes that it can be adequately addressed through careful drafting of the relevant court rules and proper case management by the judges.

19. Questions were also raised about the process for extending the list of offences to which direct committal will apply in the future. The Department advised that orders to extend the range of offences will only be made if a draft has been approved by resolution of the Assembly. It is the Department's intention to fully roll out direct committal and further legislation will be required to achieve that aim which will be subject to Assembly scrutiny. The extension at this stage to offences that are triable only on indictment will inform the development of further legislative requirements.

20. Concerns were raised that an accused could be directly committed to the Crown Court without any evidence having been presented against them and an accused may make a number of court appearances before it becomes clear if there is any evidence to support the case. While the power of the Director of Public Prosecutions to discontinue proceedings directly transferred was welcomed, it was suggested that much more efficient investigative processes on the part of the PSNI in compiling evidence and by the PPS on arrangements for presenting an indictment to the court are needed in order for the direct transfer provisions to operate effectively.

21. Specific issues were also raised around disclosure and the Committee was advised that the lack of timely disclosure remains a significant issue for legal practitioners, particularly in relation to digital evidence such as

body-worn camera footage, CCTV footage or information extracted from mobile devices. The Department is taking forward a Digital Evidence Sharing project and the final phase, which will allow for the sharing of digital evidence with the legal profession and defendants, is expected to be commenced by the end of 2021. The Department has also established a multi-agency Committal Reform Programme to coordinate implementation of the Bill and a Stakeholder Forum which includes representatives of the legal profession which can consider these issues further in the roll out plans.

22. As with the removal of oral evidence at committal stage, it was suggested that applying direct committal to more offences removes a filtering stage that can help narrow issues and reduce or remove charges with the result that some cases that could have been removed at an early stage remain in the system for a long time at a cost to the public purse. The Department expressed the view that there are sufficient checks and balances in the system to alleviate such concerns and that, with only 4% of cases not proceeding to Crown Court for a variety of reasons, the efficiency of the committal process is questionable.
23. The provisions for the magistrates' court to order inquiries and reports to inform sentencing for those who indicate an intention to plead guilty was welcomed by some as it may allow for early disposal of a case, where appropriate. Concerns were however raised by the Probation Board that Pre-Sentence Reports are requested on the basis of initial charges and difficulties could arise if these were subsequently changed. The Department advised that the Bill includes a safeguard to provide both the prosecution and the defence the opportunity to make representation to the court prior to requests being made which should ensure that the reports are only ordered when all parties are agreed they would be of benefit.

24. The main concern raised with the amendment to the process whereby the accused or their representatives can apply to dismiss charges on which they have been directly committed is that oral evidence will not be included in the process. It was suggested that oral evidence should be retained in line with the interests of justice test as provided for in the 2015 Act to maintain the rights of complainants in the criminal justice process. In response, the Department pointed out that oral evidence is not permitted in the current 'No Bill' process and that the removal of oral evidence in an 'Application to Dismiss' process is in line with that process and with the commitment to remove oral evidence pre-trial.
25. The Committee believes that the phased approach being taken towards committal reform and direct committal for all cases is an appropriate approach and considers that the intention at this time to apply direct committal to cases that are triable only on indictment is a proportionate step towards this aim.
26. The Committee considers that early engagement between all parties and robust case management will be critical to the effectiveness of direct committal. The Committee believes it is important that a collaborative approach is taken to development of a case management framework that is fit for purpose and expects this work to be expedited to ensure all partners are fully aware of their obligations on the commencement of the provisions of the Bill and to ensure that delays are not simply shifted from the magistrates' court to the Crown Court.
27. The Committee acknowledges the concerns raised in the evidence it received regarding the timely disclosure of information and, in particular, the length of time taken to provide digital evidence to defence solicitors. While the Digital Evidence Sharing project is welcome, this clearly needs to be progressed much more quickly. More effective case management to ensure the disclosure of information takes place in an appropriate and

timely manner so that cases can be progressed as efficiently as possible is essential.

28. The Committee notes the Department's intention to evaluate this phase of the roll out of direct committal when it has been in operation for 18-24 months and believes this learning will be vital in shaping further steps towards direct committal for all cases. The Committee expects to be apprised of this evaluation and will use this evaluation to inform its consideration of future proposals to extend direct committal to other offences by draft affirmative regulations. The Committee wants to see consideration also being given to capturing how the Bill improves the experiences of victims and witnesses.

29. The Committee agreed that it is content with Clause 4 as drafted.

Clause 5 - Commencement and transitional provisions, etc.

30. Clause 5 makes provision in relation to the commencement of the provisions of the Bill by Order and that provisions relating to the abolition of the oral evidence from the committal process and direct committal will not apply to proceedings instituted before the Department has commenced the relevant provisions of the Bill.

31. The Committee notes the Department's intention to bring the provisions into operation as soon as it is possible to do so and will wish to see a timeline for implementation of the legislation in due course.

32. The Committee notes that neither the Bar nor the Law Society were aware of how direct committal would operate when they gave evidence to the Committee. The PPS did, however, outline its understanding of how the process will work. While noting the Department's intention to create a

stakeholder forum, in the Committee's view it would have been useful for the Department to have initiated earlier engagement with the two key stakeholders representing legal practitioners on the practical outworkings of the new proposals.

33. The Committee agreed that it is content with Clause 5 as drafted.

Other issues raised in the consideration of the Bill

34. A key concern to a number of those who gave evidence on the Bill is that it will not have a noticeable impact in reducing the considerable delays in the criminal justice system and it was suggested that delays will simply be shifted to another part of the system as more cases transfer more quickly from the magistrates' court to the Crown Court. It was argued that the main delays in the system come at the earlier investigatory and prosecutorial stages rather than when a case reaches court, which appears to be borne out by data provided by the Department to the Committee. It was also suggested that approaches such as statutory time limits and custody time limits may have an impact on reducing delay and progressing cases more quickly through the criminal justice system.

35. The Department acknowledged that there are many elements to reducing delay in the system and works with criminal justice partners to deliver a Speeding Up Justice programme with a number of strands, committal reform being just one part of that work.

36. The Committee remains concerned at the time taken for cases to progress through the criminal justice system, an issue that has been evident for a number of years with little demonstrable progress being made. Although supportive of the provisions of the Bill, the Committee is

not persuaded that it will have a demonstrable effect on the average time taken to dispose of cases.

37. The data provided by the Department indicates that much of the delay comes at the earlier stage of the process and not when a case has reached court, which the Committee believes illustrates the need for more robust and effective investigatory and disclosure processes.
38. The Committee wants to be provided with regular reports on the progress of the implementation of the Bill and, post-implementation, the Committee wants to receive regular reports on the specific impact of its provisions on speeding up justice and reducing overall delay in the criminal justice system. The Committee believes that robust measures must be implemented to tackle avoidable delay in the criminal justice system and intends to regularly monitor the progress and impact of the Speeding Up Justice programme. The Committee welcomes the inquiry on Speeding Up Justice currently being undertaken by the Public Accounts Committee and will await its findings and recommendations with interest.
39. The transfer of more cases more quickly will inevitably have an impact on the workloads in both the magistrates' court and the Crown Court. No information was available on the financial impact, affordability and financial risk associated with the Bill. The Department is currently working to develop the business case to identify requirements in order to rebalance resources across the relevant parts of the justice system.
40. The Committee considers that there is a risk that backlogs could accumulate at the Crown Court if more cases are transferred directly without the necessary frameworks and resources in place to deal with them. The completion of the business case to include the effective rebalancing of resources will be fundamental to ensuring that resources are correctly allocated within the relevant criminal justice organisations if

the Bill is to have any impact on speeding up the progress of cases through the system.

41. The Committee believes that resources should be directed to where they will have the most impact on reducing delay in the system and recommends that any rebalancing of resources does not simply focus on identifying the revised requirements of the magistrates' courts and the Crown Court but also encompasses the earlier stages in the process where data suggests that delays are apparent.
42. The Committee questions whether redistributing resources will be enough or whether additional resources will be required. Given the lack of costings available, the Committee is not in a position to properly assess requirements at this stage. The Committee will consider resource needs and funding requirements to implement the provisions of the Bill when further information is provided by the Department.
43. The Committee is also aware that changes will be required to legal aid to reflect the reforms to the committal process. This will need to take into account that cases will be transferred to the Crown Court more quickly, counsel will be instructed more quickly and that the types of hearing will be different. The Committee has been advised that legal aid is one of the four key projects of the multi-agency Committal Reform Programme along with legislation, IT and business change.
44. While detailed modelling is required to determine the changes to legal aid necessitated by the Bill, the Committee is of the view that the revised framework must be developed and in place in a timely manner so that commencement of the provisions of the Bill is not delayed.

45. At its meeting on 10 June 2021 the Committee agreed its report on the Criminal Justice (Committal Reform) Bill and ordered that it should be published.

Introduction

Background to the Bill

1. The Criminal Justice (Committal Reform) Bill was introduced to the Northern Ireland Assembly on 3 November 2020 and was referred to the Committee for Justice for consideration in accordance with Standing Order 33 (1) on completion of the Second Stage of the Bill on 16 November 2020.
2. At introduction the Minister of Justice made the following statement under section 9 of the Northern Ireland Act 1998:
'In my view the Criminal Justice (Committal Reform) Bill would be within the legislative competence of the Northern Ireland Assembly'
3. The purpose of the Bill is to improve the operation of the criminal justice system by reforming committal proceedings, which is the procedure used to determine whether there is sufficient evidence available to justify putting a person on trial in the Crown Court. The Department's aim in the longer term is to completely abolish the traditional committal process through the rollout of direct committal.
4. The Bill removes the need for victims and witnesses to give oral evidence at committal stage and in the 'Application to Dismiss' process for those cases directly committed to the Crown Court. It expands the list of offences that will be directly committed to include all offences that are triable only on indictment and ensures related offences can be transferred together with specified offences. The Bill provides new powers for the Public Prosecution Service to discontinue proceedings between the case being committed and the presentation of an indictment to the Crown Court, which will enable charges to be withdrawn where there is a

material change in the circumstance of the case, such as new evidence emerging, and the prosecution determines that the test for prosecution is no longer met. It also repeals Section 10 of the Justice Act (Northern Ireland) 2015 (the 2015 Act) which provides that a magistrates' court will directly commit an accused to the Crown Court if they indicate an intention to plead guilty.

5. The Bill contains 6 Clauses and one Schedule.

Committee Approach

6. The Committee took oral evidence from Department of Justice officials on the principles of the Bill on 5 November 2020 following its introduction to the Assembly.
7. In addition to publishing a media signposting notice in the Belfast Telegraph, Irish News and Newsletter seeking written evidence on the Bill, the Committee wrote to a wide range of key stakeholders inviting views. In response to its call for evidence the Committee received 16 written submissions. A list of the written submissions received is included at Appendix 3.
8. During the period covered by this report the Committee considered the Bill and related issues at 17 meetings. The Minutes of Proceedings are included at Appendix 1.
9. The Committee had before it the Criminal Justice (Committal Reform) Bill [NIA Bill 11/17-22] and the Explanatory and Financial Memorandum that accompanied the Bill.

10. At its meeting on 26 November 2020, the Committee agreed a motion to extend the Committee Stage of the Bill to 11 June 2021. The length of the extension reflected the Committee's desire to progress the legislation speedily but ensure enough time was available for robust and detailed scrutiny. It also provided flexibility for the Committee to manage a heavy legislative work programme with at least two further Bills - the Protection from Stalking Bill and the Justice Bill - expected to be introduced by the Department of Justice, which would fall to the Committee for scrutiny. The motion to extend was supported by the Assembly on 14 December 2020.

11. The Committee held three oral evidence sessions with the Bar of Northern Ireland (the Bar), the Law Society of Northern Ireland and the Public Prosecution Service for Northern Ireland (PPS). The Minutes of Evidence are included at Appendix 2 and a list of witnesses who gave oral evidence is at Appendix 7.

12. The Committee would like to place on record its thanks to all the organisations who responded in writing and provided oral evidence.

13. The written evidence highlighted general support for reform of the committal process including abolishing oral evidence at committal proceedings and extending the range of offences to which direct committal arrangements will apply. Concerns were raised in both written and oral evidence, however, that getting more cases to the Crown Court more quickly may not improve efficiency in the justice system but instead could shift delays from one part of the system to another. Preferences were expressed by those who represent the legal profession that, rather than being abolished completely, oral evidence should be retained with the interests of justice provisions of the 2015 Act applied. It was also suggested that direct committal will remove an important mechanism whereby weak cases can be filtered out at an early stage.

14. The Committee explored the issues with the Department both in writing and in oral evidence sessions. Memoranda and papers from the Department of Justice on the provisions of the Bill are at Appendix 4.
15. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory Memorandum and was satisfied with the rule making powers provided for in the Bill.
16. To assist consideration of specific issues highlighted in the evidence the Committee commissioned two research papers from the Northern Ireland Assembly Research and Information Service on Reform of the Criminal Justice Process in Other Jurisdictions and Statutory Time Limits in Other Jurisdictions.
17. Noting the views of the organisations representing the legal profession that the current committal process provided for in the 2015 Act should be retained, the Committee wrote to the Lord Chief Justice for any views or comments he wished to provide on the committal process and the changes proposed in the legislation given the detailed knowledge of and integral role that the judiciary has in the committal process. The response from the Lord Chief Justice is included at Appendix 5.
18. The Committee also sought details of the analysis completed by the Department on the Bill's human rights compliance in respect of the European Convention on Human Rights (ECHR) and international human rights law.

19. The Committee carried out informal deliberations on the Clauses of the Bill at its meeting on 22 April 2021 and undertook its formal Clause by Clause scrutiny of the Bill on 6 May 2021.

20. At its meeting on 10 June 2021 the Committee agreed its report on the Criminal Justice (Committal Reform) Bill and ordered that it should be published.

Consideration of the Provisions of the Bill

21. The Criminal Justice (Committal Reform) Bill contains six clauses and one Schedule.

Context of the Legislation

22. Reducing delay is one of the biggest challenges facing the justice system and the Committee has been advised it is a priority for the Department, its criminal justice partners and the Criminal Justice Board. Reforming the committal process is seen as a key part of the plan to reduce avoidable delay. In her speech during the debate on the Second Stage of the Bill, the Minister advised that the measures will help tackle delay in the most serious cases that are heard in the Crown Court and will also help the experiences of victims and witnesses.

23. Under the provisions of the 2015 Act, an accused can currently be directly transferred to the Crown Court for trial in certain circumstances without the need for a traditional committal hearing. The Justice Bill 2015 as it was then introduced also sought to abolish oral evidence at committal stage in the magistrates' court. The Bill was amended, however, to ensure that oral evidence could be called if a judge was satisfied that it was in interests of justice to do so, although these provisions have not been formally commenced.

24. There have been calls for further reform or indeed eradication of the committal process since the 2015 Act was passed. In addition to the length of time it takes for cases to progress through the criminal justice system, the impact that having to give what can sometimes be traumatic oral evidence more than once has on victims and witnesses remains a key concern.

25. In its report on speeding up justice published in 2018, the Northern Ireland Audit Office (NIAO) suggested that the committal process added minimal value to the progression of cases, whilst imposing demands on victims and witnesses. The report stated that the committal process could effectively amount to

'a preliminary trial, with victims and witnesses required to provide testimony which they will have to deliver again at trial in the Crown Court. This is, at the least, stressful to participants and may deter them from attending for trial.'

26. The Gillen Review of the law and procedures in serious sexual offences in Northern Ireland noted that the time taken for sexual offence cases was 698 days in 2019-20 compared to 470 in 2015-16. Sir John also commented on the traumatic effect that giving evidence and the trial process has on victims. A key recommendation from the Gillen review is that steps should be taken to combat excessive delay in the judicial system. A specific recommendation in this regard was that provision should be made for the direct transfer of serious sexual offences to the Crown Court.

27. Criminal Justice Inspection Northern Ireland (CJINI) pointed out in its report on the handling of sexual violence and abuse cases by the criminal justice system that, in each year from 2015 to 2017, at least 96% of cases where the defendants' offences are exclusively sexual offences were transferred to the Crown Court from the magistrates' court for preliminary enquiries and preliminary investigations. CJINI believed this demonstrated that there are limited risks in abolishing the committal proceedings in these types of cases as, in the vast majority of cases, they will be transferred anyway. Direct committal will also reduce the anxiety for victims in such cases and should reduce delays in case progression.

28. The Fresh Start Panel on the Disbandment of Paramilitary Groups in Northern Ireland recommended that the Department of Justice should bring forward legislation to further reform committal proceedings to remove the need for oral evidence before trial. The New Decade New Approach document noted that the Executive would deliver committal reform.

29. It is the Department's intention to abolish the traditional committal process entirely. The Bill is a further step towards that aim.

Response to Call for Evidence

30. The Committee received 16 written submissions from a range of organisations in response to its call for evidence and took evidence from three organisations. The Committee appreciates the time and effort that was taken to submit the evidence which encompassed a number of wider issues for the criminal justice system, either legislative or operational, that are not covered by the provisions of this Bill. The Committee has used the evidence to undertake detailed scrutiny of the provisions of the Bill and will draw on it when scrutinising related issues that come before it in the future.

31. The Committee also sought the views of the Lord Chief Justice on the proposed reforms to the committal process.

32. While the evidence and correspondence received by the Committee was largely supportive of the Bill, concerns were raised that it removes an important part of the process whereby weak cases can be filtered out at an early stage. In addition, questions were raised about whether the Bill will improve efficiency or will instead shift delays to elsewhere in the

criminal justice system and it was suggested that other measures, such as robust case management regulations, would have more of an impact in this regard. In addition, rather than the complete abolition of oral evidence, some respondents expressed a preference for its retention in line with the provisions of the 2015 Act.

33. The Committee explored the issues raised in further detail in oral evidence sessions with a number of organisations. The Committee also sought further information and clarification from the Department of Justice both in writing and in oral evidence sessions with officials.

Support for the legislation

34. The majority of those who submitted written evidence or correspondence to the Committee were supportive of the provisions of the Bill, particularly the abolition of oral evidence at committal proceedings and the extension of the range of offences to which direct transfer to the Crown Court will apply. Examples of the views received are outlined below.

35. The Lord Chief Justice advised that he has been pressing for the reform of the committal process, which he considers vitally important, since 2012. In his view, it is difficult to sustain an argument for the retention of the current process by which only one or two cases may be eliminated when considered against the risks of an injurious impact on victims and added delay to case progression, which affects victims and witnesses and also the defendants who may spend a significant period of time in custody awaiting trial.

36. Victim Support stated that reform of committal proceedings has been a key campaign for the organisation for several years. Though recognising that no single reform can be a panacea to eradicate delay, it considers that removing committal hearings will go some way to making the trial

system more streamlined. Committal hearings can last several days, impact on delay in the criminal justice system and are an additional cost to the public purse.

37. Derry City and Strabane District Council (DCSDC) and Derry and Strabane Policing and Community Safety Partnership (PCSP) both believe that the Bill will enhance the existing judicial processes, improve the operation of the criminal justice system and deliver on the recommendations from the Fresh Start Panel, the NIAO, CJINI and the Gillen Review reports. It will also contribute to 'speeding up justice' which is a key priority in the Programme for Government and relates directly to Outcome 7: 'We have a safer community where we respect the law and each other.'
38. DCSDC and Derry and Strabane PCSP were also of the view that the speed that cases progress through the system matters to victims and witnesses, their families and communities and can help offenders to better understand the implications of their actions.
39. The Police Federation of Northern Ireland was supportive of the proposed reforms and is of the view that they will help bring expediency to the justice process in Northern Ireland and bring it into line with the rest of the UK.
40. The Probation Board for Northern Ireland (PBNI) also welcomed the focus the Bill gives to reducing unnecessary delay in the courts process.
41. Belfast City Council welcomed the proposals to reform the committal process to speed up the justice system and to improve the experience of victims and witnesses.

42. The Police Service of Northern Ireland (PSNI) recognises the significance of reforming committal proceedings and how this provides an opportunity to improve the experience of victims and witnesses, reduce delay and promote overall confidence in the criminal justice system. The PSNI supports the introduction of the Bill, believing it meets the needs of victims and witnesses, and supports the delivery of recommendations from previous inspection reports such as the Gillen Report into the law and procedures in serious sexual offence cases.
43. The NSPCC advised that criminal justice inefficiency is one of its gravest concerns and that the progress of cases involving child victims and witnesses throughout the system is punctuated by processes and practices that are not efficient and are against the timely delivery of justice. The NSPCC advised that, while supporting the Bill, additional measures and resources are needed to expedite cases involving children, both to improve their experience and renew public confidence in the delivery of justice.
44. The Bill is seen by the Public Prosecution Service (PPS) as an extremely important piece of legislation designed to ensure that the very significant statutory reforms to criminal procedure in the 2015 Act are implemented as effectively as possible to deliver the maximum benefit for all users of the criminal justice system, including victims of crime. The PPS also indicated, however, that a number of further measures will be required to create the culture change necessary to maximise the opportunities presented by the new processes including mandatory duties of direct engagement between the parties, proportionate file building and robust case management by judges.

Concerns regarding the legislation

45. Both the Bar of Northern Ireland (the Bar) and the Law Society of Northern Ireland noted their concerns that the Bill will not have the

desired impact in reducing delays in the criminal justice system. The Bar questioned the basis on which the Department has concluded that “extending the roll out of direct committal to offences triable only on indictment provided the best basis for tackling delay in the Crown Court” given analysis of legislative changes in other jurisdictions such as England and Wales have shown that reforms to the committal process alone have not reduced delays but instead shifted them to the higher court, which then struggles to absorb the increase. The Bar advised that it has not seen any evidence or figures to support the view that direct committal will improve efficiency and suggested that there are greater delays at other stages in the process, such as the investigatory stage.

46. Similarly, the Law Society noted that post implementation data shows that reforms in England and Wales introducing direct transfer have not been shown to be demonstrably more efficient in terms of impact on court delays than first having the Crown’s case tested for its sufficiency in the lower court. They advised that solicitors suggest the main cause of delay in criminal trials is not the committal proceedings but the time taken by investigatory agencies to gather evidence to support a prosecution.

47. The Law Society also suggested that the inclusion of custody time limits in the proposed reforms and the introduction of statutory time limits would have an impact on case progression and reducing delay in the trial process.

48. The issues raised by the Bar and the Law Society regarding the causes of delays in the criminal justice system are considered under the ‘Other issues raised in the consideration of the Bill’ section of the report.

49. Clauses 1 to 3 provide for the abolition of preliminary investigations and mixed committals. In its letter to the Committee dated 28 October 2020, the Department stated that these clauses are “fairly straightforward and relate to the abolition of oral evidence within the traditional committal process.”
50. Preliminary Investigations are where committal proceedings are conducted via the calling of witnesses. Mixed committal proceedings use both written evidence and the calling of witnesses during committal proceedings. Clauses 1 and 2 respectively remove these options for cases progressing via the traditional committal process from legislation.
51. Clause 3 gives effect to the Bill’s schedule, which contains minor repeals and amendments that mainly remove references to preliminary investigations or mixed committals in other pieces of legislation.

Clause 1 - Abolition of preliminary investigation and Clause 2 - Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry

52. There were a number of issues raised in respect of Clauses 1 and 2 including questioning the need for abolition of oral evidence, the tactical use of oral evidence by the defence to test resilience or discourage victims and witnesses from testifying, the impact on the right to a fair trial and the removal of preliminary investigations and mixed committals as a filter for weak or vexatious prosecutions. Given the correlation between the effect of the provisions and the significant overlap in the evidence received, the issues raised in respect of these clauses are considered together.

53. The Bar suggested that the need for oral evidence will only apply in a very small minority of cases and suggested consideration should be given to its retention where it is in the interests of justice to do so, in line with Section 7 of the 2015 Act. It stated that the retention of this safeguard at the discretion of the court is important in taking account of the right to a fair trial, access to justice and in certain cases helping to narrow the issues so as to shorten the trial or obviate the need for one entirely.
54. The Bar advised that District Judges are highly professional and must apply an interests of justice test to many decisions. If the test were misapplied in these circumstances, it could be subject to judicial review by either the defence or prosecution. The Bar also contends that counsel does not want to make the experience more traumatic for those giving evidence and prosecution counsel could intervene or a judge would stop any questions that go beyond the bounds of counsel's professional obligations.
55. While conscious of the needs of complainants and witnesses, the Bar noted that the court already has a range of special measures at its disposal which are frequently adopted either singularly or in conjunction to support individuals to give their best possible evidence. Support could also be provided by Victim Support Services and the investigating police officer could provide support before and during the course of criminal proceedings to victims, witnesses and complainants.
56. The Bar also highlighted that it is not necessarily a victim or complainant who gives oral evidence at mixed committals and it can be technical or expert witnesses and PSNI officers.
57. The Law Society similarly believes that the interests of justice test in the 2015 Act protects the rights of all parties and noted that it is not

necessarily victims who are required to give oral evidence but can be other witnesses such as police officers.

58. In terms of the impact on victims, the Law Society pointed out that complainants do not have individual legal representation and therefore may feel they have little control over the process. It suggested that Sir John Gillen's recommendations in cases of serious sexual offences will go some way to correct that position and support complainants as they progress through the justice system. The Law Society welcomed the funding of three fixed term salaried positions within Victim Support as part of a two-year pilot project but suggested consideration should be given to extending the scope of the pilot so that complainants may be free to go to a legal advisor of their own choice.
59. The Law Society suggested that, if a witness is not to be believed in a Crown Court trial or a victim or witness is mistaken, it may well be in their interests to have the matter dealt with earlier in the magistrates' court so, if used properly, the committal process can be an effective method for protecting defendants and for bringing closure to victims and witnesses.
60. There was also a large degree of support for the abolition of oral evidence at committal stage. In his correspondence to the Committee, the Lord Chief Justice stated that it is well known that giving oral evidence in court can be a distressing and intimidating experience for victims. He advised that direct committal will give victims and witnesses clarity that they will only be required to give evidence at the trial. The Lord Chief Justice also noted the concern expressed by a number of judges that requiring oral evidence at committal may occasionally be used as a tactic to see if victims are sufficiently resilient to withstand the pressure it creates. In his view, creating unnecessary stress is not acceptable.

61. The PPS advised of its support for the proposal to abolish oral evidence at committal stage and stated that mixed committals at which oral evidence is heard are undoubtedly a source of delay, add an unnecessary and unfair burden on victims and creates additional stress and anxiety for victims and witnesses, impacting on the ability to give best evidence. It also suggested that requiring witnesses to give oral evidence at committal has, on occasion, been used tactically by the defence to test the resilience of a victim or witness and that there is no disincentive for the defence to take such a course of action. Furthermore, the PPS advised that it is not uncommon in those cases where the victim does physically attend court for the defence to withdraw their demand that the witness be called.
62. The PPS stated that its preferred position is that a victim or witness has clarity at the outset of an investigation that they will only be required to give evidence once; and that the decision to take oral evidence at committal proceedings is not left to the discretion of individual judges.
63. In its submission, Victim Support NI argues that forcing victims of crime to give traumatic evidence more than once in an adversarial trial setting is inhumane. It advises that the re-traumatising impact can be seen in sharpest focus with victims of sexual assault and rape whose experience of the criminal justice process has been described by some as 'second rape' or 'judicial rape'. Victim Support advised that, in its experience, preliminary investigations and mixed committals are typically used in sexual and domestic violence cases as a means of putting victims off from continuing with trial. In its view, instead of testing evidence it tests the victim and their resolve, and using such tactics to put people off giving evidence cannot be construed as in the interests of justice.
64. Victim Support also advises that the process contravenes one of the key aims of the EU Victims Directive to prevent secondary victimisation. It

also infringes on obligations under the Istanbul Convention to protect female victims of gender based violence, such as sexual assault and domestic abuse, from “intimidation, retaliation and repeat victimisation” including in legal processes where they seek justice for the harm done to them. Victim Support states that, even with special measures, having to appear and recount what happened can be highly stressful for victims and it is essential that justice organisations and systems are set up to minimise the harm that may be caused to victims as they engage with the criminal justice system.

65. Both DCSDC and Derry and Strabane PCSP agreed that the proposal to abolish oral evidence will speed up the court procedure for victims, witnesses and perpetrators. They believe that those providing evidence often feel they are on trial and to have to go through this on at least two occasions is extremely traumatic, unnerving, intimidating and daunting, and can often have a negative impact on victims and witnesses.
66. The NSPCC advised of its support for the abolition of the preliminary investigation and mixed committals process. It noted that data on the volume of children who have been requested to participate at committal hearings has not been made available. However, in its view, a process that requires them to give evidence more than once during the progression of a case can be deeply traumatic. Although it rarely happens, it is the experience of their Young Witness Service practitioners that preparing and giving oral evidence, particularly under cross-examination, both at committal and again at the Crown Court trial, is a significant burden for children and families.
67. The NSPCC advised that, having considered the NIAO, Gillen Review and Criminal Justice Inspection findings that have concluded that committal proceedings deliver little tangible gain, it did not consider that the arguments to retain oral evidence at committal outweigh the cost of

stress to victims and witnesses, nor benefit the accused. In respect of defendants, NSPCC advised that protection and vindication of their rights should be paramount and recognised that delays to justice also have implications for defendants and their right to a fair trial within a reasonable period.

68. In response to the concerns about whether it is necessary to abolish oral evidence in its entirety at committal stage, the Department pointed out that committal hearings will continue for those cases not directly committed and therefore the potential could remain for oral evidence to be given at that stage through a preliminary investigation or a mixed committal. The experience of giving sometimes traumatic oral evidence, particularly under cross-examination, at both the committal hearing and then again at the Crown Court trial can have a significant impact on victims and witnesses. The Department referred to the Gillen Review report which noted 'committal proceedings are often listed as a mixed committal, which then turns into a conventional preliminary inquiry hearing on the morning of the matter, after the complainant has suffered the stress and worry of a court appearance, only to be told that they are not required. This is quite unnecessary and that practice should be strongly deprecated, given the additional stress and delay this process is causing.'

69. The Department had previously sought to abolish the option to hear oral evidence from victims and witnesses at a committal hearing in the Justice Bill 2015. As noted earlier in the report, this did not receive sufficient support during the passage of the Bill through the Assembly and, instead, an amendment was passed that ensured oral evidence could only be called if a judge was satisfied that the interests of justice require it. The Department advised the Committee that these provisions, placing the decision on whether to allow oral evidence at a PI or mixed committal in the hands of the judiciary, had not been commenced - while the Department was working with criminal justice partners to introduce the

relevant provisions, the Fresh Start Three Person Panel published its report which included the recommendation that legislation should be brought forward to further reform committal proceedings to remove the need for oral evidence before trial. The recommendation was accepted by the Executive in its Action Plan published in July 2018. The Department therefore believes that Clause 1 and Clause 2 are required to fulfil the Fresh Start Recommendation and that retaining the interests of justice test provided for in the 2015 Act would fall short of addressing the recommendation.

70. The Bar also highlighted the fact that some of the cases to be directly committed to the Crown Court ultimately involve serious criminal offences that could see a defendant being deprived of their liberty for many years if convicted. It therefore remained to be convinced that there is any need to remove the option of oral evidence at committal stage as a safeguard in its entirety as the fundamental principles involved, such as the role committal can play in establishing a prima facie case against a defendant at an early stage, remain unchanged since the passing of the 2015 Act. It stated that that the ability to be able to scrutinise and stress-test evidence is important and believes this is better done in the magistrates' court environment where it is done swiftly and closer to the events.
71. The Law Society stated that the committal hearing can provide a check on the discretionary powers of criminal justice agencies by ensuring that unjust or speculative prosecutions do not proceed. It also suggested that the hearing can inform the accused's pleading decision and may encourage an earlier guilty plea. The Society highlighted that the committal hearing effectively distils the case against the accused by narrowing issues, allows the prosecution to take a pragmatic look at the case as a whole and can help identify the key issues of the case such as those in dispute and those that could possibly be resolved. Committal therefore allows evidence to be tested at an early stage within the system.

72. In the Law Society's view, the weeding out of weak prosecutions and the encouragement of plea-bargaining discussions at committal hearings can save significant costs, time and resources.

73. The Department however stated that the role of the committal hearing is to establish whether there is a prima facie case to justify sending an accused to the Crown Court for trial and not a process to test evidence, which is the purpose of a trial. This was also confirmed in the correspondence from the Lord Chief Justice, who set out the difference between the roles of the magistrates' court and Crown Court as follows: "The judge's role at the magistrates' court is limited to overseeing the readiness of papers for committal before determining if a prime facie case is established and that a defendant/s should be committed to the Crown Court. The judge has no responsibility or legislative authority to control how the case is presented when it comes to trial.

In contrast, if the case were before the Crown Court judge, at the earliest stage, the judge can look at what the issues are and what evidence is necessary to shape the case for hearing. Currently issues such as disclosure of evidence etc. only begin to be formulated when the case reaches the Crown Court. The period in the magistrates' court is essentially lost as there is no obligation on parties to work together to bring a case to trial and additional work may be undertaken that adds limited value to the case."

74. The Department advised that the No Bill application is a further safeguard which allows the defence to apply to the Crown Court to dismiss any, or all, of the charges against the accused, if the court determines that there is insufficient evidence available for a jury, properly directed, to convict the accused. In addition, whilst the committal hearing could potentially help to inform the accused's pleading decision, data indicates that this does not happen in the majority of cases. Although a high proportion of

Crown Court cases result in a guilty plea (approximately 60% during 2019), only 13% came at the arraignment hearing, the earliest formal opportunity at which it can be done.

75. The Department advised that it had approached the PPS for views from an operational perspective on the Law Society's comments regarding plea bargaining at the committal hearing. In response the PPS stated that it does not engage in plea bargaining at any stage in proceedings as set out in the Code for Prosecutors. PPS also advised the Department that discussions at committal stage encouraging the early resolution of cases is not something that happens on a routine basis.
76. The Department pointed out that in 2019, 1,765 defendants went through the traditional committal process in the magistrates' court. The majority of these - 94% - proceeded by preliminary inquiry, and the remaining 109 (6%) proceeded with oral evidence at either a preliminary investigation or mixed committal. Following a committal hearing, only 75 defendants (4%) did not proceed to Crown Court for a variety of reasons, including defendants not appearing or the PPS withdrawing the case. In the Department's view, this serves to highlight the limited impact of the committal hearing as a filtering mechanism.
77. In addition to its engagement with the Department on this issue, the PPS also advised the Committee of its view that the calling of oral evidence at committal stage does not make any significant contribution to the filtering of weak cases.
78. The Law Society also advised that the committal process has been intrinsic to upholding article 6 ECHR rights in the trial process. It recognised that committal reform, including the removal of the need to give oral evidence pre-trial, may give complainants more faith and confidence in the justice system; however, it advised this should not be

achieved by compromising the rights of the accused and the need to prove a case beyond reasonable doubt. The interests of both parties must be delicately balanced at all times and an imbalance should not be created as a result of reforms. The Law Society suggested that the removal of committal proceedings could interfere with a defendant's article 6 right to a fair trial at an early stage and that the system should err on the side of the defendant's rights to have a speedy resolution of his or her case rather than waiting for a Crown Court trial.

79. The PPS advised that it is the generally recognised position that complete abolition of the right to call witnesses at committal is in no way incompatible with a defendant's right to a fair trial. It stated that there are significant checks and balances in the system to ensure that the defendant's fair trial rights are adequately protected.

80. Victim Support does not believe the removal of committal hearings will infringe on the rights of the accused to a fair trial as evidence is tested at multiple stages during the criminal justice process and stated that the trial process includes multiple mechanisms to safeguard the accused and that prosecutors are duty bound to act in the interests of fairness, including to hold on to the presumption of innocence, ensure the fair disclosure of evidence and be committed to the rights of a fair trial. On balance, the trauma to victims and the potential for these hearings to be used to pressure witnesses to withdraw from giving evidence present a much more tangible threat to fairness and justice than their abolition. Victim Support also states that the fact that so few cases are dismissed at this point would indicate that the PPS is appropriately applying evidential and public interest tests.

81. As recommended by the NIHRC, the Committee asked the Department for information of its analysis of the Bill for human rights compliance. In respect of the right to a fair trial, the Department's assessment stated that

Article 6 of the ECHR is engaged but not interfered with or limited. The assessment noted that one of the aims of the legislation is to speed up the criminal justice process, which is consistent with Article 6 and the need for a fair trial within a ‘reasonable’ time. The Department stated that it was

“satisfied that the totality of the proceedings safeguard the right to a fair trial in that the rights of the accused to know the case against him, and to call and cross examine witnesses, are secured at the trial stage of the criminal proceedings.”

82. The Department’s response providing information on the human rights compliance of the Bill is included at Appendix 4.

Committee Consideration of Clauses 1 and 2

83. The Committee explored the issues raised in the written evidence in more detail during the oral evidence sessions with the Bar, the Law Society and the PPS.

84. Having considered the written and oral evidence received, the Committee sought further information on and clarification of a number of issues during the oral evidence session with departmental officials on 25 March 2021.

Restricting the use of oral evidence

85. In response to the question of whether there might be any advantage in retaining oral evidence at committal proceedings but restricting it to use for technical or expert witnesses only, officials advised that this is not something that had been considered as it would not be in line with the overall commitment to abolish oral evidence pre-trial. Officials further advised that even the use of specialist oral evidence would require the

retention of a committal hearing which would result in the loss of some of the efficiencies that might be gained by direct transfer to the Crown Court.

Interests of justice test

86. The Committee questioned officials on why the interests of justice test provisions from the 2015 Act were not commenced. Officials advised that the Fresh Start panel report, which came after the 2015 Act, reinforced the need to take a different approach to the Act's provisions and completely remove oral evidence at committal stage. As the Executive had accepted the panel's recommendations, work was instead progressed to abolish oral evidence.

87. The officials also reiterated the Department's longer-term aim to commit all cases directly. That being so, removal of the committal hearing will remove oral evidence so the argument to retain oral evidence at committal stage is effectively a time-bound argument.

88. **The Committee notes the recommendations from a number of reviews and reports which indicate that direct committal should be fully implemented to reduce avoidable delay in the justice system and to prevent victims and witnesses from having to give oral evidence twice.**

89. **The Committee is not convinced that the legislation will speed up the justice system, one of its stated objectives as outlined by the Minister, departmental officials and in the Explanatory and Financial Memorandum.**

90. **Given the provisions of the 2015 Act have not been enacted by the Department it has not been possible for the Committee to assess the validity of the assertions that the interests of justice test as provided for in**

the 2015 Act would appropriately safeguard the rights of all parties. However, while the numbers of cases that go through preliminary investigation or mixed committal are small, the Committee recognises that it can nonetheless be a traumatic experience for those who may be required to give oral evidence pre-trial. Removal of oral evidence at committal stage will provide victims and witnesses with the reassurance that they will not have to give oral evidence or be subject to cross-examination twice.

91. The Committee agreed that it is content with Clauses 1 and 2 as drafted.

Clause 3 - Consequential amendments and repeals

92. Clause 3 gives effect to the Schedule which makes provision for consequential amendments and repeals, most of which relate to the removal of references to preliminary investigations or mixed committals in other pieces of legislation.

93. During the deliberations on the Bill on 22 April, officials were asked if the reference to the Mental Health (Northern Ireland) Order 1986 in the Schedule might need to be changed, as Members understood the Order is due to be subsumed by the Mental Capacity Act. Officials advised that one will update the other depending on timing and sequencing, and undertook to ensure this issue is taken into account as the legislation progresses.

94. The Committee agreed that it is content with Clause 3 as drafted.

Clause 4 - Direct committal for trial: miscellaneous amendments

95. Clause 4 makes a number of amendments to the direct committal trial provisions of the 2015 Act. The comments and issues raised in evidence are set out against the relevant subsection below.

Clause 4 Subsection (3)

96. Subsection 3 repeals section 10 of the 2015 Act, which provides that a magistrates' court will directly commit an accused to the Crown Court if they indicate, prior to a traditional committal hearing, an indication to plead guilty. The Department advised that a number of significant operational complexities had been identified by justice partners in relation to the implementation of Section 10 and, in addition, it is an interim measure that will become obsolete when direct committal is fully rolled out.

97. DCSDC and Derry and Strabane PCSP advised that they recognised the benefits to victims, witnesses and defendants of 'fast-tracking' cases when the accused wishes to plead guilty but there are issues when the defendant changes their plea when the case goes to the Crown Court, necessitating a return to the magistrates' court which can present significant operational risks, concerns and difficulties. Both organisations accepted that the proposal to repeal Section 10 had been agreed after extensive consultation with relevant criminal justice organisations and agreed by the Criminal Justice Board.

98. The PPS advised that it has always been supportive of the principle that those cases in which a defendant pleads guilty at an early stage should be dealt with expeditiously and proportionately. While it expressed disappointment that the Bill removes the potential for direct committal for non-specified offences, the PPS stated that it understands the position that has been adopted.

99. The PPS highlighted that it will be important that a framework exists to deal proportionately with those cases that are directly committed and which are capable of early resolution by way of a guilty plea. Formal provision of an early indication provides much needed certainty for the victim and witnesses, allows for the prosecution to serve only that material which is required for an effective sentencing hearing and avoids considerable nugatory work with a consequent reduction in delay and saving of resources.

100. However, the PPS pointed out that in the absence of Section 10, all direct committals will take place under Section 11 and, regardless of an indication from the defence of an intention to plead guilty, the legislation will provide for a potential application to dismiss. This is a potential risk for the prosecution but the PPS believes it can be adequately addressed through careful drafting of the relevant rules and proper case management by the judges. It suggests that such case management might be usefully aided by the introduction of formal guidance, such as a Practice Direction to practitioners specifically to address the handling of cases that are directly committed to the Crown Court under the new provisions. The PPS also believes that adjournments to allow the prosecution to build its case would be sufficient to address this risk.

Clause 4 Subsection (4)

101. In its briefing paper on the principles of the Bill, the Department states that subsection (4)

“amends section 11 of the 2015 Act to amalgamate and streamline sections 11 and 12 of the 2015 Act following the decision by the Department to extend the list of offences to which direct committal will initially apply. The subsection extends the application of direct committal to include all offences which, in the case of an adult, would be considered to be triable only on indictment. This applies irrespective of the age or circumstances of the accused or the procedural route by which the

accused comes to be tried on indictment. The test for the court is whether the offence is, in the case of an adult, triable only on indictment. The subsection also provides the Department with the power to bring forward an order(s) to designate any other offence(s) to which direct committal under Chapter 2 of Part 2 of the 2015 Act will apply. The amendment brings within section 11 the process originally provided for in section 12 of the 2015 Act, whereby an accused, charged with an offence not falling within the direct committal offence types, can be directly committed to the Crown Court if the offence is related to an offence for which an co-accused has been directly committed.

Subsection (4) also introduces other changes to support the introduction of direct committal.

- It amends Chapter 2 of Part 2 of the 2015 Act to provide that in cases where an accused is directly committed to the Crown Court for a qualifying offence under that Chapter, the magistrates' court shall at the same time directly transfer any other offence(s) for which the accused is charged that it considers to be related. The subsection defines a related offence as one which the court determines could be included on the same indictment as the offence which is to be directly committed.
- It amends Chapter 2 of Part 2 of the 2015 Act to allow for certain functions of the magistrates' courts, other than those related to committal proceedings, to continue after a case has been directly committed for trial. This provision seeks to maintain consistency with existing arrangements for cases which proceed to the Crown Court through the traditional committal process. This amendment is designed to allow, for example, an accused who is alleged to have breached the conditions of his or her bail in respect of an offence(s) which has been directly committed to the Crown Court, to be brought before a magistrates' court to answer those allegations. Magistrates' courts sit more frequently than Crown Court, and at a greater number of venues across Northern Ireland and this amendment facilitates prompt access to a court so that such allegations can be heard. This

in turn is important in order to protect the administration of justice, particularly where there is a risk a defendant might attempt to interfere with the criminal justice process.”

102. In response to the Committee’s request, the Department provided a list of offences that, in the case of an adult, are triable only on indictment, which are the offences to which the initial phase of direct committal will apply. The list is included in the Department’s response dated 17 December 2020 at Appendix 4.

103. The PPS advised that the approach of limiting the application of provisions to offences that are triable only on indictment is one that is clear, easily understood and workable. It will capture the most serious cases and volumes should be appropriate to an initial phase of roll-out.

104. DCSDC and Derry and Strabane PCSP stated that they accepted the offences that now should be heard in the Crown Court, but had concerns that the Bill allows the Department to designate additional offences to which direct committal will apply in the future by way of an Order, which will not require primary legislation or Assembly approval, though will be shared with the Justice Committee. They suggested a reduced level of scrutiny and potential lack of transparency in this approach. The Bar also suggested that the Committee may wish to explore the process around how and when the Department will add to the list of offences to be directly committed.

105. In response, the Department stated that no Order made under the 2015 Act, as amended by the Bill, may be made unless a draft of the Order has been laid before, and approved by resolution of, the Assembly. This would only take place for a limited number of offences that were linked to other legislative and policy developments.

106. The Department reiterated that its intention is to fully roll out direct committal and, to achieve that, further legislation will be required which will be subject to scrutiny. It explained that this first phase will allow learning prior to the development of further legislative requirements.
107. The Law Society's concerns raised in relation to Clauses 1 and 2 regarding the committal process as a filter are also relevant to these provisions. It advised that defence solicitors consider that the changes will inevitably result in some cases that could have been removed due to insufficient evidence remaining in the system for a considerable time and accumulating sizeable costs which have to be met by the public purse. It advised that the benefits of committal in terms of reducing charges, narrowing issues and, on occasion, complete removal of all charges cannot be ignored.
108. In response, the Department advised of its view there are sufficient checks and balances in place within the PSNI and PPS to alleviate the concerns raised by the Law Society. It argued that, with only 4% of cases not proceeding to Crown Court for a variety of reasons, the efficiency of the committal process is questionable.
109. Both the Bar and the Law Society pointed out that, in contrast to the Bill, the Criminal Procedure Bill 2021 currently progressing through the Houses of the Oireachtas will introduce pre-trial hearings with the aim of reducing delays, increasing efficiency and fairness in the criminal trial process.
110. The Department stated that the purpose of the preliminary trial hearing in the Republic of Ireland is very different to the purpose of a traditional committal hearing in Northern Ireland. The Explanatory Memorandum for

that Bill explains that the “principal purpose of these hearings is to deal with certain matters ahead of the beginning of the trial so as to ensure that the parties are ready to proceed on the day of the trial, and to minimise interruptions to unitary nature of the trial while it is in train.”

Research commissioned by the Committee at Appendix 6 noted that the main provisions of the Bill includes the following

“The Court can assess various case management matters and make orders or rulings to ensure the just, expeditious and efficient conduct of the trial including: the availability of witnesses; whether any particular practical measures or technology may be needed; the extent to which the trial is ready to proceed, including any long-standing issues with regard to disclosure of evidence; and how long the trial is likely to be.”

Clause 4 Subsection (5)

111. Subsection (5) amends Section 13 of the 2015 Act to add that further arrangements in respect of the documentation associated with direct committal can be provided for in either magistrates’ court rules or Crown Court Rules. The Department stated that “the change is primarily designed to allow Crown Court Rules to provide further detail on arrangements for serving documents containing the evidence on which the directly committed charge is based, should those documents not be available to the magistrates’ court at the point when the accused is to be directly committed to the Crown Court.”

112. The Bar advised of its concern that an accused could be directly committed to the Crown Court without any evidence having been presented by the prosecution which will likely add another layer of delay into the system. It questioned whether an accused may be required to make a number of appearances in the Crown Court before it is clear whether there is any evidence to support the case and suggested that the cost to the public purse of managing the case at this level is likely to be higher than in the magistrates’ court.

113. The Bar stated that much more efficient investigative processes on the part of the PSNI in compiling any evidence and by the PPS on arrangements for presenting an indictment to the court are needed for the provisions to operate effectively. Both the Bar and the Law Society also outlined concerns that cases to be the subject of direct transfer may well languish for a considerable time at the magistrates' court before they are ready for transfer, unless resources are heavily applied to the PSNI and PPS to allow them to offer a complete file so that the case may transfer.

114. The Law Society also stated that it is not yet known how or when information - papers, statements of evidence and disclosure - will be provided. It is concerned that the lack of detail could cause difficulties not only on the defence side but also on the prosecution side if victims or individuals are unaware when, if at all, or how many times they may be required to give evidence.

115. In response to these concerns, the Department advised the following:

“For Adult defendants eligible for direct transfer the first appearance in the magistrates' court will be their only appearance, at this point they will be directly transferred and a hearing date set for their first appearance in the Crown Court.

For cases that have proceeded by way of summons instead of police charge (approximately 50% of cases), the Prosecution case file will be largely complete and evidence transfer as per 13(2A) of the Justice Act (2015) is given either at the same time as the copy of the notice of committal or as soon as practicable thereafter.

For cases that proceed by way of police charge, the Bar of NI and the Law Society are correct that these cases will be at a much earlier stage when they are directly transferred. Being transferred at this early stage, however, will allow for appropriate case management by the judiciary.”

116. The Department went on to add that, for those cases not transferred directly to Crown Court, the traditional committal will proceed by way of a paper-based preliminary inquiry with no oral evidence.

117. The Department advised it is creating a Stakeholder Forum to include representatives from the Bar, the Law Society and victims' groups and that this will ensure issues such as those raised can be considered as part of roll out plans.

Clause 4 Subsection (6)

118. Subsection (6) provides the magistrates' court with powers to order inquiries and reports relevant to the sentencing of the accused, should the accused indicate an intention to plead guilty to offence(s) to be directly transferred to the Crown Court. The prosecution and the accused must be provided with the opportunity to give their views prior to the magistrates' court making a decision regarding the ordering of relevant inquiries or reports.

119. The Department advised that the purpose of the change is to provide the Crown Court with documentation to support the early disposal of the case, if appropriate, should the accused enter a guilty plea at an early stage in the Crown Court.

120. PBNI said it understands why this measure might be in place, but advised that it could potentially cause quite significant difficulties where the magistrates' court will be permitted to order a pre-sentence report before the case appears in a Crown Court listing on the basis of 'an indication to plead guilty.' It stated that pre-sentence report authors frequently find, particularly in Crown Court cases, that initial charges are either reduced in seriousness or number by the time of conviction. As a

result, if the pre-sentence report is requested on the basis of initial charges, legal difficulties would emerge should a reduced charge be put to the defendant in the Crown Court. PBNI stressed that it must prepare reports on basis of the convicted offences and it would lead to difficulties for all sides should a report be prepared on what became incorrect offences.

121. In response, the Department advised that the ability to order pre-sentence reports upon receipt of an early indication to plead guilty is allowed for under the current legislation and takes place, albeit infrequently. For illustration, during the calendar years 2019 and 2020, five and four such reports were requested respectively. These reports appear to be largely restricted to the indictable cases process, which forms part of the wider programme of work to reduce avoidable delay in the criminal justice system.
122. The Department anticipates that there will be an increase in requests for inquiries and reports. A safeguard has therefore been included in the Bill which requires the court to afford an opportunity to both the prosecution and the defence to make representations to the court prior to making request for any such reports. The Department believes this should ensure that reports are only ordered when all parties are agreed that there is a benefit in doing so.
123. The Bar believes that this provision will allow, where appropriate, for early disposal and welcomed the clarification that the accused and prosecution will be afforded the opportunity to make representation prior to the magistrates' court decision on whether or not to order the relevant inquiries or reports.
124. The PPS also welcomed this provision and hoped that the formal process by which such an indication is provided and recorded will be

addressed within the relevant court rules. The Department pointed out that, as pre-sentence reports can currently be made, there are existing procedures which the Bill will seek to utilise rather than implementing a new or separate process. The new safeguard of seeking representation by both prosecution and defence will be addressed within the relevant court rules.

Clause 4 Subsection (7)

125. This Subsection provides new powers for the Director of Public Prosecutions for Northern Ireland to discontinue proceedings directly transferred to the Crown Court between committal and the time that an indictment is presented to the Crown Court. It also sets out the arrangements for discontinuing proceedings in such circumstances.
126. The Law Society believes that this will address the situation where there is a material change in the circumstances of the case, such as new evidence emerging which will lead the PPS to conclude that the test for prosecution is no longer met.
127. The Bar accepted that the power of the DPP to discontinue proceedings directly transferred may be necessary, given the current format of the Bill. It highlighted again, however, that early stage investigative procedures will need to improve to avoid any unnecessary delay and advised that enhanced early joint engagement between prosecution and defence will be important in such cases in the Crown Court.
128. The Department advised that initiatives to improve early stage investigation procedures are being taken forward via the wider Speeding Up Justice programme of work. The issue of delay in the justice system is covered separately at paragraphs 165 to 177.

Clause 4 Subsection (8)

129. Subsection (8) amends the process whereby the accused or their representatives can apply to dismiss charges on which they have been directly committed for trial. The Department advised in its briefing paper dated 28 October 2020 that this change is designed to maintain consistency with the commitment to remove the option for victims and witnesses to be called to provide oral evidence on oath in advance of a trial.
130. The PPS advised that, if oral evidence is abolished at committal, it follows that it should be abolished for applications to dismiss, otherwise the policy objectives of the Bill will be undermined and a defendant will have different rights depending on the procedure by which they are sent to the Crown Court.
131. The Bar advised that it considers it necessary to retain the potential for oral evidence during applications to dismiss only where required “in the interests of justice” as provided for in the 2015 Act. This judicial oversight function would help to maintain the rights of defendants and complainants in the criminal justice process. While expecting it would rarely be used, the Bar states that it seems overly restrictive to limit the court to considering an application to dismiss only on the papers. It pointed out that, under the England and Wales Criminal Procedures Rules 2015, both defendant and prosecution may ask for a hearing if required and must explain why it is needed. They can also identify any witness(es) they want to call to give evidence in person with an indication of what that evidence will be.
132. In response to the Bar’s views, the Department stated that the Application to Dismiss process provides a similar function to the current No Bill process - in which oral evidence is not permitted - where the

defence has a right to apply to the Crown Court for some or all charges to be dismissed on the basis that the evidence is insufficient for the accused to be properly convicted. The Department advised that the removal of oral evidence in an Application to Dismiss hearing is in line with the commitment to remove oral evidence pre-trial and the current No Bill process, statistics for which indicated that almost a third of applications are granted.

133. The Law Society advised that defence solicitors are concerned that the recent judgement in *R v Charles Valliday [2020] NICA 43* may limit the usefulness of a No Bill application by the defence. The grounds for appeal against conviction included the trial judge's decision to reject a No Bill application because the insufficiency of evidence in the prosecution's case could be remedied by serving additional evidence. The appeal was dismissed with the appeal judges finding that, while the trial judge did not have concrete material to support this prediction, 'this is not required in every case' and that the trial judge had not erred in law.

134. The Department advised that it had considered the Law Society's comments regarding *R v Charles Valliday* and the judgment in depth. It is satisfied that the No Bill process provides a fair process for defendants to challenge cases where the evidence does not disclose a case sufficient to justify putting the defendant upon trial for an indictable offence. The Department also considers that the Application to Dismiss process provides a fair procedure in direct committal cases for defendants to challenge a case where it appears that the evidence against the defendant would not be sufficient for them to be properly convicted.

Clause 4 Subsection (9)

135. Clause 4 Subsection (9) makes a number of amendments to Schedule 2 to the 2015 Act which are mostly minor in nature or consequential to the

changes made to Chapter 2 of Part 2 of the 2015 Act. The Department stated that the most substantive change to Schedule 2 to the 2015 Act amends the Criminal Procedure and Investigations Act 1996, to define a timeframe under which a prosecutor must disclose to the defence copies of, or provide access to, material which could reasonably be considered to undermine the prosecution case or assist the case of the accused in cases directly transferred under Chapter 2 of Part 2 of the 2015 Act. The duty on the prosecution is to provide this material as soon as is reasonably practicable after the service of the notice of committal and the evidence on which the charge(s) is based as referred to in the revised Section 13(2A) of the 2015 Act.

136. The Bar highlighted that the lack of timely disclosure remains a significant issue for practitioners in the Crown Court as it is frequently delivered at the last minute or even, on occasion, during trials. In its view, the outworking of this legislative change is very much contingent upon resources being committed to ensure that the disclosure process operates effectively. This means that all police investigations, including lines of enquiry pointing away from the accused, must be exhausted and statements from all relevant witnesses, medical and forensic reports and all third-party enquiries must be completed in advance to allow this to work effectively.

137. Specific issues were raised about disclosure and, in particular, the length of time taken to provide the defence with DVDs of digital evidence such as body-worn camera footage, CCTV footage or information extracted from mobile devices. The Department provided the Committee with information on its Digital Evidence Sharing project to deliver online sharing of digital evidence rather than relying on DVDs, the final phase of which is the sharing of evidence with the legal profession and defendants. The Department advised that engagement to agree the design of this phase with the Bar and the Law Society has begun and it expects the final phase to be commenced by the end of 2021.

138. The Department also advised that it has established a multi-agency Committal Reform Programme to coordinate the implementation of the Bill. The Stakeholder Forum will also ensure that issues such as those raised by the Bar can be considered as part of roll out plans. The Department added that issues around information disclosure are being considered through the Disclosure Forum established by the PPS and PSNI to address disclosure issues.

Committee consideration of Clause 4

Transferring delays within the criminal justice system

139. The direct transfer of more cases more quickly raised concerns that, rather than reducing delays, they may instead simply be shifted from the magistrates' court to the Crown Court. The Committee also noted a report by the National Audit Office which found that the abolition of committal hearings in England and Wales reduced pressures in magistrates' courts but "was followed by a significant increase in delays in the Crown Court, which did not have the resources to deal with it."

140. The Committee sought assurances from the Department that delays will not simply be shifted within the system with more pressure being put on either the PPS, the Crown Court or both. The Department advised that the preparation and process for these committal hearings can add both delay and burden to an already stretched system. Additionally, the number of hearings for a preliminary investigation or mixed committal can on average be three to four times greater than those required for a preliminary inquiry using only written evidence. The Department pointed out that some of the work that would have been necessary for a committal hearing will no longer be required at any stage because a step is being removed with direct committal to the Crown Court. Work is underway to develop a business case to capture the relative rebalancing of costs and

resources that will be required between criminal justice organisations. The issue of resources to implement the legislation is considered further at paragraphs 178 to 183 of this report.

Case Management

141. The importance of case management and appropriate court rules in the implementation of the Bill's provision was emphasised in the evidence received on the Bill. The Law Society recommended that statutory case management time limits should be included in these reforms and this is considered in more detail at paragraphs 141 to 146 of the report.

142. The Committee asked the Department for details of any analysis that had been carried out on the impact that the case management regulations provided for in sections 91 (the power to make Regulations) and 92 (general duty to progress criminal cases) of the 2015 Act have had on speeding up the progress of cases, particularly indictable cases, through the criminal justice system. In its written response, the Department advised that while the power to make Regulations had been commenced, the general duty to progress criminal cases would not be commenced until draft Regulations have been agreed and then both will be introduced simultaneously.

143. The Department set out the following developments which it says have the potential to impact on the approach to developing regulations:

- (a) "the Indictable Cases Process (ICP) rolled out in May 2017 and a key feature of ICP is early engagement between police and prosecutors and the prosecution and defence. Senior justice leaders agree that ICP represents the most effective process for Crown Court cases;
- (b) Committal Reform will require changes to Court Rules. This work is currently underway but cannot be completed until the Criminal Justice (Committal Reform) Bill has completed its passage through the

Assembly. The introduction of direct committal will have a considerable bearing on the shape of any such Regulations;

- (c) the establishment of Crown Court Cases Performance Groups (CCCPG) which provide fresh insight into the causes of delay in the Crown Court;
- (d) the Crown Court Liaison Group (CCLC) has developed a new case management practice direction which will impact on the handling of Crown Court cases;
- (e) Sir John Gillen in his review into serious sexual offences, whilst highlighting the need for effective case management, did not favour introducing statutory case management. The lack of flexibility in Regulations as opposed to bespoke directions, he suggested, would provide a statutory straitjacket.”

144. In response to Members’ questions on whether any consideration has been given to the development and introduction of a case management handbook similar to that referred to by the PPS, officials advised that there are different views on whether or not case management should be on a statutory footing and how proportionate and extensive it should be. In line with the requirements of section 92 of the 2015 Act to consult with criminal justice partners, work has begun to develop an end to end case management framework, taking into consideration the initiatives and developments listed above, which should better inform the direction of case management regulations.

145. Officials were questioned on what engagement there has been with the Crown Court judiciary regarding the transfer of a larger number of cases at an earlier stage and the approach to case management. The Committee heard that, through their work to design the Crown Court rules, representatives from the Office of the Lord Chief Justice have had input into how judges will operate direct committal in practice along with others from the PPS, the courts service and others. The officials added

that, through the Stakeholder Forum, the Bar and the Law Society will also have the opportunity to input into the Crown Court handling arrangements.

146. The officials were also questioned on when/where consideration may be given to what is or is not relevant in a case when it is directly transferred to the Crown Court, and whether any consideration had been given to the preliminary trial hearing provisions in the Criminal Procedure Bill in the Republic of Ireland in this regard. Officials consider that the early engagement at Crown Court will, in effect, be the equivalent of what will happen at the preliminary trials under the Criminal Procedure Bill, which will not be similar to the existing committal process in Northern Ireland. The Department advised that early engagement between the relevant parties will be of fundamental importance to the process of direct committal and will help parties to narrow issues and progress a case in a more proportionate way and this will be built into Crown Court Rules.

Assessing the effectiveness of direct committal

147. The Department has been clear that its aim in the longer term is to eradicate the committal stage and apply direct committal to the Crown Court to all cases. The extension of direct committal to those cases that are triable only on indictment is one of the phases towards that aim.

148. The Committee questioned officials on plans to assess the impact of the provisions of the Bill in order to inform its next steps towards full roll out of direct committal. Officials advised that they expect to evaluate how the provisions are working when they have been operational for 18-24 months. That evaluation will be used to inform the approach to further roll out of direct committal to other offences. As requested by the Committee during the evidence session on 25 March 2021, the Department provided details of the benefits realisation mechanism that will be used to evaluate

the success of the Bill and the effectiveness of its provisions in its letter dated 16 April. This information is included at Appendix 4.

Pre-sentencing reports

149. Members asked officials what consideration had been given to the resource implications for the PBNI in view of a potential increase in requests for pre-sentence reports. The officials advised that they have engaged with PBNI on this issue and, while it is anticipated there will be an increase in requests for reports, a safeguard has been included in the Bill to allow both the prosecution and defence to make representation to the court before the request is made. The Department believes that this should ensure that reports are only ordered when all parties are agreed that they will be of benefit and should prevent an avalanche of requests for such reports.

150. **The Committee believes that the phased approach being taken towards committal reform and direct committal for all cases is an appropriate approach and considers that the intention at this time to apply direct committal to cases that are triable only on indictment is a proportionate step towards this aim.**

151. **The Committee considers that early engagement between all parties and robust case management will be critical to the effectiveness of direct committal. The Committee believes it is important that a collaborative approach is taken to development of a case management framework that is fit for purpose and expects this work to be expedited to ensure all partners are fully aware of their obligations on the commencement of the provisions of the Bill.**

152. **The Committee acknowledges the concerns raised in the evidence it received regarding the timely disclosure of information and, in particular,**

the length of time taken to provide digital evidence defence solicitors. While the Digital Evidence Sharing project is welcome, this clearly needs to be progressed much more quickly. More effective case management to ensure the disclosure of information takes place in an appropriate and timely manner so that cases can be progressed as efficiently as possible is essential.

153. The Committee notes the Department's intention to evaluate this phase of the roll out of direct committal when it has been in operation for 18-24 months and believes this learning will be vital in shaping further steps towards direct committal for all cases. The Committee expects to be apprised of this evaluation and will use this evaluation to inform its consideration of future proposals to extend direct committal to other offences by draft affirmative regulations. The Committee wants to see consideration also being given to capturing how the Bill improves the experiences of victims and witnesses.

154. The Committee agreed that it is content with Clause 4 as drafted.

Clause 5 - Commencement and transitional provisions, etc.

155. Clause 5 makes provision in relation to the commencement of the provisions of the Bill by Order and that provisions relating to the abolition of the oral evidence from the committal process and direct committal will not apply to proceedings instituted before the Department has commenced the relevant provisions of the Bill.

156. Departmental officials were questioned on the absence of a timeline to bring the substantive provisions of the Bill into operation. Officials clarified that, while Clauses 5 and 6 will come into operation on Royal Assent,

Clause 5(2) allows the Department to specify a date for the remainder of the provisions to come into force and a timeline can only be established once the Bill has progressed further through the legislative process.

However, the Department's aim is to abolish oral evidence within a short time of Royal Assent though the other substantive provisions may have a longer lead-in time.

157. The Committee notes the Department's intention to bring the provisions into operation as soon as it is possible to do so and will wish to see a timeline for implementation of the legislation in due course.

158. The Committee notes that neither the Bar nor the Law Society were aware of how direct committal would operate when they gave evidence to the Committee; however, the PPS did outline its understanding of how the process will work. While noting the Department's intention to create a stakeholder forum, in the Committee's view it would have been useful for the Department to have initiated earlier engagement with the two key stakeholders representing legal practitioners on the practical outworkings of the new proposals.

159. The Committee agreed that it is content with Clause 5 as drafted.

Clause 6 - Short title

160. Clause 6 provides for the short title of the Bill.

161. The Committee agreed that it is content with Clause 6 as drafted.

Schedule - Amendments and Repeals: Abolition of Preliminary Investigations and Mixed Committals

162. The Schedule sets out the amendments and repeals required to other pieces of legislation in respect of the abolition of preliminary investigations and mixed committals and is given effect by Clause 3.

163. The Committee had no additional queries or comments in respect of the Schedule further to that discussed during its consideration of Clause 3.

164. The Committee agreed that it is content with the Schedule as drafted.

Other issues raised in the consideration of the Bill

Impact on reducing delay in the criminal justice system

165. One of the main issues raised in both written and oral evidence is that it is not clear that the Bill will have a noticeable impact on reducing the delays in the criminal justice system. It has been suggested by a number of organisations including the Bar, the Law Society and the NSPCC, that delays may not be reduced but instead shifted to another part of the system as more cases transfer more quickly from the magistrates' court to the Crown Court.

166. The Department acknowledges that there are many elements to reducing delay in the criminal justice system and advised that it works closely with criminal justice partners to deliver a Speeding up Justice programme with a number of strands, including:

- performance reporting;
- research and analysis;
- working in partnership;
- legislation; and
- improvement projects.

Committal reform is just one part of this programme of work.

167. Although work is ongoing on the detailed process to implement the Bill's provisions, the Department believes that earlier engagement to identify the key issues in a case will allow investigators to focus on the main areas of contention rather than elements of the case that are not in dispute. This may also help to better target forensic resources. The Department advises that the ICP demonstrates a number of these

concepts. In the Department's view such an approach will therefore introduce efficiencies within the system.

168. The Lord Chief Justice also referred to the ICP, advising it had demonstrated that the time taken to conclude cases could be significantly reduced. In his view, committal reform provides the legislative framework for those principles to be established and embedded.

169. As set out earlier in this report, both the Bar and the Law Society argue that the main delays in the criminal justice system come at the earlier investigatory and prosecutorial stages rather than when a case reaches court. In their view, other issues need to be addressed to ensure more efficient and effective investigation and disclosure processes which they believe are often the reasons for delays.

170. The assertion that longer delays are seen at the earlier stage in the process appears to be borne out in data provided by the Department in response to the Committee's request for information on the length of time taken to dispose of different types of Crown Court cases and how much of this time is attributed to each part of the criminal justice system. By way of example, the 12-month rolling median length of time taken in quarter 4 of 2019-20 to dispose of a summons case was 676 days; of this, the time from the first court appearance to court disposal accounted for 149 days.

171. It was also suggested in the evidence received that statutory time limits within which cases must be dealt or custody time limits may have an impact on reducing delay and progressing cases more quickly through the criminal justice system. The Law Society believes that focused, reasonable and achievable case management time limits should be included in the reforms and would be a significant improvement to the current system. It also advised that solicitors have indicated their experiences of delays of more than 18 months whilst awaiting a committal

hearing date. It states that the impact on an accused who is in custody for that period is obvious and suggests that custody time limits would focus the mind of the prosecution.

172. In its written response to the issues raised in evidence, the Department stated that it has previously consulted on how a statutory time limits scheme might be introduced and advised that the responses highlighted the need to bring forward primary legislation to allow a meaningful starting point. It advised that statutory and custody time limits are a separate, longer term strand of work within the Speeding Up Justice Programme.

173. The Committee commissioned research on statutory time limits in other jurisdictions which pointed to the Criminal Justice (Northern Ireland) Order 2003 which includes provisions for time limits in Northern Ireland. Officials advised during the discussion on 25 March 2021 that those provisions would allow for time limits to be put in place between the charge or the decision made by the PPS and the point of trial. When questioned on why they have not been used, the officials advised of the experience elsewhere which has found that it has often been necessary to request extensions which, along with monitoring and administration, created additional burdens in the system.

174. **The Committee remains concerned at the time taken for cases to progress through the criminal justice system, an issue that has been evident for a number of years with little demonstrable progress being made. Although supportive of the provisions of the Bill, the Committee is not persuaded that it will have a demonstrable effect on the average time taken to dispose of cases.**

175. The data provided by the Department indicates that much of the delay comes at the earlier stage of the process and not when a case has

reached court, which the Committee believes illustrates the need for more robust and effective investigatory and disclosure processes.

176. The Committee wants to be provided with regular reports on the progress of the implementation of the Bill and, post-implementation, the Committee wants to receive regular reports on the specific impact of its provisions on speeding up justice and reducing overall delay in the criminal justice system. The Committee recognises that there are a number of strands to the Speeding Up Justice programme and that committal reform is an element of one of those strands. The Committee believes that robust measures must be implemented to tackle avoidable delay in the criminal justice system and intends to regularly monitor the progress and impact of the Speeding Up Justice programme.

177. The Committee welcomes the inquiry on Speeding up Justice currently being undertaken by the Public Accounts Committee and will await its findings and recommendations with interest.

Resources to implement the legislation

178. The transfer of more cases more quickly from the magistrates' court to the Crown Court will inevitably change the workloads in both courts and the resources required to manage those workloads. The Explanatory and Financial Memorandum states that "a business case is being prepared to capture the relevant costs for the criminal justice organisations and these costs will be factored into prioritised plans for future budget periods."

179. In his written submission, the Minister of Finance noted that the final position on the financial impact, affordability and financial risk have not been fully documented and suggested that the Committee should seek to be updated on the progress of the business case in its consideration of the Bill.

180. As noted previously, the Department advised that it is not intended that direct committal will save resources but instead there will be a rebalancing of resources across the relevant parts of the justice system. Work is ongoing to develop the business case to identify resources and savings in one area that may be reinvested in another part of the system. The Bill, when finalised, will provide the foundation for criminal justice organisations to develop and agree the business processes and associated Crown Court rules which will allow resource implications to be modelled. The Department advised that this will form part of the business case that will need to be approved before the new measures are introduced.

181. **The Committee considers that there is a risk that backlogs could accumulate at the Crown Court if more cases are transferred directly without the necessary frameworks and resources in place to deal with them. The completion of the business case to include the effective rebalancing of resources will be fundamental to ensuring that resources are correctly allocated within the relevant criminal justice organisations if the Bill is to have any impact on speeding up the progress of cases through system.**

182. **The Committee believes that resources should be directed to where they will have the most impact on reducing delay in the system and recommends that any rebalancing of resources does not simply focus on identifying the revised requirements of the magistrates' courts and the Crown Court but also encompasses the earlier stages in the process where data suggests that delays are apparent.**

183. **The Committee questions whether redistributing resources will be enough or whether additional resources will be required. Given the lack of costings available, the Committee is not in a position to properly assess**

requirements at this stage. The Committee will consider resource needs and funding requirements to implement the provisions of the Bill when further information is provided by the Department.

Legal Aid

184. Changes to legal aid as a consequence of this Bill will be required. In its oral evidence to the Committee, the PPS explained that the rules apply to the processes as they are now, and a different process will be required for indictable-only offences. The revised scheme will need to take into consideration that cases will be transferred to the Crown Court more quickly, counsel will be instructed more quickly and the types of hearing will be different. The PPS also advised that not only is it important that the defence is properly remunerated for work that needs to be done upfront at an early stage of a case, it will also be important that the scheme incentivises the early resolution of cases, which it does not believe is currently the case.
185. The Lord Chief Justice also suggested that changes to the legal aid framework will be required to facilitate engaging counsel at an early stage so that a Crown Court judge can ensure the defendant is fully represented and there is appropriate focus on the key issues and investigative time is used effectively.
186. Along with legislation, IT and business change, legal aid is one of the four key projects of the multi-agency Committal Reform Programme established to coordinate the implementation of committal reform. At the Committee's request, the Department provided information on 16 April on the modelling to determine the fees and legal aid changes required as a result of the Bill and what the anticipated legal aid costs are. This information is included at Appendix 4.

187. While detailed modelling is required to determine the changes to legal aid necessitated by the Bill, the Committee is of the view that the revised framework must be developed and in place in a timely manner so that commencement of the provisions of the Bill is not delayed.

Clause by Clause Consideration of the Bill

188. Having considered the written and oral evidence received, the Committee deliberated on the Clauses of the Bill at its meeting on 22 April 2021 and undertook its formal Clause by Clause consideration at its meeting on 6 May 2021 - see Minutes of Proceedings at Appendix 1 and Minutes of Evidence at Appendix 2.

189. The Department indicated on 25 March that it did not intend to bring forward any amendments to the Bill.

190. Information on the Committee's deliberations on the individual Clauses in the Bill can be found earlier in this report.

Clause 1 - Abolition of preliminary investigations

191. Agreed: The Committee is content with Clause 1 as drafted.

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

192. Agreed: The Committee is content with Clause 2 as drafted.

Clause 3 - Consequential amendments and repeals

193. Agreed: The Committee is content with Clause 3 as drafted.

Clause 4 - Direct committal for trial: miscellaneous amendments

194. Agreed: The Committee is content with Clause 4 as drafted.

Schedule - Amendments and repeals: Abolition of preliminary investigations and mixed committals

195. Agreed: The Committee is content with the Schedule as drafted.

Clause 5 - Commencement and transitional provisions, etc.

196. Agreed: The Committee is content with Clause 5 as drafted.

Clause 6 - Short title

197. Agreed: The Committee is content with Clause 6 as drafted.

Long Title

198. Agreed: The Committee is content with the Long Title of the Bill.

List of Appendices

Appendix 1 - Minutes of Proceedings

5 November 2020

19 November 2020

26 November 2020

10 December 2020

14 January 2021

21 January 2021

4 February 2021

11 February 2021

18 February 2021

25 February 2021

11 March 2021

25 March 2021

15 April 2021

22 April 2021

6 May 2021

3 June 2021

10 June 2021

Appendix 2 - Minutes of Evidence

Date of Meeting	Link to Minutes of Evidence
5 November 2020	<i>Oral evidence session with Department of Justice officials</i>
4 February 2021	<i>Oral evidence session with the Bar of Northern Ireland</i>
11 February 2021	<i>Oral Evidence session with the Law Society for Northern Ireland</i>
11 February 2021	<i>Oral evidence session with the Public Prosecution Service</i>
25 March 2021	<i>Oral evidence session with Department of Justice officials</i>
22 April 2021	<i>Informal Deliberations</i>
6 May 2021	<i>Formal Clause by Clause Consideration</i>

Appendix 3 - List of Written Submissions

- *Northern Ireland Human Rights Commission*
- *Attorney General for Northern Ireland*
- *Committee for Agriculture, Environment and Rural Affairs*
- *Committee for Infrastructure*
- *Derry City and Strabane District Council*
- *Derry and Strabane Policing and Community Safety Partnership*
- *Minister of Finance*
- *Police Federation for Northern Ireland*
- *Probation Board for Northern Ireland*
- *National Society for the Prevention of Cruelty to Children, Northern Ireland*
- *Public Prosecution Service*
- *The Bar of Northern Ireland*
- *The Law Society of Northern Ireland*
- *Belfast City Council*
- *Police Service of Northern Ireland*
- *Victim Support Northern Ireland*

Appendix 4 - Memoranda and papers from the Department of Justice

Date	Link to memoranda or paper from the Department of Justice
28 October 2020	<i>Written Briefing on the Principles of the Bill</i>
17 December 2020	<i>Correspondence providing further information requested during the oral evidence session on 5 November 2020</i>
26 January 2021	<i>Correspondence providing information on the analysis completed of the human rights compliance of the Bill</i>
19 March 2021	<i>Correspondence providing a response to the issues raised in the evidence received by the Committee on the Bill provisions and associated issues</i>
19 March 2021	<i>Correspondence providing information on case management regulations</i>
16 April 2021	<i>Correspondence providing further information following the oral evidence session on 25 March 2021</i>

Appendix 5 - Other Memoranda and papers from others

Date	Link to other memoranda or paper
4 March 2021	<i>Correspondence from the Public Prosecution Service</i>
30 March 2021	<i>Correspondence from the Lord Chief Justice</i>

Appendix 6 - Research Papers

Date	Link to Assembly Research and Information Service paper considered
26 March 2021	<i>Reform of the Criminal Justice Process in other jurisdictions</i>
26 March 2021	<i>Statutory Time Limits in other jurisdictions</i>

Appendix 7 - List of Witnesses

List of Witnesses who gave evidence to the Committee

Glyn Capper, Department of Justice

Laura Mallon, Department of Justice

Michael Forde, The Bar of Northern Ireland

Heather Phillips, The Bar of Northern Ireland

Pearse MacDermott, The Law Society of Northern Ireland

Eoghan McKenna, The Law Society of Northern Ireland

Michael Agnew, Public Prosecution Service

Francesca Keaney, Public Prosecution Service