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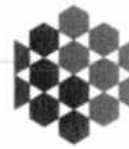
Dear Christine,

JUSTICE (NO. 2) BILL: SHARING OF ADDITIONAL DEPARTMENTAL AMENDMENTS TO PART 2 (PRISON OMBUDSMAN)

I write to offer Committee members the final text of the remaining proposed amendments to the Bill that the Department intends to bring forward at Consideration Stage. The proposed text is attached at Annex A.

We are seeking to add to the Prison Ombudsman provisions to allow:

- the Ombudsman to initiate certain investigations in defined circumstances, in response to a recommendation by the Northern Ireland Human Rights Commission that was supported by the Committee; and
- for arrangements to provide for investigations in cases of near-death which meet agreed criteria, in response to Committee deliberations on the clauses during informal consideration.



Own volition investigations

The provisions on own volition investigations will apply to those matters within the Ombudsman's complaints remit and will allow the Ombudsman to investigate on his own volition where the number or frequency of events of a similar nature requires investigation. We would intend that own volition investigations would not be limited to cases where an eligible complaint has been made to the Ombudsman.

Near-death investigations

In relation to near-death cases, it is our intention to place a duty on the Justice Minister to request the Ombudsman to conduct an investigation in defined circumstances, which will be set out in Regulations, subject to affirmative resolution. We propose to take this forward by way of Regulations in order to allow some time to attempt to address the definitional issues in relation to near-death as we have been unable to identify legal terms which might assist in this regard.

It is the clear intention that the purpose of this amendment to the Bill and the Regulations will be to require the Minister to request the Ombudsman's assistance in near-death cases. We consider that the Regulations will strengthen these particular provisions in the legislation and adequately provide for investigations by the Ombudsman into near-deaths.

I trust this is helpful, and please do not hesitate to contact me if you have any queries.

**TIM LOGAN
DALO**

Prison Ombudsman

Clause 29, page 22, line 14

At end insert 'or on the Ombudsman's own initiative (see sections 35A and 35B)'.

Clause 34, page 26, line 9

Leave out subsection (1) and insert—

'(1) The Department—

- (a) shall request the Ombudsman to investigate any custody-related matter if any of the events to which it relates is of such a nature or description, or occurs in such circumstances, as may be prescribed;
- (b) may request the Ombudsman to investigate any other custody-related matter which is specified in the request.

(1A) Before making any request under subsection (1) the Department shall consult the Ombudsman.'

Clause 34, page 26, line 17

At end insert—

'(2A) Before making any regulations under subsection (1)(a) the Department shall consult—

- (a) the Ombudsman; and
- (b) such other persons as the Department thinks appropriate.'

New clause

After clause 35 insert—

'Own initiative investigations

Own-initiative investigations

35A.—(1) The Ombudsman may carry out an investigation under this section into a matter if—

- (a) the matter relates—
 - (i) to the way in which a prisoner has been treated by a prison officer;
 - (ii) to the way in which a person visiting a prison has been treated by a prison officer;
 - (iii) to the facilities available to a person at a prison (including, in the case of a prisoner, facilities for the welfare of the prisoner);
 - (iv) to the cleanliness and adequacy of a prison; and
- (b) the Ombudsman has reasonable grounds for believing that, in relation to the matter—
 - (i) a number of events of the same or a similar nature have occurred; and
 - (ii) the number or frequency of the events requires the matter to be investigated under this section.

(2) Before commencing an investigation under this section, the Ombudsman must—

- (a) consult the Department; and
- (b) inform the Department of the matter proposed to be investigated and of the grounds referred to in subsection (1)(b).

(3) It is for the Ombudsman to determine the procedures to be applied to an investigation under this section.

(4) This section applies to a matter whether or not a complaint has been, or could be, made about the matter under section 30.'

New clause

After clause 35 insert—

'Report on investigation under section 35A

35B.—(1) Where the Ombudsman has carried out an investigation under section 35A, the Ombudsman must report in writing on the outcome of the investigation to—

- (a) the Department; and
- (b) any other person the Ombudsman considers should receive the report.

(2) In a report to the Department the Ombudsman may make recommendations about any matter arising from the investigation.

(3) Where such recommendations are made in a report, the Department must, within the required period, respond in writing to the Ombudsman setting out (with reasons) what it proposes to do about the recommendations.

(4) The required period is the period of 28 days commencing with the day on which the Department receives the report or such longer period as the Ombudsman may in the case of any report allow.

(5) The Ombudsman may report on that response to such persons as the Ombudsman may think fit.

(6) Regulations may make provision as to the procedures to be followed in relation to reports under this section and may in particular include provision—

- (a) enabling the Ombudsman to show any person a draft of the whole or any part of a report;
- (b) enabling the Ombudsman to publish the whole or any part of a report;
- (c) restricting or prohibiting the identification of prescribed persons or persons of a prescribed description in a report or the inclusion of information of a prescribed description.'

Clause 40, page 30, line 12

At end insert—

'(6A) In applying section 35A(1)(b) the Ombudsman may take into account events occurring in the period of 12 months immediately preceding the appointed day (as well as events occurring on or after that day).'

Clause 46, page 33, line 3

Leave out 'or 30(5)' and insert ', 30(5) or 34(1)(a)'