



Committee for Justice

# OFFICIAL REPORT (Hansard)

Justice Bill Parts 1, 7 & 8: DOJ Officials

18 February 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

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### **Members present for all or part of the proceedings:**

Mr Alastair Ross (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Stewart Dickson  
Mr Tom Elliott  
Mr Paul Frew  
Mr Seán Lynch  
Mr Alban Maginness  
Mr Patsy McGlone  
Mr Edwin Poots

### **Witnesses:**

Ms Angela Bell	Department of Justice
Ms Amanda Patterson	Department of Justice
Ms Karen Pearson	Department of Justice
Mr Graham Walker	Department of Justice

**The Chairperson (Mr Ross):** I welcome Karen Pearson, deputy director of criminal justice policy and legislation division; Angela Bell, jurisdictional redesign branch; Amanda Patterson, head of criminal justice policy branch, and Graham Walker, the Justice Bill manager. You are aware that the meeting is being reported by Hansard and that the report will appear on the Committee website in due course. When you are ready, briefly outline the purpose of clauses 1 to 6 and schedule 1 of the Bill, which cover single jurisdiction for County Courts and Magistrates' Courts. Then we will open up the meeting to questions before moving on to the next part, if that is agreeable.

**Ms Karen Pearson (Department of Justice):** Angela Bell and I will deal with single jurisdiction; let us take that first. Part 1 of the Bill creates a single territorial jurisdiction in Northern Ireland for the County Courts and Magistrates' Courts.

At present, Northern Ireland is divided into seven County Court divisions and 21 petty session districts by departmental orders. County Court and Magistrates' Court business is required to be dealt with in a particular division or district, depending, for example, on where the incident occurred or where a party to the proceedings lives. The Bill removes these statutory divisions and allows the County Courts and Magistrates' Courts to exercise their jurisdiction throughout the whole of Northern Ireland, bringing them into line with the High Court, Crown Court and Coroners' Courts.

The Bill also provides for the single jurisdiction to be supported by an administrative framework, the purpose of which is to provide a reasonable degree of certainty to court users about where their cases will be heard. Under the framework, the Department will determine the administrative court divisions,

after appropriate consultation, in place of the current statutory ones, and the Lord Chief Justice will issue directions detailing the arrangements for the distribution and transfer of court business.

It is intended that current listing arrangements will be largely unchanged so, for example, an offence which would currently be dealt with in the County Court division where the offence occurred, or where the defendant resides, will instead be dealt with in the administrative court division where the offence occurred or the defendant resides.

A key benefit of the new system will be the ability to transfer cases between administrative divisions. That flexibility does not exist at present, and it will allow cases to be moved where a good reason exists. Details of what "a good reason" is will be set out in the Lord Chief Justice's directions and will include, for example, where a transfer will better suit the needs of victims and witnesses, perhaps to allow them to avail of particular facilities that may not exist in all courthouses.

Maintaining court users' access to local justice has been a key consideration in the development of these proposals. It is considered that the Lord Chief Justice's ownership of the listing directions, as well as a requirement for judicial approval, and the opportunity for parties to make representations in relation to the transfer of a case, ought to provide appropriate safeguards for these proposals.

I will finish there, Chair; I am happy to take any questions.

**Mr McCartney:** I have just a couple of questions. In relation to the observation made by the Public Prosecution Service (PPS) that there will be a considerable impact on its organisation and resources if we move to a single jurisdiction, what work has been done to alleviate that for the future? If the PPS thinks that it may have difficulties around that, that might undermine the rationale in terms of access.

**Ms Pearson:** There have been some discussions with PPS. I will ask Angela to deal with that.

**Ms Angela Bell (Department of Justice):** After the oral evidence session, we had the opportunity to speak with the PPS. We discussed the whole system with it, and we highlighted that the single jurisdiction proposals have come about as a result of the review of public administration (RPA) and the changes to the administrative boundaries and local government districts. It has accepted that those RPA changes will impact on it and all the criminal justice agencies. Everybody will have to consider their position in light of RPA, which will come into force before the single jurisdiction provision. The single jurisdiction provisions will overlay on top of the RPA, and the RPA is the catalyst for any changes. Our view is that the single jurisdiction is not going to cause particular problems once RPA is established.

**Mr McCartney:** But the PPS is saying that the single jurisdiction is posing the problem rather than RPA.

**Ms A Bell:** I think that, following discussions with it, it has come to understand that the sequencing is the other way round.

**Mr McCartney:** The Children's Law Centre made an observation around travel. Have travel costs been built into the reorganisation?

**Ms A Bell:** Not at this stage. It is considered that any applications to transfer a case will be the exception rather than the norm. There may well be benefit to people making applications, so it might be that a child will have to travel a shorter distance to get to court. On that basis, we felt that it was not really appropriate to start building in extra provisions specifically for travel for children.

**Mr McCartney:** Are there any provisions built in for travel in any circumstances?

**Ms A Bell:** Not really. Obviously, legal aid will be available for the cases. Any expenses that would normally be recovered under legal aid will still be recoverable. If extra travel costs are incurred in that scenario, they will be covered.

**Mr McCartney:** If you are not anticipating too much movement, why would you not build in travel costs for exceptional circumstances where there will be added journeys?

**Ms A Bell:** We did not want to set a precedent so that other groups would start to seek similar —

**Mr McCartney:** When you say other groups —

**Ms A Bell:** Any other groups. The Children's Law Centre was particularly concerned about children. If older people started to present difficulties —

**Mr McCartney:** The Attorney General made an observation about the Lord Chief Justice giving consideration to a lay magistrate being as close to his or her home patch as possible. He said that that should be a principle written in for all transfers.

**Ms A Bell:** That was specifically included for lay magistrates because of their make-up. Under the review of courthouses back in 2000 they were set up to be local to their area when they were dealing with court matters. We really wanted to maintain that specific aspect of their make-up. As far as the Lord Chief Justice's directions are concerned, the fact that he will be issuing those directions gives sufficient cover. The draft directions suggest that there will not be very much change from the current statutory provisions; it will be an administrative version of what we have at the moment.

**Mr McCartney:** I have a general question: will the idea of the single jurisdiction lead people to believe that it may be part of a process that will eventually reduce the number of sites in which there are courthouses?

**Ms A Bell:** That was not the original intention of the policy. It is fair to say that, potentially, there will be a knock-on effect, but it certainly was not the original intention.

**Mr McCartney:** But it could be a consequence of it.

**Ms A Bell:** The number of courthouses could be reduced under the existing statutory provision. It will not be predicated on the single jurisdiction coming about. Those changes could be made under current arrangements.

**Mr McCartney:** The reason I ask this is because, if the case for a single jurisdiction were approved, it could be thrown back at you in the future. Someone could say, "Well, sure, you agreed to a single jurisdiction, so why do we need multiple places to administer justice in a single jurisdiction?".

**Ms A Bell:** I think that the Department would still be very conscious of its statutory duty to provide sufficient access to justice.

**Mr Dickson:** Thank you for presenting the outline of this issue to us. Can I ask you one question that seemed to come through in some of the consultation? Is there a danger that the single jurisdiction places too much emphasis on your administrative benefits rather than on the needs of court users?

**Ms A Bell:** That will become more apparent once the Lord Chief Justice issues his directions, which will set out the reasons for departing from the standard arrangements. I am hopeful that those will be fairly balanced and that there will not be an emphasis on court administration being the reason for any moves to take place.

**Mr Dickson:** So, you can see benefit to end users?

**Ms A Bell:** Absolutely.

**Mr A Maginness:** Thank you very much for your presentation and for your previous submission in relation to this issue. I have asked before whether the judiciary is happy with this, and I have been told that the answer is yes, but are the magistrates happy? Do you know that the County Court judges are happy, as discrete groups within the judiciary? It is not going to affect the High Court or senior judges; it is going to affect County Court judges, Crown Court judges, magistrates, or district judges as they now are. Are you content that the discrete elements have been consulted and are happy?

**Ms A Bell:** Yes, we are.

**Mr A Maginness:** In answer to the question that the vice-chair put in relation to courthouses and the single jurisdiction, it seems to me that, in the circumstances where the Department is closing

courthouses with great enthusiasm, this would fit into that particular strategy for closing courthouses. It may not have been intended that way, but it will help because you can say that there is a single jurisdiction so we do not need a courthouse in Ballymena. People can go elsewhere, and it is all a single jurisdiction now. That could be the outworking of this particular change, and I do not think that is particularly helpful to the community at large. I am making that point to you.

**Ms Pearson:** The closure of courthouses is subject to consultation. That is the process.

**Mr A Maginness:** It did not seem that way in the Assembly yesterday when the Justice Minister was replying to questions. He seemed to be very adamant. He actually talked about it as being a reform. I cannot understand how that term is used. It is certainly a cut, but it cannot be seen as reform because it was not signalled in the process of reforming the system that courthouses would close to the extent that they are being closed.

**Ms Pearson:** There is a consultation at the moment, and our understanding is that the Committee is seeing colleagues about that very issue in the middle of March.

**Mr A Maginness:** You are not the person to answer that particular question.

**Ms Pearson:** On your point, Angela said earlier that if we were not bringing the proposals forward, courthouse closures would still be possible. We understand that people may make the link, but, for us, they are two separate exercises.

**Mr A Maginness:** It is fortuitous that the two things coincide.

**Ms Pearson:** We have a difference of views on the proposals.

**Mr A Maginness:** The main point that is being made not just by the Law Society but by others is that there needs to be a robust set of guidelines to ensure that the assignment of business takes into account the needs of witnesses, victims of crime and defendants. To ensure a fair process and that flexibility is welcomed, it is important that access to justice is promoted through avoiding unnecessarily long journeys for participants in the court process where possible. It seems that, from what is being proposed here, there is not really that much by way of protection for people who could be, at the very least, inconvenienced by the single jurisdiction.

**Ms A Bell:** The Lord Chief Justice's directions will include a requirement that the parties are consulted or are given an opportunity to make representations when an application is made to move a case to a different division. We felt that that, together with judicial approval, would be required to provide a safeguard.

**Mr A Maginness:** If there is only one jurisdiction, as it were, how can you really argue in court to say, "My case should stay in Enniskillen"? The argument will be that Omagh is not that far away.

**Ms A Bell:** That is the purpose of the administrative directions. The listing arrangements will remain largely as they are currently.

**Mr A Maginness:** Really, at the end of the day, there is no protection for people in this new system. You are at the whim of the administration and those who are running the system, including the judges, of course.

**Ms Bell:** Really, the purpose of this was to benefit court users, and, while I appreciate that there will be scope for what you are suggesting, that is certainly not the intention.

**Mr A Maginness:** The other point is that, under this system, county court judges will not have a jurisdiction. They will not have a division.

**Ms Bell:** That is right. They will work throughout Northern Ireland.

**Mr A Maginness:** So, they can be pushed around the whole of Northern Ireland willy-nilly. They will have no bailiwick at all.

**Ms A Bell:** The Lord Chief Justice will continue to issue his directions so that he will decide where they sit. The expectation is that there will not be a great deal of change.

**Mr A Maginness:** It gives the Lord Chief Justice a lot of additional clout, does it not?

**Ms A Bell:** He already issues the directions.

**Mr A Maginness:** Yes, but if you are appointed to a certain division, then you can exercise your judicial power, as it were, in that division. Under this system, you do not really have any division. You do not have any seat as such as a judge. Therefore, you can just be directed here, there and everywhere.

**Ms A Bell:** That is true, but I am sure that arrangements will be put in place between the chief and his staff to ease that as much as possible.

**Mr A Maginness:** I just wonder about judicial independence in all of this.

**Ms Pearson:** There is nothing that we will be doing in the proposals that will impact on the ability of the Lord Chief Justice to run the listing arrangements. That would remain absolutely his.

**Mr Elliott:** Thanks for the presentation. I have a couple of quick points. The Bill states that the Lord Chief Justice may give directions in a number of areas like the distribution of the business etc. How is it normally operated? I am assuming that it is just a court administration team directing the business.

**Ms A Bell:** It is the Lord Chief Justice who issues directions about the distribution of court business.

**Mr Elliott:** So, it will be the Lord Chief Justice as opposed to "may" be.

**Ms A Bell:** It will be. It is worded as "may", but, in effect, it will be the Lord Chief Justice.

**Mr Elliott:** I assume that this is the broad principles of the distribution as opposed to individual cases.

**Ms A Bell:** Individual cases will then be subject to any request to depart from the normal arrangements.

**Mr Elliott:** OK. Will this proposal give precedence or priority to any type of cases, for example, family courts?

**Ms A Bell:** The directions have not yet been finalised. The Lord Chief Justice will be considering whether any particular group would require a priority, but, at this stage, it is not anticipated that that would happen unless there were a particularly good reason.

**Mr Elliott:** They will not even be contained in regulations. It will be at the discretion of the Lord Chief Justice? Is that right?

**Ms Bell:** That is right.

**The Chairperson (Mr Ross):** Are those directions subject to public consultation?

**Ms Bell:** They may not be. The Lord Chief Justice would not be required to consult publicly, but my understanding is that he will certainly consult interested parties on a targeted basis.

**Mr Elliott:** Chair, just on that point. It might be worth exploring further with the Lord Chief Justice how he intends to do that and how he will take opinions. It is important to find out what might shape his thinking on that, because we are basically in the dark. I am not saying I do not trust the Lord Chief Justice to do it properly —

**The Chairperson (Mr Ross):** It would be useful to write to him.

**Mr Elliott:** It would be useful to get a view on how he plans to take opinions.

**The Chairperson (Mr Ross):** We will move on to part 7 of the Bill, which covers VOPOs. Members, please signal if you have any questions. When you are ready, please outline the purpose of clauses 50 to 71 of the Bill, and then we will take questions.

**Ms Pearson:** We have Amanda Patterson with us today. Part 7 of the Bill will introduce provisions for a violent offences prevention order (VOPO). This is a new civil order similar to the existing sexual offences prevention order, and the Minister believes it will increase the ability of our criminal justice agencies to protect the public from the risk of serious violent harm from those who have already been convicted of violent offences.

Having extended the scope of the public protection arrangements to encompass violent offences and sexual offences, our aim is to equip those tasked with protecting the public with a similar range of appropriate risk management measures across both categories of offending behaviour. The amendments to the provisions that the Minister intends to table at Consideration Stage will address a number of concerns raised by the Attorney General about European Convention on Human Rights (ECHR) compliance.

First, we are putting a framework in place that will require any fingerprint, photographic or verification material collected under the VOPO notification provisions to be destroyed when the order expires, unless, in the case of fingerprints, they are being used to replace or update data sets already held under normal police and criminal evidence (PACE) provisions, or, in the case of photographic or other information obtained by Departments, the police have applied to the courts and been granted permission to retain such material in the interests of continued public protection.

Also included is an amendment subjecting the power of the police to enter and search an offender's address to a proportionality test where it is somebody else's place of residence. We are also aware of concerns expressed to the Committee during the evidence sessions about the availability of the orders to manage risks from young people under 18. We are very happy to take views and answer questions on that point.

**The Chairperson (Mr Ross):** Women's Aid was concerned that the threshold for a VOPO would be too high to catch domestic violence cases. Do you have you a response to that?

**Ms Amanda Patterson (Department of Justice):** Yes, the advice from the agencies was that, if we set the threshold any lower, thereby bringing in common assault, it would become unmanageable to a large extent.

The VOPO as it stands now excludes the lowest offences, such as assault occasioning actual bodily harm in domestic, family and various other circumstances. That was considered by the agencies to be where you wanted to set the level. This order is not geared totally for domestic violence cases. It is to deal with people who are presenting a risk of serious violent harm to the community; although it will include those convicted of serious domestic violence, it is not simply to deal with domestic violence.

**The Chairperson (Mr Ross):** Is there an argument for a different category — a domestic violence protection order — as is the case in other jurisdictions?

**Ms Patterson:** I do not have policy responsibility for that area, but I understand that the Department is looking to consult on domestic violence protection orders. The other reason for that being slightly different is that they would offer immediate protection to an individual. Police could do something when they arrive at an incident by serving notice. A violent offences prevention order would not offer that service, because it has to be considered by a court on the basis of a conviction.

**Mr McGlone:** My question relates to the synopsis of responses. Could you please clarify the following:

*"The VOPO will be a preventative, rather than a punitive measure, aimed at preventing children from further offending — the reoffending rate for young people (48%) is higher than that for adult offenders (42%). It also has the potential to prevent young people becoming victims of crime".*

What does that mean? Can you elaborate on that?

**Ms Patterson:** It is probably an additional benefit of the VOPO. The majority of victims of violent crime are young males. We hope that the imposition of a VOPO will help to prevent a crime being committed.

**Mr McGlone:** OK, I have got it now. In the next paragraph, you refer to the data and say that you:

*"expect that those eligible for a VOPO may be in the region of 7 per year. This figure is supported by the reoffending pattern of the number of young offenders committed to custody for a violent offence (which would in itself indicate a level of seriousness) and who went on to reoffend".*

What is that pattern that is referred to? What is the supporting reoffending pattern?

**Ms Patterson:** That figure was the number in one year who were convicted of a violent offence — 21, if I remember rightly. They had reoffended over a period of 18 months, and it is therefore suggested that they are the sort of individuals who would be covered if the VOPO applied to young people. It would likely be used for someone who had had an immediate custodial offence for a violent crime and had then reoffended within a short period. That is where the figure came from. It was designed to illustrate the fact that it would be a very, very small percentage of under-18s.

**Mr McGlone:** Is that seven out of 21?

**Mr McCartney:** The Children's Law Centre and Include Youth have raised concerns about under-18s. What is your view? Have you met?

**Ms Patterson:** Yes, we have indeed, and we understand their position and where they are coming from. The Department would say that concerns that the order will be used indiscriminately for young violent offenders are much misplaced, given the sort of numbers we had thought about. The barrier, if you want to call it that, that the court would have to apply to a violent offences prevention order is quite high. It can be used only if there is a risk of serious harm from the individual concerned.

The other concerns were in relation to the fact that there would be other licence conditions and other sentencing disposals used for young people. Our answer to that would be this: if the VOPO is not needed, it will not be used. Just because it is available does not mean that it is going to be used. Bear in mind that the statutory agencies that we consulted were able to say that they were aware of cases, albeit a very small number, where a VOPO would have been extremely useful in managing a risk from someone under the age of 18. That is really where this is coming from. If a VOPO is not needed, it will not be used. The court would not be able to use it, and we would not expect it to be used if there were other licence conditions and other sentencing disposals to manage the risk. The VOPO is not a sentencing or punitive disposal in any event. It is purely a risk management tool or a means of protecting the public.

Both organisations were talking about reintegration and rehabilitation of young people. We absolutely accept that that is extremely important. That is what the sentencing disposals and the systems would aim for, whereas the VOPO, which would more or less run in parallel, would ensure that the public protection agenda was being followed. It may also have a positive effect on parole commissioners' ability to allow for release, in that, if they can see that there is any risk in the community, they can also see that proper management tools are in place for the agencies to manage that. It may enhance the ability to allow for a young person's release.

**Mr McCartney:** In other aspects of law, the distinction is always made between being over and under 18. There is no room here to make this bespoke for under-18s.

**Ms Patterson:** I am not sure what it would look like. That has not been put forward by either of the two organisations that do not agree with the proposal for under-18s. If there was something else that we could look at, that might be possible, but it has not been put to us. In the two target consultations on the violent offender order that the Department undertook following the original consultation, which included all the children's organisations and other targeted organisations, no response was received, other than from Include Youth and the Children's Law Centre (CLC).

**Mr McCartney:** In the context of the use of the words "preventative" and "punitive", if a trawl or vetting process was done for Access NI, would a VOPO show up?

**Ms Patterson:** Sorry, I do not know the answer to that. I do not think so.

**Mr McCartney:** I am not making a difference between preventative and punitive.

**Ms Pearson:** I think that it would depend on whether it was the normal Access NI check or the enhanced one that we could write.

**Mr McCartney:** Where the term "punitive" is concerned, someone looking on might say that it would be a very rare for you to get a VOPO. If the punitive aspect is against your name and on your record, it stays on your record.

**Ms Patterson:** The conviction would be the thing that would be on the record.

**Mr McCartney:** As you said, it is used only in certain circumstances, so anybody looking at it may say that it might be a conviction, but it is a severe —

**Ms Patterson:** I am more than happy to find that out for you and to let you know.

**The Chairperson (Mr Ross):** Nobody else has indicated that they want to speak on this Part. If everyone is happy, we will move on to Part 8, which includes clauses 72 to 76, covering jury service, and clause 82, which covers defence access to premises. Whenever you are ready, will you brief us on that Part? We will then open up the meeting for questions.

**Ms Pearson:** Yes. I will start with juries. The Bill makes adjustments to current arrangements for jury service. It abolishes the upper age limit, which is currently 70; it increases the current age for automatic excusal from jury service from 65 to 70; and it makes miscellaneous amendments to the Juries (Northern Ireland) Order to bring it up to date. It is our view that removing age as a barrier to participation in this aspect of civil society is a good step. We are aware that the Commissioner for Older People suggested that a full equality impact assessment (EQIA) should be undertaken to ensure that people aged between 65 and 70 were not disproportionately affected by the amendment. We were not planning to take that step, Chair. An EQIA on the Bill has already concluded that there is a disproportionate impact on those aged over 70 who would be entitled to serve as a juror, whereas currently they are not. That is not a negative impact. It means that a person aged 71 now has a choice that was previously denied to them and that that choice is theirs to exercise. For those aged 65 to 70, while automatic excusal will no longer be available, there will be a general discretion to excuse them from service should they so request.

**The Chairperson (Mr Ross):** Are there any questions, members? There are no real issues.

I thank Karen, Angela and Amanda. Graham, you are staying with us for the next session.

**Ms Pearson:** I think, Chair, that we have defence access to cover for you as well.

**The Chairperson (Mr Ross):** Sorry; go ahead.

**Ms Pearson:** The Bill also makes provision for a defendant to be able to apply to a court for access to premises for the purpose of preparing his defence. That provision was requested to plug a technical gap. It would allow recourse to the courts should agreement not be given. The Attorney General (AG) recommended an amendment to the clause to strengthen the threshold for application. It is the AG's view that a higher test is needed to balance the rights of the occupier of the premises.

Instead of requiring access in connection with the preparation of its defence, the Attorney's view is that an application should be granted only to ensure compliance with the defendant's fair trial rights. We accept the Attorney's view and are content to bring forward the amendment that we shared with the Committee today.

**Mr Poots:** How would that pan out in reality? Can you give us an example?

**Ms A Bell:** At the moment, the defendant would normally reach agreement with the prosecution that they could inspect the crime scene. That is very rarely an issue. This ability to apply to the court for a court order would be used only on those very rare occasions when that is not agreed. It could happen

at any point during the proceedings, meaning that it could happen whenever the defendant decides that he needs to inspect the premises. That would be done by way of an application to the court.

**Mr Poots:** In thinking about human rights, if you had a dwelling, for example, where the defendant lived with a family, would the defendant have access to the entirety of the dwelling or just the part of it that they used? For example, would there be access to an individual's bedroom? Say he had a 13- or 14-year-old sister, would you be able to access the entirety of the dwelling? Obviously, people could be storing drugs in other parts of the home.

**Ms Bell:** It would be a matter for the court to direct the conditions it wanted to apply with the order. So, the order could allow access to the whole or a particular part of the premises, and it could require the defendant to be accompanied at all times by a police officer. There are certain safeguards built in for the occupier. They would also be entitled to make representations to the courts before the order is made.

**Mr Poots:** Would it have the capacity to search the entirety of an individual dwelling?

**Ms A Bell:** It is not so much a search as a visit to view the premises.

**The Chairperson (Mr Ross):** OK. Thank you.