



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice (Committal Reform) Bill:
Department of Justice

5 November 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)

Ms Linda Dillon (Deputy Chairperson)

Mr Doug Beattie

Ms Sinéad Bradley

Ms Jemma Dolan

Mr Paul Frew

Ms Emma Rogan

Miss Rachel Woods

Witnesses:

Mr Glyn Capper

Department of Justice

Ms Laura Mallon

Department of Justice

The Chairperson (Mr Givan): I welcome formally Glyn Capper, head of the justice performance team in the access to justice directorate, and Laura Mallon from the justice performance team, both of whom are from the Department of Justice. I can see a few more people in the picture whom I have not mentioned. The session will be reported by Hansard and published on the Committee web page. Glyn, I will hand over to you at this stage.

Mr Glyn Capper (Department of Justice): Thank you, Chair. Can you hear me OK?

The Chairperson (Mr Givan): Yes, we can hear you clearly. Thank you.

Mr Capper: Excellent. Thank you. I have an on-screen picture of four people, all of whom are motionless at the minute, but I can assure you that it is just Laura and me in the room at the minute. I am not sure what you can see.

The Chairperson (Mr Givan): Yes, we can see an image of four people, so that explains why I thought that there were more than just the two of you, but we can hear you, so that is OK. Feel free to continue.

Mr Capper: We will get somebody at this end to see if we can get the video running, but I will maybe start with my opening comments while we are doing that.

The Chairperson (Mr Givan): Yes, no problem.

Mr Capper: OK. First, thank you. It is good to be with the Committee this afternoon, and thanks for the opportunity to brief the Committee on the Criminal Justice (Committal Reform) Bill.

It is important to say at the outset that the principles and policies around reforming the committal process are not new. Powers to directly commit cases to the Crown Court are included in the Justice Act 2015, and reforms to the committal process were considered in detail as part of the Justice Bill's passage. There have also been a number of external reports and reviews recommending committal reform, and I will touch on some of them later. Reforming the committal process is a key part of the Department's plans to speed up the justice system and to improve the experience of victims and witnesses.

Why the committal reform Bill? It is a short, tightly-focused Bill that is designed to do three key things. First, through the Justice Act 2015, we previously sought to remove the need for victims and witnesses to have to give oral evidence at the committal hearing at a Magistrates' Court and then again at the Crown Court. The experience of giving oral evidence is sometimes traumatic, particularly under cross-examination, and can have a significant impact on victims and witnesses. However, that proposal did not receive sufficient support during the passage of the Justice Bill. The subsequent Fresh Start Agreement, however, recommended that oral evidence pre Crown Court trial should be removed, and this Bill delivers that commitment. Secondly, the Bill seeks to get more cases to the Crown Court more quickly. The Justice Act 2015 provided only for murder and manslaughter cases to be directly committed or transferred to the Crown Court, but this Bill will expand the range of offences that will be included as part of this first phase of roll-out of direct committal. Finally, the Bill deals with some technical issues to smooth the direct committal process.

Whilst the principles of the Bill are generally straightforward, some of the technicalities are quite complex. If the Committee is content, I will work through some slides that outline the purposes of the Bill with some pictures and charts that will, hopefully, make things more understandable. You should either have a paper copy of the slides or have them on screen. Laura and I are happy to answer any questions as we work through them or to take questions at the end. If you are content, we will move to the PowerPoint slides, Chair?

The Chairperson (Mr Givan): Yes, that is fine. We have them here.

Mr Capper: I am hoping that someone will sort the picture out, but, as long as the sound is OK and you are content, we will keep going.

The Chairperson (Mr Givan): Yes, we can hear you, so that is OK.

Mr Capper: The first slide is titled, "Crown Court committal process". It sets out the current process for all cases that end up in the Crown Court. I will quickly work through that. There is a Magistrates' Court initial hearing, and then all offences move to the Magistrates' Court for a committal hearing, before then going to the Crown Court for the trial. That slide also sets out the stages where evidence is provided. At the Magistrates' Court committal hearing, there are three ways in which evidence can be given: first, a preliminary inquiry, called a PE, which is written evidence; secondly, a preliminary investigation, called a PI, which is oral evidence; and, thirdly, a mixed committal, which is oral and written evidence. Essentially, when we talk about reforming the committal process, we are mainly talking about two things: first, direct committal, which is transferring cases directly to the Crown Court without that Magistrates' Court hearing — the committal hearing — and, secondly, minimising the impact on victims and witnesses, so that they have to give oral evidence only once at the Crown Court. Reforming the committal process is, essentially, those two things.

The next slide is titled, "External recommendations". A range of external recommendations and bodies have supported these reforms. I will work through those. In 2016, the Fresh Start panel recommended removing oral evidence before trial and abolishing committal proceedings in terrorist offences etc. In 2018, in its 'Speeding up justice' report, the Audit Office said that we should develop a timetable for completely eradicating the committal process. In 2018, the Criminal Justice Inspection recommended that rape, serious sexual offences and child abuse offences should be added to the list of offences to be directly committed, and that was supported by the Gillen review last year. At the beginning of 2020, the New Decade, New Approach deal noted that the Executive will deliver committal reform. We have a range of recommendations supporting committal reform.

The slide headed, "Direct committal" just gives slightly more detail on how the direct committal process will work. On the top row, you will see the current flow of cases that we have talked about. Underneath

that is how direct committal will work. Essentially, after a one-off initial hearing in the Magistrates' Court, all relevant offences will move directly to the Crown Court — they will be directly committed to the Crown Court. The 2015 Justice Act provided that murder and manslaughter cases would be directly committed and that some specified offences could be added by way of an order. However, this Bill will expand the offences that will be directly committed. The list of offences will be those that, in the case of an adult, are triable only on indictment. Essentially, that is indictable-only offences, and that will include terrorism-related and serious sexual offences in line with those external recommendations. That list of offences will apply to both adult and youth cases, and the Bill also allows us to add some additional cases, in future, by way of an order.

The next slide is titled, "Oral evidence". It deals with the issue of oral evidence in a bit more detail. We have tried to map out, under both the current process and the direct committal process, where oral evidence is currently given and what difference the Bill will make. The Bill will retain the current process of written evidence being given through the preliminary inquiry at the Magistrates' Court hearing but remove oral evidence being given through the preliminary investigation and mixed committal. As I have said, that leaves oral evidence being given once, at the Crown Court trial. I have also noted under the Crown Court box that there is a process called "no bill". That includes just written evidence, so it will not change.

As we developed plans to roll out direct committal, we identified that the Justice Act 2015 includes a process called "application to dismiss". Before a Crown Court trial, an application to dismiss can be kicked in from the point where the case is committed to the Crown Court up to an arraignment hearing. That can include oral and written evidence. Had we left that as is, cases going through the current route would only have to give oral evidence once, but cases in the direct committal route could potentially have had oral evidence twice, in the application-to-dismiss process and then again at the Crown Court trial. The committal reform Bill will remove oral evidence in that application-to-dismiss process. Hopefully, that makes sense in the way that we have described it.

The next slide is titled, "Operational outworkings (1)". The committal reform Bill will introduce a new process in the Crown Court whereby the Public Prosecution Service (PPS) can discontinue a case from when it is committed to the Crown Court to when indictment is presented. That is similar to processes that the Crown Prosecution Service has in England and Wales. It is deemed by PPS to be a necessary process for the smooth operation of direct committal.

The next slide is titled, "Operational outworkings (2)". Bear with me; this might get a wee bit technical, but I will try my best to take you through it. I have said that we would have two routes to the Crown Court: the current route and the direct committal route, where relevant offences would be directly committed to the Crown Court. The Justice Act in 2015 also included a third route to the Crown Court in an area called section 10. Section 10 provided that, if a defendant indicated an intention to plead guilty, regardless of the offence type — so, regardless of whether it was one of those murder/manslaughter cases — that offence would also be remitted directly to the Crown Court. However, section 10 also included a provision that, if the defendant subsequently decided not to plead guilty, they would be returned to the Magistrates' Court; that is the dashed red line that you see in your slide.

As we have spent a lot of time working with criminal justice organisations through that section 10 process, the Bill will seek to repeal section 10. That is for a number of reasons. It presents significant operational complexities and risks, including the risk of false release or imprisonment. It is an interim measure. Once direct committal applies to all offence types, section 10 would be obsolete, so we would have spent a lot of time and resource implementing something that is short term. Although it is not possible to quantify with any certainty, section 10 would also apply to a relatively small number of cases. For those and a host of other reasons, we have decided to seek to repeal section 10 in the Bill and instead focus our efforts on a more expansive roll-out that provides a better and less complex basis on which to implement the changes. Through what we have proposed, we think that we will get more cases to the Crown Court more quickly, regardless of an intention to plead guilty. However, we recognise the benefits to witnesses and victims of fast-tracking cases where the accused wants to plead guilty, so the Bill also includes powers to allow the Magistrates' Court to order the necessary reports in advance of a Crown Court trial.

The second last slide is headed, "Committal Reform Bill". It sums up what the Bill is designed to do. First, it will expand direct committal to the Crown Court for additional what are called "relevant offences" over and above those in the 2015 Act. So, as I have said, we will get more cases to the Crown Court more quickly, in line with those external recommendations. The Bill will also seek to abolish oral evidence before the Crown Court trial, both at the traditional committal hearing and in the

application-to-dismiss process that we talked about. Thirdly, the Bill will improve the operational outworkings of direct committal.

I will give you a sense of the next steps. We are discussing the committal reform Bill today. Hopefully, when that makes its way through the Assembly, we will be able to abolish oral evidence pre-trial relatively quickly. That simply requires some rule changes. On implementing direct committal, we have established a committal reform programme with key criminal justice organisations — the PPS, the Office of the Lord Chief Justice, police, prisons and courts, for example. We have also invited the Law Society and the Bar Council to sit on a stakeholder forum. That programme is four projects dealing with the legislation, the IT changes, the legal aid implications and the business change required. We hope to implement direct committal in the autumn of 2022.

Hopefully, that has been a useful overview of the Bill, and, hopefully, the way that we have described it makes it understandable. Laura and I are happy to take any questions that the Committee has.

The Chairperson (Mr Givan): Thank you, Glyn. That was helpful, and the slides were particularly helpful for me to follow. I appreciate that.

I have a few specific points for discussion on some of the areas, but, in general, the argument that some will make is that having an oral hearing flushes out issues rather than just doing it by writing and that there is only so much that you can ever convey through a piece of paper, so it is better to have someone in front of you. Can you address that initial general point first?

Mr Capper: Yes. Is the video sorted out, Chair?

The Chairperson (Mr Givan): No, it is not. You are fortunate that it is frozen on a sensible picture. We cannot see you.

Mr Capper: If you want, we can log off and log back on again. Are you happy to continue with sound and no picture?

The Chairperson (Mr Givan): You continue. The audio is 100%.

Mr Capper: OK, we will keep going. To deal with your question, Chair, I am sure that members will be aware that, through the process of the 2015 Act, that issue came up. As you know, the Department sought to abolish oral evidence entirely before committal, and that did not make its way through the Assembly. I suppose that there is a range of arguments there, but, if we simply look at the external recommendations that we seeking to implement, ranging from the Fresh Start panel through to what other inspection bodies have said, I think that it is also clear that, although some of the numbers that we are talking about may be small, what we are really conscious of is the impact, as I mentioned, on victims and witnesses of having to give that sometimes traumatic evidence more than once, sometimes under cross-examination. So, yes, there are arguments on both sides, but the Department's policy position and the external recommendations point us towards seeking to remove oral evidence pre-trial.

The Chairperson (Mr Givan): There is no provision in the Bill for any extraordinary measures to allow oral evidence rather than just written evidence. That right will be removed completely.

Mr Capper: Yes, the Bill seeks to remove oral evidence altogether pre-trial.

The Chairperson (Mr Givan): Is there any indication of the volume and number of cases or offences under the directly committed route?

Mr Capper: I will let Laura deal with some of the numbers, Chair. As a bit of context, I mentioned that the 2015 Act included murder and manslaughter cases as those that would be directly committed. That is a relatively small number of cases, and we also wanted to try to address the recommendations about terrorism and serious sexual offences. This is, in essence, the first roll-out of direct committal, so, in deciding what cases to include in this roll-out, we were conscious that we needed to strike a balance. We wanted to get enough cases to make that roll-out meaningful and to be able to get enough information for evaluating how we do subsequent steps. We also did not want too big of a number as to swamp the system, because it will no doubt have a significant impact on the justice

system and the Crown Court. We sought to strike that balance. I will let Laura say something more about the number of cases that indictable-only offences relate to.

Ms Laura Mallon (Department of Justice): To put it into context, I will give a bit of background information on PEs, PIs and mixed committals. Over a year, a few thousand cases go through the process, and, in recent years, that number has fallen to around the 1,500 mark. Of those cases, only about 4% will ever go through a PI or mixed committal, so we are talking about small numbers. The 2018 figure was about 82 people. By and large, those cases progress by way of written evidence.

As for the number of cases going through under direct committal, the Department intends, eventually, to fully roll out direct committal to all cases to go to the Crown Court. The offences that we have selected to go in the first tranche make up about 30% of cases that are committed annually. That will give us a large enough number to see how direct committal works in practice and will take a good chunk of cases directly from the Magistrates' Court to the Crown Court.

The Chairperson (Mr Givan): Thank you, Laura. Is there a time frame for when that 30% will increase to 100%?

Mr Capper: The Audit Office has said that we should develop a timetable to implement fully direct committal. We want to do that as quickly as possible, but we also want to learn from the first phase roll-out to understand the necessary rebalancing of resources and so on. Over the next few months, we will develop a timeline, but that will be subject to our learning from the first phase roll-out. Having developed the Bill, we are now turning our attention, through the programme board, to looking at that roll-out timeline.

The Chairperson (Mr Givan): OK. What offences will be in that initial phase?

Mr Capper: They are described, technically, as those that:

"in the case of an adult, are triable only on indictment".

I will let Laura describe that in a bit more detail.

Ms Mallon: It is probably a bit of a confusing title, but it is one that will be well recognised and understood. The terminology refers to adults. There is legislation that means that, for youth cases, the only offences that are triable only on indictment are homicide offences. We did not want to disadvantage youth cases, and we wanted to ensure that all cases that could go to the Crown Court are sent there. That is the terminology: all cases that, as an adult, would be triable on indictment. That includes a range of offences. You have your homicide ones — murder, manslaughter and all those sorts of things — and a range of serious sexual offences, such as rape, and other offences, such as serious GBH, and some specific terrorism-related offences. We can provide a list, if that would be useful. It is a rather long list and that is why it is not printed out in your packs. It is a range of the most serious offences that can only be tried in the Crown Court. No decision needs to be made about where they will be tried.

The Chairperson (Mr Givan): OK. That would be helpful.

How much will that speed up the processing of those cases? What has been the assessment of the financial costs associated with the change?

Mr Capper: OK. I will start off on that one, Chair. The question of how long it will shave off the time for cases to go through is a difficult one to answer. There is no doubt that the Department's understanding and that of the inspection bodies that I talked about is that direct committal will definitely reduce the time taken for a case to progress through to the Crown Court. We will be taking out the Magistrates' Court committal hearing, which is sometimes lengthy. That said, there is no doubt that the Crown Court hearing will be slightly longer. The length of time depends on the case. We have looked at cases going to the Crown Court through the summons route and the charge route. The length of time for both of those will be different. It is difficult to give a figure of x amount of days or weeks that will be saved.

We come back to the point that this is, in effect, a rebalancing of resources. It is still the same case going through to the Crown Court; different expenditure and resources will be required in the Crown

Court compared with the Magistrates' Court. That is one of the things that we want to learn from our evaluation of the first phase. We are using some data from previous cases to explore and extrapolate the impact that that will have on the two respective court tiers — the Magistrates' Court and the Crown Court — and we hope to model that into how it will change the balance of resources between the two courts. We do not expect it to cost any more overall, but it will be about the rebalancing.

I mentioned that we have a legal aid project as part of our overall programme. That will consider the legal aid implications for direct committal. Our legal aid colleagues in the Department are working on that project and will be doing some targeted consultation next year with the legal profession to develop those legal aid implications and fee structures.

The Chairperson (Mr Givan): I open up the session to members who want to ask questions.

Ms Dillon: I had two questions, but Glyn answered them in his response to the Chair's questions. I wonder about the legal aid implications and whether there would be savings as well as costs, which is the rebalancing stuff.

Thank you for the slides; they certainly help us to understand the process.

Mr Frew: Thanks for your presentation and the slides; they are very useful. I have a couple of questions. This might be set in train with other procedures in the judicial system, not least Diplock courts, but how do you define a "terrorist", or is it more about the terrorist offence? It strikes me that you may well have terrorists who are involved in other crime and, because they happen to be a terrorist, that is what gives the frightening impact to the witness.

Mr Capper: The simple answer to that is that we are dealing with the offence definitions.

Ms Mallon: You are right: it is a very complex area. If, in response to Fresh Start recommendations, we simply went for "terrorist-related offence", it would be quite a narrow group and would, obviously, be defined by various terrorist legislation. We know from our work with colleagues in the Department who are more used to that area, and through our work on the indictable cases process, that offences that are related to terrorists are broad and wide and can cover things such as violent offences, theft offences etc. That is why, when we selected the offences to go through, we wanted to make sure that, in addition to having sufficient numbers of offences to move on, we were looking at a broad spectrum, so we are including those violent offences and terrorist offences as well in the first tranche.

Mr Frew: So, just to be sure, violence is there? I am looking at your slide on external recommendations, and I understand why you have terrorist offences and offences that tend to be committed by organised crime groups. I also understand why you have rape, serious sexual offences and child abuse offences. We probably need to future-proof it by including domestic violence and stalking in the near future. Are you telling me that it covers all forms of violence?

Ms Mallon: It covers all violent offences that are triable only on indictment at this time. In terms of future-proofing, we shied away from putting a list of offences in the Bill. That is restrictive and the terminology used should cover future offences. We also have a clause that allows us, by way of order, to add offences should we need to. If, for example, the domestic violence or stalking offences were what is termed a hybrid offence in that they could be tried on indictment or summary, we could add those so that they are included.

Mr Frew: I asked that without knowing whether they are. I am sure that they are. Am I right in saying that, with the Domestic Abuse and Family Proceedings Bill as it is, there is a route to the Crown Court?

Mr Capper: Can we check that with our colleagues who are dealing with legislation, and we will come back to you in writing?

Mr Frew: I have it in front of me, but I am speaking without thinking, and that is always a dangerous thing.

Mr Capper: Just in case we give you the wrong answer, we will check with colleagues and come back to you, if that is OK.

Mr Frew: OK, thank you. You are removing the need for oral evidence for PI at the Magistrates' Court. Do judges have the power to request oral evidence?

Ms Mallon: No. The Bill plans to remove oral evidence pre trial, so there would be no oral evidence at the committal hearing.

Mr Frew: With regard to the repeal of section 10 of the Justice Act (Northern Ireland) 2015, looking at the schedule of amendments and repeals — it is maybe just the way that it is written — the schedule on the blue pages does not mention section 10. It mentions "Chapter 1 of Part 2", and there are three other sections and schedules. I take it that section 10 is incorporated within chapter 1 of Part 2.

Ms Mallon: Yes, it is there.

Mr Capper: We are just turning the pages ourselves to find the right reference.

Mr Frew: It is on page 9 of the blue Bill.

Ms Mallon: It is under point 15, which states:

"Sections 4(3) and 10 are repealed."

Sorry, that is the wrong bit. I can assure you that it is there.

Mr Frew: Section 10 must fit into one of those four sections. I suppose the question is: is there a wider repeal? Is something else repealed alongside section 10?

Mr Capper: Section 10 is one of the more complex areas that is repealed, so I wanted to highlight that in the presentation. As the Bill points out, other minor areas are amended and repealed, and they are presented in the Bill. In the papers that you have, there is a run-through of each clause, and that provides more detail. If a paper on the details of exactly what is being repealed is helpful, we will send that through.

Mr Frew: OK. I suppose it is about future-proofing and the mechanics of legislation. If you create an offence and believe that it should be direct committal, do you put that in a new Bill or amend the Criminal Justice (Committal Reform) Bill?

Mr Capper: From speaking to the Office of the Legislative Counsel (OLC), as we move to eradicate the committal process in tranches — let us say that it is two or three tranches after this Bill — that will require legislation. We will require legislation as we seek to remove big tranches of offences from the committal process. However, as Laura said, in the interim, if there is a small number of quite specific offences that we want to remove, the Bill as drafted gives us the provision to do that by way of order. Although big tranches will require subsequent legislation, specific things that we would like to remove as they emerge, which have become more relevant, can be added to the direct committal process by way of order.

The Chairperson (Mr Givan): I think that that is in clause 4(4) of the Bill. What is the Assembly procedure, then, for an order? Will that be a regulation? When you say that you will do it by way of an order, what exactly is the legal instrument and how will that interface with the Assembly's procedure?

Mr Capper: Hopefully, all being well, the Bill will proceed in the Assembly and, following that, if we wanted future one-off offences to be added, that would be done by way of order. It would not require primary legislation.

The Chairperson (Mr Givan): The Department will make an order to that effect. Does that require Assembly approval at any stage?

Mr Capper: It is secondary legislation that we would share with the Committee.

The Chairperson (Mr Givan): OK. We are getting into the technical outworkings of the Bill and beyond its principles, so we will look at that at Committee Stage.

Do members have any other questions? No.

I want to ask about repealing section 10 of the Justice Act (Northern Ireland) 2015 and about operational risks. At the start, you mentioned that there were some risks associated with that. Can you elaborate on that again for me? Is there any interface with victims and witnesses around that decision? That was something that they were keen on, which is why it was in the 2015 Act.

Mr Capper: It is true to say that many hours have been spent in the Department discussing section 10 and its outworkings. To put it in context, if we look at the 2015 Act, section 10 sits alongside a provision that says that only murder/manslaughter cases would be directly committed. A very small number of cases are being directly committed alongside the section 10 process, which says that, if somebody indicates an intention to plead guilty, they will go straight to the Crown Court.

One of the key pieces of that, which gives us the problem, is that, if that person then changes their mind, they would go back to the Magistrates' Court. The notion of somebody going forward and then backwards in the criminal justice system is really complex. We have a system that is designed to move somebody from left to right through the system. Once people start to go back, the operational complexities and the IT complexities produce a number of risks, including, as I mentioned, the risk of false release or imprisonment. If somebody changes their mind and goes back to the Magistrates' Court, at that point there are legal complexities that may pose the risk that bail is applied wrongly and the person is released, with the obvious impact on victims and witnesses.

From the other angle, the very good intention of section 10 was to put more cases to the Crown Court more quickly where there was an indication of a guilty plea. Although we do not record that, anecdotal evidence says that the actual number of cases to which that would apply is very small, because it is not a guilty plea; it is an indication at an early stage to plead guilty. You could be talking about a handful of cases every year. Taking all those things into account, we should also remember that, on the basis that our ultimate intention is to eradicate the committal hearing at the Magistrates' Court, there would be no Magistrates' Court to go back to in section 10. All that effort and risk of section 10 would become redundant when we remove the traditional committal hearing. Taking those things into account, we think that it is better to go for a more expanded first phase roll-out, as in more cases being directly committed in legislation, and, therefore, not have section 10. Granted, we lose some benefit, because people who indicate an intention to plead guilty would not be directly committed. However, it is important to remember that we have more cases going through the direct committal route now so, in some ways, whether they indicate an intention to plead guilty in those cases is irrelevant because they will be directly committed anyway.

As I mentioned, we recognise the importance of moving early guilty pleas more quickly through the system. When an individual indicates an intention to plead guilty, we have included powers in the Bill to allow the Magistrates' Court to get a lot of that preparatory work for the Crown Court done earlier. That should also expedite the case.

That is a lengthy answer, Chair. Hopefully, it answers some of your questions.

The Chairperson (Mr Givan): That was helpful.

Mr Frew: Just for clarification, yes, the penalty for the offence of domestic abuse is summary conviction and conviction on indictment. I do not know why I even queried that. It is there.

The Chairperson (Mr Givan): I do not think, Glyn, that anyone else has questions at this stage. No doubt we will see plenty of you when we get to Committee Stage. I thank you and Laura for your time. Do you have anything else that you need to tell us?

Mr Capper: In answer to Paul Frew's question, section 10 is repealed at the bottom of page 2 of the blue booklet.

Ms Mallon: It is one line. That is all it takes.

The Chairperson (Mr Givan): OK. Thank you, we appreciate your time.