



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice (Committal Reform) Bill:
Committee Deliberations

22 April 2021

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Criminal Justice (Committal Reform) Bill: Committee Deliberations

22 April 2021

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

Miss Rachel Woods

Witnesses:

Mr Glyn Capper

Department of Justice

Ms Laura Mallon

Department of Justice

The Chairperson (Mr Givan): We will now undertake informal deliberations on the Bill's clauses.

Departmental officials indicated on 25 March that the Department does not intend to propose any amendments to the Bill. Informal deliberations, of course, provide an opportunity for members to discuss the issues that have been raised and indicate whether they are content with the clauses or require any further information or clarification. If you wish to amend a clause or are minded to reject clauses, now is the time to do that. If members need more time to consider a clause or clauses, the Committee can continue its deliberations next week.

Members will know that, when accepting a clause, they can express views and make comments. The Committee can also make recommendations where it is not making amendments. For example, we can reflect on the implementation or outworking of a clause in the Committee's report on the Bill. If the Committee is minded to amend any of the clauses, the purpose and the desired outcome of the amendment needs to be clear. The Committee may wish write to the Minister asking whether she accepts the proposed change and then table an amendment. Alternatively, or at the same time, the Committee can ask for a draft amendment to be prepared by the Bill Clerk for its consideration, and the Bill Clerk, Stephanie Mallon, is listening to the Committee's deliberations today. If the Committee indicates that it wants any draft amendments prepared, Stephanie will attend the meeting next week to provide advice and seek clarification of the purpose of the proposed amendment, should that be necessary.

We have officials joining us on StarLeaf: Glyn Capper and Laura Mallon are available if members need clarity on any aspects of the clauses that we will now consider.

While the discussions will focus on the issues raised in the evidence, the majority of responses welcomed and supported the provisions in the Bill.

With that context and if members are happy, let us go to clauses 1 and 2, which will be taken together. Of course, those are the primary clauses that give the purpose behind the Bill in abolishing preliminary investigations.

Clauses 1 and 2 abolish mixed committals and evidence on oath not to be given at a preliminary inquiry. The key issues highlighted about those two clauses included: whether oral hearings at committal stage should be abolished completely; whether, instead of abolishing the committal process entirely, implementing the interests of justice provisions in the Justice Act (Northern Ireland) 2015 would appropriately safeguard the rights of all parties; and whether restricting oral evidence at a committal hearing to expert witnesses only would be more appropriate than abolishing oral evidence entirely.

Members, I am happy to take your views on clauses 1 and 2. I will go ahead and give my initial view on them. I have taken on board the evidence that I have received, and I am relatively content to proceed with clauses 1 and 2 as drafted. I am happy to take feedback from members. I think that there is some validity in the point about the 2015 provisions having not been put in place, and I am happy to see that point incorporated in the Committee's report. I have heard the evidence, and my view is that we can proceed with clauses 1 and 2. That is my position. I will now take the feedback and views of other members. I am happy to go round the houses, if I need to.

Ms Dillon: I assume that, because nobody else has indicated, everybody is happy with them. Much like you, I accept some of the issues that have been raised. I enquired about what is happening on legislation on preliminary inquiries in the Twenty-six Counties to see whether there are lessons that we can be learn. However, it is a very different process, and there is no opportunity for witnesses or victims to give oral evidence. Everything that we have heard outlines that we cannot get any assurances that this legislation will significantly speed up justice. Although speeding up justice is extremely important, and we want to see a bigger piece of work on that, the important part of this is the reassurance that victims will not be cross-examined twice and will not have to give oral evidence twice. I have been very open from the start that that is an important element of the Bill. Clauses 1 and 2 ensure that victims will no longer be cross-examined or have to give oral evidence twice, so I am content with them.

Miss Woods: I am also content with clauses 1 and 2. Obviously, it is difficult to know regarding the 2015 Act because the clauses were not commenced, so there is not really much that we can compare with. Like Linda, I have sympathy with the speeding up justice piece and whether this legislation will do that, but there are wider pieces of work that need to be done on that. Clauses 1 and 2 are fine the way they are.

The Chairperson (Mr Givan): When I get through all the clauses, I will come back to some of the areas that we have identified during this process and may wish to make further comment on. If everyone else is content with clauses 1 and 2, we will move to clause 3.

Clause 3 makes provision for the consequential amendments and repeals, most of which relate to the removing of references to preliminary investigations or mixed committals in other pieces of legislation. No issues were raised on the clause in the evidence sessions. Rachel, I see your hand is up.

Miss Woods: The schedule refers to the Mental Health (Northern Ireland) Order 1986. It is my understanding that that Order is due to be subsumed by the Mental Capacity Act, so I wonder whether that reference needs to be looked at or changed.

The Chairperson (Mr Givan): We can check the process for updating the schedule. It may well be that in the schedule there is a provision to amend it. If we bring the departmental officials in, we can put that to Glyn Capper. Glyn, did you pick up on that point?

Mr Glyn Capper (Department of Justice): Yes, Laura Mallon and I were just discussing that point. We think that it will be a matter of the sequencing and timing, so one will update the other depending on sequencing. We will make sure that that is taken account of.

The Chairperson (Mr Givan): OK, thank you for that. Rachel, that addresses that point. If members are content with clause 3, we will move on to the clause 4.

Clause 4 makes provision in respect of the direct committal for a certain offence and for the discontinuance of proceedings after the accused has been committed for trial. I will give a recap of

some of the issues that were raised during the evidence sessions and subsequently discussed with officials. First, they covered whether the removal of the committal stage infringes the right of defendants to trial within a reasonable time under article 6 of the European Convention on Human Rights. Secondly, there was a question over whether there was a risk that speculative or weak prosecutions would proceed directly to a Crown Court rather than being weeded out at the committal stage. Thirdly, is the removal of the potential of direct committal for those charged with a non-specified offence who indicate an intention to plead guilty by the repeal of section 10 of the 2015 Act detrimental to those defendants? Fourthly, are the safeguards in the Bill to ensure that pre-sentence reports are only ordered by the Magistrates' Court when all parties agree there is a benefit in doing so appropriate and sufficient? Fifthly, does the application to dismiss provides a fair procedure in direct committal cases for defendants to challenge a case where it appears the evidence would not be sufficient to convict them? Finally, should oral evidence be retained for applications to dismiss applying the interests-of-justice test in the 2015 Act?

Members, those are some of the key issues that have been highlighted in respect of the clause. Again, I am content with clause 4. Do members have any other comments on clause 4?

Ms S Bradley: Chair, I have some sympathy with some of the concerns raised on the clause, and I have yet to see any solution to them. I am supportive of the principle of the clause and am content to proceed with it, but I would like to put on record my concerns about some of the issues raised. Thank you.

The Chairperson (Mr Givan): OK. Again, we can incorporate some commentary on that into the report on the Bill. Members, if we are content with clause 4, we will move to clause 5.

Clause 5 makes provision in relation to the commencement of the provisions by order and that provisions relating to the abolition of 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. No issues were raised in the evidence in relation to this clause.

Ms Dillon: Chair, I have no issues other than that there is no actual commencement date or timeline. Will that be included? Does Committee want that to be included?

The Chairperson (Mr Givan): I am reading that the commencement of that is upon Royal Assent. Is that right? Section 5 and section 6 come into operation on the day after the Act receives Royal Assent. Glyn, do you want to clarify whether I am right in that?

Ms Laura Mallon (Department of Justice): The provisions of the Bill in clauses 5 and 6 come in jointly on Royal Assent. Clause 5(2) allows for the Department to specify a date, and that will be the date from which the remainder of the provisions come into force. The reason that we do not have a timeline yet is because we need the Bill in and need to know the timeline of it to set it up, but we have always said that oral evidence will be within a short time after Royal Assent. Committal reform and the substantive part of clause 4 will have a slightly longer lead-in time, but, in the coming months, once we have more refinement of the Bill, we will be able to give a more detailed indication of when that can be commenced.

The Chairperson (Mr Givan): OK. Linda, I suppose that that takes you back to your question about whether we want to put a date on that.

Ms Dillon: I do not necessarily, Chair; I was just asking. I never like to assume anything, but I assumed that it was because it would be difficult to put a date in without knowing how long the Committee Stage will take. I just wanted to clarify that that is the case. That is fair enough. No, I am not necessarily saying that we need to put a date in there. I do not have any concerns that it will not be done at the earliest possible opportunity.

The Chairperson (Mr Givan): OK. If members are content with clause 5, we will move to clause 6, which provides the short title of the Bill. No issues were raised in the evidence in respect of the clause. Are members are content with clause 6? OK. That concludes our informal deliberations on the clauses. Apart from some of the commentary, which I will come to now, no amendments have been suggested by the Committee or its members. That allows us to move beyond having another informal consideration of the clauses. Some of the wider issues that we looked at and which were touched on earlier concerning the Bill included whether it will make a difference and whether the changes in 2015

could have made a difference, had they been applied. We may want to have some commentary on those.

To recap, we touched on areas such as whether the Bill will meet its key aims of removing some of the delays in the criminal justice system and whether reforms to committal elsewhere have shifted delays to another part of the system. We touched on the fact that much of the delay in the criminal justice system is at the investigatory stage and that there is a need for more effective disclosure processes, such as the sharing of digital evidence, as well touching on whether statutory time limits or custody time limits could reduce delay in the criminal justice system. We commented on the requirement for robust case management by Crown Court judges and whether practice directions and court rules are sufficient or if consideration should be given to providing for case management in law. In the Republic of Ireland, legislation has introduced preliminary hearings, which aim to reduce delays and increase efficiency and fairness in the criminal trial process. Those were just some areas touched on in our considerations.

Here are a couple of points that, I think, it is worth having some commentary on, and then I will take members' views. We could express concern regarding the time that it takes for cases to progress through the criminal justice system and the need to have robust measures implemented to tackle avoidable delay and to ensure substantial progress in that area. We could specify a time frame for that. We could also highlight the need to ensure that delays are not just transferred from the Magistrates' Court to the Crown Court once the committal process has been removed and that we expect the implementation of robust and effective case management procedures.

Those are two broad areas worth preparing commentary on for the Committee to consider as part of our report. Are there any other areas that members would like to see commentary on? That would allow the Committee staff to start working up drafts for our consideration.

I will bring in Linda and then Rachel.

Ms Dillon: Thank you, Chair, and I apologise to Rachel in case I raise what she may be about to raise.

In everything that we have done and in whatever legislation, policy or issue we have looked at, we have tried to ensure that there is accountability. I would like to see us being updated. I am not necessarily saying that something has to be in the legislation about updating us, but it certainly is important, and the Department needs to be aware of it. I would like the Committee to be regularly updated on the issues that you have just raised about what impact, if any, the Bill will have on speeding up justice; on the impact on those who had concerns about having to give evidence twice, if there is a way of doing that; and on how it feeds in to the bigger, overall picture of the Speeding Up Justice programme. If there are problems and if blockages just move from one part of the court system to another, we would like to be made aware of it. That is vital. When we introduce legislation, it is always with good intent. We want what we do to have a positive outcome. However, if we are not updated and if we are not informed about what happens after the legislation comes into being, how do we know whether it has had a positive outcome? How will we know that we have done something that has benefited the system or those who go through it? You outlined that, Chair, in your comments before I spoke.

I imagine that Rachel may want to go further than I have done on the reporting issue. I have no doubt that it is an issue that she will want to raise; it is something that she has been focused on in all of the legislation. It is important, and I am in full agreement with her on that.

The Chairperson (Mr Givan): Thank you, Linda.

Miss Woods: You took the words right out of my mouth. Yes, there is a big role for reporting to the Committee, not just to this one but to future Committees and for our role in post-legislative scrutiny. Chair, you will be aware that I submitted a lengthy response to your recent call for evidence on post-legislative scrutiny. I do not know whether it needs to be in legislation, whether it should be part of guidance to accompany this, or whether it should be in the explanatory and financial memorandum (EFM) that there will be regular reviews of the impact of legislation.

As I say, I have some sympathy for the point that this will not address delays as a whole in the criminal justice system. I appreciate that there is a larger piece of work going on with criminal justice agencies on that issue. If there were some way of reviewing or reporting on legislation, I would be more than

happy to look at it. However, I am also content with it not going in if we or, at least, the Assembly can look at it post-legislatively.

I would also like to see some mention of resourcing. I am aware that it is not popular to put resourcing in primary legislation, but we did hear loud and clear from organisations such as the Bar Library, which pointed towards resources and deficits not being directed to where they were needed and ensuring that greater resources are directed towards to the investigation and disclosure processes. I would certainly welcome some commentary on that.

As Linda said, whether this does what it says on the tin and improves victims' experience by removing the trauma of having to give evidence twice as well as improving how their experiences are documented in the system is part of a bigger piece.

There is quite a bit there, Chair. There is only other thing that I would like further clarity on, although I appreciate that the Department has produced some figures on it. It is legal aid modelling and the changes that will be necessitated by the Bill. I am not asking for it in detail, and I appreciate that this framework needs to be in first before we know where our resources and funding need to go with that one. The impact on legal aid is something that we should consider putting into our report.

The Chairperson (Mr Givan): Thank you, Rachel.

Ms S Bradley: It is about the resourcing. I will not rehearse what has been said already, but, fundamentally, I still struggle to find the piece. One of the objectives presented originally was the speeding up of justice, and I still do not see that that objective will be achieved in any great way. There may be more efficiencies and it could be somewhat faster, but I do not think that it is the answer to that objective exclusively. I see that it is about a shift in resources. If the committal process is gone, there is no doubt that that body of work will either shuffle downwards to the Public Prosecution Service (PPS) or upwards to the Crown Court. If we are talking about a fundamental shift in operational works, we need to understand a shift in resources as well as additional resources. Any detail that we can get to run in tandem with this would be helpful. It may not be anything that warrants being in the Bill, but it needs to be understood if we are to achieve any of the objectives that were presented at the outset.

The Chairperson (Mr Givan): Thank you, Sinéad. That has given us a good steer on the areas that we would like to see in the report and the recommendations that we could make. That will allow work to be done that we can consider.

There is nothing that any member has said that I disagree with, so we can hopefully get Committee positions agreed on some recommendations in respect of it. I am not hearing that we want to propose any formal amendment on any of those areas, but we want to put them into the report and make recommendations, so we will proceed on that basis.

Members, the formal clause-by-clause consideration will be on 6 May. That is when we will go through the formal process, and we will consider the Committee report after that. Thank you, members. That concludes our informal consideration. I thank Glyn and Laura, who have been more than helpful throughout the process. I will mention that in future meetings as well. The response to the evidence that has been sought has been provided in a timely and professional manner, and that has helped members to come to a view quickly. Glyn and Laura, thank you for your work on behalf of the Department with the Committee.