



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Protection from Stalking Bill: Committee
Deliberations

11 November 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Robin Newton
Mr Peter Weir
Miss Rachel Woods

Witnesses:

Ms Barbara Compston	Department of Justice
Mr Brian Grzymek	Department of Justice
Mr Andrew Laverty	Department of Justice

The Chairperson (Mr Storey): We will now work through the clauses of the Protection from Stalking Bill on which the Committee has yet to reach a position, some additional issues, and seek views in light of the further information and clarification that has been provided by the Department.

We can discuss the issues that are raised, indicate whether we are content with the clauses, propose any amendments that we wish to make to particular clauses, or indicate whether we are minded to reject particular clauses. If members need more time to consider a particular clause or clauses, the Committee can complete its deliberations next week to allow the maximum time to consider the text of proposed amendments.

Formal clause-by-clause consideration will take place at our meeting on 25 November. When accepting a clause or amendment, members can express a view or make comments, and the Committee can also make recommendations — for example, with regard to the implementation or outworking of a clause — and those will be reflected in the Committee's report on the Bill.

I advise members that officials from the Department of Justice have joined us. We thank Brian, Andrew and Barbara for attending today. They will answer any questions or give any further information or clarification that is required.

We will go to clause 2, which is the "Offence of threatening or abusive behaviour". Departmental officials agreed to provide the view of the legislative draughtsperson on why the reference to a "reasonable person" in 2(b) is worded differently from that in clause 1. We have confirmation that nothing has been created by the use of the different wording and there is no advantage to changing that. In the response received yesterday, the Department has indicated that the draughtsperson has confirmed that, under clause 2, the prosecution has to prove what the accused person did, how a

reasonable person would be affected by that and the accused person's state of mind. It may also have to rebut the defence by proving that what was done was not reasonable.

The Department's legal advisers have outlined that clause 2(1)(b) should not be read as implying a reasonable victim as such, but rather as a mechanism for specifying the scope of the behaviour to be captured. That is a different and very specific use of the reasonable person test and injects an objective element that must apply to a clause 2 offence. The Department is satisfied that no lacuna is created by the use of the different wording, and believes that there is no benefit in attempting to change the existing wording.

I now seek the views of members on clause 2 of the Bill. In light of the additional information provided, are members content with the clause? Do members wish to discuss its amendment or do they require any further information? The officials are available if we wish to discuss rejecting the clause or wish to highlight any views or comments for inclusion in the Committee report.

As members do not have any comments, we will move to clause 17.

On clause 17, "Guidance", the Committee agreed to request clarification from the Department about whether the guidance to be provided under clause 17 will only cover the exercise of the Chief Constable's functions that relate to stalking protection orders (SPOs) and interim stalking protection orders. If so, what consideration, if any, has the Department given to expanding the scope of the guidance, so that it more closely resembles the provision in the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021? Under that Act, the Department must issue guidance in respect of the domestic abuse offence or any other matters of criminal law and procedure that relate to domestic abuse.

The Department has indicated that the intention is that the guidance will also include a specific section on the stalking offence and will be published and available to all criminal justice agencies, non-governmental organisations and voluntary agencies for assistance and guidance.

I remind members that the Department has provided the text of the proposed amendment to clause 17. The amendment implements the proposal made by the Examiner of Statutory Rules that the guidance in respect of the Chief Constable's functions in relation to the stalking protection orders should be laid in the Assembly. I seek members' views on clause 17 of the Bill. In light of the additional information provided, are we content with the clause?

Miss Woods: You will not be surprised to know that I am not content with the Department's response. Despite the intention in the written response, that is not how the Bill reads. The Bill, as it is drafted, is quite clear that the guidance is only for the Chief Constable. The guidance makes no reference to the wider exercise of public functions and the impact on those who will deal with the new law, such as the criminal justice agencies.

I am not content with the departmental amendment as it stands. The Bill Clerk might start shaking because I am talking about an amendment to an amendment or suggesting another amendment. I am aware that the Department will table an amendment. I would certainly support the Committee looking at putting in something quite similar to the guidance section — I believe that it is section 30 — of the Domestic Abuse and Civil Proceeding Act to encompass all those matters. We would also have the guidance for the Chief Constable's, which is obviously needed, and the Department would lay the guidance in the Assembly.

The Chairperson (Mr Storey): Thank you. For the members here and those who are joining us on StarLeaf, a Bill Clerk is present and will be available to take instructions on any proposed amendments. However, that cannot be done until we go into closed session. That is just for clarity in case anyone is wondering why the Bill Clerk is here. We will go into closed session to deal with that. If members are content, we will park that issue and move on.

Members indicated assent.

The Chairperson (Mr Storey): OK. Thank you.

The Committee agreed to ask the Department what further consideration it had given to the introduction of a stalking register. The Department confirmed that it has no plans to introduce a register for stalkers in Northern Ireland. It is content that, where possible, victims should raise

concerns about stalking behaviour with the PSNI, whose access to criminal records will ensure that links to any stalking convictions will be immediately picked up. Discussions are ongoing with colleagues in the public protection branch on the stalking offence and stalking protection orders coming within public protection arrangements that will enable agencies to better manage the risks from stalking offenders. SPOs will place a notification requirement on the perpetrator. That information provides a form of register that is not dissimilar to what is commonly referred to as a sex offenders' register, although no such register actually exists.

Do members require any further information or clarification or are they content to note that response?

Members indicated assent.

The Chairperson (Mr Storey): OK. Thank you.

The Committee agreed that it is minded to table amendments to provide for data collection and mandatory training and to place a requirement on the Department to report on the operation of the offence. Those amendments are similar to those that were tabled to the Domestic Abuse and Civil Proceedings Bill. The Committee agreed to ascertain whether the Minister was willing to table those amendments.

The Department stated that it does not consider that the addition of provisions relating to data collection and mandatory training and the requirement to report on the operation of the offence is necessary or would be an appropriate inclusion in the Bill, and it reiterated that the actions that officials previously outlined would be undertaken in those areas. However, the Minister appreciates the Committee's desire to include those provisions in the Bill, and she has exceptionally agreed that they should be tabled as departmental amendments.

Due to the lead-in time required to prepare legally proofed instructions, and the pressures in the Office of the Legislative Counsel, the Department indicated that it might not be in a position to share the final text of the amendments before the Committee Stage of the Bill ends on 10 December. Officials will, however, be happy to discuss the amendments at a Committee meeting prior to Consideration Stage.

To ensure that the amendments achieve the purpose that the Committee wants, the Committee should consider the text of the draft amendments before concluding its consideration of the Protection from Stalking Bill. However, given that there is some doubt as to whether the text of the amendments will be available from the Department in time, it would be prudent for the Committee to ask the Bill Clerk to prepare draft amendments to cover those areas as a contingency.

If there are no other comments from members on that, we can deal with those amendments when we go into closed session.

Members indicated assent.

The Chairperson (Mr Storey): OK. Thank you.

In accordance with normal protocol, discussions with the Bill Clerk will take place in closed session at the end of the meeting. Do we go into closed session now or complete our business?

The Committee Clerk: We have a number of other agenda items that should not take too long. I suggest that the Committee completes those first. We can then go into closed session.

The Chairperson (Mr Storey): OK. Thank you. I thank the officials who were in attendance. Brian, I thank you and your staff for your time with us this afternoon. Thank you.