



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Civil Law Reform:
Departmental Solicitor's Office

29 May 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Matthew O'Toole (Chairperson)
Ms Diane Forsythe (Deputy Chairperson)
Dr Steve Aiken
Miss Nicola Brogan
Mr Gerry Carroll
Mr Paul Frew
Miss Deirdre Hargey
Mr Eóin Tennyson

Witnesses:

Mr Michael Foster	Department of Finance
Mr Martin Tyrell	Department of Finance

The Chairperson (Mr O'Toole): I welcome Michael Foster, head of civil law reform, and Martin Tyrell, policy adviser for civil law reform. At the beginning of the session, I declare an interest in that I was a member of the previous Finance Committee, which considered the Defamation Bill. I have had some encounters, as a representative and a citizen, with the law on defamation. I put that on the record. It is not necessarily an interest, but it is worth putting it on the record. I invite the officials to make an opening statement.

Mr Michael Foster (Department of Finance): Thank you very much, Chair. It may assist the Committee if I set out briefly the breadth of our remit.

The Chairperson (Mr O'Toole): Yes.

Mr Foster: We have responsibility for civil law reform, which is distinct from civil law. Civil law is the responsibility of all the Departments here. We used to be housed under a separate directorate, which was the Office of Law Reform, but, since 2007, it has been housed in the Departmental Solicitor's Office (DSO) as the civil law reform division. Essentially, we advise Ministers and senior officials on a range of law reform matters and proposed changes to the law, which can come from a variety of sources. They can be initiated by Ministers or they can be initiatives that have, for example, come through Westminster or other legislatures that may have relevance to this jurisdiction.

In the main, our responsibilities tend to lie in defined areas. Those have tended to be in relation to marriage and civil partnership — the Committee will know that we briefed its members on that recently; divorce; family law, which includes parentage, parental responsibility and things like that; gender recognition; the law of tort, which, of course, includes defamation; land law; and private international law. Those tend to be the main areas that we cover. Some of those areas are tied to

other departmental functions. For example, on the marriage, civil partnership and gender recognition side, we have a very close linkage and relationship with General Register Office (GRO), and, on the land law side, we have a linkage to Land and Property Services (LPS). Occasionally, however, we field queries on issues where the lines of departmental responsibilities are somewhat unclear, and it tends to fall to us to take a view on those. Sometimes we will progress those, if we have the resource or knowledge with which to do so.

We also tend to be involved in occasional judicial reviews when there are challenges to the existing laws that may, in due course, have a law reform angle. Over the past number of years, we have been involved in a number of those, most recently on things like parenthood and parental responsibility, where there are active cases in the courts. We have also, as the Chair referenced, become involved with private Members' Bills from time to time, the most recent being, of course, Mike Nesbitt's Bill on defamation in the previous mandate. I sit on the shadow Civil Justice Council and the shadow Family Justice Board, as well as on a number of other bodies like the domestic violence strategy board and the mental capacity implementation group. We have a very wide range of stakeholders across a whole range of policy areas. Of course, things like Assembly questions and correspondence cases etc will tend to come to us for our advice on taking those forward.

We have a number of active areas of work. I do not want to dwell too much on marriage and civil partnership, because we have already briefed the Committee on that, but that is our current priority in terms of legislation. The Executive paper has been circulated to ministerial colleagues, and we hope to work up instructions to legislative counsel before the summer so that we can begin drafting the Bill. Following on from the update that we gave you last month, it has progressed to that extent now.

The Chairperson (Mr O'Toole): So you are waiting for the report in order to start drafting the legislation on marriage age, and you hope to start drafting in the next month or two?

Mr Foster: We hope to have the instructions finalised and sent to counsel by the summer. Counsel, taking into account their own particular resources, will determine the time frame for drafting. I had a meeting with First Legislative Counsel last week, and he was confident that they would be able to start drafting pretty soon.

The Chairperson (Mr O'Toole): Great.

Mr Foster: In addition to marriage and civil partnership, we have had a range of work recently. Defamation is one part of that. As you will know, Chair, the private Member's Bill was passed at the tail end of the previous mandate. Managing that took up considerable resource in our office. One of its outputs was a statutory review of the legislation. That has taken up quite a bit of our time in the past six to nine months as we undertook a consultation exercise and a stakeholder engagement exercise. Analysis of those exercises is complete, and advice is with the Minister. The proposal is that a report on that will be made available within the next few weeks, both for the Committee and for laying before the Assembly. The report will cover a range of issues, not just analysis of the impact of the 2022 Act but also other recent developments relating to defamation law. It is with the Minister for her consideration.

The Chairperson (Mr O'Toole): Correct me if I am wrong: I think the clause that provided for a report went into the Bill when we were considering it.

Mr Foster: That is right.

The Chairperson (Mr O'Toole): OK. Did you say that that would be laid before the Assembly before recess?

Mr Foster: Yes. It will be before recess. The provision in section 11 of the Act said two years from Royal Assent. The Act received Royal Assent in June 2022, and we hope to lay it next month.

The Chairperson (Mr O'Toole): I am sure that we can ask questions on that and other things. That is most helpful. Members, including those who are joining us remotely, as always, indicate to the Clerk if you wish to come in. I will not divide up the briefing, so members should feel to ask questions across the range of civil law areas that Michael outlined. Where are we on gender recognition, and what are the timelines for reform of the gender recognition certificate (GRC), should that policy be agreed? I do not know whether it has been agreed at Executive level.

Mr Foster: It has not. We are quite a bit behind that in relation to where we are with this.

The Chairperson (Mr O'Toole): For the purpose of the record, a GRC is a gender recognition certificate.

Mr Foster: Yes. Reform of the Gender Recognition Act 2004 is a huge policy area. I should say that my office is currently resourced by what you see in front of you. This is the extent of our resource, although we have a new member of staff joining us this week on a part-time basis, which will —.

The Chairperson (Mr O'Toole): They will be scared about the workload. If they see this evidence session, they will think, "God, there is a lot to do".

Mr Foster: She is watching, I think. I hope that she is still there when we get back. *[Laughter.]*

The Chairperson (Mr O'Toole): Sign the contract; that is the important thing.

Mr Foster: We have adopted a watching brief, essentially, in this area; I can only put it that highly. There have been a number of developments over the past six to seven years. England and Wales were first to commence a review of the Gender Recognition Act, which applies UK-wide. That review, in 2018, pointed initially to significant reform of the Act, but political developments overcame that, and the anticipated more radical reform of that policy has largely been put on hold in England and Wales. I am sure that members are aware that Scotland, where gender recognition is a devolved policy, proceeded with an Act. That went through the full statutory consultation and Committee Stage in Scotland and was signed off by the Scottish Parliament, but Royal Assent was withheld by the British Government. They employed an order made under section 35 of the Scotland Act 1998. Obviously, it was challenged by the Scottish Government, but the court in Scotland ruled against them, and my understanding is that they have decided not to appeal. At the moment, it is in a state of flux in Scotland as well.

In this jurisdiction, we have been looking at this at a time when Ministers, largely, have not been in place and, because it is such a politically controversial and sensitive area, it has been difficult to make much by way of substantive progress. However, the previous Finance Minister, Conor Murphy, wanted further information on it and commissioned a research report, which was undertaken by a team from Queen's University, Belfast. It produced a report for the Department in the summer of 2022. It is a wide-ranging report on the issue of gender recognition, although it does not touch on other, broader issues like —.

The Chairperson (Mr O'Toole): Is that Dr Latu's report?

Mr Foster: That is correct, yes. That is essentially where we are with that. We have the report, which was designed to inform future policy in this space, but, to date, because we have had other priorities for the Minister on things like marriage and civil partnership and defamation, we have not yet fully explored with the Minister what her policy intentions are on gender recognition reform.

The Chairperson (Mr O'Toole): So a sexual orientation strategy was commissioned in the previous mandate. I do not know if the strategy has been published yet. Was any work done or commissioned via that panel on gender recognition, or was there any consultation with your team from that?

Mr Foster: Martin, you might be better placed to answer that. My understanding is that it was not specific, but —.

The Chairperson (Mr O'Toole): It is called the sexual orientation strategy but it covers LGBTQI issues more broadly, not just sexual orientation.

Mr Martin Tyrell (Department of Finance): The research was commissioned principally on the initiative of the Minister.

The Chairperson (Mr O'Toole): This is the Latu report commissioned by Conor Murphy.

Mr Tyrell: The Latu report, yes. It was to inform policy decisions, but we liaised with colleagues in the Department for Communities. The sexual orientation strategy began with the former Office of the First

Minister and deputy First Minister (OFMDFM) and then moved, during a redistribution of OFMDFM functions, to the Department for Communities. It is with the Department for Communities now. That Department was certainly interested in the report and has received a copy of it to inform its wider sexual orientation strategy and its gender equality strategy.

Mr Foster: We have responsibility for gender recognition principally because of the interface with the registration system and the GRO. I am loath to use the word narrow, but with regard to the broader debate around gender, it is quite narrow.

The Chairperson (Mr O'Toole): If there was to be legislation, you would presumably need to draw on expertise from other Departments, including Communities and Health.

Mr Foster: Yes, we would. There is a cross-cutting element to it.

The Chairperson (Mr O'Toole): Just to move on to other things, with regard to where gender recognition reform is, a report was commissioned by a previous Minister but there is no Executive agreement to proceed with any particular policy.

Mr Foster: That is correct.

The Chairperson (Mr O'Toole): OK. To go back to defamation law, the Act was passed in 2022. One of the things that emerged during deliberations around the Bill was that it was difficult to establish solid information on the operation of the libel/defamation law regime here because so few cases proceed to court. There have been more reports of court proceedings involving defamation law in the last six months to a year. Is that evidence that the Defamation Act 2022 means that there are now more cases proceeding to court than there were?

Mr Foster: We cannot make that linkage with the recent cases that you have referred to. All of the evidence from the stakeholder engagement exercise tended to be that it was much too early to determine what the impact of the 2022 Act is, or is likely to be, other than that most people supported the fact that there had been incremental reform, and others were critical that it had not gone far enough. You will recall the debates that the former Finance Committee and the Assembly had around serious harm and other things like that.

The Chairperson (Mr O'Toole): I remember them well.

Mr Foster: We cannot make the connection that there have been some recent cases to show that the 2022 Act is the catalyst for this, because it is more than likely — in fact, it is almost certain — that those cases emanated before the 2022 Act was in force.

The Chairperson (Mr O'Toole): Fair enough.

Mr Foster: Indeed, the judgements in some of the higher-profile cases tended to draw on themes that were prevalent before the 2022 Act came into force.

The Chairperson (Mr O'Toole): OK. Things like the move towards the assumption in favour of jury trials was one of them.

Mr Foster: That will not have filtered through totally yet.

The Chairperson (Mr O'Toole): Because of the time that it takes for these things.

Mr Foster: No, it will not have done. We met the Bill's sponsor, Mike Nesbitt, during the engagement exercise, and he frankly accepted that two years was not going to be long enough to get a clear determination on how the Act is working. The experience in England and Wales, following their equivalent legislation in 2013, was that it took three, four or five years before there was a theme that could be developed to determine how the Act —

The Chairperson (Mr O'Toole): Case law basically became established.

Mr Foster: Case law and other evidence.

The Chairperson (Mr O'Toole): Stuff that does not proceed to become case law because it is settled or whatever. Clearly, you have gathered anecdotal evidence, I presume, from practitioners and others. Some of the practitioners who were more sceptical or even opposed to the legislation indicated a belief that it would radically — I suppose the argument was made broadly that it was — I am not sure how to distil the criticism of the Bill. Have those criticisms been vindicated in any way, so far as you can see?

Mr Foster: No, I do not think that they have, again for similar reasons. It is simply too early to tell whether those criticisms will be borne out, but I think that there is a general acceptance that the removal of the presumption for jury trials has been a step forward in defamation law. To what extent or, on the other side of the coin, what damage it causes will not really be properly borne out for a number of years yet as cases that started out post 2022 go through the system. Of those, only a tiny fraction will elicit a judgement that will be worthy of discussion. We really only get judgements in what are known as "hard cases", and I do not think that there have been any of those to date that we can draw on to fully understand how the 2022 Act has made a difference.

The Chairperson (Mr O'Toole): Is one of the potential outcomes that there may be a greater quantum of judgements because respondents are more likely to allow cases to go to court because they feel that the regime is somewhat less weighted in favour of plaintiffs, to put it directly, so there are more cases that are more likely to go to —.

Mr Foster: That is an entirely plausible explanation at this stage, yes.

Ms Forsythe: Thanks very much for being here again today. I want to focus on the defamation piece, specifically your paragraph on online defamation. You say that it is a "new and significant issue". When you say "significant", what sort of scale are you talking about?

Mr Foster: I will pass over to Martin, who has been dealing with online defamation.

Mr Tyrell: It is significant simply in the fact that most people whom we talked to mentioned it and, when we looked at commentary, it was prominent in that commentary. Most people who talk about defamation law say that online publication has created a whole new situation regarding defamation. It is a new situation that creates new challenges and is significant in that sense.

Ms Forsythe: I look forward to seeing the detail come through in the weeks ahead, but my reading of that paragraph is that it is significant but will not be taken forward in this. Am I right?

Mr Tyrell: Can I ask what paragraph that is?

Ms Forsythe: Sorry. It is the defamation section. The bottom paragraph in it. It is page 122 in our packs.

Mr Tyrell: OK. It is not numbered in your section.

The Committee Clerk: That is my brief.

Ms Forsythe: That is our brief; sorry. Just to expand on it, we are facing another election campaign, and I very much see this as a tactic that will come up. I have been a victim of this behaviour in the past, so perhaps it is a conflict of interest, if you want to call it that, to declare.

The Chairperson (Mr O'Toole): We would all have to declare that one.

Ms Forsythe: In my experience, when I suffered a lot of online abuse and what I would consider defamation, the police reports said that the law was nowhere near sophisticated enough to deal with the things that are coming through online. How advanced is that? Do you feel that something needs to be accelerated through to make sure that the legislation reflects the behaviours online?

Mr Foster: There will probably be a distinction made between what you would describe as defamation and online abuse. The police would generally not become involved in a civil matter like defamation. They become involved when there is online abuse, such as in the example that you provided. That aspect of it is way outside our remit. We are approaching it from the law of tort, and defamation is a

tort. It is not right to say that we would argue that nothing needs to be done in relation to online defamation, but, even in the existing statutory provisions, there are mechanisms within which online defamation can be dealt with properly. Online abuse is a different thing, and I fully understand and appreciate that that is an important aspect.

Ms Forsythe: I appreciate that, but I wonder what the link would be. Do you feel that you should join up with the Department of Justice? When I took forward a case of online defamation, what was put to me was the quantification of the burden to prove that what I lost was so high. In my situation, because I won my seat in the Assembly, I did not lose anything because of the comments posted online about me, so I was offered no way forward. That is relevant here. That was my experience, because there was that gap. To come back to online defamation, where something is published, do you feel that the law is advanced enough to capture what we are facing here?

Mr Foster: We would be frank enough to say that there is room for improvement in this space. Online defamation was one of the themes that were raised during the consideration of the Act in 2022. The provisions that were in the Bill as drafted by Mike Nesbitt were rejected by the Assembly. As officials, it is difficult for us to make an alternative case so soon after the Assembly has rejected provisions that were designed, in the main, to deal with certain aspects of online defamation. Section 5 and section 10 of the English Act were rejected by the Assembly. That is not to say that there are no other methods that can be used to do so, but, in respect of legislative interventions, we have to be frank enough to take a view that the 2022 Act is very recent legislation and the Assembly clearly had options and took certain options in that space.

In the face of what, you have already heard, is a significant programme of law reform projects, we might find it difficult with our existing resources to devote the time that would be required to really get to the heart of things like online defamation. It would not be online defamation in a silo; it would be online defamation taken with other aspects of defamation law that have come up during our engagement exercise that, ultimately, could form a package of reforms. However, realistically, that will be a longer-term piece of work. It is unlikely that, during this mandate, we will be in a position to bring forward further defamation legislation.

Ms Forsythe: It is important to flag, because you know how rapid the things are. When the legislation refers to "published material", it is "published" as in paper, and there is a loophole there. Going forward, would there be two offences there in respect of the person who would post the online defamation and the platform that allows it to remain?

Mr Foster: Martin, do you want to come in on that point?

Mr Tyrell: We have identified through our research a number of possibilities for policy. There have been successful prosecutions of people for defamatory material posted online. The difficulty has always been things like identifying the person who posted. People will post pseudonymously or anonymously, and you need to get the provider of the website or platform to name that person, if they can do that, which is not always straightforward. It is often more of a technical problem of trying to identify the person who posted the defamatory material. If that person can be identified, a conventional action under the Defamation Act can follow.

Ms Forsythe: Thank you. I appreciate the complexity of it. I was previously involved in working with the Justice Minister on the online abuse piece on the platforms and the need for them to verify people's identities before they post. The two things go hand in hand, I appreciate that.

Miss Brogan: Thank you both for coming to the Committee meeting this afternoon. I have a couple of questions on gender recognition. You said that England and Wales reviewed the Gender Recognition Act 2004 and made some recommendations or suggestions for reform. Will you give some detail on those?

Mr Foster: I said that they gave recommendations for reform in that there was a very detailed review of the Act in England and Wales during 2017 or 2018 — that sort of time frame — and there was an understanding, certainly at official level, that the direction of travel would lead to self-recognition.

Miss Brogan: Self-identification?

Mr Foster: Yes. In other words, it would mean not going down the medical route for gender recognition certificates. Political decisions, however, overtook that, and the policy was, effectively, shelved in England and Wales.

Miss Brogan: Is moving to the self-identification route the big change from we have now? Is that what you would be looking at?

Mr Foster: It is one of the policy options that are available in this jurisdiction. Obviously, there are a number of fairly high hurdles that would have to be overcome before it would reach a legislative outcome in this jurisdiction, but it is certainly a policy option that is available. The South has a self-recognition system, and we have taken account of reforms in that jurisdiction, as well as the work that has been undertaken in Scotland and the material from England and Wales and from around the globe. A number of countries throughout the world have made changes to their gender recognition laws — actually in both ways: some have become harsher, and others have taken a more lenient approach.

Miss Brogan: That leads me to my next question. Did the Queen's University Belfast report that Conor Murphy commissioned take into account how things work in the South with self-identification? I see in your report that 900 people in the South have used that route since 2015, but there were 75 applications in the North.

Mr Foster: One has to remember that, in the South, there was no facility whatsoever to change gender in this way before 2015. In the first couple of years of the legislation coming into effect, there was most likely a considerable volume of people who had been waiting for the legislation

Miss Brogan: They were waiting for a long time.

Mr Foster: That is also coupled with the larger population. I do not think that the figures are skewed that much in that sense.

Miss Brogan: I assume that people have the opportunities to change their minds as well. Is that right?

Mr Foster: That is one of the policy issues. There was considerable debate, particularly in Scotland, around it. In fact, the legislation was amended there. As initially drafted, the Bill was quite flexible on that, but, in response to certain concerns, it became less so.

Miss Brogan: My final question on that issue is about the Department's engagement with stakeholders. Different organisations are obviously concerned and have a passion about the issue. What has the engagement been like, and do you feel that those stakeholders are satisfied with your cooperation with them?

Mr Foster: I will be frank: it has been a while since we last met stakeholders from the transgender community. We have met representatives in the past, and the previous Minister met them as well. Of course, we are more than happy to re-establish those links once we get a sense of what direction of travel will be taken.

Miss Brogan: That is helpful, thank you.

I want to touch on the issue of no-fault divorce. I proposed the motion on no-fault divorce, which was agreed in the Chamber last week. As Minister, Caoimhe supports no-fault divorce as well, and she has indicated that she wants to change the legislation on that matter. Have you any update on where it sits?

Mr Foster: I can update you only to the extent that, as the Minister said during the debate on the motion, she has asked us to undertake some preliminary work and start engagement with those who can make a useful contribution to the debate on no-fault divorce. I mentioned that we have a new member of staff joining us this week, and I am hopeful that, with that resource, we will be able to commence that work very quickly and start scoping out some of the policy options around no-fault divorce with a view to bringing those to the Minister later this year.

The Chairperson (Mr O'Toole): Just to confirm, the policy options on no-fault divorce are being scoped —.

Mr Foster: This year.

The Chairperson (Mr O'Toole): They will be scoped this year, but we are unlikely to see legislation introduced this year.

Mr Foster: No, I think that we have to be realistic. If there is legislation, it will be later in this mandate, mostly likely in year 3. We already have a very significantly compressed mandate and a very large number of Bills, and that is not just from our perspective and our priorities. We also have to factor in the priorities of the wider Executive and the resources of, for example, the Office of the Legislative Counsel (OLC). We already have our marriage and civil partnership Bill as our principal Bill for 2025. At best, it would need to be a 2026 Bill.

Mr Frew: I see that the Strategic Litigation Against Public Participation (SLAPP) Bill is going through the House of Commons. I suspect that that has fallen now, given the calling of the election. Have you studied that Bill? It is a private Member's Bill.

Mr Foster: We have, and we have also engaged with Ministry of Justice (MOJ) colleagues, Scottish colleagues and Department of Justice colleagues on it. To put it into its context, the SLAPP issue is much wider than simply defamation. The SLAPP legislation that was proposed in England and Wales through the private Member's Bill would have covered all sorts of actions, not just defamation but privacy, environmental aspects and other aspects.

Essentially, SLAPPs are court processes and how the court system deals with vexatious or intimidating types of claims that are set out by plaintiffs in a whole range of different cases. Therefore, it is our initial assessment that any legislative reform of SLAPPs would probably need to be taken forward on a wider basis in this jurisdiction and would probably be led by Justice. Obviously, we would want to have an iron in that fire in relation to how there is an interface with defamation law, but I think that that is the limit of our remit.

We are certainly very interested in it, and we are keeping a very careful eye on developments in England and Wales and also in the South, where there is some linkage with their general scheme for a defamation Bill. SLAPPs are mentioned in that because, in the South, they have that European directive type of dynamic going on as well. It is an area that is very much at the forefront of our work in relation to defamation.

Mr Frew: This is probably a question that is more related to the Justice Department. If you do not know the answer, that is fine. Are we clear that the role of the courts and the judicial system is the same so that we could put a dismissal mechanism in that process?

Mr Foster: Currently, under rules of court, there are mechanisms to do that. I think that where the courts do have those powers has been very clearly highlighted in recent cases on this. Where the SLAPPs debate is heading in England and Wales is that they want to really set that out on a statutory basis and reinforce the message. There is a different context there because SLAPPs in that jurisdiction have been driven by very wealthy external people coming in and using England and Wales as the focal point to take a case that they are using to intimidate whoever in that jurisdiction. We have not really seen that here, but some of the themes that come from that Bill are relevant to this jurisdiction, and there are certainly things that we want to keep an eye on.

Mr Frew: It talks about a costs-protection scheme that will be created to protect defendants such as journalists. That is relevant to the experience that we have had here over the past year.

Mr Foster: Did you say "costs-protection" scheme?

Mr Frew: Yes, a costs-protection scheme would allow the court to allow the defendants to not pay the claimant's legal costs. Would there then be a cost bearing on the Government regarding that?

Mr Foster: If there is, that would be a matter for the Department of Justice, because it would be a legal aid issue. At the moment, legal aid is not granted for defamation cases.

Mr Frew: So, it could open that whole sphere of things up too. OK. That is interesting. Thank you.

Miss Hargey: I just have a question on civil registration in Irish. Obviously, it is a New Decade, New Approach (NDNA) commitment, and I know that the Minister met Conradh na Gaeilge a while ago. How is that progressing?

Mr Foster: Sadly — well, not sadly — that is a matter for my colleagues in GRO. They lead on all of those aspects. The one exception is, maybe, in relation to wills, where the Department has an interest in the substantive law relating to wills. There is an ongoing debate around the validity of wills being made in Irish. Our role in that is relatively peripheral, from my office's perspective, because the substantive law on wills does not prevent a will from being made in Irish or, indeed, any other language. The difficulty relates to the recognition when it gets into the court system.

Miss Hargey: OK. In your paper, you touched on the issue of lack of expertise in some areas of civil law, particularly land law, for example. You touched on that when you said that you have another staff member joining soon to work on issues around gender recognition — the research and stuff that would be needed to inform policy to then create legislation. What is being done to overcome some of those issues? Are there certain areas around civil or land law that you would like to prioritise in the time ahead? Could that new resource be directed to those areas?

Mr Foster: If I had an appropriate level of resources, there would be any number of law reform projects that I would like to see taken forward. Land law is a massive area of work that requires really technical expertise, and you need to find the right type of people to do that work. Unfortunately, my office has not had that type of expertise for many years now. There are a couple of areas, in particular, around shared property management, the law relating to apartments and other aspects of land law that, in an ideal world, we would hope to make progress on. We are, in fact, even up to permanent secretary level, setting out our areas of work and what type of resource we might need to progress those. We hope that will go to the Minister for her attention quite soon. After that, we might have a better sense of what is achievable, not just for the remainder of this mandate, where other factors than simply resources might stymie the amount of legislation that we can bring forward, but in the longer term, we would hope to make progress on a number of fronts.

Miss Hargey: Just on the apartment point, I am seeing an increase, even just in Belfast, in cases coming forward, and there is a lack of clarity at times. Are you getting the same view, and are you having any engagement with the Department for Communities on those issues?

Mr Foster: The DFC has an interest with regard to the private rented sector and housing. This Department has an interest in land law and substantive land law. The lines are a bit blurred at times, but although we try to do as much as we can in terms of providing advice on that, we simply do not have the tools for legislative reform at the moment.

Miss Hargey: My last question is this: could there be improvement in those areas where there are gaps at the moment?

Mr Foster: That is absolutely the case. Yes.

The Chairperson (Mr O'Toole): OK. Does anyone else wish to come in?

Mr Tennyson: I just have one question, Chair. Michael, you touched on this in response to the gender recognition question that Nicola asked. Obviously, your remit is quite narrow with regard to the gender recognition certificate, and it often gets tangled up in the wider debate around the health issue and all those things. Just for absolute clarity, it would be helpful if you could outline what a gender recognition certificate is and what rights it does or does not confer to the individuals who receive them.

Mr Foster: A gender recognition certificate is basically evidence that a person's gender has changed — from male to female or female to male — differing from their birth certificate. It entitles them, effectively, to change their birth certificate to the gender that they have changed to. That then allows them to proceed in the gender that they have chosen to change to from birth.

Mr Tennyson: With regard to rights that it confers, my understanding is that it does not have a significant impact, for example, on access to single-sex spaces and those things. That is dealt with under separate legislation.

Mr Foster: Broadly speaking, that is right. Sometimes, the debate on gender recognition can get quite toxic because people usually mistakenly conflate the two issues. It is a sensitive area, but, broadly speaking, your analysis is right.

Mr Tennyson: That is helpful. Thank you.

The Chairperson (Mr O'Toole): It is important to say that the GRC is a bureaucratic thing that makes people's lives easier, rather than some of the claims made about it.

Dr Aiken: My question is about something else in the briefing: the Singapore convention. The rest of the UK has signed the Singapore convention. The Assembly will be asked to ratify it, will we not?

Mr Foster: I will pass that to Martin.

Mr Tyrell: There is a process of ratification. It goes to the First and deputy First Minister, as it is an international agreement, and they take input from other Ministers with relevant policy responsibilities.

Dr Aiken: How does the convention stand with our rules and obligations under the Windsor framework and the requirement for the European Court of Justice (ECJ) for trade issues, given that it is a trade issue piece?

Mr Tyrell: I have not looked at the convention in that level of detail, but my sense is that it is so niche that it will not have a great impact.

Dr Aiken: I was reading about the resolution of international commercial disputes through mediation, and there is a particular process. It is designed to make sure you do not end up in a trade court, but, because of our dual-market access, it would, potentially, go down the ECJ route. I am genuinely interested to know where the Singapore convention sits in relation to the Windsor framework. I do not want an answer now. Can someone find that out and let the Committee know? I know it is a speculative question, but I spend most of my life on the Windsor Framework Democratic Scrutiny Committee thinking, "I wish someone had asked that question earlier".

Mr Foster: It has not been raised in any meetings that we have had with colleagues in the MOJ. One would expect that, if there was an issue, they would have flagged it long before now, because —

Dr Aiken: Regrettably, as you will know, it does not work that way.

Mr Foster: Ultimately, the implementation will proceed on a UK-wide basis as opposed to the devolved Administrations taking forward separate statutory instruments. It is certainly something that we can brief you on.

Dr Aiken: Your brief states:

"The Singapore Convention of 2019 applies solely to international commercial disputes",

and the final line is:

"The EU has its own Mediation Directive which applies across all member states and which applied in the UK prior to Brexit."

It also means that it applies to Northern Ireland and not to the UK.

Mr Foster: There is a distinction to be made between goods and services.

Dr Aiken: Yes. I would like a quick note on the issue.

The Chairperson (Mr O'Toole): The request will go through the Committee. Is your request that we have an update from the Department on whether there is any interaction? We are not asking for a briefing paper, but could we have a paragraph?

Dr Aiken: I do not want a full paper.

The Chairperson (Mr O'Toole): The departmental Assembly liaison officer (DALO) will ask for clarification. I don't want your new start to be watching the Committee and be — [*Laughter.*] If she is watching.

Dr Aiken: It just shows that she read the brief.

The Chairperson (Mr O'Toole): No other members have indicated that they wish to ask a question. Thank you very much, Michael and Martin. It has been a useful briefing session. I have noted that we welcome the fact that the defamation law review will be laid before recess, and the Committee will be kept abreast of any developments with commissioned work or the policy intention on gender recognition reform. The Committee will be ready to scrutinise the marriage law legislation and, indeed, anything else that comes up. Thank you very much.