



[Membership](#)[What's Happening](#)[Committees](#)[Publications](#)[Assembly Commission](#)[General Info](#)[Job Opportunities](#)[Help](#)

Session 2007/2008

First Report

Assembly and Executive review committee

**Report on the Inquiry
into the Devolution of
Policing and Justice Matters**

**Volume 1
Minutes of proceedings relating to the report,
Minutes of evidence, Papers from the NIO**

Ordered by the Assembly and Executive Review Committee to be printed 26 February 2008
Report: 22/07/08R (Assembly and Executive Review Committee)

**REPORT
EMBARGOED UNTIL**

Commencement of the debate in Plenary on Tuesday, 11 March 2008

This document is available in a range of alternative formats.
For more information please contact the
Northern Ireland Assembly, Printed Paper Office,

Powers and Membership

Powers

The Assembly and Executive Review Committee is a Standing Committee established in accordance with Section 29A and 29B of the Northern Ireland Act 1998 and Standing Order 54 which provide for the Committee to:

- consider the operation of Sections 16A to 16C of the Northern Ireland Act 1998 and, in particular, whether to recommend that the Secretary of State should make an order amending that Act and any other enactment so far as may be necessary to secure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made;
- make a report to the Secretary of State, the Assembly and the Executive Committee, by no later than 1 May 2015, on the operation of Parts III and IV of the Northern Ireland Act 1998; and
- consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.

Membership

The Committee has eleven members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee since its establishment in May 2007 has been as follows:

Rt Hon Jeffrey Donaldson (Chairperson)	Mr Danny Kennedy
Mr Raymond McCartney (Deputy Chairperson)	Mr Nelson McCausland
Mr Alex Attwood	Mr Ian McCrea
Ms Carmel Hanna	Mr Alan McFarland
Ms Carál Ní Chuilín	Mr John O'Dowd
Mr George Robinson	

Contents

Volume 1

[Executive Summary](#)

[Summary of Recommendations](#)

[Introduction](#)

[The Committee's Approach](#)

[Issues, findings, recommendations and conclusions](#)

[Annex A – Summary of what will devolve and what will not devolve](#)

Appendices

[Appendix 1 – Minutes of Proceedings relating to the report](#)

[Appendix 2 – Minutes of Evidence](#)

[Appendix 3 – Papers from the NIO](#)

[List of Witnesses](#)

Volume 2

Appendix 4 – Written Submissions

Appendix 5 – Party Position Papers

Appendix 6 – Other Correspondence

Appendix 7 – Research Papers

Appendix 8 – Other Papers

Executive Summary

1. This report has been prepared in accordance with the terms of section 18 of the Northern Ireland (St Andrews Agreement) Act 2006 which requires the Assembly to make a report to the Secretary of State before 27 March 2008, on progress towards the devolution of policing and justice matters.

2. Making progress on the devolution of policing and justice powers has proved to be deeply emotive, and highly sensitive; it has posed a significant, and often politically difficult, challenge over a considerable period of time. Indeed, the matter was considered previously by the Committee on the Preparation for Government, prior to the Northern Ireland (St Andrews Agreement) Act 2006, and, thereafter, by the Committee on the Programme for Government in the run up to restoration of the Northern Ireland Assembly in May 2007. For various reasons the devolution of policing and justice matters has been viewed by some as representing a risk to political developments in Northern Ireland, whereas others have considered that it provides an opportunity to secure political stability.

3. This report deals with the range of policing and justice powers which would cease to be reserved matters in circumstances where there was a request by the Assembly for devolution; it addresses issues associated with the ministerial model and procedures for filling the ministerial post/s for any new Department with responsibility for policing and justice powers, as well as the timing of devolution.

4. In particular, the report makes specific recommendations on the range of policing and justice powers which would cease to be reserved matters (see Annex A, pages 28-32 for a summary of what will devolve and what will not devolve) as well as the further preparations which need to be made to facilitate devolution.

5. The report discusses issues to do with the structure, relationships, governance and accountability of any new department which would exercise powers in relation to policing and justice matters and it acknowledges concerns related to the funding for, and timing of, devolution.

6. The report calls on the political parties to commit to further discussions to produce recommendations on a range of outstanding issues associated with the ministerial model and procedures for filling the ministerial post/s for any department, including how any such department would be accommodated in the Executive, and the timing of devolution. The report also acknowledges that, once such agreement is reached, the detail of that agreement be conveyed, immediately thereafter, to the Secretary of State for Northern Ireland.

Summary of Recommendations

Recommendation 1

The Committee recommends that the matters specified in the NIO Discussion Paper (February 2006) be regarded as the policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998. (Paragraph 12)

Recommendation 2

The Committee recommends that those matters in paragraphs 9(a) & (b) of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 17)

Recommendation 3

The Committee recommends that those matters in paragraph 9(c) of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 18)

Recommendation 4

The Committee recommends that those matters in paragraph 9(d) of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 19)

Recommendation 5

The Committee recommends that those matters in paragraph 9(e) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

(Paragraph 20)

Recommendation 6

The Committee recommends that those matters in paragraph 9(g) of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 21)

Recommendation 7

The Committee recommends that those matters in paragraph 9(h) of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 22)

Recommendation 8

The Committee recommends that those matters in paragraph 9A of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 23)

Recommendation 9

The Committee recommends that either before, or following, devolution of the range of policing and justice matters identified in this report, the Assembly should conduct a review of those matters relating to the 'Public Processions (Northern Ireland) Act 1998', and having regard to the outcome of the 'Strategic Review of Parading', should consider if, and when, they should be transferred. (Paragraph 24)

Recommendation 10

The Committee recommends that those matters in Paragraph 10 of Schedule 3 to the Northern Ireland Act 1998, other than those relating to the Public Processions (Northern Ireland) Act 1998, be transferred. (Paragraph 24)

Recommendation 11

The Committee recommends that those matters in paragraph 11 of Schedule 3 to the Northern Ireland Act 1998, other than those relating to '50:50 temporary recruitment provisions', be transferred. (Paragraph 25)

Recommendation 12

The Committee recommends that either before, or following, the devolution of the range of policing and justice matters identified in this report, those matters relating to '50:50 temporary recruitment provisions' should be reviewed to determine if, and when, they should be

transferred. (Paragraph 25)

Recommendation 13

The Committee recommends that those matters in paragraph 12 of Schedule 3 to the Northern Ireland Act 1998, relating to health and safety aspects of explosives, and policy development, legislation and general oversight of 'non-prohibited' firearms be transferred. (Paragraph 26)

Recommendation 14

The Committee recommends that those matters in paragraphs 14A, 15 and 17 of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 27)

Recommendation 15

The Committee recommends that those matters in paragraph 15A of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 28)

Recommendation 16

The Committee recommends that those matters in paragraph 11A of Schedule 3 to the Northern Ireland Act 1998 be transferred. (Paragraph 29)

Recommendation 17

The Committee recommends that particular administrative arrangements relating to extradition and mutual legal assistance should be exercised by the Northern Ireland Minister/s. (Paragraph 32)

Recommendation 18

The Committee recommends that there should be a single department that will exercise powers in relation to policing and justice matters. (Paragraph 35)

Recommendation 19

The Committee recommends that the political parties commit to further discussions to produce recommendations on the ministerial model to be adopted and the method by which the Assembly would make the ministerial appointment/s and that it will be necessary for these discussions to take place before the devolution of policing and justice matters. (Paragraph 36)

Recommendation 20

The Committee recommends that the political parties commit to further discussions to produce recommendations on how any new department, which will exercise responsibility for policing and justice powers, might be accommodated in the Executive and that it will be necessary for these discussions to take place before the devolution of policing and justice matters. (Paragraph 37)

Recommendation 21

The Committee recommends that preparations for the appointment of an Attorney General for Northern Ireland should be taken forward by the First Minister and deputy First Minister before the devolution of policing and justice matters. (Paragraph 38)

Recommendation 22

The Committee recommends that the post of Attorney General should be a full time role, at least initially. (Paragraph 38)

Recommendation 23

The Committee recommends that the following organisations should transfer, as proposed, to the new Department, on a without prejudice basis. (Paragraph 40)

- Northern Ireland Prison Service (as an Agency)
- Forensic Science Northern Ireland (as an Agency)
- Youth Justice Agency (as an Agency)
- Compensation Agency (as an Agency)
- Police Service of Northern Ireland
- Northern Ireland Police Fund (as an Executive NDPB and Company Limited by Guarantee)
- RUC George Cross Foundation (as an Executive NDPB)
- Independent Assessor for PSNI Recruitment Applications (as an Advisory NDPB)
- Criminal Injuries Compensation Appeals Panel (as a Tribunal NDPB)
- Police Rehabilitation and Training Trust (as a Company limited by guarantee)
- Independent Monitoring Boards (Maghaberry, Magilligan and Hydebank Wood) (Independent Monitoring Boards)
- Prisoner Ombudsman (as an Independent Statutory Office holder)
- Life Sentence Review Commissioners (as Independent Statutory Office holders)[\[1\]](#)

- Commissioner for Hearings under Prison Rule 109B (Loss of Remission Commissioner)(as an Independent non-Statutory Office holder)
- The State Pathologist (employed by the Department)
- Medical Appeals Tribunal (Ad hoc Tribunal)
- Judicial Appointments Ombudsman (as an Independent Statutory Office holder)[\[2\]](#)

Recommendation 24

The Committee recommends that the organisations listed below should transfer as proposed, on a without prejudice basis. (Paragraph 41)

- Public Prosecution Service (as a Non-Ministerial Department)
- Northern Ireland Policing Board (as an Executive NDPB)
- Office of the Police Ombudsman (as an Executive NDPB)
- Criminal Justice Inspection Northern Ireland (as an Executive NDPB)
- Probation Board (as an Executive NDPB)
- NI Law Commission (as an Advisory NDPB)
- Northern Ireland Court Service (as an Agency)
- NI Legal Services Commission (as an Executive NDPB)
- Judicial Appointments Commission (as an Executive NDPB)

Recommendation 25

The Committee recommends the need for the Assembly to develop, and approve, in due course, a Standing Order that will require, and allow, the Attorney General to report to the Assembly. (Paragraph 44)

Recommendation 26

The Committee recommends that the Assembly should review whether there is merit in the Public Prosecution Service being attached to the Department with responsibility for policing and justice matters, and should consider what the implications would be for the structure of the Public Prosecution Service. (Paragraph 46)

Recommendation 27

The Committee recommends that the independence of the PPS and its accountability to the Assembly should be examined before, and

following, the devolution of policing and justice matters to produce recommendations which would, in turn, be considered by the Assembly. (Paragraph 47)

Recommendation 28

The Committee recommends that members of the Statutory Committee for any new department which would exercise functions relating to policing and justice matters, should not sit, simultaneously, on either the Policing Board or any District Policing Partnership. (Paragraph 49)

Recommendation 29

The Committee recommends that the matters relating to appointments to the Policing Board should be examined further after the devolution of policing and justice matters. (Paragraph 49)

Recommendation 30

The Committee recommends that the matters relating to appointments to the Office of the Police Ombudsman should be examined by the political parties, initially, before the devolution of policing and justice matters. (Paragraph 51)

Recommendation 31

The Committee recommends that the NIO should make arrangements to have draft reports of the Criminal Justice Inspection submitted to the Assembly, and that the other matters raised by Criminal Justice Inspection Northern Ireland should be examined, initially, before the devolution of policing and justice matters. (Paragraph 53)

Recommendation 32

The Committee recommends that the matters relating to the future status of the Probation Board should be examined further after the devolution of policing and justice matters. (Paragraph 54)

Recommendation 33

The Committee recommends that the matters raised by the NI Law Commission should be examined further after the devolution of policing and justice matters. (Paragraph 55)

Recommendation 34

The Committee recommends that the matters raised by the NI Legal Services Commission should be examined further after the

devolution of policing and justice matters. (Paragraph 56)

Recommendation 35

The Committee recommends that matters relating to the independence, governance and accountability of the Court Service be examined further, as a matter of priority, after the devolution of policing and justice matters. (Paragraph 59)

Recommendation 36

The Committee recommends that policy advice and legislative support in relation to legal aid should be transferred from the Court Service to the new Department which will exercise responsibility for policing and justice matters. (Paragraph 59)

Recommendation 37

The Committee recommends that a protocol should be put in place between the Judicial Appointments Commission and the Office of the First Minister and deputy First Minister regarding judicial appointments. (Paragraph 60)

Recommendation 38

The Committee recommends that the NIO and OFMdFM should take forward work to ensure that current agreements should remain in place at the point of devolution and that these should be reviewed by the Department and the Statutory Committee following devolution. (Paragraph 62)

Recommendation 39

The Committee recommends the development of Memoranda of Understanding between SOCA and the Security Services respectively, with the Minister/s, the Department which would have responsibility for policing and justice matters and the Assembly, to provide for an appropriate sharing of information. (Paragraph 63)

Recommendation 40

The Committee recommends that detailed discussions should take place between the political parties, the NIO, the Court Service and the Policing Board, before devolution, in order to attempt to finalise the financial provisions for policing and justice. (Paragraph 66)

Recommendation 41

The Committee recommends that the political parties commit to further discussions to agree when a request might be made for the devolution of policing and justice matters. (Paragraph 69)

Introduction

1. Section 18 (1) of the Northern Ireland (St Andrews Agreement) Act 2006 requires the Northern Ireland Assembly to make a report, to the Secretary of State, before 27 March 2008 –

(a) as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St Andrews Agreement [\[3\]](#), for or in connection with policing and justice matters ceasing to be reserved matters;

(b) as to which matters are likely to be the subject of any request under Section 4(2A) [\[4\]](#) of the 1998 Act that policing and justice matters should cease to be reserved matters;

(c) containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008.

2. Following the restoration of the Northern Ireland Assembly, and at its meeting on 22 May 2007, the Assembly and Executive Review Committee (hereinafter referred to as “the Committee”) agreed to table a motion seeking the agreement of the Assembly to the Committee undertaking the work on preparing a report on progress towards devolution of policing and justice matters.

3. On 4 June 2007 the Assembly resolved that the task of preparing a report on progress towards the devolution of policing and justice should be a matter for the Committee [\[5\]](#).

The Committee’s Approach

4. At its meeting on 12 June 2007, the Committee agreed to conduct a formal inquiry and to prepare a report on progress towards devolution of policing and justice matters.

5. The terms of reference for the inquiry were approved at a Committee meeting on 3 July 2007 [\[6\]](#) at which time the Committee also agreed to public advertisements calling for the receipt of written submissions by 17 August 2007. In addition, the Committee agreed to write, directly, to a number of specific organisations to invite views.

6. On 11 September 2007, when it met to consider the written submissions which had been received, the Committee also approved a forward work programme for the conduct of the inquiry; it further agreed to re-advertise the terms of reference and to extend the deadline for the receipt of submissions to 26 September 2007.

7. The Committee met on 20 occasions between 11 September 2007 and 26 February 2008 during which time it considered written and oral evidence from a range of individuals and organisations, including the NIO, as well as submissions from two expert witnesses. The political parties also made submissions during the course of the inquiry.

8. The minutes of proceedings of the Committee can be found at Appendix 1 and the minutes of evidence are included at Appendix 2.

The deliberations of the Committee were informed by the “Devolving Policing and Justice in Northern Ireland: Discussion Paper” (February 2006) and subsequent papers, correspondence and memoranda from the NIO, all of which can be found in Appendix 3. Written submissions are re-produced in Appendix 4. Submissions from the political parties are included at Appendix 5, whilst general correspondence is included at Appendix 6. Papers prepared by the Northern Ireland Assembly Research and Library Service appear in Appendix 7, and Appendix 8 includes the submissions from the expert witnesses and documentation on the judicial system in England and Wales.

When it met on 26 February 2008, the Committee ordered that its report be printed.

Issues, Findings, Recommendations and Conclusions

Issue 1:

Identification of those policing and justice matters which are currently reserved matters

9. Under its terms of reference, the Committee was required to identify those policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998 (the 1998 Act).

Findings:

10. The issue was considered when the Committee met on 9 October 2007 and when it was agreed:

‘That the matters specified in the NIO Discussion Paper (February 2006)[\[7\]](#) be regarded as the policing and justice matters which are currently ‘reserved’ matters’.

11. However, the Committee draws attention to the fact that, whilst Schedule 3 of the 1998 Act deals with a range of reserved matters, including, for example, matters relating to family law, the Committee’s attention throughout the inquiry has been focused on particular matters relating to policing and criminal justice.

12. It is also the case that the NIO has developed its thinking since it published the original Discussion Paper in February 2006. The NIO has drawn these developments to the attention of the Committee in correspondence, and by way of written, and oral, evidence. A working draft version of a covering commentary, which the NIO intends to publish alongside draft legislative proposals, was provided to the Committee in February 2008. These documents can be found at Appendix 3.

Recommendation 1

The Committee recommends that the matters specified in the NIO Discussion Paper (February 2006) be regarded as the

policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998.

Issue 2:

The matters to be transferred and the extent to which they should be devolved

13. Using Chapters 5 to 17 of the NIO Discussion Paper (February 2006) as its baseline, but also having regard to Chapter 18 of that Paper, together with the suite of documents at Appendix 3, the Committee examined the range of issues which might feature in any request for the devolution of policing and justice matters.

Findings:

14. The Committee achieved a significant degree of consensus on a range of those reserved matters which should be transferred, and the extent to which they should be devolved.

15. However, the Committee was unable to achieve consensus on a number of reserved matters which might be transferred. The table at Annex A of this report provides details of what will devolve and what will not devolve.

16. The paragraphs below reflect the extent of the consensus reached in relation to the transfer of a number of those matters which are currently reserved. The report also acknowledges that, at this stage, there will remain certain limited exceptions to the general transfer of reserved powers. It is expected that the final version of the covering commentary to the legislative proposals will include a list of those matters which remain reserved. For ease of reference, the relevant Chapter of the NIO Discussion Paper (February 2006) is cross-referenced but, for completeness, it is also necessary to consider the suite of documents at Appendix 3.[\[8\]](#)

17. Chapter 5 NIO Discussion Paper (February 2006)

Criminal Law and Creation of Offences and Penalties

Paragraph 9(a) & (b) of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), should be transferred.

Misuse of Drugs

Matters relating to the 'misuse of drugs' were raised as a result of a written submission from the Cabinet Secretary for Justice in Scotland. The NIO provided an explanation of the arrangements in relation to the 'misuse of drugs' in the covering commentary of draft legislation in February 2008(See Appendix 3).8

Agreed:

That the Committee noted the proposed arrangements relating to the 'misuse of drugs', as outlined in the commentary.

Recommendation 2

The Committee recommends that those matters in paragraphs 9(a) & (b) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

18. Chapter 6 NIO Discussion Paper (February 2006)

Prevention and Detection of Crime

Paragraph 9(c) of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), should be transferred.

Subsequently, the NIO further developed its thinking in relation to the 'Regulation of Investigatory Powers Act 2000' and the 'regulation of the private security industry' as outlined in the covering commentary of draft legislation provided by the NIO in February 2008 (See Appendix 3).⁹

The Committee noted the proposed arrangements relating to the 'Regulation of Investigatory Powers Act 2000' and the 'regulation of the private security industry', as outlined in the commentary.

Recommendation 3

The Committee recommends that those matters in paragraph 9(c) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

19. Chapter 7 NIO Discussion Paper (February 2006)

Prosecutions

Paragraph 9(d) of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), should be transferred.

Recommendation 4

The Committee recommends that those matters in paragraph 9(d) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

20. Chapter 8 NIO Discussion Paper (February 2006)

Treatment of Offenders

Paragraph 9(e) of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Document (February 2006), should be transferred.

Subsequently, the NIO further developed its thinking in relation to the 'Treatment of Offenders' as outlined in the covering commentary of draft legislation provided by the NIO in February 2008 (See Appendix 3).¹⁰

The Committee noted the proposed arrangements relating to the 'Treatment of Offenders', as outlined in the commentary.

Recommendation 5

The Committee recommends that those matters in paragraph 9(e) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

21. Chapter 9 NIO Discussion Paper (February 2006)

Compensation

Paragraph 9(g) of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), should be transferred.

Recommendation 6

The Committee recommends that those matters in paragraph 9(g) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

22. Chapter 10 NIO Discussion Paper (February 2006)

Community Safety Partnerships

Paragraph 9(h) of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), should be transferred.

Recommendation 7

The Committee recommends that those matters in paragraph 9(h) of Schedule 3 to the Northern Ireland Act 1998 be transferred.

23. Chapter 11 NIO Discussion Paper (February 2006)

Chief Inspector of Criminal Justice

Paragraph 9A of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Document (February 2006), should be transferred.

Recommendation 8

The Committee recommends that those matters in paragraph 9A of Schedule 3 to the Northern Ireland Act 1998 be transferred.

24. Chapter 12 NIO Discussion Paper (February 2006)

Public Order

Paragraph 10 of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), other than those relating to the 'Public Processions (Northern Ireland) Act 1998', should be transferred.

The Parades Commission

The Committee noted that there is an ongoing 'Strategic Review of Parading' chaired by Lord Ashdown.

There were diverse opinions about the transfer of matters relating to the 'Public Processions (Northern Ireland) Act 1998' and there was no consensus about whether this should continue to be a reserved matter.

Agreed:

That either before, or following, devolution of a range of agreed policing and justice matters, the Assembly should conduct a review of those matters relating to the 'Public Processions (Northern Ireland) Act 1998', to consider if, and when, these should be transferred.

Recommendation 9

The Committee recommends that either before, or following, devolution of the range of policing and justice matters identified in this report, the Assembly should conduct a review of those matters relating to the 'Public Processions (Northern Ireland) Act 1998', and having regard to the outcome of the 'Strategic Review of Parading', should consider if, and when, they should be transferred.

Future powers of the armed forces to operate in support of the police

The NIO provided an explanation of the arrangements in relation to the 'future powers of the armed forces to operate in support of the police' in the covering commentary of draft legislation in February 2008 (See Appendix 3).¹¹

The Committee noted the proposed arrangements as outlined in the commentary.

Recommendation 10

The Committee recommends that those matters in Paragraph 10 of Schedule 3 to the Northern Ireland Act 1998, other than those relating to the Public Processions (Northern Ireland) Act 1998, be transferred.

25. Chapter 13 NIO Discussion Paper (February 2006)

The Police and the Policing Accountability Framework

Paragraph 11 of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), other than those relating to '50:50 temporary recruitment provisions', should be transferred.

50:50 temporary recruitment provisions

There were diverse opinions about the transfer of '50:50 temporary recruitment provisions' and there was no consensus about whether this should continue to be a reserved matter.

Agreed:

That either before, or following, devolution of a range of agreed policing and justice matters, the Assembly should conduct a review of matters relating to '50:50 temporary recruitment provisions' to consider if, and when, these should be transferred.

Recommendation 11

The Committee recommends that those matters in paragraph 11 of Schedule 3 to the Northern Ireland Act 1998, other than those relating to '50:50 temporary recruitment provisions', be transferred.

Recommendation 12

The Committee recommends that either before, or following, the devolution of the range of policing and justice matters identified in this report, those matters relating to '50:50 temporary recruitment provisions' should be reviewed to determine if, and when, they should be transferred.

26. Chapter 14 NIO Discussion Paper (February 2006)

Firearms and explosives

Paragraph 12 of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Document (February 2006), should be transferred.

Subsequently, the NIO further developed its thinking in relation to firearms and explosives as outlined in the covering commentary of draft legislation provided by the NIO in February 2008 (See Appendix 3).¹²

The Committee noted the proposed arrangements in relation to firearms and explosives as outlined in the commentary.

Recommendation 13

The Committee recommends that those matters in paragraph 12 of Schedule 3 to the Northern Ireland Act 1998, relating to health and safety aspects of explosives, and policy development, legislation and general oversight of 'non-prohibited' firearms be transferred.

27. Chapter 15 NIO Discussion Paper (February 2006)

The Courts

Paragraphs 14A, 15 and 17 of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Document (February 2006), should be transferred.

Recommendation 14

The Committee recommends that those matters in paragraphs 14A, 15 and 17 of Schedule 3 to the Northern Ireland Act 1998 be transferred.

28. Chapter 16 NIO Discussion Paper (February 2006)

Northern Ireland Law Commission

Paragraph 15A of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Document (February 2006), should be transferred.

Recommendation 15

The Committee recommends that those matters in paragraph 15A of Schedule 3 to the Northern Ireland Act 1998 be transferred.

29. Chapter 17 NIO Discussion Paper (February 2006)

Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters

Paragraph 11A of Schedule 3 to the Northern Ireland Act 1998

Agreed:

That these reserved matters, as described in the Northern Ireland Office Discussion Paper (February 2006), should be transferred.

Recommendation 16

The Committee recommends that those matters in paragraph 11A of Schedule 3 to the Northern Ireland Act 1998 be transferred.

Excepted Matters

30. There are a number of matters which are excepted and which would require an amendment to the Northern Ireland Act 1998 to allow for any request to be made by the Assembly for the transfer of such matters. The table at Annex A of this report provides details of the excepted matters.

31. The Committee, in the course of its deliberations, had significant discussions regarding matters that are currently excepted.

There were diverse opinions about the transfer of those matters which are excepted. Both Sinn Féin and the SDLP argued that all excepted matters should be transferred. There was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for such a request to be made by the Assembly for the transfer of these excepted matters.

32. Chapter 18 NIO Discussion Paper (February 2006)

Excepted Matters (Including National Security and Extradition)

Paragraph 3 of Schedule 2 to the Northern Ireland Act 1998

The NIO outlined the proposed arrangements in relation to 'excepted matters' in the covering commentary of draft legislation provided to the Committee in February 2008. Although no legislative powers will transfer, the commentary included a list of particular administrative arrangements relating to extradition and mutual legal assistance which would be exercised by the Northern Ireland Minister/s (See Appendix 3).¹³

Agreed:

That the matters described in the covering commentary of draft legislation provided by the NIO in February 2008 relating to particular administrative arrangements for extradition and mutual legal assistance should be exercised by the Northern Ireland Minister/s.

Recommendation 17

The Committee recommends that particular administrative arrangements relating to extradition and mutual legal assistance should be exercised by the Northern Ireland Minister/s.

Issue 3:

Ministerial Model and Procedures for Filling Ministerial Post/s

33. As well as considering what might be an appropriate ministerial model, and the procedures to be used for filling the ministerial post/s, the Committee spent a significant amount of time examining possible structures for any new policing and justice department; and how the various component parts of the policing and justice family might relate to each other, and to the Assembly, in circumstances where policing and justice matters were devolved. The Committee also took a keen interest in how matters of governance and accountability might operate after devolution.

Findings:

34. Although the Committee achieved a significant degree of consensus on a range of matters to do with structure, relationships, governance and accountability, there were occasions when it was unable to achieve consensus, particularly in relation to the ministerial model and procedures for filling the ministerial post/s.

Department

35. The Committee endorsed the earlier decision taken by the Committee on the Programme for Government that there should be a single department that will exercise powers in relation to policing and justice matters.

Recommendation 18

The Committee recommends that there should be a single department that will exercise powers in relation to policing and justice matters.

Ministerial Options

36. Although the Committee considered a range of ministerial options and possible methods of appointment as outlined below, it was unable to achieve consensus on these or any other option. The Committee noted that it would be open to the Assembly to develop other options for ministerial posts and appointment procedures which, if approved by the Assembly, would require a change in legislation.

Ministerial Options

Option 1: Single Minister

Section 21 A (3) of the Northern Ireland Act 1998 (the 1998 Act)

- Member of any party
- Consent of nominating officer required

- Joint nomination by FM/dFM
- Approved by resolution with 50/50/50 voting
- After appointment of FM/dFM and before d'Hondt
- Counts immediately for d'Hondt – schedule 4A Part 1 Para 2(2)(b)

Option 2: Two Ministers acting equally and jointly
Section 21 A (4) of the 1998 Act

- Member of any party
- Consent of nominating officer required
- Joint nomination by FM/dFM
- After appointment of FM/dFM and before d'Hondt
- Approved by resolution with 50/50/50 voting
- Counts immediately for d'Hondt – schedule 4A Part 2 Para 6(2)(b)

Option 3: One Minister and a Junior Minister in rotation (as decided by Act of the Assembly)
Section 21 A (5) of the 1998 Act

Member of any party

- Consent of nominating officer required
- Joint nomination by FM/dFM
- After appointment of FM/dFM and before d'Hondt
- Approved by resolution with 50/50/50 voting
- Counts immediately for d'Hondt – schedule 4A Part 3 Para 9(2)(b)

Option 4: One Minister and a deputy Minister
Section 21 A (5A) (a) and (b) of the 1998 Act

- Can be nominated by any member
- Must be a Member of a party of the largest or second largest designation
- Minister and deputy Minister must be from different political designations
- Consent of nominating officer required

- Elected with cross community support on a 50/50/50 basis
- After appointment of FM/dFM and before d'Hondt
- Counts in second round of d'Hondt only (where party holds two ministerial posts – schedule 4A Part 3A Part 11C (3)(A) and (3)(b)).

Recommendation 19

The Committee recommends that the political parties commit to further discussions to produce recommendations on the ministerial model to be adopted and the method by which the Assembly would make the ministerial appointment/s and that it will be necessary for these discussions to take place before the devolution of policing and justice matters.

Northern Ireland Executive Committee – Ministerial Offices

37. Although the Committee raised the matter of how any department would be accommodated in the Executive under section 17 of the Northern Ireland Act 1998, the issue was considered to be a matter for resolution in political negotiations.

Recommendation 20

The Committee recommends that the political parties commit to further discussions to produce recommendations on how any new department, which will exercise responsibility for policing and justice powers, might be accommodated in the Executive and that it will be necessary for these discussions to take place before the devolution of policing and justice matters.

Appointment of the Attorney General for Northern Ireland

38. The Committee discussed the creation of the post of Attorney General for Northern Ireland and acknowledged that the matter of the appointment of an Attorney General for Northern Ireland is for the First Minister and deputy First Minister. The Committee raised the matter with that Office and was advised that no preparatory work had been done in this regard; indeed, the Committee was told that it was a matter for political resolution. The Committee's views on governance and accountability arrangements in relation to the Attorney General are discussed in more detail in paragraph 44 below.

Recommendation 21

The Committee recommends that preparations for the appointment of an Attorney General for Northern Ireland should be taken forward by the First Minister and deputy First Minister before the devolution of policing and justice matters.

Recommendation 22

The Committee recommends that the post of Attorney General should be a full time role, at least initially.

Structure

39. The paragraphs below reflect the extent, or otherwise, of the consensus reached on the structure of any department which would exercise powers in relation to policing and justice matters.

40. There was general agreement that the organisations listed in Annex B of the letter from the NIO dated 15 October 2007¹⁴, should transfer, as proposed, to the new Department, on a without prejudice basis.

Recommendation 23

The Committee recommends that the following organisations should transfer, as proposed, to the new Department, on a without prejudice basis.

- Northern Ireland Prison Service (as an Agency)
- Forensic Science Northern Ireland (as an Agency)
- Youth Justice Agency (as an Agency)
- Compensation Agency (as an Agency)
- Police Service of Northern Ireland
- Northern Ireland Police Fund (as an Executive NDPB and Company Limited by Guarantee)
- RUC George Cross Foundation (as an Executive NDPB)
- Independent Assessor for PSNI Recruitment Applications (as an Advisory NDPB)
- Criminal Injuries Compensation Appeals Panel (as a Tribunal NDPB)
- Police Rehabilitation and Training Trust (as a Company limited by guarantee)
- Independent Monitoring Boards (Maghaberry, Magilligan and Hydebank Wood) (Independent Monitoring Boards)
- Prisoner Ombudsman (as an Independent Statutory Office holder)
- Life Sentence Review Commissioners (as Independent Statutory Office holders)¹⁵
- Commissioner for Hearings under Prison Rule 109B (Loss of Remission Commissioner) (as an Independent non-Statutory Office holder)
- The State Pathologist (employed by the Department)
- Medical Appeals Tribunal (Ad hoc Tribunal)
- Judicial Appointments Ombudsman (as an Independent Statutory Office holder)¹⁶

Structure

41. The Committee also agreed that the remaining organisations listed in the letter from the NIO dated 15 October 2007, and other correspondence¹⁷, should transfer as proposed. However, the Committee has made particular recommendations about these organisations in the section entitled 'Relationships, Governance and Accountability'.

Recommendation 24

The Committee recommends that the organisations listed below should transfer as proposed, on a without prejudice basis.

- Public Prosecution Service (as a Non-Ministerial Department)
- Northern Ireland Policing Board (as an Executive NDPB)
- Office of the Police Ombudsman (as an Executive NDPB)
- Criminal Justice Inspection Northern Ireland (as an Executive NDPB)
- Probation Board (as an Executive NDPB)
- NI Law Commission (as an Advisory NDPB)
- Northern Ireland Court Service (as an Agency)
- NI Legal Services Commission (as an Executive NDPB)
- Judicial Appointments Commission (as an Executive NDPB)

Relationships, Governance and Accountability

42. The Committee considered it essential to ensure that there should be clarity of relationships within the field of policing and justice with clearly defined roles for the Minister/s, the Department and the entire range of organisations administering policing and justice, including their relationship with the Assembly and the relevant Statutory Committee.

43. The Committee agreed on the need to strike a balance between independence and accountability that would enable the organisations to administer policing and justice effectively.

The Role of the Attorney General

44. The Committee identified a number of governance issues associated with the post of Attorney General, including the extent of the role and the relationship with, and reporting arrangements to, the Assembly and highlighted the need for changes to the Assembly's Standing Orders in this regard. The Committee welcomed the advice in the NIO letter of 14 February 2008 that the Attorney General would be answerable to the Assembly on matters of prosecution policy. The Committee also gave consideration to the role of the Attorney General in relation to prosecution policy as discussed at paragraph 45 below.

Recommendation 25

The Committee recommends the need for the Assembly to develop, and approve, in due course, a Standing Order that will require, and allow, the Attorney General to report to the Assembly.

Public Prosecution Service

45. The Committee considered the future status of the PPS and there was a collective concern about its accountability. There was a consensus around the need to increase the lines of accountability for the PPS without impacting on its operational independence. The Committee considers that this should be a matter for consideration by the Assembly before, and following, the devolution of policing and justice matters.

46. Although the Committee agreed that, for the purposes of devolution, the PPS should be attached to the Office of the First Minister and the deputy First Minister, it considers that there may be merit in it being attached to the Department which would exercise powers in relation to policing and justice matters.

Recommendation 26

The Committee recommends that the Assembly should review whether there is merit in the Public Prosecution Service being attached to the Department with responsibility for policing and justice matters, and should consider what the implications would be for the structure of the Public Prosecution Service.

47. The Committee raised the matter of accountability of the Public Prosecution Service with the NIO and noted that following its deliberations, the NIO, in its letter of 14 February 2008, outlined how greater accountability could be achieved and advised that the Director of Public Prosecutions could also be answerable to the Assembly on questions of prosecution policy.

Recommendation 27

The Committee recommends that the independence of the PPS and its accountability to the Assembly should be examined before, and following, the devolution of policing and justice matters, to produce recommendations which would be considered by the Assembly.

Northern Ireland Policing Board

48. The Committee agreed the need for a Memorandum of Understanding to clarify the relationships which would exist between the PSNI, the Policing Board and any new Statutory Committee, and which would deal with potential conflicts of interest. The Committee has requested that such a Memorandum be developed and referred to the Assembly for consideration.

49. There was consensus that members of the Statutory Committee for any new department which would exercise functions relating to policing and justice matters, should not sit, simultaneously, on either the Policing Board or any District Policing Partnership.

There were diverse opinions about whether political parties should continue to appoint MLAs to the Policing Board, but it was agreed that the matter should be considered after the devolution of policing and justice matters.

Recommendation 28

The Committee recommends that members of the Statutory Committee for any new department which would exercise functions relating to policing and justice matters, should not sit, simultaneously, on either the Policing Board or any District Policing Partnership.

Recommendation 29

The Committee recommends that the matters relating to appointments to the Policing Board should be examined further after the devolution of policing and justice matters.

Office of the Police Ombudsman

50. The Committee discussed the appointment procedures in relation to the Office of the Police Ombudsman.

There were diverse opinions about whether the advisory role in relation to the appointment of the Police Ombudsman should transfer to the Northern Ireland Minister/s or to OFMdFM, and whether the Executive should have a role in consultation.

51. The Committee agreed that this matter should be considered before the devolution of policing and justice matters, possibly as part of the suggested political negotiations.

Recommendation 30

The Committee recommends that the matters relating to appointments to the Office of the Police Ombudsman should be examined by the political parties, initially, before the devolution of policing and justice matters.

Criminal Justice Inspection Northern Ireland

52. The Committee noted the recommendations raised in the written submission from Criminal Justice Inspection Northern Ireland¹⁸ and agreed that these matters should be considered further before the devolution of policing and justice matters.

53. The Committee agreed that draft reports from Criminal Justice Inspection Northern Ireland should be submitted to the Assembly and not Westminster.

Recommendation 31

The Committee recommends that the NIO should make arrangements to have draft reports from Criminal Justice Inspection Northern Ireland submitted to the Assembly, and that the other matters raised by Criminal Justice Inspection Northern Ireland should be examined, initially, before the devolution of policing and justice matters.

Probation Board

54. The Committee noted the recommendation of the Criminal Justice Review 2000 that the Probation Board become an agency of the new Department similar to the Prison Service to assist co-operation in the correctional area¹⁹.

Recommendation 32

The Committee recommends that the matters relating to the future status of the Probation Board should be examined further after the devolution of policing and justice matters.

NI Law Commission

55. The Committee noted the submission from the NI Law Commission²⁰ and agreed that the matters raised should be considered further after the devolution of policing and justice matters.

Recommendation 33

The Committee recommends that the matters raised by the NI Law Commission should be examined further after the devolution of policing and justice matters.

NI Legal Services Commission

56. The Committee noted the submission from the NI Legal Services Commission²¹ and agreed that the matters raised should be considered further after the devolution of policing and justice matters.

Recommendation 34

The Committee recommends that the matters raised by the NI Legal Services Commission should be examined further after the devolution of policing and justice matters.

Northern Ireland Court Service

57. The Committee heard well argued testimonies from the Lord Chief Justice, the Director of the Court Service and the expert witnesses, the Chief Executive of the Irish Court Service and Professor Jackson from Queen's University²². The Committee also had regard to the judicial system which operates in Scotland²³ and to emerging proposals in England and Wales²⁴.

58. The Committee spent considerable time deliberating the issue of greater independence for the Court Service and agreed that, although it would not be possible to implement change before devolution, that this should be examined further as a matter of priority following devolution.

59. There was consensus that policy advice and legislative support in relation to legal aid should be transferred from the Court Service to the new Department.

Recommendation 35

The Committee recommends that matters relating to the independence, governance and accountability of the Court Service be examined further, as a matter of priority, after the devolution of policing and justice matters.

Recommendation 36

The Committee recommends that policy advice and legislative support in relation to legal aid should be transferred from the Court Service to the new Department which will exercise responsibility for policing and justice matters.

Judicial Appointments Commission

60. The Committee noted that the Judicial Appointments Commission will be attached to the Office of the First Minister and deputy First Minister and agreed that a protocol should be put in place between the Commission and the Office of the First Minister and deputy First Minister regarding judicial appointments.

Recommendation 37

The Committee recommends that a protocol should be put in place between the Judicial Appointments Commission and the Office of the First Minister and deputy First Minister regarding judicial appointments.

North/South Agreements

61. The Committee discussed the arrangements which would be required to ensure that current agreements should remain in place at the point of devolution. The Committee agreed that the NIO, in consultation with OFMdFM, should take steps to ensure that relevant protocols are in place at the point of devolution.

62. The Committee agreed that there should be a review of policing and justice agreements to be carried out by the Department in

consultation with the Statutory Committee following devolution.

Recommendation 38

The Committee recommends that the NIO and OFMdFM should take forward work to ensure that current agreements should remain in place at the point of devolution and that these should be reviewed by the Department and the Statutory Committee following devolution.

Excepted Matters

Excepted Matters

63. The Committee acknowledged that SOCA and the Security Services are involved in issues of national security - which are excepted matters. Nevertheless, the Committee considered that, especially in relation to non-terrorist related organised crime, there might be virtue in developing Memoranda of Understanding between SOCA and the Security Services respectively, with the Minister/s, the Department which would have responsibility for policing and justice matters and the Assembly, to provide for an appropriate sharing of information in relation to non-terrorist related organised crime and how SOCA and the Security Services would operate in Northern Ireland.

64. There were diverse opinions about the need for a higher degree of oversight in relation to the operation of SOCA and the Security Services in Northern Ireland.

Recommendation 39

The Committee recommends the development of Memoranda of Understanding between SOCA and the Security Services respectively, with the Minister/s, the Department which would have responsibility for policing and justice matters and the Assembly, to provide for an appropriate sharing of information.

Issue 4: Preparations

Identification of the preparations which the Northern Ireland Assembly has made, and needs to make, to facilitate the devolution of policing and justice matters

64. In the evidence provided by the NIO, the Office of the First Minister and deputy First Minister and the range of organisations involved in policing and justice matters, it was made clear to the Committee that all the necessary administrative arrangements had been made, or could be made, in time to respond to any request there might be for devolution of policing and justice matters.

65. Elsewhere in this report, notably in the sections dealing with structure, relationships, governance and accountability, the Committee has identified a range of matters on which further work needs to be done. Some of this work will be the subject of political negotiations,

whilst other elements are of an administrative nature and are capable of being addressed before, or after, devolution of policing and justice matters. It is also expected that the relevant Memoranda of Understanding which are required prior to devolution, will be made available by the NIO to the Assembly in March or April 2008. Consequently, the Committee is unable, at this stage, to comment on their efficacy or adequacy.

Financial Provisions

66. The Committee discussed the issue of funding for policing and justice on various occasions. It is concerned that, following devolution of those powers, any pressure that might arise on the policing and justice budget may, ultimately, have to be borne by the NI Block. The Committee agreed that detailed discussions should take place between the political parties, the NIO, the Court Service and the Policing Board, before devolution, in order to attempt to finalise the financial provisions for policing and justice.

Recommendation 40

The Committee recommends that detailed discussions should take place between the political parties, the NIO, the Court Service and the Policing Board, before devolution, in order to attempt to finalise the financial provisions for policing and justice.

Assembly Procedures

67. Following the successful conclusion of political negotiations, it will be necessary for the First Minister and the deputy First Minister acting jointly to table a motion resolving that the range of policing and justice matters described in this Report should cease to be reserved matters; and that the resolution is passed by the Assembly with the support of a majority of the members voting on the motion, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.

Issue 5:

Timing of the devolution of policing and justice matters

68. The political parties represented on the Committee had different views on the timing of devolution of policing and justice matters, and given those diverse opinions, the Committee was unable to reach consensus on this issue.

69. Since the Committee was unable to reach consensus on the timing of devolution of policing and justice matters, and this report includes recommendations about further political negotiations, the Committee was unable to reach a conclusion as to whether the Assembly will make a request for the transfer of policing and justice matters before 1 May 2008.

Recommendation 41

The Committee recommends that the political parties commit to further discussions to agree when a request might be made for the devolution of policing and justice matters.

Annex A: Summary of what will devolve and what will not devolve

Unless otherwise specified, when the table refers to issues devolving it means both that the Assembly will take on legislative competence for that particular area and that any statutory functions or powers currently conferred on UK Ministers will transfer to NI Ministers or Departments. [\[25\]](#)

Schedule 3 paragraph	Reserved Matters that will devolve	Reserved Matters that will not devolve	Excepted Matters
<p>9(a) & (b) The criminal law and the creation of offences and penalties.</p>	<p>The criminal law and the creation of offences and penalties generally, subject to the entry in the next column.</p> <p>Executive and regulatory powers under the Misuse of Drugs Act 1971.25</p> <p>Advice to the Crown on the exercise of the Royal Prerogative of Mercy on non-terrorist offences.</p>	<p>Advice to the Crown on the exercise of the Royal Prerogative of Mercy on offences that remain in the reserved or excepted field.</p> <p>Classification of drugs and the overall framework of the 1971 Act (new para 9ZA of Sch. 3 to the 1998 Act)</p>	<p>The law governing treason or terrorist offences (paras 7 and 17 of Sch. 2 to the 1998 Act)</p> <p>Advice to the Crown on the exercise of the Royal Prerogative of Mercy on offences that remain in the reserved or excepted field.</p>
<p>9(c) The prevention and detection of crime.</p>	<p>The law on police powers (other than those relating to counter-terrorism and intelligence gathering).</p> <p>Regulation of the private security industry in the longer term by the Security Industry Authority.</p> <p>The work of Forensic Science Northern Ireland and the State Pathologist's Department.</p>	<p>The legislation and regulatory structure governing the acquisition of intelligence information (including RIPA insofar as it is not already excepted) (new paras 9(a) and (b) of Sch. 3)</p> <p>Regulation of the private security industry under the current temporary arrangements (new para 9(d) of Sch. 3)</p>	<p>Police powers under counter-terrorism legislation (para 7 of Sch 2)</p> <p>Legislation governing extradition and international mutual legal assistance (para 3 of Sch. 2)</p> <p>The work of HM Revenue & Customs, the Serious Organised Crime Agency and the Borders & Immigration Agency (paras 8 - 10 of Sch. 2)</p> <p>The Serious Organised Crime Agency exercise a UK wide</p>

[\[26\]](#)

Schedule 3 paragraph	Reserved Matters that will devolve	Reserved Matters that will not devolve	Excepted Matters
9(d) Prosecutions	<p>Attorney General for NI.</p> <p>Public Prosecution Service for Northern Ireland.</p>		Advocate General for NI (para. 21A of Sch. 2)
9(e) Treatment of offenders	<p>The care and supervision of offenders in custody and on licence in the community.</p> <p>Functions relating to mentally disordered offenders.²⁶</p> <p>The release and recall of offenders generally subject to the entry in the next column.</p> <p>Probation Board for NI.</p> <p>Youth Justice Agency.</p> <p>NI Prisoner Ombudsman.</p>	<p>Legislation on separated accommodation will require SoS consent; decisions about entry to and removal from separated accommodation will fall to SoS (new para 9(c)(i) of Sch. 3)</p> <p>Legislation on the release of life sentence prisoners on licence, and certain functions relating to the Life Sentence Review Commissioners (new para 9(c)(ii) of Sch. 3)</p> <p>Legislation on the transfer of prisoners from NI to other parts of the UK (new para 9(c)(iii) of Sch. 3)</p>	<p>The Sentence Review Commissioners (para 17 of Sch. 2)</p> <p>This area will need to be revised in the light of the upcoming Criminal Justice Order</p>
9(g) Compensation	The work of the Compensation Agency and the Criminal Injuries Compensation Appeals Panel.		The compensation scheme provided for in the Terrorism Act 2000 and its successor scheme in the Justice & Security (NI) Act 2007 (para 17 of Sch. 2)
9(h) Community safety partnerships.	Everything.	Nothing.	
9A Chief Inspector of Criminal Justice for NI	Everything.	Nothing.	

<p>10 Public Order</p>	<p>The statutory framework governing the maintenance of public order, except as set out in the next column.</p>	<p>Police and army powers under ss. 21-42 of the Justice & Security (NI) Act 2007, while these are in force (new para 10A of Sch. 3)</p> <p>Matters dealt with under the Public Processions (Northern Ireland) Act 1998</p>	
<p>11 Policing</p>	<p>The PSNI. Policing Board for NI Police Ombudsman for NI District Policing Partnerships</p>	<p>The Secretary of State will continue to be responsible for national security matters including protection of national security related information (new para 11(a) of Sch. 3, insofar as not excepted under para 17 of Sch. 2)</p> <p>Matters relating to 50:50 temporary recruitment provisions</p>	<p>National security matters (para 17 of Sch. 2)</p>
<p>11A Co-operation between the PSNI and the Garda Siochana</p>	<p>Everything.</p>	<p>Nothing.</p>	
<p>12 Firearms & explosives</p>	<p>The framework for licensing 'normal' firearms. Fireworks regulation. Health & safety aspects of explosives regulation.</p>	<p>Licensing prohibited weapons and regulation of crown servants' access to firearms (new para. 12(a) and (d) of Sch. 3)</p> <p>Appeals against the Chief Constable's decision not to issue a firearms certificate – will be devolved in due course (new para 12(b) of Sch. 3)</p> <p>The removal, in individual cases, of a statutory prohibition on the purchase, etc. of firearms (new para 12 (c) of Sch. 3)</p> <p>Security aspects of explosives</p>	

		regulation (provision still to be drafted)	
<p>14A Rights of appeal to the Supreme Court and legal aid for such appeals.</p> <p>This provision is not yet commenced. The Supreme Court itself is excepted (para 11A of Sch.2 to the 1998 Act).</p>	<p>Conferral of a right of appeal to the Supreme Court of the United Kingdom and legal aid for such appeal once this provision is commenced.</p>		<p>The Supreme Court of the United Kingdom (which is to replace the appellate functions of the House of Lords) itself will remain excepted (para. 11A of Sch. 2)</p>
<p>15 The Courts</p> <p>[The functions of the Lord Chief Justice of NI, as head of the judiciary in NI, will remain unchanged following devolution.]</p>	<p>The NI Court Service</p> <p>Legal aid</p> <p>Judicial appointments and removals</p> <p>The NI Judicial Appointments Commission and Judicial Appointments Ombudsman.</p> <p>Payment of judicial salaries and pensions.</p> <p>Certain administrative functions in relation to extradition and mutual legal assistance cases.</p>	<p>UK-wide Lord Chancellor functions relating to the Data Protection Act 1998 (para 40 of Sch. 3).</p>	<p>The Prime Minister will continue to have a role in the appointment of the Lord Chief Justice and Lord Justices of Appeal. Both the Prime Minister and the Lord Chancellor will have a role in any removal of the Lord Chief Justice and a Lord Justice of Appeal (para 11 of Sch. 2)</p> <p>The appointment of special advocates (para 17 of Sch 2)</p> <p>The determination of judicial salaries, pensions and other terms & conditions (para 11 of Sch. 2)</p> <p>UK-wide Lord Chancellor functions relating to</p> <ul style="list-style-type: none"> • the judiciary (para 11 of Sch.2 • or international relations (para 3 of Sch.2) • or under the Human Rights Act 1998 (para 3 of Sch.2 and section 7(1) (b))
<p>15A The Northern Ireland Law Commission.</p>	<p>Everything now the Commission is established, although the Commission members are not all appointed.</p>	<p>Nothing.</p>	

[1] The Committee noted that the draft Criminal Justice Order will introduce a new system of 'Parole Commissioners' which will replace the current 'Life Sentence Review Commissioners'

[2] The Committee noted that the Judicial Appointments Ombudsman will now transfer to the Department having responsibility for policing and justice and not OFMdFM as proposed in the NIO letter of 15 October 2007.

[3] "Discussions on the devolution of policing and justice have progressed well in the Preparation for Government Committee. The Governments have requested the parties to continue these discussions so as to agree the necessary administrative arrangements to create a new policing and justice department. It is our view that implementation of the agreement published today should be sufficient to build the community confidence necessary for the Assembly to request devolution of criminal justice and policing from the British Government by May 2008."

[4] Section 4 (2) of the Northern Ireland Act 1998. Transferred, excepted and reserved matters. [(2A) The Secretary of State shall not lay before Parliament under subsection 2 the draft of an order amending Schedule 3 so that a devolved policing and justice matter ceases to be a reserved matter unless –

(a) a motion for the resolution praying that the matter should cease to be a reserved matter is tabled by the First Minister and the deputy First Minister acting jointly; and

(b) the resolution is passed by the Assembly with the support of a majority of the members voting on the motion, a majority of the designated Nationalists voting and a majority of the designated Unionists voting.]

[5] That this Assembly calls on the Assembly and Executive Review Committee to report, by 29 February 2008, on the work which needs to be undertaken, in accordance with section 18 of the Northern Ireland (St. Andrews Agreement) Act 2006 —

(a) as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St. Andrews Agreement, for or in connection with policing and justice matters ceasing to be reserved matters;

(b) as to which matters are likely to be the subject of any request under section 4(2A) of the Northern Ireland Act 1998 that policing and justice matters should cease to be reserved matters; and

(c) containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008

[6] Terms of reference for the Inquiry

"To identify those policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998 (the 1998 Act);

To consider which of these matters should be devolved and the extent to which they should be devolved;

To identify the preferred ministerial model and procedures for filling the ministerial post/posts for the new policing and justice department;

To identify what preparations need to be made by the Northern Ireland Assembly to facilitate the devolution of policing and justice matters and what preparations have been made;

To assess whether the Assembly is likely to make a request under section 4 (2A) of the 1998 Act before 1 May 2008, as to which policing and justice matters should cease to be reserved matters; and

To report to the Assembly by 29 February 2008."

[7] "Devolving Policing and Justice in Northern Ireland: Discussion Paper" (February 2006) – see Appendix 3

[8] Appendix 3: 'Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals, paragraphs 3.5 – 3.7

[9] Appendix 3: 'Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals, paragraphs 4.3 – 4.5

[10] Appendix 3: 'Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals, paragraphs 6.2 – 6.11

[11] Appendix 3: 'Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals, paragraphs 10.3 – 10.4

[12] Appendix 3: 'Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals, paragraphs 12.1 – 12.13

[13] Appendix 3: 'Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals, paragraph 15.10

[14] See Appendix 3

[15] The Committee noted that the draft Criminal Justice Order will introduce a new system of 'Parole Commissioners' which will replace the current 'Life Sentence Review Commissioners'

[16] The Committee noted that the Judicial Appointments Ombudsman will now transfer to the Department having responsibility for policing and justice and not OFMdFM as proposed in the NIO letter of 15 October 2007.

[17] See Appendix 3

[18] See Appendix 4: written submission from Criminal Justice Inspection Northern Ireland

[19] 'Review of the Criminal Justice System in Northern Ireland' the report of the Criminal Justice System Review, 30 March 2000. paragraph 222.

[20] See Appendix 4: written submission from NI Law Commission

[21] See Appendix 4: written submission from NI Legal Services Commission

[22] See Appendix 2: Minutes of evidence

[23] See Appendix 7: Research Papers

[24] See Appendix 7: Research Papers, and Appendix 8: 'Judiciary of England and Wales: The Accountability of the Judiciary.

[25] The majority of these functions are already devolved and are the responsibility of the DHSSPS.

[26] Most functions, including secure hospital facilities, are already devolved and fall to DHSSPS.

Appendix 1

Minutes of Proceedings Relating to the Report

Tuesday, 22 May 2007
Room 144, Parliament Buildings

Present:

Rt Hon Mr Jeffrey Donaldson MP (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd

Mr George Robinson

In attendance:

Debbie Pritchard (Principal Committee Clerk)
Stephen Graham (Assembly Clerk)
Keith McBride (Clerical Supervisor)
Lynn Gray (Clerical Officer)
Dr Peter Gilleece (Assembly Research and Library Services)

Apologies:

Ms Cáral Ní Chuilín

The meeting opened at 11.02am in Public Session

1. Apologies

Apologies are detailed above.

In the context of the work programme, members then considered the requirement on the Assembly to report to the Secretary of State on the devolution of policing and justice matters by 27 March 2008 [Section 18, Northern Ireland (St Andrews Agreement) Act 2006]

11.54am Meeting suspended due to division in the Chamber

12.11 pm Meeting re-convened with the following members present

Mr Alex Attwood, Rt Hon Mr Jeffrey Donaldson, Mrs Carmel Hanna, Mr Danny Kennedy, Mr Nelson McCausland, Mr Ian McCrea, Mr Alan McFarland, Mr John O'Dowd, Mr George Robinson.

Agreed: That the Committee should table a motion seeking the agreement of the Assembly to the Committee undertaking the work on preparing a report on the devolution of policing and justice matters.

12.14pm Raymond McCartney joined the meeting

Agreed:

“Report on progress towards devolution of policing and justice matters

That this Assembly calls on the Assembly and Executive Review Committee to report by 29 February 2008 on the work which needs to be undertaken, in accordance with section 18 of the Northern Ireland (St Andrews Agreement) Act 2006

(a) as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St Andrews

Agreement, for or in connection with policing and justice matters ceasing to be reserved matters;

(b) as to which matters are likely to be the subject of any request under section 4(2A) of the 1998 Act that policing and justice matters should cease to be reserved matters;

(c) containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008”.

Agreed: The Clerk to prepare a briefing paper on the potential impact of the Justice and Security Bill in relation to the devolution of Policing and Justice matters and to supply copies of the Bill to members.

12.54pm the Chairperson adjourned the meeting.

[EXTRACT]

Tuesday, 12 June 2007
Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mrs Debbie Pritchard (Principal Clerk)
Mr Stephen Graham (Assembly Clerk)
Ms Eleanor Murphy (Assistant Assembly Clerk)
Mr Keith McBride (Clerical Supervisor)
Mr Tom Skelton (Clerical Officer)
Dr Peter Gilleece (Assembly Research Services)

Apologies:

Mrs Carmel Hanna
Mr Ian McCrea

The meeting opened at 11:04am in public session.

1. Apologies

Apologies are detailed above.

7. Devolution of Policing and Justice

The Chairperson invited Members to declare relevant interests in relation to this item of business. The following interests were declared:

Jeffrey Donaldson:

- Member of the Northern Ireland Policing Board
- Member of Her Majesty's Privy Council

George Robinson:

- Member of Limavady District Policing Partnership

The Chairperson reminded Members that on the 4 June, and on the basis of the Committee's motion, the Assembly resolved that the task of preparing a report on the transfer of policing and justice should be a matter for the Committee. Following discussion, a number of actions were agreed, as follows:

Agreed: The Committee would conduct a formal inquiry into the transfer of policing and justice matters.

Agreed: That the Clerk should present, at the next meeting, draft terms of reference for the inquiry and a list of relevant witnesses and bodies whom the Committee might call on to inform its inquiry.

Agreed: That the Secretary of State, the Minister with responsibility for Security, Policing and Prisons, the Minister with responsibility for Criminal Justice and the Chief Constable be amongst those invited to provide evidence to the Committee.

Agreed: That relevant NIO officials be invited to address the next meeting of the Committee to provide an assessment of the expectations of the Secretary of State in terms of the report he wishes to receive from the Assembly and to report on the practical arrangements being made for the transfer of Policing, Security and Criminal Justice matters.

Agreed: That the Clerk would request copies of papers presented by the 4 main political parties at the recent Criminal Justice System Conference in time for consideration at the next meeting.

Agreed: That, following the presentation by NIO officials on 3 July 2007, the four main political parties, and those parties in the Assembly not represented on the Committee, would be invited to provide up to date position papers for consideration by the Committee after the summer recess. The papers should reflect current views on transferring policing and justice issues and the timeframe for the devolution of policing and justice matters.

12:39pm Danny Kennedy left the meeting.

The Chairperson adjourned the meeting at 12:45pm.

[EXTRACT]

Tuesday, 3 July 2007

Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

In Attendance:

Mrs Debbie Pritchard (Principal Clerk)

Mr Stephen Graham (Assembly Clerk)

Mrs Roisin Donnelly (Assistant Clerk)

Mr Keith McBride (Clerical Supervisor)

Ms Lynn Gray (Clerical Officer)

Apologies:

Mr Alex Attwood

The meeting opened at 11:05am in public session.

1. Apologies

Apologies are detailed above.

6. Inquiry into the Devolution of Policing and Justice

The Chairperson invited Members to declare relevant interests. The following interests were declared:

Jeffrey Donaldson:

- Member of the Northern Ireland Policing Board
- Member of Her Majesty's Privy Council

George Robinson:

- Member of Limavady District Policing Partnership

Ian McCrea

- Member of Cookstown District Policing Partnership

(a) Briefing by Northern Ireland Office Officials

Peter May and Clare Salters, Northern Ireland Office officials, joined the meeting at 11.58 am and gave a presentation on the devolution of policing and justice matters.

After their presentation, the officials answered questions from the members and agreed to write to the Committee Clerk with further information.

The officials left the meeting at 12.32 pm.

(b) Papers presented by political parties at the Criminal Justice System Conference

Members noted the papers presented by the DUP, SDLP and UUP at the Criminal Justice System Conference held on 5 June 2007. John O'Dowd confirmed that the paper presented by Sinn Féin would be forwarded to the Clerk for distribution in due course.

(c) Analysis of the views of political parties in relation to NIO proposals

Members noted the briefing paper providing and analysis of the political parties' views on the NIO proposals contained in the discussion paper 'Devolving Policing and Justice in Northern Ireland'.

(d) Draft Terms of Reference

There was some discussion on the level of detail and the issues to be reflected in the Terms of Reference.

Agreed: That the draft Terms of Reference should be adopted.

(e) Inquiry Workplan

Agreed: That the proposed inquiry work plan be adopted.

(f) Written Submissions

There was some discussion on the proposed list of organisations from whom written submissions would be invited.

Agreed: That letters would be issued inviting written submissions from those on the list presented (subject to one omission) and that a further consultation list to be obtained from OFMDFM Equality Unit, would also be used.

Agreed: That a public notice would be placed in the local newspapers inviting written submissions from any interested individual or group.

Agreed: That the political parties would be furnished with the briefing paper from the NIO, the official transcript of the briefing session, the analysis of party positions and the Criminal Justice Conference papers.

The Chairperson reminded members that the deadline for receipt of written submissions was 17 August 2007.

The Chairperson adjourned the meeting at 1.03 pm.

[EXTRACT}

Tuesday 11 September 2007 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mrs Carmal Hanna
Mr Danny Kennedy
Mr Ian McCrea

Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd
Mr George Robinson

In Attendance: Mrs Debbie Pritchard (Principal Clerk)
Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Ms Lynn Gray (Clerical Officer)

Apologies: Mr Alex Attwood
Mr Nelson McCausland

The meeting opened at 11:05am in public session.

1. Apologies

Apologies are detailed above

11:20am Carál Ní Chuilín joined the meeting

11:32am John O'Dowd left the meeting

6. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

Ian McCrea declared the following interest:

- Member of Cookstown District Policing Partnership.

6.1 Consideration of Written Submissions

The Chairperson reminded Members that submissions to the Inquiry had been received up to (and including) Thursday 6 September and were included in their black folders.

6.2 Written submissions

The Chairperson referred to submissions received, to representations from the Bar Council and Law Society and correspondence from OFMdFM stating that they are considering the matter.

Members agreed:

- To accept and consider late submissions received after the deadline.
- To accept and consider submissions from those organisations which requested more time.
- To extend the deadline for written submissions to 26 September
- To re-advertise the terms of reference and details of the extended deadline.
- That the Chairperson should write reminder letters to the Green Party and the Independent Health Coalition
- That the Clerk should write to those organisations who had declared an intention to submit including the Bar Council, Law Society and OFMdFM and any other key contacts.
- That the Clerk should also write to University of Ulster Transitional Justice Unit to invite a written submission.

6.3 Oral Evidence Sessions

Members reviewed the written submissions received and considered those witnesses who might be called to give oral evidence.

Agreed:

- That the Committee will adhere to the original timetable with weekly witness sessions beginning on 25 September.
- Clerk to prepare a list of key issues/questions for oral witnesses based on the terms of Reference of the Inquiry.

11:45am Danny Kennedy left the meeting

- Research paper on the role of SOCA and its relationship with the NIO and PSNI to be commissioned.

- That the following witnesses will be called to give oral evidence:

Lord Chief Justice Secretary of State
Northern Ireland Court Service Policing Board
Alliance Party Progressive Unionist Party

- That the following organisations should be amongst 'possible witnesses' to be called to give oral evidence:

Northern Ireland Human Rights Commission Public Prosecution Service
Committee on the Administration of Justice Criminal Justice Inspection NI

- That the Committee will consider inviting the following organisations for oral evidence at a later date:

Department for Social Justice Police Service of Northern Ireland
Garda Síochána

12:20pm Carál Ní Chuilín left the meeting

6.4 Other Issues

The Committee discussed the question of 'Confidence'.

Agreed:

- That the Clerk should obtain the forward timetable of reports by the Independent Monitoring Commission.
- That it may be necessary to invite the Chief Constable to appear before the Committee in the latter stages of the Inquiry.

1:00pm Alan McFarland left the meeting

The Chairperson adjourned the meeting at 1.02 pm.

[EXTRACT]

Tuesday, 25 September 2007
Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Ms Lynn Gray (Clerical Officer)

Apologies:

Ms Carál Ní Chuilín
Mr Danny Kennedy

The meeting opened at 10:30am in public session.

1. Apologies

Apologies are detailed above.

4. Chairperson's Business

4.2 Evidence session with the Lord Chief Justice

Members noted the letter received from the Lord Chief Justice stating that he wished to confine his oral evidence to matters relating to the structure of the Court Service and issues around the judiciary.

Agreed:

- That a copy of the letter from the Lord Chief Justice will be circulated to all Members.

4.3 Arrangements for publishing transcripts of evidence

Members discussed the publication of oral evidence.

Agreed: That the corrected version of the Hansard transcripts will be published following each evidence session (including the briefing session with NIO held on 3 July 2007).

4.4 Written submissions: availability of written submissions

Members discussed the matter of making written submissions available in the public gallery.

Agreed: That written submissions from witnesses appearing before the Committee will be made available to those seated in the public gallery.

Alex Attwood joined the meeting: 10:45am

5. Inquiry into the devolution of policing and justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

Ian McCrea:

- Member, Cookstown District Policing Partnership.

Oral evidence from the Northern Ireland Court Service

Members heard oral evidence from Northern Ireland Court Service officials –

David Lavery (Director), Laurene McAlpine (Policy), Jacqui Durkin (Operations) and Siobhan Broderick (Tribunal Reform). The session was recorded by Hansard.

6. Timetable for future oral evidence sessions

Members noted the current timetable of reporting for the Independent Monitoring Commission as follows:

- Report on Normalisation published on Monday 17 September.
- Next report on Paramilitaries due mid October.
- That based on a 6 monthly reporting cycle, the next report on Paramilitaries is due in April 2008.

Agreed: That the Committee may call the Chief Constable to give evidence in the latter stages of the Inquiry.

Ian McCrea left the meeting at 12:09pm

6.1 Inquiry Timetable

Members noted the proposed timetable for future oral evidence sessions, in particular, the oral evidence session with the Progressive Unionist Party on 16 October. Members noted that the Committee is awaiting a response from the Alliance Party to give evidence on 16 October.

Members discussed the possibility of calling the Public Prosecution Service to give evidence on 16 October.

Agreed: To write to the Public Prosecution Service inviting them to give evidence on 16 October.

6.2 Views from the four main parties

Members discussed the arrangements for hearing the views of political parties.

Agreed:

- To hear oral evidence from the Progressive Unionist Party and the Alliance Party on 16 October with sessions limited to 45minutes.
- That the parties represented on the Committee will discuss each of terms of reference of the Inquiry at future Committee meetings as follows:
 - 9 October: Matters to be transferred.
 - 23 October: Ministerial models.
 - 6 November: Timing and preparations for devolution.
- That Committee meetings on 9 and 23 October and 6 November should take place in open session in Room 144 (but that the Senate Chamber will be reserved if it proved necessary to re-locate because of demand for space in the public gallery).

Ian McCrea returned to the meeting 12:14

Alan McFarland left the meeting 12:15

6.3 Request for further information

Members reflected on the evidence given by the Northern Ireland Court Service.

Agreed: That the Clerk write to the Northern Ireland Office to request the following information:

- An outline of the existing structure for policing and justice (to include details of the governance and accountability relationships which the various policing and justice organisations have with the NIO and the Secretary of State for Northern Ireland).
- A description of the departmental model to which the NIO is currently working and which highlights how, and to what extent, this differs from the existing structure referred to above (to include details of any plans to dismantle or merge existing policing, or justice, organisations).
- An outline of the governance and accountability arrangements which might apply between any new department and the various policing and justice organisations.
- Details of each of the work-streams which the Northern Ireland Office is currently undertaking in relation to the devolution of policing and justice functions, the timeframe for the completion of each work-stream, the progress made to date, and the extent to which the work remains on target or is behind schedule.
- Details of the existing budgets for all aspects of policing and justice (to include NIO costs), an indication of the budgetary allocations proposed for any new devolved structure and the overall 'financial architecture' being developed by the NIO for that structure.

6.4 Models

Members discussed the need for information on the existing/proposed models for Scotland and the Republic of Ireland.

Agreed:

- That the Secretary of State's letter of 28 December 2006 should be re-circulated to Members.
- That a research paper should be commissioned on the non-ministerial Irish Court Service model and the existing/proposed models for Scotland.
- That SOCA and the Security Services be invited to make written submissions to the Inquiry.
- That the Clerk should liaise with Mr Attwood regarding the terms of the letters to SOCA and the Security Services.

Members discussed the need for a written submission from OFMdfM.

Agreed: That the Clerk will communicate with Officials from OFMdfM to say that the Committee would find it helpful if any submission from the First Minister and deputy First Minister, on the devolution of policing and justice matters, dealt, at least, with any discussions that OFMdfM has had with the NIO, or arrangements which that Department might be making, regarding the following matters:

- Appointing the Attorney General.
- Making Judicial and Tribunal appointments.
- Sponsorship of the Judicial Appointments Commission and the Judicial Appointments Ombudsman.

7. Research Paper on Serious Organised Crime Agency

Members noted the research paper on the role of SOCA.

The Chairperson adjourned the meeting at 1.02 pm.

[EXTRACT]

Tuesday, 2 October 2007 The Senate Chamber, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Mr John Lunny (Clerical Officer)

Apologies: Mrs Carmel Hanna

The meeting opened at 10:30am in public session.

1. Apologies

Apologies are detailed above.

10.40am Ian McCrea joined the meeting

4. Chairperson's Business

Options for departmental/ministerial model

Members noted the terms of the Secretary of State's letter of 28 December 2006 about 'Ministerial Models' and the associated briefing paper which summarises the various legislative options.

Members noted that the issue of 'Ministerial Models' is due to be discussed at 23 October meeting.

5. Inquiry into the devolution of policing and justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

Ian McCrea:

- Member, Cookstown District Policing Partnership.

Oral evidence from the Northern Ireland Court Service

Members heard oral evidence from the Lord Chief Justice and his officials, Alison Houston and Simon Rogers. The session was recorded by Hansard.

10.47am Alex Attwood joined the meeting

10.55am Danny Kennedy joined the meeting

11.25am Alex Attwood left the meeting

Oral evidence session with the Northern Ireland Policing Board

Members heard oral evidence from the Chairman of the Northern Ireland Policing Board Professor Desmond Rea, Vice Chairman Barry Gilligan and Chief Executive Trevor Reaney.

12:04pm Meeting suspended due to division in the Chamber

12:20 Meeting reconvened with the following Members present:

Rt Hon Jeffrey Donaldson MP, Mr Raymond McCartney, Mr Alex Attwood, Mr Danny Kennedy, Mr Nelson McCausland, Mr Alan McFarland, Mr John Ó'Dowd, Mr George Robinson

12:28 Ian McCrea joined the meeting

6. Further Written submissions received

Members noted that further written submissions had been received from:

- The Minister for Justice, Equality and Law Reform (Republic of Ireland)
- The Equality Commission
- The Law Society of Northern Ireland
- Robert McCartney Justice Campaign
- The Irish Congress of Trade Unions

Members also noted that submissions were expected from the Bar Library and the Office of the Cabinet Secretary of Justice for Scotland.

Agreed:

- To accept the latest written submissions and those expected from the Bar Library and the Office of the Cabinet Secretary of Justice for Scotland.
- That a briefing paper be prepared on the existing arrangements for cross border co-operation between the authorities in the Republic of Ireland and the NIO, the impact of devolution on these arrangements and any protocols that would need to be put in place to ensure continued co-operation on policing and justice matters.
- That the questions prepared for the Secretary of State's evidence session will be revised to incorporate the issues arising from today's sessions with the Lord Chief Justice and the Policing Board.

The Chairperson adjourned the meeting at 1.00 pm.

[EXTRACT]

Wednesday, 3 October 2007

The Senate Chamber, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín

In Attendance:

Mrs Debbie Pritchard (Principal Clerk)
Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Ms Lynn Gray (Clerical Officer)

Apologies:

Mrs Carmel Hanna
Mr John O'Dowd
Mr George Robinson

The meeting opened at 10:30am in public session.

1. Apologies

Apologies are detailed above.

2. Inquiry into devolution of policing and justice matters

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership.

Oral evidence with the Secretary of State for Northern Ireland, Mr Shaun Woodward

Members heard oral evidence from the Secretary of State and NIO officials, Clare Salters and Peter May. The session was recorded by Hansard.

Agreed: That the Clerk write to the Secretary of State to request a written response on the following:

- Matters relating to the budgetary allocations for any devolved Department of Policing and Justice.
- Issues about communication between any new Department, the Security Services, the Serious Organised Crime Agency and the NIO.
- Any outstanding questions (from the prepared list) which had not been posed during the oral evidence session.

11.30am Alex Attwood left the meeting

The Chairperson adjourned the meeting at 11.34am

[EXTRACT]

Tuesday, 9 October 2007

Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr George Robinson

In Attendance:

Mrs Debbie Pritchard (Principal Clerk)
Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Ms Lynn Gray (Clerical Officer)

Apologies:

Mr Nelson McCausland

The meeting opened at 11:00am in public session.

1. Apologies

Apologies are detailed above.

11:04am Carál Ní Chuilín joined the meeting

11:08am Alan McFarland joined the meeting

11:12am Carmel Hanna and Alex Attwood joined the meeting

3. Matters arising

3.3 Oral evidence with the Secretary of State

Members noted that a comprehensive letter has been sent to the Secretary of State's office covering the matters which were not addressed at the evidence session.

Agreed: That a copy of this letter will be issued to all Members.

4. Chairperson's Business

4.1 Northern Ireland Court Service

Members noted the letter of thanks received from the Director of the Court Service, Mr David Lavery.

Members noted that additional information on 'departmental models' has been received from the Court Service and the office of the Lord Chief Justice.

Agreed: This material will be summarised and issued to the Committee prior to the discussion planned for 23 October.

5. Inquiry into the devolution of policing and justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

Ian McCrea:

- Member, Cookstown District Policing Partnership

Identification of Policing and Justice matters which are currently reserved matters

This session was recorded by Hansard.

Members discussed which Policing and Justice matters are currently reserved matters.

Agreed: That the matters specified in the Northern Ireland Office (NIO) Discussion Document (February 2006) be regarded as the Policing and Justice matters which are currently 'reserved' matters.

Matters to be transferred

Members proceeded to discuss the matters to be transferred according to the categories detailed in the NIO Discussion Document (February 2006).

Members noted there is currently no provision in the Northern Ireland Act 1998 under which the Assembly could request the transfer of an 'excepted' matter.

Members also noted that the Committee awaits a response from the NIO, SOCA and the Security Services with regard to the issue of accountability and lines of communication.

Agreed: That the matters on which consensus had been reached during the deliberations of the Committee on the Programme for Government should be transferred.

Members then proceeded to discuss, in turn, those matters on which no consensus had been reached during the deliberations of the Committee on the Programme for Government.

Criminal Law and Creation of Offences and Penalties

(Para 9(a) & (b) Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

Prevention and Detection of Crime

(Para 9(c) Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

11:48am Carál Ní Chuilín left the meeting

Treatment of Offenders

(Para 9(e) Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

Public Order

(Para 10 Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred, subject to further work on the Parades Commission and 50:50 recruitment to the PSNI.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.
- That the Clerk will prepare a briefing paper on indicative models and safeguard mechanisms in relation to handling of issues such as the Parades Commission and 50:50 recruitment to the PSNI, and that these issues would then be considered further.
- That the Clerk will clarify whether future powers of the army to support the police are part of the Public Order (Northern Ireland) Order 1987 or the Terrorism Act 2000, and whether these will be repealed as part of the normalisation process.

The Police and the Policing Accountability Framework

(Para 11 Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters

(Para 11 Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That, in principle, the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred, subject to confirmation that the list of matters set out in the NIO Discussion document accords with the list of matters to be transferred in the Miscellaneous Provisions Act 2006.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.
- That information on existing and proposed arrangements for co-operation would be reviewed by the Committee at a later date.

Firearms and explosives

(Para 12 of Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document with regard to responsibility for 'explosives' should be transferred.
- The DUP and UUP will each clarify their position on the devolution of legislative and administrative responsibility for 'firearms' at the next meeting.

The Courts

(Paras 14A, 15 and 17 of Schedule 3 to the Northern Ireland Act 1998)

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

The Chairperson adjourned the meeting at 1.02 pm.

[EXTRACT]

Tuesday, 16 October 2007

The Senate Chamber, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mrs Debbie Pritchard (Principal Clerk)
Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Ms Lynn Gray (Clerical Officer)

Apologies: Ms Carál Ní Chuilín

The meeting opened at 10:30am in public session.

1. Apologies

Apologies are detailed above.

3. Chairperson's Business

3.3 Letter to the Secretary of State's Office

Members noted that a copy of the Clerk's letter of 8 October to the Secretary of State regarding outstanding policing and justice matters was issued to Members in this week's pack.

4. Inquiry into Devolution of Policing and Justice Matters

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

4.1 Oral evidence from the Progressive Unionist Party

Members heard oral evidence from the leader of the Progressive Unionist Party Mrs Dawn Purvis and party colleagues, Mr David Rose and Mr Stuart Finn. This session was recorded by Hansard.

10:51 Carmel Hanna joined the meeting

10:52 Alex Attwood joined the meeting

10:56 Danny Kennedy joined the meeting

10:58 Ian McCrea joined the meeting

11:09 Nelson McCausland joined the meeting

4.2 Oral evidence from the Alliance Party

Members heard oral evidence from the leader of the Alliance Party Mr David Ford and party colleague Dr Stephen Farry. This session was recorded by Hansard.

11:16 Alex Attwood left the meeting

11:26 Alex Attwood joined the meeting

11:28 Alex Attwood left the meeting

4.3 Oral evidence from the Public Prosecution Service

Members heard oral evidence from the Director of the Public Prosecution Service Sir Alastair Fraser and his colleagues Mr Raymond Kitson (Senior Assistant Director) and Mr Ian Hearst (Assistant Director). This session was recorded by Hansard.

Members discussed the evidence given by the Public Prosecution Service.

Agreed: That a paper be provided on the justice models in England and Wales which explains the relationship between the relevant government departments, the Court Service and the Crown Prosecution Service.

5. Matters Arising

5.1 Inquiry into the Devolution of Policing and Justice

This session was recorded by Hansard.

12:32 John O'Dowd left the meeting

Members gave further consideration to the following matters.

12:34 Danny Kennedy left the meeting

5.1.1 Public Order

(Para 10 Schedule 3 to the Northern Ireland Act 1998)

Members noted the briefing paper provided at Tab 2 of their packs regarding indicative models and safeguard mechanisms in relation to handling of issues such as the Parades Commission and 50:50 recruitment to the PSNI.

Parades Issues

Members noted that an interim report is expected on the 'Strategic Review of Parading' at the end of the year with final recommendations to follow in Spring 2008.

Agreed: There were diverse opinions about the transfer of 'appointments to the Parades Commission and its operation' and there was no consensus about whether this should continue to be a 'reserved' matter.

Future powers of the army to support the Police

Members noted that the Clerk has written to the NIO for clarification on this issue.

Agreed: That the Committee will consider this matter further when a response has been received from the NIO.

5.1.2 The Police and the Policing Accountability Framework

(Para 11 Schedule 3 to the Northern Ireland Act 1998)

Members discussed the transfer of powers in relation to the issue of 50:50 temporary recruitment to the PSNI.

Agreed: There were diverse opinions about the transfer of '50:50 temporary recruitment provisions' and there was no consensus about whether this should continue to be a 'reserved' matter.

5.1.3 Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters

(Para 11 Schedule 3 to the Northern Ireland Act 1998)

Members noted the briefing paper provided at Tab 3 of their packs which confirms the list of matters to be transferred as described in the Miscellaneous Provisions Act 2006.

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these

'excepted' matters.

5.1.4 Firearms and explosives

(Para 12 of Schedule 3 to the Northern Ireland Act 1998)

Members discussed the issue of devolution of legislative and administrative responsibility for prohibited firearms.

Agreed:

- That responsibility for policy development, legislation and general oversight of 'non-prohibited' firearms should be devolved.
- There were diverse opinions about the transfer of responsibility for 'prohibited firearms'.
- That the Clerk prepare a paper on the devolution of power in relation to 'prohibited firearms' in Scotland and England and Wales.
- That the Committee will consider the issue of 'prohibited firearms' at a later date.

The Chairperson adjourned the meeting at 12.58 pm.

[EXTRACT]

Tuesday, 23 October 2007 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)

Ms Sinead Nash (Assistant Clerk)

Mr Keith McBride (Clerical Supervisor)

Ms Lynn Gray (Clerical Officer)

Apologies:
Mr Raymond McCartney (Deputy Chairperson)
Mr Danny Kennedy

The meeting opened at 11:02am in public session.

1. Apologies

Apologies are detailed above.

3. Matters Arising

3.3 Firearms

Members noted that a paper will be available for the next meeting regarding the extent to which firearms matters have been transferred to the Scottish Parliament.

4. Chairperson's Business

4.2 Written submissions to the Inquiry

Members noted that, of those organisations who were given a further opportunity to make a written submission to the Inquiry, including OFMdFM, the Serious Organised Crime Agency (SOCA), the Scottish Cabinet Secretary for Justice, the Police Ombudsman and local academics, only SOCA and the Scottish Cabinet Secretary for Justice had replied.

Agreed: That, in the continued absence of a submission from OFMdFM, the Chairperson should write to request a response on the following issues:

- Appointment of the Attorney General
- Efficiency Review Panel - Number of Departments/Ministers
- Responsibility for the Public Prosecution Service

and that the First Minister and deputy First Minister should also agree to meet with a Committee delegation (comprising the four parties) for the purposes of updating the Committee on the proposed establishment of the Efficiency Review Panel.

5. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

Ian McCrea:

- Member, Cookstown District Policing Partnership

5.1 Identification of a preferred ministerial model and procedures for filling the ministerial post/s for any new policing and justice department.

This session was recorded by Hansard.

5.1.1 Departmental model

Members discussed the Departmental model for any new policing and justice department.

Agreed: That a single departmental structure, on which consensus had been reached during the deliberations of the Committee on the Programme for Government, remains the position of parties represented on the Committee.

5.1.2 Ministerial Model

Members then proceeded to discuss the options for a Ministerial model.

Agreed:

- That the Clerk will prepare a paper which clarifies the legislative options for Ministerial models including the effect of the Justice and Security (Northern Ireland) Act 2007 on the Northern Ireland (Miscellaneous Provisions) Act 2006.
- That the matter of a Ministerial model should be the subject of further discussion.

- That the Clerk obtain a script of the statement from the Minister of Finance regarding the budget for Ministerial Departments.

12:21 Carál Ní Chuilín left the meeting

5.1.3 Departmental Structure

Members proceeded to discuss matters relating to structure and noted the responses from the NIO (15 October), SOCA (18 October) and the Cabinet Secretary for Justice in Scotland (22 October).

Members heard a presentation on the research paper regarding the Court Service models in Scotland and the Republic of Ireland and noted additional papers supplied by the Court Service and the Lord Chief Justice as well as the briefing paper on the Court Service in England and Wales.

12:32 Carmel Hanna left the meeting

Agreed:

- That a research paper be commissioned on the Court Service and Crown Prosecution Service model in England and Wales and how they might compare with any proposed model for Northern Ireland following devolution.
- That Members will review the responses from the NIO, SOCA and the Cabinet Secretary for Justice in Scotland to establish the extent to which they consider they have sufficient clarification of earlier queries.
- That Members will report their views on the responses, referred to above, at the next meeting.

The Chairperson adjourned the meeting at 12.44 pm.

[EXTRACT]

Tuesday, 6 November 2007 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd

Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)

Ms Sinead Nash (Assistant Clerk)

Mr Keith McBride (Clerical Supervisor)

Ms Lynn Gray (Clerical Officer)

Mr Michael Johnston (Clerical Officer)

Apologies:

Mr Raymond McCartney (Deputy Chairperson)

Ms Carál Ní Chuilín

The meeting opened at 11:07am in public session.

1. Apologies

Apologies are detailed above.

3. Chairperson's Business

3.3 Correspondence from Committee on the Administration of Justice

Members noted an email from the CAJ expressing their disappointment at the fact that they have not been called to give evidence to the Inquiry.

Agreed:

- That the CAJ will not be invited to give oral evidence.
- That the Clerk write to the CAJ expressing the Committee's appreciation for their contribution to the Inquiry by written submission and stating that they will not be required to provide oral evidence.

4. Matters Arising

4.2 Letter to OFMdfM

Members noted that a letter has been forwarded to OFMdfM regarding the inquiry into the devolution of policing and justice and inviting a response on the following issues:

- Appointment of the Attorney General
- Efficiency Review Panel – Number of Departments / Ministers
- Responsibility for the Public Prosecution Service; and
- That FM/dFM should also agree to meet with a Committee delegation.

11.21am Alex Attwood joined the meeting

5. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

George Robinson:

- Member, Limavady District Policing Partnership

Ian McCrea:

- Member, Cookstown District Policing Partnership

5.1 Identification of a preferred ministerial model and procedures for filling the ministerial post/s for any new policing and justice department.

This session was recorded by Hansard.

5.1.1 Ministerial model

Members discussed the options for a Ministerial model.

11.32 George Robinson left the meeting

11.37 Carmel Hanna joined the meeting

12.04 George Robinson joined the meeting

Sinn Féin favoured the model of two Ministers acting equally and jointly, whereas the SDLP stated that a single Minister is the most appropriate model. However, recognising that this may not be a realistic option, the SDLP's second preference is for two Ministers acting equally and jointly, separate from OFMdFM.

The UUP support the model of a single Minister, but only in circumstances where there is full community confidence. This is a view shared by the DUP.

Agreed: That there was presently no consensus on the arrangements for a Ministerial model and that the matter should be re-visited later in the Inquiry.

5.1.2 Departmental structure

Members proceeded to discuss matters relating to structure and referred to documents distributed at 23 October meeting, including correspondence from the NIO (15 October), SOCA (18 October), the Cabinet Secretary for Justice in Scotland (22 October) and the recent research paper on the Court Service model.

Members heard a presentation on a research paper regarding the Court Service and Crown Prosecution Service models England and Wales and how they compare with the proposed model for Northern Ireland.

Agreed: That the four parties represented on the Committee would bring forward papers for discussion at the Committee's meeting scheduled for 20 November 2007 addressing the issues raised in the recent research papers.

5.1.3 Governance and accountability

Members discussed the issue of governance and accountability.

Agreed:

- That the Committee may invite an expert witness to advise the Committee on the structure of the Criminal Justice system.
- That the Clerk liaise with Research and Library Services to investigate a list of possible expert witnesses and to prepare a 'specification document' which summarises the issues which the witness might be expected to address.

12.51 Alan McFarland left the meeting

5.2 Firearms

Members noted that a paper will be available for the next meeting regarding the extent to which firearms matters have been transferred to the Scottish Parliament.

The Chairperson adjourned the meeting at 12.58 pm.

[EXTRACT]

Tuesday, 20 November 2007 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Mr John Lunny (Clerical Officer)

Apologies: Ms Carál Ní Chuilín

The meeting opened at 11:04am in public session.

1. Apologies

Apologies are detailed above.

3. Chairperson's Business

3.2 Format of today's meeting

Members noted that one of the items on today's agenda is to agree the priority list of expert witnesses, who will be invited advise the Committee on the governance and accountability arrangements for any new Department of policing and justice.

Agreed: That this part of the meeting will be conducted in closed session.

4. Matters Arising

4.2 Correspondence with OFMdfM

Members noted the continued absence of a response from OFMdfM regarding their preparations for the devolution of policing and justice.

Agreed: That, in the continued absence of a response from OFMdfM, the Chairperson should write to request at least an initial response which should include information on the progress of OFMdfM in relation to:

- Appointment of the Attorney General
- Efficiency Review Panel - Number of Departments/Ministers
- Responsibility for the Public Prosecution Service

5. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

George Robinson:

- Member, Limavady District Policing Partnership

This session was recorded by Hansard.

5.1 Independent Monitoring Commission

Members noted the latest report of the Independent Monitoring Commission on 'Normalisation' published on 17 September.

5.2 Chief Constable, PSNI

Members discussed the possibility of inviting the Chief Constable to provide evidence to the Committee.

11:27 Danny Kennedy left the meeting

11:28 George Robinson joined the meeting

Agreed:

- That the Chief Constable will be invited to provide evidence to the Committee on either 8 or 15 January 2008.
- That members will consider, in time for next week's meeting, whether there are further witnesses who they wish to invite in order to inform their deliberations with regard to 'timing' and 'confidence' issues.

6. Departmental structure

6.1 Party Papers

Members discussed progress in relation to the preparation of party papers on the governance and accountability mechanisms which should exist within any new department of policing and justice.

11:32 Alex Attwood joined the meeting

11:34 Carmel Hanna joined the meeting

Agreed: That the parties will submit papers after hearing from the expert witness/witnesses regarding governance and accountability mechanisms.

The meeting moved to closed session at 11:39 am

6.2 Expert Witness

Members noted the list of potential expert witnesses and the specification document which sets out the issues which the witness/witnesses may be expected to address.

11:48 George Robinson left the meeting

Agreed:

- Members agreed the list of expert witnesses, with one addition, and ranked them in order of preference.

11:51 George Robinson joined the meeting

- That the Clerk will contact the potential expert witnesses, in order of preference, to invite up to three witnesses to provide advice to the Committee.
- That the expert witness/witnesses will be requested to make a written submission by 5 December 2007 and appear before the Committee on either 11 or 18 December.
- That witnesses may be entitled to 'out of pocket' expenses only.

6.3 Forward work plan

Members discussed the Inquiry timeline and the agenda for meetings up until January 2008.

Agreed:

- That Members will return to the outstanding issues in relation to the 'matters to be transferred' at next week's meeting.
- That the Committee may meet on 18 December depending on the outcome of the invitations to expert witnesses to appear before the Committee.
- That there will be no Committee meeting on 4 December.

The Chairperson adjourned the meeting at 12:09 pm.

[EXTRACT]

Tuesday, 27 November 2007

Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Keith McBride (Clerical Supervisor)
Mr Michael Johnston (Clerical Officer)

Apologies: Mr John O'Dowd

The meeting opened at 11:08 am in public session.

1. Apologies

Apologies are detailed above.

3. Chairperson's Business

11.12 am Carmel Hanna joined the meeting

3.2 Expert Witnesses

Members noted that, in relation to the expert witnesses who have been invited to advise the Committee:

- Lord Woolf was unable to accept because of diary commitments.
- Justice Denham was unable to accept, but invited the Committee to Dublin to have discussions with Members of the Board of the Irish Court Service who are judges.
- Following a recommendation from Justice Denham, and in consultation with the Committee, the Chief Executive of the Irish Court Service, Mr PJ Fitzpatrick, has agreed to assist the Committee. Mr Fitzpatrick will prepare a paper and attend the 18

December Committee meeting.

- An invitation has been extended to Lord Goldsmith. A response has not yet been received.
- Professor John Jackson, Queen's University Belfast, has agreed to assist the Committee.

Agreed:

- That, in the absence of a response from Lord Goldsmith, the Clerk will seek to engage an expert witness to provide a perspective from England and Wales.

11.15am Danny Kennedy joined the meeting

- That the Clerk will write to Justice Denham to express appreciation for the invitation to meet with members of the Irish Court Service, explaining that timing is a major problem for the Committee and that it may be appropriate to consider a meeting at a later date.

3.3 Invitation from Criminal Justice Inspectorate (CJI)

Members noted that the CJI will be holding a conference for stakeholders in the Criminal Justice System on 17 January under the theme of 'the devolution of criminal justice in Northern Ireland'.

Members noted that the Chair has been invited to attend this meeting to "provide a perspective on the challenges that the devolution of policing and justice will pose".

Agreed:

- That it would be inappropriate for the Chair to discuss the Committee's position before the recommendations of the 'Inquiry into the devolution of policing and justice' have been considered by the Assembly.
- That the Clerk will contact CJI to clarify the nature of the contribution they are expecting from the Chair.
- Following clarification from CJI, the Committee will discuss whether it is appropriate for the Chair or other party representatives to attend this conference.

12.13 pm Carál Ní Chuilín left the meeting

5. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

George Robinson:

- Member, Limavady District Policing Partnership

This session was recorded by Hansard.

5.1 Matters to be transferred

Members noted that there are five outstanding matters to be dealt with in relation to the 'matters to be transferred'.

Members noted that responses are awaited from the NIO regarding two of the outstanding 'matters to be transferred'; the powers of the army to act in support of the police, and the powers in relation to the misuse of drugs.

Agreed:

- That the Committee will address the issue of '50:50 recruitment' following the evidence session with the Chief Constable.
- That the Committee will await the interim report of the 'strategic review of parading' before dealing with the parades issue as part of the 'matters to be transferred'.
- That the Chairperson should table a question at Westminster about the 'Strategic Review of Parading'.

Members noted the briefing paper (tabled) setting out the options for the devolution of firearms.

Agreed:

- That responsibility for policy development, legislation and general oversight of 'non-prohibited' firearms should be devolved.
- There were diverse opinions about the transfer of responsibility for 'prohibited firearms'.
- That the Clerk will develop wording for potential inclusion in the final report, which might recommend that, on matters where

there were diverse opinions, the Assembly would continue to keep under review those matters which continue to be 'reserved'.

5.2 Chief Constable, PSNI

Members noted that the Chief Constable will provide evidence to the Committee on 8 January 2008 at 11.15am in the Senate Chamber.

6. Departmental structure

6.1 Party Papers

Members noted that a preparation pack was distributed on 7 November to assist parties in preparing papers on the governance and accountability issues raised in recent research papers.

Agreed:

- That the Clerk prepare and distribute a consolidated list of questions to be considered as part of the party papers.
- That the party papers will be submitted to the Committee office by 9 January for discussion at 15 January Committee meeting.

The Chairperson adjourned the meeting at 12:31 pm.

[EXTRACT]

Tuesday, 11 December 2007 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Michael Johnston (Clerical Officer)

Mr John Lunny (Clerical Officer)

Apologies:

Mr Raymond McCartney (Deputy Chairperson)

Mr George Robinson

The meeting opened at 11:05am in public session.

1. Apologies

Apologies are detailed above.

3. Chairperson's Business

3.1 Expert Witnesses

Members noted that Sir Ron De Witt will be unable to provide advice to the Committee due to his imminent departure from the post of Chief Executive of HM Court Service (HMCS).

Members noted that Lord Justice Thomas, a former member of the management board of HMCS, will confirm by the end of the week whether he might be able to assist the Committee.

The Clerk drew attention to the October 2007 Judiciary paper on 'accountability', as recommended by Lord Thomas.

Agreed:

- That a paper be prepared which summarises the Judiciary paper on 'accountability' in time for next week's meeting.
- That the Clerk will source any relevant papers by Professor Bogdanor which are referenced in the Judiciary paper for inclusion in next week's papers.

11:10 Carmel Hanna joined the meeting

4. Matters Arising

4.1 Criminal Justice Inspectorate

Members noted the letter received from the CJI providing clarification on the agenda for 17 January stakeholder conference and the

contribution expected from the Committee.

Agreed:

- That the Committee considers it would not be appropriate for the Chairperson to address the conference before the recommendations of the 'Inquiry into the devolution of policing and justice' have been considered by the Assembly.
- That Members of the Committee would seek to avoid attending the conference, given the sensitive stage which may have been reached in the deliberations of the Committee.
- That, instead, Committee Members would encourage their respective parties to send representatives to the conference.
- That Committee Members would encourage party colleagues, who might be representatives at the conference, to refrain from speculating about the potential content of the Committee's report.
- That the Clerk should advise Kit Chivers accordingly, in writing.

11:20 Alex Attwood Joined the meeting

11:24 Meeting suspended for equipment check

11:26 Meeting reconvened

5. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

This session was recorded by Hansard.

5.1 Matters to be transferred

Members discussed two of the outstanding matters to be dealt with in relation to the 'matters to be transferred'.

5.1.1 Future powers of the army to operate in support of the police

Members noted the 5 December NIO letter providing clarification on the 'future powers of the army to operate in support of the police'.

Members noted that further clarification has been sought from the NIO regarding the exact nature of the powers that will transfer to Northern Ireland following devolution.

Agreed: That the Committee will await further clarification from the NIO before seeking to establish whether there is consensus with regard to the transfer, or otherwise, of these matters.

5.1.2 Powers relating to the misuse of drugs

Members noted the 6 December letter from the NIO providing clarification on the responsibility for powers relating to the misuse of drugs.

Members noted that the majority of functions under the Misuse of Drugs Act 1971 are already exercised by the DHSSPS insofar as they relate to Northern Ireland.

Agreed: That the Committee accepts the arrangements for powers relating to the Misuse of Drugs, as described by the NIO, but without prejudice to any role or responsibility that might exist for the Department of Health, Social Services and Public Safety or the Committee for Health, Social Services and Public Safety.

6. Departmental structure

6.1 Party Papers

Members noted that a preparation pack was distributed on 7 November to assist parties in preparing papers on the governance and accountability issues raised in recent research papers.

Agreed:

- That the party papers will be submitted to the Committee office by noon on 9 January for discussion at the Committee meeting scheduled for 15 January.

7. Any Other Business

Members discussed the need for further consultation with the NIO before final deliberations with regard to devolution of policing and justice can take place.

Agreed:

- That the Clerk write to the NIO to invite relevant officials to attend the Committee meeting on 8 January.
- That the matters to be discussed with the NIO should include the progress of preparations for the devolution of policing and justice, and the status of existing concordats and memoranda of understanding including those dealing with relationships with authorities in the Republic of Ireland.
- That the Chairperson will liaise with the Clerk in deciding whether or not to table a question in the House of Commons regarding the status of the North/South Justice Agreement.

The Chairperson adjourned the meeting at 11:42.

[EXTRACT]

Tuesday, 18 December 2007
Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Alan McFarland
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr Michael Johnston (Clerical Officer)
Ms Annette Page (Clerical Officer)

Apologies:

Mrs Carmel Hanna
Mr Ian McCrea
Ms Carál Ní Chuilín

The meeting opened at 11:10am in public session.

1. Apologies

Apologies are detailed above.

3. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

3.1 Expert witness session with Mr PJ Fitzpatrick, Chief Executive of the Irish Court Service

Members heard from Mr PJ Fitzpatrick, Chief Executive of the Irish Court Service. The session was recorded by Hansard.

11.24 Alan McFarland joined the meeting

11.24 Danny Kennedy joined the meeting

3.2 Expert Witness session with Professor John Jackson, Queen's University Belfast

Members heard from Professor John Jackson, Queen's University Belfast. The session was recorded by Hansard.

12.25 Danny Kennedy left the meeting

3.3 Judicial Accountability

Members noted the paper at tab 3 of their packs by the Judiciary of England and Wales on 'accountability'.

Agreed: That this paper will be considered at the next meeting on 8 January.

4. Chairperson's Business

12.28 The meeting was held in private session

4.1 Inquiry into the devolution of policing and justice

Members noted the letter from OFMdfM received on 14 December.

Agreed: That officials from OFMdfM would be invited to the Committee meeting on 8 January.

1.15 Danny Kennedy joined the meeting

1.17 The meeting was held in public session

5. Matters Arising

5.2 NIO letter

Members noted the letter received from the NIO clarifying the issues raised by the Committee regarding the 'future powers of the army to operate in support of the police'.

Agreed: That this matter will be considered at the next meeting on 8 January.

The Chairperson adjourned the meeting at 1.28pm.

[EXTRACT]

Tuesday, 8 January 2008 Senate Chamber, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Mr John Lunny (Clerical Officer)
Ms Annette Page (Clerical Officer)

Apologies: Mr John O'Dowd

The meeting opened at 11:14am in public session.

1. Apologies

Apologies are detailed above.

3. Inquiry into the Devolution of Policing and Justice

3.1 Evidence session with the Chief Constable, Sir Hugh Orde, and Deputy Chief Constable, Mr Paul Leighton

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

11:20 Nelson McCausland joined the meeting

Members heard evidence from the Chief Constable, Sir Hugh Orde, and Deputy Chief Constable, Mr Paul Leighton. The session was recorded by Hansard.

11:57 Danny Kennedy left the meeting

3.2 Invite to OFMdfM

Members noted the letter from OFMdfM received on Monday 7 January declining the Committees request to attend today's meeting.

Agreed: That this matter be considered later in the meeting following the discussion with the NIO.

3.3 Evidence session with officials from the NIO

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

Members heard evidence from NIO officials Clare Salters and Peter May. This session was recorded by Hansard.

3.4 Letter from OFMdfM

1.02pm The meeting was held in private session

Members discussed the letter received from OFMdfM on 7 January.

1.15 George Robinson left the meeting

1.15 Nelson McCausland left the meeting

Agreed: That the Chair and deputy Chair would seek an urgent meeting with the Special Advisors to the First Minister and deputy First Minister, and report the outcome to the Committee at the meeting scheduled for 15 January.

1.47pm The meeting was held in public session

4. Chairperson's Business

4.1 Party papers relating to the Inquiry into the transfer of policing and justice matters

Members noted the 9 January deadline for the submission of party discussion papers.

Agreed:

That next week's agenda will include:

- Final discussions on the 'matters to be transferred'.
- Discussion on structure and accountability based on the organisational arrangements as set out in the NIO Letter of 15 October 2007.

Agreed:

- That parties might choose to delay the submission of the discussion papers until further Committee deliberations have taken place on structure and accountability.
- That part of the discussions on the Inquiry into the transfer of policing and justice matters should be held in private session.

4.3 Committee on the Administration of Justice

Members noted the letter from the CAJ received on 20 December reaffirming their desire to give oral evidence to the Inquiry.

Agreed: That the Clerk respond to the CAJ thanking them for their interest in the Inquiry, explaining the Committee's time constraints, and suggesting that any additional information might be provided by way of a further written submission to the Committee.

5. Matters Arising

5.1 Judiciary of England and Wales: Accountability

Members noted the paper at tab 5 of their packs by the Judiciary of England and Wales on 'the accountability of the Judiciary' as recommended by Lord Justice Thomas.

Members noted the transcript of a lecture by Professor V Bogdanor referred to in the Judiciary paper.

Agreed: That Members discuss these papers as part of the party discussions on governance and accountability.

5.2 Future powers of the army to operate in support of the police

Members noted the briefing paper at tab 6 of their packs and the attached NIO letter.

Agreed: That this matter will be addressed during next week's meeting as part of the discussion on the 'matters to be transferred'.

The Chairperson adjourned the meeting at 2.03pm.

[EXTRACT]

Tuesday, 15 January 2008 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)
Ms Annette Page (Clerical Officer)

The meeting opened at 11:04am in public session.

1. Apologies

5. Inquiry into the devolution of policing and justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

5.1 Update from Chair and Deputy Chair regarding meeting with OFMdfM Special Advisors

11.17am The meeting was held in private session

Members received an update from the Chair and Deputy Chair regarding their meeting with OFMdfM Special Advisors on 14 January.

11.26 Carmel Hanna joined the meeting

11.26 Raymond McCartney joined the meeting

Agreed: That the Clerk write to the Head of the Civil Service, Mr Nigel Hamilton, inviting him to provide a briefing to the Committee on the preparations which are being made for the devolution of policing and justice.

11.36am The meeting was held in public session

5.2 Further discussions on matters to be transferred

5.2.1 Appointments to the Parades Commission and its operation

Members noted the briefing paper at tab 4 of their packs which provided a summary of the discussions which have taken place to date in relation to the Parades Commission.

Agreed:

- There were diverse opinions about the transfer of 'appointments to the Parades Commission and its operation' and there was no consensus about whether this should continue to be a 'reserved' matter, and
- That the Clerk develop wording for inclusion in the final report, which might recommend that, on matters where there were

diverse opinions, the Assembly would continue to keep under review those matters which continue to be 'reserved'.

5.2.2 Future powers of the army to operate in support of the police

Members noted the briefing paper at tab 4 of their packs which provided a summary of the discussions which have taken place to date in relation to the future powers of the army to operate in support of the police.

Agreed:

- That the matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

5.2.3 50:50 Recruitment to the PSNI

Members noted the briefing paper at tab 4 of their packs which provided a summary of the discussions which have taken place to date in relation to 50:50 recruitment to the PSNI.

Agreed:

- There were diverse opinions about the transfer of matters relating to 50:50 recruitment to the PSNI and there was no consensus about whether this should continue to be a 'reserved' matter, and
- That the Clerk develop wording for inclusion in the final report, which might recommend that, on matters where there were diverse opinions, the Assembly would continue to keep under review those matters which continue to be 'reserved'.

5.3 Discussion on structure and accountability

Members noted the briefing paper (tabled) regarding the structural and accountability issues in relation to the current policing and justice organisations.

Members discussed the issues in relation to each policing and justice organisation in turn:

5.3.1 Northern Ireland Prison Service

Agreed: That the Committee was content with the NIO proposals for devolution of the Northern Ireland Prison Service.

5.3.2 Forensic Science Northern Ireland

Agreed: That the Committee was content with the NIO proposals for devolution of Forensic Science Northern Ireland.

12.02pm John O'Dowd left the meeting

5.3.3 Youth Justice Agency

Agreed: That the Committee was content with the NIO proposals for devolution of the Youth Justice Agency.

5.3.4 Compensation Agency

Agreed: That the Committee was content with the NIO proposals for devolution of the Compensation Agency.

5.3.5 Office of the Police Ombudsman

Agreed:

- That the Clerk will inquire whether the potential role of the NI Minister or OFMdfM in appointing the Ombudsman is more than an advisory role and whether the Ombudsman is in fact appointed by the Assembly.
- That the party papers should consider whether the advisory role in appointments is to be devolved and whether it should sit with OFMdfM or any new Department of policing and justice.

5.3.6 Northern Ireland Police Fund

Agreed: That the Clerk will seek clarification from NIO on whether the funding comes from the policing budget or whether it is a separate arrangement.

5.3.7 Probation Board

12.12pm Danny Kennedy left the meeting

Agreed:

- That the Clerk will draft wording to be included in the final report which will make reference to the recommendation in the CJR 2000 that consideration should be given to the joining of the Probation Board, Prison Service and Youth Justice Agency into one system, and

- That it will be for any new Department of policing and justice to consult and decide on the future status of the PBNI.

12.16pm Ian McCrea left the meeting

5.3.8 Northern Ireland Law Commission

Agreed: That the Clerk will draft wording to be included in the final report which will recommend that lines of communication be set up between any new Department of policing and justice and the NI Law Commission as soon as possible in order for the Department to input into the work programme of the Commission.

12.17pm John O'Dowd joined the meeting

5.3.9 Criminal Injuries Compensation Appeals Panel

Agreed: That the Committee was content with the NIO proposals for devolution of the Criminal Injuries Compensation Appeals Panel.

5.3.10 Parades Commission

Agreed: That the issues in relation to the transfer of the Parades Commission will be dealt with as part of the 'matters to be transferred'.

5.3.11 Northern Ireland Policing Board

Agreed:

12.25pm Ian McCrea joined the meeting

That the party papers should address the following issues:

- Whether MLAs should continue to sit on the Policing Board.
- If there are to be no MLAs on the Policing Board, whether the political parties should continue to appoint the 10 political members of the Board.
- Whether the conclusions of the PFG Committee, that members of the Policing Board should not be permitted to sit on any new Statutory Committee for policing and justice, should be endorsed.
- The need for a Memorandum of Understanding to clarify the relationships which exist between the PSNI, the Policing Board and any new Statutory Committee for policing and justice, and which would deal with any conflict of interest.

5.3.12 Northern Ireland Legal Services Commission

Agreed:

- That responsibility for policy development in relation to criminal legal aid should be transferred from the NI Court Service.

That the Committee should await the letter from the NI Legal Services Commission before considering

- Where responsibility for criminal legal aid policy should transfer to.
- Whether responsibility for all aspects of civil and criminal legal aid should sit with one body (either the Legal Services Commission or any new Department of policing and justice).
- Whether the NI Legal Services Commission should remain as a public body and be accountable to any new Department of policing and justice or whether it should cease to be a public body with its responsibilities being taken over by the Department.

5.3.13 Judicial Appointments Commission

Agreed: That the Clerk develop wording for inclusion in the final report to support the recommendation of the Lord Chief Justice that it would be important for there to be a protocol between the Commission and the Office of the First Minister and deputy First Minister regarding judicial appointments.

5.3.14 Judicial Appointments Ombudsman

Agreed: That the Committee was content with the NIO proposals for devolution of the Judicial Appointments Ombudsman.

5.3.15 Criminal Justice Inspection Northern Ireland

Agreed:

- That if devolution occurs in May, responsibility for appointing a new Director by August 2008 will fall to the new Department.
- That if devolution does not happen by this time, responsibility for appointing the Director will remain with the NIO.
- That the Clerk will develop wording for inclusion in the final report which will recommend that issues raised in the written submission from the Criminal Justice Inspectorate be addressed by any new Department of policing and justice post devolution.

5.3.16 Northern Ireland Court Service

Agreed:

That the party papers should address the following issues:

- The degree of independence of the Court Service
- How accountability can be ensured in a future NI Court Service model.
- The division of responsibilities between the future NI Court Service agency/ independent body and any new Department of policing and justice.
- Whether the agency should continue to deliver policy advice and legislative support, or whether these functions should transfer to the Department.
- The composition of the Board of any future independent Court Service.

5.3.17 Public Prosecution Service (PPS)

Agreed:

That the party papers should address the following issues:

- The degree of independence of the Public Prosecution Service.
- The relationship between the Public Prosecution Service and the Attorney General for NI.
- The relationship between the Public Prosecution Service and the Assembly.
- The relationship between the Public Prosecution Service and the proposed Advocate General for NI.
- Which Department should have responsibility for providing funding the Court Service and the Public Prosecution Service.

5.3.18 Other Issues

Agreed:

- That the parties may wish to address the following additional issues in their party papers.

Attorney General

Following the briefing from the Head of the Civil Service:

- Whether the post of Attorney General will be a full time or part time role.
- The costs associated with this office.

SOCA and the Security Services

- The lines of communication and accountability between SOCA and the Security Services and any new Department of policing and justice in relation to 'excepted' matters such as national security and organised crime.

North/South Agreements

- The status of North/South agreements post devolution in relation to devolved matters? Whether they require re-negotiation by any new Department of policing and justice.
- Whether there are any further cross border intergovernmental agreements which require consideration prior to devolution.

The Chairperson adjourned the meeting at 1.03pm.

[EXTRACT]

Tuesday, 22 January 2008 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr John O'Dowd

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)

Apologies:

Mr Danny Kennedy
Ms Carál Ní Chuilín
Mr George Robinson

The meeting opened at 11:06am in public session.

1. Apologies

Apologies are detailed above.

3. Chairperson's Business

3.1 Short term forward work programme

Members discussed proposals for a short term forward work programme to enable the Committee to complete its report into the devolution of policing and justice matters.

Agreed:

- That the meeting scheduled for Tuesday 29 January would be cancelled
- That the Clerk liaise with the Business Office to schedule a debate in the Assembly on the Inquiry into the devolution of policing and justice.

That meetings would be scheduled for the following dates:

- Thursday 31 January, 2pm (private session) to consider party position papers and begin party deliberations.
- Tuesday 5 February, 10.30am (public session) to consider the draft legislation proposed by the NIO and to continue party deliberations.
- Thursday 7 February, 2pm (private session) to conclude party deliberations and agree the terms of the motion to be submitted to the Business Committee.
- Tuesday 12 February, 10.30am (private session) to consider a draft of the report and discuss and agree any final amendments.
- Thursday 14 February, 2.00pm (private session) to agree the terms of the report.

3.2 Reception for Criminal Justice Week

Members noted the request from the Speaker that Members register their interest in attending a reception on Tuesday 19 February at 6.30pm in the Great Hall to mark Criminal Justice Week.

Agreed: That the Clerk respond to the Speaker's Office to confirm that invitations to the reception for Criminal Justice Week would be welcomed.

3.3 Review of Assembly Functions

Members noted two motions submitted recently regarding the review of the structures and functions of the Assembly.

4. Inquiry into the Devolution of Policing and Justice

Members noted the letter from OFMdFM dated 21 January 2008 setting out the terms on which Sir Nigel Hamilton had agreed to brief the Committee.

4.1 Evidence session with Sir Nigel Hamilton and his officials, Neill Jackson and Geoffrey Simpson from OFMdFM and Tony Canavan from the Departmental Solicitor's Office

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

Members heard evidence from Sir Nigel Hamilton and his officials. The session was recorded by Hansard.

11.57 John O'Dowd joined the meeting

12.04 Nelson McCausland left the meeting

4.2 Letter from NIO re number of Ministerial Departments

Members noted the letter from the NIO dated 18 January 2008 clarifying the mechanisms for creating a new Department and how this relates to the number of Ministerial offices.

12.10 Raymond McCartney left the meeting

4.3 Letter from the Legal Services Commission

Members noted the letter from the Legal Services Commission dated 18 January 2008 regarding the future status of the Legal Services Commission 'post devolution'.

Agreed: That the issues raised in the letter from the Legal Services Commission should be included in the final report as part of the list of issues for consideration by any future Minister / Ministers of policing and justice.

4.4 Structure and Accountability

Members noted the outstanding issues to be addressed in the party position papers on structure and accountability.

Members noted that the Clerk has written to the NIO to request clarification on a number of unresolved issues raised at last week's meeting.

Agreed:

- That the Clerk revisit the written and oral evidence from the NI Policing Board to establish whether they stated a view on the future membership the Policing Board and any scrutiny Committee on policing and justice.
- That members would submit their party position papers by close of play on Monday 28 January.

Members noted that Part 2, Section 25, of the Justice (Northern Ireland) Act 2002 allows for the Attorney General to participate in proceedings of the Assembly to the extent permitted by its standing orders.

Agreed: That the Clerk draft a letter from the Chairperson to the Chairperson of the Committee on Procedures to give notice of the need to amend the Assembly's Standing Orders.

The Chairperson adjourned the meeting at 1.03pm.

[EXTRACT]

Tuesday, 5 February 2008 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Nelson McCausland

Mr Ian McCrea
Mr Alan McFarland
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)

Apologies:

Mr Danny Kennedy
Ms Carál Ní Chuilín
Mr John O'Dowd

The meeting opened at 10:38am in public session.

1. Apologies

Apologies are detailed above.

4. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

4.1 Party Position Papers

11.17am the meeting was held in private session

The session was recorded by Hansard.

Members discussed the arrangements for submission of outstanding party position papers.

11.36am The meeting was held in public session

4.2 Role of Attorney General

Members noted the briefing paper at Tab 4 of their packs summarising the evidence provided by Sir Nigel Hamilton and his officials.

4.3 Role of Advocate General

Members noted the briefing paper at Tab 5 of their packs setting out the provisions of the Justice (Northern Ireland) Act 2002 relating to the role of the Advocate General for Northern Ireland.

4.4 Policing Board (extract from oral evidence)

Members noted the extract from the oral evidence of the Northern Ireland Policing Board at Tab 6 of their packs which sets out the views of the Policing Board in relation to membership of the Policing Board and any future statutory committee which might have responsibility for policing and justice matters, post devolution.

Agreed: That MLAs appointed to any future statutory committee with responsibility for policing and justice matters should not serve, simultaneously, as members of the Policing Board, or any District Policing Partnership in order to avoid potential conflicts of interest.

4.5 Probation Board submission

Members noted the letter from the Probation Board dated 31 January at Tab 7 of their packs referring to recent discussions of the Committee regarding the future status of the Probation Board.

Agreed: That the Clerk should respond to the Probation Board, indicating that the Committee has noted the contents of the letter.

4.6 'Include Youth' submission

Members noted the letter from 'Include Youth' dated 25 January 2008.

Agreed: That a reply should issue to 'Include Youth' thanking them for their informative written submission and stating that it would not be appropriate to invite any further witnesses at this stage of the Inquiry.

4.7 Update from Clerk on arrangements for publishing the Committee's report

Members heard an update from the Clerk on the arrangements for the publication of the Committee report.

Agreed:

- That the Committee will discuss the terms of the draft motion at the meeting on 12 February.
- That the Committee will seek to sign off on the Inquiry report by 22 February.
- That the text of the report should be placed in the Business Office by 29 February.

The Chairperson adjourned the meeting at 1.03pm.

[EXTRACT]

Thursday 7 February 2008 Room 152, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)

Apologies:

Mrs Carmel Hanna
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr John O'Dowd

The meeting opened at 2:09pm in public session.

1. Apologies

Apologies are detailed above.

2. Inquiry into the Devolution of Policing and Justice

2.1 NIO Correspondence 6 February

Members noted the NIO letter of 6 February at Tab 1 of their packs.

Agreed: To return to the issues addressed in this letter following presentation of the draft legislation by the NIO.

2.2 Session with the NIO

The session was recorded by Hansard.

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Members heard a summary of the draft legislation from NIO officials Clare Salters and Peter May.

Agreed: That the NIO officials would provide written clarification on a number of issues.

2.28pm Carál Ní Chuilín left the meeting

2.3 Naming of the Department

Members discussed the need to agree a title for the new Department.

Agreed: That Members would consult their respective parties and report outcomes at the meeting on Tuesday 12 February.

2.4 Outstanding 'matters to be transferred'

2.4.1 Compensation

Members discussed the proposals relating to the transfer of responsibility for 'Compensation' as set out in the NIO Discussion Document (February 2006).

Agreed:

- That the reserved matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

2.4.2 Community Safety Partnerships

Members discussed the proposals relating to the transfer of responsibility for Community Safety Partnerships as set out in the NIO Discussion Document (February 2006).

Agreed:

- That the reserved matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.

2.4.3 Chief Inspector of Criminal Justice

Members discussed the proposals relating to the transfer of responsibility for the Chief Inspector of Criminal Justice as set out in the NIO Discussion Document (February 2006).

Agreed:

- That the reserved matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred.

2.4.4 Northern Ireland Law Commission

Members discussed the proposals relating to the transfer of responsibility for the Northern Ireland Law Commission as set out in the NIO Discussion Document (February 2006).

Agreed:

- That the reserved matters described in the Northern Ireland Office Discussion Document (February 2006) should be transferred

3.01pm the meeting was held in private session

The session was recorded by Hansard.

2.5 Structure and accountability

Members discussed a number of outstanding matters relating to the structure and accountability of policing and justice organisations.

2.6 Party Position Papers

Members discussed the party position papers.

Agreed: To continue discussions on the matters discussed in the party position papers in private session at the meeting on Tuesday 12 February.

Agreed: That the Deputy Chairperson would provide clarification on a number of matters at, or before, the meeting on Tuesday 12 February.

The Chairperson adjourned the meeting at 4.42pm.

[EXTRACT]

Tuesday 12 February 2008 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)

Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)

The meeting opened at 10.40am in public session.

1. Apologies

No apologies received.

10.42am the meeting was held in private session

3. Inquiry into the Devolution of Policing and Justice

The session was recorded by Hansard.

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

3.1 Name of any new Department

Members discussed the options for the name of any new Department

10.51am Danny Kennedy joined the meeting

Agreed:

- That, for the purpose of the report, the name will be 'the Department'.
- That 'the Department' will be defined as 'the Department that will exercise powers in relation to policing and justice matters'.

- That the naming of the report will be included as a matter to be resolved by the Assembly prior to devolution.

3.2 Structure and accountability / Party position papers

Members discussed a number of outstanding matters relating to the structure and accountability of policing and justice organisations.

11.47am Danny Kenny left the meeting

12.12pm Ian McCrea left the meeting

12.16 Ian McCrea joined the meeting

3.3 Matters to be transferred

3.3.1 Firearms and Explosives

Members discussed the proposals relating to the transfer of responsibility for firearms and explosives as set out in the covering commentary of draft legislation provided by the NIO in February 2008.

Agreed:

- That the matters described in the covering commentary of draft legislation provided by the NIO in February 2008 should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

3.3.2 Misuse of Drugs

Members discussed the proposals relating to the transfer of responsibility for the misuse of drugs as set out in the covering commentary of draft legislation provided by the NIO in February 2008.

Agreed:

- That the reserved matters described in the covering commentary of draft legislation provided by the NIO in February 2008 should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an

amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

3.3.4 Excepted Matters (Extradition and Mutual Legal Assistance)

Members discussed the proposals relating to the responsibility for administrative arrangements relating to 'extradition and mutual legal assistance' in the covering commentary of draft legislation provided by the NIO in February 2008.

Agreed:

- That the matters described in the covering commentary of draft legislation provided by the NIO in February 2008 relating to some administrative arrangements for 'extradition and mutual legal assistance' should be exercised by the Northern Ireland Minister/s.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

3.3.5 Prevention and detection of crime

(Regulation of Private Security Industry)

(Regulation of Investigatory Powers Act)

Members discussed the proposals relating to the transfer of responsibility for matters relating to the 'prevention and detection of crime' in the covering commentary of draft legislation provided by the NIO in February 2008.

Agreed:

- That the matters described in the covering commentary of draft legislation provided by the NIO in February 2008 should be transferred.
- There were diverse opinions about the transfer of those matters which are 'excepted' and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these 'excepted' matters.

3.3.6 Treatment of Offenders: Separated Accommodation

Members discussed the proposals relating to the transfer of responsibility for matters relating to the treatment of offenders and 'separated accommodation' in the covering commentary of draft legislation provided by the NIO in February 2008.

Agreed:

- That the matters described in the covering commentary of draft legislation provided by the NIO in February 2008 should be transferred.

3.4 Terms of motion for a debate on the Inquiry report

Members discussed the terms of the draft motion for debate on the Inquiry report.

Agreed:

- Members agreed the terms of the draft motion for debate on the report as follows:

“That the Assembly approves the report of the Assembly and Executive Review Committee relating to the devolution of policing and justice matters and agrees that, as required by section 18 of the Northern Ireland (St Andrews Agreement) Act 2006, it should be submitted to the Secretary of State for Northern Ireland, before 27 March 2008, as a report of the Northern Ireland Assembly.”

[Chairperson, Assembly and Executive Review Committee]

- That either 3 or 4 March is the preferred date for debating the motion in the Assembly.

1.12pm Alan McFarland left the meeting

The Chairperson adjourned the meeting at 1.16pm.

[EXTRACT]

Tuesday 19 February 2008 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd
Mr George Robinson

In Attendance:

Mrs Debbie Pritchard (Principal Clerk)
Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)

Apologies:

Mr Raymond McCartney (Deputy Chairperson)
Ms Carál Ní Chuilín

The meeting opened at 10.40am in closed session.

1. Apologies

Apologies are detailed above.

3. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council
- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

10.44am George Robinson joined the meeting

3.1 Outstanding Matters

3.1.1 NIO Letter 14 February 2008: Prosecution Policy

Members noted the NIO letter of 14 February 2008 which provided clarification on the roles and responsibilities in relation to prosecution policy.

3.1.2 NIO Letter 14 February 2008: Issues to be addressed

Members noted the second NIO letter of 14 February which provided clarification on a number of outstanding issues raised by the Committee regarding:

10.47am Carmel Hanna joined the meeting

- Responsibility for sentencing policy
- The status and make up of the Criminal Justice Board
- Funding of the Office of Attorney General for Northern Ireland
- The role of the Advocate General in relation to oversight of 'excepted' matters
- Responsibility for the Criminal Injuries Compensation Appeals Panel

3.1.3 Northern Ireland Police Fund

Members noted the NIO letter of 15 October 2007 which stated that the Northern Ireland Police Fund will transfer to the Department.

Agreed: That the Northern Ireland Police Fund should transfer according to the arrangements set out in the NIO letter of 15 October 2007.

3.1.4 Judicial Appointments Ombudsman

Members noted the OFMdfM letter of 7 January 2008 which stated that the Judicial Appointments Ombudsman will transfer to the Department and not to OFMdfM as was originally proposed in the NIO Discussion Paper (February 2006).

11.00am Danny Kennedy joined the meeting

Agreed: That the Judicial Appointments Ombudsman should transfer as proposed in the OFMdfM letter of 7 January 2007.

11.03am Alex Attwood left the meeting

3.2 Draft Report on the 'Inquiry into the Devolution of Policing and Justice'

11.06am Alex Attwood joined the meeting

3.2.1 Timing

Members discussed the current timeline for debate and publication of the draft report.

Agreed: That the Business Committee would be asked to consider scheduling the debate on the report in the week beginning 10 March.

3.2.2 The draft report

Members considered, paragraph by paragraph, the draft report on the 'Inquiry into the Devolution of Policing and Justice Matters'.

Agreed: without prejudice to further party consultation on the draft report:

- Paragraphs 1-5, read and agreed
- Paragraph 6, read and agreed as amended
- Paragraphs 7-12, read and agreed
- Paragraph 13, read and agreed as amended
- Paragraphs 14-20, read and agreed
- Paragraph 21, read and agreed as amended
- Paragraph 22, read and agreed

11.45am Danny Kennedy left the meeting

- Paragraphs 23-30, read and agreed as amended
- Paragraph 31, Sinn Féin advised that further party consultation was required on this matter and that they would revisit this paragraph at the next meeting.
- Paragraphs 37-38, read and agreed
- Paragraphs 32-36, read and agreed as amended
- Paragraph 39, read and agreed

12.28pm Ian McCrea left the meeting

- Paragraph 40 deleted

- Paragraph 41, read and agreed as amended
- Paragraphs 42-43, read and agreed as amended

12.35pm Ian McCrea joined the meeting

- Paragraph 44, read and agreed
- Paragraphs 45-47, read and agreed as amended
- Paragraph 48, read and agreed
- Paragraphs 49-52, read and agreed as amended

The meeting was suspended at 1.30pm and recommenced at 1.45pm

1.48pm Nelson McCausland left the meeting

- Paragraphs 53-55, read and agreed
- Paragraphs 56-58, read and agreed as amended

1.55pm Nelson McCausland joined the meeting

- Paragraphs 59-60, read and agreed
- Paragraphs 61-63, read and agreed as amended
- Paragraph 64, read and agreed
- Paragraphs 65, read and agreed as amended
- Paragraph 66, agreed that the Clerk would re-draft this paragraph for consideration at the next meeting
- Paragraph 67, read and agreed

2.36pm Nelson McCausland left the meeting

- Paragraphs 68-71, read and agreed as amended

Agreed:

- That the Clerk would prepare a revised draft of the report and distribute to Members on Thursday 21 February for consideration at next week's meeting.

The Chairperson adjourned the meeting at 2.46pm.

[EXTRACT]

Tuesday 26 February 2008 Room 144, Parliament Buildings

Present:

Rt Hon Jeffrey Donaldson, MP (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr John O'Dowd
Mr George Robinson

In Attendance:

Mr Stephen Graham (Assembly Clerk)
Ms Sinead Nash (Assistant Clerk)
Ms Lynn Gray (Clerical Supervisor)

Apologies: Ms Carál Ní Chuilín

The meeting opened at 10.35am in closed session.

1. Apologies

Apologies are detailed above.

3. Inquiry into the Devolution of Policing and Justice

The following interests were declared:

Jeffrey Donaldson:

- Member, Her Majesty's Privy Council

- Member, Northern Ireland Policing Board

Ian McCrea:

- Member, Cookstown District Policing Partnership

3.1 Draft Report on the 'Inquiry into the Devolution of Policing and Justice'

Members considered, paragraph by paragraph, the draft report on the 'Inquiry into the Devolution of Policing and Justice Matters'.

Agreed:

- Paragraphs 1-8 'Introduction', read and agreed
- Paragraphs 1-8 'Issues, Findings, Recommendations and Conclusions, read and agreed'
- Paragraphs 9-15, read and agreed as amended

Paragraph 16 – Committee divided

Mr O'Dowd proposed that:

'the motion is that recommendation 10 be amended to read ' The Committee recommends that those matters in Paragraph 10 of Schedule 3 to the Northern Ireland Act 1998 be transferred'.

The Committee divided, Ayes 4; Noes 5.

Ayes

Alex Attwood
Carmel Hanna
John O'Dowd
Raymond McCartney

Noes

Nelson McCausland
George Robinson
Ian McCrea
Alan McFarland
Jeffrey Donaldson

The motion fell.

- Paragraph 16, read and agreed as amended
- Paragraph 17-23, read and agreed as amended

Paragraph 24 – Committee divided

Mr O'Dowd proposed that:

'the motion is that recommendation 17 be amended to read 'The Committee recommends that all administrative arrangements relating to extradition and mutual legal assistance should be exercised by the Northern Ireland Minister/s'.

The Committee divided, Ayes 4; Noes 5.

Ayes

Alex Attwood

Carmel Hanna

John O'Dowd

Raymond McCartney

Noes

Nelson McCausland

George Robinson

Ian McCrea

Alan McFarland

Jeffrey Donaldson

The motion fell.

- Paragraph 24, read and agreed
- Paragraphs 25-38, read and agreed

11.23am Nelson McCausland left the meeting

- Paragraph 39, read and agreed as amended

11.25am Nelson McCausland joined the meeting

11.27am Carmel Hanna left the meeting

11.31am Nelson McCausland left the meeting

- Paragraphs 40-52, read and agreed

11.36am Carmel Hanna joined the meeting

- Paragraph 53, read and agreed as amended

Paragraph 54 – Committee divided

Mr Attwood proposed that:

'the motion is that recommendation 38 be amended to read ' The Committee recommends that the NIO and OFMdfM should take forward work to ensure that any agreements remain in place at the point of devolution, and that these should be reviewed by the Department and the Statutory Committee following devolution. The Committee further recommends that, before and following devolution, discussions take place to identify other areas that may become part of a future agreement'.

The Committee divided, Ayes 4; Noes 4.

Ayes

Alex Attwood
Carmel Hanna
John O'Dowd
Raymond McCartney

Noes

George Robinson
Ian McCrea
Alan McFarland
Jeffrey Donaldson

The motion fell.

- Paragraph 54, read and agreed

11.45am Ian McCrea left the meeting

Paragraph 55 – Committee divided

Mr Attwood proposed that:

'the motion is that paragraph 55 be amended to remove the following sentence:

'There were diverse opinions about the need for a higher degree of oversight in relation to the operation of SOCA and the Security Services in Northern Ireland'.

and to replace this sentence with:

'The Committee considers that the arrangements in respect of oversight and accountability of the Security Services and SOCA are inadequate and calls for discussions to strengthen these arrangements'.

11.49am Ian McCrea joined the meeting

The Committee divided, Ayes 4; Noes 5

Ayes

Alex Attwood

Carmel Hanna

John O'Dowd

Raymond McCartney

Noes

George Robinson

Ian McCrea

Alan McFarland

Danny Kennedy

Jeffrey Donaldson

The motion fell.

- Paragraph 55, read and agreed as amended

11.52am Ian McCrea left the meeting

- Paragraph 56, read and agreed
- Paragraphs 57-58, read and agreed as amended

12.02pm Danny Kennedy joined the meeting

12.03pm Nelson McCausland joined the meeting

- Paragraphs 59-60, read and agreed
- Paragraph 61, read and agreed as amended

Mr Donaldson informed the Committee of his impending appointment as a Junior Minister in the Office of the First Minister and deputy First Minister, which would require him to resign as Chairperson of the Committee.

Members expressed their congratulations to the Chairperson and acknowledged his valuable contribution to the work of the Committee.

12.10pm Jeffrey Donaldson left the meeting

12.10pm The Deputy Chairperson (Mr Raymond McCartney) took the Chair

- Annex A, read and agreed as amended
- Paragraphs 1-3 'Executive Summary', read and agreed
- Paragraph 4 'Executive Summary', read and agreed as amended
- Paragraph 5-6 'Executive Summary', read and agreed
- Summary of recommendations, read and agreed as amended

3.1.1 Appendices to the report

Members discussed the list of appendices to the report

Agreed: that the following documents be included in the appendices to the report:

- Appendix 1 – relevant extracts from the minutes of proceedings of the Committee
- Appendix 2 – the minutes of evidence (Hansard transcripts)
- Appendix 3 – a suite of papers from the NIO including the "Devolving Policing and Justice in Northern Ireland: Discussion Paper" (February 2006) and subsequent papers, correspondence and memoranda from the NIO.
- Appendix 4 – Written submissions
- Appendix 5 – Submissions from the political parties – provided at the beginning of the inquiry, submissions from the Alliance Party and the PUP - provided during the inquiry – and subsequent party position papers - submitted by parties in February 2008
- Appendix 6 – General correspondence (including correspondence with OFMdFM)

- Appendix 7 – Papers prepared by the Northern Ireland Assembly Research and Library Service
- Appendix 8 – Submissions from the expert witnesses and documentation on the judicial system in England and Wales.

3.1.2 Minutes of today's meeting and authorising the printing of the report

Members discussed the arrangements for authorising the printing of the report.

Agreed: That the Committee authorises the Deputy Chairperson to sign the minutes of today's meeting in order for them to be included in the report.

3.1.3 Distribution of the report

Members discussed the arrangements for distribution of the report.

Agreed: that a printed copy of the report be forwarded, under embargo, to each of the witnesses who gave oral evidence and those organisations who made written submissions, with copies likely to be released on Thursday 6 March.

3.1.4 The Debate

Members discussed the speaking arrangements and time allocation for the Assembly debate.

Agreed:

- That speaking arrangements for the debate should be discussed by the Deputy Chairperson and Chairperson once appointed.
- That the Committee will suggest that the Business Committee should allow for a three hour debate.

3.1.5 Media Strategy

Members discussed the media strategy in relation to the release of the report.

Agreed: That the Chairperson and Deputy Chairperson were authorised to do pre-recorded interviews, under embargo.

The Deputy Chairperson adjourned the meeting at 12.35pm.

[EXTRACT]

Appendix 2

Minutes of Evidence

Tuesday 3 July 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Alex Attwood

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd

Mr George Robinson

Witnesses:

Mr Peter May
Ms Clare Salters (Northern Ireland Office)

1. The Chairperson (Mr Donaldson): I welcome Peter May and Clare Salters to this meeting of the Assembly and Executive Review Committee. I apologise for keeping you waiting, but we had some issues that we needed to discuss in detail. Before we proceed, I draw members' attention to the paper that has been provided by the Northern Ireland Office (NIO). Members will have received copies of that paper, which were circulated yesterday.

2. I also remind members that this briefing session is being recorded by Hansard with a view to the official report of these proceedings being reproduced in any report that the Committee might ultimately publish.

3. I declare an interest as a member of the Privy Council and as a member of the Northern Ireland Policing Board. Have members any relevant interests to declare?

4. Mr O'Dowd: None.

5. Mr Attwood: None.

6. Mr G Robinson: I am a member of Limavady District Policing Partnership.

7. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

8. The Chairperson: We have asked the officials from the Northern Ireland Office to provide the Committee with an assessment of the Secretary of State's expectations regarding the report that he wishes to receive from the Assembly. Furthermore, the officials will be able to report on the practical arrangements that are being made for the transfer of policing, security and criminal justice matters.
9. Peter and Clare have already advised the Committee of their respective roles in the Northern Ireland Office, and I invite them now to address the Committee.
10. Mr Peter May (Northern Ireland Office): We will rehearse the two areas set out in the paper that the Committee received. We see this meeting as the start of a dialogue between the Committee and the NIO, and we are happy to help the Committee to meet its remit and to make its report by March 2008. If we are unable to answer any questions today, we will send the Committee a written response following today's meeting. Clare will address the first of the two questions.
11. Ms Clare Salters (Northern Ireland Office): The first question concerned what the Secretary of State expects to be contained in the report from the Assembly at the end of March 2008. The purpose of the report is to provide information on the outstanding issues that will enable the transfer legislation to be drawn up and the practical arrangements to be made. There is nothing particularly complex or detailed in what is required, and we have set out the key elements in our paper. The report should indicate the Assembly's views on the likelihood and timing of a request for the transfer of policing and justice functions.
12. The NIO discussion document published in February 2006 stated clearly that if policing and justice functions are to be devolved, then the critical mass of those functions will have to be transferred together or the system will not work as a coherent whole. Therefore our working assumption is that if the Assembly wishes to have responsibility for policing and justice, it will want the glut of those functions to be transferred.
13. The discussion document also flagged up a number of issues that could be transferred or could remain under the responsibility of the Northern Ireland Office, as the Assembly sees fit. It would be useful to know the Assembly's emerging thinking on the status of those "optional extras". I do not mean to sound as though I am trivialising them, but it would be useful to have the Assembly's thoughts on areas that do not require to be transferred for the system to work properly.
14. For the purpose of legislative planning, we need to know the Assembly's thoughts on departmental structures and ministerial oversight. That will enable us to ensure the proper order of provisions in the new legislation. We need to be guided by the Committee's thinking on that.
15. The NIO will also need to know whether the Assembly is likely to request that the Secretary of State make an order to increase the number of Departments or ministerial offices from 10, which is the current restriction.
16. In conclusion, the NIO will need to be made aware of matters that will allow it to draw up the legislation and make the practical arrangements needed. As Peter said, we are more than happy to provide the Committee and the Assembly with any information that they may require to help in the decision-making process.
17. Mr May: The second half of the paper provides information about the preparations that have been made. We aim to be ready for the devolution of policing and justice powers by May 2008, while recognising that the date on which such a request will be made is a matter for the Assembly. Therefore, our efforts across the wide range of administrative and organisational changes required to give effect to

devolution of policing and justice are focused on being ready for that date, to enable devolution at the point that the Assembly requests it.

18. The paper sets out in detail some of the areas that are being explored. However, we do not believe that the Committee will want to concern itself with those areas, because — for the most part — they are organisational and administrative.

19. The Chairperson: Thank you, Peter and Clare. I shall open up the meeting to members for questions or comments on the paper.

20. Clare, you referred to the question of the number of Departments. Does the NIO expect the report to include the Assembly's view on whether the number of Departments should be reduced to accommodate a new Department of policing and justice? Am I correct in thinking that the current legislation states that the number of Departments will not be increased by the creation of a new Department of policing and justice?

21. Ms Salters: Section 17(4) of the Northern Ireland Act 1998 places a limit on the number of ministerial offices: it states that the number will not exceed 10 unless the Secretary of State provides differently by order.

22. If the Assembly wishes to increase the number of Departments, the Secretary of State must consider that request and make an order. Therefore, it would be helpful to know if that request were coming. How the Assembly wishes to structure things within the limit of 10 is its own business, but if we know how the Assembly wishes to structure the policing and justice element, it will enable us to make the practical arrangements for transfer.

23. Mr McFarland: The legislation, as I understand it, states that if the Assembly has not indicated its position by 28 March, the Secretary of State intends to nominate Ministers and to devolve responsibility for policing and justice by May 2008. Secretary of State Hain was challenged on that and said that that was not what the legislation meant and that we should all work together. Why was that in the legislation other than as a clear threat or, indeed, a promise to Sinn Féin that, regardless of what everyone else did, the Secretary of State or the NIO was determined that responsibility for policing and justice would be devolved by May next year? What is the position now?

24. Ms Salters: The position has not changed from that which is set out in section 4(2)(a) of the Northern Ireland Act 1998. The Secretary of State cannot transfer functions unless the Assembly votes to have them transferred to it. However, the Secretary of State was trying to avoid a situation in which there was stalemate over a decision about ministerial oversight or the departmental structure for policing and justice. That, in itself, should not be a barrier to the devolution of policing and justice, but should it become the only one, it gives the Secretary of State the power to impose the model, but not the Ministers, and is intended simply to provide a means of getting over that hump.

25. Mr McFarland: I thought that it was stated somewhere in the legislation that if the Assembly did not make a decision on the election of Ministers, the Secretary of State would select them.

26. The Chairperson: It is not for me to respond, but, in fairness, the Secretary of State subsequently withdrew that.

27. Mr McFarland: I am aware that he subsequently said that that was not what he meant, but my understanding is that it is in the legislation. Is that correct?

28. Ms Salters: I do not have a copy of the Act with me, but I can provide you with detailed clarification in writing.

29. The Chairperson: From my own recollection, the Secretary of State said that he would impose a model but would not appoint Ministers. That is a summary of it.

30. Ms Salters: That is my memory of the legislation.

31. Mr McFarland: In the original legislation, it stated that if the Assembly had not identified Ministers by 28 March, the Secretary of State would then decide the model and powers would be devolved. I know that eventually he went round in circles and said that that was not what he meant, but why was it included in the first place? Was it simply a threat that would be removed when we all did the deal? The fact that the Secretary of State went to the media and said that was not what he meant does not change what is in the legislation.

32. Ms Salters: We can write to the Committee with chapter and verse on the legislation, but, off the top of my head, it is an additional model that the Secretary of State has the power to impose. However, he does not have the power to impose Ministers on the Administration.

33. The Chairperson: From my recollection, that is a fair summary, but can we possibly have written confirmation of that, please?

34. Mr Attwood: I welcome what Peter May said at the start of the meeting about the NIO's commitment to assist and report to the Committee, and I intend to rely on that. However, I have several questions on the principle of the Committee providing help, to which Clare Salters referred. Peter said that he thought that the development and agreement of protocols and memoranda is largely of an organisational and administrative nature. However, the hard detail is important. Who develops and agrees those protocols? Peter, are you saying that it is the responsibility of this Committee, working with the NIO, to develop and agree them and underpin the arrangements? I do not want you to go into any detail, but who is working on that, and are you inviting this Committee to work with you on it?

35. Mr May: In most cases, the protocols will operate between the devolved Administration's justice Ministry — if that is the model that is chosen — and the Secretary of State. Therefore, they will not be agreed until such time as there is a justice Minister to approve them. When policy issues on protocols or memoranda arise that the Secretary of State feels that the Committee should discuss, he will inform you in writing.

36. However, most protocols relate to matters such as respect for the independence of the judiciary, giving effect to the relevant section of the Justice (Northern Ireland) Act 2002, the independence of the Public Prosecution Service for Northern Ireland, and so forth.

37. Mr Attwood: Will you give written advice to the Committee on all protocols and memoranda that are being developed? Although the political responsibility of a justice Minister may ultimately be required to approve them, I am interested in the period between now and his or her appointment. Some 99% of the memoranda and protocols may be administrative and, therefore, of little interest to the Committee, but 1% or 10% may be of great interest. I do not want the situation to arise where the Secretary of State may decide to inform the Committee of some decisions but not others. If the NIO is to continue its dialogue with this Committee and provide it with any help that it can, it must be understood that we may need to probe into certain areas.

38. Before I ask you to comment on that, there is an issue about non-devolved institutions providing sufficient and appropriate information to devolved institutions on matters that include national security. There is not much time between now and February 2008. At this stage, can you map out what you mean, because there is a credibility gap between the proposals on national security and the Serious Organised Crime Agency (SOCA) and the authority of those institutions?

39. Is it the intention that all NIO staff will transfer en masse to the new justice Ministry? For example, what is your best assessment at this stage of whether all staff in the criminal justice branch, or any part of the NIO, will transfer to the new Ministry?

40. Mr May: In answer to the first of your three questions, when we write to the Committee about the legislation, we will include details of our understanding of the protocols and memoranda. Your second question was specifically about the information that will pass between the devolved and non-devolved Administrations, particularly on national security.

41. Mr Attwood: National security was just an example.

42. Mr May: We want to devolve as many of the reserved policing and justice functions as possible, subject, obviously, to the will of the Assembly. We recognise the importance of very good, close interworking between the future justice Department and the arrangements in Whitehall, part of which will be a future Northern Ireland Office.

43. National security is an excepted matter that will not be transferred to the devolved Administration. Where the work of the devolved Administration touches on matters that are national security-related, it will be necessary to consider whether devolved Ministers require access to national security information and, if so, what level of that information they might receive, and by what means.

44. We anticipate producing a document that will explain how national security related issues will be handled and managed where they interface with responsibilities that fall within the portfolios of Ministers of the devolved Administration.

45. Mr Attwood: Is that document going to be considered by the Review Committee, or will London decree how things are to be? Will there be dialogue about it, or will it be presented as a fait accompli?

46. Mr May: I do not know the precise answer to that. I am happy to respond in writing with the details.

47. Mr Attwood: From my perspective it is critical, and I would like to convince the Committee that it is critical. The Assembly, in the future, cannot be told what to do on issues of national security, and then seriously claim to have fulfilled its duty in preparing a report for the Secretary of State.

48. Mr May: Clare has outlined the areas that we believe that report should address. National security will not be devolved, so there will be no dialogue.

49. Mr Attwood: You have said that sufficient and appropriate information should be made available.

50. Mr May: Yes, that is the objective.

51. Mr Attwood: What does that mean and how will that be done? Will the information be sufficient and appropriate? That is one conversation — among many others — that we need to have with you, and I would like to know if we are going to be allowed to have it.
52. Mr May: I acknowledge the points that you are making, and I will write to you in reply.
53. Your third point was on the transfer of staff from the Northern Ireland Office to the justice Department. In essence, the way in which transfers normally take place within the machinery of Government is that staff usually transfer with a function. The future Northern Ireland Office will deal with matters that are not transferred to the devolved Administration and will continue to have its own staff.
54. The majority of staff will transfer with the policing and justice functions that are transferred, and we will consider a range of staffing issues in that context, to ensure that individual special circumstances are taken into account, and we will try to be as responsive as possible. However, the broad principle is that people transfer with the functions being transferred.
55. Mr Attwood: If there is time later, I should like to ask some further questions. I wish to put you on notice that I am not happy. I understand the principle of transfer, but I would like to know what that actually means for the management structure, especially the senior management structure. I am not interested in who will be transferred across so much as in what posts will be transferred across. How that works out over the next eight months could reflect upon the authority of the devolved institution.
56. The Chairperson: We will invite the Secretary of State to give evidence to the Committee, and that will afford further opportunities to tease those issues out with him — if he agrees to come.
57. Do members have any other questions before we give Alex another bite of the cherry? Alex, do you wish to proceed?
58. Mr Attwood: I wish to return to Mr McFarland's point, mindful of the fact that the previous Secretary of State attempted to backtrack on previous statements. If there is no indication of intent from the Assembly on the transfer of policing and justice powers; if we do not have a satisfactory report by February — and public statements have been made that seem consistent with that time frame — and if, six months after next May, there is still no commitment from the Assembly on the transfer of powers, what is the British Government's intention?
59. Ms Salters: The legislation is clear.
60. Mr Attwood: Did the Secretary of State not say that there would be further legislation? Does the NIO know whether the British Government have, as we speak, any intention of passing further legislation to impose the transfer of powers six months after next May, if there is no date for the transfer by then?
61. Ms Salters: There is not, to my knowledge, any intention to amend section 4.
62. Mr Attwood: I agree with Ms Salters about the legislation, but what about the political commitment? I am sure that Sinn Féin has an interest in this matter, as I certainly have. However, in the event that, six months after next May, no date for devolution is agreed, or if

the triple lock has not been released, is there, or is there not, a political commitment to table further legislation?

63. The Chairperson: In fairness, Mr Attwood, Committee members are asking questions of officials that should be answered by Ministers. I do not wish to curtail the discussion, and you are raising very serious issues — as Mr McFarland did earlier — but the purpose of today's meeting is for officials to provide the Committee with a briefing. We are straying into issues on which it would be unfair to expect officials to give a political response — that is not the role of officials today, or at any other time, unless they have been authorised to do so.

64. I do not wish to curtail the discussion, but the issues that Mr Attwood and Mr McFarland have raised highlight the need for an early meeting with the Secretary of State to try to tease out the issues that have been identified. Those matters are important and require further exploration.

65. Mr McFarland: The Serious Organised Crime Agency (SOCA) is reorganising and expanding, and the Assets Recovery Agency (ARA) is continuing its work. Clearly, those activities are not a matter of national security, so some oversight of that will be devolved — or will it?

66. I understand that SOCA is due to open a local office, which will be commanded from London — somewhat like a British FBI. Is that, technically, a matter of national security? Matters relating to organised crime involve us in Northern Ireland. How far will linkages go in relation to the devolution of oversight of SOCA to the Policing Board or to the criminal justice Department?

67. Ms Salters: We will write to the Committee with more detail on that matter. The Serious Organised Crime Agency is a UK-wide body, and it operates under the law that is set in each jurisdiction. Therefore, whether it is the criminal law in England and Wales, Scotland or Northern Ireland, SOCA must operate within the legal frameworks that are set in those jurisdictions. The Assembly will set the framework for Northern Ireland, and SOCA will have to operate in that framework. We can provide the Committee with further details in writing.

68. Mr May: You were correct that responsibility for the Organised Crime Task Force is among the powers that we envisage being devolved with justice and policing functions. SOCA is a UK-wide body, which will have a regional office in Northern Ireland, but its accountability will continue at national level. Arrangements are already in place in Scotland for managing the different arrangements there. As Clare said, we will write to the Committee with details, but we envisage a similar arrangement in Northern Ireland.

69. The Chairperson: Mr McFarland raised a useful point, and, perhaps, the Committee will discuss it later. The Committee should examine the situation in Scotland, because there are parallels and lessons that could be learned. However, I do not know to what extent the Northern Ireland Office has examined that situation.

70. Mr Attwood: Although it is not a matter on which the Committee must decide now, I want to know how you envisage the NIO engaging in dialogue with the Committee. Will it be occasional, or will you be prepared to bore into the issues with the Committee in a very dedicated way, if that were required? I want to know the extent of your offer and whether, for the sake of argument, you would be willing to bore into that work every week.

71. With regard to the devolution of policing and justice, can you provide a briefing on current North/South co-operation on policing-and-justice matters, and confirm whether that will continue to operate in the same way after the devolution of those matters, or whether the

Executive will make decisions on North/South policing-and-justice matters?

72. Mr May: On North/South co-operation, I will say briefly that co-operation on policing-and-justice matters between the two jurisdictions will continue until those matters have been devolved. After they are devolved, the accountability arrangements will change because the British-Irish Intergovernmental Conference is not responsible for devolved matters. Co-operation will then be taken forward under the auspices of the North/South Ministerial Council. The structures that were set up by the intergovernmental agreement on criminal justice co-operation could be maintained under the new accountability arrangements. However, that will be a matter for the Minister responsible for justice and the Northern Ireland Executive.

73. Mr Attwood: So, on the day that those matters are devolved, there will be no North/South criminal justice co-operation, as there would have been on the previous day when the matter was reserved by the British Government?

74. Mr May: Clearly, it falls under the auspices of the North/South Ministerial Council, not those of the British-Irish Intergovernmental Conference.

75. The NIO has already signalled a willingness to work with the Committee and to explore in more detail the issues that it has indicated, through the Secretary of State, to be those that it believes are part of the Assembly's fundamental remit. The NIO is, therefore, happy to work with the Clerk and others to organise that work in the most appropriate way.

76. Mr McFarland: Mr Attwood and I were members of the first Northern Ireland Policing Board. An event occurred around 18 months or two years ago. Mr Attwood will recall that, out of the blue, there came a criminal justice agreement between Dublin and London, and difficulty arose over how to take cross-border co-operation forward. As I recall, the parties were not given sight of it.

77. Some legislation was put in place, which, I believe, suggested that civil servants in both jurisdictions would develop a criminal justice cross-border co-operation agenda. In the letter that you will write to Mr Attwood or to the Committee, will you identify what good work has been done in the interim by the NIO's group of civil servants who were set up to advance that agenda?

78. Mr May: I am happy to do that.

79. The Chairperson: There are no more questions. I thank you, Mr May and Ms Salters, for being present with your team. The Committee appreciates your willingness to co-operate with it and to assist it in its work. It would be useful if you were to indicate to the Secretary of State that, in due course, the Committee hopes to hear from him as well.

25 September 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland
Mr John O'Dowd
Mr George Robinson

Witnesses:

Mrs Siobhan Broderick
Mrs Jacqui Durkin
Mr David Lavery Northern Ireland Court Service
Mrs Laurence McAlpine
Mr David Thompson

80. The Chairperson (Mr Donaldson): I welcome the representatives of the Northern Ireland Court Service. I remind Committee members that Hansard will be recording this evidence session for the purposes of publication. Members will find in their packs information on the areas that the Committee will explore with the Court Service.

81. I welcome Mr David Lavery, the director of the Northern Ireland Court Service, and his colleagues. Before the witnesses make their presentations to the Committee, I invite members to declare any relevant interests.

82. I declare an interest as a member of the Privy Council.

83. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

84. Mr G Robinson: I am a member of Limavady District Policing Partnership.

85. The Chairperson: I should also declare an interest as a member of the Northern Ireland Policing Board.

86. Mr Lavery, please introduce your colleagues and proceed with an opening statement. Members will then have an opportunity to explore particular issues with you and your colleagues.

87. Mr David Lavery (Northern Ireland Court Service): Thank you, Mr Chairman.

88. My name is David Lavery, and I am the director of the Northern Ireland Court Service. On my immediate right is Mrs Laurene McAlpine, head of policy and legislation in the Northern Ireland Court Service. On my immediate left is Mrs Jacqui Durkin, who is head of court operations. With me, also, are two other members of the Court Service senior management group — Mrs Siobhan Broderick, who is head of tribunal reform, and Mr David Thompson, who is the finance director of the Northern Ireland Court Service.

89. With the Committee's permission, I will make a short introductory statement to position our evidence. I thank the Committee for the invitation to appear here this morning. The Minister of State with responsibility for the Court Service, Mr David Hanson, asked that I convey to the Committee his willingness to assist its deliberations — if it wishes him to do so.

90. The Court Service's written evidence is before the Committee, and I do not want to tax the Committee's patience by repeating what we have already said in that; however, some introductory remarks would perhaps be appropriate. I am conscious that my appearance before the Committee marks the first time in 30 years that consideration has been given to where the courts — and by extension the judiciary — should fit into the justice system in Northern Ireland. In view of the wide range of issues that the Committee has to consider, we welcome that it has set aside time to look specifically at the future of the courts under devolution.

91. It is interesting that when the Court Service was established under the Judicature (Northern Ireland) Act 1978, it was given a special position in the justice system as a separate Department. Technically, the Court Service is a separate civil service; separate from the Northern Ireland Civil Service and the Northern Ireland Office. At that time, the Court Service was made accountable to the Lord Chancellor, who was both a Government Minister and head of the judiciary in Northern Ireland.

92. I mentioned the special place that the courts were given in the justice system in 1978 because I suspect that it is an issue to which the Committee will want to pay close attention. Apart from that, it ought to be relatively straightforward for the Committee to deal with the questions set out in its terms of reference for the Court Service. It is our view that all of the matters that the Court Service is currently responsible for — which are reserved or excepted matters — should be capable of being devolved.

93. As the Committee will know, the Court Service is currently responsible for four main areas of work: the running of the courts and the Enforcement of Judgments Office; the legal aid system, including the work of the Northern Ireland Legal Services Commission; the judicial appointments system, including the work of the Northern Ireland Judicial Appointments Commission; and the running of a number of tribunals. The Committee will be aware that last year the Secretary of State for Northern Ireland announced that it was intended that the Court Service would assume responsibility for running all of Northern Ireland's tribunals. We are currently working with colleagues in the Office of the First Minister and the Deputy First Minister to take forward those reforms.

94. As I mentioned, all of our current responsibilities are capable of being devolved. As to where they should be devolved, we would suggest the following. Legislation already provides that responsibility for judicial appointments will transfer to the First Minister and the Deputy First Minister. In the case of legal aid, responsibility for the legal aid system would be best placed in any new justice Department that the Assembly is minded to establish. The remainder of our responsibilities — running the courts and tribunals — should probably remain with us under devolution to become part of a new unified courts and tribunals service.

95. If the Committee agrees with that distribution of functions, a new courts and tribunals service would be one of several justice organisations that would be linked to, and or funded by, a new justice Department. However, the exact relationship between the future Court Service and a new justice Department could take a number of forms. At its most straightforward, the Court Service could become an agency of the new justice Department, much in the same way as Her Majesty's Courts Service in England is an agency of the Ministry of Justice.

96. In 'Devolution Policing and Justice in Northern Ireland: a Discussion Paper', published last year, the Government stated that they support the agency model. Under that model, a framework document would set out the rules and responsibilities of the Court Service agency, which would draw its funding from the new justice Department. The agency would be headed by a chief executive, who would report to the justice Minister and could be called to appear before any of the Assembly's Committees. The staff of the Court Service would be members of the Northern Ireland Civil Service.

97. As the judiciary would be one of the Court Service's key stakeholders, one or more of the senior judges might become non-executive members of its management board. That would ensure that the judiciary had a seat at the table when decisions affecting the work of

the courts were being made. The Court Service's chief executive would be expected to have a close working relationship with the head of the judiciary in Northern Ireland, the Lord Chief Justice.

98. However, the agency model is not the only option for the future of the Court Service. I have seen the written evidence given to the Committee on behalf of the Lord Chief Justice. He considers that, in the interests of judicial independence, the Court Service should sit at some distance from any future justice Department. The current arrangements for the Irish Courts Service and the recently published plans for the Scottish Court Service are two examples of that approach. As civil servants, we believe that either model could be made to work in practice.

99. I am grateful to the Committee for allowing me to make these introductory remarks, and my colleagues and I will be pleased to answer any questions from the Committee this morning.

100. The Chairperson: Thank you, Mr Lavery. I am intrigued by your suggestion of an alternative to the idea of an agency to the Court Service linked to a justice Department and that either the Irish model or the proposed Scottish model might be appropriate. I cannot recollect whether your written submission contained any detailed information on either model.

101. Mr Lavery: The submission did not go into a huge amount of detail. I think that I am right in saying that the issue was ventilated by the Lord Chief Justice in his submission. That is, perhaps, why I touched on it more fully in my opening statement. Our earlier written submission to the Committee noted that when the Court Service was established, it was given a position under the Lord Chancellor, who was both a Minister and head of the judiciary. Now that his role has been divided up, as it were, essentially the Committee has a choice to make about whether the courts should be under a Minister or under the judiciary. I think that the Lord Chief Justice will want to share his views with the Committee; At least that seems to be the case.

102. The Chairperson: Do I understand the essence of the alternative proposal to the one apparently preferred by Her Majesty's Government to be that, rather than sit under the remit of the justice Department — albeit as an agency at some arm's length — the Court Service would sit under the judiciary and not have a direct link to the justice Department?

103. Mr Lavery: Even the alternative model suggested by the Lord Chief Justice would require an accountability relationship. As the Court Service would, perhaps, draw its funding from the justice Department, there would have to be some accountability mechanism. Even in the South of Ireland, where that structure already exists, there are accountability mechanisms that allow the Minister for Justice, Equality and Law Reform to request reports from the Irish Courts Service.

104. It is quite common for the chief executive of the Irish Courts Service to appear before Oireachtas committees to give evidence, and so forth. Other accountability mechanisms include the more conventional ones of publishing an annual report, a strategic plan, and so forth.

105. However, I do not want to give the impression that the alternative model is completely and absolutely independent. There has to be some accountability balance. Someone described the options to me as a continuum; it is a case of deciding how close the courts should be positioned to a justice Department. Agency status brings the Court Service quite close to a justice Department. It is possible to think of a halfway house, where the agency might have judges involved in the management and oversight of the courts. The further-away model is that which the Lord Chief Justice is minded to recommend to the Committee. That is the model that the Irish Government chose to establish in 1996 with the establishment of the Irish Courts Service.

106. Although the Scottish Court Service was initially established as an agency, the Scottish Government — formerly the Scottish Executive — have published proposals for a possible repositioning of the Scottish Court Service in order to make it more like the Irish Courts Service model, under a board chaired by the equivalent of the Lord Chief Justice. Therefore, there are two comparators within these islands that can be examined. The third model is the agency model that operates in London.

107. The Chairperson: If the Scottish or Irish model were adopted, where would that leave the Court Service in relation to the Northern Ireland Civil Service? Would the Court Service continue as it does at the moment, as a semi-autonomous civil service, or would it still be integrated into the Northern Ireland Civil Service?

108. Mr Lavery: There would be many benefits for the Court Service if it were fully integrated into the Northern Ireland Civil Service. It is an historical anachronism that the Court Service was made a mini civil service. I sometimes remind Nigel Hamilton that I, too, am head of a civil service, but I do not think that he takes that very seriously. [Laughter]

109. It would be better for the staff to have career and other opportunities to move in and out of other Civil Service Departments. It does not necessarily follow that, if one were to adopt the Lord Chief Justice's preferred model, the Court Service would have to remain separate. I feel that our staff would benefit from career development and other opportunities in joining the Northern Ireland Civil Service.

110. It will almost certainly be necessary for the Court Service to become an agency in the first instance. Primary legislation would be necessary to create the alternative model that the Lord Chief Justice prefers. Therefore, in a sense, it will be necessary for the Court Service to be docked into any future devolved justice system. If the Assembly were minded to do so, we might be repositioned once devolution of justice takes place. I suspect that such a two-stage process will be necessary.

111. The Chairperson: That is almost the way in which the Scottish model has progressed.

112. Mr Lavery: Precisely.

113. Mr McFarland: Mr Lavery, you have been engaged in talks with the Northern Ireland Office about how all that should proceed. If the Assembly agreed to it, that could all happen next May. Can you take the Committee through the discussions that you have been having and explain how things are progressing in the great plan for May? Is the system likely to be ready by then, if the Assembly gives its consent?

114. Mr Lavery: There is much work to be undertaken, and a complex series of project work streams is being led by the Northern Ireland Office. NIO officials are best placed to give further updates to the Committee, because they are controlling the process. However, the Court Service is participating in all those work streams to ensure that it is ready to plug into any new devolved structure. Those include: human resources and personnel matters, finance; IT; and all other associated work streams.

115. There is also a lot of work to do on subordinate legislation, which my colleague Mrs McAlpine is dealing with. As the Northern Ireland Court Service is not part of the Northern Ireland Office, certain special arrangements will have to be made to bring it to an end as a separate department and transfer its functions into the justice Department. We would then emerge, phoenix-like, still the Court Service, but within the devolved context. Many work streams are going ahead, and I know that the Secretary of State has a clear objective that the necessary work should be completed in time for May 2008, if that date were to prove politically opportune.

116. Mr Attwood: I have several questions for the Court Service representatives. I want to ask about money. I recently received a letter from the Minister of Finance and Personnel confirming that, at this stage, no conversations have taken place with the NIO or the Treasury about financial issues in the event of the devolution of justice, which surprised me, given that we are now nearly in October and that this inquiry may conclude its consideration of this matter in four or five months.

117. I am anxious about money. Alan McFarland and other members of the Policing Board, retired or otherwise, know that Her Majesty's Inspectorate of Constabulary (HMIC) has proposed, under pressure from the NIO in my view, to reduce police numbers to 6,200 down from the current complement of 7,500 in or around 2010 or 2011. That has clear policing and budgetary consequences, and I cannot imagine a situation in which the NIO and the Treasury would not, in the event of the devolution of policing, try to claw substantial funds back to London.

118. Mindful that the Court Service budget for the next three years, which you kindly provided to us, is basically static and will therefore, in real terms, diminish year-on-year over that period, do you have any concerns that the Treasury and the NIO are examining the Northern Ireland Court Service in an effort to claw back funds in the event of the devolution? Do you have any concerns about funding if devolution occurs next year, given that policing and justice take up between 15% and 18% of the entire Northern Ireland budget? In the conversations at the NIO to which Alan McFarland referred, has finance featured at all, and if so, in what terms?

119. Mr Lavery: Funding is obviously a practical consideration, and I am sure that the Assembly and this Committee will want to be satisfied that sustainable funding will be available to allow it to assume responsibility for the policing and justice system. In relation to process, the Department of Finance and Personnel is represented on the programme board that oversees the work streams that I mentioned in my answer to Mr McFarland. The Northern Ireland Treasury, if you like, is at the table at the planning stage for the creation of any future Department of justice. I am sure that it will want to ensure that if justice is transferred, there is a sustainable budget for the system.

120. The Northern Ireland Court Service is just one of a number of agencies that would form part of any future devolved justice system. We know the amount of funding that we have been given until the end of this decade. Under the comprehensive spending review we have been allocated funding for the Court Service for 2008-09, 2009-10 and 2010-11. It is a very challenging settlement, as can be seen in the figures that we shared with the Committee. It is a flat settlement.

121. That means that in order to live within our budget, we will have to find efficiencies in how we do our business. We have an advantage in that we have invested a great deal in the IT systems in the courts, and that will allow us to make such efficiencies. Our integrated court operations system is probably one of the most advanced IT platforms for court administration anywhere in the world. It is now fully on stream, and it will allow us to introduce efficiencies and contain costs.

122. If I had a concern about any aspect of my budget, looking ahead to the remainder of the decade, it would be about legal aid. It is a less predictable budget because it is demand-led; it is partly a matter of how many cases there are and the fees that are charged for them. As the Committee will understand, it would take, for example, only one or two very long-running, complex criminal Crown Court trials to affect our budget significantly. However, the legal-aid budget for the remainder of the decade has been settled by the Treasury at about £65 million a year. It will be a challenge to keep within that figure. We would be keen to discuss with our colleagues in the Ministry of Justice in England, and with the Treasury, the adequacy of the funding before any transfer of the legal-aid system to the Assembly took place.

123. Mr Attwood talked about clawback. I am certainly not conscious of any effort on the part of the Treasury or the Government in

London to claw back funds from us. Our primary concern is whether the funding is adequate, because I assume that, were devolution of justice powers to take place next year, the financial settlement, the budget for the Court Service and the other parts of the justice system, would be transferred into the Northern Ireland block grant. I take reassurance from the fact that the Department of Finance and Personnel, which is the Northern Ireland treasury, will be at the table during the planning for devolution, and I am sure that it will be alert to the budgetary issue.

124. Mr Attwood: I hope that that is the case.

125. My second question relates to an issue that the Chairperson probed you on. You said in your evidence that whatever model may be chosen for the future Court Service — agency or otherwise — as a civil servant, you could work with it. Interestingly, you then said that your personal opinion was that integration with the Northern Ireland Civil Service would be useful for staff development purposes. In your oral evidence to the Committee you highlighted what you understand to be the views of the Lord Chief Justice. I do not want you to get on the wrong side of Sir Brian Kerr, but if you were to make a personal call on the ideal model or structure for the future Court Service — similar to the one that you made about how your staff's interests could be best accommodated in the future — what would that call be?

126. Mr Lavery: I note your advice not to get on the wrong side of the Lord Chief Justice — I am conscious of that on most days of the week. It is probably better that I remain slightly agnostic on the subject, because it is a continuum. I have explained the options as alternative models, and, at their simplest, that is how they might be presented. However, it is possible to arrive at an arrangement whereby the Court Service would still be part of the justice system but would have what could be called an arm's-length relationship with the justice Department. It may be possible to design a form of agency that is sufficiently at arm's length from the day-to-day running of the Justice Department to allay some of the Lord Chief Justice's concerns, without moving so far along the continuum that it becomes a separate Department in its own right.

127. For example, the Public Prosecution Service is one of the criminal justice agencies that would be devolved, becoming what is known as a non-ministerial Department: it would be a Department in its own right, but it would not be under the day-to-day superintendence of a Minister. That is what I think the Chief Justice is arguing for. The Irish Court Service is technically a non-ministerial Department.

128. However, as I told the Chairman, there would be accountability linkages. If public money were given to the Court Service in the future, there would have to be accounting mechanisms for that money. The chief executive of the Court Service would become the accounting officer and would have to be accountable to the Assembly for the use of that money.

129. There would also have to be other mechanisms to ensure that the courts could not simply go off in whatever direction they chose. If there are to be benefits from the devolution of justice, one of those would be in making the justice system work in a more coherent and joined-up way, instead of having lots of different agencies working semi-autonomously. It would be unfortunate if one of the agencies were to be floated off, quite independently.

130. In the South of Ireland, and under the proposals for Scotland, it is envisaged that courts services — even if they were non-ministerial Departments — would have to have regard to policies and strategies developed by the justice Minister and the justice Department. The legislation establishing the Irish Courts Service and the proposals published by the Scottish Executive for the Scottish Court Service both speak about allowing the justice Minister to set some sort of strategic direction to which the courts services would have to have regard.

131. We could make any of those models work in practice. It would be a case of striking the right balance between appropriate recognition for the independence of the courts and the judiciary on one hand, and having appropriate accountability to the public, through the Assembly and the justice Department, on the other.

132. Mr Attwood: Mr Lavery has raised some issues that could usefully be pursued by the Assembly's research staff as regards justice models in the South of Ireland and in Scotland. The issue is very difficult, and there is concern, when viewed from a party-perspective, that one party or another will attempt to encroach on the independence of justice and policing arrangements in the North. It is an acute issue, and I have sympathy for the Lord Chief Justice. On the other hand, am I correct in thinking, Mr Lavery, that you sit on the Criminal Justice Board in the North and that judges do not?

133. Mr Lavery: Yes, that is correct.

134. Mr Attwood: As I understand it, judges are entitled to sit on the Criminal Justice Board and should be doing so. There is a concern that the judiciary wants to keep its distance from arrangements in the North in a way that is unhealthy. It should have relationships with broader society, not just with political-accountability mechanisms. Would anyone like to comment on that issue?

135. I note that the Court Service is sitting in on all of the work streams relating to the devolution of justice actually becoming operational. Claire Salters and Peter May claim, in their useful paper, that that seems to be an extensive piece of work. Are there any issues arising from those work streams that you want to flag up to the Committee regarding rubbing points between the interests of the Court Service and the intentions of the NIO, or anything that has given you any anxiety?

136. Mr Lavery: The work on the project is proceeding in a very workmanlike fashion. There are no rubbing points that I want to highlight. There is a lot of work to get through in the time available, but I do not see a lack of agreement or coherence in the way in which the work is being approached. My only concern is the one that I mentioned in response to the earlier point about money, which is that all of the projects, or all agencies, will have a cost, and we will need to be absolutely clear that the funds transferred are sufficient to provide sustainable resources for the new justice system.

137. You mentioned judicial independence. The Committee will be aware that there is already a statutory guarantee of judicial independence in legislation. The intention is that a concordat on judicial independence will be developed when the justice system is devolved, along with a concordat on prosecutorial independence.

138. The statutory framework for devolution has a lot built in to require public authorities, Departments and Ministers to respect the independence of the judiciary and not to seek to influence the decisions of the courts in individual cases.

139. The Lord Chief Justice will speak for himself on the question of judicial attendance at, and participation in, groups such as the Criminal Justice Board. He may give some thought to the architecture of a devolved justice system and the sort of groups in which it may be appropriate for judges to participate. There are certain groups and committees that are concerned with managing the system, where the involvement of judges or heads of the prosecution service — people such as the Chief Constable and the Director of Public Prosecutions — would not be appropriate. However, there are others at a more political level at which it is arguable that their voices should be heard. We would want to work that through in a devolved context.

140. Mr McFarland: Alex Attwood has triggered a modified train of thought. How difficult will it be? Alex and I sat on the first policing

board, and for long time — 30 years — politics here was a dirty business with which the Northern Ireland Office and the policing and justice systems did not trouble themselves.

141. Psychologically, how difficult will it be for the Court Service and the judiciary to readjust to politicians, for whom they did not have a high regard, being in charge of legislation? We legislate for what the judges will judge on and we provide the money. Has that sunk into the system yet? For a long time the police did not understand; they thought that they would be able to operate without politicians annoying them.

142. The policing, judiciary and prosecution services are vital — the system would collapse without them. Has the court system understood what it is moving into? The court system is operationally independent, but the law and its funding are now being administered by people whom it previously did not hold in high regard. Perhaps it is an unfair question, but how long will it take for that psychological change to sink in?

143. Mr Lavery: All those questions are unfair. [Laughter.] That goes with the territory.

144. That is an interesting and important point, because the justice system has been under Westminster; devolved, it will be positioned much closer to Ministers and politicians who are part of the community; it will be a different political environment and will occupy a different political space.

145. The classic, and therefore the safe, answer to Mr McFarland is that the Assembly will make the law and the courts and judges will apply and operate it. The rubbing points tend to be on sentencing and what happens from day to day. That is where one encounters the grey area between the independence of judges making decisions in individual cases and a form of legitimate scrutiny by the public and the Assembly on whether sentencing, for example, adequately reflects society's concerns.

146. I am sure that that will be as much of a challenge for a devolved justice system as it is in any other part of these islands or, indeed, has been under direct rule.

147. To answer Mr McFarland's question the easy way, the Court Service looks forward to working in a devolved environment. Like all other justice agencies, for a long time the service was behind the curtain of security. When I took up my current position in the Court Service, I was struck by the fact that its name did not appear on the list of tenants of its building — it was used to being invisible. Since then, it has consciously set out to become public facing, opening an information centre in Windsor House. As the Committee will be aware, there is a European Commission information centre on one side of the front door of Windsor House and a Court Service information centre on the other side.

148. The Court Service has developed a strapline, which is its mission statement:

“Serving the community through the administration of justice.”

149. Its staff have always done that. Staff in local courts meet the public daily and are good at public service. However, the system has had to gradually rethink its position as a public service, which, I am sure, all the justice agencies have been doing. If it is the Assembly's will to bring the Court Service into a devolved context, we, as civil servants in the courts administration, certainly look forward to that.

150. I am conscious that I am hogging the discussion.

151. Mrs Jacqui Durkin (Northern Ireland Court Service): Like any change, this one must be managed carefully with staff. They must be informed about business continuity and about what the change will mean, particularly to them. I am focused on there being business as usual, and that, as progress is made towards a devolved environment, the courts and the services that they support will be run as they always have.

152. As David has mentioned, it is fair to say that the staff look forward to change, to local administration and to informed decisions being made on local issues. At present, we work for Westminster Ministers. The staff and I have been focused on providing high-quality customer service to whoever uses the courts: legal professionals, members of the public, families who are in dispute and, of course, the judiciary. We are focused on continuing to do that regardless of the governance and accountability arrangements.

153. The Chairperson: Mr Lavery, you touched on sentencing. Do you envisage that the new Department will be responsible for sentencing tariffs? Does the Court Service have a view on that?

154. Mr Lavery: I am not sure whether the Court Service has a view as such on it. For the assistance of the Committee, and as colleagues will be aware, the legislature sets the level of maximum sentences. The courts tend to be faced with a maximum possible sentence when they make a decision on a particular case. The Lord Chief Justice has said in some of his public statements that within the parameters that are set by the legislature, there is a technical process by which to apply the facts and circumstances of a particular case in order to establish the correct tariff. At present, the judiciary determines tariffs through mechanisms such as guideline judgements that are issued by the Court of Appeal and work that is carried out by the Judicial Studies Board, which advises those who pass sentences on the technical aspects of the task.

155. Other countries and, indeed, other parts of the United Kingdom have different mechanisms. In England, the Sentencing Guidelines Council develops guideline ranges of sentences that are to be applied by the courts. However, the facts and circumstances of individual cases must still be taken into account. Therefore, I do not envisage that the Court Service will consider itself as having any role in sentencing. However, a justice Department might decide that the Court Service should have a voice on the subject.

156. Mr I McCrea: The time is not right to devolve policing or justice powers. As justice is your area, do you have an opinion on whether those powers should be devolved or remain under the direct rule Administration?

157. Mr Lavery: They say that fools rush in, but — having worked in a devolved environment in the Office of the First Minister and the Deputy First Minister during the previous Assembly and, therefore, having been on both sides of the fence — my personal opinion is that, in principle, devolution brings public services and governance closer to the community. In principle, the devolution of policing and justice is a desirable objective. As for the timing of its achievability and its appropriateness, that is an entirely political matter on which I cannot offer a view.

158. The Chairperson: However, given the preparatory work that has been done, do you have any concerns about the practicality of meeting a deadline of May 2008?

159. Mr Lavery: No. If it must be done, it will be done. Laurene McAlpine, who manages the legislative aspect of that, might wish to add something.

160. Mrs Laurene McAlpine (Northern Ireland Court Service): A number of streams of work are being directed towards the practical and legislative steps to devolving justice powers, all of which are progressing well. The legislative steps are important, but they are on track for Orders in Council and subordinate legislation to be ready for enactment in May 2008. There are no technical obstacles.

161. Mr McCartney: I want to return to the various models for devolution, although Alex covered most aspects of that. You said that you remain agnostic about the best model. As the Committee progresses with collating evidence and forming an opinion, will you be in a better position to say whether the agency or non-ministerial model is better?

162. Mr Lavery: We will certainly follow the Committee's deliberations closely, because it will take evidence from key players in the justice system from next week onwards. Our views will evolve over time. However, the practical point is that which I made to the Chairman: even if we were to decide that the Courts Service of Ireland or the Scottish Court Service provided the better model, we would have to take two steps. First, the Northern Ireland Court Service would have to be devolved and made into an agency. Secondly, the Assembly would have to bring forward legislation to reposition the Court Service at arms length from the justice Department. In a way, it will be necessary to do what the Scots have done, which is to reach the agency model first, and then move beyond it, if the Assembly considers that that is the right course.

163. I remain agnostic because there are infinite ways of doing it. At some point, the Court Service will cease to be an agency and will follow a different model. However, you could quite easily set up the Court Service as an agency that would have many of the mechanisms that the Courts Service of Ireland has, such as having judges and representatives of the community on the management board, so that is not run by civil servants alone.

164. Our Court Service might achieve quite a lot of what the Irish model achieves, although, technically, it would still be an agency. We will need to do a lot of technical work, and if the Committee wants further evidence on that, we will be happy to return to it, as will our Minister, David Hanson.

165. Irrespective of that, will you recommend that the staff should not be separate from the rest of the Civil Service?

166. Mr Lavery: I see no need for them to be separate from the Civil Service. We are a small department with approximately 750 staff, many of whom are women who live and work in local communities and do not want to work elsewhere. If, on promotion, they had the chance to work in, for example DHSS it would give them more opportunities. The Court Service used to be jealous of its position as a separate civil service, and that position gave us a degree of independence. However, on balance, I have told my staff that they should not be afraid of becoming part of the wider Civil Service, as opportunities, benefits and advantages for career progression would be available.

167. The Chairperson: Mr Lavery, the Committee meeting has kept you away from a conference in Scotland today, which is being addressed by the Lord Chief Justice and touches on some of the issues that the Committee is covering. We appreciate your time and attention.

168. Mr Lavery: You refer to the annual courts services conference. Four courts services are represented: one in England and Wales, one in Scotland, our Court Service and the Courts Service in the South.

169. The Chairperson: And the criminals. I hope that this session does not drive you to drink. [Laughter]

170. Mr Attwood: Mrs Justice Susan Denham's recommendations on the Courts Service and the judiciary in the South were based on an environment in which Ministers for Justice, Equality and Law Reform in the South have, down the years, had sometimes unfettered powers. I refer to the relationship with the Garda Síochána and the Minister for Justice's resistance to creating higher levels of accountability around the Garda. There has always been a sense in the South that Ministers for Justice, in particular, have had undue influence over the administration of justice. Court cases and tribunals have taken place about that. Therefore, we do not compare like with like. Although similar concerns might have existed under the old Stormont regime, the new culture in the North means that the opportunity for undue political influence is not comparable to the fears that might existed in the South when Mrs Justice Denham made her report.

171. Mr Lavery: The justice system was in a different place in the early 1990s, when Justice Denham chaired the Courts Services Commission, which created the Irish Courts Service. Although I have no expertise to comment, the political context was unique and it affected policing and other issues as well as the courts. However, the principal driver for the Irish Courts Services Commission, which Mrs Justice Denham chaired, was the poor state and administration of the courts system and the lack of investment in it. The Irish Courts Service has said that, as part of the Department of Justice, Equality and Law Reform, it was always the poor relation. It was the least invested in and the least improved part of the Department. The real driver, as is clear from the reports of Justice Denham's commission, was to try to make the Courts Service in the South a modern, public service with proper investment and a proper public-service ethos. In the North, before the 1978 legislation to create the Court Service — which came into existence in 1979 — there were three courts services. The High Court was run as an imperial service from London. Under direct rule, the High Court, the County Court service and the Magistrate Court Service were brought together under what was then the Administration of Justice branch of the Northern Ireland Office.

172. However, the justice system remained a bit of a patchwork quilt. One of the main drivers behind the creation of the Northern Ireland Court Service was to bring all those services together in order to create a unified courts administration that was properly invested in and that had good public-service standards.

173. We hope to do the same with tribunals. There are 26-odd tribunals in Northern Ireland, many of which are run by individual Departments. If the Executive agree, those tribunals will be brought together to create a more unified service. Rather than have 26 tribunals being run in 26 different ways, the idea would be to standardise them.

174. Although the political context was unique in Ireland in the 1990s, it was driven to an extent by the fact that the court system was in a poor state. The Irish court system was the poor relation because of a lack of investment, but it has now been transformed, and it benefits from having a buoyant economy. There is no shortage of investment in the Irish court system, and it has produced a more modern public service.

175. The Chairperson: Will the review of public administration and the potential reconfiguration of local government have implications for the way in which the Court Service does its business?

176. Mr Lavery: We are examining the RPA closely, and we are reviewing our court estate. The court map of Northern Ireland derives from the local authority map, and the Court Service must ensure that it has the right facilities in the right places. We also want to achieve coterminous boundaries, in order to have the same administrative boundaries as are used for policing, local government, and so on. We are watching the RPA evolve before we make any further investment decisions.

177. Mrs Durkin: We are carefully considering how the council boundaries might move, because the court map is mapped to council boundaries and to police district command unit boundaries. Depending on the outcome of the RPA, we will seek to ensure that we have at least one, if not two, major court venues in each boundary area, and that those venues are capable of covering all types of court business, including criminal, civil and family business. We are looking closely at the other stakeholders to ensure that the structure of the estate and the services that we provide are cohesive with their boundaries.

178. The Chairperson: What is your view on the arrangements for judicial appointments?

179. Mr Lavery: Our current arrangements flow from the recommendations of the Review of the Criminal Justice System in Northern Ireland which was published in 2000. That review set the blueprint for the justice system for some time. It recommended that an independent Northern Ireland Judicial Appointments Commission (NIJAC) be established, and that innovation has been one of the great successes of the review.

180. Although it must appoint judges on the basis of merit — in other words, it must pick the best candidates — the NIJAC has a statutory responsibility to have a pool of candidates that reflects the community, and, ultimately, a judiciary that reflects the community. That system is innovative. In a way, other parts of these islands are catching up with Northern Ireland. England now has its Judicial Appointments Commission, and, in many senses, it followed our lead in doing so.

181. It will be interesting to observe in a few years' time what difference our Judicial Appointments Commission has made. Will we be able to measure whether there are, for example, as a result of the NIJAC's activities, more women on the judiciary than had been the case historically? It will be some years before patterns emerge, because we do not appoint a huge number of judges at any level in a typical year. Therefore, it will take a while for the NIJAC to have an impact.

182. The current system is more open and publicly transparent, and it is one in which people can have confidence if they aspire to a judicial career. The Court Service also appointed a judicial appointments ombudsman to whom people can bring a complaint, or concern, if they feel that their application, or candidacy, was not properly attended to, or treated fairly.

183. Although there is now a lot more openness and transparency in the system, that is not to say that it did not produce good appointments in the past. The system then was less open and less comprehensible. I am a fan, as the Committee can probably sense, of this public commission.

184. The Chairperson: Would you like to say anything about your future relationship with the Public Prosecution Service (PPS) in the context of devolution?

185. Mr Lavery: The Court Service has a close working relationship with the PPS because it is one of our main customers, and we are very conscious that all agencies have to work in a joined-up way if courts are to be sufficiently responsive. The public expect cases to be dealt with speedily, and sometimes the justice system does not achieve that. The PPS has gone through huge changes from being a small department of the Director of Public Prosecutions to being a huge department. A lot of issues emerge when an organisation is scaled-up in such a relatively short space of time. I know that Jacqui Durkin and her colleagues in court operations are in close and regular contact with us on how the PPS can help the Court Service get cases into court in a timely fashion. Perhaps Jacqui would like to say something about that.

186. Mrs Durkin: There is a lot of co-operation at local level, and at a more strategic level through the Criminal Justice Board. There is a range of court user groups at each main court venue and, like other stakeholders, the PPS plays an integral part in working together to reduce avoidable delays in the courts, making sure cases progress, are listed and are heard in a timely fashion. The Court Service wants to continue to foster that good relationship with the PPS as it is a very important part of the justice system and a key stakeholder, as David Lavery said, in that any criminal business coming to court is now coming through the PPS.

187. The Chairperson: Paragraph 10 of your written submission states that the Government will consult with the First Minister and the Deputy First Minister about how the Court Service should relate to a future justice Department and on the different models for court administration. Do you know when that consultation is likely to happen?

188. Mr Lavery: That will probably take place at the end of the process and will be informed by the deliberations of the Assembly and Executive Review Committee. What that really means is that if this Committee has a view on a particular model for the courts and the judiciary, the Court Service will try to put the flesh on the bones. Given the role that the First Minister and Deputy First Minister will play in determining issues such as the number of Departments and ministerial offices, they will be involved in those deliberations. The consultation is likely to be at the latter end of the planning phase, and the Court Service will look to this Committee to see if, for example, a consensus emerges for a preference for courts to be closer to the justice system, or conversely, at arms length. The Committee's deliberations will help inform the planning work of the Court Service. As I said earlier, optimistically, either system could be made to work.

189. The Chairperson: Paragraph 5 of your submission refers to an agreement with the Secretary of State that tribunals will transfer to the Court Service and that that is now subject to the agreement of the Northern Ireland Executive. Are we talking about the administration of tribunals, and if so, is there a timeframe for that?

190. Mr Lavery: Yes. My colleague, Siobhan Broderick, is leading that programme. The Secretary of State announced in March 2006 that tribunals, many of which are run by individual Government Departments, should be brought together into a unified tribunal service, and that the Court Service, because it is in that type of business, would be asked to take over the running of tribunals. Paragraph 5 refers to a decision that was made under direct rule, so it would be appropriate to go the Executive to ask them to validate, or endorse, that decision.

191. We hope to persuade them that there would be benefits from a more coherent administrative system if they did that.

192. There are also concerns that the tribunals are not ECHR-compliant. If, for example, a claimant applied for a social security benefit and was turned down by a Department — the Department for Social Development in this case — he will appeal to an appeal tribunal. He will go to Cleaver House, for instance, but the tribunal will be run by the Department that made the decision. Although the tribunals operate independently, it is felt, from a legal standpoint, that they are not sufficiently independent and that they should be in a different political space. In the autumn, it is our intention to invite the Executive to agree that our objective should be to create a unified tribunal service, which would become part of the Court Service. We hope to achieve that during the next one to two years. Some tribunals are small and could be transferred quickly, but others are larger, and it will take a longer time to transfer them.

193. If justice powers are devolved, the transfers will be made quickly, because it will simply be a case of transferring functions — a machinery of Government change. For instance, a Department could simply order that the appeals tribunal be transferred to the Court Service. Without the devolution of justice, we will have to enter into agency arrangements and agree with each Department that the Court Service will manage the tribunals for them. In the meantime, it has been decided that any new tribunals will be created within the Court Service. A tribunal was established on parking adjudication, and there was to be one established on domestic rates. Any new

tribunal will not be run by a Department: it will be run by the Court Service.

194. Mr McCausland: You said that under the proposed arrangements there would be greater consistency in how tribunals are run. Will there also be cost savings?

195. Mr Lavery: I am interested in looking at how it could be rationalised. However, efficiencies could be achieved if a couple of dozen of little independent organisations were brought together, and that is what I expect will happen in the longer term. As I said earlier, we have an advanced IT system in place for supporting court administration, and we would like to assess whether it could be used for tribunals. Regardless of whether the administration relates to a court case or a tribunal, it is about managing the information that comes before a judge or a chairman and managing the information that leaves the hearing, so the IT system is one area in which efficiencies could be introduced. A lot of the duplication of work can be removed, and when information is keyed in, it stays in the system, electronically. That will produce efficiencies.

196. The costs involved must be made transparent. A lot of the costs are almost disguised by the fact that the tribunals, especially the smaller ones, are embedded in Departments. It is difficult to identify their actual running costs, because they draw a lot of their support from the Department of which they form part. The Court Service will be alert to ensuring that we do not take on something for which there are not sufficient resources. However, rationalisation ought to produce efficiencies and slightly reduce costs.

197. The Chairperson: Will that include all tribunals such as the lands and water tribunals?

198. Mr Lavery: Yes. All tribunals are part of this review. I am conscious that I am hogging the limelight. Siobhan Broderick is head of tribunal reform, and she will say something about the range of tribunals that are involved.

199. Mrs Siobhan Broderick (Northern Ireland Court Service): There are about 17 Northern Ireland tribunals in a number of Departments. Among the larger tribunals are the Industrial Tribunal and the Fair Employment Tribunal. Then there is the Appeals Service, which David mentioned, with the Northern Ireland Planning Appeals Commission and the Water Appeals Commission. There are also a lot of smaller tribunals such as the Lands Tribunal, which has already been mentioned, that is made up of traditional office holders and about five or six staff. There is also a Special Educational Needs Tribunal.

200. I am sure that you are all familiar with the wide range of work covered by tribunals. Members of the public go to tribunals more often than they go to courts and, therefore, it is more important that the tribunal standards are similar; that they are more coherent in how they approach users, and that they are more customer-focused.

201. The Chairperson: What would be the resource implications if all of the tribunals were to be incorporated into the Court Service, and how would staff numbers increase?

202. Mrs Broderick: About 200 staff are involved — I can write to the Committee giving specific numbers. There are approximately 100 staff in the Appeals Service; about 60 or 70 in the Office of Industrial Tribunals and the Fair Employment Tribunal (OITFET) and a sprinkling of staff in the other tribunals.

203. Mr Lavery: We hope that the tribunal function will come to the Court Service together with the staff and the budget. We are a small department with about 750 staff, and in theory we should end up with about 1,000 staff if the tribunals join us.

204. The Chairperson: I presume that bringing the tribunals under one umbrella organisation will create efficiencies.

205. Mrs Broderick: The focus of the reform is on ensuring that tribunals are independent from sponsoring Departments. That should make them more customer-focused. Many tribunals are not, and that is due to economies of scale, which has been discussed. It would also improve the services and their efficiency, but I do not necessarily mean that efficiency is —

206. The Chairperson: No, it is not the primary driver.

207. Mrs Broderick: A better service, by its very nature, should be an efficient service. The aim is not to save jobs in the first instance.

208. The Chairperson: Is this development similar to anything that is happening in Scotland or the Republic of Ireland?

209. Mrs Broderick: England and Wales have introduced unified tribunal administration as a result of the Leggett review of tribunals in 2001. The Tribunals, Courts and Enforcement Act 2007 was introduced earlier this year in England and Wales, which provides for a unified tribunal structure as well as a unified administration. In essence, there would be one tribunal with lower and upper tiers. A claim would be submitted to the tribunal and it would identify where that claim should go.

210. Mr Lavery: The English set-up has a courts service and a tribunal service, both of which are under the Lord Chancellor. We think that, due to economies of scale, the two should be brought together into a courts and tribunals service here.

211. The Chairperson: Will the name of the service change?

212. Mr Lavery: We think that we should rebrand — to use a fashionable term — and bring everything together under the courts and tribunal service. Tribunal staff are quite positive about the change and how it would benefit them. They feel that it would be attractive to join a wider service that does the type of work in which they have expertise, instead of being a small part of a bigger department.

213. The Chairperson: Could that affect the timing of devolution?

214. Mr Lavery: No. It ought to be neutral. We can proceed with the change whether there is devolution or not. We could do it more quickly if there were devolution, as it would simply be a matter of moving all of the functions across to the Court Service. If that happens before devolution, then agency agreements would be needed, which is clumsy, but could be done. However, it ought not to have any impact on the trajectory or timetable for devolution of justice.

215. Mr McCartney: Would that include all of the tribunals, including the two that are under the NIO?

216. Mrs Broderick: Yes. Those tribunals will transfer over prior to devolution, via the machinery of government section. As they are the responsibility of the Secretary of State for Northern Ireland, and our Minister will, ultimately, be the Secretary of State for Justice, we can transfer those services more easily.

217. The Chairperson: Thank you, Siobhan. You have been very helpful.

218. Mr Attwood: As the evidence session comes to a close, I am tempted to ask what might be viewed as being more political questions. However, if you could help us it would be very useful.

219. As chief executive of a senior justice agency in the North, and mindful that you would work with any model of a devolved ministry for justice, and given the fact that there will be a devolution project, funding issues and various complexities, do you think it would be better to have a free-standing ministry for justice, or, as some people may argue, one that is taken into the Office of the First Minister and the Deputy First Minister?

220. What would be better for efficiency, effectiveness and management?

221. Mr Lavery: I do not have a view on that that would assist the Committee, other than to observe that the justice system is a big and complex machine; it is quite a task to make it work in a joined-up manner. The transfer of responsibilities from the Home Office to the new Ministry of Justice in England has created issues — that has not exactly been a tidy redesign.

222. There are benefits to having a coherent Department in charge of all aspects of the justice system. One of the benefits of devolution may be to make the justice system work in a more coherent and joined-up manner. Agencies such as the police, the prosecution or the courts tend to do their own thing. Getting them to work together with a shared set of objectives and principles is desirable.

223. As for where those responsibilities should fit politically, I do not have a view to offer. It could be a separate justice Department, or it could be positioned elsewhere; but there will be a heavy workload. If an existing Department were given that responsibility, it would certainly form the dominant part of that Department's work.

224. Mr Attwood: Although it was sensible that the criminal justice review recommended that the Office of the First Minister and the Deputy First Minister should have the responsibility to sign off on judicial appointments — except for the Lord Chief Justice, which is still the responsibility of London — that could cause problems. A recent example is the non-appointment of a Commissioner for Victims, owing to whatever is or is not happening in the Office of the First Minister and the Deputy First Minister. The appointment of judges could certainly be deemed to be as important or as controversial. Do you have any view on what was a well-intentioned recommendation, but one that could result in all sorts of difficulties?

225. Mr Lavery: I take some reassurance from the fact that, owing to the way in which the legislation is drafted, the First Minister and the Deputy First Minister — or, at present, the Lord Chancellor — do not have a lot that they can do on recommendations for judicial appointments, other than to agree to them or send them back for reconsideration.

226. The legislation obliges the Minister or Ministers to whom the recommendations go from the Northern Ireland Judicial Appointments Commission (NIJAC) to accept the recommendation. Alternatively, the Minister or Ministers can send the recommendation back to NIJAC for further consideration if they have some concerns. If NIJAC, having reflected on the concerns, is minded to stick with the recommendation that it made, the law requires that the Minister or Ministers accept the recommendation.

227. Therefore, unlike a public appointment, there is a lot less room for manoeuvre or disagreement. The legislation has been well designed to avoid any type of obstruction, or even political interference, in decisions.

228. The Chairperson: Thank you. We have covered the issues well. Thank you, Mr Lavery and your colleagues, for attending this meeting, and giving us your time, particularly as you might have been somewhere else.

229. Mr Lavery: Thank you very much Chairman.

230. The Chairperson: We may call on you again to assist us in the research that we may wish to undertake on the Scottish and Irish justice models, which Alex mentioned. I also thank the Hansard team.

2 October 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

Witnesses:

Sir Brian Kerr Lord Chief Justice

Ms Alison Houston
Mr Simon Rogers Lord Chief Justice's Office

Mr Barry Gilligan
Sir Desmond Rea Northern Ireland Policing Board
Mr Trevor Reaney

231. The Chairperson (Mr Donaldson): You are very welcome, my Lord, and I welcome your colleagues Alison Houston and Simon Rogers. I invite members to declare any relevant interests. I declare an interest as a member of the Privy Council, and as a member of the Northern Ireland Policing Board.

232. Mr G Robinson: I am a member of Limavady District Policing Partnership.

233. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

234. The Chairperson: Thank you, members.

235. On behalf of the Committee, I thank you, my Lord, for offering to give oral evidence to the Committee, in addition to the written submission that it has received from you. This is a significant occasion for the Northern Ireland Assembly and, I hope, also for you. We are aware that, previously, neither you nor any of your predecessors have appeared before locally elected representatives at Stormont.

236. I am aware that you have business to attend to this morning and that you will need to leave by 11.35 am, which is when the Committee is due to hear evidence from the Northern Ireland Policing Board.

237. I invite you to begin your presentation with a short opening statement. That will be followed by questions from members. I remind the Committee that the terms of reference for this inquiry include, in the following order: the matters to be transferred, the ministerial models, and the timing and preparations for devolution.

238. I know, my Lord, that you wish to confine your remarks to matters related to the structure of the Northern Ireland Court Service, as well as some of the changes that are already provided for in legislation concerning the judiciary — for example, those related to judicial appointments. Your written submission also touches on timing and preparations. Members may wish to elaborate a little on those comments.

239. The Lord Chief Justice (Sir Brian Kerr): Thank you, first of all, for your warm words of welcome. I am delighted to be here. I should say at the outset that I am grateful for the chance to address the Committee on the matter of the arrangements for the Court Service after the devolution of justice powers.

240. I confess that I have read, with a little bemusement, reports in the press that I am to be quizzed by the Committee or that I am to take a rare turn in the witness box. In fact, I hazard that I am probably one of the few people in this room who has actually given evidence from a witness box. However, I do not visualise my appearance before the Committee as an occasion for quizzing or confrontational cross-examination, but rather as an opportunity for a fruitful and constructive exchange, which will be not only of mutual benefit to the Committee and the judiciary, I hope, but will inform the public on a topic which is — or, at least, should be — of interest to us all.

241. When I have concluded my brief opening remarks, I shall be happy to deal with such questions as I can on the issues that I have touched on already in the letter from my office to your Committee of 30 July, and on what I have to say this morning.

242. Before I begin, may I again introduce Simon Rogers, who is my Principal Secretary, and Alison Houston from my office. They have worked with me on what I have to say this morning and on the submission that was made on 30 July.

243. It goes without saying that I am anxious to help the Committee in any way that I can. I hope that I will be able to answer most of the queries that the subject that I am about to address may prompt. If, however, there are questions that require consideration or, perhaps, a more elaborate answer than I can give extempore, I hope that you would find it helpful for me to supply supplementary material in writing.

244. I have already referred to the letter of 30 July. We also sent the Committee some material on the experience of other jurisdictions, which I hope has been of assistance in its deliberations to date. If we can help further, we would naturally be anxious to do so.

245. I hope that the Committee will forgive me if I start with a truism. I have no doubt that all of the members of the Committee accept that judicial independence is a cornerstone of democracy. The importance of that central and critical element of a fully functioning and healthy democracy cannot be overemphasised. Inasmuch, however, as the independence of the judiciary must be accorded its proper respect, so the deference due to the roles of the other two institutions of government — the legislature and the executive — must not be neglected. A proper understanding of the respective roles of each of the organs of government and an acute insight into the perimeters of their powers and functions is vital to the successful relationship that should exist among them.

246. The need to recognise and preserve the independence of the judiciary was, no doubt, the reason that that fundamental constitutional principle found statutory expression in the explicit and prominent guarantee enshrined in the Constitutional Reform Act 2005. That Act enjoins not only the First Minister, the Deputy First Minister and Northern Ireland Ministers to adhere to and uphold the principle of judicial independence; it requires them and all those:

“with responsibility for matters relating to the judiciary or otherwise to the administration of justice” —

— to refrain from seeking to influence particular judicial decisions through any special access to the judiciary.

247. Of course, while the independence of the judiciary must necessarily set the context for relationships among the various arms of government, it does not preclude interaction between them. I hope that my presence before the Committee can be taken as a clear acceptance on the part of the judiciary of the value of contact between us, provided, of course, that there is a clear understanding and acknowledgement on the part of all concerned — judges and politicians alike — of the roles that each of us play and of the areas into which we must not stray.

248. The report by the House of Lords Select Committee on the Constitution published on 26 July this year captures that point neatly. That Committee, as you will know, was examining relations between the executive, the judiciary and Parliament. Paragraph 27 of the report stated that:

“The other constitutional principle of central importance in governing the relationships between the judiciary, the executive and Parliament is that of the ‘independence of the judiciary’. This does not and should not mean that the judiciary have to be isolated from the other branches of the State. Nor does it mean that the judiciary ... need to be insulated from scrutiny, general accountability for their role or properly made public criticism of conduct inside or outside the courtroom.”

249. Judges are not troubled by the need for them to be accountable. After all, because of our systems of appeals, no judge can expect that his or her decisions will be free from the most painstaking scrutiny in as public a forum as it is possible to imagine.

250. However, accountability must take place in its proper context and should not imperil the essential concept of judicial independence.

251. It is important that it should be recognised that the need to preserve that concept is not as a defence for judges or as a means for them to forestall or deflect scrutiny. It is, as I said, a cornerstone of our democracy and it is as important for every citizen of our society as it is for members of the judiciary. That notion was well expressed by Sir Igor Judge, the senior president of the Queen’s Bench Division in England and Wales, in his evidence to the House of Lords Select Committee on the Constitution:

“The independence of the judiciary is something which is precious to every single member of the community. You must be able to go

into court and know that the person sitting in judgment is neutral — not on one side or the other — coldly applying the law that applies to your case. So although people sometimes think that when we defend judicial independence we are simply defending our own corner ... that is not the case ... The issues which arise here are of great importance to every member of the public."

252. I hope, therefore, that members of the Committee will accept that when I place particular emphasis on this point, it is not for the purpose of shielding judges from unwanted scrutiny or criticism. Rather, it is because the entire basis for such exchanges as may legitimately take place between the judiciary and the other arms of government must be clearly understood from the beginning, so that a productive and suitable relationship between us can develop. It is important that members should understand that we, as judges, recognise that there are matters that fall uniquely within your province and on which it would be entirely inappropriate that we should comment. Thus, for instance, the Committee will not receive observations from me on whether there should be two ministries or one, or whether there should be two Ministers or one. That, it seems to me, is a matter of policy on which a political decision must be taken. It is not something that I, as a judge, should comment on.

253. However, it is right that I should comment on the arrangements for the establishment of the Court Service, as that will impact directly on the judiciary and on how we do our work. Therefore, the most substantive part of the submission made on my behalf in the letter of 30 July, and my remarks today, concentrate on the structural arrangements for the Court Service on devolution.

254. I hope that the Committee will not be surprised to learn that I have given a good deal of thought to that question, and I have discussed it with colleagues in other jurisdictions, particularly England and Wales, Scotland, and the Republic of Ireland. It is also a topic that I raised and considered with colleagues during a meeting of Chief Justices at the recent Commonwealth law conference in Kenya. Indeed, as members will know, I was invited to meet the Committee last week on a day when I was in Scotland discussing proposals with colleagues there.

255. Professor Robert Hazell, director of the constitution unit at University College London, was questioned by the House of Lords Select Committee on the Constitution on the issue of an autonomous court administration. He said that:

"there is a recent trend throughout Northern Europe to introduce greater separation of powers between the executive and the judiciary, and as part of that to give the judges greater responsibility and control for managing the court service".

256. That experience was echoed frequently at the recent Commonwealth law conference. I heard accounts from the Chief Justices of the various countries represented of the arrangements in their individual jurisdictions.

257. As a result of my various discussions and my reading about the issue, I have reached the view that the most appropriate arrangement for the Court Service would be a body at arm's length from the Government under a board chaired by the Lord Chief Justice — in other words, a non-ministerial Department. Now, I do not suggest that there are not other possible models. The Committee will have seen from the papers that I submitted that different approaches have been taken in some jurisdictions, but I have concluded that the non-ministerial Department is the best option, for reasons that I hope to explain shortly. As I have said, that model has been adopted in many other jurisdictions in the Commonwealth, it is planned for Scotland, and it has been in place for some years in the Republic of Ireland. A 2006 report by the Canadian Judicial Council recommended precisely the type of model that I propose to the Committee.

258. I believe that that model provides the maximum safeguard for judicial independence, and it will also provide administrative efficiency. I recognise that if there were to be such a non-ministerial Department, legislation would be required. I appreciate that it may

not be feasible to introduce such legislation before devolution, and that makes the deliberations of the Committee all the more important. I hope that the legislation to provide what I firmly believe is the optimal arrangement will not be long delayed, following devolution.

259. That legislation should enshrine the independence of the board, but it should also be recognised — in statute, if necessary — that the board will not deal with policy, which, as I have said, would be a matter for Government. I also understand that there must be accountability to the executive for the money provided by the legislature to the Court Service. I freely accept, for instance, that it should be incumbent on the board to produce a strategic plan with key objectives, outputs and strategies, including the use of resources.

260. I further accept that that strategic plan should be submitted to the Minister for approval. I anticipate that it would be a requirement that the board report to the Minister annually, and would provide information on performance of functions and such other information as the Minister may reasonably request. One would also expect that staff numbers and grading would be a matter for the board to agree with the Minister, as well, of course, as the budget. Finally, one would also anticipate that the Ministry of justice would be represented on the board.

261. I shall summarise the advantages of the model that I have proposed.

262. First, it reflects the appropriate constitutional position by preserving the independence of the judiciary.

263. Secondly, it will provide a more efficient service. The judges and others on the board, including representatives of the Department, the profession, and suitably qualified independent members, would set the strategy for the service. They would — I respectfully suggest — be best equipped to know what the service requires.

264. Thirdly, staff working for the service would know clearly where their lines of accountability lay, and they would identify the board as giving direction to that role.

265. Fourthly, since the judiciary control the actual business of the courts in case listing and case throughput, and since its members have experience of the difficulties that those challenges raise, they are best placed to devise and enforce realistic targets and goals.

266. Finally — and I accept that this is crucially important — the structure that will be put in place will have built-in accountability arrangements so that the executive can discharge their duty to ensure that proper standards are set for the service that is provided.

267. Thank you. I am happy to take questions.

268. The Chairperson: Thank you, my Lord. We appreciate the detail that you have provided on the preferred model, with regard to the positioning of the Court Service. You may be aware that, when we heard evidence from the Court Service last week, its representatives made similar points, referring to the proposed Scottish model and the positioning of the Courts Service in the Republic of Ireland, to which you referred.

269. Would the structure that you recommend, in your opinion, have any implications for the matters to be transferred under devolution, particularly on the justice side?

270. Sir Brian Kerr: I think not. As I hope that I have made clear, the individual matters that should be devolved are not something on which I feel either qualified or competent to express an opinion. That is a matter for Government and for policy, and I firmly eschew any comment on policy.

271. However, provided what I might describe as justice services are devolved — and anything that I have read about the proposed devolution involves that, as a basic minimum — it seems to me that the model that I advocate would be appropriate.

272. Ms Ní Chuilín: Could the Chief Justice outline what the nature of the relationship would be between the board of the Court Service and the Government? You mentioned strategic plans and submissions on resources, but could you expand on that?

273. Sir Brian Kerr: Let me just recapitulate on that issue and talk about it in practical terms. First, it seems highly likely that the ministry of justice will have a representative on that board, and that representative will, obviously, report to the Minister on a day-to-day basis.

274. Secondly, as I have said already, I fully apprehend that a strategic plan will have to be devised by the board and submitted to the Ministry for consultation. I expect that there will be a requirement that there be an annual report by the board to the Minister. I fully expect that the chief executive will be an accounting officer, in respect of justifying the budget that the board will hope to secure on an annual basis. I do not know whether that deals with all the issues that you raised. Clearly, there will be some considerable outworking of that relationship.

275. No doubt, one will wish to draw on the experience of similar models in other jurisdictions to ensure that accountability arrangements — which I accept are necessary and, indeed, fundamental to this model — are adequate, so that the legislature, which, after all, is the provider of funds for the service, can be satisfied that those funds are being deployed in a proper fashion.

276. Mr McFarland: I thank the Lord Chief Justice for his submission.

277. For the last 30 years, we have had a turbulent society in Northern Ireland. I shall draw from our experience of the setting up of the Policing Board and the interaction of the police with politicians. The justice system would have been in a similar situation to policing, in respect of its attitude towards politics and politicians, and that relationship tended to be at arm's length, for obvious reasons.

278. No one will challenge the judicial independence that you have already mentioned, but I am trying to tease out a few issues. After the establishment of the Policing Board, there was an adjustment period for the police to get used to the fact that politicians — for whom they may not previously have had enormous regard — began to interfere with what was a separate and easily understood society. The Policing Board included politicians who were messing about and asking questions, and it took some time for the new arrangements to settle down.

279. In your opinion, is there likely to be a period of psychological adjustment for the Court Service and the judiciary? We, as politicians, have a duty to scrutinise those areas for which we have responsibility, and to hold people to account. Clearly, politicians legislate and will provide the Court Service with the money to operate. I notice that you kept referring to the Minister, but there will also be a Committee at Stormont, which will take a lot of interest in what the justice service does. The situation with policing is slightly different because there is a Policing Board, and I think that the policing and justice Committee will end up once removed from the Policing Board, because our politicians sit on that board.

280. The Chairperson: Alan, could you come to a question?

281. Mr McFarland: I am just trying to set a scene. There is not likely to be a justice board that is similar to the Policing Board, so the policing and justice Committee may well have a more hands-on role in examining what the justice system does. Do you think that representatives from the judiciary and the justice system — perhaps yourself — are ready to appear regularly in a forum such as this to answer questions? Those questions may not necessarily be on judgements, but on issues that pertain to the running of the Court Service or the judiciary.

282. Will a psychological adjustment be required, and how long do you think that it might take for people to get used to interference by politicians?

283. Sir Brian Kerr: I have already laid the claim that judges are ready to embark upon a relationship with the other arms of Government, and I do not mind repeating that and declaiming it. As I said in my opening remarks, it is vital that we, as judges, and you, as representatives of the executive and legislative arms of Government, have a clear view about what I described as the perimeters of our functions. Subject to that, and provided there is a clear understanding on all sides of the areas into which we must not stray, I foresee that a useful and constructive relationship can develop.

284. Although I am the Lord Chief Justice, and head of the judiciary in Northern Ireland, that does not mean that I have not had contact with politicians in the past. I have had regular meetings with the Lord Chancellor, who, until 2005, was the head of the judiciary but was also a politician. I also have regular exchanges with the Northern Ireland Office (NIO) on proposed legislation.

285. However, I can best exemplify what I said about the need to recognise the perimeters by saying that when I, as the head of the judiciary, and other judges comment upon proposed legislation, we do not comment on policy. We can be consulted, and stand ready to be consulted, about difficulties that might be anticipated in the implementation of particular items of legislation. However, we will not — and we make this absolutely clear — comment on policy. Likewise, when we are consulted by Government departments and politicians, we expect that they will not wish to make comment upon the discharge of our judicial function. That, it seems to me, is central to the notion of the separation of powers.

286. Therefore, there is no reason why a healthy and constructive relationship should not develop, provided that we all understand where we stand and where we are coming from.

287. Mr McCartney: Thank you for your presentation. From your opening remarks, I find we have something in common — I too had to give evidence from a witness box in the past. I will not say how many times, that is for another day maybe.

288. Sir Brian Kerr: You and I should probably refrain from going into that.

289. Mr McCartney: You have stated your preference for the non-Ministerial model, and the Chairperson has already said that we had evidence last week from David Lavery and we talked about the Irish model. One reason why the Irish model was introduced was due to public perception, or perhaps the reality, that there was undue Ministerial or political influence or interference with the judiciary. Is that one reason why you would prefer to see that model implemented here? Furthermore, should we be more rigorous in ensuring that there is no political interference in the future?

290. Sir Brian Kerr: I have no reason to apprehend that there will be undue political influence on the administration of justice or on the discharge of the judicial function. I have absolutely no reason to believe that that is likely to occur. If that were attempted, I, as the head of the judiciary, would conceive it as my duty to resist it firmly.

291. I am not in a position to say whether the choice of the model for the Republic of Ireland was influenced to any particular extent by the public perception about political interference. However, I have had a number of exchanges with the Chief Justice of Ireland and some of the judges, in particular Mrs Justice Denham, who prepared the report that led to the establishment of that model. They have said that it has led to a very successful relationship between the Department of Justice and the judiciary.

292. The chief executive is the accounting officer to the Department of Justice, Equality and Law Reform. He is answerable to the Dáil if issues arise, which has happened very infrequently. There is a symbolic dimension to the model that I propose, in that the public can feel confident that it recognises the vital principle of the separation of powers.

293. However, I am more concerned about practical effects. The judges who will comprise the board, along with other members, will bring unrivalled experience of the difficulties in the administration of justice in our community. Therefore, they, in an administrative rather than a judicial capacity, can bring a vital ingredient to the successful administration of justice. There are two elements: symbolic and practical, and I emphasise the latter.

294. The Chairperson: My Lord, on that point, assuming that this Committee and the Assembly accept your proposed model, as you said, the current legislation does not make provision for it, and, if devolution of the relevant powers were to come before the required legislation, transitional arrangements would be necessary. Do you have a view on what those transitional arrangements should be, bearing in mind the model that the Northern Ireland Office has proposed?

295. Sir Brian Kerr: You are right to remind the Committee that legislation would be required. Transitional arrangements are difficult to devise in a vacuum. I anticipate that the Northern Ireland Court Service's current arrangements would endure until legislation was possible.

296. Let me be clear that, although I am proposing a model that will mean an alteration in the current arrangements, I am not saying that the current arrangements do not work — they do work, and I anticipate that they would continue to do so. However, I expect that, if we go down the road that I recommend to the Committee, those arrangements will work better.

297. Mr Attwood: You are very welcome, Lord Chief Justice. I have two or three questions. In evidence to the Committee last week, the director of the Northern Ireland Court Service said:

"It is possible to think of a halfway house, where the proposed agency might have judges involved in the management and oversight of the courts."

He added:

"It may be possible to design a form of agency that is sufficiently at arm's length from the day-to-day running of the justice Department to allay some of the Lord Chief Justice's concerns, without moving so far along the continuum that it becomes a separate Department in

its own right.”

298. Are there not three options on the table? There is the option that you prefer, the option that the British Government recommend, and the halfway house that Mr Lavery outlined to the Committee. That should be considered, because, when we collapse all the issues down, there is a concern that, as a consequence of adhering to the proper requirement to keep the judiciary and the Court Service at arm's length, there will be no proper accountability, proper oversight or proper probing. My first question is — and I would like to ask a supplementary question, Chairperson — what is your view on the halfway house model?

299. Sir Brian Kerr: The direct answer is that there are, of course, at least three options, and probably a great many more than those that you have adumbrated. I do not wish to suggest to the Committee that it can choose only the existing arrangements or the model that I propose.

300. However, underlying your question appears to be a concern about the efficacy of the accountability arrangements. I pose the following question to you: is there any guarantee that what you describe as the halfway house will produce more effective and efficient accountability arrangements?

301. As I said in my opening remarks, the arrangements for the accountability of the board will have to be worked out. However, such arrangements have proved successful in many other jurisdictions. The Scottish Parliament clearly contemplates — if the current proposals are accepted there — that sufficient accountability will be built into the arrangements. In the Republic of Ireland, as I have said, for several years the broad model that I propose has operated without any express dissatisfaction with its accountability.

302. Mr Attwood: I have some sympathy with the model that you propose, although I am concerned that efforts would be made to have higher levels of political interference than would otherwise be the case. However, David Lavery outlined why the halfway house could work better than any other model. For example, he outlined that Court Service staff could be part of the wider Northern Ireland Civil Service and would therefore have career and development opportunities that would not otherwise be open to them. There may be added value in the halfway house model, without compromising the accountability associated with any one particular model.

303. Sir Brian Kerr: I cannot speak with authority about the career path for Court Service staff if the model that I propose is adopted. However, it is surely not beyond the wit of man to come up with arrangements that would facilitate movement between the Court Service and the mainstream Civil Service. In the Republic of Ireland, there is such movement from the Courts Service to the mainstream Civil Service. If any perceived disadvantages in joining a dedicated Court Service are anticipated, those could surely be overcome.

304. Mr Attwood: Could you allay some of the concerns, real or imaginary, about the model that you propose, Lord Chief Justice? In your submission, you rightly outlined that there would be a need for effective working relationships, which would be supported by periodic meetings with the new Minister or Ministers. Do you have a view about the need for effective working relationships with a broader range of society, whereby the judiciary would not just engage on the political side with the Minister or, as Alan McFarland said, the Committee?

305. Do you have a view about whether, as the issue of accountability becomes more central to people's thinking, the judiciary should have periodic meetings with a broader range of society in order to, in an appropriate way, inform how the judiciary conducts its affairs?

306. Sir Brian Kerr: Let me preface my answer by re-emphasising the need to distinguish between the various functions that we are

discussing. Judges that would be members of the Court Service would not be performing a judicial function; they would be performing an administrative function. It is right that they, in common with the other members of the committee, should be accountable to the other arms of government for the discharge of those functions. However, one must not confuse that role with the adjudicative role — the purely judicial function — that judges perform in reaching decisions on cases.

307. Allusion has been made to the fact that today is the first time that the Lord Chief Justice has appeared before a Committee. As it happens, I appeared before the House of Lords Select Committee on the Constitution.

308. It is generally recognised that I have a higher profile than my predecessors, although not all commentators — particularly radio commentators — might necessarily agree. I am anxious that, where appropriate, judges should engage in, if not public debate, then at least an explanation of the role that they perform. I have encouraged colleagues to participate in conferences. I regularly participate in such events — for instance, I made a few remarks at the recent launch of the victims and witnesses strategy, the new five-year strategy. I have also appeared before various boards, and some members of the Committee will remember that I addressed members of the Policing Board. However, one must be extremely careful that that is done in a proper way so that the concept of judicial independence is not imperilled.

309. If I were a defendant in a criminal case, if I were a claimant seeking compensation, I would take it severely amiss if the judge dealing with my case appeared in public and was subjected to questions about the discharge of his judicial function in relation to my case. Even though I am anxious to ensure that judges do all that they can to maintain confidence in the administration of justice, I am equally anxious that nothing is done that would corrode that confidence by a perception that judges are answerable to a wider audience or authority than the discharge of their judicial functions.

310. The Chairperson: I will follow through on Alex Attwood's comments about the separation of the Court Service from the Northern Ireland Civil Service. In his evidence last week, Mr Lavery said that he saw no need to be separate from the Civil Service. He envisaged that even in the event of your preferred model being adopted, there would still be a linkage between the Court Service and the Civil Service — and that, undoubtedly, was his preferred outcome.

311. My Lord, is it a question of the timing of devolution of policing and justice — whenever that may be — being an appropriate, perhaps, convenient time to introduce the model that you have suggested? Will devolution provide a vehicle to achieve that? Would you still be pressing for this kind of model if the Assembly did not exist and we were under direct rule? Does it make a difference that you are dealing with a Department of justice that, in the future, may be run by local politicians who live in the community and who are connected to and with people who may at some time appear before the courts? Perhaps that problem is not as great when our Ministers are not from the community. Is that part of the motivation behind this move?

312. Sir Brian Kerr: It is not. I am grateful and relieved to hear that Mr Lavery did not consider that there would be any disadvantage in being employed as a civil servant for the Court Service. No, is my firm answer to your second point. I would advocate this model if direct rule continued. The catalyst for the reform is the change in the constitutional order that arose from the Constitutional Reform Act 2005. As I said before, until April 2005 the Lord Chancellor was not only a senior member of the Cabinet but the head of the judiciary, but that has changed. In England and Wales, the Lord Chief Justice of England and Wales has become the head of the judiciary, and in Northern Ireland I have become the head of the judiciary. It is due to that change in the constitutional order that I have, after some considerable deliberation, concluded that this is the preferred model.

313. Mr Attwood: I must ask to be excused, because I have responsibilities in the House.

314. Mr G Robinson: Can an imposed date for the devolution of policing and justice be considered seriously when numerous Members of the Assembly are opposed to the idea until all political parties and the general public deem the timing confidence appropriate?

315. Sir Brian Kerr: My comment on that matter is not to pass any comment. The timing of the devolution of policing and justice is a uniquely political consideration. It is not for me to enter into the debate. I understand the concerns and, in common with any other citizen in Northern Ireland, I try to keep abreast of the debate. However, my role is not to engage in discussion about whether, when or in what form devolution should take place. My role is to ensure, as best as I can, that the most effective administration of justice and justice services are delivered. That is my exclusive concern.

316. Mr Kennedy: I welcome the Lord Chief Justice and his delegation. You said that you have had ongoing contact with the Northern Ireland Office on many issues, including proposed legislation. What level of contact have you had concerning the changes, and has it been at ministerial level?

317. In addition, what type of relationship do you envisage with the First Minister and the Deputy First Minister should policing and justice be devolved?

318. Sir Brian Kerr: I have had limited contact with the Lord Chancellor, Mr Straw, who is the Minister responsible for justice, on the topic under consideration this morning. Before Lord Falconer left the office of Lord Chancellor, I had preliminary discussions with him. I have also briefly — and I emphasise briefly — discussed the matter with the Secretary of State, Mr Woodward. I had no discussion on this topic with his predecessor.

319. The level of contact will depend on the model that is chosen. As I have said, one would expect that the board would include a representative from the ministry of justice, who would report to the Minister on its day-to-day activities. One would also expect that there would be a strategic plan and an annual report that would be presented to the Minister for his consideration. When one gets to the stage of working out the detail of the arrangements, there would have to be discussion as to whether the Minister could ask the board to give an account of its functions more frequently. Those matters depend on which model is chosen.

320. Mr O'Dowd: Welcome, Chief Justice. This morning's discussions on the relationship between the judiciary and legislators have been interesting. Unfortunately, time is restricted.

321. Many of the points that I wished to raise have been covered. As a lay person, my understanding is that although the legislature introduces laws, it is the judiciary that sets the sentencing tariffs. Is that achieved through a system that connects us with what happens in England, Wales and Scotland or does it happen locally? If there is a connection, will the concerns and views of the wider community be taken into account in such a system under devolution?

322. Also, what are your views on the present representative nature of the judiciary — particularly concerning women?

323. Sir Brian Kerr: Those are two topics that could occupy quite a bit of time. Although they are not immediately germane to the issues in hand, they are pertinent topics and I am happy to respond briefly to them.

324. First, Northern Ireland's judiciary is not connected to England and Wales with regard to sentencing. We do take into account

decisions made in those jurisdictions and recommendations made by the Sentencing Guidelines Council. However, on occasion, we have explicitly refused to follow either decisions made in England and Wales or recommendations made by the council. Recently, when we have delivered judgements on a number of cases in the Northern Ireland Court of Appeal and where we have refused to take those matters into account, the sentences imposed by our Court of Appeal have been greater than those imposed in England and Wales.

325. Sentencing is an extremely difficult exercise. It occurred to me to have another look at the number of legislative provisions that a judge imposing a sentence might have to consult before finally fixing on his decision. On occasions, it can be as many as 20. Therefore, it is a difficult exercise. The judge who must perform that task, which is one of the most challenging and troubling jobs that judges do, will frequently seek guidance and assistance from whatever source he or she can. Judges, therefore, take into account, but are not bound by, decisions that are made in England and Wales.

326. The second question relates to a broad and important topic. The Northern Ireland Judicial Appointments Commission, of which I am chairman, has recognised that there is an imbalance in certain tiers of the judiciary. However, it has not been given a statutory remit to appoint judges who are representative of the community; our statutory enjoinder, which is a clear injunction, is that we must make recommendations for judicial appointment that are based exclusively on merit.

327. However, we also have a statutory obligation to embark on a programme of action that will ensure, insofar as is reasonably practicable, that the judiciary is reflective of the community — as opposed to being representative of it — in Northern Ireland. The commission has, therefore, begun to investigate what might be the disincentives — what some people call the “chill factors” — that deter people, particularly women, from making applications for judicial appointment. I am happy to say that since I became the Lord Chief Justice, there has been a significant increase in the appointment of women to the bench. We could take a great deal of time to discuss and explore the reasons why more women have not come forward for judicial appointment. I am convinced that that will change. There are extremely able young women at the bar and in the solicitors’ profession who, I hope and am confident, will apply for judicial appointment in the future.

328. The Committee can take it from me, as chairman of the Judicial Appointments Commission, that one of my abiding concerns is to ensure that, in keeping faith with the overarching principle that all appointments to judicial office must be based on merit, the “chill factors” and disincentives that may discourage women from applying for judicial office will be identified and removed.

329. The Chairperson: Have you had any contact with the Office of the First Minister and the Deputy First Minister (OFMDFM) with regard to future relationships that concern the Judicial Appointments Commission and the Judicial Appointments Ombudsman?

330. Sir Brian Kerr: No, I have not. However, I anticipate that that will take place in due course.

331. Mr McCausland: Lord Chief Justice, you have said that all parties involved would welcome reasonable notice to enable changes to be made as smoothly and as efficiently as possible. What would constitute reasonable notice?

332. Sir Brian Kerr: To be honest, that is something that I have not thought about. That will depend, I suppose, on the nature of the arrangements. We judges cannot be adamant on that; we cannot impose our will. We simply recognise that there will be logistical adjustments to be made and — in common with every other body that has to make adjustments — we would welcome as much notice as you feel able to give us. I am sorry; that is a pretty imprecise reply, but I am afraid that I cannot come up with a better one.

333. The Chairperson: Lord Chief Justice, our time has elapsed. We appreciate that you, and your colleagues Ms Houston and Mr Rogers, have found time for us in your busy schedule. I hope that you will not mind our seeking any other points of clarification in due course, if required. Your evidence has been very valuable to the Committee, and we appreciate it very much.
334. Sir Brian Kerr: Thank you very much indeed. I am very grateful for the courtesy with which I have been received. I hope that this has been a fruitful, constructive and productive exchange.
335. The Chairperson: Good morning, Sir Desmond. I welcome you and your colleagues Mr Gilligan and Mr Reaney, vice-chairman and chief executive, respectively, of the Northern Ireland Policing Board. Before proceeding, I again advise members to declare any relevant interest. I declare an interest as a member of the Privy Council, and as a member of the Northern Ireland Policing Board.
336. Mr G Robinson: I am a member of Limavady District Policing Partnership.
337. Mr I McCrea: I am a member of Cookstown District Policing Partnership.
338. The Chairperson: Sir Desmond, you will be aware of the inquiry that we are conducting into the devolution of policing and justice powers to the Assembly, and the relevant preparations for that. You have very kindly provided us with a written submission. I invite you to begin with a short opening statement, after which members will explore particular issues with you by way of questions.
339. Sir Desmond Rea (Northern Ireland Policing Board): Thank you, Chairman. As you said, I am representing the Policing Board, and I am joined by Barry Gilligan, the vice-chairman of the board, and Trevor Reaney, the board's chief executive. We have provided each member of the Committee with a document, which perhaps could go into the record, if possible. My opening statement is a summary of that document.
340. I thank the Committee for its invitation to attend this morning's session. I am sure that members will appreciate that I am the chairman of a corporate body comprising diverse political and community views on many issues including the devolution of policing and justice. I will do my best to reflect the mind of the board, but I may have to reflect a personal view on some issues that members may raise, or I may come back to the Committee in writing on specific matters.
341. I am conscious that there are current and former members of the Policing Board on the Committee; they will have an insight into the workings of the board. Members will have received a copy of the board's written submission. That submission was considered and agreed by the board's corporate policy planning and performance committee at its meeting on 19 July.
342. The board welcomes the opportunity to attend today's oral evidence session. First, we will give the Committee an overview of the work of the Policing Board, and that may be through a question and answer session. Secondly, we will amplify the board's written submission. Thirdly, we will brief the Committee on the board's experience of the current tripartite arrangements, including the relationship between the board, the Chief Constable and the relevant Minister and Department, namely the NIO.
343. Finally, we will address issues relating to the operation of the tripartite arrangements under devolution, insofar as it is possible to envisage those. Following my opening remarks, we will be happy to attempt to answer questions and to provide any information that will assist members.

344. The Policing Board has a unique accountability and governance role with strong powers devolved under the relevant legislation. It is the board's role to secure an effective, efficient and impartial Police Service and to hold the Chief Constable to account for the exercise of his functions and those of the Police Service in an open and transparent way. The board does that through monthly meetings that take place in public and private session. I can explain later what determines whether a session is public or private. The board is broadly representative of the whole community, and its political members and independent members bring a valuable perspective to debate and decision-making. Members may wish to question us on what the independents bring to the deliberations of the board.

345. We have entered a new and welcome phase in the history of policing in Northern Ireland, and full political support for policing is now secured. That completes the jigsaw in respect of policing. All that remains now is for dissidents to diminish their activity and for those on the loyalist side to go away. The Policing Board is now fully representative of the whole community, and district policing partnerships, fully representative of the whole community, will soon follow, because a number of those are being reconstituted.

346. Since its establishment in 2001, the Policing Board has made solid progress in establishing and developing its role. Its achievements in establishing a framework of accountability for policing in Northern Ireland have been significant, and they are a matter of public record. I will leave copies of 'The Life and Times of the First Northern Ireland Policing Board', which gives a flavour of the work that has been done — successfully, I believe — by the board since its inception. I could list a number of things that the corporate body has done since its inception, but they are in the paper that members have in front of them, and I will not waste any time going through them again.

347. The Policing Board has driven forward a programme of policing change unprecedented in the history of policing in these islands. Tribute must be paid to the Chief Constable, Sir Hugh Orde, and his senior officer team for driving its implementation, and also to the previous Chief Constable Sir Ronnie Flanagan for initially embracing the programme of change, which was designed to secure the support and confidence of the whole community.

348. Policing is an essential public service, and local people and communities must have confidence that the police service is representative of, and responsive to, the needs of all sections of what is an increasingly diverse society. The board has an important responsibility to ensure the delivery of that service at strategic and local levels.

349. Similarly, the DPPs marked a new milestone in injecting community involvement into policing through council and local independent memberships. DPPs have delivered a level of community involvement, openness and transparency to policing that was new to these islands. Recently, a senior police officer in England took me aside and told me that forces were in the midst of a review; he said that he realised how much progress had been made and how far policing in Northern Ireland had moved on in that respect, and he expressed a wish to come to see the DPPs in action.

350. In exercising its governance role, the board has put in place accountability mechanisms to monitor and assess the performance of the Chief Constable and all aspects of the PSNI's work. The board does that, primarily, by working to the policing plan. Later this month, the board will meet a senior PSNI team to put together the next stage of the policing plan, against which the Chief Constable and the PSNI will be held to account. He is performance-appraised on his own work — the board initiated that process with the Chief Constable and with his full co-operation, and, to my knowledge, he was the first Chief Constable in these islands who was prepared to embark on that process.

351. The healthy tension between the board and the Chief Constable ensures that there is an appropriate balance between supporting the PSNI — for example, in negotiating the annual budget with Government — and scrutiny, challenge and accountability. Through its

work, the board has made difficult decisions and has done so successfully in a complex political environment. The board has intervened, when necessary, in critical incidents and in issues that have impacted on the effectiveness of policing or public confidence — the tragic Omagh bombing atrocity, to name but one.

352. The board has established important working relationships with a wide range of stakeholders and interested parties in the wider criminal justice sector and in the community. I will not name them, but they are a matter of public record and are listed in the statement that has been given to members. The board has recently established reference groups to engage with various parts of the wider community, including minority ethnic communities, the lesbian, gay, bisexual and transgender (LGBT) community, older persons and women's organisations.

353. As a public body, the board must also be subject to scrutiny on how it conducts its own business. In recent years, such scrutiny has included reports from the Office of the Oversight Commissioner, a Northern Ireland Affairs Committee report in 2005 and best-value reports. The board also commissioned an independent assessment report by a team representing in part, policing across the water and in part, human rights in the Republic of Ireland; the team was commissioned to examine the board and its work and to provide feedback in order that we could learn how better to go about our business.

354. Such scrutiny is important to assist the board in improving the discharge of its functions. As members know, the term of the Oversight Commissioner for Northern Ireland ended in May 2007. The board has been given responsibility for the oversight of the implementation of the remaining recommendations. Of the 170 recommendations, about 40 are at various stages of completion, and the board has the responsibility to ensure that those are completed.

355. As stated in the board's written submission, it supports the concept of devolution of policing as set out in recommendation 20 of the Patten Report, which states that:

"Responsibility for policing should be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security."

356. In that context, the board recognises that the major decisions about the devolution of policing and justice matters, as set out in the terms of reference of the Committee's inquiry, are primarily matters for the political parties to consider.

357. However, the board wishes to present two points of principle. That was in our initial letter of reply, and I simply summarise.

358. The first is that the role and powers of the board should not be diminished under the devolution of policing and justice, including that the Chief Constable should remain accountable solely to the board for the delivery of the policing service in Northern Ireland. That principle is consistent with recommendation 21 of the Patten Report, and is stated in the document that you have in front of you. It is also consistent with paragraph 13.7 of the Government's discussion paper on devolving policing and justice in Northern Ireland, and again that is stated in your paper. Moreover, that was also the unanimously agreed conclusion of the Assembly's Committee on the Preparation for Government when it reported on law and order issues in September 2006.

359. Secondly, the Chief Constable's operational responsibility should not be undermined when policing and justice powers are devolved. That principle is consistent with recommendation 24 of the Patten Report, and again that is summarised. It is also consistent with paragraph 13.13 of the Government's discussion paper on devolving powers, policing and justice in Northern Ireland, and, once again,

that is stated in the paper before you.

360. Those principles represent the unanimous view of the Policing Board, and it is essential that those fundamental principles are embedded in future devolution arrangements, with appropriate arrangements and protocols put in place to ensure that they are given full effect.

361. The tripartite structure in Northern Ireland policing terms refers to the working relationship between the Policing Board, the Chief Constable, the Government of the day through the Secretary of State and the Northern Ireland Office (NIO). Each has a direct interest and role in respect of policing in Northern Ireland. Although that tripartite relationship resembles the arrangements for policing, police services and police authorities in England, Wales and Scotland, in Northern Ireland the tripartite model of policing involves a one-to-one relationship: one police service; one policing board; one Government department; and one Secretary of State. It should be noted that Northern Ireland has set the standards in best practice in police accountability. For example, the Policing Board's role in monitoring human rights compliance has now been included in the legislative role of police authorities in England and Wales.

362. The NIO exists to support the Secretary of State in taking forward Government policy in Northern Ireland, and the Chief Constable is operationally responsible for the overall management of the PSNI and delivery of the policing service. The board's primary role is to secure an effective, efficient and impartial police service and to hold the Chief Constable to account. On most policing issues there will be a role, responsibility or interest for each of the organisations in the tripartite structure. The exact scope and limitations of those interests is not precisely defined, and, at times, there is a degree of tension between the three, with the Chief Constable seeking to maintain his operational responsibility, the Policing Board striving to achieve, in a transparent way, effective accountability for operational decisions that the Chief Constable has made, and the Government defining the overall policy, legislative and funding framework for policing.

363. The Policing Board has a constructive working relationship with Ministers and officials in the Northern Ireland Office, which is, at times, challenging and robust. The board wishes to see that kind of relationship continue under devolution. The board has sometimes been successful in persuading Ministers of its position, for example, in the area of restorative justice; what has evolved in respect of restorative justice is substantially what the board argued for, and, when it could not make progress, it sought clarification on issues. There are areas where the board did not succeed, and one of those is resolving the overlapping role of DPPs and community safety partnerships.

364. The future of policing reform in Northern Ireland, post-Good Friday Agreement and post- Patten Report, is one, I believe, of success. In terms of the future tripartite arrangements, the current tripartite approach to governance and delivery of policing services is well tried and tested, and over six years has proven to be effective. Under devolution the new tripartite arrangements will have the potential to become more complex and crowded, with the potential for duplication in approach, unnecessary additional bureaucracy and potential mission creep. Two of the three legs of the tripartite stool will remain unchanged if the above principles are maintained, and they are the board and the Chief Constable. It is in the third leg that the change will take place, and it is our mutual responsibility to ensure that arrangements and protocols are put in place for operation under devolution and that the reality of devolution, as envisaged in the Patten Report, is delivered, while enshrining the principles outlined earlier.

365. The role of Assembly Committees is distinct from that of the Policing Board, and their respective roles are set out unambiguously in statute. In the current tripartite structure, the board ensures the delivery of an effective, efficient and impartial police service and holds the Chief Constable to account, while the Northern Ireland Affairs Committee scrutinises the work of the Secretary of State and the Department. The new Assembly Committee would fulfil its scrutiny and policy development roles, assuming responsibility for that function from the Northern Ireland Affairs Committee. It would have a wide brief across the whole criminal justice system in Northern

Ireland.

366. It should be noted that the board will need to have a continuing relationship with the Secretary of State in respect of non-devolved matters and national issues in which it will have an interest; for example, oversight of the PSNI's role in national security matters.

367. The board has not considered the detail of powers that should be devolved across the criminal justice system, but I reiterate the board's unanimous position in support of the recommendations made by the Independent Commission on Policing — the Patten Report — which stated:

“Responsibility for policing should be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security.”

368. The board values the productive working relationships that it has developed with a range of national policing institutions. Those are listed for the Committee in my submission.

369. Six years into the delivery of the 10-year reform programme many challenges remain for policing — challenges that the board is alive to and is committed to dealing with. In the years ahead, perhaps public confidence, public expectations, quality of service delivery, and the availability of resources will feature most highly. As witnessed in recent weeks, the community wants and needs a policing service that is responsive to, and meets, community needs. In our important respective roles prior to and following devolution, we must continue to make progress on the issue of policing. That will be the real test of delivery. We must continue to move forward on policing — building community confidence as we go — to ensure the delivery of an effective, efficient, accountable and impartial policing for the whole community. Those are the issues that feature regularly in the board's engagement with the Chief Constable and the PSNI.

370. In a devolved arena, policing will be competing with other essential public-sector services for funding. More will be required from less — the anticipated comprehensive spending review (CSR) 2007 figures, which I am told are likely to come out this month, indicate that. The board will continue its work in ensuring that the Chief Constable makes the best use of scarce resources for the delivery of effective and efficient policing.

371. In conclusion, Chairman, as we continue to consider the implications of the new devolved arrangements and plan for the establishment of effective and efficient working relationships under devolution, we will be pleased to further assist the Committee in any way that we can.

372. I am sorry if I have gone a little over time, but this is a comprehensive area.

373. The Chairperson: Thank you very much, Sir Desmond. You said that “more will be required from less”, referring to the implications of the CSR and the resources that are available to policing. Does the board have a view as to whether there will be adequate funding for policing when devolution occurs?

374. Sir Desmond Rea: The board does not have a view on the matter; it has not debated it yet. The PSNI recently made a decision in respect of the full-time Reserve, as you are aware. In the course of considering that decision, we were aware of other contributory factors that affect policing and how it is carried out. I have already referred to the continuing threat from dissidents and activity on the loyalist side and to the fact that they go must away. That affects budgets, policing on the ground, and how we go about policing, for

example, by patrolling. Therefore, we have touched only indirectly on that subject. However, I suspect that when we see the CSR, we will look at it in some depth. The matter also raises the question about the number of police that we have, as you know.

375. Mr Gilligan: The Committee is well aware of the reasons that we have more officers for each person than what we describe as most similar forces.

376. I have no doubt that, despite vast improvements over the past six years, some work remains to be done. For example, in Strathclyde — which is a larger area and has a larger population than Northern Ireland — the budget that is available to the Chief Constable is considerably less. Another area for improvement is single-officer patrolling — which the Chairperson mentioned — and getting more officers to the coalface. That would make better use of officers who are currently doing civilian-type jobs. Therefore, there are a host of areas that I consider as work in progress.

377. Mr McCartney: Thank you for your presentation, the first part of which does not come within the Committee's remit, so I will not ask questions on that.

378. Is the Policing Board ready to begin work if the powers for policing and justice were devolved to the North in May 2008?

379. Sir Desmond Rea: As I said, that is a question for the politicians. When politicians make the decision on the devolution of those powers, the Policing Board will work with the Assembly to move forward.

380. Mr McCartney: There is nothing in the Policing Board's field of work that would prevent that from happening?

381. Sir Desmond Rea: Nothing whatsoever.

382. Mr McCartney: Have you had any communication with the NIO about its progress in working with other agencies on how the devolution process can be advanced?

383. Mr Reaney: At an official level, there is a stakeholder group that consists of representatives from the various agencies that will be affected, across the criminal justice system. I represent the Policing Board on that group, and the Deputy Chief Constable represents the PSNI. That group is meeting and work is ongoing. I am sure that the Committee has heard about that from NIO officials.

384. Mr McCartney: Can you give the Committee a progress report on the work of that group?

385. Mr Reaney: At present, it is very difficult for me to give an overall assessment. All I can say is that — because the accountability arrangements for policing have been in place for a considerable time — the degree of change in policing is less than what would be expected in the rest of the criminal justice system, where more preparatory work will be required.

386. Sir Desmond Rea: I was reflecting over the weekend about the relationships among Ministers, and between civil servants and the Policing Board. The three of us agree that those relationships have been characterised by a remarkably light touch over the past six years. The Policing Board will simply move across to the new Department that will be established when policing and justice powers are devolved.

387. Mr McCartney: You are ready to move?

388. Sir Desmond Rea: Yes.

389. Mr Kennedy: I welcome the Policing Board delegation. The halfback line of Rea, Reaney and Gilligan is very impressive. Thank you for your presentation.

390. I wish to ask about the future tripartite arrangements —

Committee suspended for a Division in the House.

On resuming —

391. The Chairperson: We shall now resume proceedings. For the benefit of Hansard, I ask Danny — with the Division bell ringing in our ears — to give us an abridged version of his excellent and well-honed question.

392. Mr Kennedy: You are only saying that because it is true, Chairman.

393. What relationship does Sir Desmond envisage between any policing and justice Statutory Committee and the Policing Board?

394. You will recall that the Policing Board has 10 political members, each of whom is an MLA. Any Statutory Committee would comprise 11 elected representatives. You have suggested that the Committee should undertake the role that the House of Commons Northern Ireland Affairs Committee plays. Is that a practical suggestion?

395. Sir Desmond Rea: In a sense, that is the existing arrangement. I would expect the Statutory Committee to hold the Minister to account on policy and administration. I would expect it to meet the Policing Board at least once a year — perhaps twice a year. Meetings between the Policing Board and the House of Commons Northern Ireland Affairs Committee are much less frequent than that. That is one way forward.

396. As I said earlier, the tripartite relationship among the Policing Board, the Minister and the NIO has, in my experience, been remarkably light. I would have thought that the Committee —

397. Mr Kennedy: Pardon me, Sir Desmond. At present, the Northern Ireland Affairs Committee fulfils an important role. However, it is made up of MPs, not all of whom are based in Northern Ireland. The situation with the Policing Board and any Statutory Committee would be different. The Policing Board has a political membership, and all 10 of its political members sit in the Assembly. To refer the work of the Northern Ireland Affairs Committee to locally elected representatives in that Assembly might create a build-up of tension.

398. Sir Desmond Rea: That is correct, and I spelt that out in my opening remarks. For reasons of good governance, it would make sense for MLAs who sit on the Policing Board not to sit on the Statutory Committee. Nevertheless, the Committee would play an

important role in scrutinising the work of the Policing Board and how it goes about its activities.

399. I thought that you were going to say that the Northern Ireland Affairs Committee deals with a wide range of matters, of which policing is but one finite part. Policing and justice, when devolved, will be of much greater importance to the Assembly. It is important that, as the matter progresses, memoranda of understanding between the different parties be established, and that we learn from experience and adjust accordingly.

400. The Chairperson: I just want to probe that issue a bit further. Danny was diplomatic in his choice of terms — he talked about a potential tension. Is there a potential conflict of interest, given that Assembly Members sit on the Policing Board and the Assembly will also have to scrutinise that board? Has the board given much thought to that?

401. Sir Desmond Rea: Although the board has given no great thought to it in any depth, that question is easily answered. You are quite right, there is a possibility of tension arising, but the best way to proceed would be by drawing up a memorandum of understanding that is reviewed regularly and by working to try to achieve the most positive relationships.

402. It is important that there is no political interference in the operational responsibility of the Chief Constable and how he goes about his work. That principle must be adhered to, and the board gives that degree of protection because independent members work alongside the board members. In the past, the independents have been quite prepared to flex their muscles as they deemed appropriate. Previous boards have been quite prepared to require political members to back off on something, get together, consider the matter, see if they can do a deal on it and then come back to the board to discuss that deal. That approach has been important in resolving certain matters about which there has been tension. For those of us who believe in devolution and want it to work, it is necessary to start off with goodwill and seek to build on it.

403. Mr Gilligan: Desmond mentioned a key issue; to avoid any potential conflict of interest, an MLA should not serve on both the board and any future Committee on policing and justice.

404. The Chairperson: That would avoid a personal conflict of interest, but I was thinking more of a conflict of interest arising at a corporate level, in that an Assembly that legislates on, and allocates resources to, policing would, at the same time, have a role on the board. Sir Desmond has made it clear that that could be covered — at least initially — by a memorandum of understanding. I believe that implicit in his remarks is the belief that if problems develop, the issue would have to be considered again.

405. Sir Desmond Rea: That is correct.

406. Mr G Robinson: Sir Desmond, what do you make of the Chief Constable's remarks at the weekend about who might lead a devolved Department of policing and justice and about autumn 2008 being a more likely date for the transfer of policing and justice powers? Do you personally think that he should have made those comments, and what are your views on them?

407. Sir Desmond Rea: First of all, this Chief Constable is remarkably open. He takes the issues and responds to them as he deems appropriate. I made it clear in my response to a previous question that this board wants to see devolution of policing and justice powers. We are ready to move into that mode tomorrow, as and when you decide — and it is for you to decide; I am not about to put odds on as to when you are likely to do so, simply because I do not know. However, we are ready and we will want to see it work.

408. Mr Gilligan: I also draw the Committee's attention to the fact that the Chief Constable made it very clear in that interview that he has answered to the Policing Board, and will continue to do so, in respect of his operational function.

409. Mr McCausland: Sir Desmond, is there sufficient community confidence to allow the devolution of policing and justice powers to occur in the near future? How would you assess community confidence?

410. Sir Desmond Rea: To answer the second part of the question first, various surveys have been carried out. The Northern Ireland Omnibus Survey is useful. Although it is a sample survey, it is a reputable source for ascertaining the community's views on policing.

411. Policing is being accepted increasingly across the community. The wider community has seen a PSNI that has moved forward and embarked on a programme of change. The majority of the recommendations are about what is good in policing, not simply in these islands, but across the world. Those points have been embraced, and we have made progress with them. There now exists a remarkable degree of accountability in the areas for which we are responsible.

412. The surveys tell us that there is increasing confidence across the community. For example, if my memory serves me right, one of the statistics from the previous survey — which was ignored by a lot of people and which gives a good feel for public confidence — was that 66% of people were happy with the feedback that they got from the police. That figure has increased significantly, and the respondents to that were people against whom crimes had been perpetrated. Therefore, there is increasing confidence in policing in the community.

413. Republican areas, of course, present the biggest challenge. In the past, the PSNI has not been supported in those areas. The challenge is for policing to be evident on the ground and to gain the confidence of that community. I think that that will happen. With the exception of the dissident element of that community, the fact that the jigsaw on support for the police is now complete is a demonstration of that greater confidence.

414. Mr McCausland: Does the survey not assess community confidence in policing as it is administered now? It is not actually assessing community confidence as to whether policing and justice powers should be devolved. I could have confidence in policing as it is administered now, but I might not have confidence in society being ready for the devolution of policing and justice powers. How can that confidence be assessed?

415. Sir Desmond Rea: That question must be asked, and a means of asking it must be found. As devolution progresses, gains confidence, and demonstrates its capability to deal with issues, my gut feeling is that, overall, that confidence will grow.

416. Your first question takes me into a more political area. However, I have made it clear to the Committee that the Policing Board and the police service have the confidence to move forward with the devolution of policing and justice powers as and when the Committee deems it appropriate to do so.

417. Mr Gilligan: One useful indicator is the reconstituted DPPs: how representative they will be of the entire community and how they truly engage with the police in fulfilling their role. I recognise that that will take time.

418. Mr McCausland: It will take a lifetime, perhaps.

419. Mr McFarland: The whole issue of finance and money will be tight. However, we are embarking on a number of enquiries. The Historical Enquiries Team is active. There will probably be a strategy for dealing with the past. Does it concern you and what are your views on whether the budget for all of that should be retained centrally in London, or with a justice Ministry here and the Policing Board? Potentially, that is a massive budget, particularly if there are claims of post-traumatic stress or claims against the Chief Constable. That could be a major nightmare with regard to budgeting. Can I have your thoughts on that?

420. We have been exploring the area of serious and organised crime, which is being kept away from policing in that a multi-agency approach is being taken, in particular through the links between the Serious Organised Crime Agency and the Assets Recovery Agency. Can you give your view on how that might be relevant to the future planning of policing and justice?

421. Sir Desmond Rea: My gut feeling is that the money question will become a pressing issue in the next number of months, following the comprehensive spending review, which I believe will be announced some time this month, depending on when the election is. You are quite right that certain matters will be retained by London. There may be matters that are devolved but do not have a definitive budget attached to them. The costs of those could escalate. It is for the Assembly to negotiate with the NIO and the Treasury to ensure that those issues are covered. However, you are right to point out that the money required could escalate for a number of those areas.

422. You are quite right that certain national bodies are involved in tackling serious and organised crime here. Mr McFarland knows the background to the area of organised crime as well as I do, but for the benefit of other members, agencies as well as the police are involved. The Policing Board has found that difficult and would have liked to have extended its influence and remit on accountability in that area. However, because of the other parallel agencies, that has been difficult. The board has argued its case and its representatives have been given seats on a second tier of that body. Serious and organised crime is an important area and, if the Assembly decides to have a Committee that relates to policing, the Policing Board would be interested in liaising with that Committee. You are right that serious and organised crime is an area of tension.

423. Mr Gilligan: Mr McFarland raised the question of the impact on resources that a strategy for the past would have. I share the view that the Chief Constable expressed in the interview that was referred to earlier: this is a matter that must be grasped by this body. I do not believe that you can divorce the two. That issue and all its ramifications, including the financial ones, must be addressed by the Assembly.

424. Mr Attwood: It would help the Committee if you could, based upon the board's experience of the extent and nature of policing, indicate whether you think that a future justice Department would be most effective and efficient as a free-standing body, or integrated into a current Department such as OFMDFM.

425. It may be helpful to state that the head of the Northern Ireland Court Service told this Committee last week that he could work with whatever model is chosen. However, he said that there would be benefits to having one coherent Department in charge of all aspects of the justice system. He added:

"If an existing Department were given that responsibility, it would certainly form the dominant part of that Department's work."

426. Bearing in mind the work of the Policing Board and other institutions in moving policing so far forward in such a short time, do you believe that a free-standing justice Department would best serve the future of policing?

427. Sir Desmond Rea: Speaking as a citizen, not as Chairman of the Policing Board, I start from the premise that there are far too many Departments. That is a personal view.

428. There is some sense, particularly in the initial period after devolution, in having a free-standing Department, because there are several complementary functions and matters that relate to, and with, each other. That contradicts the point that I made a moment ago; however, there is some justification for a free-standing Department for a period of time. I am thinking of how the Probation Board and the Prison Service relate to policing. As and when the police college is built, it will also have a relationship with the Prison Service, as members know. I could mount an argument for a free-standing Department, but I have not reflected much on that.

429. Mr Attwood: Thank you Professor Rea — that was useful. I wonder whether you will be as helpful in respect of my next question. In your letter to the Committee, you state that the role and power of the Policing Board should not be diminished by the devolution of policing and justice. After all the good work of the board and other policing institutions during the past four or five years, and after the transfer of responsibility for national security to MI5, are you concerned that the board will cease to have a role in an area in which it used to have an interest?

430. I will give two examples. First, are you concerned that agents, or covert human intelligence sources, who are currently the responsibility of the PSNI, and of strategic influence in the North, will be transferred to MI5 and may not operate under the same strict criteria that the Chief Constable, the Policing Board and others have so carefully worked out in the past number of years in order to develop confidence in an area that was contentious for so long?

431. Secondly, in the future, the important work of human rights advisers to the Policing Board, who conduct real-time assessments of operations and intelligence, including that of MI5, will cease. Where will the Policing Board stand if, in the future, MI5 direct the police to do something in the North that leads to a critical incident or someone's death? How will the board reassure the public in the North that the police can be held to account?

432. Sir Desmond Rea: You do not change, Mr Attwood. [Laughter.] Excuse me, while I give some background information to members of the Committee who do not have your insight.

433. Until now, "primacy" in respect of national security has rested with the PSNI. In their wisdom, the British Government decided to alter that situation, and it will soon change to the model that exists in the rest of the United Kingdom. That means that there are questions to be asked about accountability, as Mr Attwood said. Members who require some background on this issue should read annex E of the St Andrews Agreement, which is open about the issues and how they are to be tackled.

434. Since the Policing Board was formed six years ago, it has gradually extended accountability on intelligence in three formats. The chairman and the vice-chairman relate to the relevant assistant chief constable on the area of intelligence — particularly with regard to the recommendations on intelligence that flowed from the report on the police handling of the Omagh bomb inquiry and the inquiries that were mounted on the back of that report. We have done that consistently. In the course of that, the suggestion was made through the assistant chief constable to the Chief Constable that the board could be briefed on about 70% of the knowledge on intelligence — that is a notional figure. Those briefings have taken, and do take place. That is a good example of the openness of the Chief Constable, because he said that that would be possible. Mr Attwood and Mr McFarland will recall that in the course of one of those briefings — which took place in a public session, because the board encouraged the Chief Constable to conduct sessions in public where possible — the then assistant chief constable for crime operations briefed the board on the management of covert human intelligence sources (CHIS). It was interesting, because the journalists did not know what was happening, but a significant amount of information on the management of CHIS was put into the public sphere.

435. The board has also met — infrequently but consistently — the assistant chief constable for crime operations and the local head of the intelligence service. At a board meeting two or three weeks ago, at which progress reports were made on the memorandum of understanding, protocols and the board's human rights advisers — as referred to in annex E of the St Andrews Agreement — it was asked whether there were any parallels in the rest of the United Kingdom to the degree of accountability that is being exercised here. The answer was an unequivocal no. There is, therefore, a degree of accountability in this area, and that should give comfort to not only Mr Attwood but to the wider community about how the board has gone about its functions on accountability and the Chief Constable's openness in that regard.

436. We have been given information on the possible number of CHISs, but I will not go into that: you can talk about it afterwards.

437. Therefore, in answer to your concerns, I believe that we are well ahead of the game. Northern Ireland is an example of good practice throughout these islands on that issue — and some of the Committee members' colleagues can confirm that. I apologise for the long reply, but the subject required it.

438. The Chairperson: Thank you and your colleagues, Sir Desmond, for coming before the Committee this morning to give evidence. I am sorry for the interruption of the Division, but the Committee appreciates your candour, the weight of your information, and the written submission that you provided. If there are any points on which we need to probe further, we may be in touch in writing.

3 October 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Witnesses:

Mr Shaun Woodward The Secretary of State for Northern Ireland

Mr Peter May

Ms Clare Salters

NIO

439. The Chairperson (Mr Donaldson): Secretary of State, you are very welcome to the Assembly and Executive Review Committee. As you know, one of the Committee's tasks under legislation is to prepare a report for the Assembly on the preparations for, and timing of, the devolution of policing and justice matters.

440. I welcome also Ms Clare Salters and Mr Peter May, who have previously spoken to the Committee. We have received from the Northern Ireland Office a discussion paper on devolving policing and justice, which has given members a good insight into the preparatory work that the Department is undertaking towards the devolution of policing and justice matters.

441. This is the first time that you have appeared before an Assembly Committee, Secretary of State, so, again, you are very welcome. Yesterday, the Lord Chief Justice spoke to the Committee for the first time, and, to date, we have heard evidence from the chairman and chief executive of the Policing Board and from the director of the Northern Ireland Court Service.

442. I am aware that you have business elsewhere this morning and that you are anxious to leave at about 11.30. The Committee will endeavour to accommodate you. The Committee invites you to make a short opening statement, and, thereafter, members will be invited to ask questions on matters that may arise from your evidence.

443. The Committee has concentrated the matters to be transferred in the event of devolution, the ministerial models, and the timing and preparations for devolution. We are aware that a report must be presented to the Assembly by the end of February 2008, which might allow the Assembly to report to you by March 2008. Before proceeding, I invite members to declare any relevant interests. I declare an interest as a member of the Privy Council and of the Northern Ireland Policing Board.

444. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

445. The Secretary of State for Northern Ireland (Mr Shaun Woodward): Thank you, Chairman, it is a great pleasure for me to be here this morning, and I hope to be able to assist the Committee with its work, which the Government regard as extremely important. The Committee has taken evidence from several others, and, as a preface to everything that is said this morning, I stand ready, now and in subsequent weeks and months, to assist the Committee, in person or in writing, with any of its work on the preparation for further devolution. It is an extremely important part of the St Andrews Agreement.

446. As I have made clear elsewhere, I see this very much as the vital second stage, just as the first stage was absolutely vital; they are an integrated whole.

447. I know that there have been discussions on the timetable for devolution of powers. That is obviously relevant, but, at the end of the day, what matters is that we have successful devolution of policing and criminal justice in Northern Ireland — the end is that successful devolution, not the timetable. There has been endless speculation in the press about the timetable, and I, like members of this Committee, have inevitably been asked about it. I have always responded by using a form of words that have said that there is a timetable in the St Andrews Agreement, and I can see no reason why we should not be able to work to that timetable.

448. Equally, it stands that if there are reasons why a different version of that timetable needs to be, and can be, agreed between the parties, that seems to me to be entirely acceptable. However, the concentration on the timetable seems to have been somewhat unhelpful at times. What matters is that there is recognition of the value and purpose of devolution of policing and criminal justice, not only as an end in itself, but as part of the whole integrated package of successful devolution in Northern Ireland.

449. There are huge benefits to taking forward this package as a whole. At the moment, the Committee will be aware of the work that is being carried out by my deputy, Paul Goggins, with individual Ministers in the Administration here. Even though we have not devolved policing and criminal justice, there are, inevitably, huge areas of overlap that need to be worked on together — for example, tackling

healthcare in prisons or football hooliganism. Those issues cannot be tackled discretely; they cross over. Those issues would be best handled by politicians who have been elected in Northern Ireland, and not by me as Secretary of State or Paul Goggins as a Minister of State, however able we may or may not be. It just seems better that those sorts of decisions are made by Ministers here.

450. The critical part is to recognise that what is really at stake is not the issue of when or who, but rather what exactly will transfer. The February 2006 discussion paper sets out some of the issues to be resolved. It would clearly be helpful to me to hear a little more from the Committee about what powers it wants to be transferred. Equally true is that we need to be advised by the Committee on how it envisages these matters working, which will, sooner or later, include the model that it wants.

451. Other issues will be the number of justice Ministers, the way that the Department will function, the responsibilities being devolved, and whether we move on to powers in other areas that the Committee may or may not want to have transferred — for example, the issues of parades and 50:50 recruitment to the police. Those matters must be considered, and we can easily work them out well between ourselves. It is important to get them right. It is also important that we consider with the Committee all the ramifications of the transfer of powers and that we have clarity on those issues. I see that very much as a work programme that must be undertaken by the Committee and ourselves, just as a work stream is currently under way in the Northern Ireland Office in making preparations for the transfer of those functions.

452. The Committee will be aware of the substantial body of work being carried out by the Northern Ireland Office, and Peter May and Claire Salters from that office are here with me this morning. As I said, we stand ready to answer the Committee's questions. If there are questions that I cannot answer today, I am happy to respond to the Committee in writing, and any questions that cannot be answered in writing today or tomorrow, I will endeavour to respond to as quickly as possible.

453. The Chairperson: Secretary of State, thank you very much. Do either Ms Salters or Mr May have anything to add?

454. Yesterday, the Lord Chief Justice gave the Committee a very interesting insight into his views, particularly on the modalities for devolution. He expressed a preference for a non-ministerial Department for the management of the Court Service, at arms length from the Department of Justice and chaired by the Lord Chief Justice himself. Has the Northern Ireland Office considered that proposed model, which he compares to the one that is evolving in Scotland and to the one that is used in the Irish Courts Service?

455. Mr Woodward: The Lord Chief Justice has made those representations to the NIO, and made his views extremely clear. However, although mindful that there should be some form of timetable, I do not want to be restricted to talking about May 2008. Whether it is May, or slightly later next year, it is still a relatively short period of time. It would not be appropriate to entertain such a proposal at this stage.

456. However, when the functions are transferred, there would be no problem if the Executive and Assembly were to decide that the Lord Chief Justice's model was better for the judicial system in Northern Ireland. That would be a matter for the Assembly and the Executive. I will not declare a view on this — as it is not something on which the NIO should have an opinion — other than that we have no problem with the model, but it is not appropriate to entertain it while we prepare for further devolution.

457. The Chairperson: It is therefore your intention to proceed with the models outlined in the discussion paper.

458. Suppose that the Committee, and subsequently the Assembly in their report to you, agreed that the Lord Chief Justice's model was

the preferred option, but that a further delay in devolution was necessary. In that eventuality, would you still refuse to legislate for the preferred model and instead await devolution to leave the Assembly to legislate?

459. Mr Woodward: It is possible to entertain a number of hypothetical situations and, depending on a putative timetable, be speculative on a broad range of issues. The NIO does not see a problem with the model proposed by the Lord Chief Justice, but it is not appropriate for us — having committed ourselves to preparing for devolution when the Assembly asks for it — to carry it through now. That will require major legislation. The NIO does not see any problem with the model being adopted, but does not believe that it should be implemented during preparation.

460. The Chairperson: Even if the Assembly states that the Lord Chief Justice's model is the preferred option, but that it wants a further delay in devolution?

461. Mr Woodward: To be helpful, I want to say that if the Assembly were to make such a decision — however disappointing that would be — that would mean the delay would be for more than a few months. The NIO would have to work through that with the Executive and the Assembly. However, I have seen no evidence — not withstanding the understandable concerns that people have regarding confidence-building measures — that the balance of public opinion, or of individual Members, favours a lengthy delay in the second stage of devolution.

462. I know that some have concerns that May 2008 may be slightly too soon — and too far away for others — but evidence suggests that public confidence would be considerably undermined if there was a suggestion that I was entertaining the idea of a lengthy delay in the second stage of devolution.

463. Ms Ní Chuilín: Fáilte rómhaibh uilig go dtí an Coiste. You are all very welcome.

464. Do you see any administrative obstacles to the transfer of powers? At what stage is the planning for those agencies that will be transferred?

465. Mr Woodward: Across the board, and including policing?

466. Ms Ní Chuilín: Yes.

467. Mr Woodward: Let me reiterate: I believe that the timetable that is laid out can be achieved. There is no question that it is ambitious and will require a huge amount of work, but if there are reasons to delay we need to examine those reasons together. So far I have heard opinions about why delay might be a good idea, or a bad idea, but I have not seen any reasons. In the extraordinary spirit in which this Assembly and Executive are managing to function, and the way that the public in Northern Ireland completely support that, it would be helpful if people who have reasons for a different timetable should lay those out.

468. On the matter of how we in the Northern Ireland Office are preparing, we aim to ensure that the work streams set up by my colleagues Peter May and Clare Salters and others should put in place the certainty that if the Assembly indicates in the spring of next year that it wants functions transferred, the NIO will be ready to do it. That means that the various bodies, agencies, protocols and memorandums of understanding are all being dealt with. The structures are under way that will deal with, for example, the transfer of personnel, terms and conditions, consultation with trade unions, all of which are extremely important on a personal level to the

individuals involved in the transfer.

469. Of course, there is the wider issue of resources for the bodies that have to be transferred, but what matters to us is that we receive a clear indication of the actual functions that will be transferred as soon as it is possible for the Committee to do so, not that I can anticipate that that would be a reason for delay. Will those include parades or 50:50 recruitment to the police, for example? Those are the issues that this Committee and others must deliberate on and advise us on. We stand ready to make available the transfer of those functions, and I am making sure that that will be done within the St Andrews timetable. However, ultimately it will be for this Committee, the Assembly, and the First Minister and the Deputy First Minister to put forward in a motion the request to us that that be done. My intention is to make sure that the bodies and functions are in a fit condition, so that we will be able to meet that timetable if it is requested.

470. Mr I MCCrea: The DUP does not believe that May 2008 is an achievable deadline. There is still a considerable amount of work to be done before the unionist community is happy that republicans, and others, are fully committed to policing and justice. There must be confidence in the community, and whether that can be achieved by May is too close to call.

471. There have been suggestions in the past that the Secretary of State could impose policing and justice on the Assembly if it were the will of the Assembly not to commit to May. Can the Secretary of State confirm that that is the case? What are his intentions if the Assembly decides not to accept the devolution of those powers?

472. Secondly, what is his view on the number of Departments and Ministers needed for policing and justice?

473. Mr Woodward: I understand the view about the timetable expressed by you and some members of your party, but I put alongside that the considerable enthusiasm among the public for completing devolution. You will be more than well aware that the poll figure for people who do not want the devolution of policing and criminal justice is around 14% or 15%.

474. In other words, 85% of the public want it.

475. There has been a shifting tide of public opinion. The Assembly and Executive have commanding support from the vast majority of the public. A few years ago, if people had been asked whether they thought that devolution could happen, and whether they would support it, nothing like those levels of support would have been achieved. The public have responded to the leadership that you, your colleagues, the Assembly and the Executive have shown. The public like devolution, they want it, and they want the momentum to continue.

476. We are not putting any kind of pressure on this Committee, the Executive or the Assembly. I am keen to maintain momentum, unless, as I say, there are reasons why we need to slow down the pace. I am not trying to rush the devolution of policing and criminal justice powers; I am simply trying to ensure that there is momentum. Policing and justice powers could be devolved in May 2008. However, there may be reasons why it is necessary for devolution of those powers — if it can be agreed among the parties — to be delayed.

477. Looking back on discussions that have taken place on the devolution of those powers, I believe that a degree of clarity, for want of a better phrase, has been lacking over the idea of what I may or may not impose. It is important to be clear that the devolution of policing and criminal justice powers will work only if it is embraced and wanted by the public, the Assembly, the Executive and the First

and Deputy First Ministers. Therefore, like everything else that the Assembly and Executive have done, that can only be achieved by consensus.

478. There was a suggestion at one stage, before the legislation was put in place, that the Secretary of State might impose a Minister to take control of policing and criminal justice. That was never included in the legislation. Alan has fought nobly on and discussed that issue a number of times, and I understand why. However, I think that there has been a misunderstanding, because there is nothing in the legislation that gives me the power — even if I was daft enough to want to — to impose a Minister. I reassure the Committee that nothing in the legislation enables me to do that. Even if there was, I would not want to do it anyway.

479. The legislation does include capacity for the Secretary of State, in a certain set of conditions, to impose the departmental structure that is contained in the legislation. I do not see that situation arising, because I believe that the Assembly wants the devolution of policing and criminal justice powers.

480. That part of the legislation, as I understand it, was included in case the Assembly wanted the devolution of policing and criminal justice powers, but parties could not agree among themselves on the specific form that it should take. In that scenario, that part the legislation could be applied. Having seen the Executive, the Assembly and this Committee at work, it is unimaginable that such a power would have to be used. Once again, to be absolutely clear, no power exists in the legislation to impose a Minister.

481. Mr I McCrea: Do you have a view on the number of Departments that the Assembly should have once policing and justice powers are devolved?

482. Mr Woodward: To be frank about it, the form that it should take is for this Committee, the Assembly and the Executive to decide. It is not for me, as Secretary of State, to have a view about how many Departments should or should not be involved. The legislation sets out a certain number of Departments and Ministers. Obviously, it is up to the Assembly and the Executive to decide how those portfolios should be put together. We stand ready to offer support for those decisions, but, again, I return to a firm belief in the power of devolution.

483. When the Assembly is ready, we want the functions transferred so that the Assembly can take full control of policing and criminal justice. To make that transfer easier, we would appreciate it if you told us as soon as you decide how the powers are to be administered and what the model will be.

484. Mr McFarland: Thank you. I wish to tease out a bit more about the plan B scenario.

485. All that we have on paper is a document from the then Secretary of State, Peter Hain. It is the only detailed document that gives us an insight into the NIO's thinking on the issue in December 2006. I appreciate that the Secretary of State said afterwards, and Mr Woodward says now, that some circumstances have changed.

486. We have the St Andrews Agreement, which was supposed to be an agreement, but which, one would hear from the parties, was not an agreement. The DUP is adamant that it did not agree to the timetable for the devolution of policing and justice set out therein. Sinn Féin held its Ard-Fheis and sold it policing on the grounds that the plan in the St Andrews Agreement was inviolable. It had been promised, by the then Secretary of State and the Prime Minister, that policing and justice powers would be devolved by May 2007. There would appear to be a blockage: the two major parties that can deliver devolution of those powers have fundamentally different

views on the timetable.

487. Mr Woodward said, early on, that agreement among the parties was necessary in order for the powers to be devolved. We will hit the first buffer on 27 March 2008, by which date the Ministers must be nominated. Mr Woodward has heard that, within that timescale, there will not be agreement, so how does he see that situation evolving? For how long can he, as Secretary of State, simply sit on the issue? The DUP may continue to believe that, right up until the end of this Assembly's mandate in 2011, unionist confidence is not there. I am simply trying to gain some insight. We had a clear insight into how the then Secretary of State thought that the process for achieving devolution of policing and justice powers would work post-St Andrews. How does Mr Woodward see himself fulfilling his promises to Sinn Féin within the timescale, if the DUP does not agree to it?

488. Mr Woodward: Thank you for the question, Alan, but let me state a matter of fact. You referred to Peter Hain's letter, which was written before the legislation was drafted. The proposal in that letter set out an option that was being considered at that time. However, that option was not pursued. You say that all that we have is Peter Hain's letter; but we now also have the legislation. That legislation sets out what I can and cannot do, and it makes it perfectly clear that I cannot impose a Minister.

489. Mr McFarland: I understand that.

490. Mr Woodward: I want to put that on the record. Your rigorous pursuit of that issue before the legislation was made was absolutely right, because it allowed us to have clarity.

491. I cannot determine when one Northern Ireland political party or another will decide that it has witnessed enough confidence-building measures to manage its followers to the position at which they can accept devolution of those powers.

492. However, all the political parties fought an Assembly election on the basis of full devolution. There is an understanding. All my dealings, whether with MLAs or with the Executive, do not lead me to conclude that politicians are deliberately looking for an indefinite delay. The conversations that I have had with everyone in the Executive, and with a number of Assembly Members, lead me to believe that there is a recognition that we should move to the second stage of devolution and that we should not delay indefinitely, even within the lifetime of this Assembly. I see no reason why that cannot be done within the timetable. However, I am perfectly prepared to accept that reasons could arise, which could be agreed among the parties and would justify the extension of the proposed timetable.

493. We have not yet reached that position. I could speculate with you today, next week, and so on, on a number of scenarios. It is more useful, however, for me, as Secretary of State, to say that we will complete our side of the work within that time frame. This Committee, the Assembly and the Executive must do a great deal of work to decide on the model that should be adopted and on the specific functions that should be transferred and those that should not.

494. When that is done, and when people feel that there are enough confidence measures, it will be time to move forward and complete devolution. I hope that that will happen in and around the timetable set out at St Andrews. Of course, individuals, and even political parties, may choose to debate specific details, but there is overall consensus. There is certainly huge enthusiasm among the public for devolution to be completed. I stand ready to play my part in that.

495. Mr McFarland: Do you have a view on the Chief Constable's opinion, expressed at the weekend, that autumn is the time for policing and justice to be devolved?

496. Mr Woodward: As the chairman of the Policing Board said to the Committee yesterday, Sir Hugh Orde has frank opinions and is often ready to share them with people who will listen to him. Northern Ireland is lucky to have the finest and best Chief Constable of a police service anywhere in the world. His frankness and forthrightness have been part of his success, and the fact that the PSNI is regarded around the world as one of the finest — if not the finest — police services in the world owes no small debt to him. He has been a great leader, and with that leadership comes forthright views. At the weekend, he shared his views with the press. He is entitled to his view; it is a view that I listen to and certainly respect.

497. Mr McCausland: The exercise to determine what form the devolution of policing and justice might take is ongoing. However, the unionist community feels that it is premature, and there is strong opposition to any transfer of powers in the near future. Earlier, you spoke about the transfer taking place next May, or slightly later, but the general view, as I assess it in my constituency of North Belfast, is that devolution of powers by next spring or autumn is premature.

498. You also said that if there were a delay, it would be necessary to set out the reasons. From talking to people in my constituency, I believe that there are three reasons why they want to see a delay taking place, and would like you to comment on those reasons. First, policing has gone through a period of great transition. The Assembly has also had a period of significant change: Sinn Féin is now the largest nationalist party. The view is that, in those circumstances, the devolution of policing and justice powers would place an intolerable strain on the Assembly.

499. Secondly, although people may accept the current political situation, the view is that it is unpalatable and has been foisted on people. That view is taken because the Executive have a junior Minister who has been convicted of serious and atrocious terrorist crimes. People find it intolerable that such a person might have a role in the administration of policing and justice.

500. Thirdly, there are crimes that remain unsolved, for which no one has been convicted. Those crimes are still being investigated. Regardless of what assurances might be given, most people would have no confidence in a process in which a person who may have been implicated in those crimes was in charge of policing and justice.

501. Those are the three issues that are in people's minds, and they will take a lot of reassuring before those issues can be resolved. That is why there is such overwhelming opposition within unionism to the devolution of justice and policing. The concept of transferring powers, in the abstract, is not the issue; it is the practicalities of doing so in the Northern Ireland situation, where the largest nationalist party has been associated with the IRA and its campaign over many years.

502. Mr Woodward: I understand where that bundle of questions is coming from, and they rightly articulate a point of view that I have heard argued elsewhere, although not always as strongly as that, and not always with those conclusions. I shall try to deal with those questions in reverse order.

503. I made some remarks about the Chief Constable's forthrightness, and some of the reasons why the PSNI commands so much confidence around the world are its transparency, openness and accountability, and the fact that it has operational independence. It would be unfortunate if we were to suggest, in any way, the idea that police investigations should somehow be linked to transferring responsibilities for policing and criminal justice.

504. It is absolutely essential that the police's independence continues. I see no reason why that would not continue; it is absolutely enshrined in everything that we are doing. Therefore, I would trust entirely any investigation about any individual, or any matter, to

remain a matter for the Chief Constable and the police. The Chief Constable has demonstrated time and again that no one is above the law. Therefore, I have no concern about the third point that Mr McCausland made, although I understand why he made it.

505. Without intending to sound at all dismissive, I put my trust in the PSNI and the Chief Constable to ensure that there is operational independence. The structures that have been put in place, such as the Policing Board, or any of the other structures that currently support policing in Northern Ireland, should give everybody that confidence. We all have a duty to tell people why they should have confidence in the Police Service. I do not see operational independence being compromised in any shape or form, whether responsibility for policing lies with me or with the Assembly and the Executive.

506. As for the second point about devolution being foisted on people, devolution will only happen if it has cross-community support. That cross-community support seems to be already clearly vocalised by the public. In one poll after another, people show confidence, not only in the Assembly and the Executive, but in the leadership of the First Minister and the Deputy First Minister. There is remarkable support among the public, which, dare I say, absolutely includes the unionist community.

507. Poll after poll of ordinary members of the public shows that they like what they see: they like the fact that leadership is being given by the leaders of Northern Ireland's parties. They do not think that leadership is compromised because it is offered by leaders from two very different traditions; they warmly embrace it. That has been followed through, for example, in the opinion polls that were commissioned between March and August of this year, which show the public's confidence about the Assembly's assuming responsibility for policing and criminal justice.

508. Having said that, I do not underestimate for a moment that we are asking people to move on — what has been for some — an article of faith. I know what a big demand that is for many people. It is a demand that is made from both sides of the community. Equally, everything that we have seen so far supports the fact that the progress that has been made is absolutely justified. It would be a shame if impediments to further progress were based on fear, because the evidence so far has not supported those who articulated such fears. However, that is not to say that we should not continue with confidence-building measures.

509. In response to Nelson McCausland's first point, devolution of policing and justice will not place an intolerable burden on the Assembly, although I understand why some may have that fear. My view is that it will be the making of the Assembly and the Executive. When politicians who are elected in Northern Ireland have the confidence to take that next step, the public will feel that something extremely important has happened, which will mean that the entire peace process and the security and prosperity of Northern Ireland is embedded and enshrined.

510. I understand why some people are cautious about taking that step, but I do not see that the assumption of such a step is also a reason to assume that this will be an intolerable burden. I think that it will be the making of the Assembly and the Executive.

511. Mr McCausland: My third point — and the first to which you responded — related to the confidence and integrity of the process, and there are two aspects to that. You addressed one aspect, although I remain unconvinced about your answer. However, the other aspect relates to the situation in which the person with responsibility for policing and justice is the same person who, the police may say, is guilty of a particular crime. That would discredit policing and justice in Northern Ireland.

512. Mr Woodward: That is a hypothetical situation.

513. Mr McCausland: It is perhaps not quite so hypothetical.

514. Mr Woodward: I will venture that it is entirely hypothetical. First, it is a matter for the politicians elected in Northern Ireland to decide who the justice Minister should be. Secondly, I reaffirm what I said earlier: one reason why there is public confidence in the PSNI is because Sir Hugh Orde, the Police Service, the Policing Board, the Ombudsman and all the institutions that stand together to make today's policing service in Northern Ireland, are clear about one thing: nobody is above the law. The operational independence and integrity of the PSNI is the hallmark of the policing service, and that will not be compromised by transferring policing and criminal justice to the Assembly.

515. Mr Attwood: You are welcome, Secretary of State. I have two questions and two supplementary questions. The Lord Chief Justice has made crystal clear his views on how the relationship between the Minister of justice, the judiciary and the Court Service should be structured. However, the British Government are recommending that there should be an agency relationship between those bodies. Given that the Lord Chief Justice outlined the case for his preferred option quite firmly — as you said — will you explain why the agency model should be implemented?

516. Are you concerned that in creating and agreeing an arm's-length relationship between the justice ministry and the Court Service, there is a risk that the judiciary will also have an arm's-length relationship with the rest of the community in the North — not the political community — who have views on the administration of justice and who would like their relationship with the judiciary to be such that they can convey those views? Why is the Government's model the right model given that this is such a big call for the Committee and the Assembly?

517. Mr Woodward: I am not reacting to the pressure of time; I am being realistic about the timescale in which we would like to continue the process of devolution. There have been many strong and convincing arguments about future structures, but there is no reason for a radical departure from existing structures as we prepare for devolution.

518. As the Committee knows, the agency model has been implemented in the Courts Service in England and Wales, and there has been no suggestion of interference with the independence of the judiciary there. Therefore, the Government believe that the agency model works. If policing and justice powers are devolved, it will be a matter for the Executive and the Assembly to address subsequent issues as they arise. I have every reason to believe that the model we are using guarantees independence, and I know that that is something that the Lord Chief Justice is concerned about maintaining in any future model for the transfer of responsibilities. The agency model will best achieve that.

519. However, once devolution takes place, the decision will be for the Assembly and the Executive to deliberate. As we prepare for that, whatever the timescale may be, it would not be prudent to embark on a fundamental change at this juncture.

520. Mr Attwood: Is there a danger that the arm's-length relationship, which is appropriate between the judiciary and a Minister for justice, may become an arm's-length relationship that is inappropriate for the wider community? Should there not be further engagement between the judiciary and the wider community? For example, is it not the case that although the judiciary is entitled to membership of the NIO's criminal justice board, it does not have such membership?

521. Mr Woodward: We are still considering the detail of that. Let me try and reassure members on some core points. We see independence as central. That is why, first of all, the Justice (Northern Ireland) Act 2002 and the Constitutional Reform Act 2005 put a statutory obligation on Ministers and administrators to uphold that independence. Secondly, the 2002 Act set up a Judicial Appointments

Commission to take independent decisions on appointments. Yesterday, the issue was raised of representation of the community in relation to those appointments. The Lord Chief Justice was keen to demonstrate to the Committee the importance of both recognising the observation and, equally, underlining the importance of appointments' being made on merit. There is an important balance to be struck. It is testimony to the outstanding qualities of the Lord Chief Justice and the strength of the independence of the system that we are able to have that kind of dialogue, and that you are able to make the points that you make — and we may find ways to improve it.

522. I believe that the safeguards are there, and that the signing of the concordat before the transfer takes place will be one of the things that will be as important to the judicial system as it should be to everyone in Northern Ireland.

523. Mr Attwood: I agree with much of that. The Committee must get reassurance from you today about the future budgetary arrangements in the event of the devolution of justice and policing. We know about the proposals to cut back police numbers by 2010-11. Given the size of the police budget, which is 10% of the overall Budget, there is some concern that there will be clawback by the Treasury either in the event of devolution of justice and policing, or after three years of transitional arrangements. Can you reassure the Committee as best you can, bearing in mind that none of us can anticipate the future financial frameworks, that our budget lines are secure for the next three years and to the best possible extent thereafter?

524. A court case is under way in London to investigate the lethal shooting of Jean Charles de Menezes. What happens if there is a similar incident in Northern Ireland where MI5 directs police to carry out an operation, resulting in the death of a man? In those circumstances, how will the Assembly and the justice Minister be sighted on the outcome of a critical incident where there may be enormous public concern about what MI5 have or have not done? How will the Assembly, and in particular a justice Minister, be given a standing so that they can explain incidents to the community in the North in order to moderate public concerns?

525. The Chairperson: We are running out of time, and I want to bring in Raymond McCartney. A written response on the financial matters would be helpful, and you could confine your remarks to the second point that Alex raised, please.

526. Mr Woodward: I will, but with one qualification: I am working hard to secure a good financial settlement. We take policing very seriously, and as long as I have responsibility for that, I will fight for the best budget that I can possibly obtain.

527. Nonetheless, it is important to recognise that the policing budget that we have here is a good budget. I do not anticipate any cuts to the baseline, and I say that because it is terribly important that the press and everybody else hear that. There has been speculation that there might be such a cut, but that is not on the cards.

528. Equally, we are in a normalising situation, and it must be recognised that we have, in comparison with the rest of the United Kingdom, a police service with very large numbers of officers and resources. There is a very strong case for them being here, and I am not taking away from that case for one second. However, no one should doubt the fact that the policing budget in Northern Ireland is a good budget. There is one police officer in Northern Ireland for every 227 people, while in England and Wales, there is, on average, one officer for every 375 people. Everyone here must recognise that continuing to fund that level of policing — which we are going to do — is a generous settlement. It is unfortunate, sometimes, that one reads that it is not described as a generous settlement.

529. The Chairperson: Secretary of State, I am sorry to interrupt, but I am conscious of time.

530. We have written to Simon Marsh on a number of points, and it would be good to receive a written response to the second point

that Alex Attwood raised, because it is quite important. It would be better to get a response in writing, in any event.

531. Mr McCartney: If the Committee and the Assembly agree on the powers to be transferred and, in time, agree on a suitable model, when will you be ready to declare to the public that everything is in place? In a sense, that would add to public confidence that everything is done and dusted. We would not want the reverse to happen, where we would say that we are ready for the transfer of powers and where you would tell us that you are not ready because the necessary structures have not been put in place.

532. Mr Woodward: I will ensure that if the Committee indicates to me on 27 March that it is going to recommend to the First Minister and the Deputy First Minister and the Executive that devolution of powers should take place in May, there will be no reason from within the Northern Ireland Office why that timetable cannot be met. We will be ready to complete devolution on 1 May.

533. The Chairperson: Secretary of State, as regards the point that Alex raised, we will send you a copy of the relevant extract from the Hansard report of the meeting so that you are clear about the issue under discussion.

534. Mr Woodward: If members have other questions that they would like to have answered, again, I stand ready to answer them, either in writing or the next time the Committee asks me to appear before it. I am willing to help at any time.

535. The Chairperson: I will give you an idea of our forward timetable. We will continue our deliberations over the next few weeks, in particular, between the four main parties represented on the Committee. We will also receive evidence on Tuesday week from the PUP and the Alliance Party, and from the Director of Public Prosecutions. We welcome any additional information that you can provide to the Committee in written form.

536. Thank you and your colleagues for joining us this morning. We appreciate the candour with which you have addressed the Committee, and we hope that we, and the Assembly, will be in a position to report to you in due course.

537. Mr Woodward: Thank you.

9 October 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

538. The Chairperson (Mr Donaldson): Members, as you will recall, we had agreed that the four parties represented on the Committee would discuss various elements of the terms of reference for the inquiry. Members may wish to refer to their meeting pack, which contains a briefing note and table — the briefing paper of 28 June — summarising the extent to which there was a consensus among the parties during the deliberations on the Programme for Government. That is important, because there is no point in going over the old ground. We have a consensus on a range of issues, which was arrived at through the Programme for Government Committee subgroup on policing and justice matters. That information is in the meeting pack to refresh our memories.

539. As I said earlier, the purpose of today's discussion is to identify those policing and justice powers that are currently reserved matters under schedule 3 to the Northern Ireland Act 1998. Again, I remind members that we broadly accepted the NIO document 'Devolution of Policing and Justice in Northern Ireland: a Discussion Paper', which details the items to be devolved. There is a fairly broad consensus on that already, but we may want to touch on that again. The second element of this part of the terms of reference is to consider which of those matters should be devolved and to what extent they should be devolved.

540. The Committee on the Programme for Government deliberations reached a consensus, which represents a baseline position for this Committee. Therefore, our business today is to allow the parties to express views only on those issues on which there was no consensus. Unless members have a desire to unpick what we have already previously agreed as parties in the Committee on the Programme for Government, our time is better spent, as we have a great deal to cover, concentrating on those issues on which consensus was not reached at the time, and to see whether there is a basis for consensus.

541. Are members content to proceed on that basis?

Members indicated assent.

542. The Chairperson: During its deliberations on policing and justice matters, the Committee on the Programme for Government sought to achieve consensus among the parties present on each of the outstanding issues. I intend to allow a reasonable amount of time for discussion on each issue, before we make an assessment of the prospect of achieving consensus. If, however, after a reasonable amount of discussion there is no prospect of consensus, we might agree to revisit particular items later on in the Committee's inquiry. Members are free to make a formal proposal for a vote to be taken on any issue. Standing Order 47(9) states that: "All questions at a Statutory Committee shall be decided by a simple majority. Voting shall be by show of hands unless otherwise requested by a Member of the Committee."

543. The same rules apply to Standing Committees. Paragraph 4.16 of the Committee Staff Guide states:

"Members are not obliged to vote. The Chairperson is entitled to vote but does not have a casting vote. In the event of any division being called in a committee, the details, including the question proposed, the name of the proposer and the respective votes of each member present including abstentions, shall be recorded by the committee clerk in the minutes of the proceedings. If the votes are equal, the motion falls. A vote may not be taken on any matter unless a quorum is present."

544. The current quorum for this Committee is five members.

545. Those are the procedures to be followed if members feel that the Committee must divide on an issue. Are Members content that we proceed on that basis?

Members indicated assent.

546. Page three of the briefing paper of 28 June sets out the matters to be considered for devolution. It was agreed by consensus at the PFG Committee that, in principle, criminal law and the creation of offences and penalties should be devolved. At that time, the DUP and UUP were content with the extent of devolution, however the SDLP and Sinn Féin wanted all powers devolved. That was the position at the time of the PFG Committee meetings. The briefing paper also sets out an overview of what policing and justice matters will be devolved, and that was based on the information contained in a letter from the Northern Ireland Office on 15 August 2006. The final column on page three summarises party consensus: there was agreement in principle, but consensus was not reached on the extent of the matters to be devolved under the heading of criminal law and the creation of offences and penalties.

547. Mr McFarland: The PFG Committee reached agreement on the criminal activities to be devolved, but treason and terrorist offences were sticking points — the SDLP and Sinn Féin wanted those areas to be devolved. Treason is a national issue: I know that the SDLP and Sinn Féin do not agree that we should be in the national position that we are in, but that is the position until we vote differently here. Devolving the policing of terrorism offences to the Assembly — certainly at this juncture — seems an ambitious project. It is sensible to leave them parked at Westminster. We have enough to worry about with the policing of such offences as attacks on the elderly and knife crime — if they are ever devolved — without having to have serious panics and constant votes about whether terrorist issues should be brought into the legal framework.

548. The Chairperson: There is an additional complication in that there is no provision in the Northern Ireland Act 1998 for excepted matters to be devolved to the Assembly, and treason and terrorist offences are excepted matters, not reserved matters. Consequently there is no provision to devolve an excepted matter to the Assembly at any time unless Northern Ireland becomes independent or separate from the rest of the United Kingdom. There is a difficulty, because the Northern Ireland Act 1998, which established the Northern Ireland Assembly, does not contain any provision for those matters to be devolved. Is there still consensus that all other matters pertaining to the criminal law and creation of offences and penalties ought to be devolved, save for the two excepted matters? Are members still content with those arrangements?

Members indicated assent.

549. The Chairperson: The only issue, therefore, is the excepted matters — treason and terrorist-related offences. We could ask for them to be devolved, but we will be refused, because there is no provision under the current law for them to be devolved. The Assembly, as constituted under the Northern Ireland Act 1998, cannot receive those matters, even if we were to ask for them. However, members may have a different view.

550. Mr Attwood: My remarks are purely for the record, because I know that my view will not prevail. Why should some, if not all, of those matters not be transferred? First, getting primary legislation is not beyond the wit of the Westminster Parliament: it may be beyond their intentions, but it is not beyond their abilities.

551. Secondly, in reply to a question about national security, which goes back to the issue of terrorist offences, the chairman of the Policing Board said last week that he would reassure people that the handling of these matters in the North is more advanced than it is in Britain. He might even have said that the North was leading the way. I do not agree with his analysis, but he said that there were mechanisms and processes in place that gave a domestic jurisdiction some entry to issues of national security or terrorism. In doing that he confirmed a point of principle: the North — as the chairman of the policing board sees matters — would have more standing on those matters than either the Scottish Parliament or the Welsh Assembly and, arguably, the Parliament at Westminster.

552. Therefore, taking that to the next stage, or its natural conclusion, if there are special mechanisms in place here for having more standing for people here in respect of those matters, then, given the importance and sensitivity of those matters, it should be extended to the point where those matters are devolved. The circumstances in the North and the historical situation are such that there is a need for particular mechanisms put in place around issues of national security and terrorism.

553. The best mechanism would be to have responsibility for those issues ourselves. I know that I am not going to win that argument, but that is at the core of the argument. Unless we build in mechanisms of oversight and accountability around issues of terrorism and national security — even if they are excepted matters and are held by Westminster — we would be creating a potentially unstable future. Even if I cannot win the argument that those matters should be devolved, there should at least be an argument that, in our context, there should be additional oversight for terrorism and national security.

554. Why do I make those points? In a High Court case in London over the past three weeks, Cherie Blair made the argument that the security services had to get their head around the need for accountability because that was the way things were going — although she did not use those exact words. That case related to the activities of a British agent operating in Russia during the Second World War 50 years ago. Mrs Blair was arguing that MI5 must realise that those matters cannot be handled in the way they were handled in the past, where what might be the truth was suppressed — even 50 years later. That is the right argument, and particularly the right argument for the situation in the North. That is why I would still argue for transferring our responsibility for terrorist offences: we would be transferring responsibility for national security, and national security has a lot of potential to destabilise — in the worst circumstances — the future.

555. The Chairperson: Thank you. Your points are noted.

556. Mr I McCrea: Taking on board what Mr Attwood said, the very reasons he cites for transferring functions are those against our having any element of powers devolved in relation to terrorism and national security. I am not saying that everything that was done in respect to national security in the past was done right, but it would be wrong for us to bring elements of national security and terrorism and have them devolved to the Assembly, given that there are — I am not sure what to call them — former, or to some extent, terrorists who could have control, or some part to play, in the functions of that system. I could not agree to that. My party has made that clear and will remain strong on that position.

557. The Chairperson: I return to Alex's point. In the context of this inquiry, we are pursuing with the security services issues involving oversight and accountability mechanisms. Let me be clear that we have not lost sight of that, but I appreciate that there is a distinction between the transfer of powers and the question of a devolved Department having some form of accountability and oversight mechanism. I do not think that we are ruling that out in this discussion today.

558. Members, how do you wish to proceed? Do we want to go beyond the consensus that was agreed at the Programme for Government Committee? We could perhaps agree that, in principle, we accept the devolution of all powers over criminal law and creations of offences and penalties that the NIO had proposed would be devolved, but note that treason and terrorist offences are excepted matters, and that there remain diverse opinions within the Committee on the devolution of those powers. The difficulty is that we simply do not have the authority to do anything about it.

559. Mr McCartney: As long as it is clear that no consensus was reached, that is fine. You are right on the first point: we can all agree that we are in the same position as we were at the Programme for Government Committee meetings, but there is no consensus on the

latter matter.

560. The Chairperson: We would simply reflect the fact that there is a diversity of opinion on whether or not we should seek the devolution of the two additional powers either now or in the future. However, we clearly do not want that to hold back the devolution of the other powers.

561. Mr McFarland: I want to probe that matter slightly further. If there is no consensus on an issue, technically, it continues to be parked until consensus is reached. However, a difficulty arises in this scenario. If this was a case of the Committee discussing what should or should not be done about a transferable matter, I would agree that we would have to keep parking the issue until consensus could be reached. However, surely the Committee must recognise that, whatever the individual views of its members, those powers are not on offer to us as transferable powers. Surely the Committee must accept that the legal position at the moment is that the Government have clearly no intention of transferring those powers to us, and that the Committee, whatever the view of its members, has no option but to accept that. There are other powers that can be transferred, but which some of us may not want to see transferred — in that case, the lack of consensus can be recorded and the matter can be parked. However, it strikes me that what we are discussing is not an option for the Committee, in any case.

562. The Chairperson: I take your point. It is not for me to speak for Sinn Féin or the SDLP, but I think that their members would say that they do not accept that we should not ask for those powers — in other words, they do not accept the view that we should not ask to have those powers simply because they are not currently on offer. I believe that we can find a form of words that reflect the legal reality of the situation, which Alan mentioned.

563. Mr McFarland: The law states that those powers are not on offer.

564. The Chairperson: Yes, and primary legislation would be required to change the situation. I believe that this side of the Committee would want it reflected that the question is whether we ask the Government to legislate for the transfer of those powers. Clearly there is no consensus on that within the Committee at the moment. We can reflect that, eventually, in our report, provided that there are no further developments between now and then. We will also come back to Alex's point about oversight and accountability. Are members happy to proceed on that basis? We will eventually agree on a form of words to include in the Committee report that members can be happy with.

565. The question is that of the prevention and detection of crime. This is the statutory framework within which the police and other law-enforcement agencies operate in Northern Ireland. It does not cover counter-terrorism, immigration or revenue and customs, which are excepted matters: in that sense, the situation is the same as the situation that we have just discussed. Following devolution it is envisaged that the Assets Recovery Agency (ASA), the Serious Organised Crime Agency (SOCA) and the UK Immigration Service will consult Northern Ireland Ministers, where appropriate. Again, we may want to explore what is meant by consultation, what are the implications of any monitoring role, and so on.

566. In the Programme for Government Committee, it was agreed by consensus that, in principle, the prevention and detection of crime should be a devolved matter. However, again, the SDLP and Sinn Féin wanted all powers to be devolved. Members, are we content to deal with this issue in the same way as we dealt with the previous issue?

567. Alan, you wished to make a comment.

568. Mr McFarland: The issue of SOCA was raised at the previous Committee meeting. Since that meeting, the Committee sent a letter to the Northern Ireland Office requesting further information. Surely we cannot address the issue until we receive the information that was requested in the letter.

569. At last week's Committee meeting, we discussed accountability issues that would arise when PSNI officers chased after organised criminal gangs. In that scenario, cross-cutting issues might arise. There is little clarity about where the line is drawn between the PSNI and the other agencies. Responsibility for SOCA and the Assets Recovery Agency will not be devolved. Perhaps, before a final decision is made, there should be some clarity about how the interface between the PSNI and — in particular — SOCA will take place. I agree with you —

570. The Chairperson: I see where you are coming from on that. However, today's discussion is on the narrow ground of whether the power should be devolved or not. The issues around accountability, scrutiny, etc will be covered in the Committee's report. It is a slightly different issue, related though it is. The principle is that if one has a devolved power, then one will have one's own mechanisms for oversight and scrutiny. However, if the power is not devolved, then we need to explore the extent to which the Department of Justice, in Northern Ireland, will have a role — or be able to create a role — that enables some degree of scrutiny, accountability and oversight.

571. You are correct when you say that we are still waiting on a response from the Security Services, from SOCA and others, on those issues. However, I do not think that that cuts across the principle of whether or not the power should be devolved. We do not have a consensus on that, at present. Sinn Féin and the SDLP take the view that all power should be devolved, including the work of the Assets Recovery Agency, SOCA and the UK Immigration Service, which are excepted matters. Therefore, we are in the same situation again. Legally, we do not have that authority to deal with scrutiny and accountability issues. That is why I suggest that we proceed on the basis that we are agreed in principle that the powers on offer should be devolved and that there is a diversity of opinion as to whether or not we should ask for legislation to be introduced to devolve those powers which are excepted, or to enable them, potentially, to be devolved in the future.

572. Mr McFarland: Does the latter part block the former, or are they parallel issues? If there is no agreement on all of it, will Sinn Féin and the SDLP not agree on any of it?

573. The Chairperson: My understanding is that there is a consensus that the powers on offer at present should be devolved. However, if for example at the end of the process Alex said that he was not happy with the oversight mechanisms for the non-devolved matters and therefore his party was not going to endorse the overall report, that would be an issue that we would have to deal with at that time.

574. As I understand it, neither the SDLP nor Sinn Féin are saying that they will veto the devolution of the powers that are on offer, and that if they cannot have the whole package, they will have none at all. Rather, they are saying that they agree that the powers on offer should be devolved but that they would also like to have additional powers. They are not saying that we cannot have them all. If that is the wrong interpretation I stand to be corrected.

Members indicated assent.

575. Ms Ní Chuilín: I apologise for having to leave the meeting. I have to attend another meeting.

576. The Chairperson: Thanks, Carál.

577. Are we content on that issue, that we proceed on the same basis on which we have done before, notwithstanding that we need to return to the oversight and accountability issues?

578. Mr G Robinson: Agreed.

579. The Chairperson: The letter that we have sent to the Northern Ireland Office — in addition to what we have done with SOCA and the Security Services — also highlights the point that we are asking it to deal with the working relationships and lines of communication that might exist between the NIO, any new Department of policing and justice, and a national organisation such as SOCA, the Security Service etc, as regards excepted matters. Therefore, we are also asking the NIO to address that issue in the context of —

580. Mr Attwood: What date is on that letter?

581. The Chairperson: That is the one that went out yesterday.

582. The next item for discussion is the treatment of offenders. The briefing paper of 28 June stated that:

“All matters related to prisons, youth justice, probation and certain functions to do with mentally disordered offenders (including the majority of these functions, including severe hospital facilities) are already transferred ... The Committee on the Programme for Government agreed by consensus that in principle the Treatment of offenders should be devolved.”

583. There was a difference of opinion on whether additional powers should be reserved or excepted.

584. Sorry, we are considering issues that are not transferable at this stage. The Northern Ireland (Sentences) Act 1998 provides for sentence review commissioners, who deal with applications for early release. Currently, that is not a devolved matter. Sinn Féin and the SDLP took the view that it should be devolved; however, the DUP and UUP were content that it should remain a reserved matter.

585. Do members wish to express an opinion, or will we treat it in the same way that we have dealt with previous issues?

586. Mr McFarland: Is that item related only to terrorist prisoners?

587. The Chairperson: Yes, for scheduled offences.

588. Mr Kennedy: There is consensus about agreeing to no consensus.

589. The Chairperson: For the record and to clarify, the work of the sentence review commissioners is wholly concerned with the treatment of those people who have been convicted of offences connected with terrorism, and it is an excepted matter under paragraph 17 of schedule 2 of the Northern Ireland Act 1998.

590. Do we proceed on the basis that there is consensus that those powers on offer should be devolved, but, that there is a diversity of opinion as to whether we should seek the devolution of excepted matters?

Members indicated assent.

591. The Chairperson: On the matter of public order, the briefing paper of 28 June stated that:

“The statutory framework governing the maintenance of public order, including responsibility for parades legislation in NI. Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved. Responsibility for determining which weapons may be used by the police in public order situations will remain an operational decision for the Chief Constable. Appointments to the Parades Commission and its operation could be reserved, if that was the wish of the Assembly ... The Committee on the Programme for Government agreed by consensus that in principle public order should be devolved. The DUP and UUP were content that responsibility for the Army should remain as an excepted matter. They concluded that the Parades Commission should be abolished, but if it was to continue, responsibility for appointments should remain as a reserved matter for the time being. Sinn Féin and the SDLP wished to see all powers in this matter devolved with safeguards on appointments where appropriate.”

592. That was the view taken at that time. In other words, we have consensus that the transferable powers relating to public order should be transferred to a justice department; however, there was not agreement on transferring powers relating to the army working in support of the police or on appointments to the Parades Commission.

593. There may be changes to the Parades Commission issue, following the outcome of the current review. To a certain extent, it is an unknown quantity.

594. Do any members wish to express a view on any of those issues, or does the Committee wish to proceed on the same basis as before? Are members content?

595. Mr Attwood: There are probably several broader issues. First, just for the record, I do not accept the contention in the paper that: “Responsibility for determining which weapons may be used by the police in public order situations will remain an operational decision for the Chief Constable”.

596. Although that is the case during an operation, legally, the responsibility for deciding which weaponry is available to the police falls to the Policing Board. The purchase of novel and contentious weaponry falls to the Policing Board under the law, under the Patton Report and under Treasury guidelines. Therefore, if the assertion is that the Chief Constable can decide what weaponry he wants to buy, I do not accept it. I have argued that throughout, and I want it on the record.

597. I did not notice it before, but the document also says that:

“Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved.”

598. Did the NIO argue that such powers might be devolved? They should be a devolved matter. Nonetheless, is there anything in the NIO documentation or correspondence to suggest that they might be devolved?

599. My third point is substantive. The document states that:

“appointments to the Parades Commission and its operation could be kept reserved, if that was the wish of the Assembly.”

600. It is a sensitive power, and maybe the Assembly does not want it. Some would argue that that should also be the case for the renewal of the 50:50 recruitment policy and for appeals by the Chief Constable against decisions of the Parades Commission. Those are sensitive matters, and we must decide whether they should be devolved.

601. I have a list of hard questions, Clerk, so please forgive me. Would it be possible for Research Services to work through the various models? Sinn Féin and the SDLP feel that such matters could be devolved where safeguards exist. By that we mean cross-community safeguards, so that OFMDFM or any Minister would not have unilateral power to make decisions in respect of matters, such as 50:50 recruitment. Can Research Services compile the various models whereby such matters could be determined on a cross-community basis?

602. There are a lot of models. Perhaps such matters would have to be decided by an Executive subcommittee or another part of the institution. Could Research Services brief the Committee on what models might build in cross-community safeguards in the event of those sensitive powers being transferred?

603. The Chairperson: Would that include appointments to the Parades Commission?

604. Mr Attwood: Yes. It would include the renewal of 50:50 recruitment, appointments to the Parades Commission and appeals by the Chief Constable against the Parades Commission's determinations.

605. There may be other powers. I felt that Shaun Woodward hinted last week that the Assembly would not really want such powers and that the NIO would keep them for the moment. I do not have the transcript yet, but he said something that suggested to me that he was hinting at that.

606. Mr McFarland: The reason that the Committee for the Preparation for Government spent all last summer and autumn parking such decisions was that, if sensitive powers were to be devolved, there would be no agreement on anything — there would be gridlock.

607. If the SDLP wants an extension of the 50:50 recruitment policy, which is due to end in 2010, it will never get it. The SDLP might persuade the Government to make separate legislation. It strikes me that bringing all those matters here — where there will be no form of consensus on them, because they are contentious — seems slightly daft.

608. Regarding Alex's point, the issues of weaponry and what the Chief Constable can and cannot do have been devolved to the Policing Board. Some Members of the Assembly are on the Policing Board, and that is where responsibility for those issues lies.

609. The Policing Board have had a row just this week over the use of tasers, and the Chief Constable is adamant that the operational acquisition of weapons — that could be used to protect his officers — is in his bailiwick.

610. There were other occasions, as Alex knows from the first Assembly, when the police approached the Policing Board and asked them to back particular weapons. However, that issue is not the responsibility of the Assembly; it is up to our colleagues on the Policing Board. We should not get too excited about those issues — there are certainly issues that need to be investigated, but they are matters for the Policing Board.

611. The Chairperson: The point is, Alan, that if Alex's assertion is that the responsibility is already with the Policing Board, it is not an issue for this Committee. One cannot devolve something that is already devolved.

612. Alex made a point regarding future powers enabling the Army to operate in support of the police, and whether there was a question that that issue may have been considered for devolution by the Northern Ireland Office. Paragraph 12.3 of the NIO's discussion paper 'Devolving Policing and Justice in Northern Ireland' states:

"As well as drawing on general constabulary powers, the police rely on the Public Order (Northern Ireland) Order 1987 to deal with serious public disorder. They also currently use the Terrorism Act 2000, in particular part VII powers in respect of requisitioning and road closures, although the provisions are intended to be repealed as part of the current normalisation process, so are unlikely to be in use by the time public order is devolved."

613. Alex, it may be in the context of the normalisation process that there was an issue over whether the power to enable the Army to operate in support of the police should be devolved. My understanding is that that falls under the Terrorism Act 2000, rather than the Public Order (Northern Ireland) Order 1987. We may need some clarification on that issue, so I will ask for that so that we can nail that issue down for you.

614. Mr McFarland: It is worth recalling again that we have now moved away from terrorism and everything else. Therefore, the limited number of troops that are in Northern Ireland, would not normally be here — they would be in Iraq or Afghanistan. Their families are here; we have moved to garrison status now. Therefore, the days when the troops are able to be called out to deal with a bit of bother have gone.

615. There is a system throughout the United Kingdom for calling for assistance from the Army if it is required. For example, a unit that was training in Northern Ireland could be called out in a really bad situation. That is an established system; it is called Military Aid to the Civil Power (MACP), and is already in statute at Westminster. What happens is that the police apply to the Minister for Defence to have backup for those troops that might be already in this country facing a doomsday-type situation.

616. My sense is that the Ministry of Defence will not wish to devolve those powers to the Northern Ireland Assembly because they are not devolved in Scotland, Wales or elsewhere.

617. The Chairperson: Are we agreed that we proceed on the basis that the powers on offer to us on public order should be accepted, and that there remain diverse views on the other powers, including that which Alan has just mentioned? In other words, we are not holding back devolution of those powers that have the potential to be devolved, but there is not a consensus on what else should be requested for devolution regarding the public order issues. The secretariat will produce a paper on Alex's suggestions regarding the options for the Assembly in dealing with issues such as the Parades Commission and 50:50, etc. Are members content to proceed on that basis?

Members indicated assent.

618. The next item is the Police and the Policing Accountability Framework. This is the statutory framework, which provides for the existence, governance and oversight of the PSNI. It also covers funding and corporate governance of a range of statutory bodies within the wider policing field. National security would remain an excepted matter with the Secretary of State responsible for sharing information with the Policing Board. The Policing Board now have an established protocol with the Secretary of State on that issue. The 50:50 temporary recruitment provisions are also excepted unless the Assembly specifically requests that those be devolved. We have asked for a paper from the secretariat on the kind of models that might be introduced if some of those matters were to be devolved.

“responsibility for seeking a derogation from the EC Directive on Equality would remain an excepted matter even if responsibility for 50:50 were devolved.

The Committee on the Programme for Government agreed by consensus that in principle the police, and the policing accountability framework, should be devolved.

The DUP and UUP were content that the responsibility for national security information and for the derogation from the EC Directive on Equality should remain as excepted matters. The DUP and the UUP opposed the 50:50 recruitment arrangements to the PSNI but were content that responsibility for them should remain as a reserved matter.

Sinn Féin wanted an end to MI5 in Ireland. MI5 could have no role in civic policing in the north.”

And that is a quotation. [Laughter.]

“The SDLP were of the view that there should be no role for MI5 in Northern Ireland.

619. Interesting — perhaps they can cover the South.

“SDLP and Sinn Féin wish to see all powers in that matter devolved.”

620. The SDLP and Sinn Féin believe that there should be robust accountability mechanisms for the appropriate bodies and office holders in the devolved administration for all national security operations in Northern Ireland.

“Sinn Féin and the SDLP wished to see decisions on 50:50 recruitment taken in the Assembly subject, where appropriate, to cross-community safeguards.”

621. That is a summary of how far we got in the PFG. Again, there is a similar situation where we have agreement in principle that the powers on offer, as transferred powers, be devolved to a future policing and justice department. We do not have a consensus on the other powers, including the EEC directive on equality, the 50:50 recruitment arrangements, the security services or anything else that was covered by that matter, and is an excepted power.

622. Does anyone wish to comment on those issues? Most of them have been covered in earlier discussions. Members, are you content to proceed on the basis that there is a consensus that those powers that are potentially transferable should be devolved to a devolved department? Secondly, are you content that we are awaiting a paper from the secretariat on some of those issues, such as 50:50 recruitment, containing models that the Assembly may adopt if the powers were to be devolved? Thirdly, are you content that in the meantime the Committee notes that there are diverse views on whether or not the powers that are excepted or reserved should be transferred to the Assembly? Are you content to proceed on that basis?

Members indicated assent.

623. The Chairperson: We move to the issue of co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters that are covered on page 13 of tab 2 of the Member's pack. Those matters are governed by the Intergovernmental Agreement on Policing Co-operation, which is an international treaty, and therefore would have to be an excepted matter. However, the Northern Ireland (Miscellaneous Provisions) Act 2006 transfers certain aspects into the reserved field. Therefore, some of the matters in question are excepted matters and some of them have subsequently become reserved matters.

624. The arrangements for co-operation between the PSNI and the Garda Síochána cover: lateral entry; secondments, exchanges or training of officers; communications, including liaison and information technology; joint investigations; and disaster planning. Those are the matters that would devolve to the Assembly. The remaining aspects of the Intergovernmental Agreement on Policing Co-operation, and the agreement itself, which would not devolve, have been covered in terms of their being mainly excepted matters, with some having become reserved matters as a result of the Northern Ireland (Miscellaneous Provisions) Act 2006.

625. The Programme for Government Committee's 'Report on the Devolution of Policing and Justice' records that there was a consensus, in principle, that:

"co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters should be devolved."

626. The DUP and the UUP were content that:

"matters relating to aspects of the Inter-Governmental Agreement on Policing not transferred into the reserve field by the Northern Ireland (Misc. Provisions) Act 2006 and the Inter-Governmental agreement itself, remain excepted and will not be devolved."

627. That means that those matters are non-transferable.

"The DUP and UUP were further content that the reserved matters"

those covered by the Northern Ireland (Miscellaneous Provisions) Act 2006 —

"relating to specified aspects of international co-operation should be devolved."

628. So the UUP and DUP were agreed that those reserved matters should be devolved.

“Sinn Féin and the SDLP wished to see all powers in this matter devolved.”

629. That includes the excepted matters covered by the international agreement.

“Sinn Féin’s position was that the existing Inter-Governmental Agreement should be only a foundation for increasing integration and harmonisation of policing and justice on an all-Ireland basis. The SDLP proposed that those matters outlined in the various Agreements should be transferred, continue to operate and be enlarged across a range of areas.”

630. That is the current situation. There is a consensus that the matters specified as transferable should be transferred to the Assembly. I have a further question for the SDLP and Sinn Féin: the DUP and the UUP were content that matters relating to aspects of the intergovernmental agreement on policing that have become reserved matters under the Northern Ireland (Miscellaneous Provisions) Act 2006 should be devolved —

631. Mr McFarland: Are the matters listed here the same as those that appear in the Northern Ireland (Miscellaneous Provisions) Act 2006, or are there further matters?

632. The Chairperson: I need to clarify that for you, Alan. As I understand it, the matters that are listed in the members’ pack are transferable. I do not have a list of the reserved matters that were identified in the Northern Ireland (Miscellaneous Provisions) Act 2006, but I can get that for you.

633. I will go back to my question for the SDLP and Sinn Féin. In principle, and, notwithstanding your views on excepted matters, is there a consensus that the reserved matters — subject to their clarification — identified in the Northern Ireland (Miscellaneous Provisions) Act 2006 should be transferred?

634. Mr McCartney: Yes.

635. Mr Attwood: Yes.

636. The Chairperson: Members, it is advisable that we know what the reserved matters are before drawing a line under the consensus. However, I wanted to establish that, subject to the Committee having sight of the reserved matters identified in the Northern Ireland (Miscellaneous Provisions) Act 2006, there would appear to be a consensus that those matters should be transferred. I will park that on the side of the road until further clarity allows us to move forward. Clerk, perhaps we could tag that on to the next meeting at which we can establish if there is consensus.

637. I do not think that the Committee will reach agreement on the excepted matters today. Are Members content to proceed on the basis that there is a diversity of view within the Committee on excepted matters?

Members indicated assent.

638. Mr Attwood: There is a real and practical issue to be considered. I know that the Committee awaits a briefing document on the

North/South justice agreement, which is a sister to the policing agreement. I am not sure about the policing agreement, but I assume that, because it is a British/Irish agreement, it and the justice agreement, both fall with devolution.

639. Therefore, the practical issue is: what will the Committee recommend to be in place on day 1? To give an example, there is a motion on the Floor of the Assembly this afternoon. The motion, and the two amendments proposed, all agree that there is a need for some joined-up work in respect of registration of sex offenders and associated matters. Everyone is agreed that something must be done on an all-Ireland and British-Irish basis. Under devolution, all those matters fall. As a Committee, we have to decide how, between now and the date of devolution, whenever that may be, that which is desirable against any objective standard — and that is not to politicise the issue — should be in place on day 1.

640. The Chairperson: In the Committee's letter to the Northern Ireland Office, we have included the following:

"Furthermore, the Committee is interested to know what discussions there have been with the Irish Government, if any, in relation to the impact on any, or all, existing agreements and arrangements in circumstances where policing and justice matters were to be transferred, including the actions which would be required to amend or repeal existing agreements and the need to develop new protocols."

641. We will, therefore, return to that issue.

642. Mr Attwood: Ultimately, the Committee must decide what it wants to be in place on day 1.

643. The Chairperson: That is correct. We are required to report on all the matters of preparation for devolution, and that would have to include what the Assembly must do to cover those issues. On the issue of sex offenders, for example, we would not want to be in a position where we had devolution but someone could escape through a loophole because we did not have a protocol in place. It is prudent that we look at that and consider to what extent we should recommend that new protocols and new agreements should be put in place.

644. Mr Attwood: And new agreements?

645. The Chairperson: I am all for new agreements, Alex. [Laughter.]

646. Mr Attwood: Will this appear in Hansard?

647. The Chairperson: It will, yes.

648. Mr Attwood: I particularly welcome that comment.

649. The Chairperson: It depends on the content of the agreement.

650. Mr G Robinson: So long as the old agreements are got rid of.

651. The Chairperson: We move on to the item dealing with firearms and explosives. That is on page 14. This is the licensing framework for firearms and explosives. Here, everything will devolve; everything referred to here is transferable.

"The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving responsibility for explosives to the appropriate Northern Ireland Minister was agreed."

652. So there is consensus on that. There is also agreement by consensus that, in principle, responsibility for firearms should be devolved. The DUP proposed devolution that excluded legislative responsibility for prohibited firearms. In other words, the DUP's view was that the power to legislate for prohibited firearms should not be a devolved matter. Sinn Féin and the SDLP proposed full devolution of all responsibility; and the UUP proposed devolution that excluded legislative responsibility for all firearms and administrative responsibility for prohibited firearms.

653. There was a consensus on the principle of devolving powers. However, on the specific issue of the legislative power, Sinn Féin and the SDLP take the view that all legislative power should be devolved; the DUP took the view that there should be an exclusion of legislation that deals with prohibited firearms; and the UUP took the view that legislative responsibility for all firearms issues, including the administrative arrangements for prohibited firearms, should be excluded — I am sure there are good reasons for that, but I have not read the transcripts.

654. Mr McFarland: Danny and I are trying to figure out what the good reasons were.

655. The Chairperson: I noticed the puzzlement on your face. It is obscure.

656. Mr McFarland: Can we park that until we get clarity?

657. Mr Kennedy: We will check that and return to it.

658. Mr McFarland: It seems a bit strange. There must have been a reason for it at the time.

659. The Chairperson: I am not sure whether it is related to terrorism. It may be. There could be some issue here. We need to check.

660. Setting aside the issue of legislating on firearms, are members content that there is a consensus that responsibility for explosives and firearms should be devolved to the Assembly? The DUP and the UUP will be asked to check their respective positions again, so that we can revisit the question of whether there is a consensus on devolution of all powers. Are members content to proceed on that basis?

Members indicated assent.

661. I assume that Sinn Féin and the SDLP remain of the view that all power should be devolved, and I ask the UUP and the DUP to clarify their view on the legislative provision for firearms and prohibited firearms. We will tack that on to the next meeting, if the two parties can report back then, to see if we can get a consensus.

662. I move on to the courts and to the administration and oversight of the Court Service in Northern Ireland, including the UK-wide functions for the Lord Chancellor relating to the judiciary and international relations, which will not devolve. I assume they are excepted matters.

663. The Principal Clerk: Yes. International relations are excepted.

664. The Chairperson: The Lord Chancellor's functions under the Human Rights Act 1998 or the Data Protection Act 1998 will not devolve. The Programme for Government Committee agreed by consensus that in principle the courts should be devolved, and the DUP and UUP were content with the level of devolution proposed in the NIO letter of 15 August 2006. However, Sinn Féin and the SDLP wish to see all powers in this matter devolved including the Lord Chancellor functions relating to the judiciary, international relations, the Human Rights Act and the Data Protection Act.

665. Is there any change in the respective positions of the parties? Are members content to proceed on the same basis as before that there is a consensus that those matters that are transferable should be devolved through the Assembly, and that there is a diversity of view on those matters that are currently excepted, and there is therefore no consensus on requesting their devolution?

Members indicated assent.

666. The Chairperson: That completes the deliberations, but do members want to make any general points on the Inquiry into Devolution of Policing and Justice Matters before we move on to other business?

667. Mr I McCrea: In what sort of timescale does the Committee expect to make decisions on those matters? They certainly are contentious, for want of a better word, and at some stage they will be put to a vote.

668. The Chairperson: The party deliberations will be completed early in November, and the Committee will then have to identify where there is agreement and where there is not. Detailed consideration of the contentious matters to see if a consensus can be arrived at will be in November, or early December, and in January the Committee begins the completion of its preparation of the report, so decisions will probably be in December.

669. Members must be clear that it is not the intention of the Committee to revisit those areas where a consensus is reached, either as a result of the discussions today, or in the future. In the latter stages of deliberation the Committee will only revisit issues where consensus was not reached to see how they will be dealt with, and how they will be reported to the Assembly

670. The purpose of today's discussion is to ensure that there is a continued consensus on the matters that the Programme for Government Committee reached a consensus on, and to see how the other issues can be advanced. The Committee has usefully agreed to bring forward some further research on some of those issues, which will hopefully inform the Committee's discussion and help it to find a resolution.

16 October 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

Witnesses:

Ms Dawn Purvis Leader of the Progressive Unionist Party

Stewart Finn Progressive Unionist Party
David Rose

David Ford Leader of the Alliance Party

Dr Stephen Farry Alliance Party

Sir Alastair Fraser

Ian Hearst Public Prosecution Service

Raymond Kitson

671. The Chairperson (Mr Donaldson): Good morning. I welcome Dawn Purvis, leader, and executive members David Rose and Stewart Finn, of the Progressive Unionist Party. You are very welcome to this Committee meeting. As you will be aware, the Committee is conducting an inquiry into the devolution of policing and justice matters. You have kindly provided the Committee with a written submission, and we look forward to hearing more from you this morning.

672. I now invite Members to declare any relevant interests before we proceed with the oral evidence session. I declare an interest as a member of the Privy Council and a member of the Northern Ireland Policing Board.

673. Mr G Robinson: I am a member of the Limavady District Policing Partnership.

674. The Chairperson: Given that no further interests have been declared, I shall proceed.

675. Dawn, we would like you to make a short opening statement, if you wish to do so, after which members will have the opportunity to ask questions. I should explain that previous witnesses who have appeared before the Committee as part of this inquiry have explored three particular components of the Committee's terms of reference. The first is the matters to be transferred, and we welcome any views that you may have on the policing and justice matters that you believe should be transferred. The second component is ministerial models. Do you have any views on proposed models? In other words, do you think that there should be one or two Ministers or one or two Departments? The third component is the timing and preparations for devolution. Do you have a view on the timetable set

out by the Government in the St Andrews Agreement? Do you have any views on the preparations that need to be made for the devolution of policing and justice powers?

676. Ms Purvis, I invite you to make your opening statement.

677. Ms Purvis (Leader of the Progressive Unionist Party): Thank you. I thank the Committee for inviting us to give evidence today. We hope that the work of the Committee will inform the public of the machinations involved in the devolution of policing and justice powers. I do not intend to make a long-winded statement as I hope that more details can be drawn out in the question-and-answer session.

678. Further to our submission to the Committee, it is the Progressive Unionist Party's belief that all policing and justice matters should be devolved fully to the Northern Ireland Assembly, with the exception of those matters concerning national security and some of the more contentious issues. Although we would like devolution to occur as smoothly and as quickly as possible, we believe that sufficient confidence must be built within the community before that can happen. We therefore believe that the conditions for devolution are more important than the date for devolution. However, I must add that I believe that where there is a will, there is a way. If sufficient consensus can be reached — not only among the parties, but among the public — we believe that that devolution can happen sooner rather than later.

679. We were not overly struck by any of the departmental models that the NIO proposed in its consultation paper. We believe that, in the longer term, there should be a single Department with a single Minister. However, given the lack of public confidence at the moment, and in order to increase cross-community confidence and accountability in the Department, we believe that, at this point, there should be a single Department headed by two Ministers, one nationalist and one unionist. The posts should be allocated under the d'Hondt system, with ministerial positions being deemed filled once Ministers have been selected by both unionists and nationalists. I hope that that clarifies my party's position on the matter, and I hope that we can explore some of the issues in greater detail during the question-and-answer session.

680. The Chairperson: Thank you very much, Dawn.

681. You said that your party's preference was for the devolution of most policing and justice matters, and you mentioned contentious issues and national security. The national security issue is obviously very clear.

682. Do you have examples of what you think may be contentious issues, or have you done any work on identifying what contentious issues that you feel should not be transferred?

683. Ms Purvis: Although the PUP would like to see 50:50 recruitment to the PSNI coming to an end in 2010-11, as Patten envisaged in his report, given the lack of consensus amongst the parties over that issue, we believe that it would probably be better for that to remain a reserved matter.

684. We know that the parades review body is considering the whole issue of parading, and the need for a Parades Commission. We are of the firm belief that the Parades Commission should be scrapped. However, again, given that there is little consensus amongst the parties as to whether the Parades Commission should continue to exist, it is probably better that that also remains a reserved matter until such times as the parades review body publish their report and make recommendations that people can buy in to.

685. The Chairperson: You also touched on the departmental model and your preference in the long term for a single Department and Minister to oversee policing and justice matters, but that initially there should be a single Department with two Ministers who would be appointed by the D'Hondt system. Is it your view that those two Ministers would be co-equals, or that there should be a Minister and a junior Minister? Do you have any preference for the initial departmental/ministerial model?

686. Ms Purvis: Yes, we believe that they should be co-equals, and should share responsibility for the Department and make joint decisions.

687. The Chairperson: In the longer term, if there is to be a single Department with a single Minister, do you think that that Minister should continue to be appointed by the D'Hondt system, or by another method?

688. Ms Purvis: Yes, we believe that a Minister should be appointed by the D'Hondt system, in keeping with the normal pick of Departments when that method is used.

689. Mr O'Dowd: Thank you for your presentation and written submission, Dawn. An area of interest to me — and it is an area that we, as republicans, have to examine — is the remarks made or the stance taken by some unionist politicians that there needs to be sufficient confidence in the unionist community before policing and justice matters can be devolved. At times, some unionist politicians do their community a great disservice because they almost portray them as having no vision or confidence in their own position. I am not being patronising when I say that; that is not the image or the view that I have of unionism, certainly when their history and their present position is considered.

690. What is your view of the position that has been taken by some unionist politicians? I know that you have said that where there is a will, there is a way.

691. That is an interesting comment. As a grassroots based politician, and a grassroots based political party, what do you believe the mood to be in the unionist community? Furthermore, what measures can we, as republicans, and the wider political base, take to ensure that confidence in the unionist community and the wider community in general is enhanced?

692. Ms Purvis: As I said, where there is a will, there is a way. You probably do not get to hear the comments that I get to hear from the loyalist working-class community or the wider unionist community. The epitome of the comments that I hear is that Sinn Féin are fifth-columnists who want to destroy the Ministry, policing, and the criminal justice system.

693. We have all heard the comments about Gerry Kelly becoming the Minister for policing —quite frankly, that frightens people. There are lots of measures that can be taken to try to alleviate those fears. The work of this Committee is one way to do that because people do not understand how policing functions in Northern Ireland, and they do not understand how the criminal justice system functions in Northern Ireland.

694. For example, a Minister with responsibility policing will be purely in charge of the budget; the Chief Constable will continue to have operational independence and to be in charge of what happens daily with the PSNI. Not a lot of people in the public understand how policing actually works, how a Minister would function regarding policing, or how a Minister would function regarding the criminal justice system.

695. There must be more clarity, and more information must be put into in the public domain to reassure people about how the system operates. As I mentioned at my party conference on Saturday, people must have confidence in the structures of state and the Assembly.

696. Although the media portray corporate agreement in the Executive at almost every turn, the public must see parties falling out, making up and moving on. People need to see a sign of maturity, because although there may be disagreements about ministerial decisions, that is the cut and thrust of politics. As parties agree to move on, that will be a sign of Northern Ireland moving on to a more peaceful and stable future.

697. Mr O'Dowd: There may, in fact, be a disagreement in the Chamber now about a ministerial statement.

698. I agree with that interesting point that parties should be able to fall out, apportion blame and move on in a mature way. To summarise, parties must start to consider what policing means to our local communities and what the devolution of policing and justice will mean for us. Is the unionist community, or society in general, having that debate?

699. Ms Purvis: No, but the debate must happen.

700. Mr G Robinson: You indicated in your submission that the conditions for the devolution of policing and justice are more important than the date. Should powers be devolved by the May deadline? Is there sufficient community confidence for that to happen?

701. Ms Purvis: If there is the will and sufficient confidence, it can happen by 8 May 2008. It remains to be seen whether there is the political will to ensure that it does. The work of this Committee, more public information, and a demonstration of maturity by the Executive can all help to create the conditions whereby there is sufficient confidence.

702. There will never be total confidence in the devolution of policing and justice, but we must go some way to allaying the fears of the community to ensure that it happens.

703. Mr McFarland: You mentioned the operational independence of the Chief Constable. Traditionally, the Northern Ireland Court Service has been at arm's length and the prison service has operated as an agency. I do not know whether you read the transcript but when the Lord Chief Justice appeared before this Committee, he advocated a model that had no connection with the Minister. Therefore, the Court Service would not merely be at arm's length, but completely separate. Should it be that far distanced from ministerial control or should it stay roughly where it is now?

704. Ms Purvis: To be honest, I have not examined how the Scottish or Irish models work, with their court services being the control of the Lord Chief Justice. However, I have some initial concerns about how the victims of, and witnesses to, crime are treated by the judiciary and the Northern Ireland Court Service.

705. Recently, a 5-year strategy was published, which is designed to give the victims and witnesses a greater voice in the Court Service. However, the traditional view is that judges are aloof and separated from reality. To remove the Court Service even further away from the functions of society and political influence causes me some concern. The Lord Chief Justice has made great strides during his term in office in an attempt to reach out and relate more with what happens in society. Although I have concerns, the model that he suggests should be examined in more detail.

706. Mr Attwood: I want to develop Alan's point. Objectively, you are right that the judiciary has been too removed from the rest of society and that there must be a much more appropriate relationship.

707. If that is what you are indicating, I would certainly concur with that in objective terms. However, I have a concern — and maybe it goes back to some of the comments you made to John O'Dowd — that there will be a tendency among one or two parties to try to interfere a bit too much with the proper administration of policing and justice, and that they will try to interfere inappropriately.

708. Are you concerned that there might be one or two parties that might assume too much power and authority if they were to assume a justice ministry? Given that you were a member of the Policing Board until recently, would you be concerned that in those circumstances the independence of the Policing Board, the policing institutions, etc, could be compromised in a way that would undermine the confidence that has been developed over the past five or six years, which includes PUP membership on the Policing Board.

709. Ms Purvis: Are you referring to Ministers influencing politically the Courts Service or the Probation Board?

710. Mr Attwood: Or Police Service.

711. Ms Purvis: Or the Police Service? It remains to be seen how they could have any influence. Taking policing and justice as one side of the issue, there is the Chief Constable, who has operational independence and there is the Policing Board, which has oversight and accountability of the Chief Constable and his top team. What is a Minister's role in policing? Is it purely to fulfil the role that the NIO and the Secretary of State currently have? If that is the case, it would be legislative and it would look after the financial budget.

712. However, I think that the Policing Board must remain in place as the organisation with ultimate oversight of the PSNI. The Policing Board could then inform the work of the Minister — as a tool of the Department, if you like — and, therefore, the PSNI would remain operationally independent from the Department. Similarly, the agencies that function within the criminal justice system, as they do now — and I know that Alan said that they function at arm's length — would come in again within a Department. Ultimately, the Department has responsibility for those agencies, the budgets of those agencies and how they function, but there is a certain degree of independence within those agencies and how they run, and that should be protected.

713. Mr Attwood: I agree, and I think that they should be protected. However, I do not think that the Policing Board should be a tool of the Minister or Ministers — whoever they might be.

714. You say that you support the principle of a shared ministry. What model of shared ministry would the PUP support? Should there be two equal Ministers with equal authority, or should there be a senior Minister and a junior Minister — as proposed by the British Government? What model, or variation of those models, would the PUP be minded to support?

715. Ms Purvis: I have already answered that question. The PUP would support two Ministers of equal stature.

716. Mr Attwood: I am sorry; my mind must have been elsewhere. I apologise.

717. The Chairperson: Dawn, I want to return again to the contentious issues we referred to earlier. The Committee is looking at

whether there could be sufficient safeguards built into the system — be it in the Department, the Assembly or the Executive — for example, by providing the cross-community voting requirements in the Executive, the Assembly, etc. In the event of such safeguards being provided, contentious issues such as 50:50 recruitment and the parading issue could be devolved. Would you have a view as to whether it would be appropriate if safeguards were built in that devolution of those matters should take place, or do you feel that they are so contentious that, at least in the short term, they should remain reserved matters?

718. Ms Purvis: Too many safeguards restrict people in their ability to do their jobs. I would be better if the parties could reach consensus around the issues. The PUP wants rid of the parades commission; it is not seen as providing the way forward for parades in Northern Ireland. If the parades review body has anything to do with it, the death knell of the Parades Commission is on its way, and it is right that that should happen. In the absence of that, the Parades Commission should remain a reserved matter.

719. The Chairperson: In your opening statement and written submission, you mentioned the importance of bringing along public confidence. Do you have any views on what indicators could be used to measure public confidence? For instance, do the Independent Monitoring Commission's reporting processes establish public confidence on policing and justice?

720. Ms Purvis: The IMC has played a role in achieving political agreement through its reports on paramilitary activity and normalisation. However, its future role remains to be seen. Benchmarks of public confidence have been established through various polls in which the public have been asked questions, and their responses examined to establish if sufficient confidence is being built. Those polls should continue to be used. An August Ipsos MORI poll asked questions of the public to establish if there was sufficient confidence around the devolution of policing and justice. The results of such polls should be used as a benchmark and built on, and the public should continue to be asked those questions. However the polls should be conducted in a political atmosphere in which other things are happening. As I said previously, the Government must be mature enough to make decisions, fall out and move on. It is also important that the Government inform the public of what is happening, because there is not a lot of information available on what the devolution of policing and justice will involve and how it will work out. I know that the Assembly and Executive Review Committee is exploring those issues, but the access to that information could go a long way towards alleviating the fears of the unionist community.

721. The Chairperson: The poll that you referred to indicated in its responses that about 19% of unionist respondents felt that the May 2008 deadline was appropriate and would be met. You stated that political will can help to influence public confidence. Setting that aside — and using your experience and contact within the unionist community — do you sense that there is sufficient confidence to support devolution by May next year?

722. Ms Purvis: There is not. Polls must ask different questions. Rather than asking if an individual believes that the devolution of policing and justice can be achieved by May 2008, polls should ask individuals what fears they might have about the devolution of policing and justice by May 2008, or what he or she understands by the devolution of policing and justice. A more detailed explanation should be provided so that the public can understand exactly what is involved.

723. The Chairperson: Would David or Stewart like to add anything to what Dawn has said?

724. Mr David Rose (Progressive Unionist Party): No.

725. Mr Stewart Finn (Progressive Unionist Party): No.

726. Mr O'Dowd: I want to make some comments on the public confidence that is being discussed. We must prove to people that we can run Government — and you have talked about Members falling out and joining up again — but that also applies to policing and justice. The main topic of debate on most of our morning radio shows and among the public relates to concerns that people have about their safety in situations ranging from antisocial behaviour to murder and high-profile crime in their communities. A local control system that reflects the views of the local communities should be in place, because the courts seem to have a revolving door principle — and I am not advocating that everybody who goes into court should be locked up: it should be a last resort. The best way to take control of those issues is through the devolution of policing and justice, but if that does not happen and such crimes against society continue, is there a danger of a collapse in confidence in the system?

727. Ms Purvis: I do not think so, because the PSNI is operating now as it has operated for a long time. People are beginning to see improvements in policing, although that is sometimes difficult to see in the community from which I come, due to the increase in antisocial behaviour and criminal damage.

728. That is about getting policing right, making operational, day-to-day decisions and building relationships between the community and the PSNI to tackle those issues.

729. You mentioned a revolving-door policy. I want a criminal justice system that tackles and reduces, rather than develops, recidivism. However, that is about lobbying and people power proving the aspects of the criminal justice system that work. There is a greater tendency to use restorative justice principles, not only by the PSNI but throughout the criminal justice system. However, the public will not blame the lack of local control if that does not work, because they do not understand how it works.

730. Mr Attwood: Although the transfer of policing powers will be important, the vast majority of policing powers have already been transferred. Therefore, the formal transfer of those powers from the Minister there to the Minister here will not be the magic wand that will greatly enhance levels of confidence in communities. Over the last five or six years, as all the parties on the Policing Board are beginning to appreciate, most of the power and authority has moved to the Policing Board.

731. The review of the Parades Commission will make its recommendations soon. I am worried that a recommendation might emerge that gives responsibility for parading matters to politicians. The Chief Constable or the community in general should not be faced with a situation where responsibility for parading matters rests with politicians: certainly not without community safeguards. Given that you want the Parades Commission abolished, and given that one proposal may be that politicians at district council level would have responsibility for parades, what is the PUP's alternative for how to manage contentious parades, if it is not the Parades Commission or politicians?

732. Ms Purvis: The whole set-up of the Parades Commission goes against the principles of natural justice. If you want to have a parade, you fill in a form and go to the Parades Commission — if you happen to engage with it — and tell it why you wish to have that parade. Those who protest against the parade go to the Parades Commission and tell it why they do not want the parade. However, the organisers of the parade are not allowed to have sight of any of the evidence that is presented to the Parades Commission about why the protesters object to the parade. That goes against the principles of natural justice.

733. Ultimately, the Parades Commission is the arbiter of what happens around a contentious parade. By the same token, it sees itself as the mediator. You cannot fulfil the dual roles of a mediator and an arbiter at the same time; you must be one or the other. Admittedly, the current chair of the Parades Commission has made great strides to try to use mediation more, but ultimately the Parades Commission is the arbiter.

734. Local resolution of parade disputes has been successful. That process could involve local politicians, and I know of instances where local councillors have been involved. Local forums, made up of all interested groups and stakeholders, including community representatives, representatives from the Loyal Orders, band representatives, police representatives and others of community influence, can get together and resolve the issues locally. Therefore, I believe the Parades Commission should be scrapped.

735. The Chairperson: I thank Dawn Purvis and her colleagues for their evidence. The Committee appreciates it and will keep you informed of the Committee's work on the enquiry.

736. The Chairperson: I welcome Mr David Ford, leader of the Alliance Party, and his colleague, Dr Stephen Farry. You are both welcome to give evidence on the Committee's inquiry into the devolution of policing and justice powers to the Northern Ireland Assembly. Before proceeding, I invite Committee members to declare relevant interests. I declare an interest as a member of the Privy Council and the Northern Ireland Policing Board.

737. Mr I McCrea: I am a member of Cookstown district policing partnership.

738. Mr G Robinson: I am a member of Limavady district policing partnership.

739. Mr Kennedy: I have nothing to declare.

740. The Chairperson: Thank you, members. I will explain to David that the Committee has been exploring three components of the terms of reference for the inquiry, which comprise: the matters to be transferred; the ministerial models; and the timing and preparations for devolution. I invite you to make a short, opening statement on behalf of your party. I will then invite members to ask questions or explore further issues with you.

741. Mr David Ford (Leader of the Alliance Party): I thank the Chairperson for that introduction and for the Committee's invitation to give evidence. I would like to place on record our appreciation of that. However, at the same time, it is appropriate that I also place on record my party's disappointment that none of its members are included in the Committee. There are issues about inclusivity that need to be addressed by the Assembly, on a wider basis. Nevertheless, I appreciate today's invitation to the Committee meeting.

742. The Committee has already received papers from the Alliance Party. I will refer, briefly, to the three key sections that you have outlined. I will address each issue in the order in which we have dealt with it in our paper. First of all, I will deal with the issue of timing. We had a rule of thumb some time ago that, whilst we saw matters being more condition-led than calendar-led, a working, fully functioning Executive over a period of a little more than a year — which we expressed, at that stage, in terms of two marching sessions — might perhaps be an indication that the Executive was capable of dealing with other issues. At that point, the question of transferring justice powers would become appropriate.

743. However, it is not just a matter of a simple calendar and looking towards a date next summer. It is a matter of issues being shown as leadership and delivery by those who constitute the Executive, to demonstrate that there is progress that can be built on as regards to the important power of justice matters. As far as the individual powers and responsibilities to be transferred are concerned, we are broadly happy with that which was set out in the NIO document, 'Devolving Policing and Justice in Northern Ireland: a Discussion Paper'. We understand that there has been further agreement with the Committee.

744. We are concerned that there should be suitable checks and balances to ensure that there is no question of interference with the operational decisions of the Chief Constable, or other officers, and to ensure that there is a balance between ministerial responsibility, accountability and the operational duties. Perhaps the NIO has not spelt that out as well as it might have.

745. Our principle concern lies on the issue of appropriate levels for structures. As participants in the early part of last year's discussion, in the Preparation for Government Committee, we supported and endorsed the concept of a single Department of justice and policing — which now seems to be broadly accepted.

746. However, we have reservations about all the proposed models, regardless of whether they are in favour of a single Minister, dual Ministers, or senior or junior Ministers, because, fundamentally, the structures in other Departments seem to provide insufficient guarantee of the necessity for consensus and collectivity that justice requires. Justice cannot be dealt with in the same way as other Departments are, whose Ministers operate within their own field of responsibility without a great deal of collectivity around the Executive table. There are huge issues for our party about what could go wrong if the Department were to become excessively politicised, and if there were no collectivity across all those serving in the Executive, as they deal with the difficult issues relating to justice.

747. The models that have been suggested by the NIO have not dealt with that need. It is no great secret for those who sat on the Committee on the Programme for Government last year that we would like to see greater collectivity in the Executive as a whole. However, justice is one key area where the structures need to facilitate that full level of collectivity. There must be that assurance. There will be confidence in the entire community if full collective responsibility operates in the field of justice, but otherwise major difficulties will lie ahead. Undoubtedly, difficulties will arise in a field as intense and complex as devolution of justice, and if we do not have that collectivity, it could destabilise the Executive as a whole.

748. The Chairperson: You touched on your preference for a single Department of policing and justice, but you have avoided giving a preference for one Minister, co-equal Ministers, or a Minister and a junior Minister on the basis that you feel that there should be collective responsibility. If there were a single Minister, should they have additional reporting mechanisms to the Executive, with collective responsibility being exercised in the Executive and the Minister being the Executive's representative in the Department? Are you suggesting that the Executive collectively runs the Department with perhaps a Minister as its consul or representative?

749. Mr Ford: Dr Farry will provide the detail of that point, but the issue that must be addressed is the way in which collective responsibility Government operates in other places, such as London, Dublin, or even Edinburgh or Cardiff. That does not mean that each individual Department is run collectively by everyone, but that there are suitable protocols and established procedures to ensure that those matters are covered. It is preferable for everything to operate on a collective basis. We may be unable to attain that, but there will be major problems if justice is not handled on a collective basis.

750. Dr Farry: A single Department headed by a single Minister is the most logical and efficient way forward, but the emphasis must be on how the Executive operate collectively across the whole range of Government functions. If we have an Executive working to the similar norms of collective responsibility, which is the case in London, Cardiff, Edinburgh and Dublin, the fears about the consequences of having a single Minister would be addressed to a large extent. Therefore, the emphasis does not need to be on the precise governance arrangements for a single Minister and a single Department — it lies in how the Executive do their business. If the Executive were to do their business in a collective manner, that would add to the community confidence which would facilitate the early devolution of policing and justice.

751. With reference to a single Department headed by a single Minister, the Alliance Party is concerned that the British Government

have passed legislation saying that the head of that Department can only come from one or other of the two largest designations, which effectively means that only a unionist or nationalist can head up that Department.

752. A situation might arise in which the Alliance Party or any other party that is neither unionist nor nationalist would qualify under d'Hondt for a place in Government. However, under that legislation our party representative would be prevented from becoming the head of a Department of justice and policing. That situation raises serious equality considerations.

753. Mr Kennedy: I welcome Stephen and David. The Lord Chief Justice gave oral and written evidence to the Committee, in which he stated that he would prefer that the Court Service should be administered by a non-ministerial Department. Does the Alliance Party have any opinion on that?

754. Mr Ford: We have not formed any specific opinion on that, but having expressed our preference for a single Department, we do not believe that there is virtue in splitting up the functions of justice among several different Departments. We believe that it should be entirely possible for the Court Service to be handled as other agencies are within that Department.

755. Mr Kennedy: The issue of community confidence has been raised. In your view, is there enough confidence to enable the transfer of policing and justice powers at an earlier stage?

756. Mr Ford: It would be difficult to state that there is sufficient community confidence at this point. As I said in my opening remarks, much will lie with the work that the Executive will do over the coming months to demonstrate that they are a coherent body. The early presentation of an agreed Programme for Government would be a sign that the Executive was assuming their responsibilities and would enhance community confidence.

757. We are living through a period in which people are not sure whether they believe what is happening. Most people appear to me to want to believe what they think is happening, but there is a certain amount of suspended disbelief. That is where the obligations lie with the members of the Executive to show collectivity, to show that they are governing Northern Ireland well and to live up to their responsibilities. It is entirely reasonable, if that were to move forward rapidly in the coming months, that the timetable for next summer becomes feasible.

758. Dr Farry: Our primary view is that confidence is no longer defined by the bona fides of any particular individual or party that may hold the policing and justice portfolio. Those issues have been addressed by the political events of the past 12 months. The question is whether the Executive are capable of operating collectively, and whether the wider community can have confidence that policing and justice will be handled in a professional manner, and without the interference of political factors from either side in the impartial delivery of justice and the rule of law.

759. Mrs Hanna: David and Stephen have expressed concern that the office could become politicised and that the model did not demonstrate sufficient protocols and procedures to obtain consensus and collectivity. I would like to tease that idea out a little; what model would ensure the degree of consensus and collectivity that is required, not only to demonstrate confidence, but to ensure that the office is not over-politicised?

760. Mr Ford: The difficulty in answering that question is that we would seek to have a considerably greater level of collectivity in the Executive as a whole. We believe that what we have already witnessed in recent weeks shows that the appropriate level of collectivity is

not there. We want to find a way to build that essential collectivity into the matters surrounding the devolution of justice.

761. Mrs Hanna: I agree with what you are saying.

762. Mr Ford: In the present circumstances, in which that collectivity does not exist across other Departments, it is difficult to see how it would operate. Clearly, protocols must be established for the discussion of significant issues in the Executive as a whole, and on a rather greater scale than appears to be happening on some other matters that impinge on justice at the moment. Those protocols must specify ways of ensuring a sufficient degree of consensus.

763. Similarly, there must be a sufficient degree of accountability that allows a Minister to respond when urgent decisions have to be taken. It is not easy to draft such protocols from outside the Executive or — dare I say it — from outside this Committee, but we are saying that setting that type of back-up in train is essential. The alternative is a serious destabilisation to the whole process of devolution if matters go wrong in the field of justice. Such destabilisation would not occur if matters went wrong in the Department for Employment and Learning for example.

764. Dr Farry: The current arrangements for the Executive are based on the concept of collectivity, as far as it can exist, with mutual vetoes. Therefore, decisions are taken by the Executive either when a Minister forces the discussion of an issue, or when another point of view is taken into account due to a fear that a Minister from a different party will use their veto. That is a negative way of trying to engender the co-operation that the community wants to see.

765. We want a situation where Ministers have the confidence to go the Executive and hammer out common positions with their ministerial colleagues, irrespective of party allegiance. Then in turn, when Ministers take stands on extremely difficult issues, their ministerial colleagues will fall in behind them to support the collective view of the Executive. There is a very difficult issue coming up relating to the wider issue of criminal justice, which is being considered by a Minister. However, there is no evidence that the Executive are uniting behind that Minister on the approach that they may take over the next few days or weeks.

766. Mr I McCrea: I thank David and Steven for coming. I am sure that you have read — if not in Hansard then in the newspapers — about the Lord Chief Justice's preference for a non-ministerial Department to govern the Northern Ireland Court Service in order to eliminate political interference. What is your view on that opinion on that type of judicial set-up? I read in your submission that you are happy about the proposed transfer of matters — do you feel that there are any excepted matters that should also be transferred, or are you happy that they stay in the remit of Westminster?

767. Dr Farry: First, regarding the issue of the Lord Chief Justice's views, we want a set of arrangements that are as normal as anywhere else on these islands. If the norm is that the court system is governed by a Department and headed by a Minister, then that should be aspired to in Northern Ireland. The Lord Chief Justice's comments reflect the existing concerns over individuals seeking to influence decision making, which is something that we want to avoid. However, despite that being the current public perception, many criminal-justice and policing matters are already effectively devolved. Those powers are not devolved to the Assembly for policy-making decisions, but instead at the operational end with bodies like the Policing Board, where locally elected representatives take decisions on policing and criminal-justice matters.

768. It is important to stress that devolution means that a Minister and a Committee from the Assembly make decisions about policy and resources, rather than directly interfering in operational decisions. That is the accepted norm elsewhere, but we may want to create further checks and balances — which we alluded to in the paper — to ensure that that type of interference cannot happen. Therefore,

the fears that have been expressed should prove to be unfounded.

769. In answer to the second question, again the Alliance Party wants a relatively normalised situation where the powers that usually reside with a regional assembly are transferred.

770. However, we accept that there are issues of national security that need to be exercised on a UK-wide level. The terrorist threat has moved from a local stage to an international one that affects all of the UK. Therefore there is a need for that type of structure to be put in place. It must be stressed that in most international examples policing is rarely either a national function, or entirely a local and regional function. The usual pattern is that functions are split between the regional and the national tier — for example France and the United States — and in the UK that is also the logical way.

771. Concern has been expressed on the accountability of national agencies doing business in Northern Ireland, and the answer to that lies in ensuring that there are proper accountability structures in place in all of the UK, rather than trying to have a different arrangement in the Province.

772. The Chairperson: Scotland is moving towards a model that is similar to that proposed by the Lord Chief Justice, and the Republic of Ireland has a model for its court service similar to that proposed by the Lord Chief Justice. When you refer to the norm do you mean the norm of England and Wales i.e. the courts service comes under the Department of justice?

773. Dr Farry: Yes, that is the basis of the comment being made. However, it is not an issue either way how things are done, and we are prepared to be flexible in responding to that, because it is not the most fundamental issue for us, or for the public.

774. Mr McFarland: I want to tease out the ministerial model a little more.

775. You have said that you are after a collectivity with the Executive, but we are in a limbo situation at the moment, because one of the problems is that we do not have a Programme for Government. Therefore, none of the Ministers are signed up for anything, although we will have the programme soon.

776. Mr Ford: We have taken the Pledge of Office.

777. Mr McFarland: Yes, but we will have a Programme for Government, and all the Ministers will be agreed on what has to be done in the following year. That has more chance of collectivity.

778. If we could get an agreement that power will devolve sometime next year, the general opinion is that there should be a Minister and a super junior with equal powers, which is more cost effective than having two Ministers, and would incorporate cross-community safeguards.

779. Are you saying that the Alliance Party would not support the devolution of policing and justice on a model similar to that until you get whatever collectivity levels you want in the Executive? Would you hold back the devolution of policing and justice if there was a Minister and super junior on the grounds that the Executive was not fully collective?

780. Mr Ford: We do not yet have the example of, what you described as, Minister and super junior, but we do have the example of OFMDFM. There appears to have been significant problems in the operation of the first Assembly, when difficult decisions arose when there was a difference between FM and DFM, and each had a veto on any decision to be taken. Some have suggested that that is the current position around the appointment of a Victims Commissioner, which may not be accurate, but is the way it is perceived. The danger is that collectivity is not achieved merely by having two Ministers in the Department, whatever the precise nature of the arrangement between them is. Potentially, all there will be is a veto between them, as opposed to the concept of collectivity, which is significantly more embracing than merely two individuals and the two parties that they represent.

781. Mr McFarland: You may not get that, because there may not be agreement on changing the system dramatically from what has been agreed already with the Pledge of Office and the ministerial code, etc, and that is what the whole Executive, and everything else, is predicated on. I know that is not where you want to be.

782. Mr Ford: You are asking us to give an opinion on a hypothetical situation.

783. The honest answer is that I doubt whether our opinion would hold much sway with members of the other four parties or the sovereign Government, judging by the experience that we have had over the last couple of years. The Alliance Party will judge what emerges from the Committee and take a decision on it. However, a fundamental point is that there must be significantly more collectivity than is merely shown by two people having vetoes in the Department.

784. Dr Farry: Outside the context of changes and structures, the issue of collectivity becomes an issue of how individual Ministers relate to one another. I do not think that issue is overly buffered by whether or not there is a Programme for Government in place. In the last Assembly, which had Programmes for Government, there were problems with collective responsibility in the Executive. There is still potential for that sort of problem, even though the new Programme for Government is imminent.

785. The Alliance Party wants to see how the Ministers relate to one another and whether they are prepared to support their colleagues in making difficult decisions, rather than leaving them to go solo and take the flack, or leaving them to their own devices. If we can see that Ministers are serious about pulling together, and even ducking opportunities for short-term political game, we and the wider community would have more confidence in them. Perhaps that would open up opportunities for devolution sooner than has been anticipated by some.

786. Mr McCausland: Thank you, David and Stephen, for your contributions. You mentioned that the timing of devolution should be determined by the correct conditions existing in society. You talked about the conditions in the Assembly. What do you think are the right conditions and indications in the wider society?

787. Mr Ford: I said earlier that Alliance had initially been talking about two marching seasons. If society could go through the most difficult period of the year in reasonable harmony twice in a row, that would indicate that attitudes were changing. It would also indicate that the Executive was able to deal with issues over that sort of timescale. That is still, broadly, the sort of structure that we are looking at. However, we do not have, and will not have for some years, a completely harmonious, normal society.

788. We are seeking to transfer justice powers to this place in a way that would enhance movement towards normality, not create difficulties for it. That means that devolution should be part of the incentive for moving forward, not something that should come prematurely and create difficulties.

789. Dr Farry: To add to that, it is fair to say that the balance of what constitutes community confidence has changed in recent years. For the past two or three years we have supported something along the lines of what is, in effect, the quadruple lock on decision-making. Two or three years ago it was fair to say that issues relating to who takes control of sensitive offices was a major concern for many in the community. In saying that, I am not pointing a finger at any section; it applies to different sections of the community about different parties, and that is worth stressing.

790. Given the events of the past year, we have seen a revolution in many aspects of Northern Ireland society, and public opinion has shifted as a result. The primary issue for the public now is delivery and how people relate to one another. The balance has shifted from the bona fides of people's commitment to the rule of law, democracy and human rights to whether people are capable of acting responsibly for the good of society as a whole, rather than trying to serve narrow political agendas.

791. Mr McCausland: The other part of my question picked up on a point that David made a couple of times about using the parading seasons as a measure of how things are progressing. You obviously believe that that is an important issue, which would merit serious consideration in the determination of timescales. How do you see the Parades Commission's role in devolution of policing and justice, because many parading disputes have not been resolved, and there is effectively deadlock, for example, in places such as Dunloy and Drumcree?

792. Dr Farry: The Alliance Party supports the current strategic review of parading chaired by Paddy Ashdown, and we await —

793. Mr McCausland: Will you declare an interest in that?

794. Dr Farry: Indeed. [Laughter.] We have nothing to do with the chairman of that review body.

795. We await the outcome of that review with great interest.

796. Subject to the conclusions of that review, the Alliance Party envisages a continuation of some type of arbitration and decision-making body or bodies, even in the context of the devolution of policing and justice. It is right to identify the situations that remain contentious, and, indeed, others that may arise in the near future. Unfortunately, decisions may have to be taken on what should happen. My party does not want a situation in which a Minister or the Assembly takes an operational view of what decisions are made.

797. It is worth reiterating that the reason that my party has stressed that the Executive must prove themselves throughout two marching seasons is that the community would suspect that the situations in which there are disputes over parades are the most extreme example of when there could be abuse of power by a Minister who may try to interfere or indirectly put pressure on either the Chief Constable or the Parades Commission towards a particular outcome. The fear is that that pressure would serve a narrow, partisan or communal point of view as opposed to the greater interests of society.

798. However, we must be careful what we wish for. This year's marching season went extremely well. A situation in which the Assembly could be tested to see how cohesively it would respond to events did not arise. It is, therefore, difficult in practice to see how it would pursue that approach to its full conclusion. However, it is worth reiterating that the marching and parading season is when the situation becomes most tense and when there is the greatest pressure and requirement on the Assembly and any potential Minister to act for the greater good of society. That is why my party has stressed that there should be that type of approach.

799. Mr McCartney: The Alliance Party has expressed its views about public confidence and collectivity. If those were established, would the party's preference then be for a single Minister or for two Ministers who are equals as a safeguard?

800. Dr Farry: My party's preference is for a single Minister. However, that comes with an extremely heavy proviso that the Minister operates as a member of the wider Executive and on the basis of collectivity. The nature of that collectivity, rather than the nature of the Department, is probably the main consideration with regard to community confidence.

801. Mr McCartney: If the benchmark of public confidence were met, would the party still insist that devolution of those matters be held back until the second benchmark is met? For instance, if a survey were carried out, and the public were confident that its reservations had been addressed and that policing and justice should be transferred, does the party believe that those matters should not be transferred until Ministers have proved their collectivity?

802. Dr Farry: It is my party's view that public confidence is fundamentally linked the Executive's ability to function collectively. The two issues are inseparable.

803. The Chairperson: Thank you, Mr Ford and Dr Farry, for your evidence. The Committee will endeavour to keep you informed of its progress of its enquiry.

804. The Chairperson: I welcome to the Committee Sir Alastair Fraser, Director of the Public Prosecution Service; Mr Raymond Kitson, Senior Assistant Director; and Mr Ian Hearst, the Assistant Director. As you are aware, the Committee is conducting an inquiry on the devolution of policing and justice matters. The Public Prosecution Service (PPS) is an important part of the machinery of justice in Northern Ireland and it is also linked to policing. We appreciate the written submission that you have made previously and your willingness to assist us with oral evidence.

805. The format for the witness sessions has been that witnesses make a short opening statement and then Members may ask questions. The Committee has been exploring three particular components of its terms of reference: the matters to be transferred under devolution; the ministerial models; and the timing and preparations for devolution.

806. Before I invite Sir Alastair to make a short opening statement, I invite members to declare relevant interests. I declare interests as a member of both the Privy Council and the Northern Ireland Policing Board.

807. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

808. Mr G Robinson: I am a member of Limavady District Policing Partnership.

809. The Chairperson: If no other interests are to be declared, I invite Sir Alastair to make an opening statement to the Committee.

810. Sir Alastair Fraser (Director, Public Prosecution Service): I thank the Committee for its invitation for us to speak to it. I hope that the various oral submissions will be helpful to it. As director, I am mindful that I must not stray into areas that are political in nature. If I were to do so, you would remind me of that. Nonetheless it is appropriate for me, as the director, to offer my views on matters concerning devolution of justice and policing.

811. At the heart of the letter which we sent are two concerns: independence and accountability. It is an important principle that public confidence in the criminal justice system is enhanced, I suggest, by the independence and clear separation of three component parts: investigation, prosecution and adjudication. That provides an assurance of objective, dispassionate decision making, and of checks and balances.

812. The Committee will not be surprised that I emphasise independence. It is exemplified in the Justice (Northern Ireland) Act 2002 in two particular sections: section 42 provides for the independence of the director in a statutory declaration; section 32(A) provides for a new offence, should a person with the intention of perverting the course of justice seek to influence the director. That is a unique offence, which I have not come across or seen replicated in other jurisdictions. I do not anticipate that it will be widely used, but it clearly sends out an unambiguous message.

813. While the director and the deputy director will be appointed by the Attorney General, the relationship between the director and the Attorney General — which I suggest is seminal — will be different. The Attorney will not have any power to superintend the director, not will he have power to direct the director in any matter. I have had the privilege of being director for 18 years, and I have worked with six Attorneys General. Although these powers exist, I have never received a direction from any Attorney General.

814. The other matters upon which I wish to touch is the legal status of the Public Prosecution Service and the manner in which it is funded, both of which are important to me and to the service. The legal status — which is, of course, a matter for the Committee — might best be served by designating the service as a non-ministerial Department. Matters would flow from such a designation, and I am happy to discuss those with the Committee. That arrangement, together with an appropriate arrangement for funding, would best serve what I wish to protect — independence and accountability.

815. Funding is a difficult issue, and I am glad that it is not my responsibility to make these funding decisions. I note that the Attorney General will be appointed by the First Minister and the deputy First Minister, and that their office will publish his report and provide his funding, office and staff. I ask the Committee to consider whether there is a symmetry in those arrangements that could perhaps happily place the Public Prosecution Service together with the First Minister and deputy First Minister for funding purposes.

816. Again, the Criminal Justice Review, which has become quite properly almost the handle on our move towards devolution, indicated that the guiding principle would be to avoid a line of accountability with a Minister who has departmental operational responsibilities. I offer that to the Committee as another indication of the issue at stake.

817. On a positive note, this is my first appearance in front of the Committee, and I am determined that my colleagues and I will make every effort to ensure that the new relationship with the Attorney General — which will be one of consultation alone — will be workable. I am very determined that that relationship, and the relationship with the Assembly and Ministers, will be as constructive and helpful as possible.

818. Chairperson, I am happy to take questions.

819. The Chairperson: Sir Alastair, I thank you very much for the detail that you provided this morning on those specific issues.

820. You stated in your written submission that:

“Upon devolution, it will be necessary to devolve some or all of the matters set out”

in the Northern Ireland Act 1998.

821. Do you have an opinion on the extent of the devolution of those matters?

822. Sir Alastair Fraser: I look at this matter from the position of the prosecuting authority. In my estimation, as much as can be devolved should be devolved, and responsibility for those matters should rest with the director of the Public Prosecution Service, in consultation with the Attorney General. Clearly, under the Northern Ireland Act 1998, there are excepted matters that cannot be transferred, and the Committee may also decide that it does not want to seek the transfer of certain reserved matters. However, I am quite happy that paragraph 9 of schedule 3 of the Northern Ireland Act 1998 sets out the matters that the Committee should examine.

823. The Chairperson: As regards the departmental and ministerial model, you said in your written submission — and you reiterated this view this morning — that you do not: “consider it appropriate for the prosecution of offences to be placed in that Department which has operational responsibilities for other areas of criminal justice.”

824. So, you do not feel that the Public Prosecution Service should be located within a Department of justice, should one be created. You also mentioned that the funding of the service should nevertheless be a matter for the Office of the First Minister and deputy First Minister, which would produce a symmetry with the Attorney General’s office. Do you have a preferred departmental structure that would take account of the concerns that you have raised and the need for the independence of the service, not only in theory, but in practice, too?

825. Sir Alastair Fraser: Your question goes to the root of the issue. I am not making any suggestion that a Minister or a Department would not be capable of acting in a fair manner. However, the independence of the Director of Public Prosecutions must be seen as essential in any society that is democratic and that supports the rule of law. In that context, I look at what has occurred in England and Wales. The Crown Prosecution Service and its director are not placed in the Ministry of Justice. That is an unusual position for a service which has such direct operational responsibilities for the criminal justice system as a whole. The ongoing relationship that the Office of the First Minister and deputy First Minister has with the Attorney General perhaps presents a signal to where one should be.

826. It is not unusual, in the model that you described, for the officeholder to negotiate directly over funds, which include pay, counsels’ fees, etc. I do not contend that. The new service, which will have 609 people and a substantial budget of close to £40 million, would require a Minister to make the funding applications. That would also permit those funding matters to be raised in the Executive, when funding matters become a live issue. Although I suggest that the non-ministerial arrangement is best, I do not contend for an arrangement that would place the director as the principal negotiator.

827. The Chairperson: Sir Alastair, I want to tease out the funding issue a little further. You may be aware that the Lord Chief Justice’s evidence was supportive of a non-ministerial departmental model for the Court Service. I suspect that you are proposing a similar non-ministerial departmental model for the Public Prosecution Service. The Lord Chief Justice envisaged that funding for the Courts Service would nevertheless be dealt with by a Minister for justice, through a justice Department. However, you suggest that the funding issue for the PPS might sit better in the Office of the First Minister and deputy First Minister, and you use the precedent of the funding of the Attorney General’s office as a model that might be followed. Do you have a view on the proposals that were made by the Lord Chief Justice, either on the funding arrangement or on the non-ministerial departmental model that he favours for the Court Service?

828. Sir Alastair Fraser: I always have to be careful in responding to matters that concern the judiciary. I do not want to be drawn into a comment on the proposals that were made by the Lord Chief Justice; although I have no doubt that they were carefully thought through.

829. On a broad basis, the position that the Lord Chief Justice seeks is broadly similar to the one in England, where the Courts Service remains in the Ministry of Justice. In England, as I have said, the prosecuting authority does not. I am seeking to advance my own position, which is that the PPS should avail of the Office of the First Minister and deputy First Minister to provide lines of funding, which will best serve the service and the community.

830. Mr McFarland: I thank Sir Alastair for his briefing. As politicians, we have become fairly familiar with policing issues over the last year or two through participation on the Policing Board. However, judicial matters are still slightly a foreign country for us all.

831. If powers are eventually devolved, the Assembly will have a new Minister and Department; the Assembly will legislate; and it will have a Committee that will look at all the issues, as this Committee is doing now. The Lord Chief Justice has given his view that he wants to chair an arm's length body. The Northern Ireland Court Service will judge matters, and the DPP will decide who should end up in court.

832. Currently, as I understand it, one Attorney General covers the United Kingdom. What will be the role of the new Northern Ireland Attorney General? I presume that he or she will not come cheap to the Department, given the requirement for staff, offices, and so forth. How will the Attorney General fit in with all the bodies that I have described, which are all technically involved at some level with the criminal justice system?

833. Sir Alastair Fraser: That is a difficult question, which, to an extent, touches on my function and, to an extent, does not and, therefore, I must be careful.

834. I envisage that the Northern Ireland Attorney General will have three roles. As a prosecuting authority, he or she will appear from time to time before the Assembly and may be questioned on certain matters, the nature of which is open to debate. That would be one of the primary responsibilities.

835. A recent consultation paper that was published in England and Wales sought views on the reform of the Attorney General's Office. I mentioned the paper to Committee researchers, who, I am sure, are aware of it. The paper sets out two further roles, the first of which is to provide legal advice to Ministers and, where appropriate, to the Parliament and the Queen. We may wish to explore whether the Attorney General will fulfil that particular responsibility.

836. In the third role, the Attorney General acts as the guardian of public interest and would, for example, stop any vexatious litigation and have responsibility for [Inaudible.] matters. He would have a raft of specific criminal justice responsibilities, such as giving consent to prosecutions. Putting to one side that I hope to have a consultative relationship with the Attorney General, there are other areas that you may wish to consider as appropriate. He or she will probably be a fairly senior figure, and I think what you say mirrors the Criminal Justice Review which noted that the Attorney General will be drawn from a senior branch of the profession and would, perhaps, be akin to a High Court judge in standing and salary level.

837. Those are matters for the Committee and the First Minister and the deputy First Minister, who will appoint the Attorney General, to consider. I do not want to place myself between you and either the First Minister or the deputy First Minister.

838. Mr McCartney: Thank you for your presentation. In the fourth paragraph on page 2, you state that: "The Director agrees with the view of the Criminal Justice Review (2000) that public confidence in the criminal justice system is enhanced by the independence and clear separation of the functions of the key components of the criminal justice process, namely investigation, prosecution and adjudication. This provides an assurance of objective, dispassionate decision making and of check and balances."

839. What mechanisms and procedures are, or should be, in place to allow for public confidence and public reassurance that that will be the case and remain the case?

840. Sir Alastair Fraser: Under devolution, the Attorney General will be able to address the Assembly. I believe that the Justice (Northern Ireland) Act 2002 says, "on the process of prosecution", which is somewhat different from individual cases, so that is a mechanism. The director will have to continue to publish an annual report, with resource accounting being included, together with a statement of ethics that applies to all prosecutors, whether members of the service or in independent private practice, so that is another check and balance.

841. The director will increasingly be required to provide reasons for decisions, and that is an on-going development that I have taken forward over the past 18 years. The director himself will have to gird his loins to appear before Assembly Committees on matters of finance and administration. There are a number of areas outside the function of the courts to whom the director can be judicially reviewed about what he has done, and that also provides for checks and balances.

842. The final check and balance I would draw to the Committee's attention is the ongoing work of the criminal inspector. We have just come through a very thorough and rigorous inspection that lasted over eight months and touched on almost every aspect of the work of the service, which I lead.

843. Mr McCartney: The Committee has taken evidence about public confidence and how it is measured. Do you believe that there should be some mechanism in place, in a high-profile case where a prosecution is not advanced, for some explanation to be given to the public to enhance their confidence of the structures?

844. Sir Alastair Fraser: Looking to the future, we have already given an undertaking that in cases involving a fatality committed by agents of the state that, in order to reassure a concerned public, as much information as is possible will be given. Your question relates to a mechanism. I do not suppose that there could be a mechanism unless it were a statutory mechanism — I doubt if it is beyond the wit of legislators to devise a statutory mechanism that would protect not only the prosecution service but all the component parts of a prosecution, including witnesses in relation to whom some unpalatable conclusions may have been drawn.

845. There has been movement over the last 18 years as to the extent to which the director is willing to give reasons. At the moment, in significant and difficult cases where there is a request for reasons, those reasons will be provided where possible. However, that is not always possible.

846. Mr McCartney: Would a new Minister have some function in that? Do you envisage that the person to ask that question on behalf of the public should be the Minister?

847. Sir Alastair Fraser: The public is very well served by public representatives and by others who raise issues, not on a daily basis but on a weekly basis, with me. They are addressed by me to ensure that if we provide an answer it is an actual answer and not an

economic answer, and that it is as complete an answer as we can provide.

848. The Chairperson: I can testify to that, Sir Alastair.

849. Mr Kennedy: I welcome you all to the Committee. I want to tease out a bit more on the relationship that would emerge from your proposal regarding accountability. We have an Assembly elected by the people and an Executive formed as a result of that. Included in that at some stage will be a Minister or a junior Minister for policing and justice.

850. It seems to me that, on one level, the Public Prosecution Service is happy enough to have public money to pay for the excellent facilities and the service that is provided, but the issue of accountability is not as clearly defined.

851. Is there not an argument that a Minister, responding on behalf of his or her Department on the floor of any assembly, should have some recourse to feel that their input is significant? Furthermore, it should not be the case that the issue of accountability is none of politicians' business, and that somehow we are not directly involved with the oversight and overall responsibility of the decisions taken by the Public Prosecution Service.

852. Sir Alastair Fraser: I understand the gravity of what you are saying; it is a very serious point. Regarding the funding of the Public Prosecution Service, I am very aware that it is public money and that I, as Director of Public Prosecutions, am accountable for the discharge of what is a considerable amount of money.

853. The issue as to whether a Minister should be answerable for prosecutorial decisions is difficult. Ministers should, as a broad precept, be held accountable for the matters that they are responsible for.

854. The architecture of the Justice (Northern Ireland) Act 2002 provides the Director of Public Prosecutions with the responsibility for decisions in individual cases. That is not dissimilar to the arrangements in the rest of Ireland, where my colleague James Hamilton has a relationship of consultation with the Attorney General of Ireland, and no Minister in the Dáil will speak on decisions that he has taken. That is the architecture that Parliament has laid down.

855. Much will depend on the First Minister and the deputy First Minister, the Attorney General for Northern Ireland, and the Director of Public Prosecutions as to how this matter will work. However, as a general principle, the Director of Public Prosecutions is responsible for his decisions, and it is difficult for a Minister who does not carry that burden, to have that responsibility or accountability.

856. The Chairperson: What you are saying is that for example, the Attorney General for Northern Ireland, under section 25 of the Justice (Northern Ireland) Act 2002, may participate in the proceedings of the Assembly, as though he were a Member of the Assembly.

857. You are saying that you envisage a consultation process between the Attorney General for Northern Ireland and the Director of Public Prosecutions that would then enable the Attorney General for Northern Ireland, if facing questions on the Floor of the Assembly, to perhaps respond in an informed and appropriate way, having regard to any questions of sub judice and so on in particular cases. Also, you are saying that the Attorney General for Northern Ireland would be able to respond authoritatively and in an informed way on matters pertaining to the Public Prosecution Service?

858. Sir Alastair Fraser: Regarding the work of the Public Prosecution Service, I accept what you have said in the round. However, in that particular analysis, individual cases will not be discussed in the Assembly. The Attorney General for Northern Ireland will speak through the Assembly about the process of prosecution, which I take to be the work of the Public Prosecution Service. However, Standing Orders, of course, will have to be prepared for that particular function.

859. The scheme of the Justice (Northern Ireland) Act 2002 is clear. The scheme is set to limit the questioning of the Director of Public Prosecutions by the Assembly to issues of finance and administration. It would be strange if that were not fulfilled by reason of seeking to transfer responsibility for individual cases, following directions to an Attorney General, who bears no responsibility for those decisions. The present arrangements, as seen by Parliament, are the arrangements to which I must address my service.

860. Mrs Hanna: What stage are your preparations at, in anticipation of the devolution of policing and justice powers — if, for example, the Assembly decided to go ahead with that next year?

861. Sir Alastair Fraser: In my estimation, we are well prepared for devolution. My particular service is, at present, largely ring-fenced. It is essentially a funding issue and a determination of the status of the service as a non-ministerial Department. As a service, which is required to take over all prosecutions, I can say that from the 1 October 2007, we have fulfilled that responsibility. We are now in a position of taking forward all criminal prosecutions, which heretofore were prosecuted by police and, perhaps, others.

862. All of our regional offices have not yet been completed. We have some very good regional offices in Belfast, Lisburn, Omagh and Ballymena. However, that does not stop there. We are seeking to open offices in Londonderry and Newry. It is my intention, as Director of the Public Prosecution Service, to take that forward as best as I can. Those have been part of our plans for three or four years. We have succeeded in quite a bit, but we have not yet succeeded in having a prosecutor on the ground, who is accessible to the community in Newry and Derry.

863. Mr McFarland: I want to ask a question on the more detailed business of your role. There are times when your judgement about whether to prosecute, or not, is questioned. Presumably, you have guidelines as regards to whether a prosecution is cost-effective. I understand that a prosecution is based on the likelihood of successful prosecution. How do you view the move to trial by jury — which I understand we are doing here? Presumably, in the past, your judgement was on whether the judges would be likely to judge. We are now in the area of jury trials. Juries are fickle and can be swayed in a way that judges, traditionally, have not been. Judges have judged on the law. However, a good barrister can swing a jury. How do you view your judgement on whether a prosecution may or may not succeed, and the guidelines relating to that matter? Do you see them changing in the new political climate?

864. Sir Alastair Fraser: Possibly, not as quickly. There are two points that I will make. We publish a code for prosecutors that is the most detailed code in these islands. A code is published in England that, with respect, is not a code for prosecutors. It is a very short handout. Our code is very detailed, and by reference to it, one can see the business of which decisions are reached and — if one is concerned about decisions — how they can be challenged and how they can be reviewed. That is a public document and will be kept fresh and renewed each year.

865. The Chairman: I apologise for interrupting. That code is prepared internally by the Department. Is there consultation about its preparation, outside the Department?

866. Sir Alastair Fraser: Yes. We consulted widely on that document, and we continue to consult about policy documents.

867. The second aspect of your question relates to jury trials. As you know, from the beginning of October the Diplock courts system stopped and we moved to a different system under the Justice and Security (Northern Ireland) Act 2007. In that system, I, as director, can issue a certificate, so that an individual will be prosecuted not before a jury but before a judge sitting alone. I have done so in a number of cases and I have declined to issue such a certificate in a number of cases. The facility for a non-jury trial remains part of our legal jurisdiction. The reasons why juries were withdrawn, as the finders of fact, are historical. They go back to Lord Diplock's report, which was concerned about the intimidation of juries or the risk of there being a partisan jury that did not fulfil its function. For those two reasons, we had for 30 years what were called the Diplock courts. That has now gone; and, for the first time, the focus is on the director to take these decisions in a limited number of cases. I hope the numbers of those cases will not be as high as in the 1970s, 1980s or 1990s, but in a small number of cases there will still be trial before a judge.

868. Our accountability can be challenged by a judicial review application to a High Court judge or, as part of the trial process, in an abuse of process application claiming that it was wrong, and that it was an abuse of the court, for the director to act in a particular manner. That is only from 1 October.

869. The Chairperson: I thank you, Sir Alastair, Mr Kitson and Mr Hearst, for coming along to the Committee this morning and giving us your evidence. We appreciate it, and we will endeavour to keep you informed of the progress of our inquiry. We now know that there are matters which are of particular interest to you.

870. Sir Alastair Fraser: Thank you for the opportunity.

871. The Chairperson: Members, let us continue with our work.

872. Danny asked a question which the Committee needs to consider carefully in the context of its inquiry. That is, to what extent the Public Prosecution Service and the Courts Service are removed at arms length from the devolved system; to what extent there is accountability; and whether the Assembly has any power to call the Director of the Public Prosecution Service or head of Courts Service to the Assembly or its Committees to give evidence. Those are matters which the Committee should consider carefully.

873. We are all keen to see the independence of the judicial process and that it is clear in the public mind that there is no direct political interference in the day-to-day workings of the judicial process. There are, however, issues that relate to good governance. There are two non-ministerial Departments: the Courts Service and the Public Prosecution Service. In the public mind, the Assembly is the local Government in Northern Ireland; and, in the event of devolution, it will have responsibility for policing and justice matters. The public will not make great distinctions. It will expect that, since the Assembly Members have power, they can do something.

874. The Committee will need to consider carefully how to handle the issue, to ensure the maximum degree of independence for those Departments, but also accountability through the public representatives and the elected body which comprises the manifest will of the people. That is an important issue which has arisen out of the evidence sessions with the Lord Chief Justice and the Public Prosecution Service. We will need to consider them carefully in preparing our report. That is my observation.

875. Mr Kennedy: That strikes to the heart of accountability. If a controversial case arises after the Assembly assumes responsibility for policing and justice, the public will expect the relevant Minister to address the House or publicly comment about that matter. No doubt, the 'Nolan Show' would also be interested in hearing Ministers' views.

876. Although separations ought to be clearly defined, the relevant Minister must have a role in the matter of accountability — which is an issue — and due consideration must be given to that as part of the inquiry.

877. Mr McFarland: In operational policing, the Chief Constable's responsibility for what happens day to day on cases must be the same as for the judiciary — his independence must not be messed with. The idea that, afterwards, people cannot be questioned as to why certain things happened seems slightly strange. For example, in England and Wales, the appointment of the Attorney General is a political consideration. The previous Attorney General was a colleague of the Prime Minister, although that caused trouble in the matter of Iraq and things. In Northern Ireland, is the political decision to appoint the Attorney General taken jointly by the First Minister and the deputy First Minister; do the two parties decide; or do all the parties in the Executive decide? The Committee must tease out issues, such as relationships and responsibilities, that are emerging from our evidence sessions.

878. The Chairperson: My understanding is that there is a line of responsibility: the First Minister and deputy First Minister appoint the Attorney General, and the Attorney General appoints the director. Therefore, it is right to explore the implications of such matters. We should have an opportunity to look at those matters in detail when we come to consider the departmental and ministerial models. Other minds must also be brought to bear.

879. In the interim, in order to prepare for our discussions and to get a feel for how issues are handled elsewhere, including the lines of accountability and the roles of an Executive and the legislature when interfacing with the Court Service and the Public Prosecution Service, I suggest that we instruct the Committee Clerk to have research conducted into the models in England and Wales, Scotland and the Republic of Ireland.

880. Mr McCartney: Superintendence of the Public Prosecution Service should be included in that research, because that is also a big issue.

881. The Chairperson: Yes, Members must give their attention to all of those areas.

882. Concerning our ongoing inquiry into the devolution of policing and justice, last week, we touched on the possibility of introducing safeguard mechanisms that might enable the transfer of certain powers that are currently envisaged to be reserved powers or on which there is no consensus as to whether they should be devolved. In particular, I am referring to the 50:50 recruitment policy to the PSNI and the parades issue, on which, this morning, we heard evidence from Dawn Purvis and the Progressive Unionist Party.

883. The Committee Clerk has prepared briefing papers, which set out current arrangements for: ministerial accountability, according to the ministerial code; the role of the Assembly, according to Standing Orders; provisions for petitions of concern; the referral of ministerial decisions to the Executive Review Committee; and a section, on which, perhaps, we should concentrate, on additional safeguards relating to policing and justice that could be invoked in relation to decisions around the Parades Commission and 50:50 recruitment to the PSNI.

884. Those safeguards are: the agreement of the statutory Committee, on the basis of full consensus; the requirement for decisions to be made by approval of the Assembly; the provision for a cross-community vote in the Assembly on any proposed changes; the provision for a vote by parallel consent in the Assembly on any proposed changes; the provision for cross-community agreement in the Executive Review Committee and then referral to the Assembly; and provision for motions for change to be jointly brought by the First Minister and deputy First Minister,.

885. A range of safeguard mechanisms has been listed. If those mechanisms were invoked or in place, would the Committee believe that that provided the grounds for safely devolving the decisions around the Parades Commission and around 50:50 recruitment?

886. Mr McFarland: The 50:50 recruitment policy relates to policing, and it is due to expire in 2010. It is apparent from discussions last year, and from meetings of the Policing Board, that the SDLP in particular and, I am sure, Sinn Féin are not prepared to remove it before 2010. Therefore, if the issue was brought to the Assembly, it would be blocked. Unionists broadly want the policy to be removed now, so it is clear that there will be no agreement on the matter. A petition of concern would stop it anyway. If the policy expires in 2010 anyway, do we really want to exercise ourselves with the matter and create a potential battleground?

887. Parading was a political battleground, and was being used as such for years, but the issue is now in no one's interest. One gets a sense that the parties that have used the issue as a battleground have now decided to move away from it. Hopefully, the review of parading will produce a system that will allow people who wish to parade to do so in peace, and for no one to be offended by it. Perhaps such issues should be left where they are until the outcome of the Westminster review of parading.

888. With regard to the 50:50 policy on recruitment, we have enough to exercise ourselves with over the next while without taking on additional matters, to which there will probably be no solution across the Floor of the House.

889. The Chairperson: Indeed. We heard evidence from the Progressive Unionist Party to the effect that if the parading issue were resolved and agreed mechanisms were in place, you may want to devolve the responsibilities when the situation has settled and a consensus is operating at a political level. What you are saying Alan is that it could be problematic to introduce such contentious issues during the initial period of devolution, because there is unlikely to be consensus initially, pending a resolution of both issues. Therefore, it could only have a negative impact at this stage. Does the Ulster Unionist Party not agree to the devolution of those powers at this stage?

890. Mr McFarland: Both of those issues should disappear, because they are anti-unionist issues — and it seems that they may disappear. Taking such issues to the Floor of the House would only give Members one more thing to scrap about, and I suspect that we will have enough to row about. We will not find a solution to those issues on the Floor of the House, as we cannot have an impact on them because one side will block them, and we will not find a resolution to them. Other mechanisms can be used to solve those issues.

891. The Chairperson: I am clear that it is also the view of the Democratic Unionist Party that, for the time being, those matters should not be devolved. What is Sinn Féin's position?

892. Mr McCartney: Notwithstanding the review, Sinn Féin feels that the powers should be devolved.

893. Mrs Hanna: That is the SDLP's view, but Alan's views are reasonable too.

894. The Chairperson: Would it be in order for members to report, or, at least, to take the matter forward on the basis that, at the moment, there is no consensus in the Committee that those powers should be devolved, reflecting the respective positions of the political parties?

Members indicated assent.

895. As was touched on earlier in the oral evidence sessions, and as was mentioned in the Committee last week, there is no formal timetable for the strategic review of parading to report. However, it is my understanding that an interim report will be made available by the end of the year, followed by final recommendations in spring 2008. I understand that Lord Ashdown, the chair of the review, has briefed OFMDFM on the review's progress. Members may wish to ask suitable questions at the appropriate time to see if they can tease out any information on that. Alex Attwood mentioned earlier that there are indications as to the shape of the interim report.

896. Members requested clarification on the following point in relation to public order; namely, whether future powers of the Army to support the police are part of the Public Order (Northern Ireland) Order 1987 or the Terrorism Act 2000, and that it would therefore be unlikely that those powers would be devolved. It is my understanding that the Government are considering what powers may be required, post-normalisation, to enable the military to carry out specialist support to the police such as public order or work on explosive ordnance disposal.

897. I can confirm that the Clerk has since written to the NIO to ask for clarification on this matter, with a request that any reply be included in the composite response awaited by the Committee in relation to a range of other queries that it has lodged. That is how we are dealing with the matter at the moment. We have asked for the NIO to clarify the position and to give us an update on their work on the role of the Army post-normalisation, specifically in relation to supporting the police in public order situations and dealing with explosive ordnance. Are members content that we await the response from the NIO?

Members indicated assent.

898. Last week we discussed co-operation between the PSNI and the gardaí under the Northern Ireland (Miscellaneous Provisions) Act 2006. Members will recall that Alex Attwood raised a concern that in the event of devolution, some of the existing arrangements, protocols and agreements that are in place between the PSNI and the gardaí would fall, because they are international agreements between the UK Government and the Irish Government. In the event of devolution, we would need to consider what steps would have to be taken by the Executive and the Assembly to renew any agreements on matters of practical co-operation between the PSNI and the gardaí.

899. Members will find a note from the Committee Clerk at tab 3 of today's meeting pack, confirming that at schedule 4 (3) (13) of the Northern Ireland (Miscellaneous Provisions) Act 2006 there is provision for:

"Co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters —

- (a) transfers, secondments, exchanges or training of officers;
- (b) communications (including liaison and information technology);
- (c) joint investigations;
- (d) disaster planning."

900. The Committee Clerk confirms that the matters that would transfer to the Assembly are those listed in (a) to (d).

901. Given that information, members, is there a consensus on the matters of co-operation that are to be transferred? Are we content as a Committee that the matters to be transferred are the matters that would amend schedule 3 of the Northern Ireland (Miscellaneous Provisions) Act 2006?

902. Mr McFarland: I was a member of the Policing Board when those matters came up on the radar, and the Board was happy that it would be dealing with them on a daily basis. There are many rules and protocols surrounding who can come, and what they can do, but these are matters that can be sensibly dealt with by the Policing Board, and have been for some time now. The transfer is less neuralgic than it might be if they had not been previously addressed by the Board.

903. The Chairperson: Indeed. That is notwithstanding the right of the Department, the Policing Board and the PSNI to propose further areas of co-operation in future between the PSNI and the gardai. As most of those matters are operational, I am not sure if it is the Committee's responsibility to set out areas for future co-operation, save to say that the power is there to make provision for future areas of co-operation. Is the Committee content that, for the time being, the matters of co-operation to be transferred are those listed in schedule 4, paragraph 13, (a) to (d) of the Northern Ireland (Miscellaneous Provisions) Act 2006.

904. Mr McCartney: For the time being, yes. The list is not exhaustive.

905. Mrs Hanna: I hope that that covers Alex's concerns, as he is absent.

906. The Chairperson: OK. The Committee will proceed on the basis that there is consensus. The final report will revisit those issues. However, for the time being, to enable the Committee Clerk to prepare for the report there is a consensus that the matters for continuing co-operation are those matters listed in the Northern Ireland (Miscellaneous Provisions) Act 2006.

907. Turning to firearms and explosives, members will recall that last week the DUP and UUP position on legislative and administrative responsibility for firearms was touched upon. It was agreed that both parties would reflect on their respective positions on the devolution of legislative and administrative responsibility for firearms.

908. I consulted within the DUP on the party's position. As members will recall, the DUP's position in the Preparation for Government Committee was that full responsibility for firearms should be devolved save for:

"Responsibility for legislation, policy and general oversight",

and the:

"Power to grant authority to possess, purchase, acquire, manufacture, sell"

prohibited weapons and ammunition.

909. In other words, powers relating to prohibited weapons and ammunition should not be devolved, but that all other responsibilities,

legislation, policy and general oversight of firearms should be devolved.

910. The DUP's motivation for that position was to keep Northern Ireland in line with the accepted position in other parts of the United Kingdom. However, I note that under the Scottish model, the power to grant authority to possess, purchase, acquire, manufacture and sell prohibited firearms and ammunition is a devolved matter. Therefore, Scotland varies from the rest of the UK.

911. The question for the DUP is whether it wants to follow the model for England and Wales or that for Scotland. In respect of responsibility for legislation, policy and general oversight, the DUP's position would remain that of the Scottish model, that that power should not be devolved, but the party would be willing to look at whether the Scottish model on the power to grant authority to possess, purchase, acquire, manufacture and sell firearms — which is the practical, day-to-day power — should be transferred or should remain with the Northern Ireland Office.

912. Mr McFarland: The UUP's position is that powers relating to shotguns and normal legal firearms should be transferred. As members know, there have been recent discussions about whether people can or cannot take their children clay-pigeon shooting. We have a long history of clay-pigeon shooting competitions, so such powers would be useful.

913. As for prohibited weapons, we should stick with the rest of the UK. That power has remained at Westminster. I am not too exercised about the matter. If the Committee can reach a consensus on it, I will go along with it. However, the issue of prohibited weapons can be strange, and it seems better that it should be dealt with centrally. Otherwise, we might find weird variations in the law about whether a person can or cannot have a machine gun at home, for example.

914. The Chairperson: Yes. Therefore, you have concerns about a partial devolution taking place as in the Scottish model, which has the power and authority to authorise possession, but the power to create the policy and legislation remains at Westminster. Westminster retains responsibility for legislation policy and general oversight —

915. Mr McFarland: For prohibited weapons?

916. The Chairperson: Yes. But in Scotland the power to grant authority to possess, purchase, acquire, manufacture and sell prohibited weapons is a devolved matter, so there is a separation.

917. Mr McFarland: If, for example, one of our industrial companies decided to start manufacturing machine guns, and providing they were selling them overseas, would we want them to be manufacturing things that bring money into Northern Ireland? There is a moral issue about involvement in the international firearms trade, but the point is that we do not want local people having Vickers machine guns in their houses.

918. Mr I McCrea: It would not be the first time that that has happened.

919. The Chairperson: I assume the SDLP and Sinn Féin's position remains that all those powers should be devolved, both the power to make the policy, the legislation and the power to authorise people to manufacture and sell.

920. Mrs Hanna: While it is not for this Committee to limit the number of firearms in circulation, we need to move away from the gun

culture.

921. Mr McFarland: It is possible that we could bring in power over legal weapons, while remaining in disagreement on prohibited ones.

922. The Chairperson: I think that we have a consensus on the transfer of powers and full responsibility for all non-prohibited firearms, i.e. legislation, policy and general oversight. All four parties agree that, at the very least, those powers should be transferred. Do we have consensus on that?

Members indicated assent.

923. Should we then proceed on the basis that there were diverse opinions about the transfer of those matters that are excepted and reserved, i.e. prohibited weapons and ammunitions?

924. Mr McFarland: I am not clear in my own mind, and I have looked at the issue several times now, so can I ask the team to go back and produce a paper on the Scottish model that sets out all the detail on prohibited weapons, because there may be reasons why it might be useful to have the power over them here, for example, if we had an arms company that we wanted to manufacture successful weapons for sale legally to armies abroad, although they might be prohibited in Northern Ireland. I would like that to be looked at again, because it would be unfortunate to lose —

925. The Chairperson: I am happy for the issue to be parked for another week, if the Committee Clerk would kindly arrange for a paper to be prepared that examines, particularly, the Scottish model versus the model in England and Wales.

926. Mr McFarland: And why those models were introduced.

927. The Chairperson: Exactly. Why the Scots have taken responsibility for one aspect of devolution but not the other, and what is the rationale behind that. Without asking the Committee Clerk to be political in any way, he could list the perceived advantages and disadvantages? We have three options: no devolution on prohibited weapons and ammunition; the Scottish model that is part devolution; or, our own model, which is full devolution.

928. So, that is what we are asking the Committee Clerk to look at, and to bring forward a paper next week. In the meantime, we will park the issue on the understanding that there is a consensus that on all other matters pertaining to firearms the Committee supports full transfer of powers.

929. That was very helpful Members.

23 October 2007

Members present for all or part of the proceedings:
Mr Jeffrey Donaldson (Chairperson)
Mr Alex Attwood

Mrs Carmel Hanna
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd
Mr George Robinson

930. The Chairperson (Mr Donaldson): We will now move to the inquiry into the devolution of policing and justice matters. I remind members that the session is being recorded for Hansard. I refer members to the briefing paper in your folders. We have received replies from the Serious Organised Crime Agency (SOCA) and from the cabinet secretary for justice in the Scottish Government, and those may be relevant to the Committee's considerations today. Copies of those letters were sent out to members yesterday, but if anyone has not yet seen those items of correspondence, we will circulate copies to them. The agenda suggests that there are four broad headings under which we might proceed with our discussion this morning, namely: the ministerial model; the departmental structure; the governance and accountability mechanisms; and the internal and external relationships.

931. I refer members to the relevant papers that are contained in your folders. I will try to bring some structure to the discussion. I am happy for parties to express their views under each heading in turn. I recognise that there will be considerable overlap between those four headings, but if members are content, we will proceed on the basis that we will have a brief discussion under each heading, giving each party the opportunity to express its views. We will explore to what extent there is consensus on the ministerial model, on departmental structure, on governance and accountability mechanisms and on the nature of the internal and external relationships — by that, I mean the Northern Ireland Court Service, the Public Prosecution Service and the Attorney General, etc. Are members content to proceed on that basis?

Members indicated assent.

932. I invite members to declare relevant interest before we proceed with the discussion.

933. I declare an interest as a member of the Privy Council and of the Northern Ireland Policing Board.

934. Mr G Robinson: I declare an interest as a member of the Limavady District Policing Partnership.

935. Mr I McCrea: I declare an interest as a member of Cookstown District Policing Partnership.

936. The Chairperson: During the Preparation for Government proceedings in the Transitional Assembly, there was consensus among the parties for a single Department for policing and justice.

937. The main parties agreed that the basis for devolution would be a single Department for policing and justice. To date, there has been no evidence from the inquiry that that matter should be revisited. For the record, am I safe to assume that there remains consensus on that matter, and that members are agreed in principle that policing and justice should be in a single Department?

Members indicated assent.

938. We had considered a briefing paper that described the options for ministerial models that the NIO has legislated for, and the procedures that would be used for filling the ministerial posts. Is any member unclear about the different models that are contained in the NIO's legislation?

939. To remind Members of the options: the first option under section 21A(3) is a single Northern Ireland Minister; the second option under section 21A(4) is two Northern Ireland Ministers acting jointly, in other words in a similar arrangement to the First Minister and deputy First Minister; the third option is for a Northern Ireland Minister to be appointed, supported by a junior Minister, and for those positions to rotate at intervals specified by Act of the Assembly; and the fourth option states that:

"There must not, at any time, be more than one department in relation to which provision of the kind mentioned in any of the previous subsections (3), (4), and (5) is made by Act of the Assembly."

940. That confirms that there should be one Department. The legislation provides for three options, namely: a single Minister; two Ministers acting jointly; or a single Minister supported by a junior Minister on a rotational basis.

941. I will open up the floor for discussion, and I remind Members that the Justice and Security (Northern Ireland) Act 2007 subsequently amended section 21 of the Northern Ireland Act 1998. The new provisions provided for:

"the Department of Policing and Justice to be in the charge of a Northern Ireland Minister elected by the Assembly, and for that Minister to be supported by a deputy Minister elected by the Assembly."

942. Therefore there was a slight amendment made to the options. The act also introduced the option of using an Order in Council in order to establish a new Northern Ireland Department. Furthermore it introduced:

"An option to be used in circumstances where, if it appears to the Secretary of State that there is no reasonable prospect of the Assembly passing an act to establish a Department of Policing and Justice, he may use the power conferred by section 21A(6) to lay before Parliament the draft of an Order in Council in order to establish a new Department of Policing and Justice."

943. It further provided that the Department would be in the charge of a Northern Ireland Minister elected by the Assembly and supported by a deputy Minister elected by the Assembly.

944. That is the legislative basis upon which we will base our discussion. The floor is now open for any contributions on the ministerial model.

945. Mr O'Dowd: A lot of our debate will repeat discussions from last year's Committee for the Preparation for Government. Sinn Féin's view remains that the option allowing for two Ministers of equal status to act jointly is the preferable ministerial model.

946. The Chairperson: Does a Member of another party wish to venture a view?

947. Mr McFarland: Can we afford two Ministers? There is a line of logic that ran through the discussions of last year, which it may help to revisit. It is clear, particularly from discussions in this Committee, that we cannot devolve policing and justice until there is public confidence to do so.

948. There is an argument that if there is public confidence in the devolution of policing and justice powers and we are all completely comfortable with the situation, there should be no problem with the idea of a Minister being appointed under d'Hondt. If there is confidence that one party or another will not abuse its position and so on, what is the problem? That might be an argument for having one Minister, because those powers will not be devolved here until there is public confidence.

949. Last year, we discussed a model that involved a Minister and what was termed as a "super junior Minister". I see that that option is no longer in the paper, which is unfortunate. Such an arrangement would save the expense of having two Ministers. There is a fairly serious issue about who runs the show and makes the decisions. The idea was that a "super junior Minister" would be shown all the papers and that there had to be broad agreement between the two Ministers, and it saved the cost of a full Minister. That proposal seems to be completely off the paper now.

950. The model of the rotating Minister and junior Minister also raises some questions. How long would each rotational period last? Would they rotate every six months? Could the new incoming Minister change a position taken by the previous Minister? All those issues were cantered through; all the models have drawbacks and some have advantages.

951. The Chairperson: I want to clarify a matter. As I understand it, the amendment made by the Justice and Security (Northern Ireland) Act 2007 effectively introduces a fourth option, which is the concept of a First Minister and deputy First Minister of justice, for want of a better way of putting it. We have the model of Ministers acting jointly, but it seems that that would effectively mean having two Ministers — in other words, rather than them being a First Minister and a deputy, they would both be Ministers of equal standing in the Department.

952. Thus, it now seems that another option has been introduced, whereby two Ministers act jointly, but one is known as a First Minister and the other as a deputy Minister. I would like this point clarified. Is the model of a Minister and a deputy Minister different from the model of a full Minister and a junior Minister? The First Minister and deputy First Minister are Ministers acting jointly; they are not Minister and junior Minister. Therefore, is the model proposed in the Justice and Security (Northern Ireland) Act 2007 under which one Minister would be known as the Minister and other as the deputy Minister, even though the two Ministers would be acting jointly and would therefore be equal, in a sense? If that is the case, that represents a fourth option, rather than simply being another way of expressing the concept of two Ministers acting jointly. Thus, the third option would be to have the Minister and junior Minister rotating, and the fourth option would be to have one single Minister. Is that correct?

953. The Committee Clerk: Yes.

954. The Chairperson: So, in effect, we have four options. Option one is to have two Ministers acting equally and jointly; option two is to have a Minister and a deputy Minister acting jointly; option three is to have a Minister and a junior Minister rotating; and option four is to have a single Minister.

955. Mr O'Dowd: In discussing any matter, we cannot ignore costs. However, at this stage, the primary concern must be the need to have safeguards built into the system to allow for community confidence. As Alan said, the community must have confidence in the system and its operation — and I am glad that he used the term "community confidence" rather than simply "confidence within the

unionist community". Our party's primary concern is the need for safeguards, and it believes that a joint Ministry would allow for those safeguards. The party believes that at the end of the four-year term, appointments to the justice Ministry should be run under the d'Hondt system, as would be the case with any other Ministry. That would bring to an end the jointery of the post and also allay some of the concerns about finance.

956. The Chairperson mentioned the idea of a First Minister and a deputy First Minister for justice, and, if I heard him correctly, he is correct that it is a joint office. The titles are really a play on words; it is a joint office, in that sense.

957. Mr G Robinson: How will he or she be elected under the d'Hondt system?

958. The Chairperson: I understand that a provision was made stating that the Minister or Ministers will be elected on a cross-community vote in the Assembly. Members or the Clerk might be able to help me with that. I am not sure whether that provision applies to the initial appointments only, because if d'Hondt is run for the policing and justice Ministers, it will have to be rerun for the ten departmental ministerial positions, but probably not the First Minister and deputy First Minister. Therefore, if the Minister with responsibility for policing and justice is appointed by the d'Hondt system, it will have to be run alongside the rerunning of the other ten Departments. To overcome that problem and to avoid disrupting the Executive, the Government proposed that the new Ministers be appointed through a cross-community vote in the Assembly. Nominations for a Minister or Ministers, therefore, will be made in the Assembly, and the appointment will be made by cross-community vote as legislated for in the Northern Ireland (Miscellaneous Provisions) Act 2006. That is the arrangement for the remainder of the current mandate, but I assume that if details around the devolution of policing and justice powers are finalised during the present mandate for full devolution in the next, the relevant Ministers will be appointed alongside the others under the d'Hondt system.

959. Mr McFarland: Tab 2 of the members' pack explains the process for making a ministerial appointment. Schedule 5 of the Justice and Security (Northern Ireland) Act 2007 amends schedule 2 of the Northern Ireland (Miscellaneous Provisions) Act 2006 so that only the appointment of a Minister will carry a position in the Executive Committee and count in the calculation of the d'Hondt running order. Therefore the appointment of a deputy Minister does not count in either the calculation for the d'Hondt running order or the Executive. It might be worth getting clarification on the meaning of the fifth paragraph in the section entitled 'Process for making a Ministerial Appointment': is it relevant now? Will it be relevant in a future mandate? It states that Members standing for election to the post of Minister of policing and justice must belong to one of the two largest designations. That means that only the DUP Ministers can decide on the Minister and Sinn Féin decide on the deputy Minister.

960. The Chairperson: Designation means unionist or nationalist. The Minister might, therefore, come from the DUP, UUP, or PUP on the unionist side and the SDLP or Sinn Féin on the nationalist side.

961. Mr McFarland: It states that it must belong to one of the two largest political designations.

962. The Chairperson: That is unionist or nationalist: it is not parties.

963. Mr McFarland: So they must come from different designations — I am trying to make sense of this. Will d'Hondt be rerun? If, for example, the great decision is taken next year sometime, will the entire system be rerun?

964. The Chairperson: If the decision was to appoint by d'Hondt, that system would be used. I do not think that the process would be

run to appoint the First Minister and the deputy First Minister, but it would be rerun for the other ministerial positions.

965. Mr McFarland: Is it correct that the current legislation states that the new Ministers will have to be appointed by d'Hondt?

966. The Chairperson: No. There is provision in the Northern Ireland (Miscellaneous Provisions) Act 2006 for an alternative method, which will be to appoint one Minister from each of the two main designations — if two Ministers are required.

967. Mr McFarland: Will they be nominated by the Office of the First Minister and the deputy First Minister?

968. The Chairperson: The nomination will be brought forward and decided on by a cross-community vote in the Chamber.

969. Mr McFarland: Has that been overtaken by the Justice and Security (Northern Ireland) Act 2007?

970. The Chairperson: No. My understanding is that following devolution and on the establishment of a new department and Minister — or Ministers — this Committee must complete a report on the operation of the ministerial arrangements in a policing and justice Department.

971. Therefore, after the initial phase, and before the expiry of the first mandate, we must report to the Assembly again on the arrangements for ministerial appointments. Therefore, this Committee —

972. Mr McFarland: Ministerial appointments will be made during the second mandate, will they not?

973. The Chairperson: That is correct. We must report before the next Assembly elections, and the Assembly would have to agree, prior to the second mandate, the method of appointing the justice and policing Minister or Ministers to the next Assembly. As I understand it, Alan, and I am open to correction, there are two options for appointing a Minister or Ministers to the Department under the current mandate. The first option is to rerun d'Hondt and incorporate the policing and justice Department. That may involve the existing 10 Departments plus the additional policing and justice Department, or 10 Departments, with room having been made for the new Department.

974. Alternatively, the Assembly could appoint the Minister, or Ministers, by a cross-community vote ensuring that, if there are to be two new Ministers, one must be drawn from each of the main designations. The d'Hondt option is included in the Justice and Security (Northern Ireland) Act 2007, and the option for an election by a cross-community vote is contained in the Northern Ireland (Miscellaneous Provisions) Act 2006.

975. Mr McFarland: The question is whether we want to disrupt the current Ministries. How will a further Department be created? Unless an additional Department is created, Departments will have to merge, and that will interfere with the current ministerial posts in any case.

976. The Chairperson: It is the responsibility of the Efficiency Review Panel to deliberate about the number of Departments.

977. Mr McFarland: That panel was established by OFMDFM. Therefore, it could be argued that it is hard for us to get a steer on the issue until the panel decides whether to opt for the creation of an additional Department.

978. Chair, perhaps you and John may be able to help the Committee on a different issue. At one stage, there was a rumour that the junior Ministers' urgent requirement for additional staff was due to a cunning plan, at First Minister and deputy First Minister level, for the two junior Ministers to absorb the new Ministries.

979. Perhaps you have already heard that rumour. Perhaps the posts were initially to be absorbed in shadow form, but moving on to the autumn of 2008, at which stage the Secretary of State has suggested that the devolution of policing and justice may be ready to happen, those two would morph into the two Ministers in OFMDFM. Are you aware of any such plan?

980. Mr O'Dowd: I never listen to rumours or rely on cunning plans.

981. The Chairperson: I am afraid that Baldrick has been at work, Alan. No, there is no —

982. Mr McFarland: If it were true, it would save having to create an extra Department or interference with —

983. The Chairperson: The Preparation for Government Committee discussed whether the powers on policing and justice should be absorbed into OFMDFM. By consensus, the parties firmly rejected that option and felt that there had to be a single Department. I have not heard any suggestion that junior Ministers would become joint Ministers of the new Department, or of whatever ministerial model that may be agreed, and that is certainly not my understanding.

984. Mr McFarland: If the First Minister and deputy First Minister were reluctant, unable, or felt that the time was not right, to make a decision on creating an extra Department or amalgamating existing Departments and the February 2008 deadline was rapidly approaching, one way out of the problem — in an emergency and for a short period of time — would be to do just what the parties agreed not to do. That is even more reason for OFMDFM to tell us what they intend to do.

985. The Chairperson: Alternatively, we must report any failure to agree to the Assembly, which, in turn, must report it to the Secretary of State. The decision is for the Executive, not only OFMDFM. The Executive will have to decide whether there is to be a change to the number of Departments and Ministers, and we must await their decision.

986. However, that does not prevent us from reaching a view on how the ministerial model would operate — subject to a decision on whether there will be a new Department in addition to the existing Departments, or whether room will be made for the Department to become one of the existing 10. Nor does it necessarily require the Committee to take a view on whether d'Hondt or the cross-community voting mechanism should be used for the appointment of the Ministers. We must deal with whether there should be one Minister, two Ministers who act jointly or a Minister and a junior Minister.

987. The Committee will move on from consideration of that issue to the question of how the Ministers are appointed, either by d'Hondt or by cross-community voting. So far, I have only received Sinn Féin's view. The party prefers the model of two Ministers who act jointly. John, do you have a view about whether there should be a Minister and a deputy Minister or two joint Ministers?

988. Mr O'Dowd: There should be two Ministers of equal status; Minister and Minister.

989. The Chairperson: Does any other party have a view on the suggested models, for which there has been legislation? If the Committee so wished, it could bring forward an alternative suggestion, for which the Assembly could legislate, or it could be legislated for by Order in Council at Westminster. The Committee is not restricted to those models, but I am not sure what other models it would want to consider.

990. Alex, does the SDLP have a view, one way or the other, on the options that are before the Committee?

991. Mr Attwood: There are several points for consideration. The general question about the number of Departments is being taken forward by the Executive. Can you clarify what stage that matter is at, Chairman?

992. The Chairperson: The matter is with the Office of the First Minister and the deputy First Minister, which will establish an efficiency review panel. Under its remit, the panel will examine the number of Departments, among other issues. When the Deputy Chairperson, Mr McCartney, and I met the special advisers, we impressed upon them the need to give that issue priority in the efficiency review panel's work. Clearly, before it reports, the Committee must have a view about whether the Executive is minded to reconfigure the Departments or whether the Committee should report to the Secretary of State to seek his approval for the creation of a new Department, in addition to those that already exist. Therefore, we impressed upon them the need to report on that matter at an early stage.

993. Mr Attwood: Is the intention for the panel to have, at least, reported by March 2008?

994. The Chairperson: I do not know that yet. That is one reason that we have asked for the meeting — to get a feel for when the panel will be appointed and the timeframe within which it will report.

995. Mr Attwood: It is quite proper that you and the Deputy Chairperson have raised that issue and that it will be referred to in any letter as well. I concur with what Mr McFarland said; that views that might be expressed at present could be subject to radical reshaping depending on what OFMDFM comes back with, and given that the Minister of Finance and Personnel has voiced his views in recent days. I suspect that he was putting down a clear marker to OFMDFM as to what he wishes to see as the outcome. I have not seen his script. It might, therefore, be useful —

996. The Chairperson: For the benefit of the Committee and the public who are present, can you summarise those views?

997. Mr Attwood: I can only go by what I have heard in media reports. I want to ask the Clerk to acquire a copy of the script that was used by the Minister of Finance and Personnel, who, I suspect, was moving early in order to tell all his fellow Executive Ministers how he wants the matter to progress. His words came out of the blue. Peter Robinson does not speak out of the blue on most matters. That is important and worrying because it was calculated. The issue of the number of Ministers is upon the Committee and plays into its work in an intimate way, so I would like a copy of the script — if he had a script, and I presume he did. Perhaps we should ask for the script.

998. If we were looking at this — as we are at the moment — in strictly objective terms, we would probably conclude that having a sole Minister is the most efficient and effective way to go forward, because the vast majority of policing powers have already been devolved to the policing institutions. The role of any future justice Minister, in respect of policing responsibility, if he or she honours the limits of

statutory responsibility, will be quite limited. Many of the justice functions are at arms length, one way or the other, from the justice Ministry. They will operate through various agencies and so on. If the Lord Chief Justice gets his way, arms length will be maximised. So, if one considers this without reference to the politics of the North, the functions of that office should go into a single Ministry, because the functions are such as justify a single Ministry and a single Minister. In the North, however, we do not work in a political vacuum.

999. Furthermore, I echo Alan's concerns regarding the issue about reducing the number of Departments — let us say, to five or six — creates a balance of argument such that, if it were to transpire, the justice function should be located in the Office of the First Minister and deputy First Minister. I must put down a very strong marker — and I think Alan did likewise — that my party will oppose the location of justice powers in the Office of the First Minister and deputy First Minister. We think that that is centralising power; it has a potential for abuse; and it does not give much clarity to the justice function, whatever the limitations. The SDLP will strongly oppose that.

1000. I am surprised by John's comment about having a model of shared Ministry, but he then added that it was initially for the current mandate. Again, I put down a marker — once a joint Ministry is established and then announced as time-limited, there are people in other parties who will take that point and use it as an argument to unpick the joint Ministry of the Office of the First Minister and deputy First Minister. Therefore, if, as at the moment, there is a joint First Minister and deputy First Minister, and there is an argument, as there is, to have a shared and independent justice Ministry, the SDLP will not be vulnerable to putting a time limit on it. We think that there would be elements — especially in the DUP — who will consider remodelling the Office of the First Minister and deputy First Minister or remodelling the form of coalition Government that we have.

1001. If there is to be a joint Ministry — whatever the issue about effectiveness and efficiency — joint and equal, and independent of the Office of the First Minister and deputy First Minister, makes most sense. Who would want to be a junior Minister in a justice Ministry where the junior Minister is not picked through the d'Hondt system; will not be sitting at the Cabinet table; and his or her functions exist by grace and favour of the First Minister? Whatever way negotiations about the division of responsibility between the primary Minister and the junior Minister in the justice Department might end up, you would end up as "junior" in lower case, and in all ways, and it would be an invidious position to be in. Therefore, there is an argument for any joint ministry to be joint and equal.

1002. Considering this without reference to the politics of the North, a single Minister in an independent Department makes a lot more sense. However, if there is to be a joint ministry — and there are arguments for that, too, in the context of the North — then joint and equal is preferable to senior and junior. Those are the views of the SDLP, subject to all those matters I mentioned. [Laughter.]

1003. The Chairperson: As I understand it, Alex, and to summarise, the SDLP reserves its position at the moment on being definitive about the preferred ministerial model, pending clarification as to where the Executive and the Office of the First Minister and deputy First Minister is going with the reconfiguration of Departments and also whether Ministers should be appointed by the d'Hondt system or by a cross-community vote in the Assembly. However, you have indicated, in respect of each of the options before us, your view on that. You have ruled out a Minister-and-junior-Minister model; you say that in an ideal world you would have a single Minister, but, you suspect, it will be joint Ministers acting jointly and equally, and not as Minister and junior Minister.

1004. Mr Attwood: To avoid any doubts, part of your characterisation is correct. On balance, a single Ministry would be our preferred option. There are arguments, given the politics of Northern Ireland, that a shared model should be joint and equal, but in any circumstances a justice Ministry should not be part of OFMDFM nor should justice Ministers exist within OFMDFM.

1005. The Chairperson: Just to be clear, Alex. Although your preference would be for a single Minister, you are saying that if the

outcome is two Ministers acting jointly, that should be the perpetual position rather than a single mandate position that is reviewed thereafter. You did make the point that to unpick that raises questions about the unpicking the joint nature —

1006. Mr Attwood: I do not think that anything is ever in perpetuity in politics. If devolution of justice is achieved in October 2008, the mandate for the Assembly runs out two and a half years thereafter, and I would not want to create a hostage to fortune by saying that the joint Ministry would run out at that time. That would create a rush towards the argument as to why we have a joint Ministry for OFMFDM.

1007. The Chairperson: Presumably you would articulate that view in this Committee when it reports, as it is statutorily required, on the ministerial appointments in advance of the elections to the second mandate.

1008. Mr Attwood: Yes.

1009. The Chairperson: OK.

1010. Mr I McCrea: May I also seek some clarification? Is it not the work of this Committee to consider some type of mandatory or voluntary coalition, or a change to the system and type of government, at which time we will have the opportunity to deal with those issues?

1011. The Chairperson: Yes. We must report by 2016 on the major structural issues in relation to the Assembly.

1012. Mr I McCrea: If the efficiency review panel decides to reduce the number of Ministers, how will a joint Ministry work, given, as Alan McFarland said, that only one Minister can serve on the Executive? Our briefing papers mentioned the Northern Ireland (Miscellaneous Provisions) Act 2006; under the heading 'Process for making a Ministerial Appointment' the paper states that: "Only the appointment of the Minister will carry a position in the Executive Committee and count in the calculation of the d'Hondt running order."

1013. If there is to be a joint ministry in which both ministers are equal, how can only one Minister be on the Executive?

1014. The Chairperson: I understand that that is only one option of several that are available.

1015. Mr I McCrea: If the number of Ministers has been reduced by the time that the confidence exists to devolve policing and justice, the question is whether d'Hondt would have to be run in any case; some one or some party will lose out.

1016. The Chairperson: Again, the difficulty arises around which party is entitled to appoint the Minister, if that is done under d'Hondt.

1017. If the appointment is done by d'Hondt, a party that has the option of appointing a Minister to the Department of policing and justice might make that choice. It may have made that choice if d'Hondt had run again, and, instead of choosing Finance and Personnel or Education, the party might have chosen policing and justice.

1018. If we use the current system of d'Hondt, the parties will automatically say that they have appointed 10 Ministers, so which party is

eligible to choose next —

1019. Mr I McCrea: We must use cross-community voting to make the decision.

1020. The Chairperson: My understanding of the law is that we would have to run d'Hondt again. If we were to remove a Ministry — for example, the Department of Employment and Learning — would the party that holds that Department automatically get policing and justice? Would that be that party's choice? Or, if we were to add an extra Department to the existing 10, would it simply be given to the next party that would be eligible? Is that what everybody wants? It throws up several issues.

1021. According to the research paper, schedule 5 to the Justice and Security (Northern Ireland) Act 2007:

“provides that the appointment process for the Minister and deputy Minister must take place after the appointment of the FM/dFM, but before the running of d'Hondt for the remaining Ministerial positions and before the procedures for appointing junior Ministers are applied.”

1022. That further complicates the issue, because it seems that, under the Justice and Security Act, policing and justice is given preferential treatment. In addition to appointing the First Minister and deputy First Minister outside of d'Hondt, the suggestion is that we should appoint two Ministers of policing and justice, also outside of d'Hondt, and then run d'Hondt for the other Departments. Ian has opened a can of worms.

1023. Mr McFarland: I am struggling with this. Surely the Justice and Security Act 2007 overtakes the Northern Ireland (Miscellaneous Provisions) Act 2006? Normally, new legislation replaces the old. My understanding is that the 2006 Act gave several suggested models. The way in which the Justice and Security Act 2007 is phrased suggests that it is the plan — in other words that it lays out the options for real. It would be useful to get a clearer picture of everything.

1024. The Chairperson: Yes. I accept that. Our interpretation is that the 2007 Act does not actually replace the options in the Miscellaneous Provisions Act. In the end, the Assembly must decide on the preferred model. If that model differs from those already provided for in the legislation, the Assembly must legislate for it, or Westminster will legislate for it by an Order in Council. The legislation provides for the Assembly to legislate for a different model.

1025. I think that what you are asking, and I can understand it, is what are the options available to us? For example, do we run d'Hondt, or use the cross-community vote, or do we have a kind of hybrid version, which would use d'Hondt but would leave out policing and justice, if you see what I mean?

1026. Mr McFarland: It worries me that we are trying to make decisions in the middle of —

1027. Mr McCausland: Chaos?

1028. Mr McFarland: a game, where the rules are not clear. I can see what the options are. However, I sense that some of the options have overtaken others, because they were in the 2006 Act, when the Government was trying to apply leverage to parties and so on. Those options still exist, but I am not clear about the status of the Justice and Security Act 2007. Is that a result of an updated plan for

devolving policing and justice?

1029. Perhaps we need clarity on the status of all this from the NIO.

1030. The Chairperson: Someone is going to have a lot of material for their Assembly sketch next week.

1031. I take your point about the need for clarity. My understanding of the Justice and Security Act 2007 is that it is the latest, post-St Andrews thinking on how the Assembly might proceed on that. However, the Assembly is not bound by it, nor does it rule out the other options that were already provided for in the Northern Ireland (Miscellaneous Provisions) Act 2006. The NIO is simply making known its latest thinking on how that might be handled, so that if the Assembly expresses a preference the legislation is already there. However, as I understand it, the Assembly would still have the option to pick a new model completely, or to revert to one of the models and methods outlined in the Northern Ireland (Miscellaneous Provisions) Act 2006.

1032. Mr McFarland: There are also party political factors to be taken into account when knocking Departments on the head, because of the effect on the numbers that different parties get. If OFMDFM remain sacrosanct and the other Departments have been chopped back — the UUP would lose one, and I cannot remember the figures but I think the SDLP would lose one — but if the Departments were dropped down to eight and amalgamated, the parties would lose out. You are then into the business of having a separate vote initially for the two security Ministers. There are big choices if we and the SDLP have only one go at this. You would have to hold off policing and justice, and hope for something further.

1033. What I am saying is that there are political considerations that are not clear to us yet, because we do not know how many Departments there will be, and that could affect all sorts of decisions.

1034. The Chairperson: At the risk of further complicating the position I will clarify what the Justice and Security (Northern Ireland) Act 2007 says: "Regarding the calculation of "M""

1035. Alex will be glad to know that "M" is not an agent acting on behalf of the security services. [Laughter.]

1036. Mr Attwood: He is called "N". [Laughter.]

1037. The Chairperson: "M", for the purposes of d'Hondt, is the letter used in the legislation to calculate the number of Ministers allocated to each party: "Regarding the calculation of "M" in the d'Hondt process (the number of Ministerial offices held by a party), a party which is entitled to two or more seats in the Executive Committee and that has had a member successfully elected to the position of a Minister in charge of a Policing and Justice Department".

1038. In other words, the Minister or Ministers should be appointed to the Policing and Justice Department before d'Hondt is run. If:

"a party which is entitled to two or more seats in the Executive Committee has had a member successfully elected to the position of a Minister in charge of a Policing and Justice Department"

then

“that Ministerial position will be taken into account only after at least one other Ministerial position is held.”

by that party in the Executive.

“Effectively, this means that the Minister for Policing and Justice position is taken into account in the second round of calculations.”

1039. I hope that is clear. What that means is, for the purposes of calculating “M”, or deciding which party gets first choice and which gets second, the fact that a party has already taken a ministerial post in the Policing and Justice Department prior to running d’Hondt is not taken into account in the first round. It only becomes a factor in the second round — in the second round of allocations under d’Hondt.

1040. This is rocket science.

1041. Mr McFarland: The SDLP and the Ulster Unionists are punished in that it only affects the DUP and Sinn Féin.

1042. The Chairperson: That is correct.

1043. Mr McFarland: Therefore, only Members from those parties can become security Ministers. Is that correct?

1044. The Chairperson: As the research paper says: “Should a party which is entitled to only one seat in the Executive Committee have a member successfully elected to the position of Minister, then that Minister will fill their single ministerial entitlement.”

1045. In other words, if the SDLP were entitled to a single Minister, and he or she was successfully appointed as a Minister in the Department of policing and justice, he or she would have no further ministerial entitlement. It is only a party that has two or more ministries that —

1046. Mr McFarland: If the number drops to six, it only affects the two parties.

1047. The Chairperson: Yes — if you drop to six.

1048. Ms Ní Chuilín: Actually, by 2016, God knows who will be here.

1049. Mr Attwood: None of that is prescriptive. It is the British Government that want blue-sky thinking but, instead, were thinking in the shadows when all of that emerged. It is not prescriptive. The Committee and the Assembly are free to make whatever choice they want. The British Government will devolve justice and policing, but the shape of it will be in our gift.

1050. The Chairperson: As it will be for us to appoint the Minister, or Ministers.

1051. Mr Attwood: Everything is in our gift. The British Government have said that in the absence of agreement between us they might impose a departmental structure. However, that does not mean that they will impose Ministers. That stills fall under the St Andrew's Agreement's triple-lock requirements that were negotiated by the DUP.

1052. The Chairperson: Carál, did you want add anything beyond 2016?

1053. Ms Ní Chuilín: No. The principle is that it is still our decision. Until we get clarity from OFMDFM, it is an argument that is confusing the confused.

1054. The Chairperson: It would help the Committee if the team could prepare a paper that was in tabular form and set out each option, and the steps involved, in making the appointment. That would bring a little bit of clarity to the matter. Sinn Féin has been clear about its preferred model. I suspect that, around the Committee table, other parties are reserving their position, pending clarification of: where we are going; the number of Departments; and how that is going to be handled. They may also be awaiting clarity on the confusing picture that arises from two separate pieces of legislation: the Northern Ireland (Miscellaneous Provisions) Act 2006 — and the options that it presents — and the Justice and Security (Northern Ireland) Act 2007.

1055. Will the Committee Clerk check on Alan's point as to whether the Justice and Security (Northern Ireland) Act 2007 supersedes the Northern Ireland (Miscellaneous Provisions) Act 2006? Are the options in the Northern Ireland (Miscellaneous Provisions) Act still available for us and, if so, what are the appointment mechanisms relating to those options? How do they differ from the appointment option that is set out in the Justice and Security (Northern Ireland) Act 2006? We want an illustration — that we can set in front of us — of the available options and the appointment processes for each of those options. Secondly, we seek clarification as to whether all of those options are still available to us, as a result of the Justice and Security (Northern Ireland) Act 2006. We will park that matter at present. I hope that when we return to it we will have some clarity from OFMDFM on the issue of how it intends to proceed on the number of Departments.

1056. Mrs Hanna: They have not yet set up the efficiency review panel. Therefore, the issue is a way down the road.

1057. The Chairperson: We have also to be consulted before it is established.

1058. Members, we will park that issue for the moment. The discussion has been useful and has highlighted the degree to which the picture is confused.

1059. Mr McFarland: It strikes me that when we get around to discussing the Court Service, several discussions will be necessary if we are to get our heads clear as to what the options are. It is complicated. We might as well get it right.

1060. Mr McCausland: At least we have clarified the confusion.

1061. The Chairperson: Absolutely. Clarification has been an oft-used word in this process, and now we are seeking clarification of the confusion.

1062. Mr O'Dowd: To confuse matters even more, we could set up a ministry that would then be scrutinised by the efficiency review

panel in 2016 or earlier. We could introduce an interim arrangement that could be changed again by future Administrations.

1063. Mr McFarland: We are settling down well here. There will probably not be much of an appetite in the next three years for chucking a load of Departments in the air and organising them, especially with the whole issue of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). If we were to get a steer from the First Minister and deputy First Minister that we should leave the Departments static during this mandate, at least that would guide us. We could potentially create an extra Department for this mandate, which would get us out of all the trouble of messing with other Departments. It would be useful if we could pin down the First Minister and deputy First Minister, because my sense is that we will not get a review up and running in the short term.

1064. The Chairperson: In effect, you are saying that we need a political decision on the matter. While that decision will come from the First Minister and deputy First Minister, it must also come from all the parties. That is a fair point. Unless the efficiency review panel is established immediately and prioritises and focuses on the issue and reports by Christmas, or January at the latest, it will be difficult for us to bring forward a report, with a degree of clarity, in February.

1065. Mr McFarland: We may not even bring forward a report in 2009. Let us suppose that, with a fair wind, the Secretary of State's ambitions for next autumn were realised, we would not manage to turn around all the Departments, get everyone resettled and change all the roles between now and next autumn. It would be useful if the First Minister and the deputy First Minister could meet with the parties and the Executive to focus on where this is going and to give us some ground rules. Otherwise, we will be in difficulties.

1066. The Chairperson: The Committee Clerk has just pointed out that there is no timeframe for the efficiency review panel. That is something that OFMDFM will have to establish. At the moment, we have no framework to point to, so we are looking for a steer, and we will reflect that in our discussions with officials from OFMDFM.

1067. We have a response from the NIO that will help to clarify aspects of the departmental structure and, in particular, there are annexes to the NIO's letter that might be helpful as a guide. There are additional papers in your packs from the Northern Ireland Court Service and from the office of the Lord Chief Justice. There is also a briefing paper on the Court Service in England and Wales. We are examining some of the issues that we touched on in our oral evidence session last week, for example, the extent to which the Public Prosecution Service and the courts service would be at arms length from the Department. Would they be non-ministerial Departments? How does that impact on accountability of the Public Prosecution Service and the Court Service to the Assembly? How does that impact on the Department and the capacity of the Minister to answer questions in the House on matters relating to, for example, the Court Service or the Public Prosecution Service? This is a complex issue, and it goes to the heart of the evidence that we have received from the Court Service, the Public Prosecution Service and the Lord Chief Justice that they wish to argue for arm's length departmental structures.

1068. That is in contrast to the evidence, legislation and proposals from the NIO, which indicate that those matters should be under the direct control of the Department, as in England and Wales. The Committee has heard reference to the Scottish model, which is emerging and evolving, and to the model in the Republic of Ireland.

[Assembly Research and Library Service briefed the Committee.]

1069. The Chairperson: Time is marching on. I do not know whether parties want to give an initial view, but I am not sure that we will get far today in coming to a consensus on departmental structure, particularly in reference to the Public Prosecution Service (PPS) and the Court Service, accountability issues and ministerial accountability in the Assembly. I would like time to consider the research paper

in more detail.

1070. Mr McFarland: Can we have answers to the questions in section 4 of the research paper?

1071. The Chairperson: Those are questions for the Committee to consider. The content of the research paper is heavy and serious stuff because it is part of the debate that has been raised by the Court Service and the PPS about their views on the Department of justice and policing. I do not feel that I am yet in a position to give any informed view and I would like to do justice to the excellent research paper and take time to consider its implications.

1072. Mr McFarland: It will take several meetings to do that.

1073. The Chairperson: I know that it may seem that we are not making much progress, but we are, in that we are identifying the key decisions to be considered. The research paper will help to focus our minds on what is a major aspect of the report that we must prepare.

1074. Mr Attwood: First, the Committee has received a weighty letter from the NIO, which I will come back to. I only read it this morning.

1075. Secondly, one of the matters that we discussed before was the sensitive power of the Chief Constable to appeal against decisions made by the Parades Commission. To complete the circle, perhaps we could ask Lord Ashdown the anticipated date of his report into the review of parading. He might have a view on the matter, and given that it crowds into the working of the Committee, that would be useful.

1076. Thirdly, given the transfer of primacy for national security to the security service, is the NIO in a position to share with the Committee what those new arrangements are and what the relationship is between the Police Service and the Policing Board?

1077. It is referred to in a letter from the NIO, which says that the Minister for justice would get the same information as the Policing Board. In anticipation of that, should we not get the information the Policing Board got in respect of what the new arrangements will be?

1078. The Chairperson: You will note that the minutes from the previous meeting stated that an interim report is expected on the strategic review of parading, with the final recommendation to follow in the spring. We will, therefore, seek clarity on what is meant by the spring. Is it likely to come before the Committee reports in February?

1079. I can report that the security services have indicated that they will not be responding directly to the Committee; that is implicit in the letter that we received from the NIO, which has responded on behalf of the security services.

1080. Alex, I would be happy if there was a note of issues that you feel have not been covered — in fact, that goes for any member. Members should look at the NIO response regarding the security services or any other aspect of the responses that we have had. If members feel that there is a deficiency or shortfall, or that something that we have asked for has not been adequately addressed, please give us a note of it. We will then do a follow up with the NIO.

1081. As regards the research paper, the subject arose of the Courts Service in England and Wales and its relationship to the Department, which is similar to what the NIO has proposed for Northern Ireland. There is a note at the back of the folder on England and Wales, which the Clerk has provided. Do you want any further research on the England and Wales model, or are we clear on that?

1082. Mr Attwood: There is one question that I am not clear on. The NIO is proposing an agency model, and that is different from what we currently have. The NIO is saying, and the Lord Chief Justice accepts, that any model other than a justice agency would have to be legislated for in the future by the Assembly. Does that mean that the British Government are legislating now for the agency approach before devolution of justice?

1083. Mr I McCrea: Did the Secretary of State not refer to that when he was here? Is he not going ahead with their proposals, and we would make any changes regardless?

1084. Mr Attwood: That is what I heard. However, is that legislation or simply an executive decision?

1085. The Committee Clerk: I will have to check. Annex B of the NIO letter describes the Courts Service as falling under the Department of the Lord Chancellor and not having a current sponsor. It describes the future status as it being an agency, and its future sponsor would be a "Fraser figure" in the proposed Department of Justice. However, it does not go on to articulate whether legislation would be required. My impression is — from what the Secretary of State said — probably not. However, if the Committee did want to go for the non-ministerial model advocated, legislation would be needed. However, that point can be checked.

1086. The Chairperson: That point arose in the oral evidence from the Court Service, whom we specifically pressed on that point. It said that legislation would be required for its model, but not necessarily — I think — for the agency model.

1087. Mr Attwood: Why?

1088. The Chairperson: We can seek clarification on that, Alex.

1089. Do members have a view on whether we should ask our colleague from Research and Library Services to do further research on the England and Wales model?

1090. Mr O'Dowd: It might be useful. Questions may arise as we go through the issues, and then we would have to go back. It would be useful to have the work done.

1091. The Chairperson: Are members content that we ask Research and Library Services to have a look at the England and Wales model? Perhaps in doing so, it could draw a comparison between that and what the NIO is proposing in its current proposals for the agency status.

Members indicated assent.

1092. The governance and accountability mechanisms again touch on the issue of PPS and the Northern Ireland Court Service et cetera. I do not feel that the Committee is in a position to start drawing a consensus on that because we need clarity in our own thinking.

Similarly, internal and external relationships go to the heart of how the Northern Ireland Court Service relates to the Department et cetera. Are Members content that we take time to examine the briefing paper as parties and individuals?

Members indicated assent

1093. Research and Library Services are going to prepare some more work for the Committee on the England and Wales model. The Committee will return to these issues. In the meantime, hopefully we will bring more clarity to the table on the position of OFMDFM, the options for Ministerial appointments et cetera. At least the discussions helped the Committee focus on the areas that require further discussion.

6 November 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd

Mr George Robinson

1094. The Chairperson (Mr Donaldson): Members, we turn now to the Committee's inquiry into the devolution of policing and justice matters. I remind members that, at our last meeting, we resolved to continue our discussions on the options for a ministerial model. I therefore propose that those discussions should continue under the headings agreed at last week's meeting: ministerial models; departmental structure; governance and accountability mechanisms; and internal and external relationships.

1095. Members will recall that we also debated the available options for the various ministerial models, and the Committee Clerk has drawn up a briefing paper on that matter, which is included at tab 6 of members' briefing packs. That paper clarifies the current position on the options that are set out in the Northern Ireland (Miscellaneous Provisions) Act 2006, and in the subsequent Justice and Security (Northern Ireland) Act 2007.

1096. In summary, three options are set out in the Northern Ireland (Miscellaneous Provisions) Act 2006, and an additional fourth option is set out in the Justice and Security (Northern Ireland) Act 2007. That clarifies the position. It should be noted that the option that is included in the Justice and Security (Northern Ireland) Act 2007 does not supersede the other three options. Therefore, there are now four options on the table; none of the original three has been replaced. Of course, we are not tied to any of those options.

1097. I invite members to declare any relevant interests. I declare an interest as a member of the Northern Ireland Policing Board and as a member of the Privy Council.

1098. Mr G Robinson: I declare an interest as a member of Limavady District Policing Partnership.

1099. The Chairperson: There being no other interests to declare, I shall now turn to the four options for ministerial models. The first three options were introduced by virtue of section 21 of the Northern Ireland Act 1998, as amended by the Northern Ireland (Miscellaneous Provisions) Act 2006. They are: a single Minister; two Ministers acting equally and jointly — similar to the Office of the First Minister and deputy First Minister (OFMDFM); and a Minister and a junior Minister acting in rotation. The fourth option is to have one Minister and a deputy Minister.

1100. Ian, as you have just joined the meeting, I invite you to declare any interests.

1101. Mr I McCrea: I declare an interest as a member of Cookstown District Policing Partnership.

1102. The Chairperson: Thank you.

1103. The Committee Clerk: On reviewing the paper on ministerial options, I noticed that a couple of the references were incorrect. The final line of the entry on option 2, at tab 6, should read: "Counts immediately for d'Hondt — schedule 4A Part 2 Para 6(2)(b)"

1104. Members can amend their copies now, but we will send out amended versions. It is unlikely, but someone might quote from the legislation, and it is right that members should have the correct references.

1105. There is also an error in the option 3 entry, which should read:

"Counts immediately for d'Hondt — schedule 4A Part 3 Para 9(2)(b)"

1106. It is useful that that has been reported by Hansard. I apologise for the errors, but they will be amended.

1107. The Chairperson: Does any member wish to open the discussion on ministerial models? Mr Attwood, before you arrived, I mentioned that there was a copy of Peter Robinson's speech at tab 5 of the members' briefing pack.

1108. Mr Attwood: I see that.

1109. The Chairperson: The Clerk has underlined the relevant section on page 5 of the speech.

1110. I ask members to remind the Committee of the preferred model of their party.

1111. Mr O'Dowd: As I declared at last week's meeting, Sinn Féin's preferred model is for a joint Ministry including two Ministers of equal status.

1112. The Chairperson: That is option 2. Alex, am I correct in stating that the SDLP's preferred model is for a single Minister?

1113. Mr Attwood: That option makes the most sense but, in our current political circumstances, that will not attract political or

community confidence. Therefore, we may end up with the model of two Ministers, preferably of equal status — because the junior Minister would be in an invidious position — who would be separate from the Office of the First Minister and deputy First Minister.

1114. The Chairperson: Option 1 is the SDLP's preferred choice, but Mr Attwood believes that option 2 is more realistic.

1115. Mr McFarland: The UUP is of the view that policing and justice matters should not be devolved unless there were full public confidence in doing so — as everyone has said. In the absence of full confidence, why should two Ministers, presumably with their own staff, be paid £76,000 each? Are we saying that policing and justice will be devolved without there being full public confidence? If that is the case, checks and balances will be required. The UUP is in favour of a single Minister, but those powers should not be devolved without full public confidence.

1116. The Chairperson: The DUP's preferred option remains the appointment of a single Minister. It is relevant to consider Alex Attwood's comment about how the Ministers will be appointed, considering the realities of life in Northern Ireland. If a cross-community vote were required in the Assembly, for instance, would that take care of Alex's concern that an individual would have to be capable of commanding cross-community support? Should that be decoupled from the d'Hondt system, at least for the first such appointment? Clerk, do we know what the current legislative position is, because some obvious grey areas were highlighted during last week's discussion?

1117. The Committee Clerk: The legislative position is stated in the briefing paper, under "Option 1: Single Minister". The sequence for the appointment process is stated therein. The Minister could be a member of any party. The consent of the nominating officer would be required. He or she would be jointly nominated by the First Minister and deputy First Minister, and that nomination would be approved by a 50:50:50 cross-community resolution. That would happen after the appointment of the First Minister and the deputy First Minister — and before d'Hondt is run — and it would count immediately for the purposes of d'Hondt. That is option 1.

1118. The Chairperson: Alex, how do you feel about that, in the context of your preference for a single Minister? Does that not ensure that that Minister is capable of commanding widespread support?

1119. Mr Attwood: I shall deal with the realpolitik of the matter. There is already a principle of shared leadership in Government. Although we have enough confidence to set up devolved institutions, there is still a sense that — in order to guarantee those institutions — shared leadership is needed. Alan made the point that, if we were in a position to devolve policing and justice matters, that suggests, per se, that there would be enough confidence in a single Minister. That is not necessarily the case. On the contrary, one could ask why we did not establish a single Minister in leadership at the head of the Government, if there was sufficient confidence to establish devolution — as we did in May.

1120. There is considerable neuralgia in respect of justice matters. That is understandable because issues of law, order and justice have been at the heart of our conflict over the past 40 years. Therefore, it is inevitable that people will have heightened concerns and fears about how law, order and justice issues might be handled in the future. Therefore, in order to recognise the way in which leadership in respect of law, order and justice might develop, it is important to secure a level of greater confidence. That would be guaranteed by having shared leadership.

1121. Those seem to me to be some of the political realities — when one steps back from all the technical matters, concerning how d'Hondt may or may not work, or cross-community votes.

1122. That may not be the best way to run a Government. That may not be the best way to manage justice and policing, considering that the policing function has already been substantially devolved. A shared Ministry, of whatever shape, will not actually have that much level of responsibility. People may — for want of a better term — end up scratching themselves at one time or another.

1123. Despite all those practical and technical aspects, one can understand why — given the profile of issues on law, order and justice, now and in the past — a shared Ministry and shared leadership may, ultimately, be required, despite any potential downside. Although there will be some downsides, the political upside will be a greater sense of confidence and a much more stable basis for going forward. Whatever the method of the election may be, one can understand the political argument about why the election will be in respect of two Ministers — whatever option is chosen.

1124. Mr McFarland: There is an argument about whether we can rustle up a new Department by May. Can two Departments be combined? If an extra Department is created, that will create an issue for parties about the overall political balance of the Executive. If one considers the option for two Ministers — or the OFMDFM model — we may be edging quietly toward the suggestion that I made at our last meeting, namely that some deal may have already been cooked up involving the two junior Ministers, who have got their staff in place for March. Policing and justice matters could then be devolved to OFMDFM. Alex is supporting the argument that the easiest option is not to have any new Departments, that policing and justice powers could be devolved immediately, and could be shuffled into OFMDFM because the two gentlemen concerned already have their staff and are simply waiting.

1125. That is dangerous, because it is not necessarily the case that policing and justice powers should come under the remit of OFMDFM. It was agreed during all of the discussions to which I have been party that OFMDFM has enough to do, without adding responsibility for policing and justice.

1126. Operationally, policing is the responsibility of the Chief Constable, and that is overseen by the Policing Board. Therefore, what is any Minister who may appointed going to do about policing, other than to introduce legislation to the House, where it will be subject to a cross-community vote?

1127. My guess is that we are shuffling towards some form of agency system that may be the responsibility of the Lord Chief Justice or someone else. Therefore, any appointed Minister will not be able to mess around with that. Likewise, the Prison Service is an agency that cannot be messed around with. Alex has said that there may not be an enormous amount of work involved for any Minister when policing and justice powers are devolved.

1128. Policing and justice powers are not going to be devolved until there is sufficient confidence. If that confidence exists, what is the hassle with having a single Minister?

1129. There is also a cost issue. If medical operations are being stopped — and there are various other issues that MLAs hear about every day — the appointment of yet another Minister, or indeed, two Ministers, will be perceived by the public as the creation of fat cats who are earning £76,000, and who have a Department with a staff, etc. If the agencies that I mentioned are going to have all of the real power, what are those two gentlemen going to be doing?

1130. Mr Attwood: On the issue of OFMDFM, Alan may be right to state that when this matter is eventually politically brokered, the largest parties will have the main influence on the outcome. I have no doubt that some people will have the individual or collective ambition that policing and justice powers should be the responsibility of OFMDFM.

1131. We must be mindful that the head of the Court Service, and the Chairperson of the Policing Board — unfortunately this question was not posed to the Lord Chief Justice — both advised against OFMDFM being given responsibility for policing and justice. That was a big call for those two gentlemen to make, but they made it nonetheless.

1132. Regardless of what I think about the responsibilities of a justice and policing Ministry, both the Chairperson of the Policing Board, and David Lavery, the Director of the Court Service — whom I do not wish to misquote — indicated anxiousness that justice and policing functions could overburden any Department of which they are to become part.

1133. Regardless of the range of responsibilities that a justice and policing Ministry might have, there is a need to be attentive and vigilant about how those responsibilities are exercised. That is another reason why a separate Department should exist to administer those responsibilities.

1134. Although there may be some big plans for a political fix next May or June, at least two people have advised this Committee that we should not go with the idea of policing and justice powers being devolved to an already-existing Department. I suspect that were we to ask other people who have given evidence to this Committee, they would have concurred with that advice.

1135. The Chairperson: There is a simple way in which the Committee can deal with that issue. I understand that there is consensus among the parties that a single Department should have responsibility for policing and justice.

1136. Mr Attwood: Heretofore.

1137. The Chairperson: Yes. Has Sinn Féin changed its view on that issue? Is Sinn Féin of the view that responsibility for policing and justice should go to OFMDFM?

1138. Mr O'Dowd: Sinn Féin's view remains as it was — that a single Department should have responsibility for policing and justice.

1139. Last week, Alan McFarland revealed his conspiracy theory that, somehow, the two junior Ministers are set to become the new justice Ministers. There were junior Ministers in the last Administration, and, as far as I am aware, they never became justice Ministers.

1140. I am not saying that the two individuals concerned will not, at some stage in the future, be potential justice Ministers. However, they are in their present positions to carry out the role of junior Ministers in OFMDFM.

1141. There is no behind-the-scenes conspiracy to evolve the junior Ministries into a justice and policing Ministry. Sinn Féin's view, at this stage, is that the policing and justice Ministry should stand alone. However, all those matters are open for discussion. The point of this Committee is to allow parties to bounce ideas off one another and to learn from one another's opinions.

1142. We must take a step back and ask what a policing and justice Ministry will mean to the people. Members have mentioned that the community must have confidence in the transfer of policing and justice matters. However, if the wider community does not understand what the transfer of policing and justice matters will mean, how can it have confidence in the process? Presenting bogey figures from either side of the political divide as future justice Ministers corrupts the debate.

1143. We must discuss with people in urban and rural communities the justice and policing issues that they face and how the Assembly can deal with them, instead of MLAs having to appear on 'The Stephen Nolan Show' to state what they want to happen to people involved in knife crime, muggings against the elderly, or sex crimes, for example. We should debate those issues in the Assembly, and legislate for them. The Assembly should become the lawmaker, and its Members should be legislators, in the true sense of the word.

1144. Sinn Féin is willing to discuss the appointments process with the other political parties to tease out a solution. The appointment process is important. As Alan McFarland said, if there is community confidence in the process, the Assembly can appoint just one person to do the job. However, the community must have confidence after the Ministry is established. In order to maintain public confidence, the Ministry must be a joint one, for the first term, at least.

1145. Last week, I touched on the subject of finance, which cannot be ignored. However, with respect to Alan McFarland and the Ulster Unionist Party, that argument has been embellished. As we approach the discussions on the Budget, the spectre of two Ministers receiving £76,000 has been raised. That is a lot of money, in anyone's view. However, if the two individuals are dynamic enough and are given a fair wind to create a new justice and policing system, they will be worth every penny.

1146. Speaking on behalf of my community, policing and justice has been an alien factor to date. I have been reading the documents, and terms such as "Lord Chief Justice" and "Lord Chancellor" mean nothing to the people on the ground. I am not singling out the honours system or peerages for criticism, but such terms probably mean little to the vicar in Belfast who took photographs of the young people who were vandalising his church but could not get the Public Prosecution Service to take action. Those terms mean nothing to most people.

1147. We must have a system that is relevant to people in our communities, and which can inspire their confidence. As I said, having two Ministers of equal status would be a good start. However, we need a new justice and policing system.

1148. Mr McCausland: First, if there is to be devolution of policing and justice matters at any point in the future, it is crucial that public confidence exists beforehand. If confidence exists beforehand, that process will proceed. Therefore, the suggestion that we need two Ministers to ensure confidence misses the point. We must establish confidence first, and then we can create a system in which people will continue to have confidence.

1149. Secondly, having two Ministers to operate a single Ministry would be overly and unnecessarily complex. If we accepted the option of a joint nomination by the First Minister and the deputy First Minister — which would require a cross-community vote in the Assembly — there would be more than enough safeguards.

1150. However, the crucial point is that we cannot move forward until public confidence in the devolution of policing and justice matters exists. At present, that confidence does not exist.

1151. Mr McFarland: The Hansard reports for the Committee on the Preparation for Government from summer 2006 show that we reflected the public's view on the two-Minister model. However, John O'Dowd is right to point out that there is an issue about how the public perceives the justice system. I do not disagree with him that there has been a problem in various communities. That is why it is so important that the police and the Policing Board get things right and build confidence. Confidence is built on the ground only by the manner in which an individual police officer deals with an individual person. Police officers are now subject to a code of ethics, and they undergo relevant training. Confidence in the judicial system is built by people's seeing that those who commit a crime receive a suitable punishment — although there is an argument about what constitutes a suitable punishment — in the courts, early and efficiently.

1152. People will not worry about what the Ministers do because they will carry out a purely legislative role. That will be no different from the Assembly introducing other legislation. The confidence will come from the operations of those organisations on the ground, not from up here.

1153. There are questions about how the Assembly does its business effectively and efficiently. If Sinn Féin and the DUP state that they have confidence in a particular Minister, the First Minister and deputy First Minister identify that Minister, and the Assembly supports that, our respective communities will take heart. I do not see the worry about the role of the Ministers. I see a concern about how the courts and the police operate, but the Assembly can have a handle on that, and that can be addressed by the individual officers and their command structures on the ground.

1154. The Chairperson: I take it that there is not a consensus among members on the ministerial model. I summarise the situation as follows —

1155. Mr O'Dowd: Just before you sum up, Chairman, I would like to make another point. Around this time last year, I visited the Scottish Parliament during Question Time to the Minister for Justice. Without being starry-eyed or naive, I found that an enlightening experience. I sat in the Public Gallery and watched locally elected representatives quiz the Justice Minister about knife crime and youth justice.

1156. Alan McFarland said that the agencies on the ground — whether the PSNI, the Court Service or the Prison Service — carry out their duties. However, what our society has been missing is the person with whom the ultimate buck stops. That person would be the justice Minister, and Sinn Féin argues that there should be two justice Ministers for the first term. That dynamic can be added to the service of policing and justice here. The justice Ministry would be held to account in the Chamber and, with the right individuals, a debate would be created about what justice means to communities on the ground. The potential of that cannot be underestimated. A justice Minister would have an important role: first, because the buck stops with them, but also because they can create the dynamic to continue the debate about what justice means to local communities.

1157. Mr McCausland: John O'Dowd said that a justice Minister might be questioned about knife crime and youth justice. A justice Minister might also face questions in the Assembly about paramilitary-related criminality in the border counties. There are issues that are yet to be resolved.

1158. Mr I McCrea: Nelson McCausland is right. The ultimate issue is that this Committee is legislated to discuss and agree a date for when policing and justice will come within the Assembly's remit. No one is opposed to the devolution of policing and justice at some time, but we have to get it right. If the ministerial appointments were to be made solely by running d'Hondt, and Sinn Féin were to get that position, people in the unionist community would need to be sure that what Sinn Féin had been in favour of over the past 30 years was totally behind it.

1159. Neither the unionist community nor, indeed, the Catholic community would be content with there being a Sinn Féin Minister of policing and justice until they were certain that that party had entirely left its past behind.

1160. Mr Attwood: Mr O'Dowd has outlined an attractive prospect — a justice Ministry where the buck would stop, and in which a dynamic could be developed for the reshaping of the policing and justice system. However, that demonstrates a misunderstanding of some basic realities.

1161. First, although it is not the Secretary of State's only power, his major responsibility for policing at present is to set long-term objectives under the policing legislation that was introduced after the Patten Report. That is it. I remember negotiating that the legislation should include the term "long-term objectives", because if there had been lesser obligation to set objectives, that would have enabled the British Government and the Secretary of State to have a much bigger influence on how policing developed in the North during the past five or six years.

1162. There was negotiation to ensure that the term "long-term" was included, because, under precedent and convention, long-term is deemed to mean five or six years. If policing functions were transferred to the Assembly, long-term objectives for policing would become the responsibility of the new Ministry. Long-term objectives can mean many different things. However, the notion that the transfer of powers is of such enormous significance that a new system of policing and justice could be created is somewhat of an exaggeration.

1163. Secondly, with regard to the justice functions of the new Ministry, if the Lord Chief Justice's view were to prevail with the parties, there would be an arm's-length relationship of the maximum length between the justice Minister, the Court Service, and the judiciary. That is why the Lord Chief Justice came before the Committee — to argue publicly and definitely for the maximum arm's-length relationship; not for the justice agency that has been proposed by the British Government, but one for which the Assembly would legislate after the devolution of justice and policing, whereby — as it says in the Lord Chief Justice's submission — he would hold meetings with the justice Ministry.

1164. The Lord Chief Justice may have a solid argument about that being the right way to go about the matter, but the notion that a dynamic would necessarily be created and that a justice Minister would be accountable in those circumstances may exaggerate what the true nature of relationships and structures may be if the Lord Chief Justice's view were to prevail. I do not wish to pre-empt what may happen, but, if that is the case, and given what Mr McFarland has said about the vast range of other justice functions that already exist in the agency model, the notion that the justice Ministry will have swingeing powers and responsibilities may not stack up.

1165. The Assembly's real authority will come from legislation. We know from the current Government that they do not necessarily hit the ground running in respect of new legislation. I would love to know whether the Northern Ireland Office (NIO) has a lot of proposals for new legislation for the North, because it is from there that the Assembly's real authority will come. Legislation creates the architecture, but there needs to be a reality check about how much power a justice Minister will have over policing and justice matters if maximum arm's-length relationships develop in the context of devolution.

1166. Mr O'Dowd: It certainly appears that Alex lacks vision. If we, as present-day politicians, cannot look to the future, and if we, or future politicians, cannot create dynamic vision and movement in policing and justice, it would be better for us to pack our bags and move on. As Alex said, we will be the legislators. If the legislation does not create a new dynamic in policing and justice, then what is the point in introducing it?

1167. Frankly, I do not care about what the NIO is introducing. Our role, and my role, has removed the NIO from the equation. We have been elected to rule, make changes and create a better society for us all, and that includes policing and justice. We can make snide remarks about not having introduced any legislation in the past six months, etc — I have heard that all before. The fact is that, over the past six months, we have proved that we can work together. No one knows where we will be on this matter in six months' time, or in six years' time. However, I believe that if the leadership that we have all collectively shown were applied to policing and justice with the same force and dynamic, we could do exactly what I have outlined.

1168. The Chairperson: It is clear that there is no consensus, at this stage, on the ministerial model. To summarise, the DUP and UUP are very firmly on the ground of a single Minister; the SDLP suggest that that might be a model that could be adopted, perhaps in the longer term; but, in the shorter term, both Sinn Féin and the SDLP are opting for the model of two Ministers acting equally and jointly. That is the present position on the ministerial model.

1169. We are, of course, open to any other alternative models that parties may wish to put forward to the Committee. However, no party has done that thus far, so we will stick with what we have at the moment.

1170. I remind members that supplementary material has been provided on the departmental structure in the folders that were issued on 23 October, together with three letters from the Committee Clerk and cross-references to the NIO's response on each of the outstanding issues that we need to examine in respect of the departmental structure.

1171. At our last meeting, we undertook to study those responses from the NIO, as well as those from the Serious Organised Crime Agency (SOCA) and the Cabinet Secretary for Justice in Scotland, to determine the extent to which they provide clarity on earlier queries.

1172. If we look, first of all, at the NIO letter, it may be useful to establish the extent to which it satisfies the needs of the Committee. We might use the annexes to the NIO letter as a guide for discussions on the departmental structure. I refer members to tab 2 of the 23 October folder, which contains a research paper on the current Court Service model that exists in Northern Ireland, and how it compares with the models that exist in Scotland and the Republic of Ireland, and there is a supplementary research paper at tab 7 of today's meeting folder, which has been prepared by the research officer. The supplementary briefing paper that deals with the policy responsibilities of the Court Services in Northern Ireland, Scotland and the Republic of Ireland is to be found at tab 7 of today's meeting folder. The original research paper prepared by the research officer is at tab 2 in the 23 October folder. I also refer members to tab 1 of the 23 October folder, which contains the NIO letter, together with its annexes.

1173. To summarise, the NIO letter is at tab 1 of the 23 October folder, the original research paper on the Court Service is at tab 2 of that folder, and the supplementary briefing paper by the research officer is at tab 7 of today's meeting folder. I ask the research officer from the Assembly's Research and Library Service to present that paper. The research officer may wish to briefly touch on the original briefing paper, despite the comprehensive articulation of that at our last meeting, before speaking to the supplementary briefing paper that has been prepared for members.

[Assembly Research and Library Service briefed the Committee.]

1174. The Chairperson: Do Members have any questions for the research officer?

1175. Mr McFarland: Is that paper in our packs? There are several interesting questions that might be debated within parties.

1176. The Committee Clerk: There may have been an administrative error. There should be a supplemental briefing dated 30 October, and a paper dated 1 November. The Chairperson's pack had two copies of the 30 October paper and lacked the 1 November paper. I apologise if that error has been repeated in other packs. Essentially, the paper which the research officer has spoken to is that dated 1 November.

1177. The Chairperson: I thank the research officer. That is most useful. As John said, the potential issues for consideration at part 4 of

the supplemental briefing paper are useful as an aide-memoire in identifying the issues we must look at. After the oral evidence sessions with PPS and the Court Service, we acknowledged that a big issue for the Committee to engage with is the distance between the Court Service, the PPS and the Department, while, at the same time, ensuring accountability — not only fiscal but in every sense — whether it concerns a Minister answering questions on the Floor, or a scrutiny committee examining the workings of either the Court Service or the PPS. Those are significant issues for the Committee to look at in considering where on the line the Court Service and the PPS are to be placed in relation to the Department.

1178. At the moment, we know that the NIO's preferred model — or rather, the model that it legislates for — is that of England and Wales, where the court service is an agency of the Department.

1179. I ask the research officer to remind me of the position of the public prosecution service in England and Wales. Does it have a similar status to the Court Service?

1180. The Research Officer: My recollection is that it is an independent service. However, it is accountable to the Attorney General, who has powers of superintendence.

1181. The Chairperson: So the PPS in England and Wales is in a different position to that of the Court Service.

1182. Those are the potential issues for consideration. Does any Member wish to share his thoughts? Or is the position such as Alex hinted at earlier, that the Committee is moving towards the position articulated by the Lord Chief Justice?

1183. Alex, perhaps you want to kick off?

1184. Mr Attwood: Not really. I was trying to anticipate where one or two parties — rather than where the Committee — may end up on the issue.

1185. The paper read by the researcher was very good. The eight questions at the end provide a good programme of work. The Committee would find it helpful if each party were to work through those questions, to give further definition to its position. The principle that the SDLP begin with is that the agency model is better; so, too, is a relationship with the Department that is, at maximum, at arm's length.

1186. To return to something John said earlier, and he may have picked it up wrongly, to have vision one must also have proper influence, rather than undue influence. That may come through better from agency models rather than from 'arm's-length' models. To answer the research officer's question about the relationship between the court and the Minister, the debate of 'arm's length' and agency models is characterised by whether the Minister or the Lord Chief Justice chairs the board. There are peculiar circumstances in the North, where certain people have used mechanisms to exercise undue influence on the independence of the police, the court service and the judiciary. In our view, in principle, a closer relationship is better than the relationship proposed by the Lord Chief Justice, provided that it is not open to abuse or having undue influence on the police or the judiciary.

1187. The relationship between our Attorney General and the Advocate General will be critical. The obvious example of that — but not the only one — is that the Advocate General will look after the non-devolved interest, which includes terror legislation, SOCA, and MI5, to name a few. Therefore, there will be interaction between the Advocate General, representing London, and our Public Prosecution

Service in the investigation of crimes that revolve around terror, SOCA or MI5. The way in which that relationship works, and reflects on the Assembly and the justice ministry will be important. On occasion, the British Attorney General has invoked certain legal procedures in order to frustrate the prosecution of individuals for serious crime. The Police Ombudsman is investigating the Stalker report, one of the central issues of which is that a British Attorney General invoked public interest immunity to debate the pursuit of possible prosecutions by the PPS in the North. Hopefully, in future such a situation will not arise. However, if it does, will the British Advocate General have that influence on our PPS? If so, how does that fit in with our responsibilities to act thoroughly in taking forward the policing and justice agenda?

1188. The research officer is correct to cite that issue, because it is central to how stable and proper the system will be. I use those two examples to determine how far we should have progressed and, to examine concerns about the manner in which the situation may develop.

1189. The Chairperson: Thank you Alex, you have done the Committee a service by identifying the complexity of the issues. How much is gained by a round table discussion is questionable, however it may be valuable to ask each party to prepare a paper on the basis of the research officer's eight potential issues for consideration, and those will provide us with a basis for further discussion. We could go around the houses on the issue, and my colleagues in the DUP are not yet in a position to respond.

1190. Mr O'Dowd: Sinn Féin is not in a position to respond to all the points because the evidence sessions covering the relationships between the Court Service, the Public Prosecution Service and the legislator have thrown up a number of thought-provoking questions, which have been reflected in Committee.

1191. However, I hope that we reach a point at which we are able to bounce ideas off each other and have a debate on the subject, which would be useful, and I am happy for papers to be drawn up.

1192. The Chairperson: Eight potential issues for consideration are contained in the research officer's supplementary paper, which has significantly helped the Committee; however, rather than trying to respond to those today, it would be valuable if each party prepared a paper that set out its views on each of the eight issues. If those papers were ready for next week's meeting, we could then have a useful round-table discussion based on the party's respective positions.

1193. Mr McFarland: This is a complicated issue, and we must get it right. Following last week's meeting, I enquired into the possibility of finding someone, from no particular camp, who could provide us with outside, independent, advice. I was told about the former Lord Chief Justice for England and Wales Lord Wolff, who is retired from that job and, apparently, is a switched-on character. Perhaps, the Chairperson and Deputy Chairperson might arrange to speak with Lord Wolff, because independent advice from someone who is not attempting to empire-build in the local system would be useful.

1194. The Chairperson: Committees in Westminster often call on expert advice to help deal with complex issues, although I am not suggesting that our staff or the Assembly —

1195. Mr McFarland: I was not suggesting that either. However, an alternative view, from someone who is not a stakeholder in the outcome of this process and who has been through —

1196. The Chairperson: I take your point — someone who might offer a professional perspective and who has been in and knows the

system.

1197. Setting aside the “who” of that suggestion, do members agree that, alongside their party’s consideration of the potential issues for consideration, we should seek such advice? There are various models that we might usefully consider, such as the quite centralised one in England and Wales, Scotland’s evolving modalities that are tending towards the system in Dublin, and on which we have received written and heard oral evidence. There may be other models. Mr McFarland suggests that we hear from someone who has been inside the system, regardless of the jurisdiction, and who might be able to say that the England and Wales system works to a certain extent but that, given its structures et cetera, there might be a better model for Northern Ireland. Is that the sort of person —

1198. Mr McFarland: Yes. I must be careful here. My general impression is that people who have risen to the top of the judicial system — outside Northern Ireland, of course — may be a bit institutionalised. Over the years, people have referred to fuddy-duddy judges; however, I am told that this gentleman is extremely well attuned to the issues involved.

1199. The Chairperson: He has not been institutionalised?

1200. Mr McFarland: He appears to have got through without being so.

1201. The Chairperson: Do the members have any thoughts on Alan’s suggestion to call on expert advice from the perspective of someone who has been inside the system and who has not become institutionalised?

1202. Mr O’Dowd: I am happy to consider other avenues. I do not know the individual involved, but I get a sense that someone who has reached the title of Lord Chief Justice has been part of the system. I do not know how aloof a former Lord Chief Justice could be. I do not question his integrity, because that would be dangerous. He has been through the system, but I wonder whether there is someone else out there who has never been part of the system, but is a good observer of it, who could give a view from both sides.

1203. The Chairperson: Perhaps someone from academia would be suitable.

1204. Mr O’Dowd: Yes — perhaps the CAJ.

1205. Mr Attwood: John is right that it must be balanced. While Lord Wolff had a reputation for being independent and daring at times, he is still part of the system. He would be good, but there should be a broader range. It would be useful to ask Lord Wolff about the agency-at-arm’s-length debate and about such issues as the participation of the judiciary in accountability or management mechanisms.

1206. The NIO response of 15 October outlined mechanisms, but it is silent on the participation of the judiciary in some of those mechanisms. It would be interesting to hear Lord Wolff outline where the judiciary should be involved in mechanisms that are accountability-based or management-based, because what they do in England and what he did as Lord Chief Justice, would differ from what our judiciary does at the minute.

1207. The Chairperson: As well as the suggestion of getting a practitioner, we should consider whether someone from academia who has a good overview of judicial systems could usefully give us some advice on those subjects. I assume that we would have to provide them with copies of the written submissions and oral evidence that we have received from interested parties and ask them to examine

the structure of the judicial system in Northern Ireland compared to Scotland, England, Wales and the Republic. Perhaps they could give a view on what may or may not work, having regard to the need to protect the independence of the judicial system and to ensure that effective accountability mechanisms are in place, so that the Assembly and the Executive will be able to hold to account, to a certain extent, the institutions of justice in Northern Ireland.

1208. Perhaps we should ask the Committee Clerk to find out whether someone else, particularly in the world of academia, could give us their view. How do Members feel about approaching former Lord Chief Justice Wolff, as Alan suggested, to find out whether he would be willing to offer some assistance?

1209. The Committee Clerk: I could work with Research and Library Services on a proposal for that, so that there would be a structure to it. We would like to have a specification for the person that we approach. We can also do some research and come up with suggestions about who might be regarded as expert witnesses, bearing in mind what members have said.

1210. The other thing to bear in mind is the proposal in the Northern Ireland Office letter of 15 October for the transfer and accountability relationships, because they talk about non-ministerial Departments, Public Prosecution Service agency status, Frazer figures, and so on.

1211. If they are working to that model, any expert witness would have to take account of that in his or her considerations. If a different direction is to be taken, however, a marker would have to go down to the NIO that the Committee feels that it is not necessarily moving in the same direction as the NIO.

1212. Mr McFarland: I was quite struck by evidence that we heard in a previous meeting, in which it was inferred that we should not worry too much about the Lord Chief Justice's model, because an amended model will be transferred. Given that that is the reality, it might be worth not taxing ourselves too much about the phase two operation, which involves the Lord Chief Justice running his own board; that could be examined after the devolution process had taken place. There are other relationships which, as the Committee Clerk pointed out, are key elements of the management of the process on handover. We will need answers on those.

1213. The Chairperson: I take your point. The Committee may of course take another view. Without prejudice to the issue of the timing of devolution of policing and justice, and although I do not believe that the Committee has yet arrived at that point, we need to decide in principle whether this is a phase two matter or whether it should be in place before devolution, because it may have an impact on the timing debate. That would obviously require legislation.

1214. I hope that members are content that the Committee Clerk and his team, in conjunction with the Assembly research and library service, should produce a specification for inviting expert advice from one or more persons on the potential issues for consideration in relation to the departmental structure. At that point we can consider the personalities. May I also ask the Committee Clerk to acquire information about Lord Justice Wolff and any other research that is available on academic experts who might be of use to the Committee?

1215. That will also give members time to prepare the party papers on the departmental structure, which we might want to consider making available to an expert adviser for information on where parties stand. We will leave the Committee Clerk and the research officer to work on that and come back to us.

1216. The Committee Clerk: I note the discussion about the party papers, and want to be clear that they will be developed separately, and, as you suggest, Chairperson, initially, for discussion in Committee and for thorough reference to expert advice, from whoever that may come.

1217. The Chairperson: The papers are without prejudice. We will ask parties to give their initial views on these matters, and then discuss them around the table to determine whether there is consensus on any or all of the issues.

1218. Mr McCausland: Is there a timescale for the production of party papers?

1219. The Chairperson: We will have to go back to the members' packs. The issues are complex, and to ask parties to prepare a paper for next week's meeting is a tall order.

1220. Mr McFarland: Our own timescale is getting tighter. If these are the major issues, then we can take more time on them.

1221. The Chairperson: They probably are, Alan. The major issue is the timing of devolution of policing and justice. The modalities, and the preparation of our report, are as big as it gets for the Committee, with the exception of the ministerial model.

1222. The Committee Clerk: The work programme to which the Committee has been working to has, to be candid, slipped. Today should have seen discussions on timing. We were going to produce a new work programme for the Committee to sign up to later today that acknowledged the original slippage. However, the date for the obligation to report is immovable because the Secretary of State requires a report from the Assembly by the end of March 2008. The Committee has already made a commitment to report to the House by February 2008. That time frame was chosen deliberately to ensure room for manoeuvre in the event that the Assembly wanted further work done in the interim. Therefore, the timescales are tight.

1223. The suggestion is that papers from the parties are submitted by 20 November so that they can be discussed and sent to the expert witnesses. For example, if a paper were presented to the Committee next week, the expert witnesses would probably need to be given two weeks from 20 November — until 4 December or arguably 11 December. The Committee may wish to reflect on that, but there will be precious little time left to address timing and to begin looking at the content of the draft report. I can draw up a paper on the matters to be transferred and, up to a point, on the ministerial model, to record the current position so that we could just tweak it in January as the Committee develops its thinking. That is a tight time frame.

1224. The Chairperson: I take that point. However, the issue of timing will be a political decision; the furthest that the Committee will get is achieving a consensus on the modalities — and that will be a challenge.

1225. Mr McFarland: The ministerial models and the issue of timing will be the subject of political decisions, and will be addressed quite quickly. This matter is quite detailed, and if the Committee does not get it right, there will be an impact on future progress.

1226. The Chairperson: The Committee will have to do the work because no one else will, so it is important that we do our best to get it right. Alan's suggestions today have been helpful. The Committee still has to examine governance and accountability mechanisms, as well as internal and external relationships. The indicated timescale for addressing the matter of departmental structure is realistic, which was —

1227. The Committee Clerk: The deadline to bring the two pieces of work together is 11 December.

1228. The Chairperson: Between now and 11 December, when we have the parties' papers, there is value in continuing discussions to tease matters out and to ascertain to what extent we can draw parties' positions closer together. Alan is right to state that the decisions on the ministerial model and the timing of the devolution of policing and justice will be political ones. The Committee may be able to reach the point at which it can make a recommendation on the ministerial model — at the moment, I do not know because we do not have consensus on that. However, the big decisions that have to be taken will be political ones.

1229. We can leave the debate on departmental structure for the moment and ask parties to work on their papers with a view to reconsidering that issue at our 20 November meeting. We hope that we will have a report from the Committee Clerk and the Assembly Research and Library Services on the specification for seeking professional expert advice on the issue of departmental structure.

1230. Mr G Robinson: Is there a meeting next week?

1231. The Chairperson: Yes, George. Given the slippage, we must crack on with our work on a weekly basis. Had we made greater progress, we had intended at this stage to revert to biweekly meetings, but, given the future work programme, we will have to meet on a weekly basis.

1232. Are members content with how we propose to proceed on addressing the departmental structure?

Members indicated assent.

1233. The Chairperson: We will return to that matter when we receive a report on the specification for seeking expert advice.

1234. Page 8 of the original 3 October research paper deals with governance and accountability mechanisms, and the annexes to the NIO letter, at tab 1 of the 23 October meeting folder, might also serve as a guide in discussions. The original research paper, which is to be found at tab 2 of the 23 October meeting folder, also addresses the Northern Ireland Courts Service, etc. Could the research officer confirm that, please?

1235. The Research Officer: Government structures are dealt with in the annexes. The Northern Ireland Court Service is dealt with on page 17. Pages 12-18 address the governance structures in Northern Ireland.

1236. The Chairperson: That is in the annex to the original research paper, dated 3 October.

1237. The Committee Clerk: Members should refer to pages 12-18.

1238. The Chairperson: That paper deals with the outline of the current structure of the courts in respect of the Northern Ireland Court Service, and annex 2 provides the current organisational structures. Annex 3 concerns the structure of the Scottish Court Service; annex 4 concerns the revised governance model — the evolving scenario of the Scottish system; and annex 5 concerns the courts structure in the Republic of Ireland.

1239. Mr McFarland: Can those matters not be dealt with as a job lot? The Court Service is structured as it is, and the Committee does not have any input in how it organises internally. The relationship between the Court Service and the Assembly is a valid issue, but the Court Service makes changes in how it organises itself internally.

1240. The Committee Clerk: That is correct if one presumes that the NIO is going to transfer the Court Service in its present form. The question is whether the Committee is content with that present form, the robustness of the governance and accountability therein, and the relationship with the Assembly in relation to governance and accountability.

1241. Mr McFarland: The accountability of the Court Service to the Assembly is a major issue, and it strikes me that the nature of the Court Service's relationship with a future Minister, and how we deal with that, is part of what we are here to discuss. The suggestion has been made that, in order to change anything dramatically, there would have to be primary legislation at Westminster, and the Secretary of State's office suggested that that could be done eventually, although it would not happen in the coming year.

1242. The Chairperson: I guess that, post devolution, that would be a matter for the Assembly.

1243. Mr McFarland: I think that the suggestion was that the Assembly take the structure over as is, and that, if we later wished to switch to the Lord Chief Justice's model, the issue would have to be brought before the House.

1244. The Chairperson: That is correct.

1245. The Committee Clerk: Page 11 of the 3 October briefing paper starts to tease out issues for consideration in relation to governance and accountability, and the relationships that might pertain between the Court Service and the Department of policing and justice.

1246. Mr McFarland: I would have thought that the parties' submissions will consider all those matters.

1247. The Committee Clerk: That is absolutely right. If parties address the eight issues from today's paper, together with the six from the paper dated 3 October, that will provide members a framework within which to work. We will try to mirror that framework in the specification that we will produce for the expert witnesses.

1248. The Chairperson: I shall outline the information that parties should examine when preparing their papers for the Committee. Page 8 of today's briefing paper deals with potential issues for consideration in relation to the departmental structure — the research officer has identified eight issues in that paper. Page 11 of the original briefing paper dated 3 October lists potential issues for consideration in relation to governance and accountability mechanisms. Therefore, parties must address both of those sets of issues in the papers that they will present to the Committee on 20 November.

1249. Are members happy to park the issue of governance and accountability mechanisms?

Members indicated assent.

1250. Mr O'Dowd: On Alan's point, it is worth pointing out that, even if the structures are transferred as they are, we, as an Assembly, can change those structures at a later date. Therefore, in that sense, it is not a priority.

1251. Mr McFarland: There are enough complications already, so the easier we can make it, the better. Rather than chucking all the issues up in the air and hoping that they land in the right order. It seems to me that if a modified version could be shifted across, we could then address phase 2, which would constitute the detailed examination of the Lord Chief Justice's proposal and the management issues. The less confusion we add, the better.

1252. Mr Donaldson: I do not wish to unduly burden members, but since we are dealing with this matter, we may as well try to deal with all of it. I ask members to turn to page 4 of the supplemental briefing paper dated 30 October, which appears at tab 7 of members' briefing packs. The research officer has identified a further four potential key issues arising from that paper, which involve the policy responsibilities of the Court Services in Northern Ireland, Scotland and the Republic of Ireland. I ask members to incorporate those four additional issues in their party papers.

1253. For the sake of accuracy, I remind members that the paper should have three components, the first of which involves the departmental structure and consideration of the eight potential issues that are listed at page 8 of the paper dated 1 November.

1254. The second component relates to the briefing that appears at tab 2 of the 3 October meeting folder, page 11 of which lists six potential issues for consideration in respect of governance and accountability mechanisms.

1255. Thirdly, there are an additional four potential key issues to consider in page 4 of the paper dated 30 October, which deals with the policy responsibilities of the respective Court Services.

1256. That makes eight, four and six issues, respectively — a total of 18 potential issues on which we are asking members to provide their parties' views. The Committee Clerk will compile those 18 points on one list and email it to members. Party papers will have to be back with the Committee by 20 November — ideally, we need those by Friday 16 November to allow staff time to collate the papers and have them distributed for discussion on 20 November.

1257. Are there any further points on internal and external relationships that must be added to the 18 that we have already identified?

1258. Mr McFarland: If we address the 18, we will be doing well.

1259. The Chairperson: Can members turn to page 8 of the 1 November research paper?

1260. Mr McFarland: My apologies, Mr Chairman, I have to leave.

1261. The Chairperson: Thank you, Alan.

1262. The 1 November briefing paper appears at tab 8 of today's meeting folder. Page 8 lists the potential issues for consideration. That incorporates the matter of internal and external relationships, so that issue will be addressed in the 18 points for consideration. I do not propose a further discussion on internal and external relationships, because we can deal with that in the discussion on the respective

party papers.

1263. The Committee Clerk: Parties have adopted particular positions on national and international relationships that are not discussed in the research paper. However, the parties have, during the course of this inquiry, declared their positions on how those relationships might work. It would be useful if those matters were addressed in the parties' papers. However, it will not be possible for Research and Library Services to provide any direction in that area.

1264. The Chairperson: A big issue that must be considered in the context of those papers, and in subsequent discussions, is whether there is consensus on the issue of the powers and the structures that are to be devolved at initial devolution — although I am not asking for that today.

1265. Let us suppose that the model of the departmental structure that we agreed was different from the model for which the NIO is legislating. Would we, as a Committee, wish to report to the Assembly that it is our view — and this will be influenced by timing — that, in the first instance, devolution should take place on the basis of the NIO's model, and that the Assembly could then legislate for the new model that may be agreed by the Committee? I ask members to reflect on that. We will have to make that decision, as well as deciding on the departmental structure.

1266. We must decide, in principle, whether we want our preferred structure in place prior to initial devolution, or whether that is a matter for which we will subsequently legislate, and that we accept initial devolution on the basis of the NIO's preferred model. We must consider all those options.

1267. The Committee's work programme indicates that we must continue meeting on a weekly basis. Clerk, what can we usefully do at next week's meeting, apart from receiving the report from you and your Research and Library Services colleagues on the specification for expert advice?

1268. The Committee Clerk: There may be a substantive item to discuss. I must apologise, because we have been working on the matter of the possibility for the responsibility for firearms and prohibited weapons to be transferred. I am still trying to get to the bottom of that issue, because there are some questions as to how the Scottish model came about. I hope to have a paper on that matter for consideration by the Committee at next week's meeting. There will be some work to do on that matter but, arguably, not a great deal.

20 November 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd

Mr George Robinson

1269. The Chairperson (Mr Donaldson): Before we start, I declare an interest as a member of the Northern Ireland Policing Board and the Privy Council. Do any other members have any relevant interests to declare?

1270. Mr I McCrea: I declare an interest as a member of Cookstown District Policing Partnership.

1271. The Chairperson: For information, members have been provided with a copy of the conclusions of the latest report from the Independent Monitoring Commission on the issue of normalisation. The report was published on 17 September 2007 and covers the six-month period from 1 March 2007 to 31 August 2007.

1272. Members will recall that the Committee has previously discussed whether to call the Chief Constable to give oral evidence on his assessment of public confidence about the devolution of policing and justice powers. We will need to consider where we may fit that oral evidence session into our schedule before we complete our work. It will have to take place before mid-January in order to give us time to complete our report.

1273. The Committee Clerk will give us an update on our timetable and where we may slot that session in. We will want to give the Chief Constable some notice.

1274. The Committee Clerk: The work programme that has been provided to members takes us up to a proposed meeting on 11 December 2007. That was based on the decision that was taken two weeks ago that the Committee may want to call an expert witness, or perhaps more than one expert witness. Given that the Committee did not meet last week, that timetable has slipped — technically, at least. However, that will be discussed as a substantive item of business later.

1275. The Committee has parked a number of issues on the matters to be transferred, and it needs to revisit those. Consensus has not been reached on the ministerial model, and that will also need to be revisited. There is also an issue regarding the various parties' positions about the proposed departmental structures, and the Committee may want contributions from expert witnesses on that issue. Therefore, with trying to fit all that in, it is my assessment that mid-January is probably the latest date by which the Committee can afford to call the Chief Constable.

1276. The Chairperson: It will have to be either 8 January or 15 January 2008. However, we have held oral evidence sessions on days other than Tuesdays; therefore, those dates can be changed, if necessary, to accommodate the Chief Constable.

1277. The big issue for the Committee, subject to members reaching consensus on most of the other issues, will come down to the question of public confidence and the question of the timing of the devolution of policing and justice powers.

1278. Committee members should let me or the Committee Clerk know if there is anyone else, apart from the Chief Constable, whom they want to call to give evidence on the issues of confidence and timing. That will enable us to make preparations. At the moment, I cannot think of anyone else, but it is an issue that members may want to ponder.

1279. Are members happy that we approach the Chief Constable's office to explore the possibility of an oral evidence session for either

8 January or 15 January 2008?

Members indicated assent.

1280. The Chairperson: Various questions regarding departmental structures, governance and accountability arose from the research papers that were kindly provided for us.

1281. The Committee asked each of the parties to give a response, but so far it has not received any responses. That does not surprise me, because the issues are very complex. I have not consulted my party colleagues on the matter, but my view is that it is going to be very difficult for each party to have the expertise to respond to some of the complex questions.

1282. I throw this comment out for consideration: we could produce four party-political views on the matter, but I do not think that that would get us very far. We have considered, and will consider this morning, the possibility of seeking help from expert witnesses. To borrow John's phrase, are we putting the cart before the horse at this stage in asking the parties to provide responses to these very valid questions? The research papers have produced some useful information. However, one issue is the composition of a management board for a future Northern Ireland Court Service. I could consult the legal people in my party — and the other parties could do the same — but that would just give a DUP legal perspective, a UUP legal perspective, and so forth. The Committee needs to seek expert advice on these complex issues.

1283. We have not had any responses from the political parties at this stage. I suggest that perhaps we should not push for responses now if we are to get advice from expert witnesses. Before we start committing ourselves to paper or having an informed discussion about the questions that must be resolved, perhaps responses should be held back until we see where those deliberations will take us.

1284. I am conscious that time is marching on and that we have a timetable to work to, but, at the same time, I do not want us to waste a meeting talking about four party-political perspectives, when we might be better employed taking expert advice and then having the discussion. Those are just some thoughts on the matter, which leads me on to the question of the expert witnesses. Do members any party-political updates that they want to provide before we do that?

1285. Alex, you are very welcome. The Committee is discussing the questions arising from the research papers on departmental structures. When I considered the matter, I wondered whether the Committee was putting the cart before the horse, and I was suggesting that if we are to get expert advice on some of the issues, perhaps it would be better to wait until we are better informed before bringing party-political views around the table.

1286. Before we do that, I welcome George Robinson. I believe that you have an interest to declare.

1287. Mr G Robinson: I am a member of Limavady District Policing Partnership.

1288. The Chairperson: Do members have any thoughts on what I have said about party-political views? Are you content with the suggestion that we delay the party-political inputs until we get expert advice?

1289. Mr O'Dowd: I agree with that. It is a mammoth piece of work. Despite all the excellent research, which has been very useful, we

are being asked to complete a task that other states and societies have evolved over a couple of hundred years. We are trying to sit down and rewrite it. The more time and the more information the Committee has, the better.

1290. Mr Attwood: I apologise for arriving late. The late Harry Holland's family had an event in front of the Royal Courts of Justice this morning, and I was delayed.

1291. I sat down last night and tried to answer the various questions, and I produced a paper as a result of that. However, I can hold that paper for the moment, if that is the wish of other members. Whether we end up with an arm's length relationship, or an agency relationship, with the Court Service, or a hybrid of those options, it does seem that the Committee could end up differing about the actual architecture but could end up agreeing that there are certain elements that are essential to whatever model is produced.

1292. For example, one way or the other, the Court Service will require a management board, whether it operates at arm's length or as an agency. The Committee might reach an agreement on who should be on that management board — for example, representatives from all levels of the judiciary, consumer groups, the legal profession, staff bodies and management. The current management board of the Court Service does not have that diversity of representation. It seems that whether the Committee agrees on the actual structure, it could reach consensus and agree on details of the structure.

1293. The Chairperson: That is very useful, Alex. I will leave it to your discretion as to whether you want to circulate the paper for information at this stage. I appreciate that it might be unfair for one party to lay out its stall at this stage. It does not prejudice your position one way or the other, but the decision is entirely up to you.

1294. Alan, do you want to express a view on behalf of the UUP?

1295. Mr McFarland: The UUP has produced an initial observation paper, which is also complicated. Some matters are obvious — for example, operational independence and the fact that the service should be effective and efficient. We probably all agree that the service should be accountable, but the accountability mechanism is the issue.

1296. I sense that the agency system is due to be put in place by the Government before we get devolved powers, so we will inherit an agency. It seems sensible that we should not disturb that, because at least it will be a recognisable entity. I view the Lord Chief Justice's plan for arm's length management as phase 2. We should stabilise the institution, and then we can look at the business in its entirety. It would be useful to get more advice on the matter before we take such decisions.

1297. The Chairperson: That is wise, Alan. Members, are you happy with that? Has anyone else prepared papers?

1298. Several factors will influence the way in which we proceed. As Alan has rightly said, the proposal that the Government are currently legislating for is a model that, in the initial stages, will look similar to that in England and Wales, with the Court Service being under the Department's wing. Therefore, we must consider whether we accept the transfer on that basis, and, if we accept it, whether we are minded to review it after a certain period — taking account of what the Lord Chief Justice and others have said about the evolution of the model towards the type being developed in Scotland or that which is already in place in the Republic of Ireland.

1299. We must think about that and whether we want to give a clear indication to the Assembly about how we might handle that. Alex is right; we can agree on certain matters about the departmental structures. We can agree on those whether we choose the current

model or decide that it will evolve, perhaps after a review or after a certain period has elapsed. In any event, the Assembly would have to legislate for those changes, and that would necessitate a consultation process and scrutiny of the legislation by a Statutory or Standing Committee.

1300. The Committee can usefully do certain things to influence that future work. It can agree on either structures or key principles, which would underpin the initial devolved structures and which might inform the debate as it proceeds.

1301. Do we have a consensus to hold the party-political positions, pending any further expert advice that the Committee might seek?

Members indicated assent.

27 November 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

1302. The Chairperson (Mr Donaldson): We will proceed to the inquiry into the devolution of policing and justice matters. I think that Hansard will be in attendance.

1303. The Committee Clerk: We understood that Hansard would be here, but given the business yesterday and the depth of business today, their resources are stretched. We have an assurance that they will be able to provide a transcript of evidence from the recording of the public proceedings, but Hansard staff will not be in attendance. I urge members to be as clear as they can in making their contributions. As you know, Hansard staff make notes during proceedings, but they will not be able to do so on this occasion.

1304. The Chairperson: I invite members to declare relevant interests. I declare an interest as a member of the Policing Board and of the Privy Council.

1305. Mr G Robinson: I declare an interest as a member of Limavady Borough Council and Limavady District Policing Partnership (DPP).

1306. Mr I McCrea: I declare an interest as a member of Cookstown DPP.

1307. Mr Kennedy: I have nothing to declare.

1308. The Chairperson: The Committee has been looking at five outstanding matters to be dealt with in relation to the matters to be transferred under devolution of policing and justice powers. We are awaiting a response from the NIO in respect of two of those issues: the powers of the army to act in support of the police; and the powers in relation to the misuse of drugs. The Committee Clerk has been chasing that up with the NIO and will continue to do so. Therefore, we hope to be in a position to deal with those matters at our meeting on 11 December.

1309. Members will recall that the Committee had considered awaiting the receipt of the interim report of the strategic review of parading and receiving oral evidence from the Chief Constable before dealing with parades and 50:50 recruitment. If Members are still of that mind, those issues will form part of the agenda for the meeting on 15 January. The Chief Constable will have given his evidence and we expect that the interim report of the parading body will be published by then. Are members content that parades and 50:50 recruitment are dealt with following those two events?

Members indicated assent.

1310. The Chairperson: We do not yet know the timing of the interim report. If members are content, I will make further inquiries as to when the report will be published. I could table a question in the House of Commons to try to elicit from the NIO a date for that. Are members content?

Members indicated assent.

1311. The Chairperson: The fifth issue to be examined relates to firearms. At our meeting on 16 October, we asked the Committee Clerk to prepare a paper on the options relating to the devolution of responsibility for firearms. That paper is available to be tabled, and we will have a look at it when it is tabled. The paper provides details on the options for the functions that might be transferred in relation to firearms. Option one follows the Scottish model in which policy and legislation for all firearms rests with Westminster. Only the authorisation of prohibited firearms would be the responsibility of the Northern Ireland Department of policing and justice.

1312. So that is the Scottish model, which is listed under option 1.

1313. Option 2 envisages the transfer of the current functions that are exercised by the Secretary of State, with the exception of policy and legislation in relation to prohibited firearms.

1314. Option 3 is for Northern Ireland to have full responsibility for firearms. The NIO paper did not discuss that option, and the NIO has indicated that its view is that policy and legislative responsibility for prohibited weapons should remain reserved.

1315. Those are the three options that are available at the moment as regards devolution of responsibility for firearms. To recap; option 1 is the Scottish model, option 2 is the NIO model, if I can call it that; option 3, full devolution of all responsibility. The NIO has noted that its preference remains for the second option, which is to maintain the status quo.

1316. Members, it would be useful if we could reach a decision on this matter today, if possible. Does anyone want to comment on any

of the three options?

1317. Mr McFarland: We are comfortable with option 2.

[Inaudible.]

1318. The Chairperson: I think that the DUP also prefers option 2.

1319. Mr G Robinson: I would be of the same mind.

1320. The Chairperson: Of course, that would not prohibit the devolution of further powers in the future; it is simply a matter of deciding what will happen in the initial phase of devolution.

1321. Carmel, does the SDLP have a strong view on this matter?

1322. Mrs Hanna: I am aware that the party had proposed full devolution of those powers. I usually rely on Alex to give our definitive answer as he is the party's expert and spokesperson on these matters. However, I know that that is the party's view.

1323. Mr McCartney: Sinn Féin's preferred option will remain option 3.

1324. The Chairperson: So, two parties have chosen option 3, and two parties have chosen option 2. Is a way through this to deal with this matter as we may decide to deal with the wider issues and structures of devolution — the Court Service, the Lord Chief Justice's proposals, and so on? We are edging towards a situation whereby we may decide to recommend devolution of the wider powers on the basis of the arrangements that are in place at the moment, with the understanding that this Committee would continue to review the structures of devolution — or another Committee, be it a scrutiny Committee or a Statutory Committee on policing and justice, could do so on our recommendation.

1325. Is it possible that we could handle the devolution of responsibility for firearms in such a way? We could accept devolution on the basis of the status quo, as outlined in option two, but agree that the matter could be reviewed in the early stages of devolution. After devolution has bedded in, we could consider whether we should take on responsibility for prohibited firearms. Is that a possible compromise? It would enable option 3 to remain on the table, but it would just not be part of the first phase of devolution.

1326. Mr McFarland: That would seem to be quite a sensible way forward. Of course, we could reach the stage whereby we leave responsibility for prohibitive weapons with Westminster, and then Westminster could suddenly decide that shotguns are prohibited. At that stage, we would have a fairly serious problem and would have to decide whether we want all weapons legislations here. My sense is that our farmers would not wish for shotguns to be prohibited. It is a sensible way forward in that we are accepting the reality of the situation, while retaining an option for further discussion as the matter evolves.

1327. The Chairperson: Are the SDLP and Sinn Féin happy with the possible compromise that we, as a Committee, would agree to the devolution of the current responsibilities of the Northern Ireland Office, but that we would recommend to the scrutiny committee that will take on the responsibility of scrutinising policing and justice powers that it will take an early look at the issue of prohibited weapons

— firearms — and whether that matter can be devolved after the bedding-in process? It could also be done in the context of a review — although that has yet to be decided, and I do not want to pre-empt what the Committee decides. However, if the Committee were minded to recommend that it accept devolution on the basis of the model it has at the moment — being mindful of what has been said by the Lord Chief Justice, etc, — and that it wants to examine further the potential for evolving the Courts System, and so on, at arm's length, then that would be the subject of an ongoing review, which might be taken forward by the policing and justice scrutiny committee or by the continued work of this Committee.

1328. Mr McCartney: Sinn Féin wants to see all functions transferred. Obviously, I do not think that it would become a blockage to the eventual transfer. Therefore, it would be something that Sinn Féin would come back to. I would like to see the wording that the Committee agrees to, and then Sinn Féin could look at it from that point of view — if that is OK?

1329. The Chairperson: OK.

1330. Mrs Hanna: It would be useful to be able to look at the wording. I do not want to take the decision in the absence of others. However, I understand where you are coming from.

1331. The Chairperson: I understand that. Are members content that I will ask the Clerk to draw up a form of words that will envisage how the matters described in the NIO discussion document of February 2006 about the responsibility for firearms should be transferred, and that something should be added about the future transfer of the powers in relation to policy and legislative responsibility for prohibited firearms? That can then be looked at at our meeting on 11 December.

Members indicated assent.

1332. The Chairperson: The Chief Constable has accepted the invitation of the Committee to give evidence and will appear before the Committee in the Senate Chamber on Tuesday 8 January at 11.15 am. That will be our first meeting after the Christmas recess.

1333. Mr McFarland: Is the Committee meeting at 11.00 am or 11.15 am?

1334. The Chairperson: It will meet at 11.00 am. The first 15 minutes will be taken up with housekeeping and the evidence session will begin at 11.15 am. Members can slot that date into their diaries: it is likely to attract a bit of interest.

1335. I want to return briefly to the issue of the party papers that we had talked about preparing on the outstanding matters in relation to the structure, governance and accountability mechanisms for any new policing and justice Department. At our last meeting, we agreed that we would put those issues on hold, pending the advice that we will receive from the expert witnesses. A preparation pack was distributed to members on 7 November to assist parties in preparing those papers. How does the Committee plan to take that matter forward? I think that it is still content to await the expert advice before presenting the parties' respective positions. However, can members bear in mind the issues raised in the briefing papers from the Clerk and the Assembly's Research and Library Service when considering each party's position?

1336. We need to address not only the evidence and advice from the expert witnesses, but the issues that have been identified.

1337. Mr McFarland: Could the team prepare a new list of questions for the Committee, because the same question has been asked twice and sometimes three times in a slightly different guise? That may help us to clear our minds. There were also issues relating to cross-border matters. Is there any chance of getting a redefined list, as that may clarify and simplify the answers?

1338. The Committee Clerk: That is not a problem. In fact, we did that in the letter of invitation to the expert witnesses, so it is quite straightforward. However, PJ Fitzpatrick is coming on 18 December, and the Committee will have heard from Professor Jackson by that stage. Then the Chief Constable is coming on 8 January. There are still some bits and pieces to do around the issues of parading and 50:50 that may come up during the session with the Chief Constable.

1339. When we spoke earlier about the timetable, I suggested, and the Chairperson expressed the same view, that the model and structures will be the key item for discussion on 15 January. Therefore, if you had the papers from the expert witnesses and shared those with your party support staff to help the development of your responses, essentially, I would need the party papers by 9 January, so that they could be issued for discussion at the meeting on 15 January.

1340. The Chairperson: The target is to have those papers ready by 9 January for discussion on 15 January. That gives us a reasonable amount of time. The Committee Clerk will arrange for the revised list of questions to be issued to us.

1341. The Committee Clerk: It would be preferable to have them by lunchtime on 9 January, so that we can get them copied and distributed.

1342. Mr McFarland: Are we agreed that we will receive a copy of the revised list of questions by 1.00 pm?

1343. The Committee Clerk: Yes.

1344. The Chairperson: I would be grateful if you could remind members of that in an email.

11 December 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

1345. The Chairperson (Mr Donaldson): I remind members that Hansard staff are present for this session on the inquiry into the devolution of policing and justice matters. I ask members to declare any relevant interests that they may have. I declare an interest as a member of the Policing Board and as a member of the Privy Council.

1346. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

1347. The Chairperson: Thank you. In relation to the matters that are to be transferred, two outstanding issues remain to be dealt with: future powers of the Army to operate in support of the police; and powers relating to the misuse of drugs.

1348. The Committee Clerk wrote to the Northern Ireland Office on 15 October requesting clarification on what the NIO discussion document of February 2006 said about the future powers of the Army to operate in support of the police. The discussion document stated:

“Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved.”

1349. Members will see from the relevant briefing paper and the attached NIO letter that the Secretary of State believes that it would not be appropriate for the military-support powers that are contained in the Justice and Security (Northern Ireland) Act 2007 to be devolved. The military-support powers that are contained in sections 21 to 42 of the 2007 Act will continue to be available on the request of the Chief Constable in order to provide support for the police.

1350. The letter from the NIO also refers to the fact that powers in the Act apply to the police as well as to the military. As stated in the briefing paper, the Committee Clerk has responded to the NIO requesting clarification on whether the Chief Constable would need to make a request to the Secretary of State in order to invoke the powers that have been conferred on the police, for example, the power of entry, which is provided for under section 23 of the 2007 Act. The letter indicates that the Secretary of State would seek to involve the devolved Ministers as far as possible in the review of the operation of those provisions and in decisions about their repeal.

1351. The Committee Clerk has responded to the NIO requesting clarification on whether the Secretary of State will seek to involve the Minister — or Ministers — in individual operational decisions or in decisions about whether those powers should continue to be reserved. It might be best, therefore, to await further clarification from the NIO on the issues that the Committee Clerk has raised before seeking to establish whether there is consensus in the Committee that those matters should not be devolved. Are members content to proceed on that basis?

Members indicated assent.

1352. The Chairperson: Powers relating to the misuse of drugs were raised as a result of the written submission from the Scottish Cabinet Secretary for Justice that stated that the Scottish Parliament could, in the future, take direct responsibility for the law on drug abuse. A response was received from the NIO on Thursday 6 December and was issued to members. That states that the majority of functions under the Misuse of Drugs Act 1971 are already exercised by the Department of Health, Social Services and Public Safety as they relate to Northern Ireland and are therefore already devolved matters.

1353. There are two remaining substantive functions that fall to the Home Secretary on a UK-wide basis: determining the classification of controlled drugs; and making appointments to the Advisory Council on the Misuse of Drugs. There are no plans to devolve these two functions at the moment.

1354. Thirdly, the responsibility for appointing legal members of tribunals will transfer to the First and deputy First Ministers, acting

jointly, reflecting their responsibility for appointing judges.

1355. Fourthly, the responsibility to appoint members of any advisory body will transfer to the Department of policing and justice. Therefore, on the misuse of drugs, by far the majority of powers and functions are either devolved already, or will be devolved on devolution.

1356. There are really only two main outstanding issues that will continue to be dealt with on a UK-wide basis. That is the position from the NIO at the moment. All of that is without prejudice to the ability of the Assembly to seek devolution of further powers in the future. The question is whether, at the moment, we are content as a Committee to recommend that the arrangements as proposed, with the exception of the two remaining substantive functions — on the classification of controlled drugs and the making of appointments to the Advisory Council on the Misuse of Drugs — be part of the devolution. All the other matters transfer on devolution or are already transferred under the Misuse of Drugs Act 1971 and exercised by the DHSSPS.

1357. Ms Ní Chuilín: Regarding the two main points for this Committee, there is consultation ongoing with the Department of Health about whether to defer that regulation to Westminster. The matters will be decided on the outcome of that consultation.

1358. The Chairperson: Indeed, and as I have said, all of that is without prejudice. The Assembly could of course, in the future, ask for any of those powers to be devolved.

1359. Ms Ní Chuilín: If I agreed the matter today, it would almost hamstring work that we are doing in the Health Committee.

1360. The Chairperson: I appreciate that. I am quite prepared to accept, as I have indicated on other issues, a form of words in the report to the effect that the Assembly proceeds on the basis as proposed, but without prejudice to the Assembly requesting devolution of further powers. We could find a form of words that overcomes your difficulty.

1361. Ms Ní Chuilín: It could be Carmel's, too.

1362. The Chairperson: I suppose at the moment, pending that review — and we might refer to it in the text of our report — the Committee is being asked if there is consensus on at least those functions and powers that are proposed to transfer on devolution, and if there are any of those that we do not want to accept. That is without prejudice to the ability of the Assembly in the future to request the transfer of the remaining functions. Are members content to proceed on that basis? Nothing is agreed until everything is agreed, but we are at least trying to build up the report to something that we can set down in front of you to look at the wording. If we were to draft something on that basis would members be happy to look at that, and do we have consensus on that basis?

Members indicated assent.

1363. The Chairperson: We will revisit the final issue to be addressed, which is the future powers of the Army to operate in support of the police, as soon as we get further response from the NIO. Members, you will recall that parties had given a commitment to bring forward papers for discussion following submissions from the expert witnesses. Papers are expected to address the issues raised in the recent research papers with regard to the structure, governance and accountability mechanisms required in any Department. I remind members that those papers need to be submitted by midday on 9 January 2008. Obviously, we came to a point where we reckoned that we needed more expert advice, so we are getting that, and after that, we hope that parties would be in a position to submit their

papers by midday on 9 January. There was a preparation pack distributed on 7 November to assist parties in preparing papers, which included a list of the issues that parties may wish to address. The pack was also issued by email. I ask members to bear in mind the issues raised in those papers by way of preparation for the oral evidence session on 18 December with the expert witnesses. Members, that is all the substantive business that I have today. We have a draft press release, which will be circulated. It is more about next week's meeting than it is about this week's meeting — it is really just giving notice of our evidence session next week. Are members content with that?

Members indicated assent.

18 December 2007

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mr Danny Kennedy

Mr Alan McFarland

Mr John O'Dowd

Mr George Robinson

Witnesses:

Mr P J Fitzpatrick Chief Executive, Courts Service of Ireland

Professor John Jackson Queen's University Belfast

1364. The Chairperson (Mr Donaldson): Good morning. As part of the Committee's inquiry into the devolution of policing and justice matters, I welcome Mr P J Fitzpatrick, chief executive officer of the Courts Service of Ireland to today's evidence session. Mr Fitzpatrick has provided a written submission setting out some issues that the Committee might wish to explore with him.

1365. We appreciate the time that you have taken, Mr Fitzpatrick, not just to provide us with a written submission but to join us today. It is, perhaps, somewhat unusual but not unprecedented that we should have a witness from a different jurisdiction, and we are delighted to have you with us this morning. We are also pleased to see your colleague, Mr David Lavery, the director of the Northern Ireland Court Service.

1366. I would also like to acknowledge the assistance kindly afforded to the Committee by Justice Denham, who recommended Mr Fitzpatrick as a suitable source of advice for our inquiry. As you will be aware, Mr Fitzpatrick, the Assembly has tasked the Committee with responsibility for considering the preparations that must be made in advance of the devolution of policing and justice powers from Westminster to the Northern Ireland Assembly and the Executive. We are very pleased that you have so willingly offered us your expert advice.

1367. We are particularly interested in the Irish courts system. We have taken evidence from a number of interested parties who have

suggested that, in Northern Ireland, we may wish to pursue changes to our system that would reflect the arrangements currently in place in the Republic, particularly with regard to the independence of the Courts Service of Ireland from the Department of Justice, Equality and Law Reform. We have been examining that situation carefully and are keen to explore with you how the system works in practice, the evolution of the courts service under the new arrangements, and its relationship with the Department. One of the Committee's main concerns is to ensure that proper lines of accountability exist between the courts service, the judicial system, the legislature and the Executive. We will be keen to explore that in some detail.

1368. First, I invite members to declare any relevant interest. I declare an interest as a member of the Privy Council and the Northern Ireland Policing Board.

1369. Mr G Robinson: I have no interest to declare other than as a member of my local district policing partnership.

1370. Mr P J Fitzpatrick (Courts Service of Ireland): Thank you for your kind invitation, Chairman. As you said, Judge Denham and our chief justice were anxious that we should assist the Committee in whatever way possible. Judge Denham asked me to tell Committee members that if they wish to meet her at a later stage in their deliberations, she would be happy to oblige. I am very pleased to assist the Committee with its important deliberations.

1371. In the paper that I forwarded to the Committee ahead of today's meeting, I sought to describe the arrangements in the Republic of Ireland and, in so doing, to address the list of issues that the Committee Clerk sent to me. I do not propose to repeat the content of that paper in detail.

1372. The working group on the courts commission, which was chaired by Mrs Justice Denham, a judge of our Supreme Court, studied examples of courts administration throughout the world. The working group concluded that an independent courts service, with a board chaired by the Chief Justice and containing majority representation from the judiciary, provided the best solution to the need to strike a balance between appropriate judicial independence and accountability to Government.

1373. The recommended model has worked well. I was recruited as the first chief executive of the Courts Service of Ireland. I did not work in the courts previously, and I am not a lawyer — I came from elsewhere in the public sector. I had been a chief executive and had therefore been used to a non-commercial state body, which is the term used to describe public bodies in Ireland that are other than ministerial Departments.

1374. I am very happy to share our experience with the Committee, but, in doing so, I am very conscious that each jurisdiction, or country, must design and develop a courts system that is suitable for its jurisdiction and that provides confidence for its communities. Having said that, there are many similarities in our respective legal systems and in the problems we face.

1375. Recently, I was asked to assist the Scottish Court Service with its plans to become a non-ministerial Department. It is appropriate that I take the opportunity to place on record in this forum that the courts administrations of the United Kingdom and of the Republic of Ireland have forged very strong links and maintained regular liaison over several years, with a view to sharing ideas on issues and challenges of common interest, of which there are many. I pay particular tribute to my counterpart David Lavery and his colleagues in the Northern Ireland Court Service, with whom we have established a particularly warm relationship and an excellent productive dialogue.

1376. With your permission, Chairman, I will make a few comments on the list of specific issues that were sent to me. I will do so in the order in which they appear on the list, after which I will be happy to answer questions from members, in so far as I can.

1377. The first issue is accountability, which you mentioned in your opening remarks, Chairman. Under the legislation, the Courts Service of Ireland is accountable to the Minister for Justice, Equality and Law Reform, and, through the Minister, to the Government. It is also accountable to the Oireachtas. I am the accounting officer for the Courts Service and as such I am obliged to appear before the Committee of Public Accounts annually as regards the appropriation accounts.

1378. I appear before other Committees frequently, for example, the Joint Committee on Justice, Equality, and Law Reform, and the Joint Committee on Health and Children, which had concerns about children's courts, social inclusion and drugs. I appear before many Committees in my capacity as accounting officer.

1379. Members will see from my paper that the Courts Service must have regard to any policy or objective of the Government, or a Minister of the Government, concerning its functions. The Courts Service must submit a strategic plan to the Minister for approval every three years, which, when approved — with or without amendments — the Minister must lay before both Houses of the Oireachtas.

1380. The Courts Service also submits an annual report and such other information that the Minister might require. An obvious example would relate to parliamentary questions. We have a very tight time frame for turning those around to ensure that the Minister is in a position to answer them.

1381. The bulk of funding for the Courts Service is provided by the Government. It seems to me that an independent, non-commercial state body is independent to the extent that legislation, funding and other governance arrangements allow it to be. It is not, and never could be, independent to the extent that the Courts Service or any other independent, non-commercial state body in Ireland could do its own thing irrespective of the wishes of the Government. That is not possible, and I suspect that if we were to attempt to do that, we would be abolished quickly.

1382. In Ireland, judicial independence is provided for, primarily, in a written constitution. There is specific provision in the legislation establishing the Courts Service to protect the independence of the judiciary. The chief executive — not the Chief Justice — is the accounting officer and must appear before Oireachtas Committees. Legislation precludes the Courts Service from functioning in such a way as to interfere with the conduct of court business by judges or to impugn the independence of the judiciary in performing its judicial functions.

1383. The law also precludes me or any chief executive from answering before the Oireachtas any question relating to the exercise of a judge's judicial functions. However, in the event of a dispute as to whether a question constitutes a judicial matter, either the committee or I, or both, can refer to the High Court for a ruling, although that has never happened.

1384. As regards who is responsible for determining policy, the division of responsibility between the Courts Service, the Minister and Government can be summarised as follows: the Minister is responsible for policy for the justice sector generally and for legislation; the Courts Service determines operational policy for the Courts Service; for example, prioritisation of capital building programmes, capital ICT projects, etc.

1385. The Courts Service board is free, within the constraints of its strategic plan, which is approved by the Minister, to allocate

resources within the funding and staff numbers that have been approved by Government.

1386. As regards the mix of judicial, lay, and other membership of the board, membership includes judges, representatives of court users, both sides of the legal profession, an officer of the Minister for Justice, Equality and Law Reform, and so on, and that mix has worked well. The Courts Service has had a great deal of consensus and I cannot recall ever having had a vote to resolve an issue. All members contribute equally, and there is no inhibition or constraint on a non-judicial member contributing in the same way as a judicial member. In fact, the Chief Justice who chairs the board would probably ensure that the balance falls in favour of non-judicial members, and that is important.

1387. The board determines policy for the service and oversees the implementation of policy by the chief executive. It appoints the chief executive, and the chief executive holds his or her contract with the board and has no other reporting arrangement other than to the board. In other words, the board hires and fires the chief executive — if that situation were to arise.

1388. I have been with the Courts Service since it was established in 1999, and the involvement of judges on the board was the single most important recommendation — after the recommendation to establish a Courts Service — contained in the working group's report. Judges were concerned about how that might impact in the separation of powers, and what impact it would have on their judicial functions. After lengthy and careful consideration, the working group concluded that it would be appropriate for judges to work alongside others on a board, given that the functions of the service were concerned with the management and administration of the courts, rather than the administration of justice itself.

1389. I have no doubt, whatsoever, that had that not happened; much of our success would not have been possible. There is little that we do — or that we can do — that does not require the support and engagement of the judiciary. The Chief Justice, the president of each court, and a judge who is elected by his colleagues, are on the board. That has made it significantly easier for me, as chief executive, to obtain the engagement, co-operation and assistance of judges — at all levels — in implementing what is, by Irish standards, a radical change programme to a system that had remained virtually unchanged since the foundation of the state. That is what the working group has said and not what I am saying.

1390. The change programme, for judges and staff — and for the people who use the courts — has been huge. An example of that change can be seen in the fact that, in 1999, there was no email facility as court buildings were not cabled for IT. There are lots of other examples, but I will not bore you with them.

1391. One good example of change has been the establishment of a new commercial court. We were aware of the serious problem with regard to inward and foreign investment in that Dublin lacked a court that could resolve major, complex commercial disputes speedily. Through our reform and development directorate, and through our representation on the Superior Court Rules Committee, we were able to develop — with the judiciary — the commercial court case management regime and many other initiatives on rationalisation of procedures and case management. Much of that would not have happened, or would have been significantly more difficult to achieve, had the judges not been on the board, both the presidents and judges who were elected by their colleagues.

1392. I was also asked to talk about legal aid. The Courts Service does not have any responsibility for legal aid. There is a civil legal aid board, which is another independent board. Criminal legal aid is undertaken by the Department of Justice, Equality and Law Reform directly. Judicial appointments do not fall within the Courts Service's remit. There is a judicial appointments advisory board, which is a statutory board that makes recommendations to the Government about judicial appointments. The Courts Service provides secretarial and administrative support for that board simply because there is no one else to do so.

1393. I will mention early warning systems, which is something that was not included on the list of issues. One critical issue for any independent body is having early warning systems for the Minister and the Government. At the outset, we put mechanisms in place that were quite apart from the accountability provisions that were set out in the legislation. We put those systems in place so that if an incident occurred in the courts in Kerry or Cork, the Minister's office — and the Secretary-General of the Department — would be alerted immediately. That works both ways; they alert us to issues that would be raised in the Dáil and to those that the Minister encounters as he goes around the country. That early warning system was vital and has worked well so far.

1394. Another important point is the relationship between the independent body and its parent Department. Earlier, I said that a body is as independent as the legislation and funding allows it to be. The Courts Service could not work without a good, constructive working relationship with the Department of Justice, Equality and Law Reform. From the outset, we sought to ensure that we would have such a relationship. I meet the Secretary-General every fortnight and I, certainly, talk to him every week. Staff at different levels do likewise with their counterparts in the Department. The Chairman and I meet the Minister, regularly. Obviously, I am giving you a Courts Service perspective on that relationship. However, last week, I took the opportunity of talking to the Secretary-General about my visit to the Assembly and I asked him if he had a perspective on it. I did so, because, the Committee is entitled to say that that is my perspective. The Secretary-General, Sean Aylward, asked me to say that:

"The arrangements have surpassed the Department's expectations."

1395. He also suggested that, if the Committee considered it to be useful, he would be happy to talk about how the system has worked from his perspective. There are two parties in the relationship. He asked me to emphasise the fact that he would be happy to talk to the Committee, or the Secretariat, or to meet with the Committee and its Chairman.

1396. The Courts Service is staffed by civil servants, so there is movement to and from the wider Civil Service. In fact, there is more movement now than there was before the Courts Service was established. Our establishing legislation is quite similar to that for any other independent non-commercial body.

1397. Again, thank you Chairman and members for your invitation, and I hope that my visit will assist the Committee in its very important deliberations. I repeat that every country and jurisdiction must design systems that are appropriate for them. I have described our system, which works well for us. Some elements may be of help to you, and, if I can be of any further assistance to you by answering questions or providing clarification, I am happy to do so.

1398. Finally, I wish the Committee every success during the coming months in its very important work.

1399. The Chairperson: Thank you very much, Mr Fitzpatrick. That was very helpful. You have given us a very useful summary of the benefits of the independence of the Courts Service, as you see them, and useful information on accountability, which I mentioned at the outset.

1400. What have been the top three benefits of the Courts Service's having moved from being an integral part of the Department to being separate from it with the lines of accountability that you have discussed?

1401. Mr Fitzpatrick: To answer that, I must talk about the context in which the Courts Service was set up. The courts system had remained virtually unaltered since the establishment of the state and was light years behind the rest of the public service. The courts

lagged behind even the rest of the justice sector.

1402. The main benefit of setting up the Courts Service was that there would be a dedicated agency with an agenda to modernise and manage the courts — there would be a single focus. For example, the organisation would not be trying to manage the courts, the Garda Síochána and so on. There would be an organisation with the single task of bringing the courts into the twenty-first century.

1403. The second big benefit was, without doubt, involving judges on the board of the Courts Service. I omitted to say earlier that not only are judges on the Courts Service board, they are on all of the committees, including the building committee, the ICT committee, and the family-law development committee. The total number of judges involved at any one time — between the board and committees — could be 40 or thereabouts.

1404. Had the Chief Justice, presidents and judges not been on the board, judges would have been reluctant to have become involved in committees, because the issue of the compatibility of doing so vis-à-vis the separation of powers would not have been teased out, as it was by Justice Denham's working group. That has been hugely important.

1405. We have also been able to have people representing users on our board. We have a big board, but we cannot be representative of all users. However, as you know, there is a strong social-partnership agreement between Government, the employers and the trade unions, so our board has representatives from business, the congress of trade unions and the law profession, as well as somebody to represent users. In addition, we have set up user groups on a structured, formal basis, so we have national user groups for criminal, civil, family law, and so on. We have regional user groups. Therefore, the Courts Service receives feedback from people who use the courts, and a mechanism has been provided for them that did not exist before. The other benefit of that is the sense of ownership.

1406. Since the Courts Service has been established, it has been fortunate that its budget, particularly with regard to capital, has been quite good. However, its revenue budget has been quite tight. The judges' presence on the board means that there is greater appreciation that the board determines priorities and that there will never be enough money in any public sector body to go around. People ask how that would work if times were difficult and there were reductions in spending. At present, the judges' view is that, at least, they would still be in a position to influence the areas in which reductions in spending would happen, at a policy level, rather than those being imposed and, therefore, there being no sense of ownership.

1407. The Chairperson: That was helpful. I invite members to ask further questions.

1408. Mr O'Dowd: I thank Mr Fitzpatrick for his useful presentation. I noted in his comments that he is the board's accounting officer and that he reports to the various Committees. As Chairperson of the Public Accounts Committee in the Assembly, I have a particular interest in the matter and would be more than keen to have the Courts Service before that Committee in the future. Mr Fitzpatrick said that he reports to the various Committees and that the Chief Justice is the chairperson of the board. Who holds the Chief Justice to account?

1409. Mr Fitzpatrick: The board is accountable to the Minister and, through the Minister, to the Government for the performance of its functions. The reason that I am its accounting officer is because in the Republic of Ireland, due to the separation of powers and the written constitution, there is a clear separation between the Executive, the judiciary and the legislature. It is for those reasons that the Secretary-General of a Government Department and, in most cases, the chief executive is the accounting officer.

1410. However, in some non-commercial state boards, the chairman could be, and has been, summoned to appear before an Oireachtas Committee. The specific provision in the Republic's legislation is that the chief executive appears before the Committee of Public Accounts and other Oireachtas Committees. If the Minister has a serious concern, however, he or she would write to the chairman of the board. Formal communication would normally take place between Minister and chairman and between Secretary-General and chief executive at a formal level. Obviously, at an informal level, I would meet the Minister. At formal level, the chairman would meet the Minister. In doing so, the Chief Justice would act in an administrative capacity, rather than in a judicial capacity, as chairman of the board. He would only be accountable for the functions of the Courts Service, not for his other, different role as head of the judiciary. I understand that that is somewhat confusing. There are two distinct roles: one is to be head of the judiciary and the other is to be chairman of the board.

1411. Mr O'Dowd: I want to tease that out. I appreciate the answer and the clarification. However, the reason that I asked the question is because the judiciary has the majority of seats on the board and because the Chief Justice is the chairman of the board. Mr Fitzpatrick explained that the structures work well so far. Clearly, the judiciary has an important role to play in running the board and in the Courts Service. However, an important element would be to ensure that it does not become an overly dominant force in that structure. How is that ensured?

1412. Mr Fitzpatrick: That certainly has not happened. The judiciary has not sought to dominate the board. In fact, there has been consensus at board level. The Chief Justice, who chairs the board, seeks to ensure that the voices of non-judicial members are given the opportunity to be heard. Therefore, domination by the judiciary has certainly not been the experience. I suppose that it could happen if it were the majority in a polarised board. However, that has not happened.

1413. The judiciary also appreciates that the other people on the board — from the business world, the Irish Congress of Trade Unions and the Department of Justice — bring a different perspective of which judges may not be aware. It is, therefore, helpful to have that perspective.

1414. A huge amount of the work is done through the committees. Therefore, many items that come to the board have been agreed and recommended by a committee. The committee system has worked well. There are a number of non-board members on committees, such as judges. Judges do not make up the majority on any committees; I cannot think of any committee on which that is the case.

1415. Mr McFarland: I am sorry that I missed the beginning of your presentation. I am a layman to most of this — unlike some of my lawyer friends. Are the Minister or the Oireachtas committees entitled to call the Chief Justice to explain to them why something has gone wrong if they are unhappy with some administrative problems in your Courts Service? Any major mess-ups in the Courts Service are, ultimately, the responsibility of the board which, in turn, is answerable to the Minister. Can the Minister summon the Chief Justice or the board to explain what has gone wrong?

1416. John O'Dowd touched on the issue of accountability, and that is what we are trying to explore. I am happy that a degree of independence is required for things to run themselves. However, if the legislature makes the law and provides the money to enforce it, the people whom the legislature represents — the public — will want someone to explain what has gone wrong and why it has gone wrong. The Minister will have to stand up in the Oireachtas and explain that the Courts Service collapsed in a heap and that everything is a shambles, and there will have to be an explanation as to why that is the case. How is that problem tackled in your jurisdiction?

1417. Mr Fitzpatrick: Thankfully, such a situation has not arisen. However, if it were to happen, I cannot see anything in the legislation that precludes the Minister from writing to, or raising an issue with, the chairman of the board. I am the accounting officer, and I attend the Committee of Public Accounts and other Oireachtas, or parliamentary, committees. There is nothing in the legislation to preclude the

Minister from taking up an issue with the board through its chairman. It has not happened, but if something did go horribly wrong, the Minister is permitted to talk to the committee chairperson about it, because the Courts Service and the board are accountable to the Minister: the legislation is clear on that.

1418. Mr McFarland: We have powerful Committees, and I presume that you have the same. Our Committees have powers to summon and papers. Can your committees summon you as a matter of legal right? Can the Minister summon the chairman of the board as a matter of legal right? Or is he merely invited to have a word with the Minister?

1419. Mr Fitzpatrick: I get invited to the Committees all the time, but those invitations are more of a direction to attend.

1420. Mr McFarland: Do your committees have the power to summon you? I understand that there is not a problem with this when things are working well. However, a difficulty will arise when there is some drama in the Courts Service about which it will be tentative. Does the Courts Service have the power to refuse to appear before an Oireachtas committee or a Minister?

1421. Mr Fitzpatrick: I do not have that option. I shall attend committees; that is clear. There is no provision for the chairman to attend. I do not envisage a situation in which the chairman will attend an Oireachtas committee, because he is the Chief Justice. In view of the separation of powers, there is no situation in which the Chief Justice or judges will appear before an Oireachtas committee. However, I see no reason why the Minister would not raise any concerns with the chairman or with the entire board.

1422. Mr McFarland: The separation of powers is to do with their judicial responsibilities, which has traditionally been the position of judges. The difficulty is that in our case the Lord Chief Justice has proposed that judges become administrators, which has already happened in the Republic of Ireland. There is an absolute separation of powers when judges wear their legal hats but, as they will wear two hats in the future, it could be argued that the moment that they put on an administration hat the separation of powers will not have the same effect. People will want them to be accountable and able to be summoned when they wear their chairman/administration hat, and it would be perfectly legitimate for the legislature and the TDs to expect them to explain administrative problems, which they clearly would not be able to do in their legal role.

1423. I appreciate that this all hypothetical, but we are trying to devise a system that learns from current practice. We have had the Scottish and Irish models recommended to us, and we would like to hear your thoughts on the matter before we plump for one system or the other.

1424. Is there a problem with judges being administrators, and then potentially hiding under the separation of powers because they are judges?

1425. Mr Fitzpatrick: It was never contemplated that the Chief Justice would appear before an Oireachtas committee, and that has never happened. There is nothing to stop the Minister raising an issue with the Chief Justice as chairperson of the board about the functions of the board or a matter that the Minister was uneasy about.

1426. Mr McFarland: Is that a legal right of the Minister?

1427. Mr Fitzpatrick: The Act says that the board is accountable to the Minister for the performance of its functions, so it seems logical that if the Minister had a concern he would be entitled to raise it with the chairman of the board and the entire board.

1428. The specific provision that I referred to was the appearance before Oireachtas committees, which was never contemplated, and that is why a particular provision was included to allow me, as the chief executive, to be the accountable accounting officer. The service, however, is accountable to the Minister. In those circumstances there is nothing to prevent the Minister raising an issue with the chairman of the board.

1429. The Chairperson: It would appear from your paper, Mr Fitzpatrick, that in respect of your role as accounting officer you cannot be requested to give account for any matter relating to:

“(a) the exercise by a judge of his or her judicial functions

or

(b) the exercise by a person other than a judge of limited jurisdiction of a judicial nature”.

1430. There is a very clear and defined separation even in your role. While you can give account of general administration, you cannot be held to account by committees of the Oireachtas in respect of the functions of a judge.

1431. Mr Fitzpatrick: Exactly, Chairman. There are potentially some grey areas, and there is a provision that in the event of a dispute — which has never happened, by the way — between the Oireachtas committee and the chief executive either can refer the question to the High Court for a ruling. When I draw attention to the fact that that is a judicial function, by and large that is accepted. Otherwise, I am happy to deal with whatever questions I am asked.

1432. Mr McCartney: In your written submission you say that the term of office for board members is generally three years. Who determines when a person leaves the board? Is it the nominating body, or the board?

1433. Mr Fitzpatrick: It depends. The Chief Justice, the presidents and the chief executive are ex officio members of the board. The president of the Law Society and the chairman of the Bar Council, or their nominees, are members of the board, and they can either sit on the board themselves, or nominate someone else. The others are nominated for three-year terms, and this is the third anniversary of our establishment. The membership is not staggered, and there could conceivably be a high turnover, although that has not tended to happen. Unlike some boards, where half the members leave at one time and the remainder leave later, the membership of the board is fixed at a term of three years, which is relatively short.

1434. Mr McCartney: Is it possible for someone to stand down after three years and immediately be renominated?

1435. Mr Fitzpatrick: There is nothing to prevent that. In fact, it has happened, and a small number of people have been on the board for three terms, but others change regularly.

1436. Mr McCartney: Has the Chief Justice, who has the power to nominate another judge in the Supreme Court, remained as chairperson since its inception?

1437. Mr Fitzpatrick: Three Chief Justices, one of whom retired soon after our establishment, have held that position. Mr Justice Ronan Keane then became Chief Justice, and he asked Judge Denham to chair for about four or five months before he retired. The current Chief Justice, the Honourable Mr John L Murray, chairs the board now. Therefore, with the exception of a few months, the Chief Justice has chaired the board.

1438. The Chairperson: Who develops and sets sentencing policy under the current arrangements?

1439. Mr Fitzpatrick: Some of it is set out in legislation, and the Appeal Court lays down guidelines, but there is no sentencing body. There are proposals to establish a judicial council, and it is envisaged that sentencing policy might be incorporated into its role. However, at present, sentencing is mostly set out in legislation — and that is limited mainly to mandatory sentences, such as for murder. Other than that, the Appeal Court decides the sentences.

1440. The Chairperson: Is there discussion, from time to time, between the Department and the board on sentencing policy?

1441. Mr Fitzpatrick: No, because sentencing is more of a judicial role. In the absence of anyone else, the board decided, on the instigation of the Chief Justice, to establish a committee to prepare for judges information on the sentencing in different courts. It was titled the committee to provide information on sentencing, because the provision of sentencing guidelines for judges would have been a step too far beyond our remit.

1442. Given that there was no one else to provide the information, the board decided that the next best thing was to set up the committee, which is currently collating information on sentencing to circulate to judges to inform them about how their colleagues are setting sentences, and so forth. It is being done in a vacuum because there was no one else to do it.

1443. The Chairperson: This may be an unfair question, but if you were able to design a solution, how would you want that vacuum to be filled? Would the current arrangement of a committee of the board be made permanent, or is there a better option?

1444. Mr Fitzpatrick: Sentencing policy should fall within one of the several remits of a judicial council that would also be responsible for judicial training. That is probably the logical home for sentencing eventually.

1445. The Chairperson: Sentencing limits and mandatory sentences are set down in legislation in the Oireachtas. Where is the connection between that arrangement and the Oireachtas in setting sentencing limits?

1446. Mr Fitzpatrick: The legislators set the sentencing limits where there are mandatory sentences.

1447. The Chairperson: Should the judiciary desire sentences for murder to be strengthened in some way, how would that be communicated to the legislature?

1448. Mr Fitzpatrick: If problems were to arise in the courts, there is a judicial support unit in the Courts Service. Under the Courts Service Act 1998, we have the option to make proposals to the Minister.

1449. The Chairperson: Does the board make those proposals?

1450. Mr Fitzpatrick: We bring the proposals to the board. However, it is a sensitive area, because the judges are concerned about the separation of powers, but they are equally concerned that they do not trespass on the legislators' role. Therefore, judges will be careful about interfering. They see it as the function of the legislators and the executive to legislate and for them to implement the legislation.

1451. There is a unit that is involved in modernising court rules, practices and procedures. It has a close working relationship with the Department of Justice, Equality and Law Reform. It sometimes address issues that are causing concern or that are presenting difficulties in the courts. It is a tricky situation at times.

1452. Mr Attwood: Mr Fitzpatrick, it is always useful for the Committee to get real-world evidence. You have certainly helped in that regard. You may have included this in your written submission, but if you have not, and if you have the time, it may be useful if you could send a note to the Committee elaborating on the roles of the national user group and the regional user groups. While it may not be immediately relevant to the Committee's work, it may be useful in the longer term to consider models of that sort.

1453. I was a little surprised that you said that the reason the Denham report went in the direction that it did was to bring the Courts Service into the twenty-first century. I can understand that. Were there other reasons as to why that model was preferred? There is a perception that the Department of Justice, Equality and Law Reform in the South has had a big influence on the management of the criminal justice system. Was that a factor in leading Susan Denham to make the conclusions that she did? Would there have been resistance from the judiciary regarding the model that Justice Denham came up with? Would it have preferred one of the various other models? Were there a number of factors that led to the outcomes that are now in place, rather than the managerial factors that you have suggested?

1454. Mr Fitzpatrick: In relation to the first point, I have no problem providing the Committee with a description of the user groups, their memberships and the arrangements that are in place, because they are very good. I will send that to the Committee.

1455. I became chief executive officer of the Courts Service in 1999. I have no recollection of any concern about interference in judicial functions contributing to the establishment of the Courts Service. The first report of the working group sets out the reasons for its decisions. That report shows that those reasons had more to do with the state of the service, including the lack of investment and the lack of modernisation.

1456. There was an unusual situation in which local authorities or county councils were responsible for the buildings, even though, in some cases, they rarely used them. Therefore, many of the buildings — which were fine buildings — were closed because there were dangers of ceilings falling in, and so on. The buildings were in a poor condition with literally no ICT, and I am talking about less than 10 years ago. The training budget for 1,000 members of staff nationwide was €5,000 and manual systems were all over the place, for example. We managed €1 billion in respect of wards of court and for minors who had been made wards of court. That was all done in ledgers with 22,000 separate accounts.

1457. As I said earlier, at that time some judges did have grave concerns about being involved and about the new proposal because of the issue of the separation of powers. There was an element of people simply being used to a certain system that they knew well.

1458. A couple of major incidents happened in the 1990s; one, in particular, concerned the delisting of a judge from the Special Criminal Court, which created major difficulties for the Minister at the time. Overall, there was probably very little interference. The judges'

concern was that insufficient resources were being put into the courts. It was to do with the state of the courts, rather than with interference.

1459. Mr Attwood: It is interesting that the argument that you have restated is not applicable in the North. Our Court Service has been and continues to be modernised substantially. My second question arises from that. I am mindful that you are a civil servant —

1460. Mr Fitzpatrick: I am sorry; that is not so. I am on a contract.

1461. Mr Attwood: Then you are much freer to answer my question. Would it make much difference if the Courts Service board were to be chaired by the Minister, and if its majority membership were non-judicial? Do you see advantages to that situation? Would it give a greater sense of accountability, or an even wider sense of ownership, bearing in mind what the Courts Service does? In your professional judgement, and with your nine years' experience, do you think there would be advantages if the Minister chaired the board, the majority of members was non-judicial, but everything else was kept as it is?

1462. Mr Fitzpatrick: The model that we have is not unusual in the Republic. We have a lot of state boards, which are responsible for the operational side of the business — local authorities, for example. Ministers retain accountability and policy-making functions.

1463. We have no agenda, except to modernise, develop and manage the courts, so we have a single focus. Having worked in that capacity for nine years, my considered opinion is that much of what we have done would not have been possible without the involvement of the judges at the highest level. The Chief Justice, the presidents and judges elected by their colleagues are on the Courts Service board. Other judges followed and became involved in committees. I was surprised at the extraordinary amount of interest that many judges took in getting involved and influencing decisions. They sit in the courts, so having them outside was unthinkable.

1464. One judge explained to me that the product of our system is a judgment, whether written or summary. Everything else — buildings, IT systems, or whatever — exists to help produce the product. If the judges, who deliver the product, are not involved, they would be outside the system. I do not wish to labour the point, but that is the greatest benefit that our system offers. It helps me to introduce a huge programme of change.

1465. Mr Attwood: What the Committee hears is that it is important to have members of the judiciary involved in many dimensions of the life of the courts and the administration of justice. The Committee should listen and reflect upon that in making its final report.

1466. My question, however, was whether there might be a greater sense of ownership and a greater level of appropriate accountability if the Courts Service board were to be chaired by the Minister for Justice, Equality and Law Reform and if the majority of its membership, although including a heavy judicial involvement, were to be non-judicial. Would that enhance the sense of accountability and ownership around the administration of the Courts Service?

1467. Mr Fitzpatrick: That is difficult to answer. I am not aware of any board in Ireland that would have a Minister as its chairperson. There is a deliberate policy of Ministers keeping a distance from the executive agencies. The agencies do the day-to-day work and, if something goes wrong, Ministers hold them accountable. Otherwise, Ministers would, on the one hand, be involved in developing policy and, on the other, in its implementation, and that could become difficult. Our experience in the South is of boards not dissimilar to our own.

1468. Mr Attwood: I appreciate your point; however Alan McFarland's point was that the Chief Justice in the South has a dual role. He chairs your board, and he is a senior judge. Let us suppose that the Minister, or someone representing the Minister, chaired your board with a reconfigured membership. In effect, the Justice Ministry would have a couple of roles rather than the Chief Justice chairing the judiciary and the Courts Service board. Would that not create more accountability and a greater sense of ownership? I have asked that question three times, and maybe that is enough.

1469. Finally, is there a criminal justice board in the South, on which representatives from the entire criminal justice family can sit together on a statutory basis?

1470. Mr Fitzpatrick: Not on a statutory basis.

1471. Mr Attwood: Is there a non-statutory model, in which everybody sits down together on an ongoing basis, including judges and representatives of the Courts Service, the Probation Service, the Justice Ministry and the High Court?

1472. Mr Fitzpatrick: No, we do not have a statutory criminal justice board. However, the Courts Service participates in meetings within the justice sector, including with the Garda Commissioner, the head of the Prison Service, the head of the Probation Service and a range of other agencies. Judges are not directly involved in those discussions, but, if issues arise, I will talk to the judges. Therefore, although not on a statutory basis, that arrangement operates within the justice sector. There is also a lot of interoperability between the Courts Service and the police and prisons on IT projects, and so on.

1473. Mr Kennedy: Welcome, Mr Fitzpatrick; I apologise for being slightly late. I presume that decisions about the board membership and the term of membership — which is generally for three years — are entirely separate from the political process. For example, a general election does not mean that the board has to be reconfigured. Given that at least three appointments to the board are at the Minister of the day's discretion, is it the case that those are really political appointments? Are those people the Minister's representatives on earth?

1474. Mr Fitzpatrick: Those are ministerial appointments. However, there is no evidence at the board that they have a political agenda. One appointee is a civil servant, who is an officer in the Minister's Department. Another appointee, who happens to be a former director of the Rape Crisis Network, represents victims or users, and the third represents the business sector. Sometimes those appointees have political affiliations and, at other times, they do not. In my experience, the manner of their appointment has not made a difference to the work of the board. In that sense, the board is non-political.

1475. The Chairperson: Thank you Mr Fitzpatrick; your evidence has been very helpful. The Committee appreciates your candour and the quality of your evidence, which has given us much food for thought.

1476. Mr Attwood: I am sure that the director of the Northern Ireland Court Service listened closely to the fact that the chief executive officer of the Courts Service of Ireland is not a civil servant.

1477. The Chairperson: Indeed. Mr Fitzpatrick, I wish you a happy Christmas and a successful new year. Thank you for visiting the Committee.

1478. Mr Fitzpatrick: I thank the Chairperson and Members for their courtesy and invitation to visit. As I said, I am happy to assist the

Committee and provide it with the benefit of my experience, or otherwise. I wish the Committee every success in completing the important task ahead, a happy Christmas and good luck in 2008. I will send the information on the user groups to the Committee, but if any other information is required let us know.

1479. The Chairperson: Thank you. I now welcome Professor John Jackson from Queen's University Belfast. Professor Jackson is on sabbatical from Queen's University and, in recent weeks, has been based in Italy. We appreciate the time that he has devoted to providing us with advice and assistance in our preparatory work on the devolution of policing and justice powers to the Assembly and Executive.

1480. Before we proceed, do members have any interests to declare? I declare an interest as a member of the Privy Council and the Northern Ireland Policing Board. Professor Jackson, do you want to make a statement before the Committee asks questions?

1481. Professor John Jackson (Queen's University Belfast): If it is appropriate, I will say a few words. I thank the Committee for the opportunity to address it. I am here to assist the Committee on matters relating to prosecution.

1482. The Committee has a copy of a paper that sets out the thinking behind the criminal justice review, which has laid the foundations for some of the changes. The criminal justice review was asked to give close attention to prosecution arrangements; research was commissioned and two broad trends, which could be seen across several countries in recent years, were identified. First, there was a movement towards the independence of prosecution decision-making from political influence. Secondly, there was a movement towards greater transparency through a variety of explanatory mechanisms.

1483. Since the review team reported, those trends have been reflected in European standards on prosecution that were published in 2000, which state that specific instructions by Governments not to prosecute individuals should — in principle — be prohibited. Democratic states, in which Government Ministers seek to influence decision-making on prosecutions, run into trouble because of perceived political bias. That was a recent problem for the previous Attorney General for England and Wales, Lord Goldsmith, as he insisted on making prosecution decisions concerning the cash-for-honours case. As a result, the current Attorney General for England and Wales — under Gordon Brown's Administration — said that she will not take individual prosecution decisions, except on matters of national security or where the law requires it.

1484. In my submission I mentioned that a paper on the role of the Attorney General in England and Wales is currently out for consultation. In order to avoid those problems, the criminal justice review considered that there should be a consultative relationship between the Attorney General and the Director of Public Prosecutions (DPP), rather than one through which the Attorney General could direct the DPP on those matters.

1485. To say that there is a need for independence when it comes to prosecution decisions does not mean that there should be any lack of accountability for those decisions. Again, European standards make it clear that there is a need for transparency of the principles of prosecution, which are set out and published, and some mechanism by which individuals can challenge those decisions, if necessary, through the courts. In addition, the criminal justice review added two mechanisms for review of decisions: first, an inspection mechanism, which in July 2007 published a considerable report on the decision-making of the public prosecution service in Northern Ireland; and secondly, the entitlement of individuals to reasons for decisions. That has developed slowly in the new service, but it is now possible for individuals to obtain detailed reasons where available.

1486. The review considered that there was a significant role for the Assembly with respect to political accountability. It would not be

appropriate for the Assembly to get involved in individual decisions because of the perception of political interference, but it should have a role in issues such as public confidence in the effectiveness and workability of the prosecution service. The Attorney General should answer to the Assembly for the work of the public prosecution service (PPS), and, specifically, the DPP should answer questions on administration and finance.

1487. The current debate in England and Wales shows that is not easy to get the right balance between independence and accountability. In Northern Ireland, we have an opportunity to break new ground, and we can do so provided that in order to command confidence, we must try to obtain some independence for individual decision-making. At the same time, we must have some form of accountability for the work of the PPS.

1488. The Chairperson: Thank you very much, Professor Jackson. We appreciate the time that you have taken to provide a written submission to the Committee, which is very useful.

1489. Do you see the transfer of powers of section 41 of the Justice (Northern Ireland) Act 2002 as a significant change, given the degree of independence of the DPP?

1490. Professor Jackson: Yes. The Act is spelling out the situations in which decisions that were formerly taken by the Attorney General such as consent to various prosecutions or withdrawing prosecutions in specific situations would be transferred to the DPP.

1491. The Chairperson: You will be aware that the criminal justice review described the role of the Attorney General as one of oversight in relation to prosecutions. How will the relationship operate in practice?

1492. Professor Jackson: The Attorney General may have to consult with the DPP, as the Act puts it, from time to time. I hope that a good relationship would develop in that respect, so that the Attorney General obtains a detailed understanding of the work of the PPS to enable him to answer questions on that matter from the relevant Assembly Committee, which will obviously have an interest in ensuring that the PPS is working effectively.

1493. The Chairperson: One issue that the Committee is considering is where the PPS fits in with departmental responsibility in the Assembly and the Executive. Do you have a view on where the PPS should slot in?

1494. Professor Jackson: I do not have a particular view on it. I understand that the arrangements that are envisaged are that the Office of the First and deputy First Minister (OFMDFM) would provide the funding for the PPS and that the DPP would be accountable to the Assembly for the general administration and finance of the PPS. Other matters relating to the work of the PPS, which might also involve the policies of the PPS, would be matters for the Attorney General to take up and answers questions on. I do not have a particular view on whether there should be any other arrangement.

1495. I do not think that it would be appropriate to locate the PPS within a Department of justice because there are few precedents for that in other countries. Therefore, it would be a rather strange step if the PPS were to be placed under the mantle of a general Department of justice. However there must, of course, also be accountability for the PPS.

1496. The Chairperson: That is correct, and the Criminal Justice Inspection (CJI) has suggested that the Attorney General will not provide an effective line of accountability because the Attorney General is not directly responsible for the work of the PPS. Therefore, do

you have an opinion on how the PPS can be held accountable for the quality of its service while preserving its independence?

1497. Professor Jackson: You have come to the nub of the issue — the relationship between the Attorney General and the DPP is a consultative one. As you said, it will not be possible for the Attorney General to command responsibility for the work of the PPS. However, the review considered that there would be answerability to the Attorney General on the work of the service. That scrutiny could be quite detailed, and that would provide a mechanism for concerns to be raised. Those matters, along with the funding mechanism through OFMDFM, would have to be taken into consideration.

1498. The Chairperson: Is there anything in addition to that, which could be put in place to enhance the accountability but not interfere with the independence of the PPS?

1499. Professor Jackson: I am not sure whether the CJI report pointed in that direction; it deliberately refrained from recommending a specific structure to effect that. However, one alternative mechanism would be for the public prosecution service to be funded directly by the Office of the Attorney General and to make the Attorney General responsible and accountable for the work of the service. Those types of arrangements are in place in England and Wales. If they were introduced here, clarity would have to be established so that the Attorney General would have either no role or only a consultative role. The Attorney General would be able to hold the DPP accountable for the operational delivery of the service. However, those arrangements are not envisaged under the Justice (Northern Ireland) Act 2002.

1500. Mr Attwood: I have three questions. First, the CJI has given written evidence to the Committee, recommending that there should not only be a separate, free-standing Ministry, but that the PPS should be funded by and report to that Ministry. Contrary to other evidence that has been given to the Committee, the CJI said that the proposed Ministry should act as the funding body, rather than OFMDFM or any other part of the Executive. Would Professor Jackson comment on that?

1501. What will be the relationship between our PPS and the British justice system in non-devolved matters such as where there would be an incident involving national security in the North? Such a matter would be managed by the PSNI which would pass papers to our PPS. What will be the interface between the PPS and London? Would the Advocate General fill the role that the Attorney General would normally fill in the North? How will that work? During your participation in the criminal justice review, did you make any recommendations about how our Attorney General and justice ministry would be sited — for want of a better word — on events in the North that were not the responsibility of a Minister or the Assembly? The management of non-devolved matters by the PPS and PSNI in areas over which our institutions have no legal standing, is a critical matter.

1502. Professor Jackson: I will take the second of your two exacting questions first. The Advocate General would have a role on matters of national security and on any excepted matters relating to prosecution. The Act envisages that there will be a consultative relationship in that regard. The Advocate General, here, will be held to answer to Parliament if necessary for such excepted matters. There must, therefore, be a clear channel of communication so that the Advocate General would be able to answer in detail questions arising from a matter of national security. Those events always create a lot of public attention. The relationship would be consultative, and in that respect it would differ from the relationship in England and Wales where the Attorney General seems to have a power of direction in matters of security. There would be a consultative relationship — even with regard to excepted matters.

1503. Mr Attwood: Am I correct in saying that the Advocate General has more than a consultative role in matters of national security? Can he direct the PPS on what to do?

1504. Professor Jackson: No. Under the legislation, it is still a consultative relationship. It is the same relationship as that of our local Attorney General. The Westminster Government will have an interest in matters of national security here, and the Attorney General will be answerable to Parliament on those.

1505. Mr Attwood: Do you mean the British Attorney General or our Attorney General?

1506. Professor Jackson: The English Attorney General will act in the role of the Advocate General on those matters.

1507. Mr Attwood: Will there be a relationship between the British Attorney General and our political system with regard to matters that, for instance, touch on national security — on which decisions are made by the PPS — and where, in the normal course of events, our institutions do not have any responsibility?

1508. Professor Jackson: There will not be, probably.

1509. Mr Attwood: That is my understanding also. My second question relates to the giving of reasons. Professor Jackson was a bit cryptic when he spoke about the code; I think that he said it was moving slowly. In a startling moment of unanimity at the Programme for Government Committee in the summer of last year, all parties agreed that the PPS should explain its actions more fully.

1510. That arose in a rather acute way in connection with the Donaldson, Kearney and other prosecutions associated with the Stormont spy ring. The case collapsed and little was forthcoming from the then Attorney General. The Committee on the Programme for Government agreed unanimously then that more should be done in terms of giving reasons.

1511. As a member of the Criminal Justice Review Group, and mindful of what the Committee on the Programme for Government has said, will you help this Committee further as to what should be done about the giving of reasons? Thus far, the PPS has been slow to develop its code and operation.

1512. Professor Jackson: In fairness to the PPS, it has described this as an evolving matter. It has been slow, but it must be recognised, nevertheless, that there has been movement. In the code, there seems to be agreement, in principle, to give detailed reasons where that is possible. That will also relate to a situation of public concern. If the Assembly were concerned about a high-profile matter, I do not see why reasons could not be given, through the Attorney General, to an Assembly Committee.

1513. Mr Attwood: That is interesting.

1514. Professor Jackson: That position is not far removed from that which the PPS is moving towards — if it has not reached it already. I understand that that is the practice across the water. In England and Wales there is now a clear stance in favour of giving reasons, where it is possible for the Crown Prosecution Service to do so.

1515. You mentioned the report of Criminal Justice Inspection Northern Ireland. It said that it did not want to give a specific recommendation as to which Minister the service should be accountable. The report states that there must be accountability through the funding body. That makes me think that the Attorney General might be a possible avenue. To have accountability through a justice Minister would be a departure from practice in other countries.

1516. Mr Attwood: All of that is useful. You may be right. The CJI submission to the Committee says that the PPS should be funded by and report to that Ministry. That may go a bit further than the report that it did on the PPS; and it might, in any case, be vague in meaning. However, the CJI may have gone a bit further in its evidence to the Committee than in its report of last summer.

1517. The Chairperson: Professor Jackson, may I ask you about that? If we were to go down the route of the Attorney General taking on more responsibility vis à vis the accountability of the PPS, should the Attorney General then have a seat in the Executive?

1518. Professor Jackson: I would tend to say no. The Criminal Justice Review Group considered it important for the new Attorney General not to be a member of the Executive, in order to maintain the necessary distance. If we were to go down that route, the Attorney General would clearly have a close working relationship with the Executive and perhaps be in attendance at meetings of the Executive and be, not merely accountable to the Assembly, but more involved in the workings of the Executive.

1519. Mr McFarland: Is the Attorney General's post a full-time one? If so, what will he or she do? If the DPP runs the prosecution side of things, and the Lord Chief Justice runs the whole Court Service, what will the Attorney General's role be, if he does not have the role that the Chairperson has described? There must be some form of responsibility? I am trying to clarify that for myself. Presumably, we will pay that person enormous amounts of money.

1520. Professor Jackson: The member has raised a question concerning the Attorney General's role, to which I must confess detailed attention was not given during the criminal justice review. However, it was envisaged that, in addition to oversight of the Public Prosecution Service and of being answerable for it to the Assembly, the Attorney General would have a role in legislation that is going through the Assembly. At present, one of the Attorney General's roles with regard to all Bills is to ensure that they are properly human-rights proofed. Someone would have to take on that role.

1521. Mr McFarland: It is fair to say that there is already an entire department dedicated to that. Is that correct?

1522. The Chairperson: Yes.

1523. Professor Jackson: Someone must take the role of accounting to the Assembly on those matters. I presume that it would be the Attorney General. There may be other matters that need to be considered. The Attorney General has a role generally as a guardian of justice, who steps in, for example, when there are cases of contempt of court and in certain family and child matters. As to how considerable the post should be — whether it is full time, for example — that is a matter of judgement. I am unsure about whether the Justice (Northern Ireland) Act 2002 actually specifies whether that is necessary.

1524. Mr McCartney: Further to Mr Attwood's question; in the future, when a prosecution is not pursued or breaks down, who will decide what information the PPS will make available? Does it remain in the gift of the director? Can that information be shared with anyone or only in the department?

1525. Professor Jackson: No. Any such matter is subject to the DPP's decision to drop a prosecution, as it would be to institute a prosecution. Those are all matters for the DPP. However, as I have said, the Attorney General would have an advisory role on such matters in the consultative relationship. I understand that it would be at the behest of the either the Attorney General or the DPP to seek a consultation on any particular matter. If the Attorney General is concerned about a certain matter, he or she certainly has the right to raise it with the DPP, and to be consulted fully on it.

1526. Mr McCartney: Would the Attorney General expect to be consulted, or must be consulted?

1527. Professor Jackson: The relationship is such that the Attorney General should be consulted. The Act suggests that they may consult each other from time to time. It will, obviously, be an evolving relationship. However, if it is to work properly, either party should be able to insist on consultation on any matter. It would not be right for one party to refuse to consult the other on a particular issue.

1528. Mr McCartney: If the director refused to share information with the Attorney General, what would be the position?

1529. Professor Jackson: Ultimately, under the arrangements that are currently foreseen, it would be open to the DPP to, perhaps, refuse to share information. However, that may go outside the remit of what is meant by consultation.

1530. The Chairperson: Mr Jackson, in paragraphs 11, 14 and 15 of your paper, you touched on the importance of ensuring clarity in the relationships between the PPS, the Attorney General, the First Minister, the deputy First Minister, the Assembly and the public. Do you agree that the justice Minister or Ministers should be included in that mix? In particular, given the different interests, what do you believe should be the balance of power among the various constituents involved? Who should be responsible for what?

1531. Professor Jackson: Formally, I envisage prosecution as being somewhat hived off from the justice Ministry. However, that is a matter of formality: the necessity for each part of a justice system to work in partnership with the others is increasingly being realised. We keep coming back to the Criminal Justice Inspectorate's report, which also drew attention to that issue. There has, perhaps, been difficulty with that in the past because there has been the Court Service, the Public Prosecution Service, the police, and so on. There has not been the smooth working relationship between those departments that there should have been because of the difficulties of the past. I see a partnership relationship developing between the Attorney General, the DPP and the proposed justice Ministry, and that is essential. If the public are called as witnesses to court, they want to see the system running smoothly between the police, the PPS and the Court Service. That has not always been the case.

1532. The Chairperson: Would that partnership be formalised?

1533. Professor Jackson: I have not given consideration to formalising it. I do not think that that would be necessary in the first instance. One would expect those bodies to work together in a partnership, and one would expect the Ministers to liaise with each other and to be held accountable to the Assembly for its smooth running — and that is why the role of the Attorney General is important. Those Ministers would be held accountable if issues were clearly not working. It would not be necessary to formalise it beyond that at this point.

1534. The Chairperson: Are you satisfied that the degree of political accountability for individual decisions has been adequately provided for in the post-devolution arrangements for Northern Ireland?

1535. Professor Jackson: Yes. One has to ensure that when people are independent, there is some accountability at the end of the day. The role of the inspectorate is important in individual decision-making, and, as indicated, the role of reasons is very important. If those are seen to be operating fully and are rigorous enough, then there is a fairly effective mechanism for accountability.

1536. Mr Attwood: There would be accountability, but that would not be the case for excepted matters — terror, national security, organised crime, and all the other matters that would still be the responsibility of London.

1537. Professor Jackson: Yes, but that is how the arrangements are foreseen.

1538. Mr Attwood: I appreciate that. However, there are gaps. Those issues are extremely sensitive and could, potentially, have a destabilising effect. They are of enormous importance and public interest, yet we have no standing as an Assembly, as a Committee in the Assembly, as any future Minister, OFMDFM — none. We are unsighted on all of that, and it has the potential to be an unstable situation.

1539. The Chairperson: Professor Jackson, thank you very much for your evidence. We appreciate it and wish you well with your sabbatical. Have a very happy Christmas and — I hope — a restful 2008. We look forward to the product of your sabbatical in due course.

1540. Professor Jackson: Thank you very much.

1541. The Chairperson: The next issue relates to a reply that the Committee has had from the Office of the First Minister and deputy First Minister. Given the nature of the response, is it the Committee's preference to discuss the correspondence in private session?

1542. Mr McFarland: Yes, if that is your recommendation.

1543. The Chairperson: OK.

1544. Mr Attwood: There are matters arising from some of the points that Professor Jackson made. He said that post-devolution, one of the accountability and oversight mechanisms will be the Criminal Justice Inspection: whatever the Assembly or a Minister does, the CJI will have a role in respect of the PPS or the PSNI. The CJI submission to this Committee was circulated to one of the Ad Hoc Committee last week. There are issues in that submission that the Committee needs to consider — one way or the other. For example, there could be an odd situation where CJI reports on the PPS would be tabled at Westminster after devolution rather than here. That would be bizarre. The Committee needs to ensure that that issue is taken care of.

1545. There are also a whole range of other, more substantial matters. I do not want to overload the Committee or the secretariat, but there are issues about the CJI's functions that need to be regularised in the event of devolution, otherwise the CJI's functions will be in London instead of here. I advised the Committee Clerk that I would be flagging up the matter, as it needs consideration.

1546. The Chairperson: You raise some very valid points, Alex. I propose that those issues are addressed in the context of the structures and governance arrangements that we have to discuss after Christmas.

8 January 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr George Robinson

Witnesses:

Sir Hugh Orde The Chief Constable
Mr Paul Leighton The Deputy Chief Constable

1547. The Chairperson (Mr Donaldson): Members, it is now 11.15 am so we are ready to proceed with the oral evidence session with the Chief Constable, Sir Hugh Orde. I thank the Chief Constable and Mr Leighton for joining us; we very much appreciate your time. I refer members to their meeting's folder, in particular the written submission that was made by the PSNI at the beginning of the inquiry. We may wish to explore some issues from that with the Chief Constable.

1548. Chief Constable, I believe that this is a significant occasion, which might be regarded in the same light as the appearance of the Lord Chief Justice at an earlier oral evidence session. I am not aware that you as Chief Constable, or any of your immediate predecessors, have appeared before locally elected representatives at Stormont in this type of format. You are very welcome, and the Committee is glad to establish another precedent.

1549. The normal format for the meeting is to invite you to make a short opening statement, which will be followed by questions from members. The Committee will normally proceed with questions in accordance with the terms of reference from the inquiry, which you have been provided with. Those questions are on the matters to be transferred under devolution, the ministerial models and the timing and preparation for devolution. We will try to take them in that order. The Committee is especially keen, Chief Constable, to hear of your assessment of the level of public confidence that exists in policing at present and how that might relate to the transfer of policing and justice matters from Westminster.

1550. Before we proceed, I ask members to please declare relevant interests. I declare an interest as a member of the Northern Ireland Policing Board and of the Privy Council.

1551. Mr I McCrea: I am a member of the Cookstown District Policing Partnership.

1552. Mr G Robinson: I am no longer a member of the District Policing Partnership.

1553. Mr Kennedy: I am no longer a member of the Policing Board.

1554. Sir Hugh Orde (The Chief Constable): Thank you for the opportunity to meet the Committee today and to answer questions, which will hopefully assist you in preparing your report to the Secretary of State by March 2008. Some of the issues that you may wish to discuss are around timing and confidence for the devolution of policing and justice, and I am happy to give some views on those subjects in a brief opening statement.

1555. Before that, I have some general comments and observations to make on policing. First, huge strides have been made in the past number of years in moving policing in Northern Ireland forward. The current structures in Northern Ireland are held in the highest regard internationally. The PSNI is, without doubt, one of the most accountable police services in the world, and that is a good thing. An independent ombudsman carries out investigations into complaints, and the Policing Board — with which I meet at least on a monthly basis to discuss performance and other issues — holds me to account. As the Committee has already taken evidence from that body, I will not go into detail about its role. I know that some members of the Committee have direct experience of the Policing Board.

1556. Equally importantly, District Policing Partnerships (DPPs) achieve local accountability. They work at a local level with police to determine policing priorities and agree annual plans. A large number of other bodies hold the police to account and scrutinise our work, including the surveillance commissioner, the criminal justice inspectorate, Her Majesty's Inspectorate of Constabulary, human rights advisers to the board, NGOs, international visitors and independent reports such as the Blakey Report, the Stevens Report and the Crompton Report, which were commissioned by the board.

1557. At some stage, greater confidence in policing will lead to a society in which continual reference to others for reassurance becomes less common. I hope that any move towards devolution of policing can be achieved with a minimum of additional bureaucracy. Currently, there is no doubt that such accountability is a positive thing. It increases confidence in policing, which this Committee is interested in, and is good for the police and the wider community.

1558. The accountability structures that are in place, together with the determined and committed efforts of my officers and staff as well as members of the community, has resulted in the reduction in crime that we have today. Currently, crime is down by 14% on the year to date; it is at a five-year low. In November 2007 we recorded 8,500 offences; in November 2002 we recorded 13,500 offences. We are delivering on crime reduction, which feeds naturally into confidence in policing.

1559. Clearance rates are beginning to improve, but there is much more work to do in that regard. It is important to note that we work closely with other forces to ensure the service benefits of shared knowledge with colleagues in other forces. Such contacts are important now and will be ever more important as we consider the current international terrorist threat as well as ordinary organised — and disorganised — crime. I do not want our service to be isolated from any other force in England, Scotland or Wales in any way, shape or form.

1560. Recent reports on people's confidence in policing show that our competence in carrying out our work continues to grow. An Ipsos MORI poll commissioned by the Policing Board in May 2007 — not by the Police Service — showed that 84% of the public have confidence in our ability to deliver an ordinary day-to-day service for all the people of Northern Ireland. That figure exceeds the target set by the Policing Board in the latest policing plan. That is not to say that there will not be difficult days that impact negatively on the extremely challenging territory that we are charged with policing. This year is going to be a very difficult and challenging year for policing for all sorts of reasons. However, I believe that we will be judged on what we do on a daily basis in working with communities to serve all the people of Northern Ireland. We will be judged on how we deliver policing now — that is the feedback that I continually get from the people that we serve.

1561. When the Committee wrote to me about the devolution of policing, it referred to issues of timing and confidence. I will touch on a

couple of those issues. From our point of view, I have said consistently that there is no reason why devolution of policing and justice should not happen. We will work with whatever decision the Assembly reaches over the structure of a justice Department and the timing of devolution of policing and justice. My officers are serving the community today and will do so tomorrow, next month and next year, no matter what decisions are made about the devolution of policing.

1562. The structures of a policing and justice Department are a matter for this Committee, but I ask members to consider the following matters. When devolution of policing and justice occurs, it should not impact on my operational responsibility as the Chief Constable. That is a critical factor and a unique feature of policing in the United Kingdom. On a day-to-day basis, I am accountable to the Policing Board, which is also very important. As I mentioned earlier, the accountability structure is a key factor in building community confidence. For that reason it is vital that when devolution occurs, the relationship between the Policing Board and the devolved structures is clearly defined and understood. There is a continuing need for a good level of interaction with broader United Kingdom policing, which includes the two-way transfer of officers between services. That is also very important; as I said earlier, I do not want our service to be isolated. In addition, it is essential that there is clarity between the PSNI, the Policing Board and the Assembly on the question of finance.

1563. Given the events that have taken place at Stormont since May 2007, it is clear that Northern Ireland is taking control of its future. However, there is a question over whether it needs to take control of its past. The past is a critical issue for policing and confidence in current policing, not just for us, but for Northern Ireland society as a whole.

1564. In conclusion, Chairperson, I say to you and the members of the Committee that people in Northern Ireland want policing to move forward. Many people want to see local politicians take responsibility for policing. Whatever decision is reached by the Assembly on the structure of a justice Department and the timing of devolution, my senior team and I are more than ready to work with the politicians in any way that is helpful.

1565. Whether we like it or not, policing has been in the eye of political developments in Northern Ireland. It has been the critical issue. I put on record my thanks to all members of my service who have delivered a huge change programme over the past five years, have reduced crime, and have increased confidence in the service. Their commitment has contributed substantially to the reasons why today's debate at the Assembly and Executive Review Committee is taking place. I am happy to assist the Committee in any way that I can.

1566. The Chairperson: Thank you Chief Constable. The Committee appreciates your opening comments and the attention that you have paid, in particular, to some of the issues that concern the Committee, not least of which are the issues of timing and confidence. Two Committee members have to leave before the end of the meeting. I will take their questions first.

1567. Mr Kennedy: I welcome the Chief Constable and Deputy Chief Constable to the meeting and thank them for attending. It is on public record that the Chief Constable said, last year, that he thought that the devolution of policing and justice powers would be more possible in autumn 2008 rather than by the Government's deadline of May 2008. What insight on the matter led him to reach that conclusion?

1568. The PSNI has already moved to change and redefine divisional policing boundaries. In any new situation in which policing is devolved, would the Chief Constable envisage changes to those boundaries and would he be open to those changes, even under the RPA?

1569. As regards to operational responsibilities — which the Chief Constable has, rightly, sought to protect — would he prefer to be

accountable to the Northern Ireland Policing Board rather than the Assembly's policing and justice Committee?

1570. Would the Chief Constable like to share any views that he may have on the Consultative Group on the Past, which deals with the past and the suggestion of amnesties, and so forth?

1571. Sir Hugh Orde: In answer to Mr Kennedy's first question on the timing of the devolution of policing and justice powers, it was a wide ranging interview. I was asked for a general observation. The answer that I gave was what I had heard from all sorts of people. Some people were keen on the devolution of policing and justice powers while others were more reticent, and I reflected on that. It seemed to me that the devolution of those powers was more likely to occur in October. I had no particular insight on the matter. It was a general discussion on how I saw the matter and what I had heard about it, on the ground. I am happy for the Committee to have a transcript of the exact words that I used so that there is absolute clarity on what I said. I said that from a police perspective, I had no difficulty whatsoever with the devolution of policing and justice powers. That seemed to be the will of Parliament. Those recommendations were made some time ago and they make sense.

1572. Deputy Chief Constable Paul Leighton (Police Service of Northern Ireland): The short answer to the question as to whether the PSNI is open to further changes is 'yes'. The important thing to note is that we moved because we felt we could create a more manageable and better structured organisation that would be more efficient in the delivery of policing across Northern Ireland. It would bring us into line with many other police services that have divisional command units (DCUs) or basic command units (BCUs) of approximately 600 officers. Therefore, it brought us into a structure that fits well with our comparator forces. With regard to the future, coterminosity is an important concept. I am a great fan of it. I worked in a police service that had coterminosity and I see it as a huge benefit. Therefore, we would work towards a situation of coterminosity. However, we would have to work within the budget that we had and, of course, scale brings certain savings for us. We hope that we will achieve some savings, in the interim, with our current structure.

1573. The Chairperson: I refer to the question that Mr Kennedy asked about the Consultative Group on the Past. The Chief Constable and Deputy Chief Constable will be aware of some controversy that arose out of last night's public meeting and the suggestion that the term "war" be used to describe the events of the past 35 years as a means of offering people the opportunity to come forward to tell the truth about what happened. Presumably that would include perpetrators from both sides of the paramilitary divide. In return for doing so, they would be offered an amnesty for their crimes.

1574. Does the PSNI have any view on that kind of proposal at this stage?

1575. Sir Hugh Orde: I have given evidence to the Eames/Bradley commission and I have been asked back. PSNI views on dealing with the past are well known. I do not want to express a specific view on whether it was a war, or whether an amnesty would help. That is the key role of the Eames/Bradley commission. That is the only consensus on these matters that allows us to move forward. I listened to the news before seven o'clock and I suspect that, otherwise, there is no consensus: there is a huge diversion of views. The PSNI is in the middle of that.

1576. I know what is not working. I do not think that the piecemeal approach to the past will deliver sufficient closure to allow Northern Ireland to move on. I am frequently on record as expressing concerns about the draining of resources away from my establishment towards the servicing of inquiries. The latest ruling from Strasbourg about coroners' inquests suggests that we will have from 44 to 46 additional inquests. That is relevant to the Committee because it takes more and more people away from dealing with day-to-day problems to service public inquiries and coroners' inquests. I have a fixed establishment of 7,500 people, so my experts in criminal investigations and intelligence now spend 99% of their time servicing inquiries into matters that went back five, 10, 15 or 20 years. I make that point because it impacts on confidence in policing. At some stage, we will reach a tipping point, where I have to make a hard

decision about how much more I can put into looking backwards. I am also on record as saying that I will service these public inquiries as best and as efficiently as I can. I am obliged to do so under the Enquiries Act 2005, and it is the right thing to do. However, the police are being torn in two ways.

1577. The best way of dealing with the past is through a spectrum of opportunities that ranges from the PSNI Historical Enquiries Team (HET), which is important and makes a difference, right through to that difficult debate which includes amnesty, statutes of limitation and pardons.

1578. Mr Kennedy: There is also the question of accountability. Who does Sir Hugh most prefer to be accountable to?

1579. Sir Hugh Orde: The law on that is clear. At present, I answer to the Northern Ireland Policing Board. That is why we are where we are. I spoke with Paul earlier, before we arrived, and we discussed other models. Where we differ from Great Britain is that the PSNI is a single police service. In Scotland, there are eight police forces, and I understand the need for an additional committee structure there. In Wales, there are four police forces. In Northern Ireland, there is only my police force. In my opening comments, I pleaded for clarity so that we do not have to duplicate effort. The board is an understandable structure that has stood the test of time. That is who I answer to. There is a debate to be had about changes.

1580. The Deputy Chief Constable: It is different. We discussed it earlier. Look at the Home Office: there are 42 police forces in England and Wales and police authorities there act almost as interim structures. In Scotland, there are eight police boards — I am not sure what they are called in Scotland — and there is also a plurality of forces in Wales. The difference here is that there is only one police service. Whatever happens may end up with a process that duplicates effort. That is something we want to avoid.

1581. Ms Ní Chuilín: My question is about the Ipsos MORI poll commissioned by the Policing Board. Some 83% of those polled said that they were confident in the PSNI's ability to provide an ordinary, day-to-day policing service for all the people of Northern Ireland. Do both witnesses agree that, in order to maintain a high level of public confidence, it is imperative that devolution of policing and justice happens sooner rather than later? Equally, the transcript, which the Committee had sight of, seemed to say that in the opinion of the witnesses, October was the most practical time for that to take effect.

1582. Sir Hugh Orde: I have no difficulty at all with devolution of policing and justice. The member asks whether it will improve confidence in policing and justice: I think reaction will be mixed. Any feedback that I received on that matter, I gave in my interview to Wendy Austin. Some people say that they are happy with the situation as it is, and that they want the police to remain answerable to Parliament. Others say that devolution should take place today.

1583. I can deal with both options. The devolution of policing and justice makes sense. The models in Scotland and Wales have worked quite well, with the only slight caveat being the recent decision by the Scottish Parliament to award a pay increase to the police that is above that of its counterparts in England, Wales and Northern Ireland. That creates a problem with moving police officers from one area to another. It is critical to develop policing in such a way that the interaction between forces means that we can export and import talent. The difference in salary makes that difficult because there are implications for pensions and other related complexities.

1584. I have no difficulty with the devolution of policing and justice, and my reading of the general view on that is that it is simply a question of timing, rather than of whether it should happen.

1585. The Deputy Chief Constable: Your first point that devolution must proceed in order to maintain confidence is valid, because it will show that Northern Ireland is confident enough to manage its own affairs. We will be ready for that by May 2008, but timing is not an issue for the Police Service. It is not our decision, and few in the Police Service have a view on it.

1586. The Chairperson: I want to follow up on Danny Kennedy's point about accountability. If you continue to be accountable to the Policing Board, should the Policing Board in turn be accountable through the Minister or Ministers to the Assembly? I understand that the Policing Board has a relationship with the Ministers in the Northern Ireland Office. Should that continue to be the case through Ministers in the Assembly?

1587. Sir Hugh Orde: The main strength of the Policing Board is its independence. As was the case following recent events, the board can require me to attend. However, it has never had to require me to do so because that would be awful. I always attend because the board asks me to do so. I can have robust debates with the Policing Board on all sorts of subjects at short notice and to varying degrees of effectiveness, depending on people's personal views. The board is a powerful structure.

1588. My relationship with the Minister is more at arm's length. The Minister's relationship with the Policing Board is also more at arm's length than direct, except when it comes to money, because the income stream comes from central Government. I have no problem with either model, but there must be clarity.

1589. We cannot have a situation in which I answer to the Policing Board, which then reports to the Committee while, at the same time, the Committee bypasses the board by summoning me to attend its meeting here. Of course, I would turn up, as I do to meetings of the Northern Ireland Affairs Select Committee when asked.

1590. I would turn up at the Public Accounts Committee if I was asked, although that is not optional and I would have to attend. The two can work in parallel, but there must be clarity. It is a matter to be decided by the Policing Board and the Committee, rather than me, and I will work with whatever model is selected.

1591. Mr I McCrea: I thank the Chief Constable and the Deputy Chief Constable for coming today. Many people are concerned about when — or even if — policing should be devolved. We have touched on the timing but from some people's perspective the question is whether it should be devolved at all.

1592. I disagree with Paul Leighton's point that policing and justice must be devolved to maintain confidence. Many issues, such as terrorism, must be addressed before that can happen. Confidence is based on whether the police are doing a good job. However, the terrorist attacks on police officers over the past few months do not inspire confidence in the community that I represent. Simply to devolve policing and justice will not address the problem of confidence. Many other issues, such as the IRA army council, must be addressed before the devolution of policing and justice can even be considered. I suppose that those were comments rather than questions.

1593. The RPA also raises issues. As someone who sits on Cookstown District Policing Partnership, I believe that, in that largely rural area I represent, confidence in policing has been lost.

1594. For example, Cookstown's senior officer is based in Enniskillen, which has very few links with Cookstown. I am aware that that is a stopgap until Omagh is sorted, but a lot of problems exist.

1595. I believe that the police jumped first. Whether that was because of a belief that there were going to be seven councils is another argument. It is a wrong move and the changes that have been made in the local areas of having an inspector as the chief officer — I am not saying that he cannot do the job — sends the wrong message. Places such as Cookstown and Magherafelt previously had superintendents. However, the duty officers at weekends are now based in Dungannon and do not have any base in Cookstown. Issues such as that cause problems with confidence for the local communities.

1596. The Chief Constable mentioned the “arm’s-length” element. When giving evidence to this Committee, the Lord Chief Justice talked about being at arm’s length from the Ministers. It is interesting to note that that is similar to what you have said.

1597. Sir Hugh Orde: Although I was not present, I think that the Lord Chief Justice’s point was slightly different. He talked about judicial independence and he felt that something chaired by him regarding appointments was more appropriate. That is not the case with policing; we can be far closer in that sense. We do not have the legislation that enshrines our independence in the same way as the judiciary do. We are different in that respect, and I am happy with that relationship. What I am saying is that we need clarity regarding what that relationship is. Frankly, it would be a little tiresome if I had to go to the Policing Board and then had to repeat the same experience here. That would be confusing to people outside; they want clarity.

1598. Regarding the reform that Paul touched on, five years ago when I came in from a different service — as Paul did — I was staggered by the level of senior officers that I had in this police service. That was a transitional stage, and I think that Patten saw 29 districts as a transitional stage. I know that people have different perceptions and that some feel that we now have fewer officers, which we do — at the height of the Troubles there were 13,500 and there are now 7,500. That is all that we can afford. Coming from where I do, I recognise that there are far more officers here than elsewhere. The trick was to make sure we maximised their effectiveness and their commitment to the front end of policing.

1599. Frankly, I would far rather have an extra mobile patrol than a superintendent in a place that its size cannot justify. I have absolute confidence in the people who are now looking after what were the 29 districts. They have access to senior management whenever they need it. I have visited many of them and they will continue to do a good job.

1600. The critical relationship is between the DPPs and individual officers. That a DPP is liaising with a chief inspector rather than a chief superintendent does not mean that it will get a different service. In fact it will get a more personalised service, because that relationship would be the sole responsibility of that officer. I understand the concerns. Maybe Paul would like to touch on this issue.

1601. The Deputy Chief Constable: What I said was that the ultimate test of confidence will be that devolution of policing powers has to take place. I went on to say that the timing is not our concern. That is a matter for this Committee and other politicians. Eventually, what will be a sign of true public confidence will be the devolution of policing. As I have said, the timing is not an issue for us; that is the Committee’s concern.

1602. Mr McFarland: I thank the Chief Constable and the Deputy Chief Constable for attending today. There is clearly a debate to be had about the relationship between the Policing Board and any Committee that is set up. We will have a Committee consisting of 11 MLAs because that is how we operate. There are 10 MLAs on the Policing Board, and there is an issue over whether this organisation can afford 21 MLAs dealing with policing and justice. There is reluctance because one of the successes of the Policing Board is that its members have had direct political input. There is an issue, purely in our own timing, as to whether we can afford to keep them there.

1603. We still need a political influence on the Policing Board, because it relates directly to the Assembly. Whether we can have political appointees, rather than elected representatives, is another debate. However, it is a key debate as to how the devolution of policing functions, and we must have it. No doubt Sir Hugh Orde and the Policing Board will have views on that.

1604. If I may move on, money is probably the biggest issue. As you know, I spent four years on the Policing Board when the police were getting £720 million — I understand that that amount has gone up. That is an enormous sum for such a small place. There are plans to cut the police budget back. If there is devolution of policing and justice, there will be enormous pressure on the Administration to put money into health and other services rather than policing. Have you had discussions with the NIO to properly assess that you will get the full package that you are entitled to after the transfer of powers? Have you established that the NIO and the Government in London will not try to short-change the PSNI and the board on the allocation of new funding that will come into our block grant when the transfer occurs? What discussions have you had to try to ensure that you will not be short-changed amid smoke and mirrors during the changeover?

1605. Sir Hugh Orde: I have not had any specific discussions, because that is a matter for the politicians and for debate between the Minister of Finance and Personnel and the Executive. I assume that the Assembly would be reluctant to take responsibility for policing if it felt that it was not getting adequate money to deliver the service. We will deliver the service with whatever moneys we get. The question will be how effective we can be.

1606. Over the last five years, we have delivered substantial evidence that we can deliver value for money. We have delivered on efficiency savings, the Gershon savings and additional savings. We have reduced costs substantially through reducing the number of our colleagues in the full-time reserve force, which will eventually be reduced to zero. We can prove that we can deliver an ever more effective service with fewer resources. However, there will be a bottom line where something has to give, and that will mean losing people, because so much of our budget goes towards paying people.

1607. In reality, up until 2011, no one will want to move away from having 7,500 police officers. That is too important for too many reasons. However, after 2011 there will be debate about the numbers of police officers, because, as Mr McFarland rightly said, we have far more officers than there would be in a normal policing environment. The important point is that we have not achieved a normal environment yet.

1608. As the Committee will know, we submit our annual request for money through the Policing Board, where it is subject to rigorous debate, and the Government make their decision. We have just received that decision, and we must cut our cloth to deliver the service within the allocation. I imagine that the process would be no different if the money was held here. We would make the same approach, and the Assembly would decide what it would give us to deliver an effective police service.

1609. The Deputy Chief Constable: The only future discussion on finance that has been supported in any way, as the Chief Constable has said, is the comprehensive spending review (CSR) settlement, which takes us to the end of the financial year 2010-11. We have just received a financial settlement from Treasury for those three years. Mr McFarland was correct; there is a considerable reduction in the amount available, and we will have to make substantial savings over the three-year period.

1610. However, that is as far as discussion has gone about whether health, education or other Northern Ireland matters would have a call on money that has to date been going to PSNI. The Government will only ever commit to a three-year discussion on finance. As the Chief Constable said, it is likely that we will not have an establishment figure after 2011. At present, we have an establishment figure of 7,500, but that will be history after March 2011. We will have a budget, within which we will have to work, and that will affect the number of police officers.

1611. Mr McFarland: Is there any recognition that, although the PSNI was initially asked to deal with the past through its current budget and to see how that went, it is now clear that the Police Ombudsman's office is starting to look at about 67 cases, and large inquiries, such as the Corry Inquiry, will be coming through?

1612. With so many people off, do you expect to be given additional funds to employ others in order to alleviate the present policing drama?

1613. Sir Hugh Orde: We will reach a point where the situation becomes critical.

1614. The Historical Enquiries Team is separately funded, and after a long and challenging debate that has been clarified. I am confident that it can carry on its business, which is important, because it is actually delivering outcomes to families. I read the latest report last weekend, and the process is coming through with some people getting some form of comfort and satisfaction from the discussions that they have had with members of that team.

1615. The public inquiries are funded from current expenditure, which also pays for police officers. In essence that is an opportunity cost where officers are moved from operational, investigative work and some of the more complicated intelligence work into dealing with public inquiries, but there is a substantial increase, for example, in costs and legal fees — paying for counsel's advice, additional lawyers and, indeed, appointing an additional Assistant Chief Constable, who does nothing but deal with issues that arise from the past. If Government appoints public inquiries it is absolutely right that institutions, such as the police, service those inquiries. However, the cost impacts on the here and now, which is why it is important that Stormont consider that as a whole, because it will be a very real issue in the future as inquiries are not cheap.

1616. The Chairperson: You said that in 2010-11 you will be moving from an establishment-based budget to a budget that determines what the establishment might be, rather than the other way around. Who will make that decision? Is it already made, or are we working on an assumption? Where does that originate from?

1617. The Deputy Chief Constable: That is my assumption, and I am basing it on the fact that a Treasury-commissioned review of our numbers, the value for money report, reported to the Northern Ireland Policing Board some time back and recommended a number much below 7,500.

1618. However, I am also basing it on general practice in policing within the UK where there is a budget and not an establishment. Northern Ireland is probably one of the last, if not the last, organisation that has an establishment. Policing used to be run by having an establishment, and then achieving the budget to match it and pay wages, etc. In England and Wales that is gone. They receive a budget and then it is up to them whether they can supplement that budget in some way and employ more police officers, and that is why pre-setting has become very important in finance. That does not exist in Northern Ireland at the moment, but whatever financial arrangements exist after 2010-11, they will probably be budget based — although that is purely my reading of the situation.

1619. Sir Hugh Orde: I believe Paul is right. While the figure of 7,500 came from the Patten Report and is not enshrined in legislation, everyone quite rightly stuck to that principle, and it has played a critical part in getting us to where we are. Flexibility in these issues is quite difficult. Efficiencies around civilianisation are very difficult when you have to maintain 7,500 people, because you cannot replace police officers with support staff in order to save money to deliver a more effective service. Paul is right — that is probably where it will

go.

1620. Mr McCausland: You mentioned earlier that your comments regarding the month of October for devolution of policing and justice were based on conversations with a wide range of people. What reasons did they give for October being a better time than the spring?

1621. Sir Hugh Orde: I did not say October was the best time, I just did not think that devolution was achievable in May. Some people said, and I do not know if they were being amusing or not, that they thought that any date set by the British Government was not going to happen as a matter of principle, and others thought that by the time this had worked through and people had more confidence it would be later than May. It was as simple as that.

1622. In fact what I did say was:

“Do I see it in my personal judgement? I am not sure I see it in May, but I think people will start asking questions if it hasn’t happened by autumn.”

1623. That was based on feedback from people reflecting what Paul said. People see devolution as the next important step in Stormont taking control of its own destiny. Equally, I fully understand the point that was made by Ian and others that some people would be quite happy for the status quo to remain.

1624. Mr McCausland: What would happen in five or six months that would make a difference?

1625. Sir Hugh Orde: I have no idea. I think that there is something to be said about building confidence. If one considers policing trends, as I said in my opening statement, November had the lowest crime figures for the past five years, and December is looking good. Indeed, yesterday, Paul Leighton and I were considering crime trends with our district commanders, and the efforts of our officers to deliver an increasingly effective service is impacting across the peace out there. I understand the concerns in some rural and built-up areas, but, generally, people are judging us on what we are delivering now, and, over the past five years, although it has been a rocky ride on some occasions, we have consistently seen a positive trend. The longer that that trend continues, the more likely it is that there will be support for devolution.

1626. Mr McCausland: Finally, the continued existence of the IRA army council was mentioned earlier; there is clear guidance that there was republican involvement in the murder of Paul Quinn; in the Markets area, there was a situation in which a senior republican was involved in an incident which also involved one of Robert McCartney’s sisters, and no information about that was forthcoming from republican circles; and, in the west of the Province, several Sinn Féin councillors were unwilling to sit on district policing partnerships. Does that emerging pattern — and I do not wish to prolong matters with other examples that come to mind — not militate against the acceptance of any devolution of policing and justice by the people in Northern Ireland? Do you agree with that?

1627. Sir Hugh Orde: Anything that makes Northern Ireland look different makes the devolution of policing and justice more difficult. Having said that — and you did not refer to the fact that dissident republicans are determined to attack and shoot my officers when they are off duty, which is a major issue for policing — should any of that stop the devolution of powers? I do not think that it should.

1628. In a way, the aim of the dissident-republican threat is to prevent things happening that the overwhelming majority of normal, ordinary people in Northern Ireland want. My commitment is to stop those criminal lunatics before they actually succeed in killing

someone, and that is what we are determined to do with the assistance of our colleagues in MI5.

1629. Other individual cases make the devolution of policing and justice more difficult because people will be worried. In attempting to give reassurances, it is hard to talk about individual cases; however, we are awaiting prosecutions in some, and in the Quinn murder, to which you referred and which, of course, falls under another jurisdiction, there has been substantial co-operation between us and An Garda Síochána. Can we deal with that? Yes we can, but, you are right, it makes it more challenging.

1630. Mr McCausland: The reason that I did not mention the despicable attacks on the police officers was because the people who carried them out do not have any political representation in the Assembly, whereas others —

1631. Sir Hugh Orde: I do not believe that they have the support of anyone in Northern Ireland, and I do not think that they should be allowed to prevent things happening in Northern Ireland that people want to happen.

1632. Mr Attwood: I have three questions that relate to what the Chairperson and Alan McFarland were saying. The HMIC Report, '20:20 Vision – A Value for Money Establishment Review of the Police Service of Northern Ireland Post 2010/11', said that, after 2010-11, there might be fewer than 6,200 police officers. In the more normal situation — as the police see it — and given the budgetary issues that have been highlighted today, is it the PSNI's view that 6,200 full-time police officers is the number that the communities in the North can expect to see in the second decade of the twenty-first century?

1633. Sir Hugh Orde: I am not keen to speculate on the situation in Northern Ireland in 2010-11. If this were an entirely normal society with no residual effects from the so-called troubles, one could deliver an effective policing service with that number of police officers. For example, that is more than Northumbria currently has, and our geography is substantially larger. That figure is potentially there or thereabouts. Having said that, I do not wish to second-guess the situation, and it would be a high-risk strategy to move too quickly. We have got to where we have got to because we have managed to deliver an evermore effective service against the backdrop of a challenging budget and challenging demands for more efficiency, less waste and more dynamic ways to do things. However, we have managed to deliver that in spite of the dissident republican threat, the terrorist threat and all the other things that, sadly, do not make us entirely normal yet.

1634. I am very worried about a sudden cut in numbers. There is also the issue of the logistics involved in physically reducing personnel from 7,500 to 6,200, with no sign of a Patten severance package — for want of a better description — which is not realistic and would take a huge amount of time. I do not want to alarm people by stating suddenly that I think that that is where police numbers are going. If we had an utterly normal society, with no residual concerns, which includes dealing with the past, a reasonably effective service could probably be delivered with 6,200 officers.

1635. Mr Attwood: That is a forthcoming statement because the police have not said that before. The figure of 6,200 was based on flawed evidence and the real figure is higher than that.

1636. If people are prepared to accept and share policing responsibility on the Policing Board, they are capable of sharing legislative responsibility in this Building on policing and justice matters. Therefore, policing and justice should be devolved as quickly as possible. The real question is one of how people live up to their policing and justice responsibilities. Just as some cases can define the worst of the past, they can define the best of the present.

1637. On 4 October 2007 at a Policing Board meeting, Assistant Chief Constable Sheridan, in relation to the murder of Robert McCartney, said:

“I can confirm that the Senior Investigating Officer did have a number of working meetings with representatives of Sinn Fein at their request. At the last meeting, Sinn Fein members agreed to look at encouraging members of their party and witnesses to come forward. I can say that as of this date, no new witnesses have come forward.”

1638. Without prejudicing the ongoing investigation and prosecutions, is it still the case that in January 2008, no new witnesses have come forward?

1639. Sir Hugh Orde: Yes; to the best of my knowledge. However, I caveat that answer by saying that I have not been updated and need to check with Assistant Chief Constable Sheridan.

1640. Regarding the figure of 6,200, I will deliver policing with whatever resources I am given. If I am to have 6,200 officers, I was making the point that I can deliver a service with that number of people. A normal society means having full community support. That is how it works; it is not police policing communities, but rather police and communities working together to reduce crime. The caveat is that total support and a normal society mean that engagement takes place across the community. That is important.

1641. Mr Attwood: I agree, and there is growing evidence of people across communities co-operating more with the police. However, there is also evidence of grave matters from the past that still exist, an example of which is the Chief Constable's confirmation — to the best of his knowledge — that no new witnesses have come forward in the McCartney case.

1642. The police and the Policing Board have done some good work on national security and the creation of a structure around that to ensure that the worst excesses of the security services do not visit the North. Although the large majority of agents are retained by the PSNI, a small minority are retained by the security services. Therefore, in our new political era, the national security agency MI5 continues to retain a small minority of agents. Why? How many are there? What is their influence within organisations in the North? Regardless of their number, can the Chief Constable explain why MI5 is running agents in the North? Given the concerns across communities over who ran agents, how many there were and what they did over the past 35 years, why does an agency, with no accountability in the North, continue to run agents here?

1643. Sir Hugh Orde: Regarding accountability for national security, although I can answer questions from the Policing Board on the operational impact of any activity, provided that it does not compromise national security, I suspect that Mr Attwood knows that I cannot answer on behalf of MI5.

1644. It was right to transfer responsibility for national security from the office of Chief Constable to MI5. That was an essential development because it allowed this debate to take place and it addresses international terrorism — Northern Ireland is not immune to the new world. The way to deal with international terrorism, as it was to deal with threats to national security here, whether we like it or not, is through using informants. That is the only way to interdict and prevent the worst atrocities and excesses of those lunatic groups, be they international or domestic.

1645. I cannot answer the question about numbers, as Mr Attwood will be aware — not that I know how many MI5 informants exist. That is a matter for MI5. Mr Attwood is right: I can confirm that the vast majority of informants remain solely my responsibility and are

subject to substantial supervision and review and full compliance with the Regulation of Investigatory Powers Act 2000. That is something that we have taken extremely seriously over the past five years, and which led directly from the Stevens investigations and recommendations with which I was directly involved before I took over here. The surveillance commissioner is more than satisfied with the way in which we handle informants.

1646. Mr McCartney: I have a number of questions about the Committee's terms of reference. There is a tendency among members to stray into areas that are not within the Committee's remit. I am not going to do that but I may do so on another day. If I have picked up the Chief Constable correctly, am I right to think that the PSNI has absolutely no concerns about meeting the May deadline, as proposed at St Andrews, for the transfer of powers?

1647. Sir Hugh Orde: As I said in my introductory remarks, that is a matter for others. I hope that those remarks gave members some comfort. I will deliver a police service regardless of when policing is devolved. We have delivered for five years and will continue to do so. If power is devolved in May, June, July or August, we will work with whatever decision is made because we adhere to democratic principles.

1648. Mr McCartney: Is the PSNI organisationally ready?

1649. Sir Hugh Orde: I have no difficulty with that.

1650. Mr McCartney: The Assistant Chief Constable said that devolution would enhance public confidence in policing structures.

1651. Sir Hugh Orde: Mr McCartney has just demoted my deputy, but I think that that is what Deputy Chief Constable Leighton said.

1652. The Deputy Chief Constable: I said that it was an example of how public confidence could be demonstrated.

1653. Mr McCartney: That is fine. The letter that the PSNI sent to the Committee asked for an additional term of reference and mentioned defining roles and responsibilities.

1654. The Deputy Chief Constable: Clarity is important to us. The Chief Constable has said that we do not want something that duplicates or increases bureaucracy in policing. We are the most overseen police service that I know of, and it takes time and effort to service all the oversight. The design of policing structures is not a matter for the PSNI. However, when designing those structures, the Committee must bear in mind that it should not create a lack of clarity as to whom we are responsible, to whom we report or from where the bureaucracy comes. An increase in bureaucracy takes more resources away from service provision. We want to have as many people as possible spending time and effort on providing a frontline service to the people of Northern Ireland to ensure that they get the policing that they deserve.

1655. Mr G Robinson: I want to follow up on some points that were made by Mr McCausland. From a unionist perspective, the one matter that stands out in the devolution of policing and justice is the attacks on Orange Halls. From a public confidence point of view, very few arrests have been made. When will that be put right? There have been many attacks in the past few months, but few people have been apprehended. In that situation, and given that the structure of the IRA army council remains intact, how can unionists have confidence? That situation does not help us to take a decision on the devolution of policing and justice.

1656. Sir Hugh Orde: I understand that, and I take the attacks on Orange Halls very seriously. I have met Orange Order representatives on a number of occasions, as have Deputy Chief Constable Leighton and my regional Assistant Chief Constables. I hope that we can provide some reassurance in that we have put substantial resources — as best we can — into dealing with what is insidious and horrible behaviour by people who are intent on destabilising the situation. We understand that, and that is why we take the matter so seriously. I share Mr Robinson's concern that we have not been successful in bringing people to justice. To some extent, that is a result of the sporadic nature of those offences. I do not want members to think that the PSNI does not take the attacks seriously; we are considering ways to deal with them.

1657. Issues such as the attacks on Orange Halls and the IRA army council will be part of the mix around confidence in the current situation and the timing of the devolution of policing and justice, which is a matter for the Assembly and not for me. The timing of devolution must also be balanced against some of the comments that I made in my opening statement about the view — although it is mixed in different areas — that policing is delivering and people are confident that we can deliver an effective police service. It is a balance.

1658. Alex Attwood and other members mentioned the threat of dissident republicans: we can deal with that regardless of whether policing and justice are devolved. It will not make a huge difference to how we go about our business of reducing crime.

1659. The Chairperson: Do you want to mention any confidence-related matters that we have not touched on this morning?

1660. Sir Hugh Orde: No. I hope that we have given a broad overview of how we see the situation. To get a view of what people are thinking, one has to rely, to some extent, on measures such as surveys. My senior team and I speak to many people, and the consensus is that devolution of policing and justice needs to happen, but the timing is a matter for others. The PSNI — a legitimate constituency — does not have any difficulty with the devolution of policing and justice. We continually underestimate the incredible flexibility of our officers and what they have been asked to accept in the past six years as policing has moved on and huge changes have taken place. I have nothing to add.

1661. The Chairperson: In preparing for the devolution of policing and justice, is there anything with regard to the working relationship with the gardaí that the Committee should consider. Will there be any changes in how the forces co-operate and work together?

1662. Sir Hugh Orde: I do not think that devolution would cause any change in the process. I will see the Commissioner at the end of this week. We meet regularly, and that is mirrored in the organisation at different levels where officers discuss anything from border relationships to daily business.

1663. The Deputy Chief Constable: We do an incredible amount of work with the gardaí. The last meeting about the Quinn murder was on 28 December. There are ongoing meetings about various cases and, more generally, about training, drugs, road traffic accidents and day-to-day policing. There is also a secondment arrangement between the two organisations; some PSNI officers are starting secondments with the gardaí this week. There are also exchanges between our colleges. I do not think that any of that will change; it is on a police-to-police basis. There are several joint conferences every year, and the continuance of those might be considered if the devolution of policing and justice proceeds because they involve the South's Department of Justice, Equality and Law. That is the only possible change that I can think of; the day-to-day relationship is extremely good.

1664. The Chairperson: I thank you for your time this morning and for the open and full replies that you have provided to the Committee. We might return to you with issues that arise in the Committee's proceedings. I ask you to convey to all your officers our

best wishes for the coming year.

1665. We were due at this stage to have a session with officials from the Office of the First Minister and deputy First Minister (OFMDFM). A letter arrived yesterday, and that has been circulated to members by email and, this morning, in hard copy. At this stage, I do not propose to have a discussion on what we do next in relation to OFMDFM. The NIO officials are waiting outside, so I would prefer to proceed with that evidence session and follow that with a discussion on the next steps with OFMDFM.

1666. I welcome Peter May and Clare Salters to the meeting. The Committee appreciates the time that they have taken to attend. Before we proceed, I ask members to declare any relevant interests that they might have. I declare an interest as a member of the Northern Ireland Policing Board and the Privy Council.

1667. Mr I McCrea: I declare an interest as a member of Cookstown District Policing Partnership.

1668. The Chairperson: There are no further interests to be declared. The Committee thanks the NIO for the responses that it received recently from Simon Marsh on several issues that it had raised. I am sure that those responses will prove helpful in the final stages of the Committee's inquiry into the devolution of policing and justice powers.

1669. Do you want to make any opening comments? Are you happy for the meeting to proceed with Committee members raising their issues of concern and points on which they seek further clarification?

1670. Mr Peter May (Northern Ireland Office): The NIO understands that one of the key areas that the Committee wants to explore is how the NIO is proceeding with the programme. It might be helpful if we were to make some introductory remarks about that progress.

1671. The Chairperson: Yes, thank you.

1672. Mr May: It might be useful to highlight the nature of machinery of Government changes in order to inform the discussion and to highlight the key areas as the NIO sees them.

1673. The number of required actions to make machinery of Government changes work is quite small. Consequently, in Whitehall or elsewhere, machinery of Government changes can typically take place at short notice and with limited prior planning. One example of that is the decision to transfer responsibility for prisons and probation in the UK Government from the Home Office to the Ministry of Justice in 2007. That decision was announced six weeks prior to its taking effect. It is notable because the change was far more significant with regard to the staffing numbers and budgets that were affected than the devolution of policing and justice would be. Although, clearly, there were not the same political issues associated with it.

1674. It is, however, a feature of all machinery of Government changes that certain organisational aspects are dealt with after the changes have taken effect. Therefore, although more of those changes must be included in the programme, because it involves a transfer of powers from the UK Government to a devolved Administration, it is not the case that every matter must be resolved in advance of devolution.

1675. Therefore, with regard to what is essential for the delivery of devolution — what is on the critical path — the key requirement is

political agreement in the three areas that the Committee addresses in its work: which powers are devolved to which Department, within what timescale, and with what ministerial responsibility. Flowing from that are three aspects of the programme that the NIO is running that are critical to delivery. It may be useful to discuss each of those in more detail. In summary, they are the legislative, administrative and organisational steps that are necessary for devolution. It is clear that devolution cannot happen if the legislation that transfers the functions and creates the new justice Department is not in place. After my remarks, Ms Salters will say a little more about where the NIO is on legislation.

1676. The second area relates to administrative arrangements. They are the necessary underpinning of the legislative changes, which will be made — if they have not been made already. They cover such matters as governance arrangements and protocols. For example, the creation of the Courts Service as a Next Steps agency, which is one of NIO's working assumptions, means that it would be proper and appropriate to implement a framework document that sets out how that would work from the point of devolution onwards. A draft of that framework is in preparation. There is a standard template for such things. Similarly, the working assumption is that the Public Prosecution Service will become a non-ministerial Department. A framework document would be the appropriate governance mechanism to put in place there.

1677. We are considering developing protocols in four main areas: judicial independence; prosecutorial independence; policing arrangements; and national security arrangements. In each case, the protocols will build upon the agreed principles and legal framework that is already in place. They will be public documents that will set out how things will work in practice. We plan to share the drafts initially with the officials in the Office of the First Minister and deputy First Minister with whom we are working. It is important that those protocols are in place from day one.

1678. Finally, there are the organisational aspects to the change. They need to be fully functioning organisations capable of delivering the functions allocated to them and of responding to ministerial priorities from day one. Those organisations must be staffed and funded to an appropriate level, and work is ongoing to deliver that.

1679. Before Christmas, the Secretary of State announced the comprehensive spending review settlement for the Northern Ireland Office. He said that it is a good settlement that provides a sound basis upon which to enable the devolution of justice and policing.

1680. The next step is to separate that budget between the proposed Department of justice and the NIO. We will take that process forward in the coming months. The Department of Finance and Personnel in Northern Ireland and the Ministry of Justice in Whitehall will be involved to ensure that it is done in a way that is understood and accepted.

1681. The Secretary of State is committed to the Northern Ireland Office's being ready to meet the target of enabling the devolution of justice and policing by May 2008. Against each of the three critical path areas that I have outlined, we are on target. In addition, we are making good progress in a range of other areas where change is necessary. In short, the programme is on course to deliver by May if necessary, based on a series of working assumptions. Those assumptions must be reviewed when political agreement has been achieved. The target of May 2008 takes account of the end-March Assembly report. It will also provide time for any adjustments to be made if an agreement is reached in that time frame.

1682. There is a range of other useful, important activities for preparing the ground for devolution and for ensuring that there is a clear strategy for how those aspects that do not need to be resolved from day one will be resolved thereafter. Those include a range of personnel, IT and other matters. We can address those issues during questions if the Committee wishes. Clare will say a little more about the legislation, which is one of the critical aspects.

1683. Ms Clare Salters (NIO): The Secretary of State has explained in writing to the Committee that it is our intention to share an indicative draft of the two main pieces of legislation with members at the beginning of February. It will not be possible to have the legislation in final form at that stage, not least because we cannot finalise the legislation until the Assembly has decided on the matters that it wants to have devolved to it. However, we are working on the assumption that powers will transfer broadly along the lines set out in the February 2006 discussion document. We thought that it would be helpful to the Committee in finalising its deliberations to see an illustration of what the legislation would look like.

1684. The two main planks of the legislation are an Order under section 4 of the Northern Ireland Act 1998, which would amend the list of reserved items in schedule 3 to the Act. When something ceases to be reserved, it becomes devolved. That will set out the main transfer of matters from the reserved to the transferred category.

1685. The second and larger — but significantly less exciting — piece of legislation is an Order under section 86 of the Northern Ireland Act 1998. It goes through all the functions currently exercised by the Secretary of State or other UK authorities where their devolving transfers them to the appropriate Northern Ireland authority. It will be a long and exceptionally boring document that will go through every piece of statute highlighting the need to delete references to the Secretary of State and to insert “Department of Justice” or equivalent. We cannot finalise the text of that until we find out the correct title of the Department that the Assembly chooses to create. However, for the sake of having something to draft, we have used “[Department of Justice]” as an illustration.

1686. The legislation is particularly dry even by legislative standards; therefore, we intend to publish with it a commentary to help people who have an interest in the legislation, particularly outside the Committee, to understand what it means and what it delivers. Our aim is to get that commentary to the Committee early in February.

1687. The Chairperson: Thank you both for that. When that document passes over to the Committee and the Assembly, will there be a formal consultation process, or is it simply a demonstration of the work that is being done in preparation for devolution? Does the NIO plan to have a formal consultation process with political parties that would include the usual procedures at Westminster?

1688. Ms Salters: There will not be a formal consultation process; the product would not, at that stage, have been proofed by parliamentary counsel or the Office of the Legislative Counsel in Northern Ireland. It will simply be an illustration of what the legislation is likely to look like. Given that the legislation is simply to give effect to the resolution that the Assembly may pass in due course, the NIO does not plan any further consultation than that. The legislation will be adapted in the light of what the Assembly resolves. It is different from other legislation that goes through and does not come on the foot of an Assembly resolution that makes specific requests.

1689. The Chairperson: The NIO has requested that the Committee report to the Assembly by 29 February 2008; and the Assembly is scheduled to report to the Secretary of State before the end of March. In the light of those timescales, will the NIO be able, realistically, to complete the legislative process in time to allow for the devolution of policing and justice by May 2008?

1690. Ms Salters: We are confident that we can deliver legislation in May if that is what the Assembly requests. Aside from the timing, it will help to have clarity on the substance of what the Assembly is likely to want transferred and the structure and the name of the Department. Last year, a memorandum from the NIO to the Committee said that our working assumption is that all the new powers will transfer to the proposed Department of justice unless legislation has already provided for powers to transfer to, for example, the Office of the First and deputy First Minister in the case of judicial appointments. If the Assembly takes a different view about where it wants powers to be transferred, it would be helpful for the NIO to know about that so that we can adjust the legislation accordingly. The sooner that we have a steer from the Committee on the likely direction of it and the Assembly’s thinking, the less midnight oil will need

to be burned to achieve the May deadline.

1691. The Chairperson: The Committee has been liaising with the Office of the First Minister and deputy First Minister about the arrangements and preparations for devolution, in particular the role that the First Minister and deputy First Minister will have in the appointment of the Attorney General. The paper that has been provided to the Committee is largely silent on where the Public Prosecution Service (PPS) might be located. The paper does not address the critical issue of how a Minister or Ministers for policing and justice might be accommodated in the Executive. Can you confirm that the Secretary of State expects those matters to be addressed by the Assembly in its report to him, rather than the NIO introducing proposals?

1692. Ms Salters: Yes, I can confirm that.

1693. Mr May: That is true. We have put a suggestion to the Office of the First Minister and deputy First Minister that the resourcing of the PPS, as a non-ministerial Department, might be best be done through OFMDFM, rather than by a Department of justice. The Committee has already taken evidence from Sir Alasdair Fraser, Director of the Public Prosecution Service, who has set out in some detail the reasons that underpin that. The NIO has had no indication from the First Minister and deputy First Minister about their views on that, but we have put that proposal to them. It is within the Committee's remit to bring forward thoughts and proposals.

1694. The Chairperson: Equally, you also expect the question of the departmental model and how the Minister or Ministers will be appointed to come from the Committee.

1695. Mr Attwood: I have a number of questions, which should not delay you too long. The purpose of my first question is simply to clarify a point in my own mind. I understood that the North/South justice agreement would fall with devolution and that a new agreement would have to be put in place. However, evidence was given to the Committee in a briefing paper that that is not the case. It seems that at the point of devolution, some parts of the North/South justice agreement would continue to be in operation. Which is correct?

1696. Mr May: The legal advice that we have received is that formally the agreement does fall. The agreement is between the Minister of the British Government with responsibility for criminal justice matters in Northern Ireland and the relevant Minister in the Republic. As there would not be a Minister for the British Government responsible for criminal justice in Northern Ireland, the agreement would formally fall. However, there would be nothing to prevent all the areas under the current intergovernmental agreement being pursued on a North/South basis thereafter. We have set out for the Committee the work that is being done on a North/South basis under that agreement.

1697. Mr Attwood: Thank you for that clarification, because there was a bit of a muddle about that issue. So, if there is devolution on 1 May, can the Assembly, if it so chooses, have in place a new justice agreement that is modelled on the old or an advance on the old?

1698. Mr May: I do not see why not, but that may well be a matter that the Minister of justice — or whatever the title of the new Minister will be — would need to take the lead on. It would be an agreement between two Ministers, rather than an agreement between the Assembly and the Minister in the South. That was my understanding of the situation.

1699. Mr Attwood: We can work on that in the Committee.

1700. My second question is about finance. I note that a conversation is currently ongoing between the NIO and those involved in justice issues as to how the budget might be split following the CSR. That would be very interesting. Will the Department of justice's budget — whatever number of millions that may be — be transferred in the Exchequer block grant to the Northern Ireland Assembly? Could the Assembly then rework the justice element of that budget in the CSR in a way of its choosing? For example, if it decided that it wanted to subvent £5 million to health, it could do that, could it not?

1701. Mr May: Yes, the budget for justice will be added to the Northern Ireland block grant, and it will be for the Executive and the Assembly to decide how best to spend that money.

1702. Mr Attwood: The third question goes back to the Chairperson's question about where funding for the Public Prosecution Service will be sourced. In written evidence to the Committee, the chief inspector of the Criminal Justice Inspection said that he felt that the budget should fall within the remit of the Ministry of justice, not within OFMDFM's remit. I was unable to attend the Committee meeting at which Sir Alasdair Fraser gave evidence, but I vaguely recall that he said that the budget should fall within the remit of OFMDFM. Why should it be within OFMDFM rather than within the justice Ministry itself, as the CJI recommends?

1703. Mr May: There are two basic reasons why we think that it would make sense for responsibility for the budget to lie with OFMDFM. The first is that while the relationship between the Public Prosecution Service and the Attorney General will change at the point of appointment of a local attorney general for Northern Ireland under the terms of the Justice (Northern Ireland) Act 2002, the attorney general will still appoint the director and the deputy director of the Public Prosecution Service and will have various responsibilities or consultative roles with respect to the Public Prosecution Service as it moves forward. The attorney general will be appointed by the First Minister and Deputy First Minister jointly, and our working assumption is that the post will be funded through OFMDFM. Therefore, there seems to be a certain logic to the financing — which is only the resourcing that we are talking about here — sitting in the same place.

1704. The second reason is to ensure that, as in other jurisdictions, there is a separation of powers and, therefore, no perception that the ability to fund the Public Prosecution Service and the Court Service from the same ministerial authority could be used in any way to influence the independence of those functions. Due to the arm's-length relationship that the Public Prosecution Service will have with the Minister, it is primarily an issue of perception, but it is still relevant.

1705. Mr Attwood: Is that the practice in England?

1706. Mr May: In England, the Crown Prosecution Service is superintended by the Attorney General and the funding flows through that route, whereas the Ministry of Justice funds the courts.

1707. Mr Attwood: You said that the sooner the Assembly makes some decisions on structure, the better it will be for the NIO's drafting purposes. As we prepare for the devolution of policing and justice and move towards making our final report, are we missing anything? Based on your review of the evidence sessions, do you need to hear from the Committee on anything else? Alternatively, is there anything that you consider that we would be best advised to examine?

1708. Mr May: I have not carried out a complete review. If you wish us to assist the Committee Clerk, we are happy to work with him. You have heard evidence from a wide range of individuals who represent all the main elements of the policing and criminal justice field, and a large number of the relevant issues have been raised. As I have not carried out a review to assess whether all the issues have been covered, I will not commit on that.

1709. Ms Salters: I agree, and, if it will help, I am also happy to work with the Committee Clerk on a wider analysis. Perhaps when you see the draft legislation based on our working assumptions, the number of square brackets will trigger further thought.

1710. Mr McFarland: There seem to be three alternatives as to how we find a home for the transfer of policing and justice: it becomes part of OFMDFM; there is an internal review of the Departments by OFMDFM, or Westminster creates, presumably by an Order in Council, an extra Department.

1711. It was suggested that the final option would be difficult because of how long it would take to process. Should the Assembly decide that it wants an additional Department, thereby increasing the number of Departments to 11 rather than the current 10, how easy would it be for Westminster to implement that? I understand that it must be done through Westminster in advance of the devolution of policing and justice.

1712. Ms Salters: Westminster does not create the Department: the Secretary of State would increase the number of Departments. At present, the statute creates a bar on the Assembly creating more than 10 Departments in addition to OFMDFM. The Secretary of State, by Order, could increase that limit should the Assembly request it, although he would need to consider the wisdom of doing so. If that is the Assembly's wish, it could be done fairly quickly and easily.

1713. Mr May: The creation of the justice Department would be a matter for the Assembly.

1714. Ms Salters: That is correct. It would be created by an Act of the Assembly.

1715. Mr McFarland: The authority to create an additional Department comes from the Secretary of State.

1716. Ms Salters: The authority to create an additional ministerial office must come from Westminster.

1717. Mr McFarland: You have a scheme whereby the Court Service would become an agency before the transfer, and would move across as a new system. As you know, the Committee heard from the Lord Chief Justice, who reckoned that we should set up something in advance of that. He suggested that the Lord Chief Justice should chair a board of a completely hands-off organisation in which no politician should be involved.

1718. At that time, it was my understanding that that would require legislation. Once devolution of policing and justice matters had taken place, and if the Assembly wished to create a completely arms-length body, it could do so afterwards. However, if the Assembly wished to put that body in place beforehand, legislation from the UK Parliament at Westminster would be required. Again, there was a suggestion that that would take some time as a timeslot in the UK Parliament's calendar must be found before creating that body in advance of devolution of policing and justice matters. Can Mr May provide the Committee with an update on that matter?

1719. Mr May: It would require primary legislation to make that change to create, what is essentially, a non-ministerial Department, for what is now the Court Service. The Secretary of State has taken the view that it would not be appropriate for him to legislate on those matters in the teeth of devolution, and that it would be more appropriate for the Assembly — if there was a wish to move down that path — to take that step after devolution.

1720. Mr McFarland: That is quite useful.

1721. Mr May: In creating an agency, that is without prejudice to the longer-term position of the Court Service.

1722. Mr McFarland: Mr May will know that there were enormous political rows, two or three years ago — in the Policing Board and elsewhere — when it was discovered that there was a suggestion, with regard to criminal justice, that the UK's and RoI's civil servants should continue working-up cross-border criminal justice issues. At that time, there was a concern that it was a plot to harmonise North/South legislation, and so forth. Mr May must remember that matter because I remember that he, or Ms Salters, appeared before the Policing Board at that time, on that matter. What is the current position as regards to civil servants working up that cunning plan for North/South bodies in advance of criminal justice matters being devolved to Northern Ireland?

1723. Mr May: I am not sure. I was not in the Northern Ireland Office at the time to which Mr McFarland refers. There is currently an intergovernmental agreement on policing that makes arrangements for the two police services to co-operate and to create protocols with regard to a range of issues — mainly personnel issues to do with secondment, lateral entry and a range of other issues. The proposal is that that agreement will remain between the two Governments. However, the actions that will be taken under that agreement will be devolved to a Minister of justice, or whatever that post might be called. Similarly, on the criminal justice side, we have talked about the intergovernmental agreement on criminal justice. There are, to my knowledge, no other North/South aspects that are being worked up by anyone at the moment.

1724. Mr McFarland: Does Mr May not remember the row? We had a major row about the matter. Mr Attwood will confirm that because the Policing Board wailed and gnashed its teeth over it for a long time. In 2003 or 2004 there was an agreement between the British and Irish Governments. At the bottom of the agreement document, in very small print —

1725. Mr Attwood: The agreement was made at Hillsborough.

1726. Mr McFarland: Hillsborough. It was stated, at the bottom of the agreement document — in very small print — that civil servants in both jurisdictions would work together to carry forward the development of criminal justice co-operation between the two states. It caused a row at the time because it looked as if it was a cross-border body in the making and that an attempt was being made by the Governments to fire up a load of bits and pieces in advance of Northern Ireland's politicians getting anywhere near criminal justice. We would then have — when taking over responsibility for criminal justice matters — a whole raft of initiatives and agreements in place in which we, as politicians, had no say.

1727. It caused a row at that time and it was supposedly put on hold. Then, we discovered that it was ongoing. However, when the board reported on it a year later we discovered that nothing significant had come out of it. My question is where have we got to now with regard to the significance of the material that is coming out of the two jurisdictions' Civil Service working group in taking forward criminal justice co-operation?

1728. Mr May: There is an intergovernmental agreement on co-operation on criminal justice matters. That was signed by the Northern Ireland Justice Minister, David Hanson, and his counterpart in the Republic of Ireland, Michael McDowell on 26 July 2005. It sets out that there will be regular meetings of Ministers and of officials under the auspices of the British-Irish Intergovernmental Conference. That work has been ongoing since that time, examples of which include probation arrangements whereby prisoners are released in one jurisdiction but reside in another, and the development of notification systems should registered sex offenders move from one jurisdiction to the other. In response to an earlier question I want to make it clear that the intergovernmental agreement falls at the

point of devolution of policing and justice powers to the Assembly.

1729. It is then a matter for any incoming Minister with responsibility for policing and justice to take decisions about how best to proceed with criminal justice co-operation in the future.

1730. Mr McFarland: We are aware of what has been made public; those issues that you have just mentioned have all been made public and no one has a problem with that sort of co-operation. Therefore, is it correct to say that there is nothing else and no other discussions or cunning plans that we are unaware of that have been agreed privately by the two jurisdictions and that have taken place under the auspices of this co-operation between the civil servants?

1731. Mr May: Not to our knowledge.

1732. Mr McFarland: That is fine. I simply wanted assurances. I want it on the record of Hansard that we are not expecting any surprises.

1733. The Chairperson: There is no "Baldrick" option in the NIO.

1734. Mr McCartney: It is so cunning that no one knows about it.

1735. Mr May: There will be no surprises.

1736. The Chairperson: We have covered most of the areas this morning that we were keen to raise with you. Just returning to the North/South issues for a moment, I am clear about what happens with the agreement on criminal-justice matters. However, you did say in response to a question that policing co-operation would continue under the existing intergovernmental arrangements. Therefore, that will continue but the responsibility for its implementation falls to the potential new Minister and the potential new Department.

1737. I want to be clear, if policing and justice powers are devolved to the Assembly, and yet the intergovernmental arrangement continues between the British Government and the Irish Government, if any new Minister and his counterpart in the Republic wanted to amend that agreement, where does the responsibility lie for changing the agreement in the future?

1738. Mr May: Any amendment would be the responsibility of the British and Irish Governments because it is they who made the intergovernmental agreement. Therefore, there would need to be a liaison between the devolved Administration and the British Government regarding any changes that the devolved Minister wished to implement.

1739. The Chairperson: Therefore, in essence, the international agreement remains; for shorthand, it remains a strand-three matter to be dealt with at a British-Irish level. I am sure that there are parts of the agreement that relate to national issues such as passports, immigration issues and so on.

1740. Mr May: I do not believe that immigration is a part of the agreement. From memory, the agreement deals with secondment, lateral entry, disaster planning and joint investigatory teams. Regarding that agreement, powers for elements that are within the sphere of the devolved Administration will be devolved.

1741. The Chairperson: Why are the Government making a distinction between an agreement on criminal-justice matters and an agreement on policing matters? Why is one an intergovernmental issue that can be changed only by the two Governments, and the other a matter to be dealt with by any new Minister here with a new agreement being required?

1742. Mr May: The two agreements were set up at different times for different purposes. The agreement on policing was a narrowly drawn agreement — in pursuance to a number of the Patten recommendations, although that is from memory — that set out the arrangements for protocols to be established between the PSNI and the Garda Síochána regarding the areas that I have talked about, largely in the personnel field. It was a limited agreement and was set out on that basis.

1743. On the other hand, the criminal-justice agreement merely identified some broad areas in which co-operation could proceed on an intergovernmental basis. I have already explained the reasons why it falls and so on. They are simply different sorts of agreements.

1744. The Chairperson: I understand that. However, if any new Administration here wanted to enter into a new agreement on policing matters with its counterparts in the Republic, is there anything to stop that Administration, the potential new Department or the Executive entering into a new agreement?

1745. Mr May: I do not think that there is anything to stop an agreement being entered into on a North/South basis, but, clearly, if the intergovernmental agreement remains in place, that cannot be amended unless the British Government takes action.

1746. The Chairperson: I understand that. I thank you both for coming along this morning. No doubt we will be in touch with you about the consultation on the document that you are working on. The sooner the Committee can see that, the better.

1747. I have said that the Committee would return to the issue of the First Minister and the deputy First Minister. This morning we expected to have officials from OFMDFM to engage with us. That was not possible. A letter has been circulated to members, dated 7 January, which explains why it was not possible to arrange that for today. It states:

“The Ministers remain of the view that this is a matter for party political engagement and agreement and, as you know, they consider it would be appropriate for them as holders of ministerial office, to offer views to the inquiry at this stage. On this basis, the Ministers are agreed that it would also be inappropriate for officials to attend the Committee to discuss what are undetermined policy matters. Therefore we must decline the invitation to appear at this time.”

At the last meeting, the Committee explored the options for how we can conclude our report without those key elements being available. What preparatory work has been done on the role that the First Minister and deputy First Minister will have in respect of: the appointment of the Attorney General, or on the issue of the public prosecution service being funded by the Department? Issues relating to the appointment of senior judges also fall to OFMDFM. Then there is the issue of the Ministers themselves: will there be one Minister or two? How will they be appointed? Can they be accommodated within the Executive? Will they be a part of it? Will the Department have to be replaced, or do we need to approach the Northern Ireland Office for approval for an additional Department to be created? Those are major issues for the Committee.

1748. As things stand, OFMDFM says that those are political matters, not departmental issues and they must be decided between the political parties. Until there is agreement between the parties on those issues, OFMDFM will not engage further with the Committee on

them.

1749. That is my summary of the position: that is where we stand at the moment as I understand it. In the light of that, the Committee must decide how to proceed. We must prepare a report fairly soon. We are due to report to the Assembly by 29 February. We have six or seven weeks to look at those issues. The question is: do we revert to the political parties and ask them to engage on those issues and let us have the outcome in due course, or are there alternative options?

1750. Mr McFarland: Committees should not start into internal politics. Have you and the deputy Chairperson —

1751. The Chairperson: Alan, before you proceed, there is an issue that I want to clear with the Committee. We are still in public session and therefore we are still on the Hansard record. Does the Committee want to continue this discussion in public, or does it want to go into private session to deal with this?

1752. Mr McFarland: We should go into private session. There are issues of Committee integrity and how the Committee should operate to be settled. We should have a serious discussion in private without having to worry about the public record.

1753. The Chairperson: Is the consensus that the Committee proceeds in private session?

Members indicated assent.

1754. The Chairperson: I thank Hansard for its assistance in recording the proceedings.

Committee resumed in public session.

1755. The Chairperson: The Committee is in public session again. Thank you, members. There are some further items of business. Members will recall that the party papers that we were working on, following the submissions from Professor Jackson and Mr P J Fitzpatrick, are expected to be with the Committee staff by noon tomorrow. I do not know how the parties are doing. I must confess that the DUP is struggling, because contacting people during Christmas has proved to be difficult. I am not sure that the DUP's paper will be ready for the deadline, but we will do our best. Alan, what is the situation for the UUP?

1756. Mr McFarland: The work is progressing, but we have had to clear lines in London and all over the place. Some people are whizzes at that sort of work, but trying to get hold of them is difficult.

1757. The Chairperson: Alex, I know that you had done some work and met the previous deadline.

1758. Mr Attwood: The paper needs some adjustment to take account of evidence that has been gathered since then. It will not be ready for tomorrow, because one of my staff is absent. It will be ready on Thursday.

1759. Mr McCartney: We had a meeting yesterday, and I hope that Sinn Féin's paper will be ready for tomorrow's deadline, but I am not sure.

1760. The Chairperson: According to the timetable, next week, the Committee is scheduled to discuss structures and to reflect on advice from the expert witnesses. On 22 January, we will have party deliberations. At present, only discussion has been scheduled for those two days. Is that correct?

1761. The Committee Clerk: That is right. There are several other matters that the Committee will need to attend to, such as correspondence. For the next couple of weeks at least, the meetings will be for party deliberations. However, when that timetable was drawn up, I had no idea when the Budget debate would occur. The Budget may be debated the week after next, which might affect the Committee meeting, because it is scheduled for when the Assembly is sitting. The Committee must examine when it meets and whether it needs to meet more regularly in order to thrash out all the issues, particularly if more information comes from discussions with special advisers. The point was made during the private session that we are getting very close to the deadline for drafting a report and for the Committee to discuss and revise that draft before the final version is published and the report is scheduled for debate before 29 February. Although the scheduled dates are available, other pressures may impact upon them, and the Committee may need to consider again how regularly it meets.

1762. Mr McFarland: Will the Budget debate be held in early February?

1763. The Committee Clerk: I sense that it might happen sooner.

1764. Mr McFarland: The Executive will not meet to discuss the Budget until 18 January. Is that right?

1765. The Committee Clerk: I do not know, because I am unfamiliar with all of the Statutory Committees' work. As I understand it, the Committee for Finance and Personnel embraced the contributions from all the Statutory Committees, with a view to feeding them into the Budget process. I do not know the precise timescales. However, given that the Committee normally meets while there is a plenary sitting, a debate about the Budget — whether it occurs in two or three weeks' time — could affect the Committee's planned timetable for extensive discussions.

1766. The Chairperson: As I understand it, the Business Committee is meeting now, so we should know the date soon, Alan.

1767. Mr McFarland: There was talk that the Assembly and the Speaker might favour extending the deadline for the debate to 3 February. However, the Business Committee will decide that today.

1768. The Chairperson: You had envisaged the papers being circulated for next week and a discussion taking place. Would that discussion be specifically on the papers or on more general issues?

1769. The Committee Clerk: The discussion would be on the papers, because, by and large, the Committee has a position on virtually all the matters to be transferred, which comprise the first of the three components of the terms of reference. The Committee wanted to park its decision on a couple of matters, but we might come to those now and, perhaps, move them on. The Committee can then set that component aside, and it will be gathered up when members review the draft report.

1770. Therefore, the Committee must be concerned with structures and timing. Structures seem quite complicated, whereas timing is more to do with the outcome of party political considerations and whether there is consensus in the Committee about a particular date.

There is a complexity around the structures and the Government's accountability, which the Committee has focused on in all the oral evidence sessions. Members face that hurdle now and must resolve how the structures will look. That might lead to the discussion of issues such as where the Public Prosecution Service might be, whether there will be an arms-length court service, and the number of Ministers that there will be.

1771. The Chairperson: Over the past couple of weeks, I have been involved in discussions on these issues. The difficulty that I have with submitting a party position paper now is that there might be subsequent negotiations on issues that we had not anticipated and further engagement after we have met with our advisers. Therefore, what is the point of stating our position if the nature of the engagement could change? That problem has been exercising me for the past 24 hours — if we put down a position on paper but, find that the changed position of OFMDFM means a different form of political engagement, I am not sure whether that engagement will take place across the Committee table or elsewhere. If it happens elsewhere, in what structure will it take place?

1772. I am reluctant to have the type of discussion that we envisage having next week without clarity about the direction that we need. Clerk, subject to the agreement of members, we need a wee bit more time to be absolutely clear about our position on the new correspondence from OFMDFM. I want the Committee to deal with, and try to sign off on, matters to be transferred so that that business is finished because the discussion over structures will be more complex than was initially thought — I fear that the implications of the new correspondence from OFMDFM have created an added difficulty for us.

1773. Mr McFarland: From our experience of the past 10 years, I am not an advocate of position papers because the moment that they are produced, they have to be defended. Listening to an argument and modifying one's position is the essence of all negotiation and agreement, but position papers make it difficult to do that. For example, Raymond might make a very good point, of which I had not thought. However, that point might contradict what my party has put down in its position paper. Consequently, I would have to ask my party colleagues, who will growl when they hear that it is a point put forward by Sinn Féin, whether they want to change the party position. We must provide clarity for the team because they cannot write the report without it. However, the four key parties are represented on the Committee, which provides an opportunity for us to discuss where we stand. My guess is that a lot of this is quite simple because we heard that the Secretary of State is going to leave the business of creating the model for the Lord Chief Justice's office to us. Therefore, the confusion over whether we need to recommend that Westminster puts through primary legislation is not a factor anymore.

1774. The situation that we have is devolving powers according to David Lavery's amended model, which does not seem like a contentious issue. There is an issue of accountability of that organisation and who runs it, which needs major discussion, particularly if we recommend moving to the Lord Chief Justice's model. There must be a serious discussion on accountability. The structures, the number of Ministers and how to create a Department will have to be parked.

1775. That will be a political discussion somewhere down the line, when everyone is comfortable. The options are limited, but, at that stage, it will be a negotiation. Other matters must be tweaked, and let us tweak what we can tweak. In this Committee, we should lay to rest the bits and pieces that are relatively easy and deal with what we can. We can work out the political stuff as best as we can towards the end.

1776. The Chairperson: Members should be clear about what I am saying. If there is to be political engagement and agreement on a range of issues, we must know whether this Committee is expected to engage in that process, or will that happen elsewhere. If it does happen elsewhere, we are entitled to ask about how that will happen and who will take such discussions forward. It is clear to me that thrashing out decisions about the timing of the devolution of policing and justice will come down to the two main parties.

1777. The other issues must be matters for the four parties because, in theory, the Minister, or Ministers, responsible for policing and justice will be drawn from any of those parties, which will have ongoing scrutinising roles. Therefore, the four-party structure of this Committee should be reflected in the negotiations about future structures — but how will that happen? In the first instance, as your Chairperson and Deputy Chairperson, Raymond McCartney and I must seek clarity from OFMDFM because many of the structural issues relate to it. We will report back to the Committee next week when we will be in a better position to take a view on how, at a practical level, we might take our discussions forward, what our role will be in those discussions, and what role, if any, will be played by others.

1778. In addition, if this Committee is to negotiate on some of the structural issues, it would be useful if Alan McFarland and Alex Attwood consulted their colleagues to ascertain whether they have a mandate to do so because, obviously, such discussions would also have party implications.

1779. Raymond and I must explore the matter further and see where we get to. I appreciate that that will create a difficulty for the Committee Clerk; however, we have identified a major difficulty today, and I would be happier to go forward having clarified the situation rather than spending another couple of weeks in discussions only to discover that we should not have been undertaking those discussions or that other discussions are underway elsewhere.

1780. I want the Committee's role in this matter to be clarified in order that we can move forward and do what is expected of us in the knowledge that either discussions on other aspects of our work or discussions that might impact on our work are taking place elsewhere and will be fed back to us in due course, or that we are expected to undertake that work. That is not clear from the information that we have.

1781. I am reluctant to submit a paper that commits my party to positions that may be the subject of political negotiation — either inside or outside this Committee. Committee members could discover that having had discussions in the Committee, it is necessary for them to go away, consult, get agreement and come back. Given simple practicalities, we do not have the time to do that. This is not a negotiating process in which all parties are in a room or a building and are able to go in and out in order to consult. This could be a protracted situation, which changes the nature of the Committee's discussions, and we must have clarity.

1782. Mr Attwood: I have three or four points to make. We must have political and operational clarity. That is why, aside from anything else, I would like to have the head of the Civil Service present. He will be responsible for operational matters in the same way that Clare Salters and Peter May are responsible for the NIO's operational matters, and I would like to know what they have been doing in relation to those operational matters. Is it mutual to what the NIO has been doing? What are the realistic time frames in which it is working?

1783. The Committee has great political ambitions. However, they will come to naught if they cannot be delivered operationally by the Civil Service. Independent of anything else, I want operational clarity from the head of the Civil Service on where its work programme is and about the consequences of that on many levels, including timing. I agree with the Chairperson that he and the Deputy Chairperson should seek political clarity. The Committee could end up being somewhat embarrassed if it were to go down a certain road only to be told by people who are higher up the pay scale that it should not have gone there in the first instance. We must accept that political clarity is needed.

1784. I suspect that some matters will be reserved to political leadership and others reserved to Committee leadership, if you like. However, if it is in order, Chairperson, I still intend to submit a paper. It may not cover all the issues, given that one may not want to show all of one's hand. Nonetheless, it is my intention to submit a paper on a range of matters on which the Committee has been asked to report. I admit that I may hold back on some matters because I may not have the political authority that I thought that I had; the game is going to move elsewhere, or whatever. However, there are certain matters about which I want to submit a document from the

SDLP's perspective, so that if it can, at least, create certainty, it will do so.

1785. The Chairperson: Do any other members wish to comment? At present, in respect of the papers, I ask members simply to consult their colleagues on those matters. We will just have to see where we get to with regard to who will bring forward particular matters next week. Let me be clear that it is without prejudice. The Committee's appreciates, Alex, that if you bring matters forward and show your hand on certain issues, that will be treated with the respect that it ought to be accorded.

1786. Mr McFarland: We will take full advantage.

1787. The Chairperson: I remind members that the Committee will have lunch with the Northern Ireland Affairs Committee in the Commonwealth Room at Westminster on Thursday 17 January 2008 between 1.00 pm and 2.00 pm. I would appreciate it if any member who is available attends that meeting.

1788. Mr McFarland: Recently, my party office received a letter that asked political parties to have lunch with the Northern Ireland Affairs Committee on Wednesday 16 January 2008 in order to discuss the devolution of policing and justice. Have other parties received that letter?

1789. Mr Attwood: What is it?

1790. Mr McFarland: The Committee is due to have lunch with the Select Committee next Thursday. However, parties have also received a request for members to have lunch with the Select Committee next Wednesday in order to discuss the devolution of policing and justice. Of course, normally, the same people from the Committee would represent their parties at such a meeting. Are members aware of that invitation? Has there been confusion?

1791. The Chairperson: I am not aware of that. However, it may well be the case, Alan. I certainly have not been advised that my party has received such a request.

1792. Mr McFarland: I thought that it was a bit strange because the meetings are due to be held on consecutive days, on the same topic, and, normally, the parties would put forward the same members to discuss that topic. To have two meetings, therefore, seems a bit pointless.

1793. The Chairperson: Indeed. Anyway, I would appreciate it if those members who are available to attend next Thursday's lunch would indicate accordingly.

1794. The Committee Clerk: I, too, would like some clarity on what I must do, particularly with regard to next week's agenda. Matters to be transferred can be included on next week's agenda. On reflection, I believe that those issues can be resolved quickly. There are only a couple to be dealt with. The parties will take their positions, whatever those might be.

1795. With regard to structure, the NIO letter dated 15 October 2007 included, in Annex B, the working assumption of what the structure would be like. It states that the Public Prosecution Service would be funded through OFMDFM. There is an opportunity for discussion on that.

1796. In so far as clarity about political considerations is concerned, I understand why the Committee has reached that particular conclusion. The Assembly placed an obligation on the Committee to prepare a report on the terms of reference that were originally developed by the Assembly and Executive Review Committee. The Committee volunteered to undertake that piece of work when it recognised that it must be done.

1797. It seems to me that, in those terms of reference, it was the Committee's responsibility to decide what matters should be transferred, the departmental structure into which they should be transferred, and the ministerial arrangement that would head that structure. It was also the Committee's responsibility to make a recommendation, if it could, on timing. Therefore, it seems that the Assembly has determined that that is what the Committee should be doing. I understand that what Committee members are saying is that they may wish to ask their political parties for direction on their positions in relation to those matters. I am certain that it is the responsibility of the Committee to prepare a report for debate in a plenary session about all those issues.

1798. The Chairperson: Absolutely, there is no doubt about that. We will see which papers come in from the parties by next week. Assuming that we move quickly through the outstanding issues on the matters to be transferred — and then park those — we can set one third of the Committee's remit to one side. It is good to put that work behind us so that we know that, at least — from the point of view of morale — we have hit that milestone.

1799. We could then have a useful without prejudice discussion about the structures. Our previous discussions, for example, on the matters to be transferred were useful and brought us to the point whereby we had a broad consensus. It would be useful to have, next week, a without prejudice discussion on the structures. I hope that Mr McCartney and I can then report back on where we have got to on the political side of things. We can follow that with a without prejudice discussion on the structures. That may help to inform our thinking on the development of our party-political positions. By then, I hope that we will understand the context in which that discussion is taking place and where the political engagement/discussion is going over the next few weeks.

1800. I now refer to the NIO response, dated 15 October 2007, to the Committee's letters. Annex B — Chart of the Organisations in the Criminal Justice and Policing Fields — outlines the kind of structures that are envisaged by the NIO. I do not know whether it is possible to form an agenda, using that chart, which the Committee might work through and might, at least, allow a broad discussion on each of those areas. We may be able to establish quickly that there is a consensus on a number of those areas, which would allow us to focus on those areas in which we do not have a consensus. That would then be the subject of further political discussion, whether in Committee or otherwise.

1801. Are members content that we proceed on that basis next week and that we ask the Committee Clerk to draw up an agenda based on, first of all, resolving the outstanding issues on matters to be transferred and, secondly — after Mr McCartney and I have reported to the Committee on the political developments — that we have a discussion on an agenda that is based on the NIO's chart. We will proceed on that basis at next week's meeting of the Committee. I will leave it to the parties to decide what they want to do with their papers. Mr Attwood has indicated what he is likely to do.

1802. Mr Attwood: If I leave the room now, will the Committee be inquorate?

1803. The Chairperson: Yes, the Committee would be inquorate. However, we have almost finished the meeting.

1804. Mr McFarland: Would next week's meeting of the Assembly and Executive Review Committee be held in public, as has been the

convention until now, particularly with regard to discussions on matters to be transferred? I need an answer to that question, for logistical reasons.

1805. The Chairperson: Yes. Would members prefer to go into private session when we are dealing with the structures and the report back on the political side, after we have dealt with the matters to be transferred?

1806. Mr McFarland: I am an advocate of open discussion — especially for non-contentious issues. However, it is easier to speak freely on contentious issues if one is not worried about one's remarks being reported in the press. Committee evidence sessions can be made public at some stage, but it is important that contentious issues are discussed and decided in private.

1807. The Committee Clerk: Can I clarify whether the Committee wants the private session to be reported by Hansard, because it might form part of the Committee's report that is due before the Assembly by 29 February. Although parts of the sessions will be private, I will have to arrange for Hansard to be present to cover those discussions. The reports on the sessions will not be broadcast or available to the media, but members will eventually have a transcript that will be published.

1808. The Chairperson: Are members content with that?

Members indicated assent.

1809. The Chairperson: A letter was circulated to you from the Committee on the Administration of Justice (CAJ) requesting an opportunity to give oral evidence to the Committee on issues relating to the devolution of policing and justice. Following the request, the Committee refused and, subsequently, it was parked. We are getting close to the point when we must decide whether the visit happens.

1810. Mr Attwood: We can go round the houses on this, and we have done in the past. However, one group has consistently said that it has something to say. Some members have concerns about CAJ, but it has consistently said that it has some depth of knowledge. It has conducted an 18-month research project on the issue, and it might be useful to hear from CAJ. I am not saying that others cannot be invited, but CAJ has pressed the Committee and seems to have some level of authority on the subject. Furthermore, it has differentiated itself from every other organisation by saying that it wants to speak to us, so I think that we should allow CAJ 45 minutes to do so.

1811. Mr I McCrea: I disagree with Mr Attwood. Every organisation that wants to come before us will provide a good reason why they think they should be allowed to do so. I do not have an axe to grind with CAJ on this occasion, but we are too far down the road to suddenly allow another organisation to come before us, only to say no when another organisation requests a meeting.

1812. Mr McFarland: Have we received a written submission from CAJ?

1813. The Chairperson: Yes. Do you feel that that is adequate, Mr McFarland?

1814. Mr McFarland: We are running out of time, so a written submission is adequate.

1815. Mr McCartney: I agree with Alex; CAJ should be called.

1816. The Chairperson: The Committee is divided on how to take this forward: two parties said yes, and two parties said no.

1817. Mr Attwood: Chairperson, what is your view?

1818. The Chairperson: We have received a written submission from CAJ. I have no axe to grind with that group. I have differences with CAJ on a range of issues — as I have with other people. However, that does not mean that I do not want to hear what they have to say. I accept that CAJ has a contribution to make, but one must ask whether it is necessary to have an oral evidence session to fulfil that contribution, or whether its written evidence is sufficient. What can CAJ add to the Committee's deliberations at this stage that will make a difference? That is why I am not convinced that it needs to attend, Alex. You say that CAJ is the only organisation to say that it has something to say, but what could it have to say that is so significant and relevant that we should set aside part of a meeting to hear its contribution?

1819. Mr Attwood: I have a lot of arguments to make, but every comment from Peter May or P J Fitzpatrick from the Courts Service of Ireland, or David Lavery offers a new dimension that requires me to revisit our submission paper. There is always another element or nuance. The benefit of the evidence sessions is that one gets a different perspective to change one's judgement. In a way, it is a disservice to the wider community that the Committee has not taken evidence from the wider community sector.

1820. The Chairperson: I understand that, Alex, but there is nothing to stop you from meeting CAJ, going through the issues and feeding them back to the Committee if you think that there are views to be added to our evidence. My concern is that if CAJ were singled out from the wider community, a number of other organisations could also be included. At this stage, we do not have the time, and other issues must be resolved. It is open for any member to consult with CAJ if they feel that that organisation can make a valuable input on certain issues. I am willing to meet members who have points to raise, suggestions to make or who have anything that they want to incorporate in party papers. That is a matter for those members. To single out CAJ would run the risk of others asking why they were not asked to supply evidence. If the Committee is divided on that matter, I use my position as Chairperson to advise the Committee against calling CAJ for an oral evidence session. Do members want to put that to a vote?

1821. Mr Attwood: No, it is clear that a majority is not in favour of calling CAJ for an oral evidence session.

1822. The Chairperson: We shall leave it at that. I shall ask the Committee Clerk, in response to CAJ, to say that, in the light of further evidence, the Committee is happy to receive additional points in written form. I stress that it is open to any Committee member to meet CAJ if they feel that there are matters to be discussed.

1823. Members, it is now 2.00 pm and time is marching on. Are members happy to push the debate on the paper on the judiciary of England and Wales and accountability into next week's meeting?

1824. Mr McFarland: Those are both useful papers, particularly the one to do with how the administration of the Lord Chief Justice and his responsibilities work.

15 January 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Ms Carál Ní Chuilín
Mr John O'Dowd
Mr George Robinson

1825. The Chairperson (Mr Donaldson): Yesterday, the Deputy Chairperson and I met with the special advisers to the First Minister and the deputy First Minister. Gail McKibbin from the Office of the First Minister and deputy First Minister and the Committee Clerk were present for the discussions. Before I give my report of yesterday's meeting, we should determine whether members want to hear that report in public session, as this meeting is at the moment, or in private session.

1826. Mr McFarland: If we are to be open, perhaps we should hear the report in private session.

1827. The Chairperson: Are members content that we move into private session to allow for a brief discussion on my report of yesterday's meeting? We will resume in public session immediately after.

Members indicated assent.

1828. The Chairperson: The Committee is back in public session. I ask members to declare their relevant interests. I declare an interest as a member of the Policing Board and the Privy Council.

1829. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

1830. The Chairperson: We proceed to our discussion on the matters to be transferred. I refer you to tab 4 of the members' pack, which contains a summary of the three matters to be transferred that remain unresolved. The three matters are public order, as stated in paragraph 10 of schedule 3 to the Northern Ireland Act 1998, which relates to appointments to the Parades Commission and its operation; the future powers of the army to operate in support of the police; and the PSNI policy of 50:50 recruitment. The Committee has not reached a conclusion on those issues. We received some material from the Northern Ireland Office on some of the matters. The Committee Clerk has provided a note on each of the issues.

1831. At our meeting on 16 October, members agreed to wait for the interim report of the strategic review of parading before dealing with appointments to the Parades Commission and its operation. Subsequently, I tabled questions in the House of Commons, and the response from the Secretary of State indicated that the interim report was expected in the new year. It has not yet come, and "the new year" can mean anything. When someone uses that phrase, he or she usually means early in the new year, but the Secretary of State did not even say that. However, I think that he meant in the first part of the new year.

1832. The date of the publication of the final report will depend on the time that it takes to complete the consultations on the interim report. It is possible that the interim report will not have been published before this Committee has to report to the Assembly; it depends on the definition of new year. The Committee will, therefore, have to try to reach consensus in the absence of the interim report. However, we may include in our report a reference to an impending interim report, which may have implications for appointments to the Parades Commission and its operation. Perhaps we will have the interim report by then.

1833. Ms Ní Chuilín: Our report will be an interim report based on our receipt of an interim report.

1834. The Chairperson: That is right, Carál.

1835. Ms Ní Chuilín: The plot thickens.

1836. The Chairperson: No one could ever accuse us of being complex.

1837. Mr Kennedy: I hope that everyone is following this at home.

1838. Mr McCausland: There is a presumption in that conversation that the review will recommend the continuation of a Parades Commission.

1839. The Chairperson: That is not necessarily correct, Nelson.

1840. Mr McCausland: In some of the conversations, there was such a presumption.

1841. The Chairperson: That may not be the case.

1842. How do Members want to deal with that? One option, which we have used before, is to include a sentence such as this:

"There were diverse opinions about the transfer of appointments to the Parades Commission and its operation, and there was no consensus about whether this should continue to be a reserved matter."

1843. We could then leave it to the Committee Clerk to come back to us if the interim report is published, in which case we may want to amend our position. Members should bear in mind that this will be an interim report only — it will require consultation; it will not be conclusive. The Committee may have to have regard to it, but that does not necessarily mean that the interim report will be definitive. By their very nature, interim reports are not the final say.

1844. In order that our position can be noted in the Hansard report, will members clarify where each party stands on the transfer of appointments to the Parades Commission and its operation? Should appointments to the Parades Commission and its operation continue to be a reserved matter or should responsibility for that function be transferred in the devolution of policing and justice?

1845. What does Sinn Féin think?

1846. Mr McCartney: Sinn Féin believes that the function should be transferred.

1847. The Chairperson: Do you mean appointments to the Parades Commission and its operation?

1848. Ms Ní Chuilín: Yes.

1849. The Chairperson: What does the SDLP think?

1850. Mr Attwood: The function should be transferred, with built-in community safeguards to ensure that there is no potential for abuse relating to decisions being appealed or nominations to the Parades Commission — if it continues to operate.

1851. The Chairperson: What does the UUP think?

1852. Mr McFarland: The UUP hopes that a solution to this difficulty will come from Lord Ashdown's review. At the moment, the last thing that is needed is to try to solve the parades issue through debate on the Floor of the House.

1853. Mr Kennedy: Also, the UUP is on record as being in favour of the abolition of the Parades Commission.

1854. Mr McCausland: My party has a similar view.

1855. The Chairperson: We have two different viewpoints: one favours the retention of the Parades Commission and believes that it should continue to function under the auspices of the Assembly, with appointments made to it —

1856. Mr O'Dowd: [inaudible]...on the report as well.

1857. The Chairperson: It is not beyond our capacity to come up with a form of words, acknowledging that there is a review, the Committee awaits the interim report, and the interim report may have implications for devolution.

1858. The question is whether, in principle, we agree that responsibility for parades should be transferred or remain as a reserved matter. Remaining as a reserved matter means that the responsibility can be transferred at any stage in the future. There is no consensus on that. Are members content, in the meantime, to proceed using the formula that:

"there were diverse opinions about the transfer of appointments to the Parades Commission and its operation, and there was no consensus about whether this should continue to be a reserved matter."

1859. That is a statement of the position at the moment. Are members content that we add to that a reference to the review of parading? Receipt of the interim report by 29 February may influence that wording. Are members content to park that issue? The Committee Clerk will work on a form of words. If we receive the interim report, we can determine whether it has implications for either

of the two main opinions expressed by members. Are members happy to proceed on that basis? In any event, regardless of whether it receives the interim report, the Committee's report will refer to the review of parading, but its opinion on the review might change. However, in principle, the Committee is not agreed on whether responsibility for parades should be devolved at this stage.

1860. Ms Ní Chuilín: I am content. Paddy Ashdown and the Committee Clerk can sort it all out.

1861. The Chairperson: Absolutely. My money is on the Committee Clerk. Perhaps I should ask him whether he is happy enough with that. Are you?

1862. The Committee Clerk: I am delighted.

1863. The Chairperson: We shall move on. The Committee requested that the NIO provide clarification on the future powers of the army to operate in support of the police and the nature of the post-normalisation devolved powers.

1864. The clarification that we received from the NIO states:

"The Secretary of State has provided clarification with regard to the following matters:

- The Secretary of State believes that it would not be appropriate for the military support powers contained in the Justice and Security (Northern Ireland) Act 2007 to be devolved.
- The military support powers contained in sections 21 to 42 of the Justice and Security (Northern Ireland) Act 2007 will continue to be available, on the request of the Chief Constable, to provide support to the police.
- With regard to the powers conferred on the Police by this statute, the NIO has confirmed that the Chief Constable would not need to make a request to the Secretary of State in order to invoke these powers.
- The devolved Minister would be able to exercise section 29 and 32 powers (power to take possession of land and to close roads by order) independently. The Secretary of State would only wish to exercise this power himself in relation to non-devolved matters."

1865. We do not have consensus on this matter. Sinn Féin and the SDLP favour the devolution of those powers to the new Department, and, from recollection, the UUP and the DUP wish to see them remain as excepted rather than reserved matters.

1866. Mr McFarland: Defence, foreign affairs and Treasury functions remain with Westminster. Military support powers come under the heading of defence, which is a national issue.

1867. The Chairperson: It is fair to say that neither Scotland nor Wales has those powers. Again, I will put to you the tried and tested formula: there were diverse opinions about the transfer of excepted matters, and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for the Assembly to request the transfer of such powers. If the Committee wishes, we could include a reference that the Assembly would continue to review reserved matters, which are in a separate category, but, under the Northern Ireland Act 1998, we do not have the authority to transfer excepted powers. Are members content to proceed on the basis of no consensus being reached?

Members indicated assent.

1868. Mr O'Dowd: We see no role for the British Army in this situation.

1869. The Chairperson: That will be reflected in the evidence that has been given.

1870. Mr Kennedy: Presumably, you see no role for any other army?

1871. Mr Attwood: There is a contradiction in the NIO statement, because, on the one hand, it states that those matters are excepted, but, on the other hand, it states that the Chief Constable will be able to go directly to the Army to get military support and will not have to go through the political authority of the Westminster Government. Therefore, it seems that you cannot get anywhere near those matters, but it seems that the Chief Constable can exercise those powers without political approval. The Chief Constable is operationally responsible for his own business; therefore, it breaks through the fiction that there are matters that the British Government want to reserve.

1872. In the NIO document, it states that it does not want to know what the Chief Constable is asking for — he can go afterwards and account to the Policing Board and to the Minister for justice. Whatever the situation may be in Scotland and Wales, the British Government have conceded, in some marginal way at least, a significant point of principle.

1873. The Chairperson: In essence you are saying that while the Government reserve the authority to confer those powers on the Chief Constable, they give no such right to those to whom the Chief Constable must be accountable.

1874. Mr Attwood: That is not quite what I am saying. Normally, one deals with excepted matters through the British Government or their Ministers. The role of the British Army in the North is an excepted matter. The Chief Constable can go to the general officer commanding — or any other relevant person in the British Army — to ask for help from the Army. There is, therefore, a fourth category of power; it is not exactly an excepted matter.

1875. The Chairperson: I take your point, Alex; it straddles the line. The British Army is accountable to the Ministry of Defence — not the Northern Ireland Office. There is a number of variables that result in what you describe, Alex. Are members content to proceed on the basis that we have not reached consensus?

Members indicated assent.

1876. At our meeting on 16 October, there was no consensus on whether the PSNI's policy of 50:50 recruitment should be a reserved matter. It was agreed that the matter would be reconsidered following the oral evidence from the Chief Constable. I do not think that it was discussed in great detail with the Chief Constable last week.

1877. Mr McCartney: It may no longer be an issue.

1878. The Chairperson: Why would that be?

1879. Mr I McCrea: Hopefully, it will be abolished.

1880. The Chairperson: Yes, by 2010. That is a hint for Raymond about the timing of the devolution of policing and justice. Members, can we revert to our formula? There were diverse opinions about the transfer of 50:50 recruitment. There was no consensus about whether it should continue to be a reserved matter. Are members agreed to proceed on that basis?

1881. I will acknowledge the positions of each of the parties: Sinn Féin and the SDLP are in favour of the transfer of those powers; the UUP and the DUP are not in favour of the transfer of those reserved matters at this stage.

1882. Mr McFarland: They expire in two years' time anyway.

1883. The Chairperson: That is correct. We are agreed to disagree on those three matters, and that will be reflected in the report that we will prepare for the Assembly.

1884. Members will recall that, at our last meeting, we decided that we would have a further discussion on the structure and accountability matters today. It was suggested that political parties would prepare papers for discussion, but given the doubt that had arisen on the matters relating to OFMdFM, we said that it would be understandable if parties wanted to withhold those papers until we got some clarity about the respective party-political positions. How do members feel about tabling papers now? We can proceed with a discussion today. Do members want to table papers in response to the questions that were identified in the research papers that we received? How does each party want to proceed? To date, we have not received any papers — so everybody is in the same position.

1885. Mr Attwood: Consistent to what I said earlier about maximising the position of the Committee, parties should begin to show their hand — and that means producing papers.

1886. The Chairperson: What about Sinn Féin members?

1887. Mr McCartney: The Sinn Féin paper is being prepared.

1888. The Chairperson: The DUP paper is also being worked on.

1889. Mr Kennedy: The Ulster Unionist Party paper is being prepared. There is consensus; we will show you our report when Lord Ashdown reports and somebody else does something on 50:50 recruitment.

1890. The Chairperson: Maybe when Arsenal wins the Premiership?

1891. Mr Kennedy: Arsenal will come closer than Chelsea.

1892. The Chairperson: Will we set a deadline for the submission of the papers to the Committee?

1893. Mrs Hanna: There should not be any deadlines.

1894. The Committee Clerk: Chairperson, at last week's meeting, there was a request for Committee office staff to produce a paper on accountability and structures, arguably in the absence of the party-political papers. That paper has been produced and tabled, and I am sorry that I could not get it to members sooner. It deals particularly with proposals in the NIO letter of 15 October 2007, where there were projections about where the various organisations in the existing policing and justice family might sit and how they might be managed. It majors on the relationships and touches a little on the accountability. It does not, for example, address whether there should be one or two Ministers, whether they should act jointly, or whether there should be a deputy Minister. It concentrates on structures and accountability.

1895. Members have been given another paper, which was requested as a result of the oral evidence session with P J Fitzpatrick in which he clarified some points; it is also relevant to the other oral evidence sessions where governance and accountability came to the fore.

1896. The briefing paper described as A&ER 35 — 07/08 tries to capture what has been said in written submissions about governance and accountability or what emerged in the course of oral evidence sessions. It tries to match that against the assumptions that the NIO was making about where particular organisations might be. Committee members could embark on discussions around structure and accountability without prejudice to any party-political positions that they might want to declare in their papers. There is some work to be done — Alex Attwood referred to "maximising". There is scope available, if the Committee is minded to take the briefing paper, work through it, and agree where at least some of the organisations might fit and what the lines of accountability might be.

1897. When the Committee discusses the evidence from, for example, the Lord Chief Justice, during which members heard about arm's-length relationships, independence, and so on, those discussions will probably feature in party papers. However, some matters could be covered before the parties submit their papers, in much the same way as when the Committee considered the matters to be transferred. Some matters, arguably, are virtually givens, and members would be endorsing the assumptions being made by the NIO. That opinion is in the absence of any suggestion that the Committee should do otherwise.

1898. The Chairperson: I thank the Committee Clerk and staff for preparing the paper, which gives us an overview of where we are in relation to the structures and the issues that need to be considered. In some instances, there are no issues, but there are a few matters that, undoubtedly, need further consideration.

1899. Do members want to take a run through the paper and see whether there is anything that can be cleared today, meaning that we can reduce the list to a core set of issues that will inform each party's paper and will continue to inform our discussions? The sooner we get the papers, the better. However, it would be unfair if one party paper were to be circulated in advance of their all being circulated. Even if we receive a paper, I will ask the Committee Clerk to hold it in confidence until other papers are received, so that the four papers can be circulated together.

1900. In the meantime, as has been the case with our discussions on the functions to be transferred, we will do our best to reduce the number of outstanding issues and to get to the point of either achieving consensus or needing to consult our parties again.

1901. Are members content to run through the paper that the Committee staff have provided to see whether there are any matters that we can usefully resolve today, meaning that the number of issues can be reduced to a more manageable level?

Members indicated assent.

1902. The Chairperson: I do not think that the bodies are listed in any particular order. The Northern Ireland Prison Service is referred to first. We know that, at the moment, the Prison Service is an agency of the Northern Ireland Office, under the control of the Secretary of State. Post-devolution, it will transfer to what is known in the draft legislation as the Department of justice. The name of the Department may change, but for the purposes of our discussions, we will call it the Department of justice.

1903. At this stage, no issues have arisen on the post-devolution arrangements for the Northern Ireland Prison Service. Are members agreed that there are no issues and that we can reflect that in our report, or does anyone have an issue that they feel should be examined in the context of the transfer of responsibility for the Prison Service to the new Department?

1904. Are members agreed with this position?

Members indicated assent.

1905. The Chairperson: Forensic Science Northern Ireland is also an agency of the Northern Ireland Office, under the control of the Secretary of State. Post-devolution, it will transfer to the Department of justice. Are there any issues about the principle of devolving responsibility for that agency to the new Department?

1906. Are members agreed that there are no outstanding issues?

Members indicated assent.

1907. The Chairperson: The Youth Justice Agency of Northern Ireland is an agency of the Northern Ireland Office, under the control of the Secretary of State, and, post-devolution, responsibility for its functions will transfer to the Department of justice. Are members happy that no issues need to be addressed in relation to that agency?

Members indicated assent.

1908. The Chairperson: The Compensation Agency for Northern Ireland is an agency of the Northern Ireland Office, under the control of the Secretary of State. Post-devolution, it will transfer to the Department of justice. The Compensation Agency administers compensation schemes covering actions taken under the Terrorism Act 2000. Although the Act will not be a devolved matter, the agency will likely be asked to continue to administer applications for compensation, which are now at a fairly low level, on the basis of a service-level agreement. All that we have to do is satisfy ourselves that we are happy for that arrangement to continue. It is similar to other arrangements for other Northern Ireland Departments. There are other matters — for example, Home Office matters — that are not transferred but that are administered by local Departments under service-level agreements. Are members content to proceed on that basis?

1909. Mr McCartney: There are some aspects of compensation arrangements that afford the British Secretary of State the right of disapproval, even though the agency might recommend compensation. Sinn Féin would have concerns about that aspect.

1910. The Chairperson: If that matter relates to compensation under criminal justice legislation, it will transfer here anyway, Raymond, so it would no longer be under the control of the Secretary of State. I think that it would fall to the Minister, or Ministers, for justice.

1911. Are members content?

Members indicated assent.

1912. The Chairperson: The Police Ombudsman is operationally independent. At present, the Crown is advised by the Prime Minister and Secretary of State on such appointments. Post-devolution, a possible advisory role on appointments to this office may be devolved to the Northern Ireland Minister or OFMdFM. The issue for the Committee is whether, when requesting the devolution of policing, the parties represented in the Assembly will want to consider the advisory role for appointments to that office. In other words, do we want the Minister, or Ministers, in the Department of Justice to take on the advisory role, or do we want OFMdFM to take on that role? Alternatively, do we want the advisory role to continue to be a matter for the Secretary of State and the Prime Minister?

1913. Mr Attwood: I do not want to second-guess the content of the paper that we have been provided with, but are we sure that it is just an advisory role and not an executive role? Obviously, responsibility for the office will be devolved if devolution goes ahead. However, that does not mean that the arrangements regarding appointments need to be devolved — responsibility for the appointment of the Lord Chief Justice, for example, will not be devolved.

1914. The Chairperson: That is correct, and the issue is whether the local Administration wants to retain an advisory role in the appointment process.

1915. Mr Attwood: Will the local Administration have more than an advisory role? Will OFMdFM, or another office, have an executive role in the appointment of a future Police Ombudsman? The research paper may well be right, but, at the back of my mind, I wonder whether the Ombudsman is currently appointed by people from this Building, rather than through the Secretary of State's recommendation to the Prime Minister and the Crown.

1916. The Committee Clerk: I would need to clarify that with the NIO, but I understand that the only element that we are discussing is the advisory role for the appointment of the Police Ombudsman. As the Chairman correctly described, the advisory role for the appointment would transfer to the new Minister or to OFMdFM. The question is whether the Committee, or the Assembly, also wants to ensure that the Assembly has the scope and opportunity to advise whoever makes the appointment.

1917. Ms Ní Chuilín: We need clarification on that point.

1918. Mr McFarland: Discussion on the devolution of the advisory role for the appointment of the Police Ombudsman was being held back because of the sensitivity of that post. The Committee is being asked whether it has any concerns about the suggestion. Therefore, we need more detail.

1919. The Chairperson: First, can the Committee Clerk double-check the point that Alex raised about the current process for appointing the Police Ombudsman? Secondly, assuming that the advisory role would be devolved to either OFMdFM or the Minister, or Ministers, in the Department of Justice, can parties consider whether they want the advisory role to be devolved?

1920. Mr McCausland: The appointment of the Police Ombudsman would remain a Crown appointment.

1921. The Chairperson: It would remain a Crown appointment. The appointment would be subject to the advice of either the Prime Minister and Secretary of State, as it is at present, or OFMdfM or the Minister, or Ministers, at the Department of justice. While clarification is sought on the query that Alex raised, I ask the parties to consider those possibilities. Members, we will park the issue to allow for consultation at party-political level.

1922. We move on to discuss the Northern Ireland Police Fund. The fund is a non-statutory company that is limited by guarantee and made up of 10 directors. It is financed by the Northern Ireland Office and receives approximately £1.8 million a year. The NIO oversees its corporate governance and financial propriety. The present arrangement is that, post-devolution, the Assembly will have an oversight role. The issue is who will continue to pay the £1.8 million, but I am not sure that we can answer that question.

1923. Mr McFarland: Presumably, the funding would come from the policing budget, which would transfer across.

1924. The Chairperson: Members, should we seek clarification from the Northern Ireland Office on whether that £1.8 million will come out of the policing budget, or whether it is a separate —

1925. Mr McFarland: Is the money ring-fenced?

1926. The Chairperson: Yes, should we ask the NIO to clarify whether the money will be ring-fenced as a separate arrangement? Should we also ask whether, in the event of devolution and the Assembly not asking for the power to fund the Northern Ireland Police Fund, the NIO will continue to provide the funding? Are members content that we seek clarification from the NIO on those matters to put us in a better-informed position to make a decision?

Members indicated assent.

1927. Ms Hanna: Is that fund for retired police officers?

1928. The Chairperson: The fund is mainly for widows and disabled police officers, and their children. It includes an educational bursary arrangement.

1929. Are members content to proceed on the basis that we will seek clarification from the NIO as to whether the funding comes from the police budget or is ring-fenced out of the overall NIO budget, and whether, in the event of devolution, the NIO intends to continue funding the police fund if it is not paid for by the Assembly? When we have that response we will be better able to decide what we want to do.

1930. Do members agree?

Members indicated assent.

1931. The Chairperson: The Probation Board for Northern Ireland is a non-departmental public body. After devolution, probation will be devolved, and responsibility for the Probation Board will be transferred to the new Department of justice. The board and its members will be appointed by, and will be accountable to, the Northern Ireland Minister, or Ministers, for justice.

1932. Certain issues will arise. The Criminal Justice Review 2000 recommended that the Probation Board should become a departmental agency, similar to the Prison Service or the Youth Justice Agency. The NIO decided that the future status of the Probation Board should be decided by the Assembly. The Probation Board outlined an option to create a single body that would encompass the Prison Service, the Youth Justice Agency and the board. However, it advocates the continuation of the present arrangements, saying that the changes that were made in England and Wales were disruptive and provided little benefit. The board believes that a public-body model is more appropriate than an agency of a Department.

1933. The Criminal Justice Inspectorate (CJI) supports the recommendation of the Criminal Justice Review 2000 that the Probation Board might become an executive agency following devolution. However, the CJI believes that some expertise of the current board should be retained by non-executive appointments to the agency management board.

1934. That is the current position. We must decide whether to accept the recommendation of the Criminal Justice Review, and recommend in our report that, post-devolution, instead of being a non-departmental public body, the Probation Board should become an agency of the new Department of justice. Alternatively, do we look for another option, or do we simply park the issue, saying that it will be for the Department of justice to consult with the Assembly about future arrangements for the Probation Board? The NIO has said that it is not going to legislate to change the board's status, so, in any event, it will transfer as a non-departmental public body.

1935. Is it our place to make a recommendation? Is this issue so important that it should properly be a matter for the new Department to take forward through a process of public consultation and Committee scrutiny? I am reluctant to react in a knee-jerk fashion. We have taken some evidence on the subject, but there is a bigger issue, and I am not sure that we need to deal with that in our report.

1936. We must flag up the current arrangement that will continue post-devolution and the recommendation of the Criminal Justice Review. We might recommend that the new Department should produce proposals at an early stage. Are members content to ask the Committee Clerk to draw up a form of words on that?

Members indicated assent.

1937. Mr Attwood: I agree with that course of action. It would be useful to encourage the consideration of a future work programme for the prospective justice Minister and related Committee. Last week, I met members of the Probation Board in an unrelated capacity. The Chief Probation Officer told me that the Probation Board's view on the matter had shifted and that it now favoured the agency option, as exemplified by the Prison Service, so that it would have more of an integral role in a new justice Department and in the wider justice family. A future justice Minister and his Department might be able to achieve a quick consensus on the matter, which would facilitate a much better administration of justice thereafter.

1938. The Chairperson: Alex, perhaps in the form of words that we send to the new Committee, we could refer to the recommendation in the Criminal Justice Review 2000. We do not need to refer to the view of any particular body now. We simply need to encourage the Department to introduce proposals at an early stage on the future status of the Probation Board for Northern Ireland.

1939. The Criminal Justice Review 2000 recommended the establishment of an independent Northern Ireland Law Commission:

“to keep under review criminal and civil law”.

1940. The chief executive has been appointed, but, presumably, the commission is not yet fully functioning. Post-devolution, the Government's position is that responsibility for the Northern Ireland Law Commission should transfer to the Northern Ireland Minister, or Ministers, for justice. The review indicated that a new Department of justice should have responsibility for the Northern Ireland Law Commission. If policing and justice matters are devolved, it will be necessary to put in place arrangements to ensure that the Law Commission has the opportunity to consult appropriately with the Assembly.

1941. Clerk, is it up to the Committee to suggest what those arrangements should be, or is it simply required to flag up the need to put in place the arrangements after the powers have been devolved?

1942. The Committee Clerk: It is more the latter, Chair. I have included that point because, although no witnesses from the Law Commission were called before the Committee, its written submission requested clarity on what form the engagement would take and what would be the lines of accountability and relationships. That fits in with the broader principles that the Committee has been discussing.

1943. The Chairperson: Are members content for the Committee Clerk to draw up a form of words that simply flag up the need for arrangements to be put in place to ensure that the Law Commission has the opportunity to consult appropriately with the Assembly? When the Committee agrees the wording, it will be included in the report.

1944. Mr McFarland: Presumably the relevant Assembly Committee will exchange information with the Law Commission anyway, because that is the usual system. Surely no additional special arrangements are required, other than to ensure the Law Commission's access to that Committee.

1945. The Committee Clerk: I do not think that further arrangements need be established. However, the Law Commission made that specific point in its submission, and I draw it to the Committee's attention for endorsement and to agree that it is a valid point. As for the logistics, you are right. As Peter May said last week, much of the detail of how the relationship operates in practice will be sorted out after the powers have been devolved. However, if the Committee is minded to endorse the Law Commission's suggestion, it is free to do so in the report, but it does not need to do much beyond that.

1946. The Chairperson: Are members content to move on?

1947. Mr Attwood: Should the Committee not recommend that arrangements whereby the Law Commission can consult with the Assembly and the Minister are put in place quickly? We saw from the Law Commission's submission that although it is in its infancy, it has some level of work programme, and its chairman, Declan Morgan, will be anxious to make progress on that. The Committee should join the circle of relationships between the Law Commission, the Assembly and the Minister.

1948. Mr McFarland: After the devolution of policing and justice, surely those functions become part of the Minister's Department, do they not? The responsibility should transfer to the Minister, who will presumably do the rounds and chat to the people for whom he or she is responsible. After the transfer of powers, an Assembly Committee will be established. To draw it to the attention of that

Committee, perhaps we should include in the report the fact that the Law Commission has expressed its desire for early interaction with it. That should happen anyway, and I am not sure that a special point needs to be made.

1949. Mr Attwood: It does need to be made, simply because the Law Commission has just been established, the correct lines of communication and management must be set up and its work programme should be quickly informed by what the Assembly wants, not just by the commission, as a self-starting organisation.

1950. Mr McFarland: The Law Commission will be well-established by the time policing and justice powers have been devolved.

1951. The Chairperson: Given that the commission has a special responsibility for reviewing civil and criminal law, and we are the legislative body, Alex is right. We must decide which lines of communication are appropriate. We need to ask what will prompt a review of this law or that law: is it the Minister, is it the scrutiny Committee, or something else? Is it the case history? It is right that we determine the correct lines for that. It elevates the status of the commission, vis-à-vis the Assembly, a little above some of the other bodies. It is very specific to our work; it will be our responsibility to legislate for whatever changes the commission proposes. Therefore, it is important that we have a good working relationship with it. The Committee Clerk will draw up something for us; we can have a look at that and ensure that it satisfies the points that both Alex and Alan have made.

1952. Are members content?

Members indicated assent.

1953. The Chairperson: We move on to the Criminal Injuries Compensation Appeals Panel. That panel is a non-departmental public body funded by the Northern Ireland Office but independent of it. Members of the appeals panel are appointed by the Secretary of State. Post-devolution, the panel will be funded by the Department of justice and the Northern Ireland Minister, or Ministers, for justice would be responsible for appointments to it. We are aware of no issues arising from that proposal. Those are the post-devolution arrangements.

1954. Are members content?

Members indicated assent.

1955. The Chairperson: We move on to the Parades Commission. We have already discussed this under the heading 'Matters to be Transferred'. For management purposes, the commission is an executive non-departmental public body and it is funded entirely by the Northern Ireland Office. The Government's preference, post-devolution, is that responsibility for all aspects of parades, including appointments to the Parades Commission and its operation, should be devolved. At this stage, there is no consensus on the devolution of powers, either for the operation of, or appointments to, the Parades Commission. We have dealt with that already, subject to the issue coming back again after our report.

1956. Are members happy to proceed on that basis?

Members indicated assent.

1957. The Chairperson: The Northern Ireland Policing Board is a non-departmental public body. The NIO has stated that following devolution, it will be for the Assembly and the Northern Ireland Minister, or Ministers, for policing to allocate funding from the Northern Ireland block grant. Following devolution, responsibility for the appointment of independent board members will transfer to the Northern Ireland Minister, or Ministers, for policing.

1958. We may need a memorandum of understanding to clarify relationships that exist between the PSNI, the board and the Assembly Committee, to deal with any potential conflict of interest. That is the main issue that we need to flag up in our report. It arose in some of the evidence that we received.

1959. Mr McFarland: Alex and I were on the first Policing Board. It troubled us at that stage, and it does again, as we are involved in the roll-in to setting up this relationship again. Potentially, 21 MLAs could be involved in policing and justice: 10 on the Policing Board and 11 on the Committee.

1960. The Chairperson: Plus the Minister?

1961. Mr McFarland: Or, potentially, two Ministers. Therefore, 23 Members of the Assembly could be involved. We are already getting a feel of how pressed parties are ensuring that MLAs attend Committees and meet quorums. The question is whether we let this run for the moment, and take the hit on people's time and effort, or should we consider, while we have a bit of time to discuss it, how the process could be better organised? This is just a personal view; but it is an issue that we must consider.

1962. One benefit that the Policing Board brought was that it received political input. It probably still does. At times, that was absolutely vital to sorting out problems. Parties were able to get together and discuss how all this would work.

1963. Political input is needed on the board to ensure that its success is not wrecked. The question is whether the Assembly can afford for 10 MLAs to be involved. Could appointees who are chosen by the five political parties using the d'Hondt system achieve the same results? Appointees would, therefore, represent political parties, but not be MLAs.

1964. There is conflict between the different roles of the board and the Committee. The board has an operational role — the estate belongs to the board and it processes the budget. The question is should the Committee take its hands off now, not get excited, and accept that if responsibility for the Policing Board is devolved, 21, 23 — or however many MLAs — will be involved directly in the issue? Or should the Committee try to give a steer — obviously, after discussions with party groups — on maintaining political influence on the board while trying to make the most effective use of MLAs' time and effort?

1965. The Chairperson: At least two issues arise from that, Mr McFarland. One is the principle of whether MLAs should be members of the Policing Board. Another is whether, if an MLA is a member of the Policing Board, he or she can be a member of the scrutiny Committee. There is potential —

1966. Mr McFarland: After various discussions, the Programme for Government Committee agreed that a Policing Board MLA should not be a member of the scrutiny Committee, because he or she would have conflicting roles.

1967. The Chairperson: Yes. The Committee would need to reflect that in its report. The issue is party political. Therefore, I will ask the Committee Clerk to circulate a note among all parties, asking them to put forward their party-political viewpoints in their position

papers: do they agree that current arrangements should continue — that MLAs should continue to constitute 10 members of the Policing Board; do they agree with the Programme for Government Committee's recommendation that when an MLA is a member of the Policing Board, he or she cannot be a member of the scrutiny Committee; and if MLAs are not members of the Policing Board, should political parties appoint 10 political representatives — who are not MLAs — from their membership?

1968. I ask the Committee Clerk to circulate a note on those issues to parties in order that they consider the matter in their position papers. The issues are appointments to the Policing Board and potential conflicts of interest — for example, the time involved. Should there be 10 MLAs on the Policing Board? If not, should they be replaced by appointees from the political parties? If an MLA is a member of the Policing Board, does the Committee agree with the recommendation of the Programme for Government Committee that he or she should not be a member of the scrutiny Committee? I ask that parties' political positions on those matters be reflected in their position papers.

1969. Mr G Robinson: The financing of the board concerns me somewhat. Funds will have to come out of the Northern Ireland Budget. I am worried about that because money is tight enough for Departments. Will extra money be available?

1970. Mr McFarland: The extra money will also be transferred.

1971. The Chairperson: On the devolution of policing, its entire budget, which includes money for the Policing Board, will be transferred. It will then become part of Northern Ireland's block grant. Therefore, that which would previously have been expended by the Northern Ireland Office on all matters to be devolved will automatically transfer with the block grant. The money will not have to be found in existing resources.

1972. Mr Atwood, in your absence, the Committee has agreed that the Committee Clerk will circulate a note to political parties, asking that when they prepare their position papers, they will address the issue of political appointments to the Policing Board; whether they agree in principle that there should still be 10 MLAs on the Policing Board; if not, whether they should be replaced by 10 political representatives that are appointed by political parties; and whether they agree with the Programme for Government Committee's recommendation that if an MLA is a member of the Policing Board, he or she should not be a member of the scrutiny Committee.

1973. Mr McCartney: Some clarification on MLA's roles should be provided. The suggestion could be made that in some situations, they are optional.

1974. The Chairperson: You mean a hybrid situation where it is a matter for the political parties who they appoint, be that an MLA or not.

1975. Mr McCartney: There should be a list of options.

1976. The Chairperson: If Sinn Féin want to include that, that is OK. Are members content that, subject to achieving a consensus on that, there are no other issues on the transfer of the Policing Board under devolution?

Members indicated assent.

1977. The need for a memorandum of understanding will have to be flagged up in the Committee's report.

1978. The Northern Ireland Legal Services Commission is a non-departmental public body, which is sponsored by the Court Service and answerable to the Lord Chancellor. After devolution it will continue to be an NDPB (Non-Departmental Public Body) sponsored by the Department of justice. The funding, which is substantial, will transfer from the Lord Chancellor's department via the Courts Service to the new Department.

1979. The first issue for the Committee is whether the policy roles on legal aid should remain with the Northern Ireland Court Service, or be passed to the new Department of justice. The Northern Ireland Court Service director advocates a legal-aid system in the new Department — he told the Committee that the legal aid system should be entirely a matter for the Department, which I assume includes policy as well as funding. The current level of funding is £72 million, which is fairly substantial. The evidence from the Court Service representatives was that responsibility for legal-aid arrangements, both policy and funding, should rest with the new Department.

1980. The second issue is whether responsibility for all aspects of civil and criminal legal aid should be carried by one body — either the Legal Services Commission or the Department — instead of being split between them. I assume that that is the policy?

1981. The Committee Clerk: Yes; in fact it is everything.

1982. The Chairperson: Right, it is everything. Assuming that the Committee accept that responsibility for the legal-aid system should transfer, on devolution, to the new Department, a further issue arises over whether responsibility for legal aid should then be devolved from the Department to the Northern Ireland Legal Services Commission.

1983. The Committee Clerk: Essentially, the Committee is talking about the future of the Legal Services Commission.

1984. The Chairperson: The third issue is whether the Northern Ireland Legal Services Commission should remain as a public body and be accountable to the new Department of justice, or whether it should cease to be a public body and have its responsibilities taken over by the Department. As the Committee Clerk said, we are talking about whether we continue to have a separate Northern Ireland Legal Services Commission and, if so, what its relationship will be with the Department.

1985. Mr Attwood: There are three questions, two of which the Committee could achieve a consensus on — I am not sure of the third. It seems incongruous that the policy role for legal aid is currently with the Northern Ireland Court Service, even though it does not want it. Therefore, it is sensible that the Court Service does not have a role on policy, and that responsibility goes to the Department or the commission.

1986. The second question is whether one body should deal with all civil and criminal legal aid — it seems sensible that that should be the case, whether that body is the Department or the commission.

1987. The final question is whether the Legal Services Commission (LSC) should remain as a public body, or whether the Department of justice should take over responsibility. Has the Committee heard evidence on that? I sense that a Northern Ireland Legal Services Commission is a better model. Tony Holland, who headed the Parades Commission and the Northern Ireland Legal Services Commission, also thought that — he is the man to rely on.

1988. The Chairperson: The Chairman of the Legal Services Commission, Jim Daniell, came to see me last week, ostensibly to talk about the work of that body. He mentioned the work of the Assembly and Executive Review Committee and expressed a view on the matter. I asked him to put that view, in writing, to the Committee Clerk. The Committee Clerk has not yet received that information. I think that Mr Daniell's views are not dissimilar to those of Tony Holland and would add a little meat to the bones.

1989. Members are we agreed that if the Court Service does not want to continue to have responsibility for legal aid policy, it does not make sense to have it straddling more than one non-departmental body? I assume that there agreement is principle that, whether the policy is transferred to the Department or the commission, it should be transferred from the Court Service. Although we are not yet agreed on the recipient, it does not make sense — as Mr Attwood has said — to let the policy rest with the Court Service when the Court Service does not want it. One ends up with three bodies involved in legal aid which is not the most efficient way of doing things.

1990. In their previous submission to the Committee, the Legal Services Commission said that

“In both England and Wales and in Scotland it has been deemed appropriate to keep legal aid at arm's length from the Government. At some point in time, responsibility for policy and execution in respect of civil and criminal legal aid must be brought together. At present, the Commission has responsibility for paying out large sums of money for criminal legal aid without any control over who gets the aid and how much. It might be sensible to resolve this at devolution rather than later.”

1991. That was the position at that time. The Chairman of the LSC will add to that, in a further written submission to the Committee, following my discussion with him.

1992. Mr McFarland: It makes eminent sense that the actual doling out of all that stuff is at arm's length. Who decides the policy on that matter? The commission could decide the policy on that providing that it was answerable, in its policy role, to the Department — one would not want the Minister and the Department to give money to the commission to dole out, and to have absolutely no say on policy. Is that right? Mr Attwood, you are knowledgeable in those matters.

1993. Mr Attwood: Sorry. I was distracted.

1994. The Chairperson: If responsibility for policy transferred from the Court Service to the commission, what would the role of the Department, as the funding body, and that of the scrutiny committee be in developing future policy?

1995. Mr Attwood: The policy role should remain, primarily, with the Department even if the Legal Services Commission administers the money.

1996. Mr McFarland: However, the Legal Services Commission is suggesting — and the Chairperson has just said — that the policy should remain with the commission. Therefore, it would be administering policy. Clearly, it is sensible to hold it at arm's length. However, the Legal Services Commission is also advocating that policy should remain with it. If that is done, is there a line of accountability, on policy, between the commission and the Department? The commission could get the head staggers and produce all sorts of weird policy —

1997. Mr Attwood: That would not make sense.

1998. Mr McFarland: No.

1999. The Chairperson: I hope that we will have received the brief paper from the commission by the time of next week's Committee meeting. Is the Committee content to park the issue, in the meantime, while acknowledging that we are agreed in principle that the policy should be transferred from the Court Service? The question is whether it should be transferred to the Department or the Legal Services Commission. We will need to consider that matter. We will also need to look at where the commission sits with regard to its relationship with, and accountability to, the Department.

2000. The Committee Clerk: At the moment the Northern Ireland Office assumption is that it will be an executive non-departmental public body, as it currently is, reporting to the Department of Justice. It envisages a future role for the Legal Services Commission.

2001. The Chairperson: We will park that, and come back to it when we receive the letter from the commission.

2002. The Judicial Appointments Commission is a non-departmental public body sponsored by the Court Service which is answerable to the Lord Chancellor. Post-devolution the Lord Chancellor's responsibilities in relation to the appointment of the listed judicial offices and the Northern Ireland Judicial Appointments Commission would transfer to the First Minister and deputy First Minister acting jointly.

2003. The issue for the Committee is that in his submission the Lord Chief Justice states that:

"it would be important for there to be a protocol between the Commission and the Office of the First Minister and deputy First Minister about judicial appointments."

2004. That is one of the areas where we do not yet have a response from OFMDFM.

2005. Before we deal with that, are there any other issues in relation to the Judicial Appointments Commission that the Committee needs to determine? In the Committee Clerk's view there are not.

2006. Mr McFarland: Presumably that is an arm's-length issue in that we do not see OFMDFM interfering technically with the views of the commission.

2007. The Chairperson: Hence the reason for a protocol. In the report, I think that we should include a reference to the Lord Chief Justice's submission, and the Committee needs to decide if it agrees with the Lord Chief Justice on the need for a protocol, and it will then be up to OFMDFM to come up with a draft of the agreement on such a protocol.

2008. The question for the Committee is whether we think there should be a protocol. My view is that on a matter as important as that there should be, and I do not believe that prejudices the position, because it does not inhibit the power of one or the other — the commission or OFMDFM — it is simply ensuring that there is clarity on their respective roles.

2009. The Committee Clerk: That is part of a broader appointment process for public appointments, and essentially it gives advice about whether someone who has come through that process should ultimately be appointed.

2010. The Chairperson: Are members happy to make reference to the Lord Chief Justice's submission in our report, and make it clear that we support the view that there should be a protocol drawn up between the Judicial Appointments Commission and the Office of the First Minister and deputy First Minister on judicial appointments? The Assembly can still reject that.

2011. Mr McCartney: I assume that it is envisaged that there would be.

2012. The Chairperson: I would have thought so — we need to flag it up as part of the preparatory work.

2013. The Judicial Appointments Ombudsman is an independent statutory body. The Commissioner for Judicial Appointments is the responsibility of the Lord Chancellor. Post-devolution the Lord Chancellor's functions in relation to the ombudsman would devolve to the First Minister and deputy First Minister acting jointly as these Ministers will be responsible for judicial appointments through the Judicial Appointments Commission.

2014. No issues really arise from that. Does anyone have a point to make? Content?

Members indicated assent.

2015. Criminal Justice Inspection (CJI) Northern Ireland is a non-departmental public body. Post-devolution it will continue to be a non-departmental public body sponsored by the Department of Justice.

In its written submission, the CJI stated:

"The CJI propose the Executive call for an independent quinquennial review of CJI functions and performance.

- The Chief Inspector must delegate the carrying out of an investigation to the PSNI if they wish to carry out the inspection. The CJI advocate that when responsibility for the PSNI transfers to the Assembly, the PSNI should inspect in Northern Ireland as agents for the CJI.
- Propose that CJI should be able to report on specific cases. For example, HM Crown Prosecution Service Inspectorate has been asked by the Attorney General to review the handling of certain cases which give rise to public concern.
- Any new Department will need to appoint a new chief inspector when the current contract expires in August 2008.
- Future resources given the fact that CJI has recently been invited to take on new responsibilities as part of the UK's national preventative mechanism under the optional protocol to the International Convention against Torture."

2016. The Committee must ask whether those resources come out of our block grant or whether we get extra money for fulfilling that function.

2017. The CJI submission also noted:

“Policing and justice should be brought together in a single Ministry. A unified Ministry would make for a strong unified criminal justice board. The present board is consultative, not executive, and the doctrine of the independence of the criminal justice agencies is allowed to militate against effective planning and management. CJI has no access to papers of the CJB, not does it inspect the NIO — aside from its executive agencies. Executive operations of the Ministry, for example community safety partnerships, should be open to scrutiny.”

2018. Those are the issues relating to the CJI’s written submission. How do we want to take those matters forward? Do we make specific recommendations or do we flag up the issues that we feel need to be considered early by the new Department in consultation with the Assembly and its Committee? There are some fairly major issues, but they are not really for this Committee.

2019. Mr McFarland: Chairman, as you know yourself from your time on the Policing Board, when this was introduced it was all a bit of a muddle, because there were empires vying with each other between the HMIC, the policing inspections, the CJI and others. The situation must be looked at and sorted out. The Chairperson is right; it would be easier done by a new Department.

2020. The Chairperson: Are members content for the Committee Clerk to draw up a form of words for us to consider, which would draw attention to the submission that we have received from the CJI, and that those are issues that the new Department, in conjunction with the Assembly, may wish to examine post-devolution?

2021. One issue, which is perhaps more immediate, is the need to appoint a new chief inspector by August 2008. Obviously if devolution occurred in May 2008, there might be time to take forward an appointments procedure. However, do we want to refer to that in our report, in so far as the timing of the devolution of policing and justice will have implications for the arrangements for the appointment? If devolution occurs, the matter will fall to the new Department, which will proceed with the appointment process, and if devolution does not occur prior to August 2008, it will remain with the Northern Ireland Office. I do not think that we need to say anything more on that.

2022. Are members content? The Committee Clerk will draw up a form of words for us so that we flag it up in the report.

Members indicated assent.

2023. Mr Attwood: I have a technical point, and I am sure that the matter will be taken care of in whatever transfer arrangements happen, but I thought that Kit Chivers indicated that there needed to be some work done to ensure that his reports were tabled with the Assembly, rather than with Parliament. Is that taken care of in the transfer order or does a separate provision have to be made?

2024. The Committee Clerk: Mr Attwood’s point is part of a wider point. The easiest way to describe it would be if we were to go back to the appointment of an Attorney General, for example, and the role that the Attorney General will have in reporting to the Northern Ireland Assembly. I understand that the Assembly will have to create a Standing Order to allow that to happen. Mr Attwood is right: other arrangements need to be put in place to accommodate whatever those new arrangements will be. However, at the highest level, I cite the example of the Attorney General. In my view, the Committee is likely to recommend to the Assembly that the Committee on Procedures should develop the appropriate Standing Order. Other business arrangements will also have to be put in place.

2025. Mr Attwood: OK.

2026. The Chairperson: Are members happy to proceed on that basis?

Members indicated assent.

2027. The Chairperson: We now turn to the Northern Ireland Court Service, which is currently under the Lord Chancellor's Department. Post-devolution, the NIO proposes that it becomes an executive agency of the new Department and headed by a chief executive.

2028. Members will recall that, in his written submission and in oral evidence to the Committee, the Lord Chief Justice advocated that the Court Service be at arm's length from the Government, with an independent board. I also recollect that the head of the Northern Ireland Court Service, Mr Lavery, also indicated a preference for a more arm's-length relationship with the Department, perhaps on a transitional or phased basis.

2029. The issues for members to consider are: the degree of independence of the Court Service; whether the agency should continue to deliver policy advice and legislative support, or whether those functions should transfer to the Department; and how the board of any future independent Court Service would be composed. Those issues were included in the list of issues to be addressed in the party position papers. Unless anyone has anything in particular to say at this stage, I suggest that we await the position papers and then have a discussion to see whether we can arrive at a consensus on the issue.

2030. Members will recollect that, in his evidence, the Secretary of State said that it was not the intention of the Northern Ireland Office to legislate for any change pre-devolution, and that it would be a matter for the Assembly to take forward any change that was proposed here. That would imply that, on devolution, the Court Service would be an agency of the Department. However, it is, of course, an option for this Committee to recommend that the NIO should legislate for change prior to devolution. It would create a major problem for NIO and its legislative timetable if such a date were agreed at a political level. In any case, we must give some thought to that issue and consider whether, in principle, we want to go with the Lord Chief Justice's proposal of an arm's-length Court Service with its own independent board. If so, who would legislate for that pre- or post-devolution — would it be the Assembly or the Northern Ireland Office?

2031. Are we content to proceed on that basis? Does the Committee Clerk want to raise any other points about the Court Service? This is one of the main structural matters that members really must take a view on, and, if possible, reach consensus. If not, then a political decision will have to be made on it one way or the other.

2032. The Committee Clerk: If the Committee would find it helpful, when I am writing to ask members to give a view on the Policing Board and the dual role and so on, I could also mention both the Court Service and the Public Prosecution Service (PPS). I will list what I regard to be the relevant briefing papers and oral submissions that address the issue. I am reluctant to volunteer to suggest that I will send them all out again, because they have been issued to members on a number of occasions. However, if members review that list and then find that they are short of some documents, they can come to our office, and we will arrange for the set to be completed.

2033. The Chairperson: Members may also find it helpful to look at the paper that they have been given on the Court Service, which arose from the evidence from PJ Fitzpatrick.

2034. Finally, I turn to the Public Prosecution Service. It is a non-ministerial Department under the superintendence and direction of the Attorney General. Post-devolution, it will continue to be a non-ministerial Department, with the Attorney General having a consultative

role only and no power of superintendence or direction. The issues for the Committee are: the degree of independence of the PPS; the relationship between the PPS, the Attorney General and the Assembly; and funding responsibility for the PPS. In the NIO's proposals, responsibility for funding of the PPS would sit with OFMDFM. We are aware that a definitive position on that matter has not yet been reached.

2035. Again, members, those matters are to be addressed in the party political papers. Therefore, unless anybody has a particular issue that they want to raise, we will defer the discussion on that until receipt of all the papers. Are members happy with that for the moment?

Members indicated assent.

2036. The Chairperson: That has been useful in reducing significantly the number of issues about the structures that we must examine.

2037. Mr McFarland: I am not clear about the matter of the Attorney General, and it might be useful to add it to the list. Are we going to hire someone for that job at enormous expense? Will it be a full- or part-time position? What will the person do? The Attorney General will be the link between the court system and the Assembly, but how will that operate? In the past it was clear what he did regarding supervision of the PPS, and, in England, he used to be a member of the Government. What will our Attorney General look like and what will he or she do when we appoint one?

2038. The Chairperson: Do you want to add that as an additional category?

2039. Mr McFarland: Yes. It is the one thing that I am unclear about. How will the post operate, and what power will it have? If the Assembly wishes to have a go at somebody about something, can it access David Lavery from the Court Service, or will it have to go through the Attorney General?

2040. The Chairperson: I suggest that we ask the Committee Clerk to reduce the paper to the outstanding issues and to add to it the matter of the Attorney General. It should also note that the Committee seeks clarification on the role of the Attorney General and the relationships between that role and the other elements of the judicial process, including the relationship with the Assembly.

2041. Mr McFarland: Will you add the relationship with the First Minister and deputy First Minister, because the Attorney General will be appointed by them, although the selection comes from somewhere else? Who will pick the candidates? Will he or she have an office here with the Executive? Where will he or she be situated, and what will he or she do?

2042. The Committee Clerk: In private session, the Committee asked for a briefing about the arrangements that the Northern Ireland Civil Service is making to accommodate the transfer of policing and justice. Would it help if I were to flag up that issue as a potential question for the chair of the oversight board?

2043. The Chairperson: OK. We will also add it to the list.

2044. Mr Attwood: I do not want to expand the list too much, but there are four areas that we must address. First, there is the matter of the North/South agreements, which the NIO now says fall with devolution, and having in place what is required as quickly as possible thereafter. Some essential justice work is being done on a North/South basis about policy on offenders and so on.

2045. Secondly, and this is a variation on what Alan said, what will be the relationship with the PPS of the Advocate General, that is the person in the British Government who will liaise with the PPS about serious criminal matters? What will his relationship be with our Attorney General, and what will be the flow of information between the Advocate General, the PPS, the Attorney General and the Minister?

2046. The other two items are the issue of the Serious Organised Crime Agency (SOCA), and how it will interface with the Assembly, and the issue of the security services and what relationship or flow of information will exist there. The NIO has said that it is working on what will come across from the security services to the Minister.

2047. I apologise, Chairperson, I have to go to another meeting.

2048. The Chairperson: We will add the Attorney General, the North/South agreements, the Advocate General UK, the SOCA and the security services to the outstanding issues list. The paper will be revised and circulated to members along with the note of the issues that must be addressed in addition to those which have already been flagged up in the party political papers.

2049. Mr McFarland: Do we have a date for the party political papers?

2050. The Chairperson: We have left that matter open, but with strong encouragement that they should be submitted as soon as possible.

22 January 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr John O'Dowd

Witnesses:

Sir Nigel Hamilton Head of the Northern Ireland Civil Service

Mr Neill Jackson

Mr Geoffrey Simpson Northern Ireland Civil Service

Mr Tony Canavan

2051. The Chairperson: The Committee will continue its inquiry into the devolution of policing and justice matters. Hansard is in

attendance. We have received a letter from Gail McKibbin from the Office of the First Minister and deputy First Minister (OFMDFM). It confirms that Sir Nigel Hamilton will be joining the Committee this morning, but that he will be unable to respond to questions that the Committee raised about the post of the Attorney General for Northern Ireland.

2052. Mr Attwood: Is there any explanation as to why that is the case?

2053. The Chairperson: We can ask Sir Nigel Hamilton for an explanation. We will proceed to the evidence session.

2054. Good morning, Sir Nigel and gentlemen. Thank you for agreeing to brief the Committee at such short notice. The normal format for evidence sessions is that we will invite you to make a short opening statement, which will be followed by questions from members. The Committee normally proceeds with questions according to the terms of reference of its inquiry in the following order: matters to be transferred; ministerial models; and timing and preparations for devolution, relating to policing and justice matters. However, given that the Committee is nearing the end of its inquiry into the devolution of policing and justice, it is especially keen to hear about the progress that the Northern Ireland Departments are making in anticipation of devolution.

2055. Before we proceed, I invite members to declare any relevant interests. I declare an interest as a member of the Policing Board and the Privy Council.

2056. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

2057. The Chairperson: If there no other interests to declare, we will proceed. Sir Nigel, you are very welcome. Please begin by making a short opening statement.

2058. Sir Nigel Hamilton (Head of the Northern Ireland Civil Service): Thank you very much, Chairperson. My colleagues are Geoffrey Simpson, Tony Canavan and Neill Jackson; I will refer to them in my opening statement.

2059. I am grateful for the opportunity to address the Committee on the preparations being made by the Northern Ireland Civil Service to take receipt of devolved policing and justice matters. The inquiry is at an advanced stage, and the Committee has heard extensive evidence from the Secretary of State, and others, on the proposals for devolution. The genesis of the work and the various planning assumptions are in the discussion document that was published by the Northern Ireland Office (NIO) in February 2006.

2060. I should make it clear that whether devolution should be sought, what the conditions might be and the timescale are subject to political agreement, and the exact nature of the transfer is yet to be determined. Those are matters for political consideration and consideration by Ministers. Therefore, there could well be issues that are of interest to the Committee, on which I will be unable to comment. Ultimately, it is for the Assembly to decide which powers and functions it wishes to devolve and those which it does not. However, I hope that my evidence will prove to be helpful to the Committee in its considerations.

2061. The Northern Ireland Civil Service's planning assumption is that it must be ready to receive policing and justice powers, as described in the NIO discussion document, with a new Department of justice taking on board most functions. That would represent a significant change in public administration. Therefore, it is imperative that our preparations for change are meticulous and complete by the due date. It is not simply that we must prepare for the creation of a new Department; we must also cater, for example, for the transfer of staff, records, casework, ICT, finance, and so on. I will return to that matter in a moment. All of that must be legislated for,

and staff and the public must be kept informed of developments.

2062. As the Committee knows, a complex programme is being led by the NIO, as it will be the Secretary of State who will be responsible for giving over the powers, and that is where responsibility for, and working knowledge of, policing and justice functions currently resides. There is full engagement in the programme from representatives of Northern Ireland Departments to ensure that the transferred functions can be readily assimilated, in due course, into the devolved Administration and its Executive and administrative arrangements.

2063. I will share with the Committee several aspects of the preparations for structures and the process. They are the programme management machinery, including engagement by Northern Ireland Departments; the steps to devolution; and the implications for the Office of the First Minister and deputy First Minister.

2064. In relation to the programme management machinery, it has been important from the outset that the devolved sector works closely with the programme established by the NIO to plan effectively for the devolution of policing and justice powers. While recognising the separate political accountabilities to Ministers in the two Administrations, it is important that there should be full engagement — as there is — to avoid duplication or omission. The Northern Ireland Civil Service is engaged in that programme work at several levels. At the highest level, there is a sponsor group chaired by the Northern Ireland Office's permanent secretary, Jonathan Phillips. The Northern Ireland Civil Service is represented on that group by Bruce Robinson, the permanent secretary of the Department of Finance and Personnel, and Rosalie Flanagan, the director of executive services in OFMDFM.

2065. Underneath them, an NIO programme board is taking forward the work of the programme, and my colleague Mr Canavan represents the Northern Ireland Civil Service on that programme board. At project level, the Northern Ireland Civil Service is represented and engaged on nine separate projects: legislation, office services, ICT infrastructure, ICT business applications, transfer of assets, records and corporate file plan, personnel, finance and budgeting, and communications. We will be happy to enlarge on some of those areas later if the Committee wishes.

2066. We also want to ensure that all our staff involved on those projects have the opportunity to share together their experiences to ensure that there is cohesion, and mechanisms have been put in place for that.

2067. Beyond that, there is a high-level Devolved Administration Board for the devolution of justice, which I chair. The purpose of that board is to monitor the progress of the programme and to ensure that the needs and views of the devolved Administration are considered fully. That high-level programme board includes Bruce Robinson and Rosalie Flanagan from the sponsor group, Tony Canavan and other colleagues from the Department of Finance and Personnel and OFMDFM, as well as representatives from some of the other services, including the NIO, the Northern Ireland Court Service and the Public Prosecution Service (PPS). In some senses, it is a mirror image of Jonathan Phillips's group, and it will ensure that everything converges.

2068. Finally, we have a separate project in OFMDFM, chaired by deputy secretary John McMillen, to consider the implications of functions that may become the responsibility of the proposed Department, post devolution. Neill Jackson and Geoffrey Simpson are involved in that work.

2069. I hope that members see from the preparations that have been made that extensive engagement has been put in place to prepare and plan for the work, and it is all taking place in circumstances where decisions on the shape and timing still lie in the political arena. Our planning assumptions are based on the 2006 NIO discussion document and the various provisions already in primary

legislation, such as the Justice (Northern Ireland) Act 2002.

2070. I am confident that with the robust programme management arrangements that have been established, and with the dedication of the civil servants involved, we can be ready for a smooth transfer of powers in whatever form and timescale the Assembly agrees.

2071. The next issue is the steps that need to be taken for devolution to happen. The devolution of policing and justice will require several legislative measures to be enacted by the Northern Ireland Office and the Office of the First Minister and deputy First Minister. Officials from the Northern Ireland Office and OFMDFM are working together to identify the provisions needed and to determine the sequencing.

2072. As you know from the presentations to the Committee, the NIO is scoping the reserved legislative provisions governing policing and justice and drafting the Orders. The First Minister and the deputy First Minister will then be specifically responsible for sponsoring a Bill for the establishment of a Department with justice and policing responsibilities. They will also bring before the Assembly a determination for the number of ministerial offices to be held by Northern Ireland Ministers and the functions to be exercised. The Bill will have to be introduced to the House following approval of an OFMDFM resolution on those issues.

2073. The timescale requires the Assembly to report to the Secretary of State by 27 March. If that timescale is met, it will present challenges for the passages of the legislation. We are considering how both the administrative and legislative procedures available will allow the legislation to be in place to enable devolution to happen.

2074. Two issues require political decision. The Committee is aware that the legislation provides for a number of alternatives for the appointment of a Minister to a new Department. The option chosen will have implications for the consequential running of the d'Hondt procedure. Secondly, the Northern Ireland Act 1998 limits the number of ministerial offices to 10, unless the Secretary of State makes an Order increasing that number. Clearly, if an increase in the number is not agreed and is then sought, some realignment of existing ministerial posts will be required.

2075. The final aspect is the implications for OFMDFM. They were described in detail in our written submission to the Committee on 7 January 2008; however, for completeness, I will summarise the position briefly. As I have said, we have a project established under the direction of a senior official to consider the implications for OFMDFM on taking over transferred functions. That project is overseen by a board of officials, including representatives from the Departmental Solicitor's Office and the NIO. There is representation also from the Attorney General's office, the Public Prosecution Service and the Court Service.

2076. The representation on this project reflects the fact that the main implications for OFMDFM arise in relation to appointments to judicial office, and, subject to ministerial agreement, funding support for the Public Prosecution Service. On the devolution of justice and policing, provisions of the Justice (Northern Ireland) Act 2002 will be activated, which will result in the First Minister and the deputy First Minister taking responsibility for appointing an Attorney General for Northern Ireland and making judicial — and certain tribunal — appointments. In addition, the 2006 NIO discussion document proposed that the First Minister and the deputy First Minister should take on sponsorship responsibility for the Northern Ireland Judicial Appointments Commission and the Northern Ireland Judicial Appointments Ombudsman — though I would have to say that it is accepted that the independent position of the Ombudsman would be enhanced if the office were appointed and supported by the Minister for justice, rather than OFMDFM. Given that OFMDFM is responsible for making judicial appointments, it would separate the Ombudsman issues from the Judicial Appointments Commission.

2077. All the proposals that I have outlined in relation to OFMDFM remain matters for political consideration and political decision, but in

all of this, we must ensure that the necessary prudent preparatory work is done.

2078. I apologise if I have covered a range of issues at broad level. There is significant engagement in an extensive range of preparatory administrative work by the Northern Ireland Civil Service. Progress has been made, but much more still needs to be done. However, I am confident that, with the skills and the application of the Civil Service, we can be fully prepared for these responsibilities.

2079. The Chairperson: Thank you, Sir Nigel. That is a comprehensive summary and we very much appreciate it. What discussions have taken place between OFMDFM, the board that you chair and the NIO about the arrangements for the devolution of policing and justice?

2080. Sir Nigel Hamilton: There is membership of those bodies. Bruce Robinson and Rosalie Flanagan sit on the sponsor group of the NIO, which means that they have oversight of what is going on at NIO level. They bring that back to the Devolved Administration Board, which I chair. There is a linkage between all those pieces of work, because those on the board and those who sit on the groups at senior level share information.

2081. The Chairperson: The Committee has been in correspondence with the Office of the First Minister and deputy First Minister on matters that it will fall to that Department to implement in the event of the devolution of policing and justice. You also referred to some of those matters.

2082. The Committee has a specific interest in matters relating to the Attorney General, but I know that you cannot talk about those in detail today. However, it would be remiss of me not to point out that the Committee has concerns about its capacity to report to the Assembly before the end of February on the preparations for the devolution of policing and justice. We have not had any real detail on the preparatory work that the Department has done on matters that it will implement, such as the appointment of senior judges, the appointment of the Attorney General — and the Department's relationship with him or her — and the issue of where the Public Prosecution Service will sit in the panoply of the criminal justice system and the departmental arrangements in the Assembly.

2083. We hope to report on those important matters by 29 February 2008. They are mainly matters for political consideration, and we hope that discussions will be taken forward in due course.

2084. Sir Nigel Hamilton: You are correct — they are matters for political discussion, and they are being considered. Ministers have been made fully aware of all those matters, and it is their responsibility to undertake decisions on them.

2085. Mr McFarland: I am trying hard to understand why they are matters for political consideration, because the 2006 NIO discussion document states that there was a choice about whether the PPS was devolved from the Court Service and administered by the Office of the First Minister and deputy First Minister. I am trying to work out what is political about that, because the Office of the First Minister and deputy First Minister is the best place for the PPS to have a home and be administered. It is not as if the Office of the First Minister and deputy First Minister can do anything with the PPS. It could be administered by the Department of Finance and Personnel, or the Department of Health, Social Services and Public Safety, but the Office of the First Minister and deputy First Minister seems to be the logical place for it, so that its budget and its administration remain separate from the Court Service. That is not related to anything political.

2086. At the moment, the Attorney General for England and Wales is a political position that is decided by Government. Will the Attorney General's position here be a political one? I understood that it will not be a political position and that the matter will be decided

by a panel. The Office of the First Minister and deputy First Minister appoints the Attorney General, but the panel gives it an official rubber stamp. I am trying to understand why this is a political and contentious issue. Perhaps I am being dozy, but I am trying to understand why it is a sensitive issue.

2087. We were within an ace of suggesting that the Committee summons people and papers here, because there has been a total lack of co-operation from the Office of the First Minister and deputy First Minister, and one would have thought that it would have been interested in engaging with us. It is good that you are finally here, because it has been difficult for me and the Committee to understand why there is such sensitivity around the issue. We understand the issues about Departments and Ministers, and we understand about the timing — clearly, those are political issues — but we are having difficulty in understanding why those two issues have been moved into the political arena. We received a letter stating that we were not allowed to discuss those issues. I am simply trying to understand why they are so sensitive.

2088. Sir Nigel Hamilton: Obviously, I cannot comment on behalf of the First Minister. However, decisions are required about whether the PPS will be a non-ministerial Department, and about the nature and extent of the oversight of the Civil Service's work. Decisions are required, but they are not decisions for civil servants to make.

2089. The role of the Attorney General is not a political issue per se, but it is for politicians to decide how an Attorney general is to be appointed, on what basis, and what functions are to be exercised. Those are matters for Ministers, not for officials.

2090. Mr McFarland: With everything else in this panoply — and we have looked at it in a fair amount of detail now — it is clear who is doing what and why they are doing it. We are having difficulty grasping what the new role of the Attorney General will be, because, up until now, the role of the Attorney General has been clear. Traditionally, the Attorney General has supervised the PPS and been answerable for it. We are told that there is to be an Attorney General for Northern Ireland, but what will his or her role be? Will the Attorney General be the person who is summoned to the scrutiny Committee on policing and justice to answer on behalf of the Court Service, or will David Lavery be summoned to do that? Why are we putting the service at arm's length?

2091. Somebody somewhere must have some idea of what this is all about. The Committee has a clear idea about most of the issues under consideration because somebody has appeared before the Committee to tell us what they think; for example, the NIO has given evidence. With those issues, it all makes sense. The role of the Attorney General is the one issue about which there is a degree of confusion, because no details are available. If we are saying — and maybe we are — that the appointment of an Attorney General will be the political appointment of a judicially qualified MLA to oversee the system, that is OK — that is clearly a political choice. However, my understanding was that that would not be the case. I understood that the Attorney General would be independent and would be selected from among a group of QCs or retired judges, and that he or she would be the link between the Assembly and the court system. Is that right? I am having real difficulty finding out why nobody seems to know anything about this matter, or, if they do, why they are all saying that they cannot talk about it.

2092. Sir Nigel Hamilton: I will invite Tony to respond in a moment. There is an important distinction to be made between a political decision or a political appointment and a decision that is to be taken by politicians. Civil servants do not have a say on the role, function or remit of the Attorney General, nor do they have a say on the appointment process. We can offer options and so on, but that is all. In this case, it is up to the First Minister and deputy First Minister to make the decision. Once that decision is made, we can work on it and implement it.

2093. Mr McFarland: So you think that it is a political appointment — is that what you are saying?

2094. Sir Nigel Hamilton: No. I explicitly said that it is not. It is for politicians to make the decision on the nature of the appointment — whether the role will be part time or full time, whether it is a legal appointment, and so on. Tony might like to comment on whether it will be regulated by the Commissioner for Public Appointments. Those are matters on which decisions have not yet been taken.

2095. Mr McFarland: Up until now, the rules of the game have been quite clear. If we went to Westminster now, we would find absolute and detailed rules about how to select an Attorney General, what he or she is not allowed to do and his or her role. However, when this appointment is moved to Northern Ireland and taken away from whomever the Attorney General is at Westminster, suddenly we know nothing about the role at all, and the entire matter is up for discussion with OFMDFM — how the post is to operate, how it is selected, who does it, and so on. Is that all put in a Magimix somewhere to eventually end up as a political decision?

2096. Sir Nigel Hamilton: It is not quite as dramatic as that.

2097. Mr Tony Canavan (Northern Ireland Civil Service): A number of details about the functions of the Attorney General for Northern Ireland are contained in statute. They are set out primarily in the Justice (Northern Ireland) Act 2002, and they relate mostly to the relationship with the Director of Public Prosecutions (DPP). They outline the changes to the current relationship of superintendence that the Attorney General based in London has over the Director of Public Prosecutions, and the new, slightly more arm's-length relationship that will exist with an Attorney General for Northern Ireland.

2098. The legislation also gives the power of appointment of the DPP and the deputy DPP to the Attorney General. It refers to a number of functional aspects of the relationship, including consultation on the code for prosecutors, consultation with DPP on matters for which the Attorney General will be accountable to the Assembly, and consultations on responsibilities relating to the annual report of the DPP.

2099. Other statutory functions are set out in legislation: the Northern Ireland Act 1998 contains provisions relating to devolution matters and cases relating to the boundaries of devolution, involving the Judicial Committee of the Privy Council; the Justice (Northern Ireland) Act 2004 contains a responsibility to issue guidance for criminal justice organisations on human rights standards; and the Justice (Northern Ireland) Act 2002 contains a requirement that the Attorney General will be consulted by the Chief Inspector of Criminal Justice on his programme of inspections.

2100. On relating those functions to comparable legislation on the appointment of the Lord Advocate in Scotland under the Scotland Act 1998, one will find that much has been left unsaid about the role of the Assembly and in contrast to the Scottish Parliament. There are, therefore, aspects that are not stated clearly.

2101. A raft of functions relating to the Attorney General's non-statutory role in defending the public interest in matters relating to civil law will pass across, because they are carried out currently by the Attorney General for England and Wales. In Northern Ireland, such roles will be carried out by the new Attorney General. However, that is not set in statute though custom and precedent have established that the Attorney General has a role with regard to vexatious litigants on contempt of court proceedings and the appointment of amici curiae in courts, and will continue to have that.

2102. The Attorney General might also be given a range of functions by extrapolation from the work that is done by the Attorney Generals in London and Dublin and the Lord Advocate in Scotland — providing legal advice to the Executive, for instance. However, that is not laid down in statute, so it would be for the First Minister and deputy First Minister to decide.

2103. The Justice (Northern Ireland) Act 2002 contains provisions relating to the appointment by First Minister and the deputy First Minister, but it does not contain anything about the appointment process. The Criminal Justice Review 2000 first raised the possibility of Northern Ireland having an Attorney General separate from England and Wales, and the review stated that it should be a non-political appointment. There were also references to the non-political nature of the appointment in the debates in Parliament on the Justice (Northern Ireland) Act 2002. There is, therefore, that collateral for the view that the appointment of the Attorney General should be non-political. However, it is up to the First Minister and the deputy First Minister to consider further details on the appointment and laid terms.

2104. The Justice (Northern Ireland) Act 2002 also contains provisions relating to the required qualifications of any Attorney General; for example, being a member of the Bar of Northern Ireland or a Northern Ireland solicitor for 10 years. Therefore, there is some statutory provision for what the Attorney General will do and what his or her qualifications will be. It has been said that an MLA can become the Attorney General. That would not be permitted, and that is stated in the Justice (Northern Ireland) Act 2002.

2105. Mr McFarland: Thank you, Mr Canavan. That is the first straight answer on this issue that the Committee has received, and it helps us to understand with what we are dealing. It seems ridiculous to say that we cannot talk about the issue.

2106. Mr Attwood: I will begin with my easiest question. Some reserved matters fall between the interface of the devolved justice Ministry and the London Government, but they are relevant to Northern Ireland. Where are the protocols and memorandums that are due to be prepared in respect of sharing of national security information — where relevant — with the Policing Board and the devolved Administration or the Minister. We have been informed that following the devolution of policing and justice, there will be some issues that touch on national security, and the minister will have to understand how those matters are dealt with. Decisions will have to be made about what the Minister for justice — if one is appointed — will hear on issues that might arise on national security.

2107. Where are we in the administrative arrangements, in respect of memoranda and protocols that will govern the sharing of information, let us say, on national security? I could ask about other issues that are not going to be transferred.

2108. Sir Nigel Hamilton: Those are not matters for the Northern Ireland Civil Service. The Northern Ireland Civil Service has nothing to do with national security. Those matters would be taken up by NIO colleagues.

2109. Mr Attwood: I appreciate that national security will not be a devolved matter. However, it has been acknowledged by the NIO, in correspondence with the Committee, that some aspects of policing and justice touch on national security. Those with responsibility for overseeing such matters will need to understand how national security will be handled and what type of information they can expect to receive on issues with a national security dimension.

2110. Sir Nigel Hamilton: Mr Chairman, that correspondence is from the NIO, so I cannot answer the member or comment.

2111. Mr Attwood: Are you saying to the Committee that, at this stage, in your work programme as head of the Civil Service, nothing is being done in respect of arrangements for sharing information where issues of national security could affect the devolution process?

2112. Sir Nigel Hamilton: No, Mr Chairman; I have said that this is a matter for the NIO. I cannot comment; I have not seen the correspondence. I am not involved. Mr Attwood will recall that national security was not the responsibility of any of the nine project teams that I read out. It is a matter for the NIO and the Department of justice to take forward in the first instance.

2113. The Chairperson: Clearly, members, this is not a matter for the Northern Ireland Civil Service. It is not a matter with which Sir Nigel or his board should be dealing.

2114. Mr Attwood: I am surprised by that comment. NIO officials gave evidence that there would be a need for sharing certain information. That requires certain protocols and a memorandum of understanding.

2115. In three or four months, we may be in a position where justice and policing powers are devolved, and I expect that whatever information-sharing protocols are needed will be in place by that stage. I am surprised that, as yet, Sir Nigel's team seems to be unsighted or not involved in that work. It seems to be work that might legitimately fall within his responsibility.

2116. My second question arises out of Alan's earlier question. I note what was said about the future role of an Attorney General. Is there any indication of when the process of appointing an Attorney General might begin? If we are to have devolution of justice in May, the timetable, both for us to finish our business and for decisions to be taken on the transfer of powers, is very tight. Some of the detail of that, namely the appointment of an Attorney General, in the event that there is to be a transfer of powers, might already be established. Can you share with the Committee any indication of when a process might be initiated for the appointment of an Attorney General, given it that will take some time?

2117. Sir Nigel Hamilton: No, I cannot. I must repeat what I have said. It is for Ministers to decide on the nature, the role, the remit and the appointment process. When Ministers so decide, officials will take it forward.

2118. Mr Attwood: I appreciate that. Can you help the Committee further? Is there any indication from Ministers as to when they might decide?

2119. Sir Nigel Hamilton: That is a matter for Ministers.

2120. Mr Attwood: I appreciate that, but you are the head of the Civil Service. You have given the Committee indications about preparedness on your side of the house; for everything to be in place when decisions are taken. Would it not be helpful for you to know when Ministers might make a decision about, for example, the Attorney General? Would it not help you to complete your business?

2121. Sir Nigel Hamilton: Decisions on all those issues would give us more time to prepare. I am not in a position to comment on the nature of, or timetable for, such decisions. That is a matter for Ministers, who are aware of the issues. It is they who must make those decisions. I am sorry, Chairperson; I will repeat what I said at the outset. There are a number of issues on which I cannot help the Committee. I am being explicit about that.

2122. Mr Attwood: It is for the Committee to speak for itself, but I would like some help on some of these matters, even though it does not appear to be forthcoming. That is not your fault, I might add. I can understand why you are answering in such a way.

2123. My third question is about staffing. Will you tell the Committee whether all the NIO staff currently involved in policing and justice matters will come over en masse in the event of devolution? Bearing in mind all the issues around the transfer of policing and justice powers, are there any indications that there might be any recruitment of staff to deal with those responsibilities?

2124. Sir Nigel Hamilton: I might be able to help you a bit more on that one. There are several things to say about this matter, because I would not want the Committee to be misled. As I said in my presentation, the first responsibility of the NIO is to pull together, in a putative Department for justice within the NIO, all those functions and resources that would transfer to the devolved sector. When the legislation is drafted and decisions are made on the functions that transfer, those staff, who are wholly or mainly engaged in the functions that will be transferred, and whose rights are protected in the event of transfer, and will move across to the devolved sector. Similar situations have arisen in local government reorganisation and the review of public administration.

2125. At the moment, as I understand it, the NIO is effectively dividing itself into those functions that would transfer, along with the required staffing responsibilities, and the remnant NIO functions that would not transfer. On the date of devolution, therefore, all those staff would go to work in the devolved sector. It may also mean that some home civil servants would have to come to us on secondment. There may also be some Northern Ireland civil servants in the remnant NIO who will stay on the other side.

2126. Secondly, there are clear differences in grades between the NIO, the Northern Ireland Civil Service and the Northern Ireland Court Service, particularly at executive level. Those are being worked on at the moment so that we are fully aware of what would happen on the date of devolution. We can then put a strategy in place to ensure that, after devolution, there would be a convergence of those terms and conditions. However, I would not want the Committee to think that on day one of devolution, all NIO staff will become Civil Service staff on exactly the same terms and conditions. It will take time for one to migrate to the other.

2127. I will just say one more thing to Mr Attwood. I suspect that a decision will have to be made about whether NIO staff in corporate services functions, such as personnel and finance, will be coming to us or staying where they are. Nevertheless, staff involved in criminal justice and policing functions will transfer to the devolved side when the functions transfer. The staff will come with the functions either wholly or mainly. I hope that that helps.

2128. Mr Attwood: That is very helpful. I have a final question about money. Can you tell the Committee about the outcome of the budget for policing and justice? Are you satisfied that, over the next three years of the comprehensive spending review (CSR), that budget will be sufficient to maintain the level of justice and policing provision that we have heretofore enjoyed? Given that the budget will be transferred en bloc, including a considerable budget for justice and policing provision, do you see pressures on the policing and justice budget from the risk that it will be vulnerable to other Ministers believing that they can spend the money better than a devolved justice Minister might?

2129. Sir Nigel Hamilton: I cannot comment on what the outcome of the CSR will be for the Northern Ireland Office. I do not have any responsibility for that matter; as it has not been an area of concern to me, I have not done any work on that issue. The project team that is considering the matter, which includes a senior member from the Department of Finance and Personnel (DFP), is working on splitting the Northern Ireland Office budget into one that would be devolved and one that would remain with the NIO. It is much too early to provide any analysis on whether that would be adequate. However, I would be very surprised if colleagues from DFP, and the DFP Minister, did not want to be absolutely satisfied with the quantum of the budget, when it is eventually extracted from the Northern Ireland Office.

2130. It remains to be seen, following devolution, whether the budget for criminal justice and policing will be ring-fenced and managed, or whether it will formally become part of the Northern Ireland block grant. That matter will have to be discussed by the Minister of Finance and Personnel and the Executive at that time.

2131. Mr Attwood: It is intended that the budget will be transferred as part of the overall block.

2132. Sir Nigel Hamilton: The budget for justice and policing would be transferred as part of the overall block.

2133. The Chairperson: As I understand it, the budget is earmarked until 2011, and it is based on the costs associated with the establishment of the PSNI. From 2011, the policing and justice budget will be part of the overall Budget, and it will become part of the debate, such as the one that has taken place over the past few weeks, on the Budget.

2134. Sir Nigel Hamilton: It would be premature to say how the policing budget and the overall Budget will relate to each other.

2135. The Chairperson: It is too early to say at this stage.

2136. Sir Nigel Hamilton: Yes, it is premature at this stage. However, the issue is at the forefront of the thinking and work of DFP colleagues.

2137. The Chairperson: I thank you Sir Nigel, and your colleagues, for your attendance this morning. I hope that you understand that the nature of our questioning is because we are anxious to draw together all the information to enable us to present as full a report to the Assembly as possible. The Committee has a sense that our report to the Assembly, which we need to make by 29 February, will include a number of issues on which political agreement has not yet been reached. From there, it will be a matter for Ministers and others to take forward those discussions.

2138. Sir Nigel Hamilton: Thank you very much. I have no doubt that my colleagues, and my successor, will have an interest in those matters.

2139. The Chairperson: Members, we will continue our discussion on policing and justice. A letter, dated 18 January 2008, from Clare Salters of the Northern Ireland Office has been circulated to you. It deals specifically with an exchange that took place between Clare Salters and Alan McFarland during our Committee meeting on 8 January about the number of Departments and ministerial offices, and who has the authority to create those Departments. The letter makes it clear that the prime responsibility for deciding on the number of Departments rests with the First Minister and the deputy First Minister. Sir Nigel also mentioned that in his evidence.

2140. Therefore, the devolved Administration must determine whether it wants to create a new Department or to include policing and justice in an existing Department. If the existing cap of 10 Departments were to be increased by the establishment of a new justice and policing Department, the Secretary of State would have to lay an Order before Parliament to give effect to that. Those decisions must be taken by the end of March 2008, when the Assembly must present its report to the Secretary of State.

2141. The Committee Clerk: When I read the transcript of the meeting on 8 January 2008, I thought that there was some ambiguity in the evidence of Clare Salters and Peter May, and, therefore, I wrote to them. It may be useful for members to read the paper to assist their consideration of the development of their party papers, so that they understand the logistics of ministerial appointments, and so forth. That is the purpose of noting the letter at this stage.

2142. Mr McFarland: That is helpful, because it sets out everything clearly.

2143. The Chairperson: I suspect that we are beginning to achieve some clarity in the midst of this grey and murky water. Members,

that paper is available to you; whether it informs your party papers is a matter for you. It helps the Committee by providing additional information on that particular aspect of the structures.

2144. There is also a letter from the Legal Services Commission. Last week, I mentioned that I had met the chairperson of the Legal Services Commission, who raised some concerns. I asked him to put his concerns in writing, and members have a copy of the resulting letter. The Committee Clerk may provide some clarification on that.

2145. The Committee Clerk: The letter centres on the Committee's deliberations on structures and accountability. Last week, the Committee began to consider where various policing and justice organisations might be located post-devolution of those powers. The issue raised by the Legal Services Commission centres on the question of the policy for legal aid and its administration. Last week, the Committee discussed whether that policy function should transfer from the Court Service to the new justice and policing Department or fall under the responsibility of the Legal Services Commission.

2146. In the greater scheme of things, the Committee has been considering whether it should interfere at this stage in the restructuring or simply draw attention to issues such as that raised by the Legal Services Commission and start to set out the work programme for any new Minister, or Ministers, for policing and justice and the associated scrutiny Committee. As the Chairperson said, the letter is a result of the conversation that he had with the chairperson of the Legal Services Commission, but it is up to the parties to consider the extent to which they want to reflect, or comment on, it in the report.

2147. The Chairperson: Thank you. Members will recollect that the witnesses from the Court Service who gave evidence were keen to offload its responsibility for the legal-aid policy. The question for the Committee is whether to take a view at this stage on whether the responsibility for that policy should transfer to the new Department or to the Legal Services Commission, which has responsibility for administering legal aid in Northern Ireland.

2148. I get the sense that the Legal Services Commission would be keen to have responsibility for policy-making as well as administration. However, I suggest that we need to examine issues of accountability. If, for example, the Committee were to recommend to the Assembly the model preferred by the Lord Chief Justice, in which the Court Service would be at arm's length from the Department — albeit that may be a matter for the Assembly after powers have been devolved — the Department's responsibilities would be fairly lightweight, because most of the institutional arrangements would be outwith the Department and at arm's length in non-ministerial departmental bodies or elsewhere.

2149. That would result in the Committee or the Department being responsible for initiating legislation, so would members be happy if the policy role was further diluted by devolving some aspects of policy to some of the non-departmental public bodies? That is the type of issue that we must consider. As the Committee Clerk said, it is not necessary for the Committee to reach a definitive conclusion. However, such issues are out there, and we might flag them up for consideration by Ministers or the scrutiny Committee, post devolution.

2150. This week, I encountered another such issue, of which you may have seen some press coverage. Under the Criminal Justice and Immigration Bill that is going through Parliament, it is proposed that the position of Prisoner Ombudsman should be placed on a statutory footing. The current Ombudsman has raised concerns about the independence of his office in the event that it is funded by the NIO to investigate prisoner complaints, with the NIO also having responsibility for the Northern Ireland Prison Service. I expect that parallels could be drawn with the Police Ombudsman. Suffice to say, those are not matters on which the Committee must make hard and fast decisions. However, they might be issues that we want to flag up to be dealt with, post-devolution, by the new departmental Ministers and the scrutiny Committee.

2151. Does anyone have any further comments to make on the letter from the Legal Services Commission?

2152. Mr McFarland: After the transfer of policing and justice powers, will the responsibility for legal aid policy remain where it is?

2153. The Chairperson: It will fall to the Court Service.

2154. Mr McFarland: The Court Service is being reorganised. Is that a good time to begin shifting responsibilities, or should that be done before devolution?

2155. The Chairperson: Possibly.

2156. Mr McFarland: The difficulty is that if we do not have a Department of policing and justice before powers are devolved, to which Department should the responsibility for legal aid policy be shifted, or should it just stay with the NIO?

2157. The Chairperson: That is an issue that you might wish to consider in your party-position papers, and we can revisit that matter when we begin our discussions on those papers. Members must determine whether their parties have a view on where the responsibility for legal aid policy should sit. If the Court Service continues as an agency of the Department or becomes an arm's-length non-ministerial Department, should responsibility for legal aid policy remain with it? Should responsibility for that policy transfer back to the Department or go to the Legal Services Commission? Therefore, members might want to reflect on that in the party position papers.

2158. Does anyone have any other comments on the letter from the Legal Services Commission?

2159. The Committee Clerk: In the Northern Ireland Office's working assumptions for a post-devolution situation, the Legal Services Commission would become a non-departmental public body sponsored by the Department of policing and justice, which is what the NIO is working towards. The working assumptions say nothing about policy —

2160. Mr McFarland: Is policy currently with that organisation?

2161. The Chairperson: No, it is with the Court Service.

2162. Mr McFarland: Presumably, it could stay with the Court Service, even though the commission will be coming —

2163. The Chairperson: It could, although we have had evidence from the Court Service that it would rather not have that responsibility.

2164. Mr McFarland: Yes; however, responsibility could conceivably stay there until the new Department for policing and justice is formed. In which case, responsibility would be switched to it.

2165. The Chairperson: Yes, although, it would be necessary to reflect that in legislation.

2166. The Committee Clerk: I imagine that that would require a legislative change, or, at least, a transfer of functions. However, members are once again getting back into the situation of deciding whether the Committee wishes to flag up those issues or make firm recommendations.

2167. The Chairperson: With the Committee's agreement, I ask that two aspects be considered. I do not know whether the Research and Information Directorate can help us. As we listened to Sir Nigel's evidence on the Attorney General, and, in particular, to his response to Alan, it struck me that it might be useful for us to have a brief note reflecting that evidence and any other information that is available on the functions of the Attorney General, as set out in legislation.

2168. Mr McFarland: Various references were made, and it is a matter of looking those up.

2169. The Chairperson: Exactly. We need a summary of what is known about the office of the Attorney General. We will want to reflect that in our report.

2170. Secondly, it would be useful if we had clarification as to what will happen, under current proposals on devolution, to the policy on legal aid. Is the NIO's proposal that responsibility for legal aid policy remains with the Court Service? If so, what would be required to transfer that policy from the Court Service, post-devolution, either to the Department or to the Legal Services Commission? Would either transfer require legislation? That would be useful to know and it would inform our further deliberations.

2171. We move on to structure and accountability, and the issues that we have been dealing with previously. Last week, we made some progress across a range of functions and institutions linked to policing and justice organisations.

2172. Some further issues need to be considered, and may need to be addressed in the party position papers. For members' information, the Committee Clerk has written to the Northern Ireland Office to seek clarification on a number of the issues that were raised at last week's meeting. They include whether the role of the Attorney General will be full time or part time, and what the costs are associated with the role. If we get that response, we could add that into the paper that the Committee Clerk will prepare on the office of the Attorney General.

2173. We have also sought clarification on the office of the Police Ombudsman. Is the potential role for OFMDFM or any new Minister simply an advisory role on appointments, or is it envisaged that the Police Ombudsman will be appointed directly by the Assembly?

2174. In relation to the North/South agreements — Alex raised this — the Committee Clerk has requested that the NIO supply a list of such agreements, memoranda of understanding and protocols, suitably annotated, to explain whether they will fall or will be replaced. That will ensure continuity of arrangements.

2175. We have requested that the NIO confirms whether the Northern Ireland Police Fund is part of the block grant or whether it is a separate arrangement, and if it is a separate arrangement, whether it continue post-devolution. That issue arose in earlier deliberations.

2176. With regard to the wider issue of the disaggregation of budgets, the baseline figures were identified in the NIO letter of 15 October 2007, and the Committee Clerk has asked whether the allocation of moneys has been further developed since then and what the details are. When there is a response from the NIO, it will be circulated to members.

2177. It may be helpful if we were to revisit those outstanding issues on the structure and accountability of the devolution of policing and justice that we discussed last week. We will await clarification from the NIO before revisiting the issues that I have just mentioned.

2178. We turn to the Northern Ireland Policing Board. Issues arose as to whether MLAs should continue to sit on the board; if there are to be no MLAs on the board, whether the political parties should continue to appoint the 10 political members; whether the Committee agrees with the conclusions of the Programme for Government Committee, which stated that members of the Policing Board should not be permitted to sit on the new scrutiny committee; and the need for a memorandum of understanding to clarify relationships that exist between the PSNI, the Policing Board and the Assembly Committee; and to deal with any conflict of interest. I suggest that those matters be included in the party position papers. They are political in nature, and there is no point in members engaging in a detailed discussion in advance of the completion of those papers.

2179. Mr McFarland: Chairman, do you think that we must flag up that matter to the Policing Board? When I was on the Policing Board, there was a brief discussion and a view that MLAs were needed as members. However, that was before the new dispensation and before any projected timescale for devolution when MLAs would be under pressure due to Committee and other workloads.

2180. At that time, the chair of the Policing Board and others were of the view that MLAs should stay on the board. Should we give the Policing Board an opportunity to comment, or should we leave it as a political issue?

2181. The Chairperson: Was that matter raised in the Policing Board's written or oral evidence to the Committee?

2182. The Committee Clerk: I would need to review the transcript and the written submission, because I cannot recall whether it was mentioned.

2183. The Chairperson: I suggest that we ask the Committee Clerk to review the written and oral evidence that we received from the board to see whether a view is expressed on that matter. If not, I will write to the chair on behalf of the Committee to ask whether the board wants to take a view. However, I will point out to him the very tight timescale in which we are working.

2184. Mr McFarland: Essentially, it is a political matter to do with the parties and their timing. The question is whether we ask the board whether it has a view, as a matter of courtesy. My guess is that it would be keen to retain the political influence. I understand that. Therefore, it is a matter for the political parties to decide how best that might be achieved.

2185. The Chairperson: The risk is that we increase the duplication of people who are considering the matter. I am sure that the chair of the board would be reluctant to give a view without consulting the political parties represented on the board. Those political parties are the same as are around this table.

2186. Mr McFarland: Should we just leave it?

2187. The Chairperson: In the short term, we will ask the Committee Clerk to examine the evidence for any reference to the matter. I am reluctant to go further, because we will be duplicating the work.

2188. I ask members to reflect on the issues relating to the Policing Board and to touch upon them in the party position papers. Again, the Northern Ireland Court Service is a big issue for the Committee. We have had evidence from the Lord Chief Justice and from the Court Service, and we know the current position on the legislation on the Northern Ireland Office's proposals. Therefore, I hope that, in your party papers, you will reflect upon the degree of independence of the Court Service; how accountability can be assured in a future Northern Ireland Court Service model, which may vary depending on the model; the division of responsibilities between the future Northern Ireland Court Service agency/independent body and a new Ministry of justice; whether the agency should continue to deliver policy advice and legislative support, or whether those functions should transfer to the Department; and how the board of any future independent Court Service should be composed, including whether, or how, the Department might be represented on it. I hope that that list will be a useful aid to you when reflecting on the issues relating to the Court Service and what you might wish to touch upon in your party position papers.

2189. With regard to the Public Prosecution Service (PPS), you might want to consider the degree of independence of the PPS; the relationship of the PPS to the Attorney General, which was raised earlier with Sir Nigel Hamilton; the relationship of the PPS to the Assembly and the proposed Advocate General for Northern Ireland; and which Department should have responsibility for providing funding to the Court Service and the PPS. The current proposal, as I understand it, is that the Court Service would be funded by the Department of justice, and the PPS would be funded by OFMDFM. Members should reflect on that and on whether they feel that the Committee should take forward that position, having regard to issues of independence and accountability.

2190. With regard to the Serious and Organised Crime Agency (SOCA) and the security services, the Committee must consider the lines of communication and the accountability of SOCA and the security services to the new Department in relation to excepted matters, such as national security and organised crime. Alex touched on that matter earlier in a question to Sir Nigel Hamilton, and there is a question of protocols. Again, members might want to reflect on the matter in their party position papers.

2191. We have already discussed the Northern Ireland Legal Services Commission; where responsibility for criminal legal-aid policy should be transferred; and whether all aspects of civil and criminal legal aid should be the responsibility of one body, namely the commission, or any new Department of policing and justice. In other words, should the commission be retained or should it be integrated into the Department? Should the Department have full responsibility for legal aid policy and administration or should policy be separate from administration? Should the Department have responsibility for policy and the commission responsibility for administration, or should the commission be responsible for all matters? Members should reflect on those issues with regard to the Legal Services Commission, and, indeed, whether it should remain as a public body and be accountable to any new Department, or cease to be a public body, with its responsibilities being taken over by the Department.

2192. In their position papers, parties might also wish to consider their preferred name for any new Department. Should it be called the Department of policing and justice, the Department for policing and justice, the Department for justice or the Department of justice? There are many variations on the theme. We hope that we will not need to spend £500,000 in order to come up with a name. I am sure that the Committee will take a slightly more low-cost approach to the naming of the new Department.

2193. I remind members that submissions must be with the Committee Clerk by close of play on Monday 28 January 2008. Parties may wish to include a statement on the timing of devolution and the ministerial model in their papers. Those are the two big political decisions that, as we reported last week, are likely to be taken at a higher political level. However, OFMDFM indicated to the Committee that if it wanted to take a view, it was at liberty to do so, and that might inform the debate. It remains to be seen whether members can reach consensus on that around the table, with all the political considerations that there are. However, in their papers, members may wish to reflect their party's view on the preferred ministerial model. I believe that we have discussed that already. At present, I believe that Sinn Féin and the SDLP favour a single Department with two Ministers acting jointly, and the DUP and the UUP favour a single Department with one Minister. Those positions have been stated around the table. For the purposes of their papers, members

may wish to consider whether their party's position has changed and whether they wish to make any statement on the timing of devolution.

2194. The Committee may need to consider the Attorney General. Mr Canavan told the Committee that the Attorney General cannot be an MLA. Consequently, it will be necessary for the Assembly's Standing Orders to allow for the Attorney General's participation in its proceedings. However, that will not include voting rights. That is covered by Part II of section 25 of the Justice (Northern Ireland) Act 2002. Members can be provided with a copy of that extract at any stage. I suggest that the Committee Clerk drafts a letter on my behalf to the Chairperson of the Committee on Procedures in order to draw his attention to the need for such a Standing Order to be drafted and adopted in time for the devolution of policing and justice. It is not really the Committee's responsibility, however.

2195. Mr McFarland: Can you refresh my memory as to why that is, Chairman? Logically, that is presumably so that the Attorney General —

2196. The Chairperson: So that he or she can answer questions.

2197. Mr McFarland: Yes, but only on prosecution matters. Logically, the Minister or Ministers would answer questions on every other justice matter. However, if the Attorney General has no responsibility for the PPS — which, I believe, is the new plan — on what will he or she answer questions? If all matters except prosecution are the responsibility of the Minister, and it is a matter over which the Attorney General has no control, for what will the Attorney General be answerable?

2198. The Chairperson: Alan, could you elaborate on that new plan?

2199. Mr McFarland: At the moment, the Attorney General is responsible for the PPS.

2200. The Chairperson: Yes, and that would be the position if the status quo were to remain.

2201. Mr McFarland: Yes — if we move across. If we have direct accountability, say something has gone wrong with the policy in a prosecution case, or whatever, we cannot summon the director of the PPS because he is completely independent. However, there must be someone in the chain of command that could be hauled out and asked about what is going on, what happened, how did things go wrong and whether the matter could be sorted out? At the moment, that person is the Attorney General.

2202. We have heard from the NIO plan that that is no longer the case. The Attorney General would keep a rough eye on what the director and the new Department are doing, but would no longer have any responsibility. Who will be responsible for the PPS? How do we get accountability? I am struggling with all of that. If we are not allowed to go near the PPS because it is independent, and the one point of access that we had has been removed— where the Attorney General took responsibility and could be called to account for what went on, although not interfere with the actual decisions — how will it all work?

2203. The Chairperson: The Committee Clerk has written to the Northern Ireland Office seeking clarification on the role of the Attorney General, whether the post would be full time or part time and the costs associated with the role. I suggest that we do a follow-up note to the NIO asking for clarification on the changing role of the Attorney General in relation to oversight of the PPS. If the NIO intends to take that forward, what are the implications for the PPS, and who has oversight responsibility for the PPS in the event of the Attorney General's not having that hands-on type of oversight that we thought would initially —

2204. Mr McFarland: Is that a matter for OFMDFM? I think that was what was said before. It would be worth reviewing the evidence that we have so far. I am not at all clear about it. If the Committee is here in a year's time and power has been devolved and there is complete chaos in the PPS, who would we haul in to ask about what is going on?

2205. The Chairperson: The second question to ask for clarification on is if the Attorney General no longer has that hands-on oversight role, for what would he or she be answerable to the Assembly?

2206. Mr McFarland: My impression is that the Attorney General has a catch-all role, in that there is a link with all sorts of bits and funny little parts of the criminal justice system. It would be useful to get a list of those roles. Maybe a list is available.

2207. The Chairperson: Mr Canavan referred to that when he quoted from the legislation.

2208. Mr McFarland: Yes, there was some list of the little things for which the Attorney General was half-answerable.

2209. The Chairperson: Yes, we want to know the current position: what does the NIO regard as being the role of the Attorney General; what is the relationship to the PPS; who will have oversight of the PPS; and for what is the Attorney General answerable in the Assembly?

2210. Mr McFarland: While we are on the subject, there is one question that I did not ask, because I thought that we had done enough. What about the Advocate General? I think that that is a GB-based post with broad oversight.

2211. The Chairperson: The Advocate General deals with excepted matters.

2212. Mr McFarland: I do not think that it impinges on us directly. Can we be happy that there is nothing, other than a watching brief from afar?

2213. The Chairperson: What is relevant to us is the relationship between the Attorney General and the Advocate General.

2214. Mr McFarland: Or, indeed, the relationship between the Minister and the Advocate General.

2215. The Chairperson: Alan, do you want us to include those matters in the list of questions that we are seeking clarification on — subject to us not already having it?

2216. Mr McFarland: Yes — maybe we have the clarification. It was a matter that was on the back burner when we were looking at all the other big stuff.

2217. The Chairperson: It easily passes us by.

2218. The Committee Clerk: We will gather the requests together in a single paper. Part of it will be research-based and part of it will be clarity from the NIO on a range of issues.

2219. Mr McFarland: What is the timescale for that, given that our papers are due in next Monday?

2220. The Chairperson: It may not be available for then. If not, the party papers should reflect the feelings of the parties under the current position. Additional papers from the NIO, the Committee Clerk or the Research and Information Directorate will inform our subsequent discussions.

2221. Mr McFarland: Will an interim paper suffice, if we have clarity on some areas?

2222. The Chairperson: Yes. Tab 3 of the members' pack provides a breakdown of the issues to be addressed in the party position papers. Members are agreed on a few of them, so there is no need to include them in your papers. However, it will be useful to have a view on outstanding issues.

2223. The Committee Clerk: Last week, we were asked to add a number of issues to the back of the table to help the parties to develop their position papers.

2224. Mr McFarland: Are they included in the table?

2225. The Committee Clerk: They are at tab 3. That tab also identifies the extent to which the Committee has agreed the position of some organisations — as decided last week — and what parties should be looking at in organisations such as the Court Service.

2226. The Chairperson: Does anyone else have a comment on policing and justice?

2227. Mr Attwood: I mentioned earlier that I may have overstated the view of the Probation Board for Northern Ireland, so I will correct that for the record. I have a copy of the board's submission to the inquiry. It confirmed vigorously that the current model as a non-departmental public body has demonstrated its worth and is more effective at handling probation than a Government agency would be. I may have given the impression that the board wanted to transfer from the non-departmental public body model to an agency model, but its submission to the Committee states strongly that it wants to retain its current model. I will speak to the Probation Board for Northern Ireland about how my understanding arose, because it was in a private meeting. In order to avoid doubt and create certainty, I am confirming the situation.

2228. The Chairperson: That is on the record.

2229. The Committee Clerk: In the Criminal Justice Review, there was some speculation about the creation of an agency that would embrace the Probation Board for Northern Ireland, the Prison Service and the Youth Justice Agency. Perhaps in Mr Attwood's role on one of the Ad Hoc Committees, he might have seen emerging evidence about how the working relationships among those three agencies are developing. Perhaps that is where Mr Attwood gathered the wrong impression.

2230. The Chairperson: Thank you. That concludes this part of the Committee meeting.

5 February 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Mr George Robinson

2231. The Chairperson (Mr Donaldson): The Committee requested a briefing paper summarising the legislation on the role of the Attorney General and Advocate General for Northern Ireland, including a summary of the evidence that was provided by Sir Nigel Hamilton and his officials on that matter at our meeting of 22 January. Members will find that information in their members' pack. The paper also sets out the role of the Attorney General for England and Wales, including any relevant information provided in previous research papers and briefings from expert witnesses on the role of the Attorney General.

2232. In addition, members will find some information on the functions of the Advocate General, which is taken from schedule 7 of the Justice (Northern Ireland) Act 2002, which sets out those functions.

2233. The Committee requested that the Clerk investigate whether, in their evidence, the representatives of the Northern Ireland Policing Board provided a view on the future membership of the board and any Scrutiny Committee for policing and justice. Members will recall that one of the issues that we have asked parties to consider is whether an MLA who is a member of the Policing Board should be excluded from membership of any future scrutiny Committee on policing and justice. In oral evidence to the Committee, Sir Desmond Rea, chairman of the Policing Board, expressed the view that an MLA should not serve on both the board and the scrutiny Committee.

2234. The members' pack also contains a letter from the Probation Board, which is dated 31 January 2008. It refers to the Committee's recent discussions on the future status of the Probation Board for Northern Ireland. Members may wish to take that letter into account in representing their views on the Probation Board.

2235. Do members agree that the Clerk should write to the Probation Board to indicate that the Committee has noted the terms of its letter? It would simply be an acknowledgement that we have received its letter detailing the matters on which we had sought information. Is the Committee content that we acknowledge that?

Members indicated assent.

2236. Mr Attwood: I want to return to the issue of whether Policing Board member should be members of the scrutiny Committee on policing and justice. A variation on that theme is whether MLAs who are members of district policing partnerships (DPPs) can also sit on the scrutiny Committee. In that case, the relationship is clearly at arm's length, and the power of a DPP member is very different from that of a Policing Board member. Nonetheless, that issue probably needs to be considered, if not in our papers, then at least in a

conversation. I do not think that such a discussion will take very long, but the issue must be addressed, because we could be hit with it in three or six months' time. The SDLP has certainly addressed it in its position paper.

2237. The Chairperson: That is a fair point. I ask the Clerk to add that to the discussion note. In other words, if the Committee were to agree, in principle, that an MLA who is a member of the Policing Board should not serve on the scrutiny Committee for policing and justice, should that rule also apply to any MLA who is a member of a local district policing partnership, given the potential for a conflict of interest? We will include that point in our wider discussions on the issue.

2238. The pack also includes a letter from Include Youth and a copy of their original submission to the inquiry in August 2007, which requests an opportunity to make an oral submission to the Committee. As members will know, requests have been made to give evidence to the Committee; in particular, there has been a request from the Committee on the Administration of Justice.

We decided that, at this stage in our deliberations, we did not have the time to grant those requests. Would it be in order for the Committee Clerk to write back on behalf of the Committee, expressing our appreciation of the interest shown by Include Youth and for their informative written submission, but that at this late stage of the inquiry it would not be appropriate to invite any further witnesses? Is the Committee content that we respond in that way?

Members indicated assent.

2239. The Chairperson: OK.

2240. Mr I McCrea: Unless we feel compassionate, and want to hear from all those from whom we have not accepted requests, and invite them all to our last few meetings.

2241. The Chairperson: We have already touched on the arrangements for publishing the Committee's report, as has the Committee Clerk. Is there anything practical to add?

2242. The Committee Clerk: No, other than to say that time is of the essence. I have developed some sections of the report, but I cannot develop other sections until I have a clearer position. All will depend, then, on the session that we might have on Thursday afternoon, probably after the Northern Ireland Office officials give the illustrative examples of the draft legislation.

2243. The Committee had agreed previously that those party deliberations on the papers should be in private session. Technically, that means that there would not ordinarily be an official transcript of those discussions. However, bearing in mind that they could be fundamental to the report, there is an opportunity for us to seek to have an official transcript, but for the discussions not to be broadcast around the Building. The transcript would only be published at the same time as the publication of the report. There is a slight risk with that, which we accept. We are examining the establishment of a protocol between Committees and the Office of the Official Report, because once we take this course of action and say that it is in private session, there is a slight risk that someone will get their hands on a transcript which is then leaked or released. I need to be clear whether the Committee wants a transcript of those discussions if they are to be held in private.

2244. The Chairperson: Do members have any strong views one way or the other?

2245. Mr I McCrea: If Hansard are to be here, so be it.

2246. The Chairperson: Which sessions have you in mind, Clerk?

2247. The Committee Clerk: If the paper from Sinn Féin emerged in time, then part of the session on Thursday would be held in public, with Hansard present to hear from NIO officials about the illustrative examples of the legislation. I presume that the Committee might prefer to go into private session for the consideration of the papers. The issue then is whether the Committee would like to have a transcript of those private proceedings; and, arguably, if those discussions continued, for example, next Tuesday, should they be in private session; and if so, whether Hansard should be present for the purposes of producing a transcript.

2248. The Chairperson: We are a Committee, not a negotiating forum. Nevertheless, we are going to have to negotiate our way through some of these issues. If we arrived at certain outcomes and someone was to read the report, would they understand how we arrived at those outcomes? Should we not at least produce a summary of the discussions that took place, and which resulted in whatever consensus might be arrived at on any particular issue?

2249. The Committee Clerk: As you know, Chairperson, drafts of the transcript would normally be circulated to members for correction. There is a slight risk at that stage that, with the best will in the world, discussions that were intended to be held in private may end up in the public domain. Bearing in mind that the report is due to be published on or before 29 February, the timing may also be a consideration.

2250. Mr Attwood: I have no problem with everything being recorded by Hansard. I am prepared to rely on people sticking to confidentiality. It would be useful to have a record of these events. I am relaxed about that.

2251. The Chairperson: Some other matters may arise during the meetings that the Committee Clerk referred to, in which case we might prefer not ask for a record of those occasions. Will we proceed on the basis that Hansard will provide a transcript of all other deliberations?

Members indicated assent.

2252. The Chairperson: The Committee Clerk has already referred to Thursday's meeting. We hope that NIO officials will be present to provide illustrative examples of the draft legislation that is being prepared. We may also, then, be in a position to have an initial discussion about the position papers.

2253. I remind members to bring the folders that we are working on today to Thursday's meeting. They contain papers that we may need to refer to. Are members content with the draft press release? I doubt whether we will make it on to the front pages, but you never know. That is not the fault of those who drafted it.

Members indicated assent.

2254. The Chairperson: The next meeting of the Committee will be on Thursday 7 February at 2.00 pm in room 152 in Parliament Buildings. Thank you.

7 February 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

Witnesses:

Mr Peter May

Ms Clare

Salters

Northern Ireland Office

2255. The Chairperson (Mr Donaldson): Members have copies of a letter from the Northern Ireland Office (NIO). It is dated 6 February 2008 and provides clarification on several matters that were raised in a letter from the Committee Clerk on 18 January 2008. Those matters relate to: the Attorney General; the role of the Police Ombudsman; what will happen to the North/South agreements in the event of the devolution of policing and justice, and the Northern Ireland Police Fund.

2256. I will not go into detail on the letter at this stage, because members have had time to read it, and we will return to each issue in our discussions later. Members should also have copies of a covering letter from the Northern Ireland Office and the indicative legislative proposals for the devolution of policing and justice matters to the Northern Ireland Assembly and Executive.

2257. As no one has any queries on the correspondence, we move on to hear evidence from the NIO officials, and I welcome Peter May and Clare Salters. I declare an interest as a member of the Northern Ireland Policing Board (NIPB) and the Privy Council. As no other member has any interests to declare, I invite Peter and Clare to make a short opening statement, after which members will have the opportunity to explore particular issues. I thank Peter, Clare and their colleagues for providing illustrative examples of the draft proposals for legislation, which the Committee received yesterday. I seek their assurance that today's engagement should not be regarded as any form of consultation on the draft proposals for legislation, and it is important that the record reflects that.

2258. Today is really only an explanatory session, not a formal consultation by the Committee for itself or on the Assembly's behalf.

2259. Ms Clare Salters (Northern Ireland Office): That is absolutely right.

2260. The Chairperson: Thank you, Ms Salters. I invite you to make a short opening statement.

2261. Ms Salters: Thank you, Chairperson. You mentioned the illustrative draft legislation that we shared with the Committee yesterday. I thought that it might be helpful if I began by saying a little bit about the purpose of sharing the texts with you at this stage and about their status, which ties in with the assurance for which you have just asked.

2262. As I am sure that you are aware from the letter that accompanied the texts, the legislation very much represents work in progress at this stage. It is incomplete in several ways, as well as the obvious fact that it will need to be adjusted in the light of the Assembly's eventual decisions about what matters it wants to have transferred and to what structure. The text has not yet been cleared by parliamentary counsel and there are gaps where the draftsmen, frankly, ran out of time so that it could be shared with the Committee while it compiles its report. The gaps are primarily in the field of criminal justice and explosives. Work is in hand to take those matters forward.

2263. At present, therefore, the legislation is by no means final. However, we believed that it would be helpful to allow the Committee and, in due course, the wider Assembly to see the broad shape of the transfer legislation. You will see that it does not create new law; it merely separates out the matters that will be devolved from those that will not. It also provides an early example of the progress that is being made by the Northern Ireland Office in order to prepare for May.

2264. With regard to the content of the papers, I hope that the covering commentary and the table at annex F are helpful in enabling the Committee to find its way around the orders. I appreciate that even by legislative standards they are particularly dry and impenetrable. There are four orders included in yesterday's bundle; the section 4 order that transfers legislative competence; two orders under section 86 that transfer Executive functions and make consequential amendments to make the transfer work; and a separate order under section 86A that transfers certain Executive functions that relate to extradition and international mutual legal assistance, which remain excepted matters. There will eventually be two further section 86 orders; one that deals with subordinate legislation and another that deals with the transfer of property and assets. Work is in hand on both of those. They will be ready by May if required.

2265. For completeness, I must also mention that work is also in hand to commence several of the provisions that are contained in the Justice and Security (Northern Ireland) Act 2007 and the Northern Ireland (Miscellaneous Provisions) Act 2006, both of which made amendments to the Northern Ireland Act 1998. We hope to make the necessary commencement orders in March 2007. In commencing those provisions, which include updating the triple lock and the various models from which the Assembly may choose how to structure a Department with responsibility for policing and justice matters, NIO is simply ensuring that the necessary provisions are in place for devolution when the Assembly requests it. There is nothing in the legislation about devolution.

2266. That is all that I have to say by way of an introduction. Obviously, we are happy to take whatever questions the Committee wants to ask.

2267. The Chairperson: Thank you very much. The covering letter that arrived with the indicative proposals stated that it was the NIO's intention to publish updated and more complete proposals for draft legislation alongside the Committee's report. I am somewhat concerned that clarity on that is needed. It is important to avoid creating the impression that the Northern Ireland Office is anticipating the Committee's report or, indeed, responding to it in advance of the report's publication. For example, if the Committee were to recommend that the Public Prosecution Service (PPS) should be located in any new Department for policing and justice, rather than its funding coming from OFMDFM, what implications would that have for the legislation that NIO is drafting? In other words, the Committee is clear about the present proposals and, obviously, the NIO is drafting the legislation to reflect the current proposals. However, it is

possible that the Committee will make a recommendation to the Assembly that would be at variance with some aspect of NIO's proposals. Yet, if NIO publishes the draft legislation alongside the Committee's report, the question will arise as to what implications there will be for the legislation if the Committee's report varies from NIO's proposals?

2268. Ms Salters: At this stage, the draft legislation is illustrative — the final legislation will be what the Committee comes up with and what the Assembly approves. The draft legislation simply serves to provide an idea of the context and shape, and to show the Committee and — we hope in due course — the Assembly how the transfer of powers would be effected.

2269. We are not trying to respond to, or pre-empt, the Committee's report. The publication of the draft legislation is to set the context. We had intended to make an updated and more comprehensive version of the document available to all Members at the same time that the Committee's report was made available to them so that they could see the same context that the Committee is seeing at present.

2270. Updating the document is simply to fill in the gaps without narrowing any of the policy options that we know the Assembly still has to take a view on. The document cannot be finalised until the Assembly has made a decision, so anything that we publish is without prejudice to the Committee's report and the eventual decisions made by the Assembly. We sought to make the introductory sections of the reports clear on that issue so that people would understand it was about context. We are happy to take suggestions on how to make that clearer, and we will work closely with the Committee Clerk on the timing of publication to ensure that it does not pre-empt the Committee's report and that it is subject to the same embargoes.

2271. The Chairperson: I accept your point about the wording of the introduction. However, the Secretary of State could be more explicit in his foreword when he states that he is publishing the proposals for draft Orders and an accompanying commentary, which he hopes will explain how devolution will work in practice and help inform Assembly discussions about the transfer of those powers. It could be stated a bit more explicitly that there may be a variance — he does not have to put it in those terms, but he must make it clearer that the Assembly has the right to bring forward proposals that may require changes to the legislation. Although that is stated in the introduction, people often skip that after reading the foreword by the Secretary of State. Using terms like "without prejudice" would be helpful.

2272. Mr Attwood: How long does it take for a draft Order to get Royal Assent after it is tabled?

2273. Ms Salters: Although the process can be very quick, a lot depends on the dates of parliamentary recess. Normally, three or four weeks are allowed to get a draft Order through, but a lot depends on the other pressures on Parliament at the time, the degree of complexity of the draft Order and the amount of notice given.

2274. The Chairperson: As the draft legislation is made up of Orders in Council, rather than Statutory Instruments, a Standing Committee would have to consider them.

2275. Ms Salters: That is correct.

2276. The Chairperson: Would each draft Order be considered separately?

2277. Ms Salters: That is a matter for the parliamentary authorities, but as the Orders all address different facets of the same issue, it makes sense for them to be considered together.

2278. Mr Attwood: That is helpful — I did not know that although I should have.

2279. Given that the Assembly may only get the opportunity to debate the report to the Secretary of State on 10 or 11 March, the Secretary of State would not receive a report from the Assembly until, say, 11 March, which is only seven weeks before the May date — if there is to be a May date. I am also mindful that there will probably be at least two weeks of recess in Westminster between then and now, too. Given your response to the Chairperson about the need for a Committee, could all this be turned around in four or five weeks?

2280. Mr Peter May (Northern Ireland Office): The date has always been May 2008 rather than a specific date in May 2008. Therefore, as far as we are concerned, devolution at any point in May 2008 would meet the St Andrews Agreement timescale. On the basis of what we know at the moment, we believe that it would be possible to deliver the legislative processes through Parliament in time for May 2008.

2281. The Chairperson: Alex, for information, I can tell you the recess dates. For once my dual mandate can assist the Committee.

2282. Mr Attwood: Your triple mandate.

2283. The Chairperson: I am thinking of legislatively.

2284. Parliament is in recess from Monday 7 April until Friday 18 April, so there will be a full two-week recess in the second and third week of April.

2285. Mr Attwood: I will ask my next question, but I can anticipate the answer. If we do not reach agreement on the transfer of justice and policing powers by May, can you advise the Committee of the Secretary of State's intentions, given the documentation that was passed previously to the Assembly on the Hain proposal?

2286. Ms Salters: The position is set out in statute. The provisions for transfer are set out in section 4 of the Northern Ireland Act 1998. The powers of the Secretary of State are limited to what the Assembly has voted to have transferred to it, and, if the Secretary of States believes that the Assembly will be unable to reach a decision, he is allowed to impose one particular departmental model. Those are the constraints on his powers.

2287. Mr Attwood: Has the Secretary of State indicated to you that if we have not managed to get this matter over the line by, say for the sake of argument, the first or second week of May, he may, at that stage, rely on the legislative powers that he has?

2288. Ms Salters: I have just outlined the powers that he has.

[Laughter.]

2289. Mr Attwood: The Committee received these papers late, through no fault of ours or yours, so there will be many questions. One issue that jumped out at me was that, subject to the Secretary of State's consent, the Assembly could legislate around the Regulation of

Investigatory Powers Act 2000 (RIPA). Page 10 of the submission states that this matter will remain a reserved matter, not an excepted matter.

2290. Ms Salters: Some aspects of RIPA are excepted. Its subject matter is generally excepted by virtue of schedule 2 of the Northern Ireland Act 1998, except in so far as it relates to the provisions on the prevention and detection of serious crime, which are currently reserved. We are saying that they will continue to be reserved. At the moment, the Assembly could, if it wanted, legislate on the reserved aspects of RIPA with the Secretary of State's consent, and that would continue to be the case.

2291. Mr Attwood: Is any part of RIPA excepted?

2292. Ms Salter: Yes.

2293. Mr May: Most of it is.

2294. Mr Attwood: So the Assembly could deal with the reserved end, which is the softer end.

2295. Mr May: It would involve the provisions that deal with serious crime.

2296. Mr Attwood: So the Assembly could deal with serious crime, but not national security. I did not know that. That is a pretty significant power to have, if the Secretary of State would agree to us using it.

2297. Paragraph 11.15 of page 22, confirms that:

"Following devolution, it will be possible, without committing an offence, to share sensitive information — other than that relating to national security — with the Minister and Department of Justice.

Going back to your previous correspondence with the Committee, will there be written protocols on that sharing of sensitive information with the Minister for justice?

2298. Ms Salters: Provisions in the legislation, particularly in the draft section 86 of the Order, deal with paragraph 11.15. However, there will also be some general protocols in the Assembly, similar to those between devolved and non-devolved Departments.

2299. Mr Attwood: Will the Assembly's protocols be modelled on that?

2300. Ms Salters: They are all tailored to the particular circumstances.

2301. Mr Attwood: Are those protocols being prepared at the moment?

2302. Mr May: Yes.

2303. Mr Attwood: Without prejudice to their final form, can you share the working draft of those protocols with the Committee?

2304. Mr May: The protocols are not yet at a stage where they can be shared with the Committee. In due course, they will be public documents.

2305. Mr Attwood: When will you be in a position to share the working protocols with the Committee?

2306. Mr May: It is hard to know, because we have not sought a ministerial view on the protocols as they are being developed. However, it will probably be March or April before they can be more widely shared.

2307. Mr Attwood: I want to see them at that stage.

2308. I acknowledge that even a quick perusal of your presentation on the draft legislation provides clarification, particularly on issues such as the North/South arrangements for policing and justice, about which I had been confused. It does not try to guide the Committee but usefully sets the scene, and I appreciate your assistance.

2309. Mr McFarland: To follow on from Alex's point, the Committee had a lengthy discussion with the Secretary of State in the Senate Chamber on 3 October 2007. Members pressed him on what Plan B would be should policing and justice not be devolved in May 2008. As I recall, he said that he could see no circumstances in which he would impose the devolution of policing and justice on the Assembly. Is that a fair assessment of what the Secretary of State said? He excluded the possibility of taking unilateral action and imposing a model on the Assembly should the First Minister and deputy First Minister not have requested that those powers be devolved. Am I correct in saying that the plan was that the Assembly would identify Ministers by 28 March 2008?

2310. Mr May: You may be referring to the remit of the Assembly contained in the St Andrew's Agreement.

2311. Mr McFarland: Did that not extend beyond that agreement?

2312. Mr May: No, although it may be part of the terms of reference on reaching a view on the ministerial arrangements for the Department by 27 March 2008, which is the date that I recall.

2313. Mr McFarland: I remember that there was a specified date by which, in theory, the Assembly had to identify the new Ministers.

2314. The Chairperson: The identification of the individual Ministers fell by the wayside. However, Peter is correct that part of the remit, or the preparatory work that the Assembly must undertake, is to agree the ministerial/departmental model. When the model of selecting Ministers changed to a cross-community vote in the Assembly, the requirement for the individual Ministers to be identified fell.

2315. In paragraph 478 of the Minutes of Evidence from 3 October 2007, the Secretary of State said:

"There was a suggestion at one stage, before the legislation was put in place, that the Secretary of State might impose a Minister to

take control of policing and criminal justice. That was never included in the legislation. Alan has fought nobly on and discussed that issue a number of times, and I understand why. However, I think that there has been a misunderstanding, because there is nothing in the legislation that gives me the power — even if I was daft enough to want to — to impose a Minister. I reassure the Committee that nothing in the legislation enables me to do that. Even if there was, I would not want to do it anyway.”

2316. Mr May: Perhaps it is worth making the distinction between the ministerial model and the Minister. Mr McFarland’s question was about the model rather than the Minister.

2317. Mr McFarland: I want to be clear: the original plan was that if the Assembly could not agree by May, the Secretary of State would devolve the policing and justice powers anyway.

2318. The argument has always been about whether the Secretary of State had that right. Originally — way back in discussions — there was that right, in that if we could not agree by May, he could impose it. That then changed. We pinned the NIO specifically on that question — and it did not relate specifically to Ministers — as to whether the Secretary of State could impose policing and justice on the Assembly if the Assembly had not asked for it? My understanding of the Secretary of State’s answer was that he would not be daft enough to impose policing and justice on the Assembly if it did not ask for it. As I understand your answer to Alex, the legislation allowed the Secretary of State to do so. Is that not correct?

2319. Ms Salters: No, it explicitly does not allow him to do so.

2320. Mr May: The legislation allows the Secretary of State to decide on a ministerial model if, in his judgement, that is the only matter that is holding the Assembly back from being able to take devolution —

2321. The Chairperson: — and to put that into the legislation. I understand that it does not go beyond that.

2322. Mr McFarland: OK. Are we saying that if the First Minister and deputy First Minister went through the triple lock and asked for devolution, and the Assembly agreed but the parties could not agree on the model, that the Secretary of State has the ability to decide on the model?

2323. Mr May: The Secretary of State has the ability to implement one particular model.

2324. Mr McFarland: It would have to have passed all the first hurdles.

2325. Mr Attwood: All the big hurdles are over here.

2326. Mr McFarland: I am now clear.

2327. The Chairperson: In relation to the budget, the NIO’s letter of 15 October 2007 identified baseline figures, and your more recent letter of 6 February 2008 stated that you expect budgets for the comprehensive spending review (CSR) period for 2007 to be agreed shortly. Is there a precise date as to when the details will be published? The Assembly will have a particular interest in this matter, and a number of parties have expressed the view that there would be a concern to ensure that the budget is right before devolution take

place. Do you have anything to add as to the precise date of when you would expect the budget for CSR 2007 to be published?

2328. Mr May: I understand that the overall quantum available for the Northern Ireland Office is already publicly available; it is just a matter of how it is split between the different elements of public expenditure. I do not have a specific date, but I can write to the Committee Clerk with that information when the date is known — obviously, that would have to be done before the end of March for the forthcoming financial year.

2329. The Chairperson: It would be useful if you could indicate, in writing, the date.

2330. Mr Attwood: I want some points of detail clarified. Let us say for the sake of argument that the end of May was the date for transfer. Is there anything to stop the appointment of an Attorney General between now and then, so that on the day of devolution we would have our own Attorney General in place able to fulfil his or her statutory functions?

2331. Mr May: The First Minister and the deputy First Minister must make that appointment.

2332. Mr Attwood: Yes, but is there any legal impediment that would not allow OFMDFM to put in place a process leading to the appointment of an Attorney General by the end of May, so that if devolution were to happen then, an Attorney General for Northern Ireland would be in place?

2333. Ms Salters: I would need to double-check the precise terms of the Justice (Northern Ireland) Act 2002. My guess is that running a competition and coming to the verge of making a decision would not require any statutory powers — actually making the appointment might require those provisions to be commenced.

2334. The Chairperson: The memorandum from the Northern Ireland Office distributed prior to the Committee's oral evidence session on 8 January 2008 stated that work continues on the development of the concordats and memoranda of understanding that must be in place at the time of devolution. It is expected that those concordats will relate to the independence of the judiciary and the Public Prosecution Service (PPS), as mentioned in your discussion document published in February 2006.

2335. Although your letter of 6 February 2008 made passing reference to that issue, can a list be made available to the Committee of the concordats and the memoranda that the NIO are developing on policing and justice agencies, as well as a summary of the content?

2336. Mr May: Four protocols or memoranda are under development. You mentioned two of them, which are to do with prosecutorial independence and judicial independence. A third addresses how the policing bodies will interact, particularly on the issue of how the Policing Board and an Assembly Committee would work together, as well as more generally. The fourth memorandum considers national security related matters, which have already been mentioned by the Committee. Work is ongoing in those four areas, but we are not yet in a position to share drafts with the Committee.

2337. The Chairperson: Do you have any idea when you might be able to share the drafts?

2338. Mr May: Previously, I suggested that it would probably be March or April 2008.

2339. Mr McFarland: We have spent time discussing interaction with the Policing Board because it has a major effect on how we do business. Did you say that a memorandum was being developed to address how that will work?

2340. Mr May: Yes. One of the reasons that that is not yet final is that we wanted to hear what the Committee had to say on that issue. I understand that there is a consensus among the political parties that the role of the Policing Board should not be diminished in the event of devolution of policing and justice. We must be clear about how the Policing Board's role is carried forward. I understand that the Committee has considered the issue of mandates — whether members of the Policing Board could sit on the justice Committee — and how MLAs would oversee other MLAs.

2341. Mr McFarland: Will you take on board whatever view the Committee or the Assembly has on the matter, or might the NIO take a separate view and impose a system on the Assembly as part of the memorandum?

2342. Mr May: It is not clear that the NIO could impose any approach to how the Assembly would operate in relation to the policing institutions, because the statutory basis upon which the Assembly operates will not change. The NIO is interested in, and will want to take account of, the views of the Committee. Without having seen the proposals, one cannot make any guarantees about exactly how that would operate. The objective is to find a means of allowing all of the institutions that are set up in relation to policing to operate effectively in the devolved scenario.

2343. Mr McFarland: A system was set up in which Northern Ireland and Irish Ministers meet, and in which the civil servants have a work programme on cross-border justice issues. Your letter of 6 February 2008 says that all of those arrangements will fall on devolution. Technically, the Minister here will set up whatever systems we wish to have to deal with our colleagues in the South. Will the work programme that has been done so far be made available to the Assembly for it to potentially take on, or will it be hidden away in archive and we start from scratch?

2344. Mr May: It has been suggested that, if that agreement falls, it will become an empty shell with no ongoing role. On arriving at the new Department, the Minister would be given a briefing on that, along with other matters to do with the remit of justice and policing. That would cover the areas of cross-border co-operation that had been ongoing. Briefings would also be given to the Assembly Committee in due course.

2345. Mr McFarland: Teams of civil servants have been beavering away on those issues for years. Presumably, that involves much forward thinking and paperwork on their thoughts and plans. Logically, if that is good work, we should be able to pick it up and continue with it. Will that happen, or will we be told otherwise? As you know, we are not allowed to see papers from previous Administrations.

2346. Mr May: There will be a full briefing on any work that has been done, and information about any inter-governmental agreements will be made available to the Committee and the Minister.

2347. Mr McFarland: Is that a "yes" or a "maybe" to see the work programmes?

2348. Mr May: There will be a means of making the content available. As you said, we must consider the convention that formalises access to papers. However, gaining access to that information should be more straightforward because that work was carried out on an inter-governmental basis. The objective would be to ensure that the Minister and the Assembly are fully aware of all the North/South work that was going on, the point it has reached, and what plans are in place to advance it.

2349. Mr McCartney: On a small point concerning the foreword written by Shaun Woodward, are you working on anything that might be problematic before the end of May, or are all the practical arrangements on course to be in place for then?

2350. Mr May: If the Assembly requests devolution for the end of May, we can deliver all that must be delivered.

2351. Mr Attwood: Subsequent to this meeting — and it should not be too much work — will you inform us of all the ongoing Crown appointments in the North that will still be in the gift of the Prime Minister?

2352. Mr May: After devolution, all Crown appointments will remain — which ones are you referring to?

2353. Mr Attwood: The position of Lord Chief Justice is a Crown-appointment made on the recommendation of the Prime Minister, as is that of the Police Ombudsman.

2354. Mr May: Do you only want to know about appointments that relate to devolved policing and justice functions?

2355. Mr Attwood: No, we wish to know about appointments across the board. I do not know whether there are any beyond policing and justice functions.

2356. Mr May: That would cover a wide range of public appointments.

2357. Ms Salters: The majority of such appointments are proposed to be made here. However, the matter has been flagged up, and I am sure that we will be able to give you the information that you have requested. Is it Crown appointments rather than public appointments in general that you are interested in?

2358. Mr Attwood: Yes, Crown appointments. The four protocols are important — particularly those relating to the composition of the policing board and national security — and we must see the relevant information in order to build up a full picture.

2359. Mr May: It is worth highlighting that the protocols build on established legal principles and the existing policy framework. We are not changing any legislation by means of the protocols — they will not be legislative instruments. We will merely be putting more flesh on the bones of how the devolution of policing and justice might work in practice. I hope that that reassures you.

2360. The Chairperson: Thank you Ms Salters and Mr May for your assistance. There are one or two points on which you will get back to us in writing, and we appreciate that.

2361. Members, we are still in public session, and there are some other matters that ought to appear on the record and that we can deal with before moving into private session.

2362. First is the name of the Department. In our report to the Assembly, we may wish to recommend a name for the new Department. Obviously, that would enable NIO officials to include appropriate references in the draft legislation.

2363. In the Irish Republic, there is the Department of Justice, Equality and Law Reform. At Westminster, policing and justice matters were dealt with by the Home Office alone, but they have now been divided between two Departments: the Ministry of Justice deals with the criminal-justice system and the Home Office deals with policing. In Northern Ireland, the consensus seems to be that there should be one Department for policing and justice matters. At any rate, it seems to be the consensus among the four parties that are represented around this table.

2364. That being the case, there is then the question of whether to choose a name such as the Department for policing and justice, or some variation on that theme. This is a practical issue, but it would be good to sign off on it at least. We have all had to use different names for the proposed Department. The NIO uses the generic term "the Department of Justice" in the draft legislation, but I am not sure that that fully reflects the nature of the Department.

2365. Mr McFarland: I suggest that the Committee Clerk write down two or three options for us to consider. I would have to consult my party colleagues on the title, because we have not discussed it yet, but I could come back with a recommended choice.

2366. The Chairperson: There is the matter of one little word: we must decide whether to use "of" or "for" in the title. I asked the Committee Clerk to provide the full titles of all the Northern Ireland Departments. The Departments that have "of" in their title are: the Department of Agriculture and Rural Development; the Department of Culture, Arts and Leisure; the Department of Finance and Personnel; the Department of Education; the Department of the Environment; the Department of Enterprise, Trade and Investment; the Office of the First Minister and deputy First Minister; and the Department of Health, Social Services and Public Safety.

2367. The Departments that have "for" in their title are: the Department for Employment and Learning; the Department for Social Development; and the Department for Regional Development. Members may want to consider whether they would prefer to have a Department of policing and justice or a Department for policing and justice.

2368. In my opinion, the Department for policing and justice would be the better choice because the Department will not dispense policing and justice — as the use of the word "of" would imply — rather it will deal with issues that relate to policing and justice.

2369. Mr McFarland: The guidance of the Chairperson is to opt for "for".

2370. The Chairperson: I am simply reflecting some initial thoughts. The title "Department of policing and justice" almost implies that the Department supplies policing and justice services, but the title "Department for policing and justice" implies that the Department deals with those matters but does not necessarily dispense them.

2371. Mr G Robinson: Agreed.

2372. The Chairperson: It is just a thought.

2373. Could the four parties represented in the Committee give some consideration to that issue, and perhaps provide some feedback by next Tuesday? It is not a major issue, but having some clarity about the name of the Department would help the Committee Clerk in preparing the report and the NIO in preparing the draft legislation. Other political parties do not necessarily have an input around this table, so should the Committee write to them to ask for their view on that title, or will they have an opportunity to comment on it when

the report is presented to the Assembly?

2374. Mr McFarland: Should the four parties reach an agreed solution, one option would be to write to the other parties to ask them to confirm that they are happy with it.

2375. The Chairperson: The other option is to simply embody it in the report, and let those parties comment on it, if they wish, when the report is being considered by the Assembly. I ask members to consult with their party colleagues and report back by Tuesday. Let me emphasise that selecting a name does not mean that the balloon is about to go up or anything like that — I say that lest a firing squad should appear out the back. [Laughter.]

2376. I now turn to the outstanding matters to be transferred. Members are aware that a number of matters to be transferred were agreed by consensus at the Programme for Government Committee and were included its January 2007 report on policing and justice. However, this Committee has not specifically addressed those matters. For the purpose of completeness in our inquiry report, we must establish whether there is continued agreement for the transfer of those matters.

2377. These are matters on which there was a broad consensus in the Committee on the Programme for Government. In order to assist the Committee Clerk in preparing the report, and so that everyone is aware of the issues when the report is presented to us, it might be helpful if he could run through the outstanding matters in order to establish if there is broad agreement at this stage, under the proviso that nothing is agreed until everything is agreed. I want to establish whether members are content that these are matters that do not require further examination.

2378. The Committee Clerk: The first issue that occurs is mentioned in chapter 9 of the discussion document, and is related to the Compensation Agency on the one hand, and the criminal injuries compensation appeals panel. As you have suggested, there was no controversy around this issue in the Committee on the Programme for Government. The proposals are that they be funded by the new Department for policing and justice, and that the Minister or Ministers would be responsible for the appointments, in particular to the panel. The Committee on the Programme for Government agreed that compensation should be devolved as proposed in the NIO discussion paper at that time. It affects the language that you have been using in relation to matters to be transferred. It is proposed that the Committee would agree that the reserved matters described in the discussion paper should be transferred.

2379. The Chairperson: Are members content that we stick with what was agreed in the Committee on the Programme for Government in relation to the reserved matters?

Members indicated assent.

2380. The Chairperson: In relation to excepted matters, is it possible that we continue to use the accepted formula that we agreed on in our meeting of 9 October 2007, namely: "There were diverse opinions about the transfer of those matters which are "excepted" and there was no consensus on seeking an amendment to the Northern Ireland Act 1998 to allow for a request to be made by the Assembly for the transfer of these "excepted" matters."?

2381. I assume that those are matters relating to compensation generally?

2382. The Committee Clerk: They would be excepted matters as opposed to reserved matters, but which fit into issues relating to

compensation.

2383. The Chairperson: Are members content? It is the sort of thing that can be revisited by a future scrutiny Committee.

2384. Mr McFarland: I am slightly confused. We are talking about reserved matters. There are some reserved matters that we have agreed should not be transferred. Are we still talking about compensation only?

2385. The Chairperson: We are. It is purely about compensation. Are members content?

Members indicated assent.

2386. The Chairperson: We now move on to community safety partnerships.

2387. The Committee Clerk: The Committee on the Programme for Government agreed that the responsibility for the community safety partnerships should be devolved as proposed in the discussion document.

2388. Mr McFarland: That is at chapter 8 in the legislation?

2389. The Chairperson: Yes. There are no excepted matters; they are all reserved matters, and can all be devolved.

2390. Are members content?

Members indicated assent.

2391. The Chairperson: OK. The next item relates to the post of chief inspector of criminal justice. The Committee on the Programme for Government agreed that responsibility for that post should be devolved as proposed by the Northern Ireland Office. This is a reserved matter, and can be devolved, as was set out in the discussion paper of February 2006.

2392. Are members content?

Members indicated assent.

2393. The Chairperson: The Criminal Justice Review recommended the establishment of an independent Northern Ireland law commission to keep criminal and civil law under review. A chief executive has already been appointed. This is a reserved matter, and the Committee on the Programme for Government agreed that the responsibility for the Northern Ireland law commission should be devolved as proposed by the Northern Ireland Office.

2394. Are members content?

Members indicated assent.

2395. The Chairperson: That completes the outstanding matters to be transferred. We will now move into private session.

7 February 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)

Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood

Mrs Carmel Hanna

Mr Danny Kennedy

Mr Nelson McCausland

Mr Ian McCrea

Mr Alan McFarland

Ms Carál Ní Chuilín

Mr John O'Dowd

Mr George Robinson

2396. The Chairperson: The Committee has received papers from the DUP, UUP, SDLP and Sinn Féin. Most members would have received them yesterday afternoon or this morning. I apologise that it took so long to get them to you, but, as soon as the Committee office received all four papers, it released them to members. I hope that members have had time to have an initial look at them.

2397. Mr G Robinson: I got my papers only at 2.00 pm today, so I have not had much time to look at them.

2398. The Chairperson: I ask the Committee to agree that any recommendations that it might make about future restructuring, relationships, governance and accountability will be by way of matters to be considered by the Minister, or Ministers, and the relevant scrutiny Committee, following the devolution of policing and justice matters.

2399. Let me explain, Members. Given the remaining timescale in which we must report to the Assembly, inevitably, there will be some matters — considering the party position papers — and some proposals that will alter what the Northern Ireland Office proposed hitherto in relation to the initial devolution. The Committee must decide — because it will inform and, perhaps, influence our discussion — whether the matters that we agree should change, should be changed before devolution, or whether we recommend to the Assembly that they ought to be considered, post-devolution, by the Minister and the relevant scrutiny Committee. For example, if the Committee was to say that the Public Prosecution Service should fall within the remit of the Department for policing and justice rather than OFMDFM, would we require that change to be made pre- or post-devolution? It will be useful for the Committee to take a view on that, because it will inform and influence our discussion and, perhaps, the members' capacities to reach consensus on the issues.

2400. In addition, for the purposes of concluding the discussion on the future status of the various policing and justice organisations, I ask the Committee to consider whether it can agree with the working assumptions that are contained in annex B of the letter from the Northern Ireland Office of 15 October 2007 on the future status of those organisations if policing and justice matters were to be transferred. I am referring, for example, to the PPS falling under the responsibility of OFMDFM.

2401. It is a question of how we reflect that in our report and whether we are content to go with the NIO model initially as the basis for devolution, or to make recommendations that would be considered by a new Minister or Ministers and a Scrutiny Committee, or whether we want to get into the business of making recommendations to the Assembly that should be legislated for and changed before devolution. Obviously, that will make a difference to the manner in which we report to the Assembly.

2402. Mr Attwood: You are right to ask the question. To some degree, we are stuck between a rock and a hard place, because the Criminal Justice Review did not produce the outcomes that we would have liked. Therefore, the justice legislation does not give effect to what is necessary, and primary legislation is required to amend that. If we are working to the time frame of May 2008 for the devolution of policing and justice, there are some things that we will simply not get primary legislation for, even if everyone agreed to it.

2403. The Chairperson: That is a fair point, because according to the parliamentary timetable, there are three working weeks between the Assembly issuing its report on 27 March and 1 May. If we were to report to the Assembly that structural changes should be made, and the Assembly failed to reach consensus on the May date, it would be open to the Assembly to say that it wants a Committee to do further work on the matter, with a view to recommending legislative changes before devolution. As Mr Attwood rightly said, we are working on an assumption that we must complete the report and report to the Assembly within a certain time frame. In that context, we need to decide to what extent we can reasonably ask for legislative changes, without further direction from the Assembly.

2404. Mr McFarland: We were getting on really well. The Committee Clerk produced a list of questions and we were moving through them. We were sent off to comment on four or five areas, with a view to reaching agreement and moving on. However, the SDLP has 10 pages of unrelated issues. I thought that we had got on really well at identifying the issues that we need to make decisions on. It may not be perfect, and we wish to change many things afterwards. However, there are three or four major political issues to be discussed, and they will determine the timescale. By and large, the rest of the issues relate to whether we could live with the proposals to produce a package in the required timescale. We do not know whether that will work, and we may have to come back to it.

2405. The other issue relates to whether it is the perfect model, but that would require a further six months of discussion. I thought that we were answering the questions with a view to reaching agreement on them, leaving the big three or four issues that are essentially for political discussion between the DUP and Sinn Féin. However, it would be useful if the rest of us could be involved in that discussion. We now seem to be reopening a discussion on whether we reform the entire legislation and open it up.

2406. The Chairperson: That is not my desire, but before we embark on a detailed consideration of the respective party positions, I want to be clear that there is an understanding that will inform and influence that discussion. Although we may reach consensus on the relocation of the Public Prosecution Service from the Office of the First Minister and deputy First Minister to the new Department, we would not expect that to be legislated for before devolution.

2407. If that is not the case, I am simply saying that that has consequences for the report that we will write, and for how we take it forward thereafter.

2408. Mr McFarland: It has been suggested that that the justice Department is not a healthy place for an independent organisation and, in order to make it independent, it was recommended that the PPS become part of OFMDFM so that it is away from the justice system.

2409. The Chairperson: That is correct.

2410. Mr McFarland: If we want to leave it where it is, the PPS will become part of the justice Department. If we think that the PPS needs to be more independent —

2411. The Chairperson: Under the current NIO proposal, the PPS will move to OFMDFM. That is the default position on devolution. There may be a consensus among the Committee to dissent from that and find a balance between independence and accountability. We may decide that the NIO's proposal is wrong and that, for the purposes of accountability, the PPS should be moved to the justice Department. Such a position would be contrary to what the NIO is recommending on devolution. The question would be whether we wanted that change to take place pre-devolution — in other words, we would not accept the devolution of the powers of the PPS until that the proposal were changed to move the PPS to the new Department. Or we would accept the NIO's proposal that the PPS rests with OFMDFM, but that the new Minister, the new scrutiny Committee and the Committee for the First and deputy First Minister would consider the issue.

2412. Mr McFarland: My understanding is that OFMDFM has to agree and organise a place for the PPS, otherwise there is no way that it will go anywhere. We asked OFMDFM what its plans were to receive the PPS. We can recommend that the PPS goes to OFMDFM, but unless that Department creates a space for it, the PPS cannot go there. We will have to change the legislation to allow it to be part of the justice Department, unless OFMDFM agrees a space for it.

2413. The Chairperson: When Raymond McCartney and I spoke to OFMDFM, we were told that the Committee can take a view on the matter and decide whether to accept the proposal at political level. Assuming that the Committee reached a consensus that the PPS should not be in OFMDFM, but in the Department of policing justice, should our report recommend that that should occur before devolution takes place? That is a matter for political discussion, and the Assembly will consider our report in that context.

2414. Mr McFarland: The Ulster Unionist Party has supported the PPS going to OFMDFM; have any parties said that it should not?

2415. The Chairperson: Yes, the SDLP has taken that view.

2416. Mr Attwood: The SDLP agrees with the Criminal Justice Inspectorate (CJI).

2417. Mr McFarland: How then, would you make the PPS independent? It has to be accountable, and it still can be from OFMDFM. If it were part of the new justice Department, how would you ensure that the PPS was not susceptible to financial squeezing from a justice Minister?

2418. Mr Attwood: Equally, the PPS might face financial squeezing from OFMDFM, when it wanted to exercise some muscle.

2419. Mr McFarland: OFMDFM would have no vested interest in doing that.

2420. Mr Attwood: Either OFMDFM or the Department of justice might have a vested interest. Without going into the merits of the argument, the issue of whether there might be some interference with the independence of the PPS, depending on where the finance is located, is as valid to OFMDFM as it is to the Ministry of justice. It may be more acute in the Ministry of justice but, as the CJI said, that is a more sensible place to ensure a higher level of accountability.

2421. Mr McFarland: Three parties are voting for the PPS to be part of OFMDFM, and one against, so we will not reach agreement on that.

2422. The Chairperson: The DUP and UUP say that funding should come from OFMDFM.

2423. The SDLP says that funding should be transferred to the new Department. Sinn Féin has not given its view on the matter, yet.

2424. Mr Attwood: Let us rewind. We have worked on the basis that we have between now and the end of March to deal with the matter. Therefore — in the real legislative world — even if we all agreed to certain outcomes, we may not be able to require that of the British Government prior to devolution, if devolution was in May. We work in those time frames. Even if we wish to see something by consensus, we could only say it; we could not actually guarantee it. Nevertheless, if we can say it, we should do so. In that way, if justice is not devolved in May, it may happen between May and a later date.

2425. The Chairperson: That is a fair summary of where we are.

2426. Mr Attwood: There are other issues where we may or may not get agreement, but it would only be by way of recommendation to a future scrutiny Committee, assembly and justice Minister, to say that we had consensus about doing more work around the PPS. That is the one area where we think that there is the least accountability, in real terms. The SDLP flagged that matter up. However, when I flagged it up in the paper, I said that it should be something that we should look at in the future. In the short term it is a big discussion, and we are not going to get that discussion beyond a certain line. I think that, in the report, we should flag it up as part of a future work programme.

2427. Mr McFarland: We were sent off with four quite specific questions to answer. Had I understood that we were into a full discussion on all the ins and outs of each of those, we could have written a 20-page paper on it. My understanding was that those were issues on which we were trying to take a decision — one way or the other — or not, as the case may be. I am worried that we are getting into a whole discussion where all of those issues are being left open. If that is the case, I would need to go return to the beginning and put markers down as to how it should all go — or how it might go over the next six months, nine months or a year — until someone makes a decision and there is a bit of legislation.

2428. We are getting confused now. Our mission, as I understood it, was to produce a report on what could and what could not be agreed for reporting to the Assembly. On the political questions, we were down to four relatively simple questions as to whether in the timescales, we could do this, that or the other thing. If we are into a whole discussion on the matter, with a view to the fact that it will not go forward in May, we would need to put markers down for the following six months worth of discussions. In that case, my paper would no longer be valid.

2429. The Chairperson: With respect, Alan, I do not think that that is the case. It is a matter for each party to determine the content of its own paper. The SDLP is perfectly entitled, if it so wishes, to produce a book on the subject. It is a matter for each to determine how it will approach the issue. I can still determine the SDLP's position on each of the four matters that you have mentioned. Therefore, it is still there. That party has commented on other matters that the Committee has to consider in the context of its report, which is fair.

2430. We are saying that, given the timescale that is remaining to us and where there is a consensus, there should be changes to the structures that are proposed by the Northern Ireland Office. That will apply to a number of issues that Mr Attwood has flagged up in his

paper and, perhaps, in other papers. Some of those issues are already provided for in current legislation. The question is whether, in the timescale that is available to us, we tell the Assembly that we cannot proceed with devolution until those matters are dealt with, or that we believe that there is scope for structural change. Do we say that we believe that it would be in the interests of the criminal justice system, for example, for the PPS not to be positioned in the ambit of OFMDFM but, perhaps, under the Department of policing and justice, as the SDLP has proposed? We feel that that is a matter that ought to be examined by the Minister, or Ministers, and the relevant scrutiny Committee.

2431. In other words, we are doing precisely what you are saying: we are trying to produce a report and get an agreement on it, but recognizing that there may be structural changes. Bearing in mind the oral and written evidence that we have received, we feel that the matter might be better dealt with in a different way from that proposed by the NIO, and in the current timescale we will be unable to deliver that change.

2432. That is without prejudice to the Assembly deciding that there is no pressure because they will not agree to the May deadline. They may agree another date or decide to keep their options open; in which case, Alan, you could revisit the issue. The Assembly might say to the Committee that that gives us more time, that they appreciate what we have done, and that rather than kick the issue into the long grass, let us use the time that is now available to examine it in more detail and produce another report at an agreed date. That may happen in theory; it may not happen in practice. I want to be clear, Alan; we are going to get into a debate and a negotiation around this table on some of these issues because there are variations in each of the four papers on different aspects.

2433. Before we begin that negotiation, I want to get an agreement that whatever consensus we reach, that we take either of the following courses of action. We may agree that if the consensus is for structural change, we cannot deliver that in the timescale envisaged at the moment, and that our recommendation to the Assembly would reflect that. We would say that we believe that changes must be made and that a scrutiny Committee may want to discuss that. On the other hand, the Committee may decide not to go along with that, and say that if we agree to change, it has to be legislated and enacted prior to devolution. That would have to be reflected in the report, and it would influence the discussion that takes place around this table.

2434. Mr Attwood: I hope that that uncertainty will lift as we work through the particular issues, Alan.

2435. The Chairperson: At least we are recognising the realities of where we are. We may have to revisit how we handle them as we go along. Nothing is hard and fast, but I thought it would be useful for members to have some understanding of how we would take things forward beyond the report, and it might influence the approach that members take to particular matters.

2436. For the purposes of the report, and to assist the Committee Clerk in his preparation of the draft report for the Committee, I will run through the details of a letter sent to the Committee by the NIO dated 15 October 2007. In annex B of the letter, the NIO listed a number of criminal justice and policing organisations and their status and location within the overall structure of the criminal justice system. The list included the PSNI, which is currently sponsored by the policing and security directorate of the Northern Ireland Office. On devolution, under the current proposals, it will transfer to the new Department for policing and justice.

2437. Are members content that that is where we see the PSNI fitting into the overall structure of things? That the Policing Board will continue to exist, but policy for the PSNI will transfer, and that those matters that currently are dealt with by the policing and security directorate of the NIO will transfer to the new Department?

Members indicated assent.

2438. The Chairperson: The RUC George Cross Foundation is currently an executive departmental public body, which is sponsored by the policing and security directorate. On devolution, it will transfer to the new Department. The primary role of the Foundation is the disbursement of funds and funding of projects commensurate with the aim of marking the sacrifices and honouring the achievements of the RUC.

2439. Are members content that the Foundation transfers to the new Department?

Members indicated assent.

2440. The Chairperson: The independent assessor for PSNI recruitment applications is an advisory departmental public body sponsored by the policing and security directorate. On devolution, it will transfer to the new Department. Is the Committee content for that to happen?

Members indicated assent.

2441. The Chairperson: The Police Rehabilitation Training Trust is a company limited by guarantee and sponsored by the policing and security directorate. On devolution, it will transfer to the new Department. Is the Committee content with that?

2442. Mr McCartney: Is that something that the new Victims' Commissioners might seek to bring under their remit?

2443. Mr McFarland: The trust was set up to look after officers who had been injured and to retrain officers leaving after the Patten Report, which meant it had a major remit. After 2010, the number will be relatively small. Although the trust does a useful job, the scale of work that the trust does may drop due to people leaving the Police Service. However, because a legacy of the past 30 years is a group of damaged people, the workload may rise because those people will become more affected by what they have gone through as they get older. Therefore, the decrease in workload for the trust because of people leaving the Police Service may be compensated by people who deteriorate with time and require rehabilitation. It is maybe worth just leaving it.

2444. The Chairperson: That is a good question Raymond. The difficulty is that legislation is required to form the new commission so we are in unknown territory. Therefore, as that is beyond our remit, we are safe to simply accept that the trust transfers to the new Department without prejudice to the new Department, the Commission or OFMDFM determining otherwise in the future.

Members indicated assent.

2445. The Chairperson: The independent monitoring boards have independent board status and will transfer to the new Department on devolution. Is the Committee content with that?

Members indicated assent.

2446. The Chairperson: The Life Sentence Review Commissioners are an independent statutory body, whose powers will transfer to the Department on devolution. They are appointed by the Secretary of State in accordance with article 3(1) of the Life Sentences (Northern

Ireland) Order 2001. Clerk, will the Department appoint commissioners under devolution?

2447. The Clerk: No; they will not.

2448. Mr Attwood: I read that the Government is retaining that power.

2449. Mr McCartney: That is going to change.

2450. Mr Attwood: The Government said that they were keeping that power.

2451. Mr McFarland: That is strange.

2452. Mr McCartney: From the Ad Hoc Committee on the draft Criminal Justice (Northern Ireland) Order 2007, I understand that the parole commissioners will take over the work of the Life Sentence Review Commissioners.

2453. Mr McFarland: The Life Sentence Review Commissioners are different from the parole commissioners and specifically deal with terrorist offences. As everyone has — in theory — been released, the Life Sentence Review Commissioners might not have much work.

2454. The Chairperson: The Life Sentence Review Commissioners are different; Alan, you are talking about the special provision that was made for the early release of prisoners under the Belfast Agreement.

2455. Mr McFarland: That is what the Life Sentence Review Commissioners deal with.

2456. Mr McCartney: The Life Sentence Review Commissioners are separate from the Sentence Review Commissioners.

2457. The Chairperson: That is correct.

2458. Mr McFarland: So what do the Life Sentence Review Commissioners deal with?

2459. They deal with all life sentences.

2460. Mr McFarland: In that case it will become the parole commission, as was discussed in the Ad Hoc Committee.

2461. The Chairperson: The Life Sentence Review Commission was established under the Life Sentences (Northern Ireland) Order 2001, which is after the Sentence Review Commission was set up in 1998.

2462. Mr Attwood: Are the Sentence Review Commission's powers going to be transferred?

2463. Mr McFarland: No; that body will stay as an anti-terrorist measure under the banner of national security. I do not know how relevant it is — does it deal with Real IRA prisoners?

2464. The Chairperson: It is still there. A number of prisoners have been returned on breach of licence, and they can still make applications for early release.

2465. The Committee Clerk: The discussion document does not specifically say who makes the appointments, but we can check who does.

2466. The Chairperson: What does it say about the Life Sentence Review Commissioners?

2467. Mr Attwood: That power does not come across to the Assembly. Page 13 of the NIO briefing paper says that the work of the Life Sentence Review Commissioners and the Secretary of State's powers in connection with terrorism, which is an excepted matter, will not be devolved. Thus, the work of the Life Sentence Review Commissioners does not come across to here.

2468. The Chairperson: Yes, they are the ones who are connected with the brief.

2469. Mr McFarland: They are the ones who are connected with terrorism. What about the parole commissioners?

2470. The Committee Clerk: I will check who appoints them and let the Committee know on Tuesday.

2471. Mr McFarland: But that power will not be devolved.

2472. The Chairperson: Yes, but there are two commissions.

2473. Mr McFarland: The Life Sentence Review Commissioners deal with terrorist matters and will become the parole commissioners — that is a devolved matter that will come across as part of the normal system. Is that not right?

2474. Mr Attwood: The Secretary of State will appoint.

2475. Mr McFarland: Appoint who, though?

2476. Mr Attwood: The Sentence Review Commissioners.

2477. Mr McFarland: But it is the Life Sentence Review Commissioners who are mentioned in the document.

2478. The Chairperson: Yes, the situation has changed now. In the 2006 discussion document, the functions were to be devolved. Under the draft legislation that is now before us, they will remain a reserved matter. Paragraph 6.6 on page 13 of the NIO briefing paper states: "New paragraph 9(c)(ii), inserted by Article 3(1) of the draft section 4 Order at Annex B provides that legislation covering

the release, on licence, of offenders serving life sentences (including matters relating to the Life Sentence Review Commissioners) will remain a reserved matter. The effect of this is that any future Assembly legislation dealing with the release, on licence, of offenders serving life sentences would require the consent of the Secretary of State. The reason for this is to ensure that any legislation would not cut across the process of securing the Commissioners' continued access to national security information."

2479. Paragraph 6.7 states:

"However, many of the functions of the Secretary of State under the Life Sentences (NI) Order 2001 will transfer to the" new policing and justice Department.

"The necessary amendments to that Order are provided for in paragraph 4 of Schedule 2 and paragraphs 67 to 69 of Schedule 3 to the draft section 86 Order at Annex C."

2480. Paragraph 6.8 states that:

"The draft Criminal Justice Order published on 8 November 2007 will introduce a new framework of public protection sentences, as well as permitting the establishment of Parole Commissioners. These new arrangements will in due course overtake the current system of Life Sentence Review Commissioners. At this stage, as that legislation is only in draft, it would not be right to include specific provision in the draft Order included with this document. However it is likely that certain aspects of the work of the Parole Commissioners would be dealt with on the same basis as the arrangements for the Life Sentence Review Commissioners discussed above."

2481. Mr McFarland: So presumably the Secretary of State will hold that power.

2482. The Chairperson: Yes, it looks like it. While the Assembly would have some legislative function, we can only legislate on those aspects that impact on arrangements for the Life Sentence Review Commissioners with the consent of the Secretary of State. It seems that the functions of the Life Sentence Review Commissioners will remain a reserved matter. Members, it would be worth getting clarification from the Northern Ireland Office on that issue, just to check whether any preparatory work needs to be reflected in our report.

2483. Mr McFarland: It sounds as though the Life Sentence Review Commissioners will morph into the parole commissioners.

2484. The Chairperson: In due course.

2485. The Committee Clerk: Annex F of the legislation gives a summary of what will be devolved and what will not be devolved.

2486. The Chairperson: In the main document, that came under prosecutions, but that does not appear in the summary.

2487. The Committee Clerk: It is under proposed article 9(e), and it describes what powers will and will not be devolved.

2488. Mr McFarland: The documentation says that the issue of the Life Sentence Review Commissioners will be revised when the draft

Criminal Justice (Northern Ireland) Order 2007 becomes law.

2489. The Chairperson: I think that we need to get that issue clarified.

2490. Mr McCartney: Paragraph 6.6 of the indicative legislative proposals refers to future Assembly legislation — regarding the release of offenders serving life sentences — having to be referred to the Secretary of State. I think that that is subject to change. I recall Tom Haire giving evidence to the Ad Hoc Committee on the draft Criminal Justice (Northern Ireland) Order 2007, and he said that the Secretary of State's consent would no longer be required. It used to be that the Secretary of State could refuse to release a life sentence prisoner, but my recollection is that under the new system he cannot.

2491. The Chairperson: The Life Sentence Review Commissioners are currently an independent statutory body. For the purposes of our report, we need to establish whether it will remain under the remit of the Northern Ireland Office pending any legislative changes.

2492. Mr McFarland: It is worth making a note of that. My understanding is that the draft Criminal Justice (Northern Ireland) Order 2007 will go through next week, which will be prior to our report being published. Therefore, it is worth having a look at the Hansard transcripts from that Ad Hoc Committee, because there were evidence sessions on that issue. That will also give us some clarification. For people's guidance, it is worth making a note in our report that this is likely to change, and to outline roughly what that change will entail.

2493. The Chairperson: We will park that issue for now and seek clarity from the Northern Ireland Office as to whether we need to include in our report a reference regarding the transfer to the new Department of the Life Sentence Review Commissioners, or the transfer of some of their functions.

2494. Mr McCartney: Paragraph 6.8 of the indicative legislative proposals provides some extra information, but it is obvious that they are also uncertain.

2495. The Chairperson: If the NIO says that responsibility for Life Sentence Review Commissioners will be transferred to the new Department, are we agreed in principle to that? The NIO may say that it will remain a reserved matter pending the creation of the new parole commissioners, but that certain functions will transfer to the new Department. If that is the case, are we agreed that those functions should be the responsibility of the new Department, as opposed to OFMDFM or somewhere else?

Members indicated assent.

2496. The Commissioner for Hearings under Prison Rule 109B (Loss of Remission Commissioner) deals with the loss of remission. That is currently an independent statutory body that will become an independent non-statutory office holder with responsibility transferring to the new Department or to the Prison Service.

2497. The Committee Clerk: That is what it said in the NIO's letter of 15 October 2007. However, it seems that the NIO is not quite clear at this stage as to what it might want to do.

2498. The Chairperson: We are dealing with the issue of loss of remission. There is a commissioner — the more I look at these things,

the more commissioners I discover in our system — who deals with the loss of remission. Under the proposals from the Northern Ireland Office, the Loss of Remission Commissioner or Commissioner for Hearings under Prison Rule 109B will become an independent non-statutory office holder. The question is whether responsibility for that commissioner will transfer to the new Department or to the Prison Service.

2499. Mr Attwood: I think that the Department would have an arm's-length —

2500. Mr McFarland: It is an appeals mechanism.

2501. The Chairperson: The Prisoner Ombudsman recently resigned on this principle. I have a lot of sympathy for the position that he took.

2502. Is there consensus that our report should reflect a desire that that function should transfer to the new Department rather than the Prison Service? Might we also write to the Northern Ireland Office to that effect as it might assist them in their drafting?

2503. Alan, are you content with that? It relates to the principle of avoiding conflict of interest and ensuring genuine independence.

2504. Mr McFarland: There must be an independent appeal mechanism. At the moment, it is not.

2505. The Chairperson: Exactly, the word "independent" must mean precisely that.

Members indicated assent.

2506. The Chairperson: The State Pathologist is currently employed by the Northern Ireland Office. Under devolution the State Pathologist will transfer to the new Department, operating at arm's length from the Department, but accountable to the new Minister or Ministers. Are we content that that should be the case? That may set something of a precedent for other things in the future.

2507. The medical appeals tribunal is currently an ad hoc tribunal, which will transfer to the new Department or to the new courts and tribunals service. Again, it is a question of whether it should transfer to the new Department or the new courts and tribunals service. When will the new service be established? Is it likely to be in place before devolution?

2508. The Committee Clerk: There is nothing to suggest any movement on that, but, as I said, we are quoting from the NIO's letter of October 2007.

2509. Mr McFarland: Is that part of the reorganisation that is required before powers are devolved?

2510. The Chairperson: The reorganisation is ongoing and not directly linked to the timing of devolution.

2511. Mr McFarland: Given that there is an obvious link between the two, it seems reasonable to transfer the medical appeals tribunal to the new courts and tribunals service, because they will have similar requirements for staff, and so forth.

2512. The Chairperson: I take it that the medical appeals tribunal hears general cases from throughout the Health Service, rather than specific medical appeals, such as those relating to policing or prisoners.

2513. The Committee Clerk: I imagine so, but I will check.

2514. Mr McFarland: It is a legal tribunal that allows people who feel aggrieved to appeal. Therefore, it is a good idea to transfer it to the new courts and tribunals service.

2515. The Chairperson: Do any other Members have strong views?

2516. Mr Attwood: I agree with Alan.

2517. The Chairperson: It would be curious to establish a new courts and tribunals service but stick that one tribunal into the Department. I ask the Committee Clerk to reflect in his note to the Northern Ireland Office that the Committee reached consensus that the medical appeals tribunal should transfer to the courts and tribunals service, rather than to the Department.

2518. I wanted to clear up those matters as part of the tidying-up process. They do not relate to the party position papers that follow.

2519. Mr McFarland: It is worth checking, not now but in due course, that nothing in David Lavery's evidence would militate against that decision.

2520. The Committee Clerk: If you do not want me to check it now, I will report back on Tuesday.

2521. Mr McFarland: I just want to be sure that we have not missed a trick.

2522. The Chairperson: Yes, the fact that it is flagged up separately raised a question in my mind too.

2523. Members, parties have dealt with the issues in different orders, and that is not a problem. If you are agreed, we will deal with the issues in the order that they appear in the briefing papers: the Police Ombudsman; the Northern Ireland Policing Board; the Northern Ireland Court Service; the Public Prosecution Service; the Attorney General; excepted matters including the Serious Organised Crime Agency and the security services; and North/South agreements.

2524. The first question for the Committee is whether the advisory role on the appointment of the Police Ombudsman should be devolved to the Northern Ireland Minister or to the Office of the First Minister and deputy First Minister.

2525. By way of a summary, the UUP believes that the advisory role should be devolved to OFMDFM, whereas the SDLP believes that the Executive may be involved to advise or approve the defined profile of public appointments when there may be heightened public interest. I take it Alex that the SDLP accepts in principle that the advisory role should be devolved to OFMDFM, but subject to either consultation or approval with and by the Executive?

2526. Mr Attwood: Yes. That is why I asked Clare Salters whether the Executive would have an advisory role in Crown appointments. There is an argument for Executive involvement as opposed to merely that of OFMDFM.

2527. The Chairperson: The DUP said that the role should be devolved to the Department of justice. Sinn Féin has not given its view.

2528. Mr Attwood: There is a lot of consensus on that issue then. [Laughter.] It is one of the easier matters.

2529. The Chairperson: I do not think that the matter is one of those on which anybody will have to go to the wall.

2530. Mr McFarland: Do we take it that OFMDFM does not want it then? [Laughter.]

2531. Mr McCartney: Sinn Féin's view on the model is that the Ministry's roles and responsibilities will help.

2532. The Chairperson: Sinn Féin says that it will reserve its decision on the matter until issues around the new model for the Department are resolved.

2533. Putting on my party-political hat, rather than that of the Committee Chairperson, I will say that the DUP's view is simply that the Department will have a more hands-on involvement in day-to-day policing matters and might, therefore, be in a better position to have an informed view on the appointment of the Police Ombudsman. Furthermore, if it is decided that OFMDFM will be responsible for the appointments of senior judiciary, the Attorney General and the PPS, it will essentially be responsible for appointments to the senior judiciary.

2534. The Committee Clerk: It will be; through the Judicial Appointments Commission.

2535. The Chairperson: Of course. However, it will be involved in the process. There might be value in separating policing from judicial matters; therefore, rather than all matters being OFMDFM's responsibility, policing matters will remain with the Department. I believe that that is the rationale — to consider a more even division of responsibility. It is not a major issue.

2536. Mr McFarland: If we were further down the road, I would not have a problem with that. The difficulty is, as you are more than aware, Chairman, the controversy that surrounds the office of Police Ombudsman. In time, that may well decrease. However, I sense that there is still quite a lot of angst out there.

2537. In order to ensure that there is protection against, for example, dodgy advice being given, perhaps the advisory role should be devolved to OFMDFM initially. Certainly, when the Police Ombudsman has become a less neuralgic issue, that role can slip into the Department easily. However, at present, stuff is being dealt with which will, on the face of all of this, be upfront and included in the mix of whether the role should or should not be devolved, et cetera. The fewer matters that can be made controversial, the better. Advice on all of those other key and potentially controversial matters, such as the appointment of Lord Chief Justice, comes from OFMDFM. The Police Ombudsman's post is the one on which people might get fraught. However, if it is dealt with initially by OFMDFM, there will be less of a problem with its roll-out with regard to whether it is correct to have those who might be justice Ministers advising on the matter.

2538. The Chairperson: I envisage the Committee's press release's being rewritten: "UUP representative says 'First and deputy First Ministers less dodgy than other Ministers!'" [Laughter.] I take your point, Alan. Because OFMDFM is involved, it strikes me as one of those issues that we will simply have to kick into the political mix and on which discussion will ensue. Other issues will also form part of that package. Therefore, I do not believe that it is a matter on which the Committee needs to get terribly exercised unless it has consensus. However, at the moment, I do not sense that there is a consensus.

2539. The Committee Clerk: That is an example — similar to others on the list — of a situation in which there is currently a diversity of opinion, which may change further down the track, and that is why scope was built in for the scrutiny Committee to review Ministers' work areas and encourage them to re-examine such issues. In the meantime, in order that policing and justice matters might be devolved, members recognise that that must be located somewhere.

2540. The Chairperson: Members, would it be fair to say that if we were to ask the Committee Clerk to draw up something about that issue for our draft report? To summarise, it should be along the following lines: the Committee considered whether the advisory role concerning the appointment of the Police Ombudsman should be devolved to the Office of the First Minister and deputy First Minister or to the new Department —

2541. Mr Attwood: — Or to the Executive.

2542. The Chairperson: — or to the Executive collectively, and that no consensus was reached on that matter and the Assembly must give it further consideration.

2543. If such a formula can be developed for matters on which we do not reach a consensus, it will be up to the Assembly to decide whether to kick the matter back to the Committee if there is a delay in devolving policing and justice, kick it to OFMDFM, or accept the NIO proposal that it goes to OFMDFM but indicate that the matter should be revisited by the Minister and the scrutiny Committee. Are members happy with such a formula?

Members indicated assent.

2544. The Chairperson: Moving on to matters concerning the Policing Board, the questions are: whether MLAs should continue to sit on the Policing Board, and, if not, should the political parties continue to appoint 10 political members to the Board; whether members agree with the conclusions of the Committee for the Programme for Government that members of the Policing Board should not be permitted to sit on the new scrutiny Committee; and whether there is a need for a memorandum of understanding in order to clarify relationships that exist between the PSNI, the Policing Board and the Assembly Committee and to deal with any conflicts of interest.

2545. Concerning the latter question, NIO are working on a protocol to deal with that matter, therefore, until that is completed, it is not an issue with which we must become embroiled. Although Alex Attwood covered that matter in his paper and issues that we must consider may arise from the draft protocol, are members content to temporarily park that matter until we see what NIO comes up with?

2546. The Committee Clerk: Given the time frame mentioned by NIO, the Committee is obliged to report before it will have a chance to consider the draft protocols.

2547. The Chairperson: We should therefore say that we believe a protocol to deal with any conflict of interest must be drawn up and agreed by the PSNI, the Policing Board and the Assembly Committee. Are members content to flag that matter up in that manner? I believe that there is consensus on the necessity for a protocol and that a recommendation for such a protocol should be included in the report. Is that agreed?

Members indicated assent.

2548. The Chairperson: Turning to other issues — I am working backwards in order to achieve consensus before reaching the contentious issues — the four parties agreed that the Programme for Government's conclusion that if a person is a member of the Policing Board, that person should not sit on the scrutiny Committee, should stand. I would like that provision extended to include the stipulation that a member of a district policing partnership should not sit on the scrutiny Committee. In such circumstances, there would clearly be a conflict of interest.

2549. The next point is whether an MLA should sit on the Policing Board or be a member of a district policing partnership. However, I think that we agree in principle that a member of the scrutiny Committee should not be a member of either the Policing Board or a district policing partnership. Are members content with that?

Members indicated consent.

2550. The Chairperson: We must now consider whether any of the 10 political representatives on the Policing Board should continue to be MLAs appointed by the Assembly parties, or whether they should be political appointees from the four parties, which would be entitled to appoint MLAs but would choose to appoint non-MLAs who, presumably, hold senior positions in their respective parties.

2551. On that question, three of the four parties were of the view that MLAs should continue to sit on the Policing Board. Alan, because of the points that you have made in the past about the conflict of time, and so on, the UUP was of the view that, on devolution, the MLA representatives should be replaced immediately on devolution by political appointees and that no MLA should sit on the Policing Board. Is that assessment correct?

2552. Mr McFarland: Yes. If there are two Ministers, 23 MLAs will be involved directly with policing and justice. Sammy Wilson proposed dropping the total number of MLAs to 73. All four parties talked about that way back, and said that, eventually, it would be sensible to reduce the number of MLAs to a more practical level.

2553. Last week, we discussed the number of MLAs on a Committee. The DUP is different, because it has 36 MLAs, and it must find jobs for people. The smaller parties have difficulty in trying to ensure that people are not overstretched and that they can attend to Committees. The UUP has two MLAs on the Policing Board, and they are pushed for time. For example, Leslie Cree, who is our spokesman on the Committee for Enterprise, Trade and Investment, was sitting in that Committee this morning when he should have been at a Policing Board meeting, especially as today was a big day for the Policing Board. He had to make a major choice between joining in on a major issue for the Policing Board — and I believe that that meeting was likely to be quite fraught — and the Committee for Enterprise, Trade and Investment, which was also important.

2554. The number of ad hoc Committees will increase as more legislation comes forward, and, if we reduce the number of MLAs, although we can cope at the moment, there will come a time when MLAs will be unable to properly serve on their Committees. Although

we might get away with it until next April, it was thought, way back, by the Policing Board and the Committee on the Preparation for Government, that it was quite important to have political representation on the board. The one great success of the Policing Board was that it had politicians of some sort on it, so that the major political parties could go away and discuss problems and produce solutions. Therefore, political input is vital. However, the issue is how to retain that political involvement without crucifying the MLAs who are busy trying to do other things.

2555. One option was to use the d'Hondt system and the political representation of the parties here, to elect political appointees to the board rather than MLAs. It was an attempt to find a practical solution in which the board would retain political input and the Assembly Members, now and in the future, would not be overstretched.

2556. The Chairperson: I misrepresented the Sinn Féin position; it has not taken a specific view on that issue, but it has said that the matter requires further investigation, perhaps through a future, separate report from the Committee. That implies maintaining the status quo for the time being but, in the context of the work of this Committee in reviewing the structures of the Assembly, the number of MLAs, etc, it would become a matter for further consideration. Raymond, feel free to correct me if I am wrong.

2557. Mr McCartney: Sinn Féin felt that it was not an issue for the Committee in relation to formulating this report. We did not rule it out by saying that we disagree. People held differing views. However, we felt that the Committee should finish this report, and that if the party felt that it should revisit the subject, it should do so later, rather than take a position now. There were obvious questions, such as how political appointees would be remunerated.

2558. Mr McFarland: For an initial period after devolution, we could live with having the MLAs banned. I was trying to be helpful.

2559. The Chairperson: I was coming to that, Alan.

2560. I suggest that, for the purposes of our report, that we state that, for the time being, an initial period, we continue with the current arrangements, but that that be subject to review by this Committee, in the context of our ongoing work of reviewing the number of MLAs, the structure of how the Assembly operates and so on. That is without prejudice to the view of the SDLP and the DUP that they should continue to be there and without prejudice to your view, and, potentially a Sinn Féin view, that, over time, that should change. That is a sensible way of approaching it.

2561. There is still bedding-in to be completed. The Policing Board is well-established, but there is an argument that runs: it will take time, even for the board, to adjust to the new post-devolution arrangements. There is benefit in having the continuity, even though you are right, Alan, it creates the conflict of time situation. There is still a benefit in having that overlap during the initial period post-devolution. We can then revisit it under our remit as the Assembly and Executive Review Committee.

2562. Alex, how do you feel about that?

2563. Mr Attwood: As long as it is without prejudice, that is fine.

2564. The Chairperson: That should be reflected in the draft report: the status quo should continue for the time being, but will be subject to further review by —

2565. Mr Attwood: The phrase “for the time being” creates a condition around it. I would rather that was not used. I prefer

“... shall continue, but it shall be subject, without prejudice, to review.”

2566. The Chairperson: That is fine. There are timescales for our work in any case and there will be a timescale for looking at this. We are not kicking the issue into the long grass.

2567. That covers the issues relating to the Policing Board.

2568. As to the Northern Ireland Court Service, we have agreed that, in principle, the Committee will support the need for a memorandum of understanding to clarify the relationships between the PSNI, the board, and the Assembly Committee. We will await the draft protocol or memorandum of understanding from the NIO. That will probably come after we have reported: that is why we will state that there needs to be a memorandum of understanding.

Members indicated assent.

2569. The Chairperson: We turn to the Northern Ireland Court Service. The issues are: the degree of independence of the Court Service; how accountability can be ensured in a future Northern Ireland Court Service model; the division of responsibilities between the future Northern Ireland Court Service agency or independent body and the new Department; whether the agency should continue to deliver policy advice and legislative support or whether these functions should transfer to the Department; and how the board of any independent Court Service should be composed.

2570. We had a variety of views on those issues. Some parties dealt with all the issues; some with only selected ones. All four parties are agreed that we should protect the independence of the Court Service. That statement is worth making in the report, without prejudice to the model individual parties pursue: we are agreed on that principle. Are members content that the report should contain a statement to that effect?

2571. Mr McFarland: The Court Service should be free in that it is independent of political interference. There is an issue over accountability; the service needs to be independent in its operations. However, if you mean by independent that it should have nothing to do with the Department at all —

2572. The Chairperson: We are talking about judicial interference. Therefore, you are right, Alan. The Committee Clerk could draft a form of words that would clearly express the principle of independence as we understand it, but would establish the need for accountability mechanisms. That statement would reflect the evidence that we have received and the consensus of opinion around the table — that we respect the independence of the criminal justice system, but we want to ensure that there is adequate accountability. We have waited all these years, so we do not want to have to tell the public that we cannot hold anyone to account. There is a consensus that there must be a degree of accountability, and that we must find a balance between the structures that we subsequently create. It would be a general statement of principle on the part of the Committee.

2573. We will now move on to how that independence and accountability is reflected in the model for the Court Service. Three options have been presented to us in evidence. The first is the status quo, which is represented by the proposal by the Northern Ireland Office. At the moment, the Court Service is the responsibility of the Ministry of Justice in London. The NIO proposal is that the Court Service

becomes an agency of the new Department.

2574. The second option is the proposal by the Lord Chief Justice for an independent Court Service with its own board. Accountability will be provided for by having some departmental representation on the board of the Court Service.

2575. The third option is a hybrid, which David Lavery, the chief executive of the Court Service, mentioned in his evidence to the Committee. He did not suggest it as necessarily an end product, but perhaps as an interim or transitional arrangement, in which an agency might be at greater arm's length than that proposed by the NIO.

2576. Those are the three options that we have to consider. The DUP and Sinn Féin are silent on the issue and are saying that it is a matter for further negotiation. The UUP have a similar position.

2577. Mr McFarland: Our position is that it should transfer as a new model, and then we would want to have a discussion about whether the Lord Chief Justice's model should be adopted.

2578. The Chairperson: Similarly, the SDLP are saying that the options have considerable merit, but that it is not a matter to be determined pre-devolution. There is likely to be a consensus around that. Given the practicalities of all of this, we would be saying that in the absence of a consensus that supports an alternative model, devolution should take place initially on the basis of the model proposed by the Northern Ireland Office, namely, that a Court Service agency be created under the wing of the new Department. I do not know, Raymond, whether you can take that option back to colleagues and commend it to them, or whether you feel that it might be a matter for discussion at a higher political level.

2579. We were told that we could make suggestions or recommendations in our report. However, that does not prejudice any negotiations that might take place in parallel to what we are doing. It is a question of whether we as a Committee, at this stage, can reach a consensus in our report, that in the first instance, devolution of the Court Service arrangements should take place on the basis of the model contained in the relevant legislation. We believe that there is considerable merit in the alternative models that have been suggested, and we recognise that it is important that the independence of the Court Service is embodied in the models and the institutional arrangements. However, it is equally important that there is proper accountability, and that further work must be carried out. There must be further consultation, and the new Minister or Ministers and the scrutiny Committee could usefully take that work forward.

2580. Mr McFarland: Are we recommending that that discussion takes place after the devolution of policing and justice? If devolution of policing and justice is delayed and we do not meet the May deadline, I am unsure whether we can recommend the Lord Chief Justice's model in the intervening period. If devolution were delayed until November, it would give the Committee time to re-examine the Public Prosecution Service in more detail. The question is whether we want to get into a discussion on the Lord Chief Justice's model, because it is a major step change in terms of accountability. Do we wish to get involved in that, even though it would cause a delay, or should we recommend that it is examined by the Minister post-devolution?

2581. The Chairperson: We could recommend that the Lord Chief Justice's model be examined by the Minister post-devolution. It is entirely a matter for the Assembly to decide otherwise.

2582. Mr McFarland: Absolutely — I am merely saying that we could make a general recommendation.

2583. The Chairperson: We should not presume to take on that responsibility, because it is beyond our remit.

2584. Mr McFarland: It is complicated.

2585. The Chairperson: Yes it is complicated. We should not presume to take on that responsibility. If we were minded to make a recommendation, it would simply be that the Assembly may wish to consider whether the work may be taken forward by the Minister and the scrutiny Committee post-devolution.

2586. Mr Attwood: It would be fair to report that there was good evidence for every option. Therefore, it is a difficult matter to conclude. We need to acknowledge what was said by the Lord Chief Justice, the chief executive of the Court Service and the NIO. We need to flag that up. Since those discussions, an arm's length model has been set up in the South, an agency model has been set up here, and there is agreement between various agencies in England and Wales.

2587. Mr Attwood: This is a hybrid model. Even as we are talking now, the whole thing is going in different directions.

2588. The Chairperson: Things are evolving in Scotland too.

2589. Mr Attwood: We have audiences for this report.

2590. The Chairperson: Do you have any view, without prejudice, on how the Committee should handle the matter?

2591. Mr McCartney: Sinn Féin's note says that policing and justice powers could proceed with the agency post outlined by the NIO, and then there should be further discussion.

2592. Mr McFarland: We are all agreed then.

2593. The Chairperson: Given our timescale, are members content that we have reached consensus? The DUP mentioned considerable merit. We welcome the contributions made by the Lord Chief Justice and the Court Service. There is merit in their proposals, but a great deal of work must be done, and a lot of consultation will need to take place. We recommend that the Assembly considers how that consultation might best be taken forward, in the context of devolution and the Minister and the scrutiny Committee. Clerk, can you work on a plan for that?

2594. The Committee Clerk: I can certainly look at it. There may be another angle to look at it from as well, and that is if the Committee's report indicates that there are some matters for higher political negotiation. It is conceivable that such issues may be referred back, not necessarily by the Assembly, but by a different route through the parties for more work to be done.

2595. The Chairperson: Do you wish to reflect that in the draft report?

2596. The Committee Clerk: I am simply saying the draft wording might reflect that it could be discussed in various forums.

2597. The Chairperson: We could find a general phrase for

“the Assembly will wish to consider how best to take this matter forward”.

2598. Mr McFarland: The Lord Chief Justice was adamant that he wanted to have no politicians anywhere near this issue. He was clear about that. That is a difficulty for us as politicians, because we are responsible for all of this, and the idea that politicians should get offside and not annoy the Court Service will not be acceptable to the Assembly.

If this is delayed, we can send it back to another Committee. The difficulty is —

2599. The Chairperson: The Assembly could set up an ad hoc Committee to deal with it.

2600. Mr McFarland: Yes. The difficulty is whether we need to go toe-to-toe with the Lord Chief Justice in the lead in to the devolution of policing and justice, which is my sense of what would happen. Does the Assembly really need a public spat — which it probably would be — about whether the Court Service, and all, would be accountable to the Assembly or not? Should we get the matter devolved and let the Minister and the Lord Chief Justice lock themselves away somewhere for a fortnight to work out how it all links together?

2601. The Chairperson: The Lord Chief Justice recognises the timescales and the legislative realities of the process. It is not for me to speak for the Lord Chief Justice, for the record, but I do not believe that we will go toe-to-toe on that within the timescales that are envisaged. We can only work to the time frame that the Assembly has set for us. I agree with Alan. In reality, we may have more time after March in which to examine those issues. However, we cannot have regard to that at this stage.

2602. Mr McFarland: We do not want to say anything that looks as though we are recommending that, if time becomes available, a Committee will be able to take a definite view on that matter. We do not want to take a definite view on that matter before devolution, because, in order to do that, we would have to call the Lord Chief Justice again, and I guess that we would have a major row about whether the Assembly and politicians should be interfering and asking questions. My guess is that we may not want to do that before devolution. Let us get the powers devolved, and then worry about fighting with the Lord Chief Justice.

2603. If we have an option of saying that, if it is delayed, some Committee should examine that issue with the prospect of arriving at a solution, we do not want to go there at all.

2604. The Chairperson: I take your point. The report must show warmth to what the Lord Chief Justice and David Lavery have said. We can find warm words to reflect the fact that the Committee has a lot of sympathy with their positions, yet the realities are —

2605. Mr Attwood: We have sympathy with the agency model as well. The Lord Chief Justice may not want to live in an ivory tower.

2606. The Chairperson: We will try to reflect that, Alan. It is not for the Committee to recommend anything to the Assembly beyond saying that those matters require further consideration. The Assembly will decide on the timing of devolution of policing and justice. If it says that the time is not right, it may wish to say that it wants to park all the issues or revisit A, B or C. The Committee should not try to influence that, but it should work strictly within its remit, which is to report on the current preparations. Are members happy that that is how we will deal with the question of independence, accountability and changing the proposed model from that of an agency to

something else?

2607. There is also the question of division of responsibilities between the Court Service — whether it is an agency or an independent body — and the new Department. That relates particularly to policy and legislative support. According to the views have been given on that, the DUP said that policy and legislative support should transfer to the Department, but the UUP did not commit to anything, did they, Alan?

2608. Mr McFarland: I thought that we had decided already that policy would go to the Department and that operation would stay with several different organisations.

2609. The Chairperson: That was the case with legal aid.

2610. Mr McFarland: The same logic applies. That is what the Department does.

2611. The Chairperson: Hold on. We are in danger of having a very anaemic Department, with all of the various at-arms-length powers. That is not a criticism, but one would have thought that policy and legislative support would have found a natural home in the Department.

2612. Alan, you have given the view of the UUP, and Alex —

2613. Mr Attwood: Our position is the same.

2614. The Chairperson: Raymond, what is the position? Sinn Féin's view is that whether the agency should continue to deliver policy advice and legislative support will be determined by an agreed model.

2615. If the model, for the purposes of our report, is the agency model — for that is where we are at the moment — the question for Sinn Féin is whether policy advice and legislative support be with the Department.

2616. Mr McCartney: I will get back to you on that one.

2617. The Chairperson: We have, then, agreement among three of the parties, and we ask Sinn Féin to confirm whether they would be happy, in principle, for policy advice and legislative support to rest with the Department, rather than with the Court Service.

2618. With respect to the Court Service, we were asked: if there is an independent Court Service, how should the board be composed? I do not think we need to discuss that in our report because we are beyond that now. Are members content with that?

Members indicated assent.

2619. The Chairperson: We are almost there on the Court Service: we just need clarification from Sinn Féin as to whether it is content, in principle, for policy advice and legislative support to rest with the Department. The Assembly, or political negotiations outside this

Committee, might change that. We do not ask that the answer be set in tablets of stone; however, it would be useful if there were consensus to that.

2620. Mr McCartney: I will get the answer to that and submit it to the Committee Clerk, independent of the Committee.

2621. The Chairperson: Are members content with that?

Members indicated assent.

2622. The Chairperson: The time is now between 4.20 pm and 4.25 pm. Alex, you have to leave —

2623. Mr Attwood: If I left at 4.40 pm, that would be all right.

2624. The Chairperson: Then we will crack on with the Public Prosecution Service (PPS).

2625. The issues here are: the degree of independence of the PPS; the relationship of the PPS to the Attorney General for Northern Ireland; the relationship of the PPS to the Assembly; the relationship of the PPS to the proposed Advocate General for Northern Ireland; and which Department should have responsibility for providing funding for Court Service and the PPSNI.

2626. With respect to the degree of independence, are members content to use the same form of as that which we used with respect to the Court Service — to the effect that we are agreed on independence, but it should be balanced with accountability? If members are not content later, we can revise the words when we look at the draft report. Are members happy for the Committee Clerk to use the same formula for both?

Members indicated assent.

2627. The Chairperson: We now turn to the relationship of the PPS to the Attorney General, to the Assembly and to the Advocate General.

2628. The UUP's position was that the PPS should be administered by OFMDFM; and that the Attorney General should answer to the Assembly for the effective administration of the PPS.

2629. The SDLP responded that: as consistent with the current legal framework, there should be a maximalist approach to the oversight of the PPS. It is insufficient for the PPS to be answerable only for finance and administration. The PPS should be funded by the Department.

2630. The DUP position was that: the PPS should continue as a non-ministerial Department with a significant degree of independence from the Department. Funding should sit with OFMDFM. In addition to the Attorney General, the director of the PPS should be answerable on financial and administrative matters.

2631. Sinn Féin's position was that it believed in the independence of the PPS and appropriate mechanisms to ensure public accountability would like to explore further the relationship of the PPS to the Attorney General and in particular to look at the relationship of the Lord Advocate of Scotland and the Scottish Parliament, which are equivalent to the PPS and the justice Minister.

2632. Drawing all that together with the relationship of the PPS to the Attorney General for Northern Ireland and to the Assembly, The DUP and UUP seem to be saying that there should be a strong relationship and the Attorney General should answer for the PPS in the Assembly. In other words, if the Attorney General is answering questions, he should be capable of answering questions about the PPS. Alan, is that a fair reflection?

2633. Mr McFarland: Yes, the logic is that the PPS is independent operationally, and the same argument applies to the Court Service. However, the PPS gets money and has effective inefficiency issues, so someone needs to answer for those, and the logic is that whereas before the Attorney General was responsible both operationally and administratively, he should now be responsible administratively for the PPS, and answer questions in the Assembly on its effect and efficiency on the financial side. That creates accountability for the area that you are allowed to do.

2634. The Chairperson: Yes, and the DUP's position was similar. Alan, what was the UUP's position on funding for the PPS: was it that it should come from OFMDFM?

2635. Mr McFarland: Yes, our position was that OFMDFM should be responsible for funding.

2636. The Chairperson: The UUP and DUP have fairly similar positions. Alex, the SDLP was saying that funding should be made by the Department rather than by OFMDFM. The SDLP said that it was insufficient for the PPS only to be answerable for finance and administration. Do I take that to mean that the director of the PPS should be more answerable to the Assembly on a wider range of matters, or do you see merit in the position of the UUP and DUP, whereby the Attorney General has that answerability?

2637. Mr Attwood: The SDLP considers that the PPS will be, arguably, the institution with least accountability in the North; the party is concerned about that. Therefore, we believe that there must be a hard conversation about new levels of oversight on what the PPS does, either à la Policing Board model or giving the Committee more significant power than simply over-administration: looking at policy, patterns, practice and so forth. As a minimum, the SDLP wants the Committee to say that this matter must be probed further, because it is not being sufficiently addressed. Arising from that, it is difficult to divorce the issues of the PPS from the roles of the Attorney General and the Advocate General. We will not be masters of our own house: there will be a huge range of functions over which we will have neither authority nor standing, because they are excepted matters. We must acknowledge that but close down the potential difference and conflict. That is why in our paper the SDLP talks about the relationships between the Attorney General and the Advocate General on one hand and the Attorney General and the PPS on the other. This needs to be worked out fully so that we do not end up with a situation where we are not seen to be "at the races", for want of a better term, when significant matters arise around the PPS.

2638. To summarise, the SDLP wants to have a more fundamental debate about this. We are not going to get it done in the short-term; it will need new legislation. Nonetheless, in the short-term we need to work through the relationships between the Advocate General and the PPS and the Advocate General and Attorney General very quickly and thoroughly. In the meantime, if the Attorney General is going to come to the floor of the Assembly to answer questions, then let us make sure that he is responsible for addressing the fullest range of issues, consistent with the statutory authority that currently exists. If we really push him to the max of his position we will get as much back from the PPS as we possibly can in terms of accountability. Currently we see huge gaps in terms of oversight in respect of that office.

2639. The Chairperson: Therefore, to close the gap, Alex, you suggest that either the scrutiny Committee has a greater role in holding the PPS and the Director of Public Prosecutions to account on policy issues, etc, in addition to —

2640. Mr Attwood: It would require new law.

2641. The Chairperson: Yes — or that you go for a Policing Board-type model to hold the PPS to account. You also seem to be saying that where the Attorney General and the PPS have a connection, the Attorney General should be answerable to the Assembly to the fullest extent possible for those aspects.

2642. Mr Attwood: Yes, under the current legislation. There is also the issue of how we get sight of what the Advocate General is saying to the PPS.

2643. The Chairperson: We have accepted that.

2644. Mr Attwood: The Assembly will require a level of information. There cannot just be a big black hole with regard to that body's authority.

2645. The Chairperson: Did you say that legislation is required if the scrutiny Committee has a greater role?

2646. Mr Attwood: The law is contained in the two Justice (Northern Ireland) Acts of 2002 and 2004.

2647. The Chairperson: Do you advocate the enactment of legislation pre-devolution?

2648. Mr Attwood: We need to win the political argument on whether that is the direction in which to go. I doubt that we will win it between now and 29 March. However, I want to win it some time thereafter.

2649. The Chairperson: The Committee and the Department may examine that.

2650. Mr Attwood: Even if there were an acknowledgement from the Committee that that matter should be examined, the battle at the criminal justice review was essentially lost.

2651. Mr McCartney: Sinn Féin broadly agrees with Mr Attwood's earlier comments. Issues with regard to accountability and superintendence must be dealt with. The Lord Advocate of Scotland talked about her role during her presentation to a conference in the Stormont Hotel. She mentioned situations in which she is answerable to the Scottish Parliament.

2652. The Chairperson: Alex, the DUP's paper talks about the present position pre-devolution — the Attorney General at present has a superintendence role over the PPS. Under the NIO proposal that falls, and the DUP is saying that should be reinstated. Why do you feel that the superintendence should be with the Committee or an independent board rather than as it is at present with the Attorney General? Where do you see the deficiencies in that?

2653. Mr Attwood: Historically, policing and the administration of justice have been a matter of dispute. Therefore, to build up confidence in policing we established the policing structures with a heavy ownership for the political parties; similarly, in respect of justice, we need to give significant ownership to the political parties because that is a mechanism to build up confidence. At the moment, apart from finance and administration, we are not going to have that input. Therefore, in principle, a model of having political oversight with shared responsibility by the political parties is better than having individual oversight from an Attorney General in the context of the North.

2654. The Chairperson: Even when the Attorney General is answerable to the Assembly?

2655. Mr Attwood: Given the historical dispute over the administration of justice, it is a model that has merits in terms of actual buy-in from the political parties. That does not preclude the need for the Attorney General. Obviously the Committee could not have oversight of individual cases — an Attorney General might have some responsibility to explain the situation in respect of individual cases. For example, the Attorney General currently accounts to the Westminster Parliament in respect of decisions he makes on individual cases; he may say very little about them because of national interests, but nonetheless he feels obliged to make a statement, for example stating that he has decided to drop a prosecution on the basis of national security. So the Attorney General may have a continued political role vis à vis the PPS. However, in terms of broad policy, practice and other functions of oversight, the SDLP's view is that an Assembly scrutiny Committee, or a Policing Board-type model, offers a better way forward.

2656. Mr McFarland: Operationally, the Chief Constable does his own thing and, after that, the Policing Board is able to ask him why he did it; but you are not allowed to do that with a judge. One cannot haul in a judge to ask him to explain a decision. In fact, that is the one area in which that is completely verboten. I understand that one cannot haul in the DPP to ask him why he decided to prosecute one case and not another, because that is his operational role. Alex is saying that we should be able to ask a judge to explain his decision and to ask a prosecutor why he did not prosecute. I like that idea, because if the public were to hold Jeffrey Donaldson, for instance, accountable as the justice Minister, they would want him to explain why person A was not prosecuted.

2657. How do you square operational independence with people having a legitimate interest in why something did or did not happen? We have struggled with that question, and we have erred on the side of saying that we must hope that the Lord Chief Justice and the judges are able to keep some control over the Court Service and the judiciary. Similarly, it is vital that the person appointed as DPP has operational control over their organisation. Operationally, what other interference can be introduced to both of those organisations? I am all for full accountability and hauling in the Court Service to find out whether it is working properly and whether it is spending its money wisely, but I struggle with working out how to interfere with the operational side.

2658. Mr Attwood: You are not. Putting aside decisions on individual cases, what is wrong with a scrutiny Committee, or another structure, carrying out some of the work that the Policing Board does on policing? What is wrong with a scrutiny Committee, or some other accountability structure, working with the PPS to develop a code of ethics for prosecutors, on the treatment of victims or any other policy or practice that might be dealt with by the PPS? Why could we not ask the PPS: what is your victims' liaison strategy?

2659. Mr McFarland: That would be a matter for the Department and the Minister. The scrutiny Committee would call the Minister in to ask what the Department was doing about those matters. That is unlike the Policing Board, which has an operational duty to run policing. We do not have that structure.

2660. Mr Attwood: My argument is that whatever a justice Minister might do and whatever the normal scrutiny Committee might do, the legislation restricts that role to finance and administration. There is range of other interests where we should be seeking an oversight

and accountability function for this Assembly or some other mechanism.

2661. Mr McFarland: I thought that the Lord Chief Justice had all these people — I am not as familiar as you on these matters — and a whole organisation that develops policy for courts and stuff.

2662. The Chairperson: Yes, and we are recommending, subject to agreement with Sinn Féin, that that transfers to the Department.

2663. Mr McFarland: So surely the proper working, changes of policy, code of ethics etc is developed by the Department alongside those various organisations on which we currently spend a fortune?

2664. The Chairperson: Except that, under the current proposals, the PPS does not come under the Department — it comes under OFMDFM.

2665. Mr McFarland: Yes, but that is only for administration. Is it not the case that the development of prosecution policy for the PPS is done centrally by an organisation in London?

2666. The Chairperson: It would be the Attorney General, and he or she will be appointed by OFMDFM.

2667. Mr McFarland: Is there not a board of some description that advises on all of this stuff? I understood that there were organisations already in existence that advise the Court Service as to how it should be operating with regard to sentencing, policy, etc, and that judges have a group that advises them on decisions of courts and what they should be doing. I understood that there was a similar system for prosecutions.

2668. The Chairperson: We are at our limit here. Perhaps we could ask the Committee Clerk would to take up the point that Alan has raised.

2669. Mr McFarland: It is just to clarify who decides on policies, because I think that there are a number of organisations in existence.

2670. The Chairperson: We were given a paper on the Attorney General after Sir Nigel Hamilton gave his evidence. It might be worth having another look at that, Alan, to examine the role of the Attorney General. Perhaps we could ask the Committee Clerk to have a look at the issue.

2671. We will return to this point at our meeting on Tuesday. What we need to look at is whether the director of the PPS is accountable to the Assembly for more than just finance and administration. Should he also be accountable on policy and practice?

2672. Secondly, what is the role of the Attorney General in all of that and the Attorney General's answerability to the Assembly, and how can that be utilised to ensure that the PPS is more accountable?

2673. Thirdly, we need to work out where the Department fits in to all of this in relation to the question of funding, which at the moment would transfer to OFMDFM — indeed should it transfer to the Department — and what is the role of the Department in relation

to the PPS on any of these matters.

2674. If we could look at those issues when we come back on Tuesday we could maybe then take things forward.

2675. Mr McFarland: If we are raising those questions about the PPS, surely those same questions arise about oversight of policy and practice in relation to the Court Service?

2676. The Chairperson: The Court Service is a bit easier to understand because the agency model gives —

2677. Mr McFarland: Policy and practice in relation to the Court Service transfers to the Department?

2678. The Chairperson: It does, yes, as with any agency or non-departmental public body. However, the PPS is not an agency but rather an independent body so, so the situation is different.

2679. Mr McFarland: If you go to the Lord Chief Justice's model then the issue about policy and practice arises again.

2680. The Chairperson: Members, could I also remind you about giving some thought to the name of the Department ahead of next Tuesday's meeting? Also, perhaps Raymond could come back to us on the issue of the issue of policy and advice in relation to the Court Service.

2681. Mr McFarland: What is the status of our papers and that of the Hansard report?

2682. The Chairperson: They are confidential at the moment. The papers are confidential to the Committee, and I ask that members please respect that. Secondly, the Hansard report will come to members for correction.

2683. Mr McFarland: And will they be published eventually?

2684. The Chairperson: They will as part of our report. The transcript of today's private session will not be published until our report is published.

2685. The Committee Clerk: In relation to the party position papers, it is a matter of judgement for the Committee to decide whether it wishes to include any or all of those papers in the report, as is the case with other documents that you have seen. That is part of the process of agreeing what will be in the final report.

12 February 2008

Members present for all or part of the proceedings:
Mr Jeffrey Donaldson (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)

Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr George Robinson

2686. The Chairperson: The first part of the meeting will be public session to deal with the formalities, minutes and so on and then we will move into private session. I remind you that Hansard will take a note of the discussions for the purposes of the report in due course.

2687. Danny Kennedy has notified us that he will be delayed, but there are no other apologies. You have the draft minutes of the proceedings of the meetings held on 5 and 7 February, does any member wish to make any amendments to the minutes or seek any clarification. If not I am happy to sign to both sets of minutes.

2688. Before we move into private session, I invite members to declare any relevant interests. I declare an interest as a member of the Policing Board and the Privy Council.

2689. Mr I McCrea: I am a member of Cookstown District Policing Partnership.

2690. The Chairperson: Thank you, members. We are now ready to move into private session.

12 February 2008

Members present for all or part of the proceedings:

Mr Jeffrey Donaldson (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Danny Kennedy
Mr Nelson McCausland
Mr Ian McCrea
Mr Alan McFarland
Mr George Robinson

2691. The Chairperson (Mr Donaldson): Members will recall that at the last meeting on Thursday, we agreed to consult parties on the naming of the new Department. "The Department for Policing and Justice" was suggested as a possible name. The DUP discussed the matter. "The Department for Home Affairs" was also suggested as an option for the Committee: that was the option which applied when we last had devolution of policing and justice powers. Does anyone else want to comment on the name of the Department?

2692. Mr McFarland: We, too, discussed "home affairs"; "homeland security" was also suggested. We also considered the justice title, which seemed to us to encompass everything.

2693. The Chairperson: Two parties considered "home affairs".

2694. Mr Attwood: We are not considering "home affairs".

[Laughter.]

2695. The Chairperson: That will come as great shock to the nation, Alex.

2696. Mr Attwood: You will not get consensus on that proposition.

2697. We think the title should be "justice and policing", because it sends out the political message that there is a big responsibility in this building. Justice is a generic term and it could cover all bases; I am sure that this is what Alan is thinking. However, to demonstrate political ownership of those functions, "justice and policing" is a better way to get out the full political message that we have authority on those matters.

2698. Mr McCartney: My party realises that the first task is to assist the process of the draft legislation. We are comfortable with the idea of a "Minister for Justice and Policing".

2699. The Chairperson: In that order?

2700. Mr McCartney: Yes.

2701. The Chairperson: The suggestion was "policing and justice".

2702. Mr McCartney: I am sorry: I thought that there were four options. My mistake.

2703. The Chairperson: No — that was one suggestion. I wanted to be clear —

2704. Mr McCartney: That is fine.

2705. To be fair and honest, Sinn Féin realises that this could be revisited in time.

2706. The Chairperson: Do you have a strong view on whether the Department would be called "justice and policing" or "policing and justice"?

2707. Mr McCartney: Yes, we would prefer to see a "Minister for Justice and Policing".

2708. Mr McFarland: Northern Ireland would be different in that policing and justice would be in one Department. The Ulster Unionist

Party is keen on there being a Minister because, if policing and justice is ready to be devolved, there is enough confidence to have a Minister.

2709. The title of the Department that you mentioned signified that it would have two parts. We would be uncomfortable if the Department were divvied up so that one Minister took policing and the other took justice. At one stage, a strong attempt was made to organise OFMDFM on such a basis that the First Minister had some areas of responsibility, and the deputy First Minister had others, completely negating the purpose of having a joint office. If such a compromise were reached, that would destroy the joint nature of the arrangement and that would not be the right signal to send out. On the other hand, I wonder whether a Department "for justice", or "of justice", would be one entity, and whether the two Ministers would be Ministers of one entity? If that were the case, there would be no temptation to divvy it up with one Minister responsible for one slice of it and the other responsible for the other.

2710. The Chairperson: I almost had a nightmare last night, because when a name is introduced into the politics of Northern Ireland, difficulties immediately emerge on getting agreement on that name. Various options have been put forward.

2711. Alan, you seem to be saying that your preference is for a Department with a single descriptor, whether Department of home affairs or Department of justice.

2712. Mr McFarland: That would signify that policing and justice are together in the Department, and that there would not be a Department for policing and a Department for justice. Much of the work of Departments is done by agencies anyway. For at least the past two years, you will have heard my endless speeches about the fact that, since much of the work is contracted out, devolution of policing and justice will not be the great joy that the Minister or Ministers might think it is. However, because it is a neuralgic issue, the idea of separating policing and justice into two parts of one Department is dangerous. There would be a temptation to attempt to divvy it up.

2713. The Chairperson: The DUP is in favour of the Department being called the "Department of Home Affairs", and the UUP is in favour of either "Department of Home Affairs" or "Department of Justice". The SDLP is in favour of "Department of Policing and Justice" or "Department of Justice and Policing", and Sinn Féin is in favour of "Department for Justice and Policing". How do we propose to unravel that?

2714. The Committee Clerk: You can use the tried-and-trusted form of words that there were diverse opinions and the Committee was unable to reach a consensus on that for the purposes of the report. The original reason that the Committee considered the title of the Department was to assist the NIO in the development of the legislation so that it could use a generic title for the transfer of all of the functions that will be required. Potentially, that means that that detail will have to be ironed out prior to the conclusion of the legislation and the devolution settlement.

2715. The Chairperson: What is the current default in the legislation?

2716. The Committee Clerk: The NIO shows it in shorthand as "D o J".

2717. Mr McFarland: The NIO is using "Department of Justice".

2718. The Chairperson: That is the NIO's default position, but it has not indicated that it will impose a name. Members, I can only

suggest that we reflect on our respective positions, and perhaps consult with our parties. In the meantime, I ask the Clerk to draft the usual formula of words into the report to reflect the position of each of the parties that there is not a consensus in the Committee on the name of the new Department.

2719. In the meantime, we will have a couple more bites of the cherry between now and the report's being signed off. Members might want to reflect further on the matter. Are Members happy to proceed on that basis?

2720. Mr McCartney: Should we try to agree on a working title? I ask that because, I can imagine people saying that the Committee could not even agree on the name of the Department, and that might override all our work.

2721. The Chairperson: That is a concern of mine also. Unfortunately, journalists tend to focus on those sorts of issues, rather than the bigger, more important ones. Nevertheless, I do not want to minimise the name's significance to some people.

2722. Mr McFarland: Presumably the NIO will continue to refer to it in its documents as "Department of Justice". The question is whether we accept that as a working title for the moment.

2723. Mr McCausland: Why do we need a working title? Why do we not simply refer to it as "the Department" in the report?

2724. The Chairperson: It is not essential to have a full working title. We can refer to it simply as "the Department". If members want to amplify what that means, we can say that, for the purposes of the report, "the Department" means the Department that will exercise responsibility for policing and justice powers. The Committee's report will be on the devolution of policing and justice matters. Officially, that is what we have been working on. We can adopt the working title of "the Department for Policing and Justice" without prejudice to the outcome of this process — on the basis that our inquiry is about policing and justice matters — or we can use the shorthand title of "the Department".

2725. Mr McCausland: We should use the shorthand of "the Department", because that seems to have advantages.

2726. The Chairperson: Clerk, we will refer to "the Department" in the report. However, at the beginning of the report, there should be an explanatory note to say that the Department referred to in the report is the Department that will exercise powers in relation to policing and justice matters. Are members content that we use "the Department" as the working title?

Members indicated assent.

2727. The Committee Clerk: That leaves the issue of the legislation that is to be ironed out at some point after the publication of the report. It will have to be more precise.

2728. The Chairperson: At the end of the report we will have a section that will summarise — perhaps in bullet points for simplicity and ease of reference — the outstanding issues that must be resolved prior to devolution. Some of the issues that we touched on can be dealt with after devolution. However, some matters must be resolved before devolution: i.e. the name of the Department; the number of Ministers; and whether there is one Department, or two. There seems to be consensus that there should be one Department, so we can proceed on that basis.

2729. There are some matters, such as those involving the PPS and the attorney general, which must be resolved before devolution. I envisage that, at the end of the report, there will be a reference section that will highlight those issues that remain to be resolved prior to devolution. We are obliged to inform the Assembly of those aspects of the preparations for devolution that are not yet completed. The name of the Department may be one of those issues.

2730. We will move on to the matters of structure and accountability, continuing the discussion that we had last Thursday on the respective party position papers. To remind members and those colleagues who were unable to attend last Thursday, the issues that were not dealt with at that meeting include the role of the Attorney General, how that post will relate to other offices, and whether it should be a full- or part-time post. There is also the issue of the costs associated with that office — in other words, who will fund it.

2731. The Chairperson: We then deal with the matters that are known as excepted matters, which specifically relate to the Serious and Organised Crime Agency (SOCA) and the security services, and the lines of communication and accountability of SOCA and the security services to the new Department in relation to excepted matters such as national security and organised crime.

2732. The third aspect is the North/South arrangements: the status of the North/South agreements after devolution in relation to devolved matters; whether they require renegotiation by the new Department; and whether there are any further cross-border intergovernmental agreements that require consideration prior to devolution.

2733. We then have the question of the Northern Ireland Police Fund, namely whether it is part of the block grant or a separate arrangement and, if it is a separate arrangement, whether that will continue after devolution. The Committee may be interested to know if the allocations of money have been further developed since then, and if so, how. An initial response from the NIO said that the Police Fund was part of the block grant, but we will need to look at that in more detail.

2734. At last week's meeting we discussed structures and accountability, and several matters required further clarification following the receipt of draft legislation from the NIO. Members also discussed the Life Sentence Review Commissioners and requested clarification on the future status of the Life Sentence Review Commissioners as set out in the recent NIO draft legislation.

2735. We will return to the matter of the Life Sentence Review Commissioners, as it is somewhat complex. We will deal instead with the Attorney General; excepted matters; North/South agreements; and the Northern Ireland Police Fund. Before doing that, I refer members to the minutes of the meeting of 7 February, when we discussed the issues of compensation, community safety partnerships, the chief inspector of criminal justice and the Northern Ireland Law Commission. However, members can see that there was agreement on most of those issues from the minutes of the meeting. Clerk, do you have a note for the members who were not present about the structures and accountability that we signed off on last Thursday?

2736. The Committee Clerk: A transcript of that session will be coming out, which records all the details. I was concerned that if the minutes of proceeding were recorded, it would represent a public report of matters discussed in private. The transcript of the proceedings should be available soon, possibly this afternoon or tomorrow, and that will provide a summary for the members who were not present at last week's discussions.

2737. The Chairperson: OK.

2738. We now turn to the role and relationship of the Attorney General. The question is whether the post of Attorney General will be

full- or part-time. There was a fairly broad consensus in the party position papers that, at least initially, the role should be full-time. Sinn Féin's position was that it would return to the matter.

2739. Mr McCartney: Sinn Féin is happy for the post to be full-time.

2740. The Chairperson: Do any members have strong views on the matter? From memory, Mr Attwood indicated initially that the post would be full-time, but —

2741. Mr Attwood: I recommended a full-time post.

2742. The Chairperson: It was the UUP then, who suggested a full-time role initially, with the possibility of it being reviewed after a period.

2743. Is the UUP content that, initially, the post of Attorney General should be a full-time role?

2744. Mr McFarland: Yes; it has to be a full-time role. We thought that after things settled down, and the Attorney General's post increasingly became a monitoring job, it could be reclassified as a part-time role. However, that was not something on which we were exercised.

2745. The Chairperson: Raymond has indicated that, subject to everything being equal, and without prejudice to what happens outside this meeting, Sinn Féin will not object to the post of Attorney General being a full-time position. Is there consensus among the parties that the post of Attorney General should be a full-time position?

Members indicated assent.

2746. The Chairperson: The status of the Attorney General will change under devolution. At present, the Attorney General for England and Wales also covers Northern Ireland and has a superintendent's role over the Public Prosecution Service (PPS). Under the proposals for devolution, Northern Ireland will have its own Attorney General, who will not have a superintendent's role over the PPS. The DUP was concerned that that will diminish the accountability of the PPS to the devolved structures. Although the Attorney General may come to the Assembly to answer questions, and the director of the PPS may also visit to answer questions on narrow issues of PPS administration and finances, there would be no one to answer questions on prosecutions in general. By contrast, the Lord Advocate has visited the Scottish Parliament and answered questions about prosecutions. Does the Committee accept the Northern Ireland Office proposal that the Attorney General should not have a superintendent's role over the PPS?

2747. Mr McFarland: We have been caught up in the fallout of what happened in England. In England, the Attorney General is, effectively, a member of the Cabinet. After the problems around the decision to go to war in Iraq, there has been a feeling that someone who is, effectively, a Government Minister should not be in charge of the PPS. It was recommended that the Attorney General should no longer be a Government Minister. That recommendation has been incorporated into our situation, so we are caught in the confusion of a situation that has nothing to do with us and are in danger of losing accountability on prosecutions.

2748. Last week, Mr Attwood highlighted that, although we do not want a system that interferes with the Department of Public

Prosecutions (DPP), if we are responsible for policing and justice, we require a system where someone explains and defends the policy of the DPP. Maybe we have missed a trick by accepting a roll-out of what happened in England for reasons that do not concern us.

2749. The Chairperson: Indeed. That is why I did not want us to miss a trick, in case there is something that the Committee should say to the Assembly on whether the Attorney General should have a superintendent's role — whether that role remains the same as it is now is a matter for debate. The Committee must decide either to make a firm recommendation to the Assembly or to suggest that the Assembly considers the issue after the devolution of policing and justice powers. The matter is important, and we should try to get it right before the powers are devolved. Would primary legislation be required to put it right?

2750. Mr Attwood: Going down that road would require primary legislation because the position of our Attorney General is outlined in the two Justice Acts, which require primary legislation to be amended. However, sometimes amendments can be made by Order — I am not sure, we must get advice on that.

2751. Alan's argument is right, but he is wrong about the timing. The decision that the Attorney General should not have a superintendent's role arose from the fact that the Attorney General was seen to have influence in the Public Prosecution Service on hard cases. Historically, we have seen that in the North. The criminal justice review said that because of public concern that an Attorney General should have such power, it would not be appropriate for him or her to have that power. People in England are looking at the power of the Attorney General as a consequence of the Iraq war, and the actions or inactions of Lord Goldsmith.

2752. I am not in favour of an Attorney General here having powers of superintendence over the PPS because of the danger of replicating the historic issues associated with the powers of the Attorney General over the PPS over the past 30 or 40 years. I am in favour of more accountability on the part of the PPS. There are ways to improve the position of the Attorney General that would create a sense of greater oversight of the PPS — without giving him or her powers of superintendence. Remember, however, that that would involve a middleman, namely the Attorney General.

2753. The alternative to that is to build up the powers of the scrutiny Committee in the Assembly, or to create a management board of some sort, around the PPS; for example, by borrowing from the Northern Ireland Court Service agency model, or from the Policing Board models. However, one way or the other, as outlined in the SDLP paper, we want a discussion on how to have accountability on the part of the PPS. It is not there at the moment, as you outlined. There is accountability for finance and administration, but not for policies, or practices or patterns, or for the rest of the life of the PPS. I recognise that one should ask questions about individual decisions, but one should not be seen to interfere in any individual decision.

2754. The Chairperson: Alex has suggested a model of higher oversight that could be exercised through the Assembly Committee, or a model similar to the Policing Board. A third option would be a management board, similar to an agency approach, on the Court Service model. The difficulty with the management board model is that it is still at arm's length from both the Department and the Assembly. Whereas it might give some kind of public input, and the Department might have representation on that board, it does not give the Assembly a great deal of accountability.

2755. We have seen that sentencing policy and prosecution are big issues. Some of the biggest stories in the news media in recent months have been about why this person was not prosecuted, or why that person received such-and-such a sentence. There is a broad consensus that we need to strengthen lines of accountability between the PPS and the Assembly and/or the Department.

2756. One way to do it might be to establish that the development of policy for the PPS should be taken forward in consultation with the

Department. We need to look, however, at how that would make the PPS accountable to the Assembly. A scrutiny Committee may scrutinise the work of the Department, but it cannot oversee the policies of the PPS. It will be a frustrated scrutiny Committee: particularly as the Assembly will take grief over this issue, if there are not lines of accountability that respect the operational independence of the PPS. I suspect that members will want to revisit this issue.

2757. It will be useful if we could find a mechanism that draws a consensus within this Committee, so that we can present the Assembly with a recommendation as to how the issue should be dealt with.

2758. Do any of the evidence that we have received over the course of the inquiry touch on this matter? Obviously, Alex has suggested some models, but has anyone else given evidence on this issue?

2759. The Committee Clerk: From memory, the only evidence that the Committee received on that matter was that given by Professor Jackson of Queen's University, Belfast. He talked about whether the Public Prosecution Service should come under the remit of the Office of the First Minister and deputy First Minister — which is the assumption that the Northern Ireland Office is working on — or whether it could be attached to a new Department of policing and justice.

2760. I am not sure that his advice was specific as to how that might work in practice. If the PPS were attached to the Office of the First Minister and deputy First Minister for pay and administrative purposes, there would still be scope for a Department of justice and a scrutiny Committee to call the director to account on policy matters and on the way in which he and the PPS operate.

2761. I expect that the Assembly and the scrutiny Committee would have the normal powers to call people to give evidence and to request to see papers on policy matters, as distinct from getting involved in individual cases. A recommendation or a general statement on that potential relationship is perhaps something that the Committee might want to articulate in its report.

2762. Mr McFarland: We have considered a number of scenarios about the new Department being responsible for policy in order to give it something to do. Logically, that is what would happen because a mechanism for developing policy and a system for calling people to account is required.

2763. If the new Department is to be responsible for policy, logically, the relevant Ministers and the scrutiny Committee would have a relationship similar to that of the Chief Constable and the Policing Board. Although the Committee would not have the responsibility for personnel issues and owning the police estate, it would have the job of ankle-biting and scrutinising the work of the Department, the PPS and, perhaps, even the Court Service on policy matters.

2764. The Chairperson: There is a consensus that policy matters on issues such as legal aid, which are the responsibility of the Court Service, should transfer to the new Department. The question is whether the same should happen with public prosecutions.

2765. Mr McFarland: Can we recap? Is there not a separate sentencing organisation that monitors policy? I thought that judges had a grouping in which they modify policy regarding court cases that have occurred. I should know this, but I cannot remember.

2766. Mr McCartney: Do they not do that in the golf club?

2767. Mr McFarland: Certainly not. Is there not a monitoring organisation? I am sure that the Lord Chief Justice referred to a body that updates and modifies policies and procedures regarding sentencing.

2768. The Chairperson: I am not aware of any such body.

2769. Mr Attwood: England has the Sentencing Guidelines Council.

2770. Mr McFarland: Yes. Do we not have that here?

2771. Mr Attwood: No.

2772. Mr McFarland: Therefore, the Sentencing Guidelines Council does not affect us. I thought that something was mentioned about setting up some such body.

2773. Mr Attwood: When questioning the Lord Chief Justice and, maybe, other witnesses, I asked whether there was a need to create those sorts of structures in which a local sentencing guidelines council would give its opinions on sentencing policy to the judiciary. I was mindful that a sentencing guidelines council would be an independent body.

2774. Mr McFarland: Would the new Department also have responsibility for a sentencing guidelines council? If so, that would give it some oversight into sentencing and prosecutions. The Minister would also be in a position to explain the workings of any such council.

2775. Mr Attwood: In principle, the first issue that needs to be addressed is the involvement of the judiciary in the wider criminal justice institutions. For example, when policing and justice powers are devolved, the Criminal Justice Board — which is a powerful beast that the NIO is part of — will be a powerful beast in the devolved Ministry.

2776. That is made up of police, probation, the Court Service, prisons, the criminal justice section of the NIO, etc. In England, the judiciary sits on the Sentencing Guidelines Council, but over here, as I understand it, the judiciary declined to sit on it. There are issues generally about the judiciary and its involvement in a structured way with the other members of the criminal justice family.

2777. The second issue is building of mechanisms around the judiciary that can give it proper advice, such as a sentencing guidelines council.

2778. We have been talking about the third issue, and I do not know whether we can get it resolved. However, there must be new levels of accountability and oversight for the PPS, which, perhaps, the 2001 criminal justice review did not cover sufficiently. That may involve the scrutiny Committee or some other third-party body monitoring the PPS, but, whatever happens, there must be some structure. I am prepared to live with an Assembly Committee taking on that role as a kicking-off point, and that might be the best way to do it. I am not hung up on any particular model. It could be a scrutiny Committee, with the right statutory functions, but we do not have that at the moment. There would have to be new legislation, taken forward by us in the event of devolution — say in May — to accommodate us having that statutory function. We would then work out what areas would be covered under that statutory function. A good precedent has been set by the Policing Board as to how a scrutiny Committee could probe into the policy, practice and patterns of the PPS in a way that does not compromise its independence.

2779. The Chairperson: Rather than creating new bodies and having yet another body in orbit floating around the criminal justice system, I feel that we need to look at how the lines of accountability can be strengthened on this side in relation to the legislature. In the end, it will be the legislature that will deal with the law, which will include issues such as sentencing. If we were to make the law, but could not have an input into the policy and procedure, it would become very difficult, disjointed and dysfunctional.

2780. I have a lot of sympathy for what Alex Attwood said about looking at whether the scrutiny Committee should have additional statutory functions that would enable it to do that. Where would the policy sit? Would it sit in the Public Prosecution Service or in the Department? The scrutiny Committee having statutory functions to call to account and to investigate and enquire into policies and practices is one thing, but who would it be enquiring into? Would it be enquiring into the Department or into the PPS, or both?

2781. We must consider whether we make a recommendation to strengthen the lines of accountability of the criminal justice system, without compromising the operational independence of any of those bodies that we might want to strengthen with the statutory functions of that Committee. Secondly, we must consider where policy rests. Does it rest in the Department or, in relation to prosecutions, in the PPS? If so, how do we design the statutory function for the Committee that takes account of either of those options?

2782. Mr McCartney: There is a need for greater accountability. Alex Attwood outlined a good example. However, in regard to the relationship between the Committee and the ministry, I assume that the Minister would have the same responsibility. If the Committee had that statutory right, one would assume that the Minister would also desire that.

2783. The Chairperson: As I understand it, if a Department has a function, be it policy, the scrutiny Committees, as happens now, have the powers that they need to call them to account. If the PPS has the statutory responsibility, as things sit, the degree to which it can be held to account is limited. That is the scenario that Alex is suggesting; in which case, the Committee's statutory powers may need to be strengthened.

2784. Mr McFarland: Do we require more information about that from the PPS or the DPP? If we make suggestions — which we seem likely to do — that are different from what the Lord Chief Justice spoke to us about, the chances are that he will disagree. Although I am not referring to him, in some of those criminal-justice organisations, there is a sense that people are empire-building and that they perceive an opportunity to ring-fence themselves in order to get others out of their hair. Perhaps there are reasons that we have not considered that would make it dangerous to move policy from the PPS to the Department, and it might be useful to investigate those.

2785. The Chairperson: Indeed, I would be particularly interested to find out about the Scottish model for interaction between its prosecution service, Justice Department and Parliament.

2786. Mr McFarland: In Scotland, rather than the Minister, the Advocate General is responsible for coming to the table to answer questions. That would be the same as us giving policy superintendence to the Attorney General in order that we could summon him or her to ask about what is going on and why.

2787. The Chairperson: Clearly, we are not going to reach consensus about the Attorney General having superintendence powers. However, is there consensus about the PPS continuing to be responsible for policy in addition to strengthening the scrutiny Committee's statutory functions in order that it can call the director of the PPS to account on policy issues? The third option is to give such powers to the Department, which would mean that the scrutiny Committee would have the right to call the Minister to account.

2788. Mr McFarland: Previously, we decided that it would not be healthy for the organisation that administers the law to make policy decisions. On several occasions, we have taken execution powers into Departments and away from policy makers. If the Department were to make policy decisions, would there be an issue if the PPS and the DPP were to decide on individual cases and administer policy?

2789. The Chairperson: We require more information about the implications of either policy responsibility being transferred from the PPS to the Department, or the PPS retaining that responsibility and the scrutiny Committee's statutory functions being strengthened to enable the director of the PPS to be held to account on more than just administration and finance.

2790. Mr McFarland: Can we also have similar arrangements between the Court Service and the judiciary clarified? I am unclear about whether we have had conflicting evidence from those bodies.

2791. The Chairperson: Are you saying that statutory functions should be extended to enable us to call the Lord Chief Justice?

2792. Mr McFarland: During our evidence sessions, when we were trawling for opinions, we were not expecting that point to arise. We heard evidence from David Lavery, the Lord Chief Justice, Vernon Bogdanor and others, and it would be a matter of re-examining that evidence in order to ascertain who develops the guidelines by which judges make judgements. I assume that it is the judges who, throughout the UK, talk among themselves and decide on general ways to deal with situations. However, who decides on sentencing policy in Northern Ireland? Is it the Department or the Secretary of State — I do not know?

2793. I am not clear on those issues, because we have not been approaching them from that direction. As a general principle, policy should rest with the Department, unless there is a particular reason why it should rest with the executive arm, meaning judges, the Court Service or the PPS. The Department would be in a position to co-ordinate policy, and it would be relatively easy for the Department to interface with the Assembly because the Minister could be called to the Committee to be scrutinised. If policy is left to the Court Service, the judges and the PPS, mechanisms must be developed to allow people from those organisations to explain why they are doing things. Those organisations are keen for the Assembly not to scrutinise them. The Committee has heard evidence that they should be at arm's length from politicians, who should not trouble their tiny minds with such matters. However, I am not sure that politicians here see it in that way. Am I making sense?

2794. The Chairperson: You are making sense. We must clarify the position on a number of key areas. First, under the current proposals from the NIO for devolution, who will set sentencing policy? Secondly, we must consider the issue of the policy on prosecutions. Under the NIO model, one assumes that that will rest with the PPS, without any accountability to the Department or the Assembly. However, I am not sure about that, and there might be something with the Department that we do not know about. Thirdly, what implications would there be if we were to retain policy in the PPS but strengthen the statutory function of the scrutiny Committee to hold the director to account on policy? If we were to take the policy from the PPS and give it to the Department, what implications would there be for the PPS?

2795. Mr McCartney: The Lord Advocate of Scotland made a presentation to a conference in the Stormont Hotel, and someone who was at it said that they were impressed by what she said about being called in front of the Scottish Parliament about a breakdown in prosecutions. A clause allows her to opt out of giving a reason, if that is in the public interest. If the PPS is left to make a decision that giving information is not in the public interest, a mechanism would be needed to decide who the arbiter of that is.

2796. The Chairperson: A third option is to consider Alex Attwood's suggestion that the role of the Attorney General in answering for the PPS in the Assembly might be strengthened, without that being a superintendent's role. That might be similar to the role of the

Advocate General in Scotland. That is a third option to explore. The lines of accountability might come through the Attorney General, rather than through the Department.

2797. Mr Attwood: That is such a big issue, and some of best minds tried to work it out in the criminal justice review. We only have a couple of weeks to do that, so we will not be able to work it out. However, it would be significant if we could reach a consensus that there must be greater oversight, and if we considered models.

2798. The Chairperson: That would be significant, and it would then be a matter for the Assembly whether it wanted to carry out that work pre-devolution or post-devolution. In order to inform the Assembly, we need to know what the position would be if the current NIO model were to proceed under devolution. We need to know what the current position is on sentencing policy, and on the lines of accountability for the PPS, and who those are routed through.

2799. Therefore, in our report to the Assembly, we must set out what the current model is. If there is consensus that the current model needs to be strengthened as regards the lines of accountability, then what are the options? One possibility could be to examine the role of the Attorney General. The second option would involve the transfer of policy responsibility from the PPS to the Department, and the third would involve strengthening the statutory functions of the scrutiny Committee so that the director of the PPS could be held more to account on policy matters. Those are at least three models that the Committee might examine and present to the Assembly for further consideration, either before or after devolution.

2800. Mr Attwood: A fourth option would involve a structure similar to that of the Policing Board.

2801. The Chairperson: A fourth option would be to open up for debate the status of the PPS. It is a non-departmental public body that operates at arm's length from the Department. Could the structure of the PPS be changed to strengthen accountability, albeit at arm's length? That would be a fourth option that the Assembly might examine.

2802. Are Members content that we ask the Clerk to draw up a paper for us to look at — with the assistance of Assembly research services and whoever else he needs to call on — to see whether we can reach consensus to at least highlight the issue, and our thoughts on it, in the report? There is a consensus that we are not happy that the potential arrangements for sentencing and prosecutions are sufficiently strong to ensure public accountability through the legislature here. Members have expressed unease about the safeguards, and we must then consider how that will be reflected in the report.

2803. Mr McCartney: And then the mechanism can be dealt with.

2804. The Chairperson: Alex is right; in the time remaining to us, we are not going to come up with a single model.

2805. The Committee Clerk: The context of today's conversation is different to that of last week's conversation, which was on a range of other matters that were in the party position papers. It was clear that the Committee's concerns about the issues that were discussed last week were to be picked up by the Minister or Ministers of policing and justice and the Statutory Committee post-devolution.

2806. However, today you are asking that I get information, particularly on the PPS, that would inform the Committee's report so that it might make recommendations in a pre-devolution situation, or at least partially in a pre-devolution situation — and, arguably, in a post-devolution situation. Given the time available, I do not believe that it is likely that that will be wholly possible. I will certainly ask the

question. I do not think that it is a matter for Assembly research services, if I may say so. I accept entirely that this issue has emerged very late in the inquiry, but research and library services generated a series of papers, and a body of written evidence was supplied to the Committee on all of those issues. I do not sense that this matter has been an issue until now. I simply wish to flag up the fact that the Committee is due to report by 29 February, which is two weeks away, and it must consider how it might resolve any, or all, of those issues. For instance, the report could say that the issue exercised the minds of Committee members to a great extent and that there were various options considered as perhaps better working solutions than the current arrangements or the arrangements on devolution, and that it would then be a matter for the Minister or Ministers and the statutory Committee in a post-devolution situation.

2807. However, it would be difficult to make progress in the time that remains for the Committee to report.

2808. The Chairperson: I take your point, but this issue differs from other issues that we have dealt with, because in the public mind, this issue will be a significant post-devolution factor. We have identified four options — none of which damage the respective positions of any of the political parties — and there is value in outlining them. I would like the report to state clearly that the Committee is concerned about the lines of accountability and that those lines should be strengthened appropriately to ensure that the public interest is served but the operational independence of the criminal justice institutions is respected. Therefore, the Assembly should explore further ways in which we can strengthen those lines of accountability, as they are not now sufficient to strike the right balance. It is a matter for the Assembly to determine whether that is done by way of an instruction to the Department.

2809. The process concerns me a little — I have a vision of the issue rolling down the road ahead of us — yet it may be the only way in which we can deal with it. The stronger we make our case in the report, the more likely it is that the Assembly will take note of it and prioritise it. This issue may come down to the timing of devolution: if there is no consensus for it to occur in May, the Assembly may take the view that someone could take forward this work in the interim. That is why I am reluctant to say that it should simply be dealt with after devolution. The Assembly may take a different view and decide to make use of any delay by addressing the inadequacies that the Committee has identified in respect of the proposed arrangements.

2810. The Assembly would then decide whether it wishes to set up a Standing Committee, which would be similar to the Preparation for Government Committee, to take forward some of the work and to produce a report. If the Committee goes down the road of deciding that the Department should deal with the issue after devolution, it does not leave open the option for the Assembly to consider whether that work could be usefully taken forward in the interim within an agreed timetable.

2811. Mr McFarland: Members must clarify the information in their minds. We may be able to narrow the options down to two, but it is incumbent on us to clarify matters in our minds so that we can give guidance to the Assembly. After all, we will have to take the lead on debates relating to the issue, and we will have guide people on what issues need to be addressed. The deadline is getting tight, but it would be useful to re-examine the evidence, because two or three options may simply fall off the edge — in which case we will be a little further on. However, we have a duty to clarify the matter in our minds before we move on.

2812. The Chairperson: Is the Committee content with the suggestion that the Committee Clerk should draft a response to the effect that we have identified this as a major issue that must be addressed? We have to inform the Assembly that, in the context of its report to the Secretary of State, it will have to consider how it wishes to take the matter forward. Further to that, it must decide whether there are matters that it wishes to address, before or after devolution. I would not try to guide the Assembly any further than that, or ask whether or not the matter should be dealt with by the new Department.

2813. The Committee Clerk: Procedurally, that is entirely in keeping with section 18(1)(a) of the Northern Ireland (St Andrews Agreement) Act 2006, which refers to

“the preparations that the Assembly has made, and needs to make”.

2814. Mr McFarland: We must have clarity, for example, about the role of the Attorney General. The holder of that post must be in place on devolution. I know that it is unlikely, but technically in May, we could have devolution here, in which case OFMDFM must quickly put in place a process for recruitment of the Attorney General, who must be in post on devolution, as I understand it. We must have clarity about what the Attorney General is going to do, and whether or not he has a duty to appear before the Committee.

2815. The Chairperson: There is a consensus among the four party positions that the Attorney General should appear before the Assembly. I have a question for the Committee Clerk: I believe that the position at present in the NIO proposals is that the Attorney General has the right to attend meetings of the Executive, but not to vote. Is that correct?

2816. The Committee Clerk: Yes.

2817. The Chairperson: That is the current position. I believe that legislative provision has been made to enable the Attorney General to appear on the Floor of the House and to answer questions.

2818. Mr McFarland: That legislation must be made in the Assembly.

2819. The Committee Clerk: It is also the case that, if an Attorney General for Northern Ireland is not appointed on devolution, the Attorney General for England and Wales will continue to carry out the required functions until such times as a local appointment is made.

2820. The Chairperson: OK. There is a default position. It is my understanding that the funding for the Attorney General's office comes from the Department. Is that correct? The Public Prosecution Service is funded by OFMDFM. How is the Attorney General's office to be funded, according to the current NIO proposals?

2821. The Committee Clerk: I am not sure that that is specified. However, it would be an office in its own right. In order to protect the integrity and the independence of the Attorney General, the budget for that office would not necessarily be associated with any new Department of policing and justice. The question is addressed here because members have, from time to time, raised the issues associated with creating another office.

2822. The Chairperson: The Minister of Finance and Personnel read out a list of bodies in the House yesterday. It seems that the Food Standards Agency gets a special mention every time there is an allocation of funding. It struck me that that Agency gets its funding directly from the block grant rather than being channelled through the relevant Department. I assume, therefore, that the Attorney General's office will be funded in the same way. Is the Policing Board also directly funded? The question then is: who determines the allocation? Is it the Minister of Finance and Personnel?

2823. Mr Attwood: Yes. The justice and policing budget will be funded from the block grant. Those moneys will not be protected.

2824. The Chairperson: Yes. Therefore, the allocation to the Department will be determined by the Minister of Finance and Personnel. The allocation will then be disbursed to the various agencies and boards that are the constituent parts of the Department, which will

include the Attorney General's office.

2825. Are members content that the funding for the Attorney General's office is kept separate, and comes out of the block grant directly, rather than being routed through either the Department or the Office of the First Minister and deputy First Minister?

2826. Mr I McCrea: I was going to ask if OFMDFM had given a view on the matter. However, I now know the answer to that question.

2827. The Chairperson: OFMDFM has not given a view on the matter. That Department said that the Committee could form its own view without prejudice to any view that that Department might form in due course. It is proposed that the PPS will be funded through OFMDFM. The distinction between the PPS and the Attorney General is that he or she will have a seat on the Executive. Consequently, the office of the Attorney General is almost a ministerial office. Therefore, if funding is routed through another Department, does that potentially prejudice the uniqueness of that role?

2828. Mr Attwood: To whom will the Attorney General be accountable for his or her budget?

2829. The Chairperson: I suppose that he will be accountable to the Minister of Finance and Personnel for his budget.

2830. Mr Attwood: Although I am sure that the SDLP will agree that matter, I would like to think about it.

2831. Mr McFarland: Therefore, will the Finance and Personnel Committee be responsible for scrutinising the Attorney General's budget?

2832. The Chairperson: The Clerk has told me that, because the Attorney General is appointed through the Office of the First Minister and deputy First Minister, that office would have a role in the financial allocations.

2833. Mr McFarland: That seems to be a more sensible way of dealing with the matter.

2834. The Chairperson: It means that the Attorney General's office will be included in the same Department as the PPS.

2835. Mr McFarland: But only for the administrative side of that office?

2836. Mr Attwood: We have not agreed whether the office should be funded by OFMDFM.

2837. The Chairperson: No, we have not: under the current NIO proposals the Attorney General's office and the PPS are part of OFMDFM.

2838. The Committee Clerk: Under the arrangements that would come into force on devolution of policing and justice, the responsibility for prosecution policy rests with the Director of Public Prosecutions and not with the Attorney General.

2839. Mr McFarland: Nevertheless, the question is whether the policy remit should devolve to the Department or whether it should rest

with the Director — because the Director is the operational arm. Should the person who operates the policy be the same person who decides the policy?

2840. The Committee Clerk: That is the fundamental point about the independent role of the Public Prosecution Service.

2841. Mr McFarland: No. They are independent in their decisions on who should, or should not, be prosecuted.

2842. The Committee Clerk: The policy on that rests with the Director of Public Prosecutions.

2843. Mr McFarland: It does at the moment. However, the question is, should —

2844. The Committee Clerk: In the future, that policy will rest with the Director of Public Prosecutions.

2845. Mr McFarland: Is that only if we agree to it?

2846. The Chairperson: We have been looking at the question of whether, if that is the case — and it is under the current proposal — we should strengthen the statutory functions of the scrutiny committee to hold the Director to account for that role, or should we remove that power from the Director and transfer it to the Department. Those are the two options on the policy remit. Perhaps it might be left as it is, but something could be built around the PPS that increases its accountability — such as a management board or something similar to the Policing Board.

2847. Mr McFarland: Is there something, of which we are unaware, that would make the moving of responsibility for policy from the DPP to the Department a complete disaster that might wreck the PPS?

2848. The Chairperson: I believe that we are agreed that that is something that we are not going to be able to consider. Therefore, we may flag it up as an option. Then, it would be the responsibility of the Assembly to determine how the matter should be further investigated.

2849. Mr McFarland: Can we not — with a phone call — find out if there is a responsibility —

2850. The Chairperson: We might get one view on the matter as a result of a phone call. However, that view may not be impartial. I am not sure that it would provide a holistic approach.

2851. Mr McFarland: Can we re-examine the body of evidence that we have on the issue?

2852. The Chairperson: If the PPS says that it will be the end of the world for prosecutions in Northern Ireland if it loses its policy remit, is that an objective one?

2853. Mr McFarland: No, it is clearly not, but the question is why? If there is a logical reason why he can say that then we can accept that it would. If it is a case of him feeling that we are interfering with his empire, and he will be left with nothing to do, that is a

different issue.

2854. The Chairperson: There may well be a valid reason why the Director of Public Prosecutions and the PPS should continue to deal with policy. We cannot get into a further detailed examination of any of the four options that we have already identified, and there may be other options that will emerge. The best that we can do at this stage is to flag them up to the Assembly.

2855. Mr McFarland: We do not need to have another meeting of the Committee or we would be doing that over every issue. It is just not clear at the moment whether we could come to a decision if we had more clarity of information, because what we do know is that we cannot summon the Director of Public Prosecutions to appear in front of a Committee. We have been told to forget that, because as the Lord Chief Justice (LCJ) argues, if he is in front a Committee he might be asked questions that are to do with his decision-making process on whether to prosecute or not, and, you will recall, that the LCJ said that he was not prepared to put any judge in that position.

2856. The Chairperson: Three of the four options that we are looking at result in the policy remaining with the director. The first one is that the director has policy responsibility, but the scrutiny Committee's statutory function will be strengthened to hold him, or her, to account.

2857. The second option is that the director has the policy responsibility, but the Attorney General's role is strengthened so that he or she is answerable to the Assembly for policy issues relating to the Public Prosecution Service.

2858. The third option is to build some kind of an accountability mechanism around the PPS itself, at arms length from the legislator, be that a management board, or a police board role.

2859. It is only in the fourth option, where you suggest the possibility of transferring policy to the Department, that the question arises of the implications for public prosecutions in Northern Ireland. Can we get a quick answer to that question that might inform us as to whether or not we should continue to flag that option up, or do we just run with the three options that envisage the Director having policy responsibility, but with the lines of accountability strengthened.

2860. The Committee Clerk: The honest answer is that I do not know how quickly I can get an answer.

2861. The Chairperson: Could we make an attempt, and what would you suggest that attempt might be, Alan? Should it be to talk to the Director of Public Prosecutions or to the Northern Ireland Office or both?

2862. Mr McFarland: I am asking whether there are indications as to which we should do in the body of evidence that we have received so far. I have not trawled through that, because we have been looking at this only lately from a different angle. We were going along with maintaining the status quo, but Alex raised a number of questions that perhaps we should have thought about earlier. They then raised doubts in my mind. I have been puzzling for some time about politicians being told to get their hands off the judicial system and not interfere in prosecutions or the Court Service. We were told to back off, and I was going along with that, although I was uneasy, because if we are making the law and providing the money we have a duty to make sure that the law is functioning properly, and the money is being spent properly

2863. That is the duty with which the Committee is charged. If it is hands-off in several of those areas, it will be prevented from doing its duty. There are, rightly, some matters in which the Committee should not be allowed to interfere, such as judicial judgements and

decisions on who is prosecuted. However, inside those narrow parameters, the Committee could argue that it has a vested interest in ensuring that the rest of those bodies — the Court Service, the judicial system and the PPS — work properly. The next question is how that is ensured.

2864. That is the point at which we have arrived, albeit belatedly: how best can politicians fulfil their duty with regard to those matters? I am asking only some logical questions. I appreciate that it is a bit late in the day. However, I am trying to determine whether, even at this late stage, the Committee could get a bit more clarity that might inform its decision-making. On the other hand, we can park the issue and deal with it later. I do not mind if anyone wishes to do that.

2865. The Chairperson: Before I invite Mr McCartney to speak, there are two issues that I want to discuss. One is the principle of who deals with public prosecutions policy. Depending on the answer to that question, the second issue must be dealt with; how it will be ensured that there are proper lines of accountability between whoever is responsible for policy and the Assembly. I believe that Mr McFarland is asking whether there is any way that the Committee can get an answer to the first question, which might, at least, inform us on the models with which we would answer the second question.

2866. Mr McFarland: Is there any easy way to get the answers? I do not want to create a lot of extra work. Clearly, there is a timeframe. Can we consider the matter quickly? If we cannot find a quick answer, we will have to park the matter.

2867. The Chairperson: My recollection is that we have not received enough evidence to date to adequately deal with the question of who should have policy responsibility. It is a big question. I am not sure that in the time that is available, we can get a satisfactory answer that we could, with justification, bring to the Assembly to contend that we believe that responsibility for policy should be taken from the director. We do not have sufficient evidence before us to justify making that recommendation at present. I believe that that is evident from the conversation that we have had.

2868. Nevertheless, concern has been raised around the table about whether it is right that the director continues to have responsibility for policy or whether we need to beef up the Department and give it policy responsibility. I am not content that we have enough evidence before us with which to make that judgement, nor am I content that we can do justice to answering the question in the time that is available. However, I believe that it should be flagged up in the report. In doing so, it should also be flagged up in the report that the decision on that has implications for the lines of accountability. The Committee is not happy with current proposals on the lines of accountability. There is a feeling — a sense of unease — that the lines of accountability are not strong enough with the director's having policy responsibility. Therefore, there are some models that the Assembly might wish to explore further. It is up to the Assembly to decide how it wants to take the matter forward.

2869. Although I accept your point, Mr McFarland, I believe that that is the best that we can do even if there were an easy answer to your question. However, I do not believe that there is an easy answer. The issue is too complex and important for the Committee simply to say that because the director says something, it should be the basis on which a judgement is made.

2870. The Committee Clerk: Chairperson, it is probably worth recognising that any of the evidence that the Committee has heard is based on the premise of decisions that would be taken on devolution that are contained in the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004; that there would be no superintendence role, and that responsibility for prosecution policy would rest with the director.

2871. The Chairperson: At present, that is the default position. I sense that none of us is happy with the lines of accountability that are

created in the new post-devolution system. It is simply a matter of reflecting that strongly and prioritising it in our report to the Assembly, and, in so doing, saying that the Committee believes that that issue must be dealt with. How it is dealt with is a matter for the Assembly.

2872. We simply want to flag up that, in considering the direct lines of accountability, the question arises as to whether it is appropriate for the director to be responsible for developing policy on prosecution, or might the Assembly wish to consider removing that power and giving it to the Department. That is the best that we can do at this stage, Alan. I do not want the issue to be parked: I want the Committee to flag it up in terms that make clear to the Assembly that it must examine the issue.

2873. Mr McCartney: I need clarification on one point. We have already heard that when powers have been devolved, the NIO will no longer be the custodian of the agency, which can then be turned into what has been called the Irish/Scottish model. When the current arrangements for the PPS have been devolved, will the Assembly have the power to overturn that?

2874. The Chairperson: Yes, it will.

2875. Mr McCartney: All members have made the same points as Alan this morning. I do not want to be controversial, but that highlights the need for the transfer to take place as soon as possible because, without transfer, the current situation, to which you referred as a disaster, will continue.

2876. The Chairperson: I take your point, Raymond. However, in theory at least, should devolution be delayed, the Assembly could still carry forward the work that the Committee has started.

2877. Mr McCartney: Absolutely; I was simply saying that there are questions about public confidence, and so forth.

2878. The Chairperson: The Committee can deal with the issue in different ways. The Assembly has decisions to make, and, at a higher political level than this Committee, decisions will have to be taken on timing. Those decisions will influence how the Assembly decides to move forward.

2879. The Committee has generated enough heat around the table — and I mean that in a positive and constructive sense — to justify flagging up the issue as a priority in its report. It must be considered in the context of devolution, and, whether pre-devolution or post-devolution, it is a matter for the Assembly, not the Committee.

2880. Are members content to let it rest there? The Committee Clerk will try to get his head round members' positions when he drafts the report.

Members indicated assent.

2881. The Chairperson: To clarify, members, there is consensus that the post of Attorney General should be full time. For the time being, are members content that the costs associated with that office be dealt with according to the current arrangements? Should changes be required in the future, that will be a matter for the Department and the scrutiny Committee, and so forth. Is the Committee Clerk happy with that?

2882. The Committee Clerk: Yes.

2883. The Chairperson: We move on to the lines of communication and accountability of the Serious and Organised Crime Agency (SOCA) and the security services to the Department on excepted matters, such as national security and organised crime.

2884. The DUP's position, as reflected in its paper, is that it does not propose any additional mechanisms be conferred on the Assembly for those matters.

2885. Alan, the UUP's position is that there should be further examination of whether additional memoranda of understanding should be developed to allow the Policing Board and the Assembly a degree of oversight in the involvement of SOCA in Northern Ireland.

2886. Mr McFarland: SOCA covers two types of organised crime: terrorist-related organised crime and ordinary decent crime (ODC), as it has been described. The Policing Board and the Assembly are not allowed to interfere in terrorist-related crime. However, if SOCA targets an organised criminal gang, the issue is whether the Policing Board, and, one could argue, the justice Minister and the Committee, may have an interest in whether that investigation is being properly and rigorously conducted. How can we ensure that we, and they, are kept informed about such investigations?

2887. The Chairperson: You raise an interesting point. That issue arose at the Policing Board meeting last Thursday. The Chief Constable has said, on the public record, that there will come a point when our so-called paramilitary organisations will no longer be regarded in that sense and will be treated as criminal gangs. In response to a question that I asked, the Chief Constable said that, in his opinion, we have already reached that point, and the PSNI are approaching the issue from the perspective of dealing with organised crime.

2888. That raises a question as to whether the UVF or the provisional IRA, for the sake of argument, are being treated as organised gangs if they are continuing to operate organised crime — I am not suggesting that they do or do not, unless the Chief Constable clarifies the position on that. Assuming that those organisations were engaged in organised crime, would that be a terrorist-related matter of national security, which would, therefore, fall under the protocols that exist between the Policing Board, the security services and SOCA, or would it fall under the other category that Alan identified? The latter category may need to be dealt with as a separate category, with separate memoranda of understanding, so that there would be some degree of further accountability between SOCA and the Policing Board and the Department.

2889. Mr McFarland: Let us suppose that there is an organised gang — there are a number of them around — which is not related to a paramilitary group, but which has teamed up with an organised gang in Romania to import drugs. That gang is clearly not terrorist-related. SOCA will look at that organisation and its international links. That is what SOCA is for; it is the equivalent of the FBI in looking at crimes that cross international borders. How are we to ensure that the Assembly and the Policing Board will be kept up to date on the investigation into that gang, which is based in Glengormley? We would be unable to scrutinise an investigation that falls under the remit of SOCA, because SOCA is an excepted matter. Perhaps we need additional memoranda.

2890. As I understand it, the memoranda that are in place between MI5, the police and SOCA are concerned with anti-terrorist measures. Do they also cover, or do we need additional memoranda to cover, the Policing Board and the Assembly being made aware of what SOCA is doing with the organised gang in Glengormley that has teamed up with the Romanians?

2891. The Chairperson: Yes. I take your point. Alex, you might want to come in, because your paper covered that issue.

2892. Mr Attwood: There are many dimensions to that issue. Last week, NIO officials told the Committee that the memoranda will not be available, perhaps, until April. I was surprised at that. We have a very large piece of draft legislation, in confidence, and we do not have even draft memoranda that govern all the channels of communication between the various agencies and the Minister, etc. I do not want to draw any conclusions about that, but I am keen to see what those memoranda will say. I suspect that they will be extremely restrictive.

2893. The Chairperson: Can we ask the Committee Clerk to communicate with the NIO? Unfortunately, it was made clear to us last week that we will not see those memoranda before we publish our report. At this stage, the best thing that we can do is ask the Committee Clerk to write a letter, on behalf of the Committee, to the Northern Ireland Office in the context of the preparation of those memoranda of understanding, saying that there is a distinction between organised crime that is linked to terrorism or paramilitary groups and that which is linked to what we might call ordinary criminal gangs.

2894. Mr McFarland: We might call it ordinary decent crime.

2895. The Chairperson: Therefore, it is the view of the Committee that there ought to be a distinction drawn between the two, and we would want to see that reflected in the memoranda in respect of the level at which the Policing Board and the Assembly can interface with SOCA on that matter. Alan, does that reflect your views?

2896. Mr McFarland: Yes.

2897. Mr Attwood: I am concerned about the content of all the memoranda.

2898. I think that we should try to get some consensus on my second point. One of the real risks is that when the Assets Recovery Agency (ARA) in the North disappears into SOCA on 1 April, and given that SOCA, at senior management level, is heavily influenced and occupied by ex-security service people — which is the case not just at leadership level but at senior management level where there are ex-MI5 operatives — inevitably their tendency will be to go after international terror and international money. The level of organised crime in the North, which is significant in domestic terms, will not register alongside the international terror or financial threat. There is a real problem that, over time, if not quickly, there will be a drift of resources and strategy away from the North by SOCA, leaving the issue of organised crime in the North not properly addressed.

2899. The Chairperson: Indeed. Alan McQuillan has highlighted that same concern. It is important to make it clear to the NIO when drafting the memoranda that we want to see a higher level of engagement between SOCA, the Policing Board and the Assembly or Department in relation to that aspect of organised crime.

2900. Mr Attwood: That is absolutely right.

2901. The third issue is that we have spent a lot of time this morning talking about making the PPS accountable, yet there is a huge area of the PPS's work where we have no interest, such as the Advocate General's office's responsibility on the excepted side, which involves the hard and serious terror side, among other areas. We will have virtually no standing, because we do not have any right to be involved in that and, no doubt, the information shared by the Assembly or the Minister will be very limited, and it will be even more

acute when it comes to the security services.

2902. In its paper, the SDLP spent a long time arguing that if we are really to be involved in accountability in the North, then whether it relates to SOCA, MI5 or the role of the Advocate General, we need to firm up matters as far as possible. People may think that this is some sort of witch-hunt or hobby horse or whatever —

2903. Mr McFarland: Certainly not.

2904. Mr Attwood: — or whatever way you want to put it, but we will be limited, and maybe end up with no role, on critical issues of policy in the PPS around excepted matters and the policy and activities of MI5 in the North.

2905. I am not making a political point, but last Friday afternoon, we saw MI5's role in the North, when it was revealed that an agent was about to be exposed. We see how that can impact. Let us fast forward six months to when MI5 is recruiting in the North, someone is about to be exposed in the North, or some activity of MI5 raises public concern in the North. We will have little standing or authority on those issues. That is why we say that we will not get that issue over the line in the next two weeks. However, along with the PPS issue, the Committee needs to highlight issues around SOCA and its future practice, MI5 activities in the future, and issues concerning the Advocate General.

2906. I am sorry to give the Committee Clerk a bit more work, but I have a straightforward question. In future, will the Advocate General for Northern Ireland have a superintendence role over the PPS on excepted matters? I suspect that he will. Therefore, the powers regarding excepted matters that will be taken away — for good reasons — from the Attorney General might be given to the Advocate General. That is because the British Government will want to be able to direct the PPS — on grounds of public interest or national security — not to pursue certain matters, to collapse certain cases and not to prosecute certain people. I might be corrected on this, but I suspect that that little piece of evidence will highlight a significant policy reason.

2907. Again, in one way, we are not going to be able to progress this issue. The SDLP and the Ulster Unionist Party raised the issues of SOCA and accountability. However, Sinn Féin's paper did not. If Alan is saying, on behalf of the Ulster Unionist Party, that there are issues that may need to be considered generically, I think that the Committee should at least name those issues, even if we cannot agree on how to progress them.

2908. Mr McCausland: I have a question about SOCA and the letter that the Committee is sending. From what I gathered, the Chief Constable was saying that paramilitary crime was now regarded as ordinary crime. Why then, in our letter, are we drawing a distinction between serious crime and paramilitary crime?

2909. The Chairperson: That is because there are still organisations in Northern Ireland that are engaged in terrorist activity.

2910. Mr McCausland: To which organisations was he referring?

2911. The Chairperson: The organisations that he no longer regards as being engaged in terrorism.

2912. Mr McCausland: Which organisations are those?

2913. Mr McFarland: He was basically saying that loyalist terrorist organisations are now just criminal gangs.

2914. Mr McCausland: What about republican organisations?

2915. The Chairperson: He is continuing to treat them as terrorist organisations for the purposes of dealing with the law and the special powers that he has.

2916. I drew attention to that issue. It is a big and ambiguous area. If certain organisations are being deemed as ordinary criminal gangs, why, then, are prisoners in Maghaberry Prison who are affiliated to those groups still being separated and granted special status? Such questions need to be pursued with the Chief Constable.

2917. Mr McCausland: That is fine.

2918. The Chairperson: The Committee does not want to get involved in the paramilitary issue. As a Committee, we are asking why there cannot be greater engagement between the Policing Board, SOCA and the new Department and Assembly regarding organised crime that is non-paramilitary related. That is what Alex was flagging up. In fairness, Alan McQuillan also flagged that up. We will leave the issue of what is or is not a paramilitary organisation for other people and another day.

2919. Mr Attwood: I agree. I am happy for the letter to be sent. One other issue is that the security services want to treat republican organisations, but not loyalist organisations, as a national security threat. Considering what the Chief Constable said last week — I was not aware that he said this — and as Alan said, he is trying to differentiate between loyalists and republicans because MI5 want to pass the issue of loyalist organisations over to the police, but do not want to do the same with republican organisations.

2920. Mr McCartney: Sinn Féin's position regarding SOCA has not changed since the meetings of the Committee on the Preparation for Government. Therefore, that is why that issue was not mentioned in our paper. Our position is well known.

2921. The Chairperson: I understand that. Is the Committee Clerk content with the Committee's position regarding excepted matters?

2922. The Committee Clerk: Some more than others.

2923. The Chairperson: There is an issue as to whether North/South agreements will require renegotiation by the new Department after policing and justice powers are devolved. There is also an issue as to whether there are any other cross-border or intergovernmental agreements that require consideration prior to those powers being devolved.

2924. The Committee Clerk: Those questions were put to the NIO on behalf of the Committee following previous discussions. North/South agreements will have to be renegotiated. Unfortunately, the NIO did not answer the question about whether there were further agreements that require consideration.

2925. The Chairperson: At the Committee meeting of 7 February 2008, the representatives from the NIO were clear that there is an agreement that falls on devolution, but that another aspect continues post-devolution.

2926. Mr Attwood: That is the policing aspect.

2927. The Chairperson: Yes, and they were clear that, statutorily, nothing is required to be renegotiated beyond the current agreements. However, that is a matter for Ministers.

2928. Mr McFarland: In their preamble at last week's meeting, the representatives from the NIO talked about ongoing work between civil servants on cross-border justice issues. I asked whether we could have a list of that programme, but I cannot remember whether they agreed to supply that.

2929. The Chairperson: I cannot remember either. Perhaps their response glossed over that question.

2930. Mr McFarland: They said that work was ongoing. Logically, we must be made aware of what that work is.

2931. The Chairperson: Do you want a letter to be sent on behalf of the Committee to follow up on your question, and to ask for clarity on the issues that continue to be the subject of discussion?

2932. Mr McFarland: As I have not seen the Hansard report, I do not know what exactly was said. I think that I asked the representatives from the NIO what ongoing work between civil servants was taking place.

2933. The Chairperson: I do not think that we got an answer.

2934. Mr Attwood: There is an extensive work programme, but it is non-threatening.

2935. Mr McFarland: Nonetheless, it would be good for the Committee to know what it contains.

2936. Mr Attwood: There would be a real problem if the justice agreement were to fall. The politics of the justice agreement are pretty neutral, but its impact on the health of the citizens on the island is important. Therefore, it would be useful to put a justice agreement mark II in place, at least in the areas that have been governed by the justice agreement mark I. The justice agreement should be taken forward in many different ways, and we can have that conversation. The old agreement should, at least, be renewed under devolution because it is a matter of protecting people, North and South.

2937. Mr G Robinson: That is also the DUP's line on that.

2938. The Chairperson: The DUP's position is that the Department would need to agree new arrangements to replace the existing North/South agreements on relevant policing and justice matters.

2939. Mr I McCrea: Alex is saying that an agreement must be put in place on devolution, when the current agreement falls. Such an agreement would be an interim one to allow the new Minister, or Ministers, to get their act together to put a new agreement in place. Is that your suggestion?

2940. Mr Attwood: Yes, if the Assembly could agree that it would like to see the measures that are in the current agreement in place at the point of devolution.
2941. The Chairperson: That question was asked, Alex. The difficulty is that, legally, that must be agreed at ministerial level.
2942. Mr Attwood: On day one of devolution —
2943. The Chairperson: A ministerial meeting or a North/South Ministerial Council meeting could take place.
2944. Mr McFarland: The Assembly has to put the legislation through.
2945. Mr Attwood: It is not legislation.
2946. The Chairperson: No, it is not legislation.
2947. Mr Attwood: It is an agreement between Governments.
2948. The Chairperson: It is an agreement between Governments at ministerial level.
2949. Mr McCausland: What areas are covered by the agreement?
2950. Mr Attwood: Children's issues and sex offenders are covered by it.
2951. The Chairperson: The sharing of information on paedophiles is covered.
2952. Mr McFarland: Multi-Agency Sex Offender Risk Assessment and Management (MASRAM) is included; it is all fairly logical stuff.
2953. Mr Attwood: All the policing and security aspects of the agreement will continue anyway.
2954. The Chairperson: People will ask what the agreement is about, so it is important to have that information.
2955. Mr McFarland: It is about, for instance, sending the Fire Brigade to Lifford if there were a fire there.
2956. The Chairperson: We need a copy of the agreement from the NIO, or a list of the issues that are covered by the agreement. We need to incorporate that in our report, and we need to tell the Assembly that there is an existing agreement, which will fall on devolution. We need to tell the Assembly which issues are covered by the agreement, and that new arrangements will need to be put in place.

2957. Mr McCausland: This is about the exchange of information between Northern Ireland and the Republic on issues such as paedophiles and sex offenders. What is the position on the exchange of information between Northern Ireland and England, Scotland and Wales? Why should there be an arrangement between Northern Ireland and the Republic of Ireland when there is an equal need for relationships and exchanges of information between the Republic of Ireland and Wales or Scotland? Paedophiles can get on the boat at Dun Laoghaire and go to Holyhead or wherever. What is needed is a British Isles exchange of information rather than a North/South arrangement.

2958. The Chairperson: The current arrangement is a North/South agreement. If that is to be replaced by a new British-Irish agreement —

2959. Mr McCausland: That would be in keeping with the whole thrust of the Belfast Agreement, because it will be an east-west relationship.

2960. The Chairperson: I assume that that would have to be done under the aegis of the British-Irish Council. It would mean pulling together the justice Ministers —

2961. Mr McCausland: Information on such serious matters should be taken out of politics.

2962. The Chairperson: I assume that some sort of arrangement already exists.

2963. Mr McCausland: Rather than creating a North/South mechanism, a comprehensive arrangement would cover all the relationships.

2964. The Chairperson: You are probably right, Nelson. I rather suspect that there are aspects of the North/South agreement that are territorial in nature. In order to have an informed conversation on this issue, we must obtain a list of the areas that are covered by the North/South agreement so that we can identify those issues that require immediate attention at North/South Ministerial Council level, and those that might fall to the British-Irish Council.

2965. Mr McFarland: We have that in one of our papers from the NIO.

2966. The Chairperson: I have it somewhere. Perhaps the Committee staff could circulate that list to members by email so that they can give it further consideration. In the first instance, Alex, we will have to consider the form of words to be used in the report to flag the issue up to the Assembly. We will then have to determine whether there is a specific recommendation.

2967. Can we park that in the meantime, members? We need to establish the substance of this next matter.

2968. We put a question to the NIO in relation to the Northern Ireland Police Fund. It is funded out of the Northern Ireland block grant. One assumes, therefore, that it would fall to the Department to deal with that matter. Someone asked me whether responsibility for the Police Fund should rest with the Department, with the victims' commissioners designate — or with OFMDFM, because it liaises with the victims' commissioners designate. I do not know the answer, and, at the moment, there is no home for the Police Fund. Is that correct? I am not sure whether it is funded out of the block grant. The NIO may have clarified exactly who takes on responsibility for it.

2969. The Committee Clerk: To be honest, I do not have the letter of 15 October 2007 with me.

2970. The Chairperson: Was that circulated in a recent folder?

2971. Mr McFarland: It is the first letter in our black folders.

2972. The Committee Clerk: No. It is at annex B of the letter of 15 October 2007.

2973. The Chairperson: In its letter of 6 February 2008, the NIO say:

"The Northern Ireland Police Fund's budget forms part of the general Policing and Security allocation which in turn is part of the overall NIO grant. There is no separate arrangement."

That does not tell us where it is going.

2974. Mr McFarland: We had a chart detailing all the agencies that would transfer across.

2975. The Committee Clerk: It is at annex B of the letter of 15 October 2007, which I do not have to hand. When I send the other document out, I can tell the Committee where it is proposed that the Police Fund will sit. My recollection is that it is a body that will fall under the remit of the proposed new Department of justice.

2976. The Chairperson: Clerk, you think that the Police Fund comes under the remit of the Department of justice?

2977. The Committee Clerk: Yes.

2978. The Chairperson: If that is the case, does the Committee think that the Police Fund should remain in the Department, or should we leave the matter for further deliberation after the devolution of policing and justice?

2979. Mr Attwood: It should remain there; there will be new legislation on the Police Fund between now and the autumn, so there will be a legislative opportunity to look at moving it from the Department of justice.

2980. The Chairperson: Are members content that this matter transfers as proposed by the NIO?

Members indicated assent.

2981. The Chairperson: Clerk, a line should be put inserted in the report stating that the Assembly may wish to consider further whether the funding of the Police Fund is a matter for the Department of justice or the Victims' Commission and OFMDFM. Are members content with that?

Members indicated assent.

2982. The Committee Clerk: The original discussion paper in 2006 stated that:

“funding and oversight of Police Fund would be a matter for the Northern Ireland Executive.”

That was non specific, but my recollection is that there is reference to the Police Fund falling under the responsibility of the Department for justice in annex B of the letter.

2983. The Chairperson: That completes what the Committee has to deal with in regard to structures.

2984. The Committee Clerk: In relation to the point on position papers.

2985. The Chairperson: We move onto the issue of Life Sentence Review Commissioners. Clerk, as there was a query on this issue at last Thursday's meeting, will you talk us through where we have got to?

2986. The Committee Clerk: Yes; the draft Criminal Justice (Northern Ireland) Order 2007, which was also discussed last Thursday, will introduce a new system of parole commissioners who will overtake the current Life Sentence Review Commissioners. The NIO says that the new parole commissioners would be subject to the same arrangements as the Life Sentence Review Commissioners. The new law will largely replicate the existing law.

2987. Mr McCartney: I assume that there will be one rather than two separate entities.

2988. The Committee Clerk: That is right.

2989. The Chairperson: Do we need to do anything about that?

2990. The Committee Clerk: Nothing, other than simply noting the answer.

2991. The Chairperson: Would it be necessary to mention it in our report?

2992. The Committee Clerk: Not specifically. That matter will be addressed along with a raft of other issues in the report. However, there is no requirement for the Committee to make a specific recommendation.

2993. The Chairperson: Is there anything that you want to flag up concerning the Commissioner for Hearings under Prison Rule 109B or Loss of Remission Commissioner?

2994. The Committee Clerk: The future sponsor will be the Department for policing and justice. The Committee asked for clarification

about whether the Department or the Prison Service would sponsor that position.

2995. The Chairperson: That raises a question about the position of the Prisoner Ombudsman, which has attracted a degree of publicity in recent weeks. The Prisoner Ombudsman has tendered his resignation because, under the legislation proposed by the Northern Ireland Office, his office would come under the Prison Service's jurisdiction, and he has said that, given that he would be required to investigate prisoner's complaints against staff and that his office would be funded by the Prison Service, there is a potential conflict of interest. He felt that the Prisoner Ombudsman should be appointed in the same way as the Police Ombudsman, namely that it should be a Crown appointment and not under the auspices of the Department.

2996. The Committee Clerk: That is also my recollection, although, I understand that some of the more controversial provisions in that legislation have since been withdrawn. However, I need to check on that.

2997. The Chairperson: For the benefit of Alex, who has returned, we need do nothing concerning the Life Sentence Review Commissioners, and we have had clarification that, in time, they will become the parole commission. Secondly, the Commissioner responsible for hearings under prison rule 109B will be sponsored by the Department for policing and justice.

2998. I have raised the issue of the Prisoner Ombudsman's intent to resign because he is concerned that the NIO's proposed legislation would entail future appointments to his position being made by the Department — which will be responsible for the Prison Service — and will potentially result in a conflict of interest because the Ombudsman must consider prisoner's complaints about Prison Service staff. In the future, the Ombudsman feels that his post should be a Crown appointment — similar to that of the Police Ombudsman — and outside the Department's remit. I asked whether the Committee should take a view or express an opinion on that issue, albeit that it would require legislative changes. Such a matter would be another of those flag-up issues to which the Assembly might wish to return. Do you wish to be involved in the discussion?

2999. Mr McFarland: It would be useful if that position retained some form of independence. At the time, the decision to make the position of Police Ombudsman a Crown appointment — with its own Department, hundreds of detectives and all sorts of other things — was a major issue. The appointment of the Prisoner Ombudsman does not appear to require the same level of activity. Clearly, there must be independence and it makes sense to remove the responsibility for that position from the Prison Service, but I am not sure that it is necessary to make it a Crown appointment and give it its own Department with endless numbers of prison investigators and so on. It is not the same.

3000. The Chairperson: Do we wish to mention that matter in passing and flag it up for the Department and Committee to consider in the future? Are members content to deal with the matter in that way? At this stage, we need not become exercised about it, and there are issues that we should consider in more detail.

3001. It is not really part of the preparatory work for devolution, but the Department and the Committee might want to look at it afterwards. A line or two in the report could reflect that concern has been publicly expressed about that issue and that the Department and the Committee might want to examine it after devolution.

Members indicated assent.

3002. The Committee Clerk: There was another matter under the broad heading of the Commissioner For Hearings. There is a similar

issue in relation to the medical appeals tribunal. Those tribunals will all be gathered together in the courts and tribunals service, to which the director of the Northern Ireland Court Service referred. That offers some clarification. That service would be an agency of the Department, so lines of accountability would exist there.

3003. The Chairperson: OK. We will move on to the Criminal Injuries Compensation Appeals Panel. In a letter of 15 October, the NIO stated that the Criminal Injuries Compensation Appeals Panel is a non-departmental public body funded by the NIO with members appointed by the Secretary of State. After devolution, the panel was to be funded by the Department with the new Minister or Ministers responsible for appointments to the panel.

3004. I understand that the panel transferred from the NIO to the Northern Ireland Court Service on 1 December 2007. The transfer was delivered by a machinery of Government letter, which transferred to the Secretary of State for Justice certain functions which were previously the responsibility of the Secretary of State for Northern Ireland. That allowed the Northern Ireland Court Service to assume administrative responsibility for the tribunal. We are awaiting confirmation from the NIO that that transfer has taken place, and we have asked for clarification on whether the new Minister will still be responsible for appointments to the panel.

3005. The Committee Clerk: Yes. It is not a controversial issue, but the updated version of the discussion document is silent about that panel. I simply pointed out that it was an issue that had previously exercised the minds of the Committee. We will wait for confirmation from the NIO.

3006. The Chairperson: OK. Are members content with that?

Members indicated assent.

3007. The Chairperson: Moving on to matters to be transferred, several matters to be transferred have been further developed in the most recent summary of draft legislation that has been provided by the NIO. It will be necessary to agree the status of those matters, as outlined in the latest documentation.

3008. With regard to firearms and explosives, the summary of the draft legislation by the NIO provides further clarification of the proposals set out in the initial NIO discussion document of February 2006. That document suggested that there were several ways in which firearms matters could transfer. The summary of draft legislation from the NIO confirms which firearms responsibilities will be devolved. All aspects of firearms responsibility should devolve apart from three. First, the matter of firearms appeals and the applications for the removal of statutory prohibition on holding firearms relates to appeals against the Chief Constable's decisions, and applications for the removal of a prohibition. The Assembly's capacity to legislate will be subject to approval from the Secretary of State. Therefore, the Assembly may legislate on that area, but will require the approval of the Secretary of State to do so.

3009. Secondly, the issue of prohibited weapons relates to arrangements for authorising the possession, purchase, acquisition, manufacture, sale or transfer of prohibited weapons. The Assembly's capacity to legislate will be subject to approval by the Secretary of State. That matter has moved on from being an entirely reserved or excepted matter to one on which the Assembly may legislate with the approval of the Secretary of State.

3010. Thirdly, the matter of Crown Servants relates to the authorisation in writing of a person without a firearms certificate who is a Crown Servant to purchase or acquire firearms for the public service. One assumes that that applies to the police, for example. That

responsibility will not devolve to the Assembly.

3011. With regard to explosives, the initial NIO discussion document of February 2006 suggested that the new Department would have full responsibility for matters relating to explosives. However, the more recent summary of the draft legislation states that that view has been revised and that responsibility for explosives regulation relating to health and safety and fireworks control should be devolved, but that security-related explosives matters should remain reserved.

3012. Mr McFarland: To clarify the point on health-and-safety issues linked to explosives, if explosives are being used in a quarry, that is normally a health and safety matter. Is that a security-related matter, because it involves the use of explosives?

3013. If a quarry owner got hold of gelignite, plastic explosive, or whatever they use nowadays, to bring rocks down in his quarry — is that a security matter or a health and safety matter?

3014. The Chairperson: It strikes me that that is health and safety.

3015. Mr McCausland: So the regulations for quarry use are our responsibility. What is left then? What does security cover?

3016. The Chairperson: I would imagine control of explosive devices, which in a security context might mean searching for explosives, detonators, etc. Obviously we do not have the military power, so that would not devolve to us. Security would also relate to powers in the Terrorism Act, for example, and explosive devices, which would remain as matters to be dealt with on a UK-wide basis, rather than by us.

3017. Mr McCausland: Presumably that also means licensing of manufacturing companies.

3018. The Chairperson: That would be security vetting and so on.

3019. Members, are you content that we do not raise an issue about the transfer of non-security explosive matters to the Assembly, because that is a new power. Are we happy for that to take place? The previous view was that it should take place and be reserved, but the NIO are proposing to devolve it. The Committee was always concerned about the security rather than the commercial issues. Are we content to proceed on that basis?

Members indicated assent.

3020. The Chairperson: Let us now turn to the misuse of drugs. The NIO did not raise the matter of powers relating to the misuse of drugs in the February 2006 discussion document. However, this matter was discussed by members as a result of the submission from the Scottish Minister for Justice.

3021. The NIO have explained how this matter will transfer in their summary of the recent draft legislation as follows:

“The Government believes that there is considerable merit in retaining a common framework within which controlled drugs are dealt

with and classified across the UK. The effect of this would be that the Assembly would continue to require the consent of the Secretary of State to amend the primary legislation”.

3022. However, the vast majority of the functions that are provided for in the Act — which the Secretary of State (in practice the Home Secretary) exercises in relation to Great Britain — are already devolved in Northern Ireland. They are conferred upon the Department for Health, Social Services and Public Safety, including the function of regulating the lawful use of controlled drugs in Northern Ireland by subordinate legislation. There are also already consultative roles for the Northern Ireland Ministers for health and for education outlined in the Act. By convention, there would be a need for a Legislative Consent Motion in the Assembly if the Government were to introduce legislation at Westminster that would alter the functions of DHSSPS or any of the Northern Ireland Ministers in this regard.

3023. So it is a two-way process. If we want to legislate we need the consent of the Secretary of State, and if they want to legislate in a way that impacts upon the transferred powers then they need the consent of the Assembly.

3024. Are members content with that?

Members indicated assent.

3025. The Chairperson: I am now turning to excepted matters in relation to Extradition and Mutual Legal Assistance.

3026. Two of the matters discussed at Chapter 18 of the NIO Discussion Document (February 2006) are Extradition and Mutual Legal Assistance — “(MLA)”.

3027. They will probably want to know who gets the money for that now. [Laughter.]

3028. As detailed by the February discussion document, there is a single legislative framework in existence for extradition arrangements throughout the UK (as a result of the introduction of a European arrest warrant). Therefore, the Government did not propose to devolve legislative competence in this area to the Assembly.

3029. However, the NIO stated that there are some administrative functions relating to extradition which could be exercised by Northern Ireland Ministers.

3030. The recent NIO summary of draft legislation confirms those matters relating to extradition which will transfer on devolution.

3031. The first of those matters is the inclusion of the Lord Chancellor’s functions on the designation of an appropriate judge in both category 1 (EU) and category 2 (non-EU) cases, provided for in sections 67(1)(c) and 139 (1)(c) of the Extradition Act 2003 respectively. Those will transfer to the Department of justice under article 3(2)(a) and (b).

3032. Secondly, the Lord Chancellor’s functions with regard to paying for legal aid before the House of Lords and designating judges to grant legal aid under sections 185(4) and (6) of the Extradition Act 2003 will transfer to the Department of justice under article 3(2)(c) and (d).

3033. Thirdly, the Lord Chancellor's regulation-making powers on costs for category 1 and category 2 cases provided for under section 61(8)(b) and 134(8)(b) will transfer to the Department of Justice under the devolution arrangements.

3034. Those are the Lord Chancellor's regulation-making powers on costs for category 1 and category 2 extradition cases. I am sure that that all means something. However, the bottom line for the Committee is that those limited powers will transfer on devolution to the Department. Will anyone be raising any major objections to that, he said moving on swiftly?

3035. I will move on to the subjects of the prevention and detection of crime and the regulation of the private security industry. The Private Security Act, as amended by the Justice and Security (Northern Ireland) Act 2007, enables the regulation of the private security industry in Northern Ireland by the Security Industry Authority. The distinction between the long-term arrangements for regulating the public security industry and the interim arrangements under the 2007 Act is new. The latter was not in place at the time of the initial NIO discussion document. I am simply flagging up that matter up to Committee members.

3036. The NIO previously said that some reserved aspects of the Regulation of Investigatory Powers Act 2000 (RIPA) would need to remain as a reserved matter. That is the case, and there are also some related intelligence-gathering issues that need to be reserved in parallel. That is not a new issue; it is simply a clarification of the position that we had previously flagged up as requiring a resolution.

3037. The February 2006 discussion paper highlighted the interface between national security and serious crime and indicated that, for that reason, some aspects of RIPA — that are currently reserved — might need to remain so. After consideration the Government has concluded that the techniques and methodologies concerned are of importance to the protection of national security. Therefore those arrangements should remain a reserved matter. Members that is not a new position. It is simply the NIO clarifying that which we asked them to clarify.

3038. After a report published in September 2003, the Government introduced arrangements for the separation of paramilitary prisoners in the interest in safety. The wings of two houses in Magheraberry Prison have been designated as separated accommodation. Criteria have been published that prisoners must meet to gain entry. They include membership of, or support for, a proscribed organisation and that their admission would not be likely to prejudice their safety or that of others. The separated accommodation scheme is administrative in nature, although it is included in the prison rules. Matters that officials and Ministers take into account in deciding whether or not to admit prisoners to, or remove them from, separated accommodation can include detailed and sensitive national security information.

"The NIO are proposing, therefore, that legislative competence in relation to accommodation in separated accommodation should remain reserved and that the Secretary of State would remain responsible for decisions on whether an individual should be admitted to, or removed from, separated accommodation."

3039. That is provided for in the draft legislation that will deal with the transfer of powers to the Assembly and Executive.

3040. Therefore, the NIO is saying that decisions on paramilitary prisoners, who apply for admission to the separated accommodation at Maghaberry Prison, or who may need to be removed from that accommodation, involve matters that are sensitive as regards national security. Therefore, the legislative competence and the decisions on who should be admitted to, or removed from, that accommodation will remain with the Secretary of State and not transfer to the Assembly when powers are devolved.

3041. That completes the consideration of the matters to be devolved. The Committee Clerk's brief included the clarification that we sought from the NIO in the light of the emerging legislative documents that we received last week.

3042. We move on to the terms of a motion for debate on the report. A draft was circulated yesterday, and there should be copies for everyone.

3043. Mr McCartney: Will the Committee be receiving copies of that brief?

3044. The Committee Clerk: I can provide members with copies.

3045. The Chairperson: I have also read it into the record as well, Raymond, and it will appear in Hansard.

3046. Mr McCartney: The Committee is meeting in private session today, and it is the first time that I have heard of the criteria for the separation of accommodation being linked to British national security.

3047. The Chairperson: Will the Committee Clerk please circulate my explanations on all those issues to each member? The explanations will be included in Hansard. However, I may have skipped a word or two, so it is better that everyone receives a copy.

3048. Members, you have a copy of the draft motion that will be tabled to the Business Committee. My understanding is that must be tabled by a certain date.

3049. The Committee Clerk: Should the Committee express a preference for the debate to take place on either the 3 March 2008 or 4 March 2008, the Business Committee would have to consider the motion when it meets next Tuesday, because business is scheduled two weeks in advance. After indicating what may be debated two weeks in advance, the Business Committee approves the Order Paper for the first of those two weeks.

3050. The draft motion, as it appears in the briefing document is as follows:

"That the Assembly approves the report of the Assembly and Executive Review Committee relating to the devolution of policing and justice matters and agrees that, as required by section 18 of the Northern Ireland (St Andrews Agreement) Act 2006, it should be submitted to the Secretary of State for Northern Ireland, before 27 March 2008, as a report of the Northern Ireland Assembly."

3051. Any party can amend the motion, and the Committee's report will reflect the need for further consensus before a report is sent to the Secretary of State. Therefore, when the Committee asks the Assembly to approve its report, which is the basis of the report that the Assembly will send to the Secretary of State, several outstanding issues will need to be resolved. What does that mean for the Committee? Will the Committee be saying to the Assembly that its report reflects a current view and that should the Assembly make no changes, it will have to send that report to the Secretary of State? That will reflect that the Assembly is not yet ready for devolution, because certain matters must be agreed before devolution can take place.

3052. Mr McFarland: Surely it must be done that way, because the Assembly told the Committee to discuss the issues and report back on its position, which is what it will be doing. There is no other mechanism, unless the Assembly tells us to continue our discussions.

3053. The Chairperson: I have only one question, on which I will seek clarification. If the Committee states that its report should be submitted to the Secretary of State as a report of the Northern Ireland Assembly, is that in line with the motion that gave the Committee its remit? Perhaps the Committee Clerk will remind us of the terms of that motion that referred the matter to the Committee in the first instance.

3054. The Committee Clerk: The terms of the motion were based on the Northern Ireland (St Andrews Agreement) Act 2006.

3055. The first obligation that is placed on the Assembly in the Northern Ireland (St Andrews Agreement) Act 2006 is that

“(1) The Northern Ireland Assembly must make a report to the Secretary of State before 27 March 2008 —

as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St Andrews Agreement, for or in connection with policing and justice matters ceasing to be reserved matters;

as to which matters are likely to be the subject of any request under section 4(2A) of the 1998 Act that policing and justice matters should cease to be reserved matters;

containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008.

3056. The Chairperson: We have dealt with the first two issues, but we have not reached consensus on them. The third issue is an assessment of whether the Assembly is likely to make a request for the devolution of policing and justice matters before 1 May 2008. Is that in our remit?

3057. The Committee Clerk: It is in your remit, and you can express a view that the Committee did not reach consensus on some issues.

3058. The Chairperson: That question can be answered in two ways. First, the Committee can report that there is no consensus on whether the Assembly is likely to make such a request — in other words, we do not know, which is the truth. There is no consensus out there to devolve policing and justice matters. The Assembly has not reached a definitive decision on the matter yet. Perhaps we should simply report that it is the Committee’s understanding that no view has yet been formed on whether to request devolution of policing and justice matters. That will be the basis of the report, because the Assembly may then have to come to a view — even if it is that we are not ready for devolution before 1 May 2008. We are being asked to assess whether the Assembly is ready to make that decision, or has made that decision. Clearly, neither applies.

3059. Mr McCausland: Is the question not that we should assess whether the Assembly is likely to request devolution? What was the wording again?

3060. The Chairperson: Under the terms of reference, and within the legal requirement, section 18 of the Northern Ireland (St Andrews Agreement) Act 2006 is entitled “Report on progress towards devolution of policing and justice matters”. It goes on to mention the arrangements that the Assembly has made and intends to make, so it is not suggesting that there must be a definitive answer. We could say in our report that it is a requirement on the part of the Assembly to report to the Secretary of State on whether the Assembly

is likely to make such a request for the devolution of policing and justice matters before 1 May 2008. That is the requirement under the legislation.

3061. Mr McFarland: We could say that it is a requirement on the Assembly, not the Committee.

3062. The Chairperson: We could go on to say that, from evidence that the Committee has received, we do not believe that there is consensus, or we could say that the Committee has not taken a view on the matter but urges the Assembly to come to a view so that a report can be made to the Secretary of State by 27 March 2008. There are a number of ways in which the Committee can deal with the issue.

3063. Mr McFarland: Our view is that there is no consensus. That helps the Assembly.

3064. The Chairperson: Do the four parties around the table want me, as the Chairman, to ask the formal question: is your party ready to support a request from the Secretary of State for the devolution of policing and justice powers before 1 May 2008? We could include the outcome of that in the report, which would say that the Committee reported that Sinn Féin and the SDLP's view was x, and that the DUP and UUP's view was y, z or any variation in between. The report would draw those views to the attention of the Assembly.

3065. The Committee Clerk: The Committee has agreed, in certain circumstances, that the resolution of some of the issues, such as the ministerial model or the method for appointment, is a matter for higher political consideration. Therefore, the recommendation could also refer the issue of whether the Assembly is likely to make a request to that higher political forum. That could be an alternative.

3066. Mr McFarland: Technically, if the parties meet and agree on those issues, the report might be able to make recommendations to the Secretary of State.

3067. The Chairperson: Our report would say that, given that a number of significant issues remain to be resolved, the Committee has formed the view that the Assembly is not yet in a position to request the devolution of those powers. That would be a factual statement; it would not ask any party to take the view that it is against devolution in May 2008, regardless of what else is agreed. The parties in the Assembly would be left to take that question forward.

3068. Do members want to reflect on that in advance of tomorrow's meeting? Do you want the Committee to put the question formally to the four parties that are represented here — without prejudice to the outstanding issues that are to be resolved, do you wish to have the devolution of policing and justice powers before 1 May 2008?

3069. The second option is that the Committee's report would reflect the fact that there was not yet a sufficient level of agreement to enable the request for the devolution of policing and justice powers to be made.

3070. Does the Committee want the question to be put formally, or should the report reflect that it is evident from the inquiry that the Committee was not yet in a position to request the devolution of policing and justice powers, leaving it for the Assembly to resolve the outstanding issues in whatever way it sees fit.

3071. Mr McFarland: The best option is to make a factual statement that, because the outstanding issues are not resolved, the

Committee is not able to take the decision.

3072. The Chairperson: It would then be left to the political parties to express their views in the debate. The Committee would say that we recognise that work remains to be done, but we would say that we are, or are not, in favour of devolution by 1 May 2008.

3073. Mr McFarland: Potentially, the leaders of the parties can get together and come to another decision.

3074. Mr McCausland: What will be forwarded to the Secretary of State? Is it the content of our report, or is it the content of our report and the debate?

3075. The Chairperson: The report and the debate will be forwarded, along with any further political decisions that may be taken in the meantime.

3076. The Committee Clerk: It is conceivable that, after the debate, whether that is to be on 3 March or 4 March, or on 10 March or 11 March, the Assembly will have a further debate before May that might address the issue more sharply.

3077. The Chairperson: My view is that the best that we can do is to report the factual position. The alternative is to go back to your parties and ask them to make a political decision before they have seen the report. I am thinking about what the best way of handling that is, under the protocol and convention of the situation.

3078. Mr McFarland: The Secretary of State has met with most party leaders and has put a fair amount of pressure on them to take a decision. My guess is that there will be more such meetings to try to progress the issue after the debate in the Assembly.

3079. The Chairperson: It is important to be clear that, as it currently stands, there is not going to be devolution of policing and justice powers.

3080. Mr McFarland: The point that I am making is that there could be. If the Secretary of State calls all-party talks between 17 March and 28 March, with a view to producing a decision, technically, the party leaders could produce a —

3081. The Chairperson: I appreciate that, but that is way beyond —

3082. Mr McFarland: Yes, but the final decision will be taken by the party leaders. The Committee's report will have to state that some issues are undecided, and it will be up to the parties to take those decisions.

3083. The Chairperson: To get back to the terms of the motion, are members content with the current terms of the motion?

3084. Mr McCartney: Will the report state that certain issues remain undecided?

3085. The Chairperson: Absolutely.

3086. The Committee Clerk: The Committee is simply being asked to approve the content of the report.

3087. The Chairperson: That is correct. In effect, there is a three-week period between the debate on the Committee's report and it being referred to the Secretary of State. Therefore, parties can address any issues during that time. In theory, it is possible for agreements to be reached on some of the outstanding issues, but that may not happen.

3088. Mr McFarland: Is the Committee in a position to recommend that our report should be forwarded as a report of the Assembly, or is that the Assembly's decision?

3089. The Chairperson: It is the Assembly's decision.

3090. The Committee Clerk: The Committee has to recommend the report to the Assembly.

3091. The Chairperson: The Committee will propose that our report should be submitted to the Secretary of State for Northern Ireland before 27 March 2008 as a report of the Northern Ireland Assembly. It is up to the Assembly as to whether it agrees to that. Basically, the same system is used as when any other Committee produces a report — it can then become a report of the Northern Ireland Assembly. However, the Committee's report is not necessarily the final and definitive view. Under its legal obligations, the Assembly may refer our report, plus other matters, to the Secretary of State.

3092. Are members content with the terms of the motion?

3093. Mr Attwood: This is probably like dancing on the head of a pin, and events will probably have moved on after 3 March or 4 March. However, I am concerned about the terms of the motion. The motion states that the Assembly approves the report. Someone may argue that the use of the word "approves" means that the Assembly is approving the fact that policing and justice powers will not be devolved by May 2008, rather than simply approving the report.

3094. The Chairperson: Assembly Members are free to propose an amendment to reflect that if they so wish.

3095. The Committee Clerk: Essentially, the wording is the same as was used when the Ad Hoc Committee reports were referred to the Secretary of State. Therefore, the wording has been drafted in the same way as if it were an Ad Hoc Committee report. Basically, the motion is stating that the Assembly endorses the report and refers it to the Secretary of State.

3096. The Chairperson: Are members content with the terms of the motion?

Members indicated assent

3097. The Committee Clerk: Is there a preference for a date for the debate? Although the Committee cannot necessarily influence the Business Committee, it is able to request that the debate should take place on one of the four days that I have identified. Those four days have been identified because the Assembly will be in recess from 15 March and does not reconvene until after the deadline for the submission of the report.

3098. The Chairperson: An early debate will give Members more time to consider matters before the report goes to the Secretary of State.

3099. The Committee Clerk: Are either 3 or 4 March suitable?

3100. The Chairperson: Those dates would be our first preference. Our second preference would be 10 or 11 March. Bearing in mind our present position, are you happy that we can deliver the report for either 3 or 4 March?

3101. The Committee Clerk: Yes. Chairperson, you had also mentioned the prospect of a meeting tomorrow. In light of the way things have gone today, I am not in a position to give you anything substantive for discussion tomorrow. We may obtain new material, but I wonder whether there is any virtue in having a Committee meeting tomorrow. It might be better to pick up the pieces at next Tuesday's meeting and take a first read through the draft report then, with a view to ordering that it be printed when you have had a second read over it in two weeks' time.

3102. Mr McCausland: I propose that we meet again next Tuesday.

3103. The Chairperson: We have had a full discussion today. Over the past two or three days, we have ranged over the issues. The longer that we discuss them, the more we will uncover things that might have to be included.

3104. Alex, we have covered all the ground in discussions. There is not much point in having a meeting tomorrow because there is not enough material available to justify bringing people together. We feel that we should allow the Committee Clerk the time that he needs to draw up the first draft of the report for initial consideration next Tuesday. There will be much to discuss when we examine the draft report. It will give the Committee Clerk time to get it finalised. There are no issues that have to be rolled into tomorrow. We have covered the ground that we needed to cover today. We are of the view that we set tomorrow aside while the Committee Clerk concentrates on furnishing us with a draft report as quickly as possible in advance of next Tuesday. We will then have a further deliberative session on the draft report. The final session to sign off the report for publication will take place the following Tuesday.

3105. Mr Attwood: The staff will need as much time as possible, because it is not an easy piece of work. I am not necessarily arguing for a meeting tomorrow, but having moved the discussion about the PPS down the track, we could move the discussions about SOCA, the security service and the North/South agreements down the track as well. If we are not going to meet tomorrow, we must make time to have those discussions.

3106. The Committee Clerk: I intend to make requests today for the various pieces of information that the Committee wishes to see, and to ensure that they are issued as promptly as possible to members in advance of the publication of the draft report, and so that they can consider that information immediately before the first reading of the report next Tuesday. In the meantime, I will try to produce a form of words in the draft report that might reflect the outcome of the queries that have been submitted from various places, and might anticipate the Committee's position on those issues.

3107. The Chairperson: Are members content?

Members indicated assent.

3108. The Chairperson: We will not have a meeting tomorrow. That will give the Committee staff time to work on the draft report, which will be circulated to members as soon as possible, and before the meeting next Tuesday. We will ask members to treat the draft report as confidential. We do not want it to enter the public domain until members have had a chance to discuss it in more detail.

3109. Were there any other matters on which we asked the parties to go back and reflect? At this stage, there is no consensus on the name of the new Department. Members have heard the options, and if there are any further views, we can revisit that issue in the context of our deliberations on the draft report.

3110. Last Thursday, we asked Raymond McCartney to consider an issue and come back to us on it.

3111. The Committee Clerk: He has clarified his position on a couple of points.

3112. The Chairperson: That is fine.

Appendix 3

Papers from the NIO



Devolving Policing and Justice in Northern Ireland: A Discussion Paper

Table of Contents

	Page Number
Foreword by Secretary of State	
Chapter 1. Introduction	1
Chapter 2. Background	2
Chapter 3. Scope of Devolution	3
Chapter 4. Departmental Models	4
Human Rights & Equality safeguards	6
Resources	7
Chapter 5. Criminal Law and Creation of Offences and Penalties	8
Chapter 6. Prevention and Detection of Crime	9
Police Powers	9
Police & Criminal Evidence (NI) Order 1989	9
Regulation of Investigatory Powers Act 2000	9
Criminal Records Checks & Disclosures	9
Forensic Science Northern Ireland	10
State Pathologist's Department	10
Key Persons Protection Scheme	11
Other UK bodies involved in tackling criminality in NI	11
Chapter 7. Prosecutions	12
Public Prosecution Service	12
Advocate General for Northern Ireland	13
Chapter 8. Treatment of offenders	14
Prisons	14
Prisoner Ombudsman	14
Probation Board for Northern Ireland	14
Youth Justice Agency	15

Mentally disordered offenders	15
Life Sentence Review Commissioners	16
Sentence Review Commissioners	16
Northern Ireland (Remission of Sentences) Act 1995	17
Chapter 9. Compensation	18
Compensation Agency	18
Criminal Injuries Compensation Appeals Panel	18
Chapter 10. Community Safety Partnerships	19
Chapter 11. Chief Inspector of Criminal Justice	20
Chapter 12. Public order	21
Legislative framework	21
Parades Commission	21
Chapter 13. The Police & the Policing Accountability Framework	22
Policing Board	22
Appointment of members	23
Funding	23
Devolution of Board functions	23
District Policing Partnerships	23
Police Service of Northern Ireland	24
Funding and audit	24
Pay and pensions	25
Recruitment and appointments	26
Senior appointments	26
Vetting appeals	26
Temporary 50:50 provisions	26

Severance	27
Alternatives to Plastic Baton Rounds	27
Flags and emblems	28
Medals	28
Police complaints and the Police Ombudsman Appointment	29 29
Funding and corporate governance	29
The wider policing family	29
Police Oversight Commissioner	29
Lay visitors	30
Police Association	30
Police Rehabilitation and Retraining Trust	30
Police Fund	30
RUC George Cross Foundation	31
RUC Widows Association	31
Traffic Wardens	31
Chapter 14. Firearms and explosives	32
Chapter 15. The Courts	33
The Courts	33
Lord Chancellor's responsibilities	33

Lord Chief Justice (NI) responsibilities	34
Northern Ireland Court Service	34
Legal Aid	34
Inspection of the Court Service	34
Social Security Commissioners & Child Support Commissioners	35
Appeals to the House of Lords/Supreme Court of the UK	35
The Judiciary	35
Judicial independence	35
Roles and responsibilities	35
Judicial appointments	36
Senior judges	36
Other listed judicial offices	36
Removal of judicial office holders	36
Senior judges	36
Other listed judicial offices	37
Northern Ireland Judicial Appointments Ombudsman	37
Judicial salaries, pensions, terms & conditions	37

QC appointments	38
Miscellaneous UK-wide Lord Chancellor functions	38
Court-related functions	38
Appointment functions	38
Other UK-wide ministerial functions	39
Chapter 16. Northern Ireland Law Commission	40
Chapter 17. North-South Co-operation	41
Criminal Justice co-operation	41
Policing co-operation	41
Personnel exchanges between PSNI & An Garda Siochana	41
Chapter 18. Excepted matters (including national security & extradition)	43
National Security: transfer of primacy	43
Counter-terrorism policy and legislation	44
Security of economic key points	44
National Security vetting	44
Extradition	45
Mutual Legal Assistance	45
Chapter 19. Next Steps and Implementation	46

Foreword

The legislation I have introduced today will pave the way for future devolution of policing and justice in Northern Ireland. I have introduced this enabling legislation now because I want to send out a clear message: I believe that responsibility for policing and justice in Northern Ireland should properly lie with a Northern Ireland Assembly, directly accountable to the people of Northern Ireland.

Devolution of policing and justice will not happen overnight. It cannot happen until the Assembly is restored. It cannot happen until the Assembly wants and asks for devolution of these powers. And it cannot happen unless Parliament is convinced that the proposed arrangements for devolution are robust, workable and broadly supported by the parties.

But although this may be some way off, it is important that we start discussing now, with all the parties, how devolution of policing and justice can work most effectively for the people of Northern Ireland. This paper is intended to initiate and facilitate those discussions. It sets out what the Government believes is a sensible and pragmatic framework for policing and justice in Northern Ireland under an Assembly.

It sets out which specific powers we think should be devolved and how these could operate. It also identifies particular areas where further thinking is needed.

This paper is not a blueprint but a discussion document. It is an opportunity for all the political parties in Northern Ireland to engage with the Government and, together, work out how devolution of policing and justice should work.

The Rt Hon Peter Hain MP
Secretary of State for Northern Ireland

Chapter 1

Introduction

1.1 Under the law as it currently stands, a restored Northern Ireland Assembly and Executive would not have responsibility for policing and justice matters, which remain the responsibility of the UK Government and Parliament at Westminster. The Government believes that it is in the best interests of the people of Northern Ireland that, in the context of stable devolved government and with broad support from the parties, decisions on these matters should be made by local politicians. The Government set out its willingness in principle to devolve these matters in the Belfast (Good Friday) Agreement and reiterated it in the Joint Declaration of 2003.

1.2 In advance of this transfer of responsibility happening, some detailed consideration needs to be given to exactly what would devolve, what would not, and the implications such a transfer would have for the structure of the Departments within the Executive. This consideration needs to be informed by a clear understanding both of what is meant by "policing and justice matters" and of what the Government's position is in relation to future devolution. This information should enable the parties to consider how best to approach discussions – both within and between the parties – about the what, how and when of devolution.

1.3 This paper sets out in broad terms what we mean by justice and policing in Northern Ireland, what is intended to be devolved and also identifies some areas where devolution is not so straight forward and where further thought needs to be given to how it should be achieved.

1.4 It is not a detailed implementation plan. That can only be put in place when it is clear what is to be devolved and to what structures, which is something the Assembly will need to consider. There will be a significant amount of detailed planning to be done to ensure a smooth and successful transfer when devolution is eventually agreed.

1.5 In parallel with this document, the Government has today introduced a Bill to Parliament that includes enabling clauses to pave the way for this future devolution when the time is right. The Bill does not make any assumptions about what the Assembly will ask for in the way of policing and justice powers or when it will do so. It simply gives the Secretary of State the power to give effect to the Assembly's request by Order, rather than requiring another Bill in due course.

1.6 The Government plans to invite the parties to discuss the proposals in this discussion paper in the coming weeks.

Chapter 2

Background

2.1 Prior to the introduction of Direct Rule in 1972, the old Stormont Parliament had responsibility for policing and justice in Northern Ireland. Although all subsequent attempts at devolution have reserved responsibility for these matters to Westminster, the Government has a longstanding commitment to devolve policing and justice when circumstances are right to do so.

2.2 It had been hoped that it would be possible to reach agreement on how this would be done in the 1996-8 negotiations leading up to the Belfast (Good Friday) Agreement. That did not prove possible. Instead the Agreement recommended independent reviews of both policing and criminal justice as a means of taking this work forward. But the Agreement made clear that the British Government remained "ready in principle, with the broad support of the political parties, and after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues." That remains the Government's position today. The Independent Commission on Policing ("Patten")

2.3 The Independent Commission on Policing in Northern Ireland was established as part of the Agreement. The Commission reported on 9 September 1999 and thereport – known as the "Patten Report" – made 175 recommendations. Whilst much of the Patten Report drew directly on previous reviews of the Royal Ulster Constabulary (RUC) it also dealt with wider policing reform issues linked to the Belfast Agreement.

2.4 To oversee the implementation of these recommendations, the Patten Report recommended the setting up of an Independent Police Oversight Commissioner to monitor and report on progress three times a year. In his June 2005 report the current Oversight Commissioner stated that two thirds of the Patten recommendations had been implemented and that he was confident that the remaining recommendations would be achieved on time.

The Criminal Justice Review

2.5 The terms of reference for the Review of the Criminal Justice System in Northern Ireland were set out in the Belfast Agreement. The Agreement envisaged a wide-ranging review of criminal justice (other than policing and those elements of the system relating to the emergency legislation) – the most important and far-reaching survey of criminal justice in Northern Ireland in the last 30 years. The Review, which was set up in 1998 and reported in March 2000, aimed to deliver a fair and impartial system of justice to the community; be responsive to the community's concerns, and encourage community involvement where appropriate; have the confidence of all parts of the community, and deliver justice effectively and efficiently.

2.6 So far nearly three quarters of the 294 recommendations of the Review have been implemented. Most of the remaining recommendations depend on devolution of responsibility for criminal justice matters.

Chapter 3

Scope of Devolution

3.1 When considering the potential for devolving policing and justice matters to the Northern Ireland Assembly, it is important to do so within the framework of the Northern Ireland Act 1998, which gives effect to the structures and procedures set out in the Belfast Agreement. That Act divides subjects into three categories: transferred matters, reserved matters and excepted matters. Generally speaking, transferred matters are those that the Assembly can legislate on of its own accord. Excepted matters are those that are the responsibility of the UK Government and only Parliament at Westminster can legislate on. Reserved matters are also the responsibility of the UK Government and would normally be legislated on at Westminster. However, the Assembly can legislate on reserved matters with the consent of the Secretary of State and such matters could, under certain circumstances, be transferred to the Assembly's responsibilities in the future.

3.2 The overwhelming majority of policing and justice matters fall within the "reserved" category and, along with other reserved matters, are set out in Schedule 3 to the 1998 Act. It is these that are the focus of this discussion document. The Joint Declaration published by the British and Irish Governments in 2003 included at Annex 2 an indicative list of policing and justice matters covered by Schedule 3, making clear that, in principle, all or any of these might be devolved. Updated to take account of the Justice (NI) Act 2002 and the Constitutional Reform Act 2005, this list reads as follows:

- the criminal law¹;
- the creation of offences and penalties¹;
- the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings¹;
- prosecutions;
- the treatment of offenders (including children and young persons, and mental health patients, involved in crime);
- the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
- compensation out of public funds for victims of crime;
- local community safety partnerships;
- the Chief Inspector of Criminal Justice in Northern Ireland;
- the maintenance of public order, the Parades Commission for Northern Ireland;
- the establishment, organisation and control of the Police Service of Northern Ireland and of any other police force (other than the Ministry of Defence Police); the Northern Ireland Policing Board; traffic wardens;
- firearms and explosives;
- rights of appeal to the Supreme Court and associated legal aid arrangements;
- the Courts;
- the Northern Ireland Law Commission;
- the Social Security and Child Support Commissioners.

1 Except in relation to national security, treason and counter-terrorism, which are excepted matters.

3.3 This list sets out, in broad terms, the areas that the Government would envisage devolving, should the Assembly wish it. Decisions about which areas should devolve (and the timing of the transfer) have not yet been taken, and it is theoretically open to the Assembly to request the transfer of all of them or only a few. The Government, however, considers that there are fundamental linkages between the various elements of the policing and justice system and devolving it piecemeal would be likely to undermine its capacity to operate as a coherent system. So while there is some flexibility in certain discrete areas, the Government's view is that policing and justice, if they are to devolve, should devolve all together and at the same time.

3.4 The rest of this document explains in more detail what is covered by each of the headings in the above list and identifies those few areas where, if the Assembly wishes it, there might be scope to separate responsibilities between Westminster and Stormont. The chapters are ordered to mirror the sequence in which these issues appear in the list in Schedule 3 to the Northern Ireland Act 1998.

Each chapter also highlights the key issues which will need to be resolved as part of the process by which the parties in the Assembly come to a decision about devolution.

Chapter 4

Departmental Models

4.1 The first – and in some ways the most significant – issue that will need to be resolved concerns the Departmental structures that will need to be put in place following devolution. Before devolution of justice and policing takes place, the Assembly will need to consider how the devolved administration would reorganise itself to receive and manage these new responsibilities. This is primarily for the Northern Ireland parties themselves to address but, given the sensitivity of these functions, the Government would need to be satisfied that the arrangements were likely to “prove robust and workable, and broadly supported by the parties” (Joint Declaration 2003 p.14).

4.2 Consistent with the Agreement, whatever new model is agreed should contain adequate safeguards to protect the rights and interests of all sides of the community while ensuring that there is effective decision-taking capability.

4.3 Without prejudice to the views of the parties it is possible to identify a number of models:

4.3.1 A single Justice Department, headed by one Minister (perhaps supported by a Junior Minister from the other tradition). This was broadly the approach favoured by the Criminal Justice Review. A single Department has the advantage of facilitating a joined-up approach to the criminal justice system. A variant would be to agree a rotation arrangement so that the Department changed hands between parties after a fixed interval.

4.3.2 A single Justice Department headed by two Ministers, with decisions requiring the agreement of both, similar to the arrangement provided for in the Northern Ireland Act where the First Minister and deputy First Minister act jointly in carrying out their statutory functions. (As a variation on this, the First Minister and deputy First Minister could themselves take on the roles of the two ministerial heads of a new Department.) Any double-headed arrangements of this sort would strengthen cross-community accountability but could weaken decision-taking capability. It would therefore be particularly important to consider whether this model would be likely to prove robust and workable.

4.3.3 Responsibilities for justice to be added to those of the First Minister and deputy First Minister, perhaps supported by additional Junior Ministers. Two key issues here are whether it would be workable for the First Minister and deputy First Minister to provide ministerial oversight in these key areas in addition to all their other responsibilities; and whether such an arrangement would fundamentally change the nature of the Office of the First Minister and deputy First Minister, and the relationship between that Office and the Northern Ireland Departments.

4.3.4 Two Departments (say Policing and Justice), with the two Ministers each coming from a different tradition. Splitting the portfolios could reduce risks of deadlock but weaken efforts to integrate the system more effectively.

4.4 In settling this issue, account will need to be taken of both political balance and effective governance.

NOTE: The text in the rest of this document refers variously to a Northern Ireland Minister for policing and a Northern Ireland Minister for justice. This does not indicate a recommendation that there should be two separate such posts. It is merely an indication of where, in the event that the Assembly decided to create two separate such posts, the responsibility would most logically lie.

4.5 The parties will wish to consider whether establishing new arrangements for the devolution of policing and justice has any implications for the allocation of functions and responsibilities between existing Northern Ireland Departments and to reflect on the implications for the operation of d'Hondt. The relationship between the Department or Departments with responsibility for policing and justice and the Executive as a whole will need to be addressed, as will the relationship of the new arrangements to the Assembly, including the implications for the structure of Assembly Committees. The role of any Assembly Committee overseeing policing will need to be considered in light of the important role set out in the Patten recommendations for the Policing Board, on which a number of MLAs are represented. Providing clear lines of accountability will be important to ensuring the system works well.

4.6 In order to promote joined-up working across policing and justice, a number of jurisdictions have established cross-cutting groups of Ministers and/or officials. Arrangements of this sort are currently in place for Northern Ireland. It will be necessary to address whether such structures would continue to be desirable after devolution of policing and justice.

Human Rights and Equality safeguards

4.7 The Human Rights Act 1998 and sections 6 and 24 of the Northern Ireland Act 1998 provide important human rights safeguards that will continue to apply following the devolution of policing and justice. Under those provisions, the Northern Ireland Minister(s) and Department(s) responsible for policing and justice post-devolution will be obliged to act in a way that is compatible with the European Convention on Human Rights. Similarly, the Assembly will be unable to pass any legislation which is incompatible with the Convention.

4.8 Most of the organisations which would devolve as part of the devolution of policing and justice are covered by the statutory equality duty set out in section 75 of the Northern Ireland Act 1998. They would continue to be covered by that duty following the devolution of policing and justice, irrespective of whether responsibility for them transferred or remained reserved or excepted. Any new Department of Justice and/or Policing would automatically be covered by the duty by virtue of section 75(3)(c) of the 1998 Act.

Resources

4.9 Currently funding for policing and justice does not form part of the Northern Ireland block grant, but instead is voted on separately by Parliament. Parliament makes two such votes: one for the Northern Ireland Office budget and the other for the budget of the Northern Ireland Court Service, a separate Department headed by the Lord Chancellor rather than the Secretary of State. On devolution, funding would transfer to the Northern Ireland block grant.

4.10 In England, Scotland and Wales a proportion of the funding for policing is provided from Council Tax by means of a policing precept. This allows for policing to be enhanced by local authorities in GB to reflect local priorities. The Government is currently considering how best to provide for this power to be available to Northern Ireland Ministers after devolution. It would of course be for Northern Ireland Ministers and the Assembly to decide how to allocate resources across all of the responsibilities.

4.11 The chapters which follow look in more detail at what devolution would mean for each of the headings in the list at 3.2.

2 The following organisations are covered:

- the Police Service of Northern Ireland;
- the Police Ombudsman;
- the Policing Board;
- District Policing Partnerships and, following commencement of the as-yet uncommenced amendments introduced by the Police (NI) Act 2003, the Belfast DPP sub-groups;
- the Northern Ireland Court Service;
- the Director of Public Prosecutions (though not in respect of a decision on whether or not to prosecute);
- the Chief Inspector of Criminal Justice;
- the Northern Ireland Law Commission;
- Probation Board for Northern Ireland;
- the Northern Ireland Office (encompassing the Forensic Science Agency, the Youth Justice Agency, the Prison Service and the Compensation Agency); and
- HM Revenue and Customs.

Chapter 5

Criminal Law and Creation of offences & penalties

Paragraph 9(a) & (b) of Schedule 3 to the Northern Ireland Act 1998

5.1 This chapter considers the overall statutory framework governing what constitutes a crime and what the appropriate penalties are. The Secretary of State is currently advised on this by the Criminal Justice Directorate of the Northern Ireland Office. As the heading suggests, a key part of the work is creating and maintaining the criminal law in Northern Ireland through legislating for the creation of offences and related court procedures (current topics include bail, proceeds of crime, hate crime, mental health review, road traffic offences and sexual crime, including sex offender management). The work also includes development of criminal justice policy in related areas, such as court sentencing and restorative justice, as well as services for victims of crime.

5.2 Following devolution, these functions would become the responsibility of Northern Ireland Ministers, and be carried out within a Northern Ireland Department of Justice. Subsequent arrangements for cross-jurisdictional services – for example the Criminal Cases Review Commission – would be a matter for the devolved administration to consider.

5.3 Responsibility for advising the Crown on exercise of the Royal Prerogative of Mercy traditionally has been exercised in exceptional circumstances primarily to grant remission of penalties imposed by the courts. Following devolution, as is the case in Scotland, it would be for Northern Ireland Ministers to advise the Crown on cases which fell into what would then be the devolved area, while the Secretary of State would continue to be responsible for advising in relation to any matters which were reserved or excepted, such as treason or offences prosecuted under terrorism legislation.

Chapter 6

Prevention & Detection of Crime

Paragraph 9(c) of Schedule 3 to the Northern Ireland Act 1998

6.1 This chapter deals with the statutory framework within which the police – and other law enforcement agencies – operate within Northern Ireland. The Police Service of Northern Ireland is the organisation established to maintain law and order in Northern Ireland. It is therefore the main organisation involved in the prevention and detection of crime. The organisation and accountability of the police service is dealt with in chapter 13.

Police powers

6.2 The police have a series of statutory powers, including some in common law, that enable them to take forward their crime prevention and detection duties, many of which require judicial authority. For example, they may obtain search warrants or effect a forced entry to premises under certain circumstances. For Northern Ireland, these powers are largely set out in the Police and Criminal Evidence (NI) Order 1989 (known as PACE). Police and Criminal Evidence (NI) Order 1989 (PACE)

6.3 Broadly speaking, PACE legislation in Northern Ireland mirrors PACE legislation in England and Wales, so police officers in both jurisdictions have very similar powers.

6.4 At present, PACE legislation is a matter for Westminster, being brought forward by the Secretary of State, usually in response to similar changes being made for England and Wales. Following devolution, responsibility will transfer to the Assembly and the Northern Ireland Minister for policing. If there are separate Ministers for policing and justice post-devolution, there may be a need for the transfer legislation to require the policing Minister to consult the justice Minister before amending PACE, given the importance of these rules for the wider justice system.

The Regulation of Investigatory Powers Act 2000 (RIPA)

6.5 The Regulation of Investigatory Powers Act (RIPA) provides a comprehensive regulatory structure governing the acquisition of intelligence information. As such, its subject matter is generally exempted. Given the interface between national security and serious crime some aspects of RIPA which are currently reserved may need to remain so.

Criminal records checks and disclosures

6.6 Part V of the Police Act 1997 creates a UK-wide statutory framework for the disclosure of criminal and police records as part of the recruitment process for certain sensitive posts. The primary aim of the legislation is to protect children and vulnerable adults. The Act gives the Secretary of State the ability to seek the necessary information from the Chief Constable and the power to specify any new databases holding relevant information. As the framework is UK-wide, the Secretary of State's powers allow access to relevant information from any UK police service. Work to implement Part V of the 1997 Act in Northern Ireland is well advanced and is likely to result in the establishment of an executive agency of the Northern Ireland Office to deliver disclosure services.

6.7 In Northern Ireland there will also be a need to co-operate with An Garda Síochána and other criminal justice agencies within Ireland to minimise gaps between systems in Northern Ireland and the Republic of Ireland. There will continue to be a cross-UK and an international dimension to the work following the devolution of policing and justice.

6.8 The powers currently vested in the Secretary of State could transfer to a Northern Ireland Minister following devolution of policing and justice. In the event that there were to be separate Ministers for policing and for justice, some thought would need to be given to which would be most appropriate to fulfil these functions. Alternatively, as Part V is self-contained it would be possible for it to remain the responsibility of the UK Government without affecting the overall devolution of policing and justice. Equally, it would be possible for legislative responsibility (for amending the statutory framework) to remain at Westminster while executive responsibility (for carrying out the functions under the legislation) to transfer to Northern Ireland Ministers. In Scotland Ministers have responsibility for both, but work closely with colleagues in England and Wales to ensure the system is joined up.

Forensic Science Northern Ireland

6.9 Forensic Science Northern Ireland (FSNI) is responsible for the provision of scientific advice and support to enhance the delivery of justice. It became the third Executive Agency of the Northern Ireland Office in September 1995, its functions having previously been carried out by the Northern Ireland Forensic Science Laboratory, a Division of the NIO. Its name was changed from the Forensic Science Agency of Northern Ireland to Forensic Science Northern Ireland in April 2000.

6.10 FSNI is headed by a Chief Executive who is accountable to the Secretary of State for Northern Ireland. He is required to make an annual report to the Secretary of State which is laid before Parliament. Policy oversight and scrutiny of the FSNI is carried out within the Criminal Justice Directorate in the NIO.

6.11 All the functions of Forensic Science Northern Ireland would be devolved, so that FSNI would become an executive agency of a Department of Justice. It would be accountable to Northern Ireland Ministers, and responsibility for scrutiny and oversight of the FSNI would transfer to a Department of Justice.

State Pathologist's Department

6.12 The State Pathologist's Department (SPD) is a department of the NIO, operating at arms length in providing an independent forensic pathology service for Northern Ireland, as well as providing advice and guidance in other areas of forensic medicine. The core function of the SPD is to conduct autopsies as directed by HM Coroners in Northern Ireland. The statutory duties of the State Pathologist and his department are contained in the Coroners Act (Northern Ireland) 1959 and Coroners Rules 1963.

6.13 The SPD's primary role is to carry out autopsies to determine the cause of death when it occurs suddenly, suspiciously or unnaturally; preparing autopsy reports and giving evidence at coroners' inquests. The SPD supports the Police Service of Northern Ireland and the Public Prosecution Service by attending scenes of death or crime, by providing expert forensic pathology opinion and advice to them and by giving evidence in court.

6.14 These functions would be devolved and the SPD would become a department of the Department of Justice, operating at arms length from but accountable to Northern Ireland Ministers.

Key Persons Protection Scheme

6.15 Since the early 1970s successive Secretaries of State have operated and financed a limited discretionary scheme to protect the homes (and occasionally the workplaces) of certain individuals considered to be under a substantial or greater terrorist threat. In making decisions for admission to the scheme Ministers consider the individual's job or occupation, any wider role that he/she might be fulfilling and a threat assessment supplied by the Chief Constable. Applications that fall outside the strict eligibility criteria are also considered.

6.16 After devolution, and assuming that the scheme or something like it was still necessary, its operation would become the responsibility of Northern Ireland Ministers. Arrangements would need to be developed to ensure that they had access to appropriate information when considering an application, given that some of it might originate from sources within the excepted field.

Other UK bodies involved in tackling criminality in NI

6.17 HM Revenue & Customs (HMRC) is another law enforcement body that operates in Northern Ireland. Revenue and customs remain excepted matters and, as such, will not be devolved. The legislative framework underpinning revenue and customs officers will continue to be the responsibility of Parliament at Westminster. However, HMRC will continue to work closely with the police, and other partner agencies of the Organised Crime Task Force, following the devolution of policing and justice, to tackle organised crime in Northern Ireland.

6.18 The Assets Recovery Agency, Serious Organised Crime Agency and the UK Immigration Service are also involved in tackling criminality in Northern Ireland. The Assets Recovery Agency's aim is to disrupt organised criminal enterprises by seizing their criminal assets, using both civil recovery and taxation powers. The Serious Organised Crime Agency's main purpose is to prevent and detect serious organised crime and to reduce the harm it causes to the UK. All three organisations report to the Home Secretary and form part of the Home Office. Following the devolution of policing and justice it is envisaged that they will consult with Northern Ireland Ministers, where appropriate, instead of the Secretary of State.

Chapter 7

Prosecutions

Paragraph 9(d) of Schedule 3 to the Northern Ireland Act 1998

The Public Prosecution Service

7.1 The single most significant element of reform proposed by the Criminal Justice Review 2000 was the transformation of the existing Department of Public Prosecutions (DPPNI) into a new Public Prosecution Service for Northern Ireland (PPSNI). The PPSNI was formally established on 13 June 2005 using provisions set out in the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004.

7.2 The PPSNI when fully rolled out will be responsible for all prosecutions previously conducted by the DPPNI and those previously

brought by the police. It will operate regionally, establishing local offices in Belfast, Londonderry, Ballymena, Omagh, Newry and Lisburn. In order to be able to take on this role fully, the new Service is being greatly increased in size. Full roll-out of the new PPSNI is planned for 2007.

7.3 The head of the PPSNI is the Director of Public Prosecutions for Northern Ireland. The PPSNI is an independent prosecuting authority subject, currently, to the superintendence and direction of the Attorney General, and is accountable to the Attorney for the performance of his functions. The Attorney is in turn answerable to Parliament for the PPSNI. The Attorney is not engaged in the day to day running of the Service but may be consulted in respect of certain prosecutorial decisions. Even when consulted, the prosecutorial decision rests with the Director unless it requires the consent of the Attorney or the Attorney exercises his power to direct. The power of direction has not been used since the early 1970s.

7.4 As well as looking at existing arrangements, the Criminal Justice Review was tasked specifically to look at how prosecutions, and the Attorney General's other functions in relation to Northern Ireland, should operate once they were devolved. Flowing from the Review recommendations, the Justice (Northern Ireland) Act 2002 sets out the arrangements for a post-devolution environment.

7.5 The current position is that one person, the Attorney General, holds two posts: Attorney General for England & Wales and Attorney General for Northern Ireland. Under devolution a new Attorney General for Northern Ireland (Attorney General NI) will be created. The Attorney General for Northern Ireland will be appointed by the First Minister and deputy First Minister, after consulting the Advocate General for Northern Ireland (see below).

7.6 Following devolution and the end of Ministerial responsibility for the prosecution service, the Director's relationship with the Attorney General for Northern Ireland will be one of consultation. The Attorney General NI will have no power of direction or superintendence over the PPSNI, whether in individual cases or on matters of policy. This underpins the independence which was a key recommendation of the Criminal Justice Review.

7.7 The Attorney General NI will be responsible for appointing the Director and Deputy Director of Public Prosecutions. He will also require the Director to prepare an annual report on how he has exercised his functions, and will arrange for that report to be published and to be laid before the Assembly. The Director will not be required to answer to the Assembly except in relation to finance and administration and will consult the Attorney General NI where appropriate.

7.8 The independence and impartiality of the prosecution system are fundamental principles of the UK justice system. The Government will put forward a Concordat setting out the core principles of the independence and impartiality of the Public Prosecution Service in Northern Ireland, which would be agreed with the Northern Ireland Executive before devolution. Advocate General for Northern Ireland

7.9 The current Attorney General has a number of functions relating to Northern Ireland which are excepted, and which will not therefore be devolved. These include matters relating to national security, such as the certification of scheduled offences. Following devolution of policing and justice, a new office of Advocate General for Northern Ireland will be created to take on responsibility for any of the current Attorney General's functions which are excepted and which will not be devolved to the Director of Public Prosecutions in Northern Ireland or to the Attorney General for Northern Ireland. This role will be fulfilled by the same individual who serves as the Attorney General for England and Wales.

Chapter 8

Treatment of Offenders

Paragraph 9(e) of Schedule 3 to the Northern Ireland Act 1998

Prisons

8.1 The Northern Ireland Prison Service is an executive agency of the Northern Ireland Office. It operates under the direction and control of the Secretary of State within a statutory framework based on the Prison Act (Northern Ireland) 1953 and the Prison and Young Offenders' Centre Rules (Northern Ireland) 1995. It is responsible for keeping in secure, safe and humane custody those committed by the courts. It works with prisoners and other organisations in seeking to reduce the risk of re-offending and in so doing aims to protect the public and contribute to peace and stability in Northern Ireland.

8.2 The prisons function would be devolved and the Northern Ireland Prison Service would become an agency of a Department of Justice accountable to the Northern Ireland Minister for justice.

Prisoner Ombudsman

8.3 The Prisoner Ombudsman is responsible for the investigation of complaints made by prisoners that cannot be resolved through the Prison Service's complaints procedure and for the independent investigation of any deaths in prison custody. The Ombudsman is currently appointed by the Secretary of State. On devolution the power of appointment would pass to Northern Ireland Ministers.

Probation Board for Northern Ireland

8.4 The Probation Board for Northern Ireland (PBNI) is a Non-Departmental Public Body established under the Probation Board (NI) Order 1982. The Board is appointed by the Secretary of State on a 3-year term and consists of a Chairman, Deputy Chairman and between 10 and 18 members. The aim of the Board is to help reduce crime (and the harm it does) by the provision of an adequate and efficient probation service.

8.5 The PBNI works with offenders who are subject to probation orders, community service orders and combination orders. They are also responsible for supervising those children serving the second half of a Juvenile Justice Centre Order and for the provision of grants for community development purposes.

8.6 Probation would be devolved and responsibility for the PBNI would be transferred to the Department of Justice. The Board and its members would be appointed by and accountable to the Northern Ireland Minister for justice. Following from Recommendation 222 of the Criminal Justice Review, the Assembly could legislate to change the status of the PBNI if it decided that Agency status would be a more appropriate means of delivering Probation services.

Youth Justice Agency

8.7 The youth justice system deals with children aged between 10 and 17. The main functions exercised within that system are delivered by the Youth Justice Agency, an executive agency of the NIO. It carries out its functions under the provisions of the Criminal Justice (Children) (NI) Order 1998 and the Justice (NI) Act 2002. Policy oversight and scrutiny of the Agency is carried out within the Criminal Justice Directorate of the Northern Ireland Office.

8.8 The Youth Justice Agency is responsible for a range of functions. In terms of custodial facilities, it operates the single Juvenile Justice Centre at Rathgael, near Bangor, which accommodates boys and girls who are committed to custody by courts or who are in need of a place of safety under Police and Criminal Evidence procedures.

8.9 The Agency's community services provide a Northern Ireland-wide network of projects which deliver a range of community orders, as well as working in partnership with other organisations to divert children away from crime and the criminal justice system. In addition, the Agency is responsible for the provision of a Youth Conferencing Service, currently being rolled out across Northern Ireland, to provide for diversionary and court-ordered youth conferences – a recent development in sentencing options for the Youth Courts, which give victims a stake in the outcome.

8.10 Youth Justice would be devolved as part of the devolution of policing and justice functions, and the Youth Justice Agency would become an agency of a Department for Justice, accountable to the Northern Ireland Minister for Justice.

Mentally disordered offenders

8.11 The arrangement of secure hospital facilities is already a transferred matter and, when the Assembly is operational, is the responsibility of the devolved administration in Northern Ireland. However, the Secretary of State retains some statutory functions in relation to mentally disordered offenders (on the release and transfer of restricted patients).

8.12 Where a mentally disordered offender is made the subject of a hospital order or is given a prison sentence and subsequently transferred to a hospital for treatment, he or she may also be made subject to special restrictions where this is necessary for the protection of the public. Unless directed or ordered by the Mental Health Review Tribunal, a restricted patient may not be discharged, transferred or granted leave of absence without the consent of the Secretary of State. The Secretary of State has powers to direct that a patient no longer be subject to a restriction order and may discharge patients from hospital. He may also recall patients who he has discharged or who have been discharged by the Tribunal.

8.13 Following devolution of policing and justice, these functions would transfer to the Northern Ireland Minister for Justice.

Life Sentence Review Commissioners

8.14 The Life Sentence Review Commissioners (LSRC) are appointed by the Secretary of State in accordance with Article 3(1) of the Life Sentences (Northern Ireland) Order 2001.

8.15 Commissioners are appointed for a renewable 5 year period, subject to the statutory age limit of 70 years of age, and may not be removed from office or prevented from taking a second term of office, without consultation with the Lord Chief Justice (NI). (The current commissioners were appointed on 9 September 2002.)

8.16 The Order requires, where practicable, that the Commissioners include individuals with specific professional qualifications or experience in the legal, medical, criminological and rehabilitative fields. Appointments are also made from those with a lay background so as to include an independent community based dimension.

8.17 At present there are 25 Commissioners in post, one of whom has additionally been appointed as Chairman. The Commissioners are supported by a full time Secretariat.

8.18 In accordance with the 2001 Order and associated Rules, the Commissioners are primarily responsible for assessing life sentence prisoners and considering them for release once the minimum period set by the court has expired. When they are satisfied that it is no longer necessary for the protection of the public that a life sentence prisoner be confined, the Commissioners will direct the Secretary of State to release him. Commissioners are also involved in examining the cases of prisoners recalled to custody and in making recommendations on issues of prisoner management and rehabilitation.

8.19 Responsibility for oversight of the LSRC and the operation of their functions lies within the Criminal Justice Directorate of the Northern Ireland Office. The functions carried out by the LSRC would be devolved and the Northern Ireland Minister for justice would be responsible for appointments to the Commission and oversight of its operation.

8.20 New administrative arrangements will need to be developed to ensure that, when making their decisions, Commissioners have access not only to relevant information from the devolved administration (provided from the Prison Service and the Police Service for Northern Ireland via Northern Ireland Ministers) but also to appropriate information which falls within the excepted field (and thus would need to come via the Secretary of State).

The Sentence Review Commissioners

8.21 The Sentence Review Commissioners are appointed by the Secretary of State in accordance with Section 1 of the Northern Ireland (Sentences) Act 1998. Their principal function is to implement the arrangements under that Act for the accelerated release of prisoners convicted for 5 years or more of scheduled offences in Northern Ireland or of similar offences committed elsewhere.

8.22 The work of the Sentence Review Commissioners is wholly concerned with the treatment of those convicted of offences connected with terrorism, which is an excepted matter (paragraph 17 of Schedule 2 to the Northern Ireland Act 1998). As such it would not be devolved.

Northern Ireland (Remission of Sentences) Act 1995

8.23 The 1995 Act increased from one third to one half the period of remission available to certain individuals convicted of scheduled offences. It provides that where such a person is released at the 50% point of his sentence he is on licence until he reaches the two thirds point of that sentence. The Act confers on the Secretary of State power to revoke a person's licence and recall him to prison in prescribed circumstances. The Secretary of State is also empowered to suspend the early release provisions of the Act. The Secretary of State's role is wholly concerned with the treatment of those convicted of offences connected with terrorism, which is an excepted matter (paragraph 17 of Schedule 2 to the Northern Ireland Act 1998). As such it would not be devolved.

Chapter 9

Compensation

Paragraph 9(g) of Schedule 3 to the Northern Ireland Act 1998

Compensation Agency

9.1 The Compensation Agency is an executive agency of the Northern Ireland Office responsible for the administration of four statutory compensation schemes on behalf of the Secretary of State: Criminal Injuries Compensation Scheme (for injuries before 1 May 2002), Criminal Damage Compensation Scheme, Terrorism Act Scheme, and Criminal Injuries Compensation Scheme (Tariff) (for injuries after 1 May 2002).

9.2 The Agency is headed by a Chief Executive and is accountable to the Secretary of State. Policy oversight and scrutiny of the Agency is carried out within the Criminal Justice Directorate of the Northern Ireland Office.

9.3 If the Assembly took on responsibility for legislating on compensation matters, subject to any changes decided in the interim, the Agency's functions would be devolved and it would become an executive agency of the Department of Justice, accountable through Northern Ireland Ministers to the Assembly.

9.4 The only exception would be responsibility for the Terrorism Act Scheme, which is an excepted matter and would not therefore be devolved. (The scheme is due to come to an end in 2007.)

Criminal Injuries Compensation Appeals Panel

9.5 The Criminal Injuries Compensation Appeals Panel Northern Ireland deals with appeals against decisions about compensation, made under the Northern Ireland Criminal Injuries Scheme (Tariff) 2002, by the Compensation Agency. The panel is a Non-Departmental Public Body funded by the Northern Ireland Office, but independent of it, although members of the appeals panel are appointed by the Secretary of State.

9.6 The panel's functions would be devolved so that it would be funded by the Department of Justice and the Northern Ireland Minister for Justice would be responsible for appointments to the panel.

Chapter 10

Community Safety Partnerships

Paragraph 9(h) of Schedule 3 to the NIA, inserted by section 83 of the Justice (NI) Act 2002

10.1 There are, at present, twenty six Community Safety Partnerships (CSPs) across Northern Ireland, one in each district council area, which operate on a voluntary basis. The CSPs listed in Schedule 3 to the Northern Ireland Act 1998 are statutory partnerships, provided for in the Justice (Northern Ireland) Act 2002. The Secretary of State has not exercised the powers under section 72 of that Act to place these partnerships on a statutory basis.

10.2 The Review of Public Administration (RPA) has recommended a reduction in the number of Councils which will have a direct impact on reducing the number of CSPs. Consideration is being given to enacting Section 72 in line with the changes flowing from the RPA.

10.3 Following devolution, the responsibility for exercising what are currently the Secretary of State's functions in respect of CSPs would fall to the Northern Ireland Minister for justice.

Chapter 11

Chief Inspector of Criminal Justice Paragraph 9A of Schedule 3 to the Northern Ireland Act 1998, inserted by the Justice (NI) Act 2002

11.1 The Criminal Justice Review recommended the establishment of an independent Criminal Justice Inspectorate for Northern Ireland (CJINI) to be responsible for ensuring the inspection of all aspects of the criminal justice system, excluding the courts. Section 45 of the Justice (NI) Act 2002 provides for the creation of an office of Chief Inspector of Criminal Justice in Northern Ireland, to be appointed by the Secretary of State. Schedule 8 to the 2002 Act makes provision dealing with the practical aspects of the office such as tenure, staff, delegation of powers, etc.

11.2 The current Chief Inspector was appointed and the Inspectorate established in October 2004. Currently the CJINI inspects 20 organisations and has published a number of reports to date.

11.3 Following devolution the CJINI would retain its independence and fulfil the same functions. The functions currently conferred on the Secretary of State would be devolved to the Northern Ireland Minister for justice.

Chapter 12

Public Order

Paragraph 10 of Schedule 3 to the Northern Ireland Act 1998

12.1 The maintenance of public order is an operational responsibility for the police. Public order offences include disorderly behaviour, riotous behaviour, unlawful assembly, affray and breach of the peace. Incidents of public disorder range significantly in scale and scope: a fracas outside a public house counts as public disorder as do the most serious incidents of widespread rioting and serious violence.

12.2 Public Order is classified in the Northern Ireland Act 1998 as a reserved matter (with the exception of "subversion and terrorism" which are excepted matters covered by paragraph 17 of Schedule 2). In principle, responsibility for public order would be devolved along with other policing functions. However, this is a contentious issue and the Government recognises that there are concerns, particularly around certain parades, which make devolution of aspects of public order more difficult than others and that these will need to be addressed ahead of devolution.

Legislative framework for policing public order

12.3 As well as drawing on general constabulary powers, the police rely on the Public Order (Northern Ireland) Order 1987 to deal with serious public disorder. They also currently use the Terrorism Act 2000, in particular part VII powers in respect of requisitioning and road closures, although the provisions are intended to be repealed as part of the current normalisation process, so are unlikely to be in use by the time public order is devolved.

The Parades Commission

12.4 The Parades Commission was established by the Public Processions (Northern Ireland) Act 1998 and consists of a Chairman and six members appointed by the Secretary of State. It is treated as an Executive Non-Departmental Public Body for management purposes and is funded entirely by the NIO. Its principal functions are to facilitate mediation between parties to disputes concerning public processions, and issue determinations where agreement between the parties cannot be reached.

12.5 The Government's preference is that responsibility for all aspects of parades, including appointments to the Parades Commission and its operation, should be devolved. It would be undesirable to keep this responsibility reserved to Westminster while devolving responsibility for policing (and therefore for policing parades). However, the Government recognises that a subject as contentious as parading has the capacity to reinforce community divisions at a time when the focus of the devolved institutions is on developing a vision of a shared future.

12.6 While retaining responsibility for parades legislation – or even just for appointments to the Parades Commission – within the reserved category is markedly less desirable than devolving them, these are options that could be considered by the Assembly in taking a decision about which aspects of the currently "reserved" list it wants to see transferred.

Chapter 13

The Police and the Policing Accountability Framework

Paragraph 11 of Schedule 3 to the Northern Ireland Act 1998

13.1 The Police Service of Northern Ireland is the organisation established in law to maintain law and order in Northern Ireland and it comes under the direction and control of the Chief Constable. The Patten Commission recommended that the Chief Constable should be operationally responsible for the direction and control of the policy (as is the case in Great Britain) and accountable to a cross-community Policing Board, except on matters of national security.

13.2 There are a range of other organisations within the policing family in Northern Ireland. This section of the discussion document describes their various functions, the current role of the Secretary of State in their work and/or regulation, and the implications that the devolution of policing and justice would have for them. It should be read in conjunction with the relevant chapters on the prevention and detection of crime (chapter 6) and on excepted matters (chapter 18).

The Northern Ireland Policing Board

13.3 Part II of the Police (NI) Act 2000 (as amended by the Police (NI) Act 2003) established the Northern Ireland Policing Board and set out its statutory duties, powers and responsibilities. The Policing Board is one of the key elements of the police accountability architecture as set out by the Patten Report and has all the powers Patten recommended.

13.4 The Board's principal function is to secure the maintenance, efficiency and effectiveness of the police in Northern Ireland. In discharging this function, the Board must hold the Chief Constable and the PSNI to account for the performance of their duties. The Board must also:—

- monitor the effectiveness of the PSNI in counteracting crime, and encourage the public's co-operation with the police in the prevention of crime;
- monitor the performance of the police in carrying out its general duties, in complying with the Human Rights Act 1998, and implementing the Annual Policing Plan;
- keep itself informed about the workings of Part VII of the Police (Northern Ireland) Act 1998 (police complaints and disciplinary proceedings);
- monitor the trends and patterns in complaints against the police, and recruitment to the police and police support staff;
- oversee the manner in which public complaints against traffic wardens are dealt with by the Chief Constable;
- assess the effectiveness of measures taken to ensure that its membership and support staff is representative of the community, and to assess the level of public satisfaction with the performance of the police and District Policing Partnerships (DPPs); and
- assess the effectiveness of the DPPs and the measures taken by them to obtain the views of the public about policing matters.

Appointment of members

13.5 When the Assembly is in operation, the Board's membership is made up of 10 MLAs, appointed in proportion to the parties' strength in the Assembly, using the Hondt formula, plus nine independent members appointed by the Secretary of State. Responsibility for the appointment of independent board members would transfer to the Northern Ireland Minister for policing, following devolution.

Funding

13.6 The Policing Board's funding currently comes from the Northern Ireland Office, from funds allocated by Parliament, and the NIO therefore has responsibility for ensuring high standards of financial propriety and value for money within the Board's operation. Following devolution, it will be for the Assembly and the Northern Ireland Minister for policing to allocate funding from within the Northern Ireland block grant. As well as financing the police service itself, and in accordance with the Police (NI) Act 2000, the Board is provided with funding to cover 75% of the expenses incurred by District Policing Partnerships.

Devolution of Board functions

13.7 Patten also recommended that the powers of the Policing Board should in no way be diminished when responsibility for policing is devolved. The Government has accepted this recommendation, and will transfer responsibility for the Board's statutory framework, except where this relates to excepted matters. The detail of the relationship between the Board, the Northern Ireland Minister for policing and an Assembly policing committee will need to be determined before policing and justice are devolved.

District Policing Partnerships (DPPs)

13.8 The Patten Commission recommended that each district council in Northern Ireland should be required to establish a District Policing Partnership. Patten also recommended that they should be co-terminous with District Command Units. There are therefore currently 26 DPPs and 4 sub-groups in Belfast. The Review of Public Administration will, however, have an impact on the number of both District Command Units and DPPs. The Police (NI) Act 2000 (as amended by the Police (NI) Act 2003 and the DPP (NI) Order 2005) sets out the general functions of DPPs and places a requirement on the Policing Board to produce a Code of Practice containing guidance as to the exercise by DPPs of their functions.

13.9 The role of the DPPs is a consultative, explanatory and monitoring one. In summary their functions are:

- to articulate community views on the policing of their district;
- to contribute to the formulation on policing plans and priorities;
- to monitor police performance at district level;
- to report on these matters to the Board and Council; and
- to obtain the co-operation of the public with the police with a view to preventing crime.

13.10 Like the Policing Board, and as recommended by Patten, DPP membership is a mix of elected and independent members. The independent members are appointed by the Board in accordance with the requirements set out in the legislation and a Code of Practice issued by the Secretary of State.

13.11 Following devolution, all of the Secretary of State's functions in respect of DPPs would be devolved to become the responsibility of the Northern Ireland Minister for policing. Similarly, the statutory framework governing DPPs would, following devolution, be for the Assembly to amend.

13.12 The only exception to this would be the terms of the "declaration against terrorism", which prospective independent DPP members will be required to make, when the amendments introduced by the Police (NI) Act 2003 are commenced. This will mirror the declaration made by candidates seeking election as local councillors. Electoral legislation will remain an excepted matter and the text of the DPP members' declaration will need to keep in line with it, so this aspect of the legislation will remain reserved following the transfer of policing and justice.

The Police Service of Northern Ireland

13.13 The Police Service of Northern Ireland is under the day to day direction and control of the Chief Constable. The operational independence from political control of a Chief Constable is a fundamental principle of UK policing and, in the Northern Ireland context, is enshrined in legislation under Section 33 of the Police (NI) Act 2000. Patten also recognised (paragraph 6.21, recommendation 24) this important concept as a key tenet of his report.

13.14 The Patten Report recognised that the Chief Constable must have sole operational responsibility and neither the Government nor the Policing Board should have the right to direct him or her as to how to conduct an operation. However, the Report also recognised that it was important to be clear that a Chief Constable, like any other public official, must be both free to exercise his or her responsibilities and also capable of being held to account afterwards for the manner in which these responsibilities are exercised.

13.15 Ministers also have a general duty under section 69 of the Police (NI) Act 2000 to promote the efficiency and effectiveness of the police and have regard to the principle that policing in Northern Ireland is to be conducted in an impartial matter. 13.16 There is no reason, in principle, why this legislation should not be devolved but care would need to be taken to ensure that it was in the best interests of securing the confidence and trust of all sections of the community. The options for consideration include keeping section 33 (1) of the Police (NI) Act 2000 reserved, or relying on existing cross-community safeguards that currently exist within the Northern Ireland Act 1998.

Funding and audit arrangements

13.17 The roles of the Secretary of State, Policing Board and PSNI in respect of responsibility for police funding are set out in Section 9 of the Police (NI) Act 2000. Linked to that, arrangements for setting policing objectives and oversight of police performance and accountability are contained within sections 24-7 of that Act. Funding for policing is provided by the Secretary of State to the Policing Board, and it is then for the Policing Board to set the budget for the Police Service of Northern Ireland. Following devolution of policing, the Secretary of State's responsibilities would transfer to the Northern Ireland Minister for policing. Some limited funding, in the form of grants will, as at present, continue to be provided from the Home Office. This includes, for example, Northern Ireland's share of assets seized.

13.18 The Police (NI) Act 1998 gives the Secretary of State the power to appoint, from among Her Majesty's Inspectorate of Constabulary (HMIC), an inspector to carry out an annual inspection into the efficiency and effectiveness of the PSNI. The inspector reports his findings to the Chief Constable. Following devolution of policing, the Secretary of State's responsibilities would transfer to the Northern Ireland Minister for policing. Unless the Assembly legislated otherwise, the Minister would, however, continue to be obliged to select the inspector from the HMIC, whose members are appointed by the UK Government.

13.19 There are further arrangements set out in the Police (NI) Act 2000 for auditing the PSNI's value for money. The National Audit Office (NAO) carries out regular "best value" assessments of the PSNI and reports to the Secretary of State. The Secretary of State has the power to direct the Policing Board to take action should he receive an unfavourable report from the NAO. Following devolution of policing, the Secretary of State's role would transfer to the Northern Ireland Minister for policing. The role of the National Audit Office would transfer to the Northern Ireland Audit Office.

Pay and pensions

13.20 Sections 25 and 26 of the Police (NI) Act 1998 give the Secretary of State power to make regulations for a wide range of pay and conditions of service issues for police officers serving in Northern Ireland, both regular officers and reservists. Section 62 of the Police Act 1996 requires him to take into account decisions reached at the UK Police Negotiating Board when setting pay and terms & conditions of service.

13.21 Following devolution of policing to the Assembly, it would be the responsibility of the Northern Ireland Minister for policing to set police pay and conditions of service. In carrying out this function, the Minister would, unless the Assembly legislated otherwise, continue

to be obliged to take into account decisions reached at the UK Police Negotiating Board.

13.22 Section 25 of the Police (NI) Act 1998 allows the Secretary of State to make regulations providing for pensions and gratuities in respect of service as a member of the PSNI. As with pay, this would become the responsibility of the Northern Ireland Minister for policing following devolution.

13.23 The Secretary of State is responsible for appointing independent persons to decide on any medical appeals under the Pensions regulations. Following devolution, this will become the responsibility of the Northern Ireland Minister for policing.

Recruitment and appointments

13.24 Recruitment to the PSNI is a matter for the Chief Constable and the Policing Board, in accordance with the statutory framework set out in the Police (NI) Act 2000. That would continue to be the case following devolution of policing.

13.25 This section sets out the Secretary of State's current responsibilities in this area (executive and legislative), and the implications of devolution. Arrangements for dealing with personnel exchanges between the PSNI and An Garda Síochána are discussed in more detail in Chapter 17.

Senior appointments

13.26 The Secretary of State currently has a role in approving the Policing Board's appointment of the Chief Constable or any senior officer, and of any call by the Board on the Chief Constable or any senior officer to retire in the interests of efficiency or effectiveness. This role would transfer to the Northern Ireland Minister for policing on devolution.

Vetting appeals

13.27 As recommended by the Patten Commission and in line with arrangements in the rest of the UK, the Chief Constable is required to set up a vetting panel to decide on the suitability of individual candidates. The criminal convictions that would be likely to debar candidates are set out in regulations. In addition, the panel may take into account terrorist connections or other factors. A candidate has a right of appeal against the panel's decision. Appeals are heard by an Independent Assessor, appointed by the Secretary of State following consultation with the Policing Board. Responsibility for appointing the Independent Assessor, following devolution, would fall to the Northern Ireland Minister for policing.

Temporary 50:50 provisions

13.28 The Police (NI) Act 2000 currently makes temporary provisions allowing the Chief Constable to exercise limited positive discrimination in appointments to the PSNI (both in terms of regular officers and for some competitions for support staff) so that where a pool of qualified applicants for a post exists, he can appoint equal numbers of Catholics and non-Catholics. The operation of these powers is known as the "50:50 provisions". The temporary provisions also allow the Chief Constable and the Policing Board to make appointments at other ranks from suitably qualified external candidates.

13.29 The temporary provisions include a UK derogation from the EU Directive 2000/78/EC and the arrangements set out in:

- article 40A of the Race Relations (NI) Order 1997;
- article 71A of the Fair Employment & Treatment (NI) Order 1998; and
- sections 44(5)-(7), 45 & 46 of the Police (NI) Act 2000.

13.30 The Secretary of State has the power, in certain circumstances, to amend the 50:50 quotas by Order if there are insufficient numbers from one or other section of the community to meet recruitment requirements.

13.31 The purpose of these provisions was to address the historic under-representation of Catholics in the police service in Northern Ireland but, as temporary provisions, they expire if not renewed by Parliament every three years. The provisions were last renewed in 2004, to run until 30 March 2007.

13.32 In deciding whether to bring forward an order to renew the provisions, the Secretary of State must consult the Policing Board and take into account any recommendations it makes before making an Order, which is subject to Parliamentary approval. Current patterns project a steady progression towards the target of 30% Catholic composition by 2010/11. The Government remains committed to the use of the temporary provisions until this has been achieved.

13.33 If the temporary provisions are still in force at the time that policing is devolved, it is the Government's view that the responsibilities for this policy which are currently exercised by the Secretary of State would not transfer to the Northern Ireland Minister with responsibility for policing unless the Assembly's vote requesting the devolution of policing specifically included a request for these temporary provisions.

13.34 Responsibility for seeking a derogation from Directive 2000/78/EC will continue to be a matter for the UK Government.

Severance

13.35 There are currently two severance schemes in operation in PSNI: a voluntary severance scheme, effective from January 2001, to provide enhanced benefits to officers leaving the service under the terms of the scheme and a separate scheme for members of the Full Time Reserve (FTR) as a direct result of the Chief Constable's decision, in line with Patten, to phase out 807 FTR posts between April 2005 and September 2006.

13.36 The numbers to be accepted each year for the voluntary scheme (which is open to both regular and FTR officers) are controlled by criteria set by the Chief Constable. The rules governing the scheme are set out in regulations made by the Secretary of State and the NIO has a responsibility for ensuring that the scheme continues to meet its objectives and provides value for money. The scheme will run until 2010 or such other date as specified by the Secretary of State. The Secretary of State and the NIO will have similar responsibilities in respect of the FTR severance scheme.

13.37 On devolution the Secretary of State's responsibilities in this area will transfer to the Northern Ireland Minister for policing, provided devolution occurs before either or both schemes expire.

Alternatives to Plastic Baton Rounds

13.38 The search for an effective and acceptable alternative to the Plastic Baton Round continues. The NIO led UK wide Steering Group was set up to take forward Recommendations 69 and 70 of the Patten Report.

13.39 The Group, made up of experienced policing practitioners, scientific and other expert advisers, initiated two separate research programmes that have led to the development of two new projectiles: the Attenuating Energy Projectile (AEP); and the Discriminating Irritant Projectile (DIP).

13.40 The AEP, which is a safer alternative to the baton round, was introduced operationally to police forces throughout England, Wales and Northern Ireland (and the army in NI) on 21 June 2005. The DIP is designed temporarily to incapacitate the individual through the delivery of a small cloud of irritant to the upper body and is being developed to a longer time scale.

13.41 The Oversight Commissioner has reported that Recommendation 69 has been achieved (June 2005). The Steering Group has also made significant progress with Recommendation 70 through the increased availability of Water Cannon, CS and PAVA sprays and Taser. Despite these developments Government remains committed to a longer term search for even more potentially less lethal alternatives.

13.42 In a devolved context the authorisation for use of Less Lethal Weaponry will remain an operational decision for the Chief Constable. It is envisaged that the Minister with responsibility for policing will continue to take an active interest in maintaining close co-operation with the Home Office, Ministry of Defence and ACPO in terms of the research programme. Northern Ireland interests will continue to be represented at the Steering Group, or its successor body, though the Home Office will assume the Chair in summer 2006. This group will take forward UK interests within the international context.

Flags & emblems

13.43 Section 54 of the Police (NI) Act 2000 provides the Secretary of State with the power to regulate the design of the PSNI badge and the flag, and to regulate the flying of all flags from police buildings. Before making such regulations, the Secretary of State must consult the Policing Board, the Chief Constable and the Police Association.

13.44 Following the Policing Board's agreement on the design for the PSNI badge, the Secretary of State brought forward the Police Emblems and Flags Regulations (NI) 2002. The effect of these is that, in accordance with the recommendations of the Patten Commission, the PSNI flag is the only flag that may be flown in connection with the police and their buildings. The only exception is that, if the Queen visits a police building, the Royal Standard may be flown at that building. The regulations do not prescribe when the PSNI flag will be flown: this is a matter for the Chief Constable to decide.

13.45 It is proposed that the power to regulate as set out in Section 54 of the Police (NI) Act 2000 would transfer to the Northern Ireland Minister for policing.

Medals

13.46 At present, service medals to police officers in Northern Ireland are awarded under Royal Warrants that cover police officers throughout the United Kingdom. At present, regular members of the PSNI are eligible to receive a long service medal after 22 years' service while reservists qualify for a long service medal after 15 years' service. Following devolution of policing, policy for medal eligibility

would continue to be set by the UK Government. The delegated powers provided for under Royal Warrants would, however, transfer from the Secretary of State to the Northern Ireland Minister for policing.

Police complaints and the Police Ombudsman for Northern Ireland

13.47 The Police (NI) Act 1998 provides for a Police Ombudsman to investigate complaints into misconduct by police officers in Northern Ireland. The office was established in November 2000 and the Ombudsman currently has a staff complement of 128, including independent investigators from a variety of disciplines and cultures.

13.48 Like the Chief Constable, the Ombudsman is operationally independent and all complaints about the police must be referred to her. The complaints system is such that the Ombudsman provides the investigative role in handling a complaint and then makes recommendations to the Director of Public Prosecutions (where she believes a prosecution is warranted) or the Chief Constable (for disciplinary action).

13.49 In criminal cases, it is then for the Director to weigh the evidence provided by the Ombudsman and to decide whether to take forward a prosecution and, if a prosecution goes ahead, it is for the courts to decide on guilt and award any punishment if appropriate. In relation to disciplinary offences, it is for the Chief Constable to decide if the evidence warrants disciplinary action, undertake the disciplinary proceedings and award the punishment.

Appointment

13.50 The Ombudsman is appointed by Royal Warrant for a fixed term of up to seven years. At present, the Crown is advised by the Prime Minister and Secretary of State on such appointments. Following devolution, it would be possible for that advisory role to devolve to the Northern Ireland Minister for policing or to the First Minister and deputy First Minister acting jointly. This is something which the parties represented at the Assembly will want to consider when requesting the devolution of policing.

13.51 The legislation permits the Secretary of State to call on the Ombudsman to retire only in very limited circumstances. That responsibility would also devolve to Northern Ireland Ministers.

Funding & corporate governance

13.52 Funding for the Police Ombudsman's work is provided by the Secretary of State and he therefore has a responsibility to ensure that the organisation observes high standards of financial propriety and corporate governance. Following devolution, this responsibility would transfer to the Northern Ireland Minister for policing.

The wider policing family

Police Oversight Commissioner

13.53 The establishment of the time-limited Office of the Police Oversight Commissioner was one of the Patten Commission's

recommendations. The Commissioner's role is to oversee and report on the implementation of the 175 Patten recommendations. The Commissioner is appointed by the Secretary of State. In the event of policing being devolved before the Commissioner's post expires in May 2007, the Secretary of State's responsibilities would transfer to the Northern Ireland Minister for policing.

Lay visitors

13.54 Section 73 of the Police (NI) Act 2000 makes provisions for designated places of detention to be visited and reported on by "lay visitors". (Designated places of detention are custody suites in police stations used to detain suspects. Criminal and terrorist suspects are detained in separate custody suites.) Lay visitors are appointed by the Policing Board, which can confer on them such powers as it considers necessary to enable them to fulfil their duties. The Board will continue to be responsible for these appointments and conferral of powers following devolution. Any changes to the legislation would be a matter for the Assembly. Responsibility for designating places of detention under the Police and Criminal Evidence (Northern Ireland) Order 1989 would transfer to the Northern Ireland Minister for policing. Designating places of detention under paragraph 1 of Schedule 8 to the Terrorism Act 2000 will remain an excepted matter.

Police Association

13.55 Sections 32 & 33 of the Police (NI) Act 1998 provide for the existence of the Police Association to represent members of the PSNI in certain professional matters. The legislation also gives the Secretary of State certain statutory functions in relation to the Association, including the power to regulate its constitution and proceedings. Following devolution of policing, these responsibilities would transfer to the Northern Ireland Minister for policing.

Police Retraining and Rehabilitation Trust

13.56 The Secretary of State provides funding to the Police Retraining and Rehabilitation Trust (PRRT) for the provision of rehabilitation and support services to officers leaving the PSNI, and monitors the use of that grant to ensure value for money and high standards of financial propriety. This responsibility would transfer to the Northern Ireland Minister for policing.

Police Fund

13.57 The Police Fund was set up in 2001 to provide assistance, including financial, to police officers injured or disabled as a direct result of terrorism in Northern Ireland and their families, as well as police widows widowed through terrorism and their dependents. The Fund is a non-statutory company limited by guarantee, and made up of ten directors. As such, the Secretary of State has no statutory functions in respect of the Fund. However, it is financed by the Northern Ireland Office (currently receiving around £1.8m a year) and the Department oversees its corporate governance and financial propriety. Following devolution of policing, funding and oversight of the Police Fund would be a matter for the Northern Ireland Executive.

RUC George Cross Foundation

13.58 Section 70 of the Police (NI) Act 2000 gives the Secretary of State the power to establish and fund an RUC George Cross Foundation. The Foundation was established in September 2001 with HRH the Prince of Wales as its patron. The Foundation has a number of statutory functions including the following:

- the disbursement of funds and funding of projects commensurate with the aim of marking the sacrifices and honouring the achievements of the RUC;
- supporting the professional development of police officers and innovations in policing by means of bursaries and scholarships;
- undertaking joint initiatives with the Widows' Association and other groups within the police family; and
- taking responsibility for the Memorial Garden and a new police museum.

13.59 Following devolution of policing, the Secretary of State's functions would transfer to Northern Ireland Ministers.

RUC Widows' Association

13.60 The RUC Widows' Association was established nearly 25 years ago by the then Chief Constable, Sir John Hermon, to foster the social well-being, friendship, health, recreation and leisure of members of the Association and to strengthen and extend facilities for their children. Like the Police Fund, the Association is non-statutory. In addition to donations and members' subscriptions, and in line with a recommendation of the Patten Commission, the Association receives funding (currently in the region of £30-40,000) from the Northern Ireland Office, which also provides oversight of the Association's corporate governance. Following devolution of policing, responsibility for funding and oversight of the Association would fall to the Northern Ireland Executive.

Traffic wardens

13.61 The Department for Regional Development (DRD) has overall responsibility for road safety and the functions discharged by traffic wardens are in the process of being transferred to that Department.

Chapter 14

Firearms & Explosives

Paragraph 12 of Schedule 3 to the Northern Ireland Act 1998

14.1 The Secretary of State is responsible for policy on firearms in Northern Ireland. Policy development, legislation and general oversight is carried out within the Policing and Security Directorate in the Northern Ireland Office.

14.2 Firearms control in Northern Ireland is exercised principally under the Firearms (Northern Ireland) Order 2004. The day to day administration of firearms licensing is the responsibility of the Chief Constable. Fees for licenses are set by the Secretary of State.

14.3 The Secretary of State has a number of statutory functions including deciding appeals from persons aggrieved by decisions of the Chief Constable, deciding applications for the removal of a prohibition on holding firearms (people sentenced to certain periods of imprisonment are normally prohibited from holding firearms for 8 years or for life) and issuing museums firearms licenses. The Secretary of State also has powers, by Order, to prohibit movement of firearms and ammunition within or from Northern Ireland, and to make certain regulations.

14.4 Unlike Northern Ireland, firearms in Scotland have historically been regulated under Westminster legislation. Under devolution, policy and legislation on firearms remain reserved to Westminster, but the day-to-day operation of that policy and related functions has been devolved. Firearms licensing rests with Chief Constables and the authorisation of prohibited weapons with Scottish Ministers. It would be possible to follow a similar model in Northern Ireland, with the Chief Constable dealing with licensing and a NI justice Minister authorising the holding of prohibited weapons, but policy and legislation for all firearms reserved to Westminster.

14.5 Alternatively, it would be possible to devolve many of the Secretary of State's responsibilities for the regulation of firearms to Northern Ireland Ministers. A NI Department of Justice and/or Policing could then be responsible for legislation, policy and general oversight of firearms licensing, while day-to-day management of this would continue to rest with the Chief Constable. The policy and legislation, including Ministerial authorisation, for prohibited weapons would remain reserved.

Explosives

14.6 The Secretary of State is also responsible for policy and legislation on explosives, including substances which are controlled as if they were explosives, such as ammonium nitrate. His statutory functions include the licensing of controlled substances, factories, magazines and stores, shot firers, fireworks and the registration of premises. These functions are carried out on his behalf within the Policing and Security Directorate of the Northern Ireland Office.

14.7 The Secretary of State's responsibilities for explosives would be devolved to Northern Ireland Ministers. Thought will need to be given as to whether these responsibilities would best sit with the Minister for policing or the Minister for public safety.

Chapter 15

The Courts

Paragraphs 14A, 15 and 17 of Schedule 3 to the Northern Ireland Act 1998

15.1 The Courts and the Judiciary, together with a number of other related functions in Northern Ireland, are not currently the responsibility of the Secretary of State, but of the Lord Chancellor. The Lord Chancellor has responsibility for:

- matters relating to the courts including procedure, appeals, juries and enforcement of judgments and orders;
- legal aid and the Northern Ireland Legal Services Commission;
- judicial appointments and removals (including the Northern Ireland Judicial Appointments Commission);
- making recommendations to Her Majesty the Queen for appointment as Queen's Counsel; and
- a range of UK wide functions.

15.2 The Criminal Justice Review made a number of recommendations for changes to some of the above arrangements. The recommendations were given legislative effect by the Justice (Northern Ireland) Act 2002. It was originally intended that the provisions of that Act would be commenced upon devolution of justice, but the Justice (Northern Ireland) Act 2004 allowed for the establishment of the Judicial Appointments Commission ahead of devolution.

15.3 The Constitutional Reform Act 2005 (which extends to Northern Ireland) provides for the reform of the office of the Lord Chancellor in order to clarify the roles and responsibilities of the judiciary and the executive. Where post devolution provision has already been made by the Justice (Northern Ireland) Act 2002 in relation to the Lord Chancellor's role and responsibilities in Northern Ireland, the Constitutional Reform Act, which will come into force in April 2006, builds upon it. To avoid confusion in this paper, description of the way the system currently operates is to be taken as that which applies as of April 2006.

The Courts

Lord Chancellor's responsibilities for courts in Northern Ireland (after April 2006)

15.4 The Lord Chancellor is responsible for the administration of the Northern Ireland courts. He has a duty to ensure that there is an effective and efficient system to support the carrying on of the business of the courts. He is responsible for the laying of reports on the exercise of that duty before Parliament. He is responsible after consultation with the Lord Chief Justice of Northern Ireland for functions relating to the organisational framework of the courts (for example, specifying the number of court divisions); destination and allocation of proceedings between courtiers; and provision of resources. He has the power to allow or disallow procedural rules made by the various court Rules Committees; has the power to make certain rules for coroners courts after consultation with the Treasury, to agree to the making of procedural rules for such courts by the Lord Chief Justice of Northern Ireland; has the power to appoint non-judicial members to Rules Committees and has the power to designate either the secretary, or one of the joint secretaries, to such a Committee.

15.5 On devolution, the Lord Chancellor's responsibilities in relation to the courts would transfer to the Northern Ireland Minister for justice. Lord Chief Justice of Northern Ireland's responsibilities for the Courts in Northern Ireland (after April 2006)

15.6 The Lord Chief Justice of Northern Ireland, as head of the Northern Ireland judiciary, is responsible for functions relating to sittings of courts and the times and places of those sittings; assignment of individual judges; appointment of judicial members to court Rules Committees; distribution of business within the same courtier; making of procedural rules for coroners' courts after consultation with the Lord Chancellor; nominations to various posts (for example, Presiding County Court Judge); and handling of complaints against members of the judiciary. It is not intended to disturb these arrangements on devolution of justice. The Northern Ireland Court Service

15.7 The Northern Ireland Court Service was established in 1979 as a separate Civil Service in Northern Ireland. It is the Lord Chancellor's department in Northern Ireland and it supports the Lord Chancellor in fulfilling his responsibilities here. The main role of the Court Service is to provide the administration for courts across Northern Ireland (including the Enforcement of Judgements Office, the Fixed Penalty Office, the Court Funds Office, the Office of the Chief and other Social Security Commissioners and the Child Support Commissioners). It also currently provides the Lord Chancellor with policy advice and legislative support relating to his ministerial responsibilities in Northern Ireland.

15.8 Responsibility for the Court Service will be devolved to the Northern Ireland Minister for justice. The Criminal Justice Review

envisaged that following devolution the Northern Ireland Court Service would become an executive agency of a Department of Justice, headed by a Chief Executive. This view is supported by the Government.

15.9 The Agency will provide the administrative support for the courts in Northern Ireland, but we will need to consider whether it should continue to deliver policy advice and legislative support, or whether these functions should transfer to the core Department of Justice.

Legal Aid

15.10 The Lord Chancellor currently discharges his responsibility in relation to legal aid policy and funding and the Northern Ireland Legal Services Commission through the Northern Ireland Court Service. After devolution these responsibilities will transfer to the Northern Ireland Minister for justice.

Inspection of the Court Service

15.11 At present the Chief Inspector of Criminal Justice for Northern Ireland (see chapter 11) is responsible for ensuring the inspection of all the criminal justice system except the Courts, although the Northern Ireland Court Service currently co-operates fully with all relevant Criminal Justice Inspectorate activity on a non-statutory basis. Consideration will be given to including the administration of the courts within the Inspector's formal remit.

Social Security Commissioners and Child Support Commissioners

15.12 The Lord Chancellor currently provides administrative support, through the Northern Ireland Court Service, to the Office of the Social Security Commissioners and Child Support Commissioners, who are appointed to hear and determine appeal points of law from Appeal Tribunals under the Social Security and Child Support Legislation. It is proposed that, on devolution, responsibility for providing administrative support to the Commissioners will transfer to the Northern Ireland Minister for justice.

Appeals to House of Lords / Supreme Court of the United Kingdom

15.13 The Constitutional Reform Act 2005 provides for the establishment of a new Supreme Court of the United Kingdom which will replace the appellate jurisdiction of the House of Lords and the devolution jurisdiction of the Privy Council. That Act amends the Northern Ireland Act 1998 so as to provide that the UK Supreme Court is an excepted matter, but that appeals to it and associated legal aid are reserved matters. This preserved the current position in relation to the House of Lords.

15.14 On devolution, it is intended that responsibility for rights of appeal from the Northern Ireland Courts to the House of Lords (and the UK Supreme Court, when established) and legal aid for such appeals would transfer to the Northern Ireland Minister for justice.

The Judiciary

Judicial independence

15.15 It is a core principle of the criminal justice system that judges, like the prosecution service, should be independent of government. Taken together the Justice (Northern Ireland) Act 2002 and the Constitutional Reform Act 2005 place a duty on Northern Ireland Ministers to uphold the continued independence of the judiciary. They provide that Northern Ireland Ministers must not seek to interfere with any particular judicial decision.

15.16 The Government will put forward a Concordat setting out the core principles of the independence and impartiality of the Judiciary in Northern Ireland, to be agreed with the Northern Ireland Executive before devolution.

Roles and responsibilities of the Lord Chief Justice of Northern Ireland and the Lord Chancellor in relation to the judiciary

15.17 The Lord Chief Justice, as head of the judiciary, is responsible for ensuring that the views of the judiciary in Northern Ireland are effectively represented to Parliament, to the Lord Chancellor, to other Ministers of the Crown, to the Northern Ireland Assembly, to the First Minister and deputy First Minister and to Northern Ireland Ministers; that appropriate structures are in place to ensure the welfare, training and guidance of the judiciary; for the deployment of individual members of the judiciary; for the allocation of work within the courts; and for the handling of complaints against members of the judiciary. The Lord Chancellor is responsible for the appointment and removal of specified judges. He also has ministerial responsibility for the Northern Ireland Judicial Appointments Commission, which includes appointment, remuneration and tenure of members, approval of staffing and funding, and laying the Commission's annual report before Parliament.

Judicial Appointments

Senior Judges (Lord Chief Justice, Lord Justices of Appeal)

15.18 Currently the appointments of senior judges (Lord Chief Justice of Northern Ireland and Lord Justice of Appeal) are made by Her Majesty the Queen on the recommendation of the Prime Minister.

15.19 On devolution of justice functions, senior judges would be appointed by Her Majesty the Queen on the recommendation of the Prime Minister. Before the Prime Minister made this recommendation, he would require the First Minister and deputy First Minister, acting jointly, to make a recommendation to him concerning the appointments in such a form as he may specify. Before making any recommendation to the Prime Minister, the First Minister and deputy First Minister would consult the Lord Chief Justice of Northern Ireland. The Northern Ireland Judicial Appointments Commission would advise the First Minister and deputy First Minister as to the procedure which they should adopt for formulating their recommendation to the Prime Minister. The First Minister and deputy First Minister, with the approval of the Prime Minister, would then determine the procedure.

Other Listed Judicial Offices

15.20 Currently appointments to the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (offices up to and including High Court judge) are to be made on the recommendation of the Northern Ireland Judicial Appointments Commission, which is chaired by the Lord Chief Justice. The Lord Chancellor may require the Commission to reconsider its decision, giving reasons for so requiring. Where the Judicial Appointments Commission reconsiders and reaffirms or reselects a candidate, the Lord Chancellor must proceed with the appointment.

15.21 On devolution of justice functions, the Lord Chancellor's responsibilities in relation to the appointment of listed judicial offices and the Northern Ireland Judicial Appointments Commission would transfer to the First Minister and deputy First Minister acting jointly. Removal of Judicial office holders Senior Judges (Lord Chief Justice, Lord Justice of Appeal & High Court judge) 15.22 The Lord Chief Justice, a Lord Justice of Appeal or a High Court judge may be removed from office by Her Majesty following an address by Parliament on grounds of misbehaviour. The procedure for such removal follows closely the post devolution arrangements provided in the 2002 Act detailed below.

15.23 On devolution of justice functions, removal of the Lord Chief Justice, a Lord Justice of Appeal or a High Court judge (appointed before devolution) will be by Her Majesty following an address by Parliament, on the recommendation of an independent removals tribunal. Post devolution the Lord Chancellor would continue to be responsible for:

- making a motion to the House of Lords for the presentation of an address to Her Majesty the Queen for removal from office;
- receiving a recommendation from a removals tribunal;
- laying a copy of the report of a removals tribunal before the House of Lords; and
- selecting judicial members of a removal tribunal in consultation with the most senior judicial office holder in each of the specified court tiers.

Other Listed Judicial Offices

15.24 Listed judicial office holders (i.e. offices listed in Schedule 1 to the 2002 Act), other than High Court judges appointed before devolution, may be removed by the Lord Chancellor on grounds of misbehaviour or inability to perform after consulting the Lord Chief Justice, following a recommendation of an independent removals tribunal.

15.25 On devolution of justice functions, the Lord Chancellor's responsibilities in relation to the removal from listed judicial offices (including High Court judges appointed after devolution) will be discharged by the First Minister and deputy First Minister acting jointly.

Northern Ireland Judicial Appointments Ombudsman

15.26 Currently, the Commissioner for Judicial Appointments in Northern Ireland has responsibility for complaints regarding judicial appointments. This office will be replaced as soon as practicable by that of the Northern Ireland Judicial Appointments Ombudsman (provided for in section 9A of the Justice (Northern Ireland) Act 2002, as substituted by section 124 of the Constitutional Reform Act 2005). The Ombudsman will deal with any complaints made in relation to individual judicial appointments recommended by the Judicial Appointments Commission. The Lord Chancellor is responsible for the Ombudsman, including recommendations for appointment to that office; removal from office; payment of salary and issuing of Codes of Conduct. He has also power to ask the Ombudsman to consider any particular application or scheme which has caused him concern.

15.27 On devolution of justice, the Lord Chancellor's functions in relation to the Ombudsman would devolve to the First Minister and deputy First Minister acting jointly as these Ministers will be responsible for judicial appointments through the Judicial Appointments Commission.

Judicial salaries, pensions, terms and conditions

15.28 Determination of remuneration, superannuation, and terms and conditions of service for the judiciary (other than removals from office) is an excepted matter, so that policy and legislative responsibility would remain with the Lord Chancellor after devolution. Further work will need to be done to develop appropriate arrangements for funding and administering salaries after devolution.

QC Appointments

15.29 The Lord Chancellor currently makes a recommendation for appointment to Her Majesty the Queen, acting on the advice of a panel convened for the purpose. Responsibility for making recommendations to Her Majesty the Queen will be reviewed when the outcome of a more general consideration about the future of the rank of Queen's Counsel is known. Miscellaneous UK-wide Lord Chancellor functions Court-related functions

15.30 The Lord Chancellor has a number of UK-wide court-related statutory responsibilities which he exercises in respect of Northern Ireland and which the Government considers it would be appropriate to devolve (for example: acting as Central Authority for child abduction cases and transmitting applications for the reciprocal enforcement of maintenance orders). Responsibility for the policy aspects of these functions, which relate to international relations (an excepted matter), would remain the responsibility of the UK Government.

Appointment functions

15.31 The Lord Chancellor also has responsibility for a range of appointments and associated functions for various statutory tribunals which have a UK-wide jurisdiction. In general these fall into three categories, which, in the Government's view, require slightly different treatment in the context of devolution. The table below sets this out:

Category

Proposed treatment

Tribunals where the Lord Chancellor will exercise his appointment function in consultation with the heads of the judiciary in each of the three UK jurisdictions.

These arrangements should continue to apply post-devolution.

Arbitrators, referees and an advisory body where the appointments do not fall within the remit of the Judicial Appointments Commission in either England & Wales or Northern Ireland.

The Lord Chancellor's appointment functions should devolve to Northern Ireland Ministers.

Tribunals where the Lord Chancellor makes some appointments to UK-wide tribunals after consultation with the Secretary of State for Northern Ireland and Scottish Ministers.

The consultation role afforded to the Secretary of State for Northern Ireland should transfer to Northern Ireland Ministers.

Other UK-wide ministerial functions

15.32 The Lord Chancellor exercises a range of other ministerial functions in respect of Northern Ireland under UK-wide legislation. In some cases, the Act itself will make provision for appropriate post-devolution arrangement (e.g. the Freedom of Information Act 2000 provides for the Lord Chancellor to continue to exercise his functions in consultation with the First Minister and deputy First Minister). In other cases, the function may relate to an excepted matter and will therefore remain at Westminster (e.g. functions under the Human Rights Act 1998 which relate to international relations and obligations of the UK). Consideration is currently being given as to whether there are any UK-wide functions in respect of which specific post-devolution provision requires to be made.

Chapter 16

Northern Ireland Law Commission

Paragraph 15A of the Northern Ireland Act 1998, inserted by section 83 of the Justice (Northern Ireland) Act 2002

16.1 The Criminal Justice Review (see recommendations 244-255) recommended the establishment of an independent Northern Ireland Law Commission to keep under review both criminal and civil law in Northern Ireland. Sections 50 to 52 of, and Schedule 9 to, the Justice (Northern Ireland) Act 2002 makes provision for its establishment.

16.2 Recommendation 255 stated that, in the event of criminal justice responsibilities being devolved, responsibility for the Northern Ireland Law Commission should be brought within a new Department of Justice. The Government's position is that responsibility for the Law Commission should transfer to the Northern Ireland Minister for justice.

Chapter 17

North-South Cooperation

17.1 This chapter sets out current arrangements for formal co-operation between Northern Ireland and the Republic of Ireland in the justice and policing fields. These are in addition to the normal contacts and co-operation which exist between agencies on both sides of the border.

17.2 It will be a matter for the North-South Ministerial Council and subsequently the Assembly and the Irish authorities to decide whether more formal arrangements should be set up post-devolution.

Criminal Justice co-operation

17.3 The Criminal Justice Review (2000) made several recommendations relation to co-operative working between Northern Ireland and Ireland, including the establishment of a group of criminal justice policymakers from the two jurisdictions (recommendation 278). In the Updated Implementation Plan (2003) the two Governments set out their intention to reach an Intergovernmental Agreement on co-operation in criminal justice matters within the framework of the British-Irish Intergovernmental Conference (BIIGC).

17.4 The Intergovernmental Agreement on criminal justice co-operation between Northern Ireland and Ireland was signed on 26 July 2005. The Agreement formally set in place a structure for work on co-operation between the criminal justice agencies in Northern Ireland and Ireland. It established a meeting of relevant Ministers at least once a year, and a meeting of the supporting Working Group of officials twice annually. The Ministerial Meeting operates under the auspices of and is accountable to the British-Irish Intergovernmental Conference (BIIGC) and provides periodic reports on its work to the BIIGC. The Working Group initiates work programmes addressing areas for cooperative working identified in the Criminal Justice Review and looks at further areas of work that could be taken forward.

17.5 The group and its work programme are wholly within the Strand Three arrangements set out in the Belfast Agreement, and the intergovernmental Agreement applies only to such functions as are not devolved. In the event of devolution the responsible Ministers may review the operation of the structures established by the Agreement.

Policing co-operation

17.6 The PSNI and Garda Síochána continue to work together to develop policing co-operation and tackle crime in a number of areas such as organised crime and drugs. This has been facilitated by existing good relationships and the implementation of legislation and arrangements aimed at exchanging officers.

Personnel exchanges between PSNI and An Garda Síochána

17.7 The Patten Commission recommended that "there should be a programme of long-term personnel exchanges, such as fixed-term secondments, between the Northern Ireland police and the Garda Síochána, in specialist fields where co-operation between the two services is most needed, such as drugs, and in areas such as training."

17.8 Section 56 of the Police (NI) Act 2000 states that the Policing Board and Chief Constable shall implement any arrangements made in pursuance of an Agreement between Governments dealing with co-operation of policing matters between the PSNI and the Garda Síochána. It was subsequently agreed that Patten's recommendation on co-operation would be addressed through the framework of an Inter-Governmental Agreement on Policing Co-operation, which was signed by both Governments on 29 April 2002. In particular, Articles 2, 3 & 5 provide for both Governments to introduce necessary administrative and legislative measures to enable movement.

17.9 There are three types of movement between the forces:

- personnel exchanges – exchange for all ranks, without policing powers, for up to one year;
- secondments – the secondment of ranks sergeant to chief superintendent, with policing powers, for up to three years; and
- lateral entry – the permanent transfer of officers for ranks above inspector and under assistant chief constable.

17.10 The administrative measures for both personnel exchanges and secondments are facilitated by the Joint Protocols signed by the Chief Constable and Garda Commissioner on 21 February 2005. The legislative measures required for these secondment programmes are provided in the Police Service of Northern Ireland (Secondment) (Garda Síochána) Regulations 2004.

17.11 Whilst the final provisions necessary to implement secondments and lateral entry between both services are not yet in place, the arrangements for personnel exchanges of officers are. The first mutual personnel exchange programme commenced on 10 October 2005.

17.12 Legislation on this matter is currently the responsibility of Parliament at Westminster and the Secretary of State and, under the terms of paragraph 3 of Schedule 2 to the Northern Ireland Act 1998, responsibility for signing or amending an international Agreement of this nature with another sovereign State would remain with the UK Government even following the devolution of policing and justice.

17.13 At the same time, it is important to give Northern Ireland Ministers as much flexibility as possible to facilitate closer co-operation between the PSNI and Garda Síochána across all areas of the Inter-Governmental Agreement on Policing Co-operation.

17.14 For that reason the Government intends to transfer this Intergovernmental Agreement from the excepted to the reserved field, with the intention of devolving by Order as much of the Agreement as is consistent with fulfilling the Patten recommendation regarding closer co-operation between the two police services. Further work is needed to identify which aspects of the Agreement can be devolved and which cannot.

Chapter 18

Excepted Matters (including national security and extradition)

National security: transfer of primacy

18.1 National Security is an excepted matter under the Northern Ireland Act 1998 (paragraph 17 of Schedule 2) and will not therefore be devolved.

18.2 In February 2005 the Government announced that the lead responsibility for national security intelligence work in Northern Ireland, to counter the threat from terrorism relating to the affairs of Northern Ireland, should transfer from the Police Service to the Security Service. This has been the position in the rest of the UK since 1992.

18.3 The transfer of responsibility will align operational arrangements with political and constitutional responsibilities. It will facilitate the devolution of policing and justice when a robust and workable basis for that is agreed. It is part of the modernisation agenda of the PSNI and was made possible by the significant progress already made in implementing the recommendations of the Patten Commission, particularly in relation to Special Branch and the handling of intelligence. Patten also acknowledged that whatever changes were necessary in policing arrangements for Northern Ireland, it would remain the case that on national security the Chief Constable's main accountability is to the Secretary of State and this would remain a matter for central Government. ("We recommend that responsibility for policing be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security." – Patten paragraph 6.15 and recommendation 20.)

18.4 There are significant benefits in having arrangements for national security in line with the rest of the UK, not least to provide for a consistent and coordinated response to the threat from terrorism. The police will continue to work in partnership with the Security Service and this arrangement will make the best use of the complementary skills and expertise of both organisations.

18.5 The powers and responsibilities of the Policing Board and the Police Ombudsman to oversee policing are not affected by the change in lead responsibility.

18.6 Some aspects of policing touch on national security matters but most do not. There is also an interface between national security matters and some organised crime activities. Therefore, even when policing is devolved, those with responsibility for overseeing policing will need to understand how national security issues are handled. This will include not only the Policing Board and Police Ombudsman but devolved Ministers and Assembly committees as well. The Government has consistently recognised the importance of local transparency, as has the Chief Constable, though it will not risk compromising information or techniques that would jeopardise national security.

18.7 Considerable progress has been made in policing reform since Patten. It is essential that the benefits of the new systems in place within the PSNI are maintained. The long lead-in time is allowing joint teams to be established to test out the new structures and working arrangements in order that there will be no loss of operational effectiveness following the transfer of primacy.

Counter-terrorism policy and legislation

18.8 Counter-terrorism policy and legislation is driven on a UK-wide basis. The Home Office has primary responsibility for this issue in the UK, except in Northern Ireland. By agreement, the Secretary of State for Northern Ireland is responsible for the response to terrorism in Northern Ireland, whether that threat relates to domestic or international terrorism.

18.9 Northern Ireland is covered, in the main, by UK-wide counter-terrorist provisions set out in, for example, the Terrorism Act 2000, the Anti-Terrorism Crime and Security Act 2001 and the Prevention of Terrorism Act 2005. The Terrorism Act 2000 is the main piece of counter-terrorism legislation in the UK. The Act provides a range of measures designed to prevent terrorism and support the investigation of terrorist crime.

18.10 The Terrorism Act 2000 contains some provisions that are specific to Northern Ireland. Part VII supplements the powers in the rest of the Act and is focussed towards the particular needs of Northern Ireland. Many of the powers were carried forward from the Northern Ireland (Emergency Provisions) Act 1996 and other previous temporary legislation. These provisions are due to be repealed by the end of the security normalisation period. After normalisation is complete, the permanent UK-wide counter-terrorism legislation will continue to apply in Northern Ireland. The Government remains committed to the ideal of a return to jury trial, but Ministers have made clear that whatever provisions are necessary will be made available to secure effective trials, where intimidation of jurors by paramilitaries remains a factor. The Government is also considering what powers the army may need post-normalisation in carrying out specialist support to the police, such as public order and work on explosive ordnance disposal.

18.11 Counter-terrorism is an excepted matter under paragraph 17 of schedule 2 to the Northern Ireland Act 1998 and responsibility for it will not be devolved. However, there will continue to be a residual role of representing Northern Ireland's interests in the development of UK-wide policy in this area. This will require contact between the devolved administration (including criminal justice agencies) and Whitehall.

Security of economic key points

18.12 The Secretary of State has a responsibility to ensure the security of designated economic key points (EKPs) and parts of the designated critical national infrastructure. An EKP is an installation, the products or services of which contribute significantly to the normal day to day life in Northern Ireland or play a central role in the efficient and necessary functioning of government or the economy. By their nature, they are primarily associated with major utilities. The security of the EKPs and the critical national infrastructure is a

matter of national security and therefore remains an excepted matter that will not be devolved.

National security vetting

18.13 A limited number of posts in government and other critical organisations in Northern Ireland required the holder to undergo national security vetting. This process is an excepted matter and will not therefore be devolved.

Extradition

18.14 In 1998, when the list of excepted and reserved matters was drawn up, it was the intention that extradition generally should be an excepted matter (part of international relations, listed in paragraph 3 of Schedule 2 to the Northern Ireland Act 1998)). However an exception was made for the surrender of fugitives between Northern Ireland and Ireland, which was made a reserved matter. The reason for this difference was that, at the time, a separate arrangement existed for transferring fugitives between the UK and Ireland, known as the Backing of Warrants Scheme. This allowed extradition between Northern Ireland and Ireland to be carried on on a police to police basis, so that the RUC (as they then were) and An Garda Síochána recognised arrest warrants issued in each other's jurisdictions.

18.15 The introduction of a new European Arrest Warrant (EAW), as set out in the EU Council Framework Decision of 13 June 2002 (2002/584/JHA), has put in place a single legal framework for extraditions between those EU countries that have amended their legislation in order to operate the system. There is now, therefore, no difference between the arrangements for extradition between the United Kingdom and Ireland and arrangements for extradition between the UK and other EU countries. (The EAW is designed to make the process of extradition a judicial act, closely following the backing of warrants model.)

18.16 The Extradition Act 2003 brought these new arrangements into force in the UK, and at the same time repealed the old "backing of warrants" legislation. It also updated legislation governing extradition to and from countries outwith the EU. The Government believes that it is appropriate to continue to retain a single legislative framework for extradition arrangements throughout the UK, and does not propose to devolve legislative competence in this area to the Assembly. However, there will become specific administrative functions relating to extradition which could be exercised by Northern Ireland Ministers (for example, the designation of an appropriate judge to hear cases and issues associated with legal aid). Further work will need to be done to develop a full list of these functions, but it is the Government's intention to transfer all appropriate functions at the time that responsibility for policing and justice devolves. The Bill currently going through Parliament makes explicit provision for this.

Mutual Legal Assistance

18.17 Similar considerations apply in relation to Mutual Legal Assistance, the term which describes international co-operation between criminal justice agencies governed by the Crime (International Co-operation) Act 2003. The Government intends to retain responsibility for ensuring a UK-wide legislative framework for these matters but to devolve administrative and executive functions to Northern Ireland Ministers wherever appropriate and the Bill provides for this. Again, further work is needed to develop a list of appropriate functions for transfer.

Chapter 19

Next Steps & Implementation

19.1 The Government fully accepts, under the Belfast (Good Friday) Agreement, the desirability of devolving policing and justice on a basis that is "robust and workable and broadly supported by the parties". It confirmed that view in response to the Patten Report. The legislation going through Parliament will enable devolution to be delivered by secondary legislation when the circumstances are right.

19.2 The Bill enhances the arrangements already set out in the Northern Ireland Act 1998 (section 4) for further devolution. Section 4 allows the Secretary of State, by Order, to devolve reserved matters, but only if the Assembly has passed a resolution, with a cross-community vote, requesting it. This therefore requires the parties in the Assembly to have come to an agreement about whether or not the time is right to request further devolution, about what should be devolved and about the departmental structures that should be put in place to receive the new functions. It is only at the point when these decisions have been taken that it will be possible to set in place the detailed implementation plan – and to draw up the secondary legislation – required to effect the transfer.

19.3 The process of transfer will not be an instantaneous one, as there are a number of administrative and contractual changes that would need to be made in order to make the policing and justice machinery operate effectively in a devolved context. Without a definitive decision on the precise scope of devolution and the departmental structures that the Assembly will wish to put in place, it is difficult to give a clear estimate of the lead time. Much depends on how quickly the parties can agree the detail of structures and scope of devolution.

19.4 It is for this reason that the Government wants to encourage the parties represented at the Assembly to start considering these issues in some detail, both internally and in discussion with each other. The Government aims to discuss the possibilities with the parties over the coming weeks with a view to facilitating wider dialogue.

An electronic version of this document is available at www.nio.gov.uk. For additional hard copies or further information about this document, please contact:

Devolution Unit
Northern Ireland Office
Stormont Castle
Belfast BT4 3TT



Northern Ireland Office
Political Directorate

11 Millbank
London SW1P 4PH
Telephone 020 7210 6681
Facsimile 020 7210 0229

Stormont Castle
Belfast BT4 3TT
Telephone 028 9037 8194
Facsimile 028 9037 8198

Clare Sallers
Assistant Director, Devolution & Legislation
Northern Ireland Office

clare.sallers@nio.gov.uk
www.nio.gov.uk

Martin Wilson
Principal Clerk, Preparation for Government Committee
The Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

15 August 2006

Preparation for Government Committee

Thank you for your letter of 10 August to Alan Whysall seeking information for the Preparation for Government Committee. We have also since spoken and you have added a couple of additional requests. I will try to deal with each in turn.

There is no legal definition of national security but it is generally understood to relate to the safety and security of the state and its people. The protection of national security is one of the Security Service's functions and, as set out in section 1(2) of the Security Service Act 1989, this is defined in particular as protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. The Northern Ireland Act 1998, Schedule 2, lists of some of the areas included under the heading 'national security'. The 1998 Act, together with the discussion paper 'Devolving Policing and Justice in Northern Ireland' provides a fuller picture by indicating which matters will be devolved and which will not. I know that you were looking to collate a comparison between the 1998 Act, the Scotland Act and the discussion document, and attach a table which may be of help to you.

No protocols exist between the Northern Ireland Office and the Security and Intelligence Agencies in GB in relation to the handling of national security matters.

On your separate question about the recent changes in respect of judicial appointments, I am grateful to colleagues in the Northern Ireland Court Service, into whose remit this matter falls, for the following explanation:

The Justice (Northern Ireland) Act 2002 made provision for the creation of an independent Judicial Appointments Commission for Northern Ireland ('the NIJAC'). Schedule 3 to that Act already provides for the transfer of the Lord Chancellor's judicial appointment functions to the First Minister and Deputy First Minister.

It was intended that the provisions of the 2002 Act (including the establishment of the NIJAC) would be brought into operation on the devolution of justice functions. However, in the Joint Declaration, the Government undertook to bring forward legislation to allow the NIJAC to be established before devolution. Accordingly, the Justice (Northern Ireland) Act 2004 amends the 2002 Act to provide for the functions of the First Minister and deputy First Minister in relation to the NIJAC to be transferred to the Lord Chancellor, thus enabling the Commission to be established in advance of the devolution of justice functions. The NIJAC was established on 15th June 2005.

It is intended that, when responsibility for justice matters is devolved, these responsibilities would transfer back from the Lord Chancellor to the First and deputy First Ministers. This would require a transfer Order under section 86 of the Northern Ireland Act 1998

Act.

I hope that this provides the clarification you were seeking. Please let me know if there is anything further we can provide.



Clare Salters

Table 1: Reserved Matters: Implications for Devolution[\[1\]](#)[\[2\]](#)[\[3\]](#)[\[4\]](#)

Summary of Justice and policing issues contained within Schedule 3 to the Northern Ireland Act 1998

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(a) & (b) The criminal law and the creation of offences and penalties ²	<p>The statutory framework governing what constitutes a crime and what appropriate penalties are.</p> <p>It does not cover the law governing treason or terrorist offences because these are excepted (see below).</p>	<p>Everything covered by these paragraphs, including advice to the Crown on exercise of the Royal Prerogative of Mercy for cases falling into what becomes the devolved category.</p>	-	None.

9(c) The prevention & detection of crime and powers of arrest and detention in connection with crime or criminal proceedings³

The statutory framework in which the police operate, covering the powers available to them over and above those exercisable by ordinary citizens.

It does not cover counter-terrorism legislation, immigration or revenue & customs because these are excepted (see below).

Everything covered by this paragraph, including some administrative functions connected with international co-operation on criminal matters, with the exception of the matters listed in the next column

Responsibility for the Assets Recovery Agency or Serious Organised Crime Agency which will remain UK-wide bodies.

Those aspects of the Regulation of Investigatory Powers Act 2000 (RIPA) that are excepted together with some aspects that are currently reserved.

Whether some aspects of the Regulation of Investigatory Powers Act 2000 which are currently reserved will need to remain so.

Whether the arrangements for dealing with criminal records checks and disclosures are best regulated on an NI or a UK-wide basis.

Decisions on which aspects of RIPA that are currently reserved will need to remain so.

9(d) Prosecutions⁴

The statutory framework covering the rules applying to the prosecution system, including the roles of the Public Prosecution Service for NI and the Attorney General for NI.

It does not cover the role of the Advocate General for NI, which is an excepted matter (see below).

Everything within this paragraph, subject to the agreement of Concordats between the UK Government and the NI Administration on the independence of the prosecution system.

-

Agreeing the Concordat.

9(e) Treatment of offenders (including children and young persons, and mental health patients, involved in crime) ⁵	Everything to do with prisons, youth justice, probation and certain functions to do with mentally disordered offenders (though the majority of these functions, including secure hospital facilities) are already transferred.	Everything covered by this paragraph.	The NI (Sentences) Act 1998, which provides for the Sentences Review Commissioners and the early release scheme.	Arrangements will need to be put in place to allow the Life Sentences Review Commissioners (which will be devolved) to continue to have access not only to relevant information from the devolved administration (from the NIPS and PSNI via NI Ministers) but also to appropriate information which falls within the excepted field.
9(f) repealed	It does not include the work of the Sentences Review Commissioner.	-	The NI (Remission of Sentences) Act 1995.	-
9(g) Compensation ⁶	The law governing the circumstances in which victims of crime can be compensated out of public funds and the administration of the system to deliver this.	Everything covered by this paragraph, including the Compensation Agency and the Criminal Injuries Compensation Appeals Panel.	The compensation scheme provided for in the Terrorism Act (which is due to end in 2007).	None.
9(h) Community Safety Partnerships	Statutory partnerships provided for in the Justice (NI) Act 2002. These are different from the current voluntary schemes that the local councils operate.	Everything.	-	None.
9A Chief Inspector of Criminal Justice for NI	The Inspectorate & the law governing how it operates.	Everything.	-	None.

10 Public Order

The maintenance of public order, including the conferring of powers, authorities, privileges or immunities for that purpose on constables, members of the armed forces of the Crown and other persons (other than the Ministry of Defence Police) but not any matter within paragraph 17 of Schedule 2 (national security, etc.); the Parades Commission.⁷

The statutory framework governing the maintenance of public order, including responsibility for parades legislation in NI.

Preferably everything (though see also the list of issues remaining)

NB: Responsibility for determining which weapons may be used by the police in public order situations will remain an operational decision for the Chief Constable - ie: there is no ministerial function or legislative capacity to devolve.

See list of issues remaining

Certain aspects of parades, for example appointments to the Parades Commission and its operation could be kept reserved, if that was the wish of the Assembly.

Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved.

11 The Police and the policing accountability framework

"The establishment, organisation and control of the PSNI and of any other police force (other than the MoD Police); the Northern Ireland Policing Board; traffic wardens."⁸

The statutory framework which provides for the existence of the Police Service of NI and the governance and oversight arrangements which apply to it (the role of the Policing Board, District Policing Partnerships & Police Ombudsman). Also, the funding and corporate governance of a range of statutory and non-statutory bodies within the wider policing field (the Oversight Commissioner, Police Retraining & Rehabilitation Trust, Police Fund, RUC George Cross Foundation and RUC Widows' Association

Everything except those matters listed in the next two columns

The SoS would continue to be responsible for the arrangements for sharing information relating to national security with the Policing Board because national security remains an excepted matter.

The 50:50 temporary recruitment provisions, unless the Assembly specifically request that these be devolved. And responsibility for seeking a derogation from the EC Directive on equality would remain an excepted matter for the UK Government, even if responsibility for 50:50 were devolved.

The detail of the relationship between the Policing Board, the Northern Ireland Minister for policing and an Assembly policing committee.

The Assembly will need to consider whether to seek devolution of the 50:50 temporary recruitment provisions.

The Secretary of State would retain power to issue statutory guidance to the Ombudsman (the Minister for policing

Whether responsibility for advising the Crown on the Ombudsman appointment should

NB. The Oversight

	<p>Commissioner's term of office comes to an end in May 2007</p> <p>This paragraph does not cover police powers, which are dealt with under paragraph 9(c) above.</p>		<p>would also have this power).</p> <p>The declaration made by independent DPP members will not devolve because it needs to remain the same as the declaration made by candidates standing for local election to local councils, and electoral law will remain excepted.</p>	<p>remain reserved or transfer to FM & DFM rather than the Minister (s) for policing.</p>
<p>11A Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters</p>	<p>This is governed by the Inter-Governmental Agreement on Policing co-operation which is an international treaty and would therefore have been an excepted matter. However the NI (Miscellaneous Provisions) Act 2006 transfers certain aspects of international co-operation into the reserved field, enabling them to be devolved.</p>	<p>Arrangements for co-operation between the PSNI and the Garda Síochána with respect to lateral entry, secondments, exchanges or training of officers; communications (including liaison and information technology); joint investigations; and disaster planning.</p>	<p>The remaining aspects of the Inter-Governmental Agreement on Policing and the Agreement itself.</p>	<p>The Assembly will wish to consider whether, with the UK Government's agreement, they wish in the future to negotiate replacement arrangements with the Irish government.</p>
<p>12 Firearms & explosives</p>	<p>The licensing framework for firearms and explosives.</p>	<p>In principle, everything covered by this paragraph, but see issues remaining</p>	<p>See issues remaining</p>	<p>Should legislation governing automatic & semi-automatic weapons remain reserved (as in Scotland)?</p> <p>Should responsibility for explosives regulation fall to the Minister for public safety or to a Minister for policing or justice?</p>

15 The Courts	<p>The administration and oversight of the court system in Northern Ireland.</p> <p>NB: The next two columns focus on the Government functions and responsibilities, not those of the Lord Chief Justice of NI, whose professional responsibilities as head of the judiciary in NI will remain unchanged following devolution.</p>	<p>The NI Court Service (including the Lord Chancellor's functions in respect of court admin)</p> <p>Legal aid</p> <p>Judicial appointments arrangements (subject to the agreement of a Concordat between the UK Government and the NI Administration governing the independence of the judiciary), will become the responsibility of the First Minister & deputy First Minister.</p> <p>Appointment of arbitrators, referees and advisory bodies other than those falling within the remit of the NI Judicial Appointments Commission.</p> <p>Making recommendations to the Crown on the appointment of Queen's Counsel.</p>	<p>Appointment and removal of the Lord Chief Justice of NI and the Lords Justice of Appeal – responsibility will remain excepted (see below).</p> <p>Judicial salaries, pension and terms & conditions will continue to be excepted (see below).</p> <p>UK-wide Lord Chancellor functions relating to the judiciary or international relations.</p> <p>Lord Chancellor functions under the Human Rights Act 1998 or the Data Protection Act 1998.</p>	Agreeing the Concordat.
15A The Northern Ireland Law Commission	<p>The Criminal Justice Review recommended the establishment of an independent Northern Ireland Law Commission to keep under review both criminal and civil law in Northern Ireland</p>	Everything (once established). -		None

Table 2: Excepted Matters: Commentary on Devolution Proposals[\[5\]](#)

Summary of Law and Order provisions contained within Schedule 2 of the Northern Ireland Act 1998 & the Northern Ireland Act 1973, with reference to similar provisions in the Scotland Act 1998

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>3.9 International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations and extradition, and international development assistance and co-operation, but not –</p>		
(a) repealed		
(aa) co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters –	<p>3. International relations, including treaties, the making of peace or war and neutrality, and matters connected therewith but not –</p>	
(i) transfers, secondments, exchanges or training of officers;	(a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;	
(ii) communications (including liaison and information technology);	(b) & (c) not related to law & order.	
(iii) joint investigations;		
(iv) disaster planning;		
(b) & (c) not relevant to law & order.		
<p>4.10 The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police.</p>	<p>4. The armed forces of the Crown but not any matter within paragraph 3 of Schedule 3 to this Act.</p>	<p>(1) The Extradition Act 2003 repealed the old backing of warrants scheme which existed between the UK and Ireland and replaced it with the European Arrest Warrant which, in effect, replicated that system across those participating Member States. The discussion document explained that the Government considered it appropriate to retain a single legislative framework for extradition arrangements throughout the UK and therefore would not intend to devolve legislative competence to the Assembly but intended that some specific administrative functions relating to extradition and international mutual legal assistance on criminal matters should, post-devolution, be exercised by Northern Ireland Ministers instead of the Secretary of State. The 1998 Act was amended by the Northern Ireland (Miscellaneous Provisions) Act 2006 to make it possible to transfer those functions by Order despite this remaining an excepted matter.</p>
<p>7.11 Treason, but not powers of arrest or criminal procedure.</p>	<p>6. Treason and treason felony but not powers of arrest or criminal procedure in respect thereof.</p>	<p>(2) The 1998 Act was further amended by the NI (MP) Act 2006 to transfer certain aspects of co-operation between the PSNI and the Garda Síochána (which, being governed by an international agreement were excepted) to the reserved field so they were capable of being devolved with the rest of policing matters.</p> <p>Will not devolve.</p>
		<p>Will not devolve.</p>

11.12 The determination of the remuneration, superannuation and other terms and conditions of service (other than those relating to removal from office) of judges of the Supreme Court of Judicature of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the Judicature (NI) Act 1978, county court judges, recorders, resident magistrates, lay magistrates, coroners, the Chief and other Social Security Commissioners for Northern Ireland and the Chief and other Child Support Commissioners for Northern Ireland.

11A. The Supreme Court.

[No specific reference in the 1998 Act.]

17.13 National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion; the subject-matter of-

(a) the Official Secrets Acts 1911 and 1920;

(b) Chapter I of Part I of the Regulation of Investigatory Powers Act 2000, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and

(c) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by s.4 (2) (crime) & not by any other provision of ss.1-4.

21A The office and functions of the Advocate General for Northern Ireland.

[\[6\]](#)

9. The appointment and removal of judges of the Supreme Court of Judicature of Northern Ireland, county court judges, recorders, resident magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other National Insurance Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland.

[No specific reference in the 1973 Act.]

10. The appointment and office of the Director and deputy Director of Public Prosecutions for Northern Ireland.

14. Special powers and other provisions for dealing with terrorism or subversion.

NB: The 1973 Act preceded the Acts which put the intelligence agencies on a statutory footing and publicly acknowledged their existence for the first time.

[No specific reference in the 1973 Act.]

Legislative competence will not devolve, but it is proposed that, on devolution, responsibility for providing administrative support to the Social Security and Child Support Commissioners for Northern Ireland will transfer to Northern Ireland Ministers..

Will not devolve.

The Justice (NI) Act 2002 provided that the appointment of the DPP(NI) would, following devolution of policing and justice, be the responsibility of the Attorney General for Northern Ireland (who will be appointed by the FM/DFM). So this will automatically devolve with criminal justice matters.

Will not devolve.

Will not devolve.

[1] Unless otherwise specified, when the table refers to issues devolving it means both that the Assembly will take on legislative competence for this particular area and that any statutory functions or powers currently exercised by the Secretary of State will transfer to NI Ministers.

[2] This is identical to paragraph 4(a) of Schedule 3 (minimum reserved matters on Appointed Day) to the Northern Ireland Constitution Act 1973.

[3] This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973.

[4] This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973.

[5]9 This is broadly similar to the wording of paragraph 5 of Schedule 3 to the Northern Ireland Constitution Act 1973, which dealt with the RUC and the Police Authority.

10 See paragraph 9 of Part I of Schedule 5 to the Scotland Act 1998

11 See paragraph 10 of Part I of Schedule 5 to the Scotland Act 1998

[6]11 See paragraph 10 of Part I of Schedule 5 to the Scotland Act 1998

12 See item L1 in paragraph 3 of Part II of Schedule 5 to the Scotland Act 1998

13 See item B8 in paragraph 3 of Part II of Schedule 5 to the Scotland Act 1998

5 This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973.

6 This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973.

7 This is broadly similar to the wording of paragraph 3 of Schedule 3 to the Northern Ireland Constitution Act 1973.

8 This is broadly similar to the wording of paragraph 5 of Schedule 3 to the Northern Ireland Constitution Act 1973, which dealt with the RUC and the Police Authority.



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST

8 June 2007

Dear Mr Marsh

Report on Devolution of Policing and Justice Matters

I thought you might be interested in the extract, attached, which is taken from the Official Report of the proceedings of the Northern Ireland Assembly on 4 June 2007. As you will see, the Assembly resolved to call on the Assembly and Executive Review Committee to report, by 29 February 2008, on the work which needs to be undertaken in order to comply with the provisions of section 18 of the Northern Ireland (St Andrews Agreement) Act 2006.

I also want to confirm that the Assembly and Executive Review Committee will be considering this requirement when it meets, next, on Tuesday 12 June 2007. If you have any queries, please do not hesitate to contact me.

Yours sincerely

Stephen J Graham

Committee Clerk

Monday 4 June 2007

COMMITTEE BUSINESS

Report on Devolution of Policing and Justice Matters

Mr Speaker: I advise the House that the Business Committee has agreed that the motion will be treated as a business motion. Therefore, there will be no debate on the motion.

Mr McCarthy: On a point of order, Mr Speaker. This matter is of great importance to every elected representative and member of the community in Northern Ireland. What mechanism exists for the consultation of Assembly Members who are not members of the Assembly and Executive Review Committee?

Mr Speaker: It is entirely a matter for the Assembly and Executive Review Committee to decide how it will inform party leaders and other parties of its business. That is not the business of the House.

Mr Burnside: On a point of order, Mr Speaker. Since you have ruled that there will be no debate in the Chamber, may I ask the Committee Chairperson, through the Chair, why this motion is being brought before the House at this early stage, when there is no demand from the community for the transfer of policing and justice powers and the criminal investigation into the Northern Bank robbery, carried out by the Republican movement. Sinn Féin/IRA —

Mr Speaker: Order. I ask the Member to take his seat.

That is not a point of order. Mr Burnside has been a

(b) as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St. Andrews Agreement, for or in connection with policing and justice matters ceasing to be reserved matters;

(b) as to which matters are likely to be the subject of any request under section 4(2A) of the Northern Ireland Act 1998 that policing and justice matters should cease to be reserved matters; and

(c) containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008.

If the Member for South Antrim has a problem, he should consult his colleagues who sit on the Business Committee, which agreed unanimously that this motion be presented to the Assembly. It is a procedural motion, and I am surprised that Mr Burnside did not check his facts before raising such a supercilious point of order.

Question put and agreed to.

Resolved:

That this Assembly calls on the Assembly and Executive Review Committee to report, by 29 February 2008, on the work which needs to be undertaken, in accordance with section 18 of the Northern Ireland (St. Andrews Agreement) Act 2006 —

(a) as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St. Andrews Agreement, for or in connection with policing and justice matters ceasing to be reserved matters;

(b) as to which matters are likely to be the subject of any request under section 4(2A) of the Northern Ireland Act 1998 that policing and justice matters should cease to be reserved matters; and

(c) containing an assessment of whether the Assembly is likely to make such a request before 1 May 2008.

an Assembly Member for quite a while and a member of another House for a shorter time, so he should know about procedure. This is a procedural matter, which the Committee has rightly brought to the House to be dealt with and approved.

Mr Dodds: On a point of order, Mr Speaker. Will you confirm that the Business Committee recommended, and decided unanimously, that this be treated as a business motion and that if the Member has a problem with that, he should take it up with his party's representatives on the Committee?

Mr Speaker: The Member is quite right: Members should not bring to the Floor of the House for debate issues that should be dealt with by the Business Committee. It was agreed by the Committee and by the Whips that this is the best way forward, as it is a procedural matter.

The Chairperson of the Assembly and Executive Review Committee (Mr Donaldson) I beg to move

That this Assembly calls on the Assembly and Executive Review Committee to report, by 29 February 2008, on the work which needs to be undertaken, in accordance with section 18 of the Northern Ireland (St. Andrews Agreement) Act 2006 --

266



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings

Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Peter May
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST

15 June 2007

Dear Mr May

Report on Devolution of Policing and Justice Matters

Further to my letter of 8 June 2007 I have been asked to invite relevant officials from the NIO to attend the next meeting of the Assembly and Executive Review Committee, which is scheduled for Tuesday 3 July 2007.

You will know from my earlier letter, that the responsibility for preparing a report to the Assembly on the transfer of policing and justice matters rests with the Assembly and Executive Review Committee. As a result of discussions at its most recent meeting, on Tuesday 12 June, members concluded that it would be useful if officials were to brief the Committee in order to provide, in particular, an assessment of the expectations of the Secretary of State in terms of the report he wishes to receive from the Assembly; and to report on the practical arrangements which are being made for the transfer of Policing, Security and Criminal Justice matters.

I would be grateful if you were to have for someone from the NIO contact me so that we might discuss, and agree, the necessary arrangements.

Yours sincerely

Stephen J Graham

Committee Clerk



Northern
Ireland
Office

Northern Ireland Office
11 Millbank
London SW1P 4PN
Telephone 020 7210 6462
Facsimile 020 7210 0246
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Mr S J Graham
Clerk to the Assembly and Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

2 July 2007

Dear Mr Graham,

Thank you for your letters of 8 and 15 June in relation to the Assembly and Executive Review Committee's considerations for their report on progress towards the devolution of policing and justice matters under section 18 of the Northern Ireland (St Andrews Agreement) Act 2006. We were grateful for your invitation for Northern Ireland Office officials to appear before the Committee and give evidence at its next meeting on 3 July.

The NIO welcomes this opportunity to brief the Committee and to provide an assessment of the Secretary of State's expectations of the Assembly's report and an update on the practical arrangements which are being made for the transfer of policing and justice matters. The officials who will be attending are Peter May and Clare Salters.

The Committee may find it helpful to consider the paper attached at Annex A to this letter, which summarises the key issues which the Secretary of State would expect to

be covered in the Assembly's report, as well as setting out the practical arrangements which are being taken forward by the NIO in order to be in a position to devolve policing and justice matters to the Assembly by May 2008, should the Assembly so request. It may be that this paper will help to clarify any outstanding issues and to focus the Committee's questions as they take evidence from officials on 3 July.



Northern
Ireland
Office

Naturally we would wish to be as helpful as possible to the Committee as it gathers evidence in preparation for its report. In this, our assumption is that the Committee will only be considering matters which would fall within the Assembly's remit following the devolution of policing and justice matters.

I refer you to the discussion paper attached at Annex A and trust that this will be of use to the Committee.



2007 11/22/07

A handwritten signature in black ink that reads "Simon Marsh". The signature is written in a cursive style and is positioned above a solid black horizontal line.

**SIMON MARSH
PRINCIPAL PRIVATE SECRETARY**



Northern
Ireland
Office

Northern Ireland Office
11 Millbank
London SW1P 4PN
Telephone 020 7210 6462
Facsimile 020 7210 0246
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Stephen J Graham Esq
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

24th July 2007

Dear Stephen,

**COMMITTEE'S INQUIRY INTO DEVOLUTION OF POLICING AND JUSTICE
MATTERS**

At the Committee's meeting on 3 July, attended by Clare Salters and Peter May, the Committee raised a number of points on which we agreed to write with further details. I think these are all addressed in the attached paper. If you have any further questions, I know that both Peter and Clare will be happy to assist wherever possible.

Yours,
A handwritten signature in black ink, appearing to read 'Simon Marsh'.

SIMON MARSH

Committee's Inquiry into Devolution of Policing and Justice Matters: Meeting on 3 July 2007: Response to Questions

Appointment of Ministers to a Department for policing and justice

1. The Committee asked whether or not the Secretary of State would have the power to appoint Ministers to Northern Ireland departments, and specifically to a Department for policing and justice. As Clare Salters explained to the Committee on 3 July, there is no such power for the Secretary of State; this is a matter entirely for the devolved institutions themselves. Section 17 of the Northern Ireland Act 1998 provides for the First and deputy First Ministers, acting jointly, to determine the number of Ministerial offices (not to exceed ten unless the Secretary of State provides for more by Order) and section 21 provides for NI departments to be established (and dissolved) by an Act of the Assembly.

2. The new section 21A of the 1998 Act (which will be inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006 when the relevant provisions are commenced) provides for a department with policing and justice functions to be established by an Act of the Assembly and, in addition, provides the Assembly with the power to provide for a number of different arrangements for the ministerial oversight of such a Department in addition to the arrangements available under the 1998 Act as originally passed.

3. The amendment to section 21A made by section 44 of the Justice and Security (NI) Act 2007 provides a further model that is available to the Assembly. In addition, section 44(5) of the 2007 Act confers on the Secretary of State the power to establish, by Order in Council a department with policing and justice functions, based on the new model provided for in that Act, but only if it appears to him that there is no reasonable prospect of the Assembly agreeing on the model for a department for policing and justice. There is no provision in the legislation for the Secretary of State to appoint Ministers to such a Department. Even where the Secretary of State has used his or her order-making power to establish the Department, responsibility for appointing Ministers rests with the Assembly.

Protocols and Memoranda of Understanding

4. The Committee requested details about the protocols and memoranda of understanding which are being developed. Work is ongoing to develop the complete list of what will be required, and in some instances this may change as the programme develops. However, based on our current understanding, the areas in which protocols or other arrangements will be required are:

(a) Protocols between the Secretary of State and the Executive covering the independence of both the Judiciary and the Public Prosecution Service, as outlined in paragraphs 7.8, 15.15 and 15.16 of the Discussion Paper published by the Government in February 2006. The protocols will be consistent with the Justice (Northern Ireland) Act 2002.

(b) One or more protocols clarifying respective roles and responsibilities where a transferred matter touches upon matters that are national security related. It will be up to the devolved administration whether or not they want to comment on the protocols but, as national security is excepted, there can be no negotiation on the text.

(c) A protocol between the Secretary of State and the Chief Constable setting out the principles relating to the handling of national security matters by the Chief Constable. The role of the Policing Board will not be changed by this protocol.

(d) Protocols or memoranda of understanding to address ICT and other support service arrangements. These arrangements will clarify roles and responsibilities and may need to cover both the arrangements with the Departments currently in the devolved sphere and arrangements with Agencies and Arms Length Bodies within the current NIO.

Staff transfers

5. The Committee also asked about the transfer arrangements for the senior management structure in terms of what posts will be transferred across. As Peter May noted in the evidence he gave to the Committee, the principle is that the posts to transfer will be those associated with the functions which transfer. The same approach will be taken to funding arrangements. This is the principle that was followed during devolution of the Departments currently under the auspices of the Executive.

6. That will apply at senior management level as at all others. Where posts have an involvement in matters which would fall to both the devolved and non-devolved sides, a judgement will be reached on an overall basis to ensure that there is a fair distribution of posts between the Department of Justice and the future Northern Ireland Office.

Serious Organised Crime Agency

7. The Committee sought information on the oversight arrangements for the Serious Organised Crime Agency (SOCA). The Serious Organised Crime and Police Act 2005 provides for the functions and activities of SOCA, under the supervision of the Home Secretary. It is an executive, non-Departmental Public body sponsored by, but operationally independent from, the Home Office. SOCA is led by a Board, the chair of which is appointed by the Home Office and that chair manages the relationship with Government and Ministers. The Home Secretary sets priorities for tackling organised crime across the UK and appoints the Director General of SOCA. SOCA is required to publish an Annual Plan and Report which is laid before Parliament.

8. In broad terms, under devolution, a Minister for Justice in Northern Ireland would exercise the same functions and responsibilities as the Scottish Ministers. A number of functions are conferred under the Act on Scottish Ministers, and the Home Secretary is obliged to consult with the Scottish Ministers in a range of matters governing SOCA, including the setting of strategic priorities, codes of practice, action plans and specific activities in Scotland. Scottish Ministers also have direct functions in directed arrangements or designation of powers to SOCA staff.

9. The Northern Ireland Policing Board will not have oversight of SOCA. SOCA officers will, however, come under the jurisdiction of the Northern Ireland Police Ombudsman. Officials from the Northern Ireland Office are currently engaged with SOCA on a range of issues including governance and the merger with the Assets Recovery Agency.

Cross-border co-operation on criminal justice matters

10. Finally, the Committee asked about cross-border co-operation on criminal justice matters. There has always been operational co-operation between the criminal justice systems in Northern Ireland and the Republic of Ireland, especially between the police, but it has been ad hoc. The Criminal Justice Review made recommendations about areas of work to be addressed co-operatively. It was agreed that some formal arrangements should be put in place to govern co-operative working and to ensure that it remained accountable to Ministers.

11. An Intergovernmental Agreement on Criminal Justice Co-operation was signed by the British and Irish Governments in July 2005. It set out that there would be regular meetings of Ministers (at least yearly), and meetings of officials (at least twice a year). The official Working Group advises Ministers on a programme of work, reporting progress and proposing new areas of work. Workstreams are taken forward by Project Advisory Groups (PAGs) made up of officials and practitioners.

12. The initial work programme comprised areas of work recommended by the Criminal Justice Review, viz:

- (a) Registered [sex] Offenders
- (b) Public Protection, including addressing Re-offending
- (c) Forensic Science

13. To this have been added PAGs dealing with:

- (a) Exchange of Personnel

(b) Victim Support

(c) Youth Justice

(d) Criminal Justice and Social Diversity

14. Outcomes of this work so far include

(a) joint training by the two forensic science services;

(b) regular exchanges and visits between officers responsible for monitoring sex offenders;

(c) cooperation between the two probation services, with the Irish Probation and Welfare Service (PWS) piloting a PBNI programme for domestic violence offenders in Dundalk;

(d) plans for the Irish Probation Service to send offenders to a PBNI drink-driving programme based in Londonderry;

(e) work between the two probation services to introduce a common risk assessment tool for sex offenders for the first time;

(f) the identification of more significant obstacles to cooperative working, in the areas of mutual enforcement of offender registration requirements, and sharing of fingerprint and DNA data.

Northern Ireland Office

July 2007



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings

Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784

Fax: (0)28 9052 5917

Email: stephen.graham@niassembly.gov.uk

Mr Peter May
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

25 September 2007

Dear Peter

Assembly and Executive Review Committee

The Assembly and Executive Review Committee requested, at its meeting today, that I write to the Northern Ireland Office to request information on the preparations which it has been making for the devolution of Policing and Justice.

The Committee would like to request clarification on the following three matters:

1. The timing and progress of each of the workstreams which the Northern Ireland Office is currently undertaking in relation to the devolution of policing and justice functions.
2. Details of the budgetary allocations and overall 'financial architecture' of the devolved department.
3. The departmental model which the NIO is currently working towards.

Yours sincerely

Stephen J Graham

Committee Clerk



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

26 September 2007

Dear Simon

Inquiry into the devolution of policing and justice matters

The Assembly and Executive Review Committee met yesterday to hear oral evidence from the Northern Ireland Court Service in relation to its Inquiry into the devolution of policing and justice matters.

As a result of discussions with the Court Service, I was directed by the Committee to obtain the following information from the Northern Ireland Office (NIO):

1. An outline of the existing structure for policing and justice (to include details of the governance and accountability relationships which the various policing and justice organisations have with the NIO and the Secretary of State for Northern Ireland).
2. A description of the departmental model to which the NIO is currently working and which highlights how, and to what extent, this differs from the existing structure referred to at 1 above (to include details of any plans to dismantle or merge existing policing, or justice, organisations).
3. An outline of the governance and accountability arrangements which might apply between any new department and the various policing and justice organisations.
4. Details of each of the work-streams which the Northern Ireland Office is currently undertaking in relation to the devolution of policing and justice functions, the timeframe for the completion of each work-stream, the progress made to date, and the extent to which the work remains on target or is behind schedule.
5. Details of the existing budgets for all aspects of policing and justice (to include NIO costs), an indication of the budgetary allocations proposed for any new devolved structure and the overall 'financial architecture' being developed by the NIO for that structure.

Whilst the Committee is likely to wish to explore the issues referred to above with the Secretary of State at the evidence session next week, I do appreciate that you may not be in a position to reply within that timeframe. However, it would assist the Committee greatly if you were to submit a formal response before 17 October.

Yours sincerely

Stephen J Graham

Committee Clerk



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

8 October 2007

Dear Simon

Inquiry into Devolution of Policing and Justice Matters

Further to my letter of 26 September 2007, and following on from the Secretary of State's appearance before the Assembly and Executive Review Committee on 3 October, and the receipt of some additional written evidence, I wish to raise a number of points on which I trust you will be able to assist. I know you are already in possession of a draft transcript of the proceedings of the oral evidence session and that many of the points below will be familiar to you. However, there are other, often connected, points which Members did not manage to raise during the oral evidence session. The Secretary of State did say that he would be happy to deal with such matters in correspondence, or by way of his appearance before the Committee at some stage in the future.

Governance, accountability, structures, relationships and resources

During the oral evidence session, there were a number of questions relating to governance and accountability. These are matters which were raised at points 1, 2 and 3 of my letter 26 September, and a composite reply would be helpful. Your response should also deal with the working relationships, and lines of communication, which might exist between the NIO, any new Department of Policing and Justice, and national organisations such as the Serious Organised Crime Agency (SOCA) and the Security Services in relation to, for example, 'excepted matters'. Indeed, you will be aware that the Committee has invited SOCA and the Security Services to make their own written submissions on just this point. It would also be useful if the Secretary of State was to offer a view on how the Policing Board might relate to any 'scrutiny committee' which might be established as a result of the creation of a Policing and Justice Department, given the potential conflict of interests which MLAs might have to face, and whether the role and constitution of the Policing Board might change in the future.

Similarly, and in relation to point 5 of my letter of 26 September, during his evidence, the Secretary of State sought to give reassurance to the Committee on the matter of funding (and resources) for policing. Indeed, he indicated he was "working hard to secure a good

financial settlement." He went on to describe the policing budget as "a good budget." An elaboration, which addresses the detail of existing, and planned, budgets and the 'financial architecture' which is being developed to support any devolved structure, would be most welcome.

Although not raised in my earlier letter, or during the oral evidences session (because of time constraints), the matters, below, are also of interest to the Committee. The views of the Secretary of State would be welcome.

Appointments to the judiciary and contact with OFMdFM

The Committee is aware of the legislative provision for appointing an Attorney General but is interested to be kept informed of the practical arrangements, and timing, for making such an appointment. The Committee is also anxious to have an understanding of the future relationship between the Attorney General and Advocate General and the role to be played by the Executive in appointments to the judiciary.

What contact, if any, has there been with OFMdFM about the matters referred to in the preceding paragraph, specifically, and indeed, more generally, in relation to the transfer of policing and justice matters?

Cross border co-operation on policing and justice matters

The Committee has received a written submission from Mr Brian Lenihan, TD, Minister for Justice, Equality and Law Reform. The Committee would welcome details of the existing arrangements for cross border co-operation on policing and justice matters, including those which have their basis in Inter-Governmental, European Union, or International Agreements, and any other informal, or 'ad-hoc' mechanisms which might be in place.

Furthermore, the Committee is interested to know what discussions there have been with the Irish Government, if any, in relation to the impact on any, or all, existing agreements and arrangements in circumstances where policing and justice matters were to be transferred, including the actions which would be required to amend or repeal existing agreements and the need to develop new protocols.

Community confidence

The issue of 'community confidence' in relation to the transfer of policing and justice matters has also been raised with, and by, the Committee. The Committee would be interested to hear from the Secretary of State as to the measures he considers might, usefully, be applied to gauge that confidence. In this regard, the Secretary of State referred to a poll figure, for people who do not want the devolution of policing and criminal justice, as being around 14% or 15%. The Committee would find it helpful to have more details of the poll to which the Secretary of State refers.

As I indicated in my letter of 26 September, a reply before 17 October would be especially helpful to the Committee.

Yours sincerely

Stephen J Graham

Committee Clerk



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

11 October 2007

Dear Simon

Inquiry into Devolution of Policing and Justice Matters

Further to my letter of 8 October 2007, and following on from the meeting of the Assembly and Executive Review Committee on 9 October. I wish to seek clarification on a point on which I trust you will be able to assist.

In the letter from the NIO to the Preparation for Government Committee on 15 August 2006 the NIO makes reference to (under Public Order: issues remaining);

“Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved”

The Assembly and Executive Review Committee would like to seek clarification on this statement.

In what circumstance would these powers be devolved?

What progress has been made in developing the powers?

As I indicated in my letter of 8 October, a reply before 17 October would be especially helpful to the Committee.

Yours sincerely

Stephen J Graham

Committee Clerk



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

15 October 2007

Dear Simon

Inquiry into Devolution of Policing and Justice Matters

Further to my letters of 26 September and 8 October 2007, I have a specific query about any progress which may have been made in relation to 12.3 of the NIO Discussion Document (February 2006) which deals with various powers under the Public Order (Northern Ireland) Order 1987 and the Terrorism Act 2000. Clare Salters' letter of 15 August to the Preparation for Government Committee builds on the NIO Discussion Document and records that "Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved."

However, I trust you will understand that the Assembly and Executive Review Committee may not be able to reach a conclusion on the extent to which such Public Order matters might be transferred, unless it has an understanding of the other powers there might be, post-normalisation, and which would provide military support to the police in relation to public order and explosive ordnance disposal.

In the circumstances, I would ask that you address this matter in the composite reply you are preparing in answer to the Committee's earlier queries.

Yours sincerely

Stephen J Graham

Committee Clerk



**Northern
Ireland**

Northern Ireland Office
Castle Buildings
Belief: U.L. 3G

Principal Private Secretary to the
Secretary of State for Northern Ireland



Stephen Graham
Clerk to the Assembly and Executive Review Committee
Rm 428
Parliament Buildings
Stormont Estate, Belfast
BT4 3XX

15th October 2007

Dear Stephen,

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

Thank you for your letters of 26 September and 8 October, to which I hope I can provide sufficient answers for the Committee. As the Secretary of State said to the Committee during his appearance on 2 October, he is very keen to help the Committee in its task.

Governance of and relationships within the Northern Ireland criminal justice and policing family

The criminal justice and policing system in Northern Ireland is made up of a combination of organisations of different types, reflecting their relative distance from Ministers. The Ministers responsible (the Secretary of State for Northern Ireland and the NIO Minister for Criminal Justice and Policing, the Secretary of State for Justice and the MoJ Minister with responsibility for the Northern Ireland Court Service, and the Attorney General) meet together to set strategic priorities as the ministerial Criminal Justice Strategy and Delivery Group. Support to the Ministers is provided by the NIO, the Northern Ireland Court Service and the Attorney General's Office, respectively.

Service and the Attorney General's Office respectively

A Criminal Justice Board provides support at official level, ensuring the criminal justice system works co-operatively and in a coordinated way, and deals with issues of inter-agency interest. The Board is chaired by the Director of Criminal Justice, Northern Ireland

114



INVIS ERIS PIOPLA



Northern
Ireland
Office

Office, with representatives of the Court Service and Attorney General's office, and of the key criminal justice organisations: the Police Service of Northern Ireland; the Public Prosecution Service, led by the Director of Public Prosecutions; the Probation Board; the Prison Service and the Youth Justice Agency.

The NIO has four agencies, which are operational arms of the department (the Prison Service, Youth Justice Agency, Compensation Agency and Forensic Science Northern Ireland). Then there is a range of non-departmental public bodies (NDPBs) including the Probation Board, Policing Board and Office of the Police Ombudsman; these operate independently of ministers but are sponsored by the department and their functions are set out in legislation. There are also several other independent bodies that the

departments sponsor, but which do not properly fall into the NDPB category

In order to clarify the relationship of the NIO and the various criminal justice organisations, I am sending:

- an organisational plan for the NIO to Directorate level, including the relationship to the department's four agencies (Annex A);
- a table setting out the various bodies in the policing and justice fields (those sponsored by the NIO and those sponsored by the Court Service), including their status, current sponsor (as appropriate), current budget and staffing, their status at the point of devolution and their likely future sponsor (Annex B);
- a paper setting out in general terms the defining characteristics of agencies and the various types of NDPBs and other sponsored bodies. This is intended to make greater sense of the previous table, by expanding upon how the various parts of the criminal justice and policing family relate to ministers and the department (Annex C);

The relationship of the various arm's-length bodies to the Minister and core department will not, with two crucial exceptions, be changing at the point of

:FW



INVESTOR IN PEOPLE



Northern
Ireland



devolution: the agencies will remain agencies, the NDPBs will remain NDPBs, with all the relevant accountability structures etc. The Government believes that any changes ought to be a matter for the incoming Minister. Likewise, arrangements for coordinated governance which are currently managed through the ministerial Strategy and Delivery Group and the Criminal Justice Board will be for the Minister of Justice to determine.

As the Committee will already be aware, the exceptions are the Court Service and the PPS. The changes that are proposed are, in the case of the Court Service, necessary to effect its devolution to a single department of justice; and in the case of the PPS, already set out in statute following the Review of the Criminal Justice System 2000. The intention is that the Court Service, which is presently a department of the Lord Chancellor, should become an agency of the Department of Justice¹ (with some departmental-type functions coming within the Department of Justice itself). In the longer term it will be open to the Assembly to consider alternative models for courts and tribunals administration (such as those in Scotland or Ireland) should they wish to do so. The PPS, which is currently resourced through the NIO and superintended by the Attorney General, will be resourced through another department and will have a consultative relationship with the new Attorney General; whilst it is a matter for the Executive, it is our view that OFMDFM would be the appropriate resourcing department for the PPS.

I would flag two further, very minor points on the status of arm's-length bodies. There are moves currently to put the office of Prisoner Ombudsman on a specific statutory footing; this makes no change to the functions or status of the office. The Criminal Justice Review 2000 recommended that the Probation Board be established as an agency of any future Department of Justice. At the time, NIO ministers took the view that that was a matter for

the future devolved Minister to determine, and so it has remained an NDPB with its own independent Board.

¹ I am using the term 'Department of Justice' throughout as shorthand for whatever department receives policing and justice functions.

aw



INVESTOR TO PROSPER



Northern
Ireland
Office

Of course, the criminal justice system also includes wholly independent elements – particularly the judiciary and the legal professions. Protecting the continued independence of the judiciary has been a key feature of the Government's most recent constitutional changes in the Justice (Northern Ireland) Acts of 2002 and 2004 and the Constitutional Reform Act 2005. It is intended that the provisions of this legislation should be protected by the agreement of a Concordat on the Independence of the Judiciary, a draft of which has been previously shared with the Assembly. Arrangements for the administration of the courts will likewise reflect the importance of maintaining the real and perceived independence of the judicial function. Regulation of the legal professions is already transferred to the Executive (DFP).

UK Bodies

As well as those policing and justice organisations which will devolve, the Department of Justice and the criminal justice system will also need to work with those UK-wide bodies with responsibilities in the law enforcement field. These include SOCA, HMRC, the Borders and Immigration Agency, and the Security Service. Their roles will not change following devolution of justice, and they will continue to be accountable through the various Whitehall and Westminster channels which govern UK Government structures. As a matter of course, these bodies will want to work with local law enforcement bodies to ensure operational effectiveness. At present, the key forum for coordinated activity – both operational and strategic – is the Organised Crime Task Force. The relationships are informal but there is full participation. Even at present, the various bodies are not accountable to the same minister, but this has not lessened the effectiveness of the cooperation.

SOCA is an Executive Non-Departmental Public Body which is sponsored by but operationally independent from the Home Office. Therefore it is also operationally

JW



DEPARTMENT OF JUSTICE



Northern
Ireland
Office

independent from NIO. SOCA plans its own priorities, including how it exercises the functions given to it by statute, based on strategic priorities set by the Home Secretary. SOCA's Annual Plan includes specific reference as to how it will exercise its functions in Northern Ireland, as required by statute. SOCA has agreed to work in partnership with law enforcement agencies in Northern Ireland and its Annual Plan for 2007/08 states it will provide intelligence support to agencies in Northern Ireland, conduct intervention activity, undertake enforcement operations and facilitate international law enforcement assistance. SOCA's role in Northern Ireland would not change following the devolution of policing and justice. I understand that you have sought a submission directly from SOCA; if you have further questions in light of that submission, please do come back to me.

HM Revenue and Customs is a non-ministerial department, responsible for the collection of taxes and payment of tax credits and other benefits. It will continue to operate on a UK-wide basis, including its enforcement responsibilities. It already has a protocol governing joint operations with the PSNI. It also has operational links with devolved departments, and this may also be the case with the Department of Justice.

The Border and Immigration Agency is an agency of the Home Office. It will continue to operate on UK-wide basis, accountable to the Home Secretary.

The role of the future NIO in this field will be very limited. It will have responsibility for Northern Ireland-specific policy and certain operational functions which fall within the excepted field, principally counter-terrorism and national-security related issues. As such it will have the task of representing Northern Ireland interests to the Home Office which will have the UK-wide lead.

Of course the NIO will also be responsible for the interface between the devolved administration and Whitehall. This interface function will include the Department of Justice alongside the other devolved departments from the point of devolution; there is not going

187



BY ESTABLISHMENT



Northern
Ireland
Office

to be any special relationship between the Department of Justice and the future NIO by virtue of their shared past.

The role of the Security Service

The Committee has asked about the role of the Security Service in a devolved structure and how the Service will relate with the new Justice Department and other policing and justice organisations in Northern Ireland. The Security Service has asked us to let you know it will not be making a written submission in response to the Committee. However, it has been consulted on the terms of this part of this reply.

The Secretary of State has and will retain responsibility for national security as an excepted matter. The Secretary of State, together with the Home Secretary, is

responsible for the activities of the Security Service in Northern Ireland. The Justice Minister will have responsibility for policing and justice along the lines of the discussion paper 'Devolving Policing and Justice in Northern Ireland'. While remaining operationally responsible, the Chief Constable will continue to report to the Secretary of State for those aspects of the PSNI's work that have a national security element or dimension.

As some aspects of policing and justice touch on national security matters, those with responsibility for overseeing such matters will need to understand how national security issues are handled in general terms and what type of information they can expect to receive in relation to issues with a national security dimension in the policing and justice field. In this connection, documents currently in preparation will when appropriate be presented to the relevant bodies including the Policing Board and the devolved administration and Assembly

Lines of accountability and working relationships are probably best illustrated through examples. In the scenario of a terrorist incident or counter terrorism operation, the police,

...



INVESTING IN PEOPLE



Northern
Ireland
Office

the emergency services (if appropriate) and the devolved administration will lead on and be responsible for the local response. The Security Service and Whitehall Ministers will carry the strategic intelligence lead and will decide any matters of UK wide or international interest. In doing so, they will ensure that the devolved administration will be given access to the information necessary to enable it to fulfil its roles.

When the Secretary of State appeared before the Committee on 3 October Alex Attwood asked the following question:

'...There is currently in London a court case arising from the lethal shooting of John De Menezes. What happens in Northern Ireland if there is a similar incident, when MI5 have directed the police to carry out an operation and a man is dead? In those circumstances how will the Assembly and the Justice Minister be sighted on the outcome of a critical incident where there may be enormous public concerns about what MI5 have or have not done? How will this body, and the Justice Minister in particular, be given a standing that they can explain to the Community in the North as best they can in order to moderate public concerns?'

The Government's response is as follows. The Security Service, also known as MI5, will not direct the police to carry out an operation'. The Prime Minister's Written Ministerial Statement of 10 January 2007 makes clear that:

'The PSNI and the Security Service will be completely distinct and entirely separate bodies. All necessary interaction between the Security Service and the PSNI, for example in response to the threat of international terrorism, will, as directed by the Chief Constable, be by way of liaison. No police officers will be seconded to or under the control of the Security Service. The small number of police officers who act in a liaison capacity with the Security Service will be PSNI Headquarters staff acting in that role for fixed time-limited periods to the extent that the Chief Constable deems necessary for them to perform their duties. Policing is the responsibility solely of the PSNI. The Security Service will have no role whatsoever in civic policing.

37



INVESTOR IN PEOPLE



Northern
Ireland
Office

'Leadership and direction of all police work is the responsibility of the Chief Constable who will remain accountable to the Policing Board.

'All PSNI officers will be employed by the PSNI and will be accountable solely to the Chief Constable and to the Policing Board and upon transfer to the Ministers for Justice. The Patten policing reforms will be maintained and there will be no diminution in police accountability.'

However, it is of course entirely necessary and correct that the Security Service should share with the PSNI all information that the PSNI might need to meet its policing responsibilities. To ensure this is the case the Security Service has agreed the five key principles identified by the Chief Constable as crucial to the operation of the new arrangements

In respect of a critical national security incident such as the example referred to by Alex Attwood, while the Chief Constable is operationally independent, he reports to the Secretary of State on national security matters. This is in line with paragraph 6.22 of the Patten Report which reads: 'As in the rest of the United Kingdom (including Scotland under the new devolved arrangements there), the Chief Constable remains fully accountable for the involvement of police in matters involving national security, even though his or her main accountability in such matters is to the Secretary of State rather than to the Policing Board.'

But clearly the Justice Minister and the Assembly will have an interest. And most importantly, they must have the information they need to enable them to fulfil their proper roles. Therefore, where the PSNI take action on the basis of information provided by the Security Service and in circumstances where issues arise that are of interest to the devolved institutions, the Chief Constable will consult the Security Service about its role and the information it provided before briefing the Minister on the general detail of the



INVICTORIS FIDES



Northern
Ireland
Office

policing operation. While sensitive national security information will not be able to be passed to Ministers within the devolved administration, it is not envisaged that this will impede them in fulfilling their roles. We envisage that the Justice Minister, given his/her role, will receive the same level of information as does the Policing Board in such matters.

It will be for the Justice Minister to agree with the Chief Constable the extent to which his/her briefing may be made available to the Assembly and the public.

Policing Governance and Accountability

The Report on Law and Order Issues from the Committee on the Preparation for Government agreed that the Policing Board should "retain its current powers" after devolution. This is consistent with the Patton recommendation, accepted by Government, that there should be no diminution of the Board's powers on devolution. The Assembly Committee will also have an important role to play in relation to the work of the Department of Justice. Work is progressing on draft protocols in this area, and we would be interested in hearing the emerging views of the Committee on how these roles and relationships might work.

Organisational Structures

You ask for the departmental model to which the NIO is currently working, and you ask how this differs from the existing structure. The structure of the future Department of Justice will be determined by the functions for which it will be responsible, including the sponsorship of arm's-length bodies. At present work is focused in looking at what functions may be transferred to the Department, subject of course to the Assembly's request, and how that translates into the staffing of business areas, including corporate services. No proposals have been made for the structure of the new department.

JW



TOGETHER IS PEOPLE



Northern
Ireland
Office

Resources

The table at Annex B includes the 2007/08 baselines for the various criminal justice and policing organisations. The Department has received details of its CSR funding, following the Chancellor's statement on 9 October, and is in the process of deciding allocations. As such we are not in a position to provide specific future baselines by business area but would be content to do so once allocations have been made.

It is our intention that the financial architecture governing the criminal justice and policing functions should be the equivalent to that in other departments. For example, agencies and NDPBs will be funded from within the department's total resource and capital settlement. The mechanisms for monitoring and reporting expenditure for all organisations will also be similar to that in other departments.

Appointments

You asked about the practical arrangements and timing of appointment of the Attorney General. The appointment of the Attorney General for Northern Ireland would be made by the First Minister and deputy First Minister acting jointly. Consideration of these issues would fall to OFMDM as a result. In terms of timing, the appointment can only take effect after devolution of justice responsibilities. Until the appointment of the Attorney General for Northern Ireland, the current Attorney remains in post

The post-devolution role of the Attorney General for Northern Ireland is restricted to law officer functions within the legislative competence of the NI Assembly. The role of Advocate General for Northern Ireland will be filled by the Attorney General for England and Wales and will deal with law officer functions in relation to non-devolved matters in Northern Ireland. The remits of both posts are set out in the Justice (Northern Ireland) Act 2002.

1W



NI ASSEMBLY



Northern
Ireland
Office

There are issues where the Attorney General and Advocate General are required to consult by statute and there are sure to be issues which arise in the course of normal business which require liaison and discussion. In any case the Government envisages the two post holders would wish to develop a positive and cordial relationship.

You refer to the role played by the Executive in appointments to the judiciary. The Executive as a body has no role in judicial appointments. The arrangements for appointments of the judiciary, including the role of the First Minister and deputy First Minister, are set out in sections 4 and 5 of the Justice (Northern Ireland) Act 2002 as amended by section 4 of the Justice (Northern Ireland) Act 2004. I would also refer you to paragraphs 15.18-15.21 of the Discussion Document.

Cross-border cooperation on policing and justice matters

There are presently two intergovernmental Agreements on cross-border cooperation in this field. These agreements, between the two Governments, govern the formal elements of cooperation in the field. They also reflect the reality of long-standing operational contact and cooperation. The Government recognises the operational importance of contacts between the criminal justice organisations in Northern Ireland and the Republic of Ireland, which will be a matter for the heads of the relevant organisations.

The IGA on Police Cooperation ensures that protocols are established between the Chief Constable and the Garda Commissioner in a range of specific areas of cooperation, including the exchange of personnel. As set out in paragraph 17.14 of the Discussion Document, the Government intends to transfer this IGA from the excepted field to the reserved field, with the intention of devolving by Order as much of the Agreement as is consistent with fulfilling the Patten recommendation regarding closer cooperation between the two police services.

17



DEPARTMENT OF JUSTICE



Northern
Ireland
Office

The IGA on Criminal Justice Cooperation establishes an accountability framework for regular contact between the criminal justice organisations and the respective Government departments and for the development of coordinated policies and practices. Its terms, as presently drafted, mean that the structures it establishes cease to have effect by intergovernmental agreement at the point of devolution. However, it would be for the new Minister for Justice in Northern Ireland to decide with the Irish Minister whether or not to continue operating the structures which have proved effective so far.

The UK and Ireland also deal with one another at a European level in respect of justice matters. As with all contacts at this level, the UK government has the lead, and there will be a role for the Department of Justice in Northern Ireland to make its representations to the Home Office or Ministry of Justice.

There has been no formal discussion between the NIO and the DJELR on the future of these bodies.

cross-border cooperation. We believe that they share our understanding of the way in which formal cooperation will be brought forward on devolution. No work has been undertaken to address the question of new protocols, which would be a matter for the Minister for Justice.

NIO's Devolution Programme

You also asked for more detail on the NIO's Devolution Programme. I attach a note of the various projects and their remits at Annex D. If the Assembly makes its request for the completion of devolution by 27 March, the necessary legislative procedures would allow for completion during May. The Programme is scheduled to be complete in line with the making of the relevant legislation. None of the projects is reporting any slippage in progress towards that goal. Of course, if the Assembly requests the transfer of functions at some later date, the end-date for various elements of the programme will follow suit.

JW



INVESTING IN PEOPLE



Northern
Ireland
Office

The Devolution Programme has been organised to recognise the contributions which a

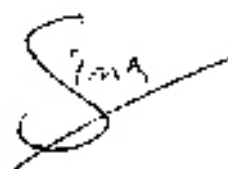
wide range of stakeholders have to make for delivery of the programme. We are in contact with OFMDFM at official level in relation to the administrative arrangements which would be required in relation to devolution, while recognising that political decisions have not yet been taken on the timing or nature of devolution.

Community Confidence

The Secretary of State explained his approach to measuring community confidence to the Committee on 3 October. The arrangements for devolution have built-in arrangements to ensure that public confidence is in place. It is his view given the strong endorsement by the public of the work of the Assembly and the Executive that public confidence will be sufficient to enable the completion of devolution.

You asked which poll the Secretary of State was referring to in relation to stating that only 14 or 15% did not want devolution of justice and policing. The poll in the Belfast Telegraph on 10 August 2007 asked about the devolution of justice and policing. In response only 14% indicated they 'never' wanted to see devolution. A further 13% were in the 'don't know/unstated' category. This means that, of those expressing an opinion, 84% were in favour of devolution ($73/87 = 84\%$).

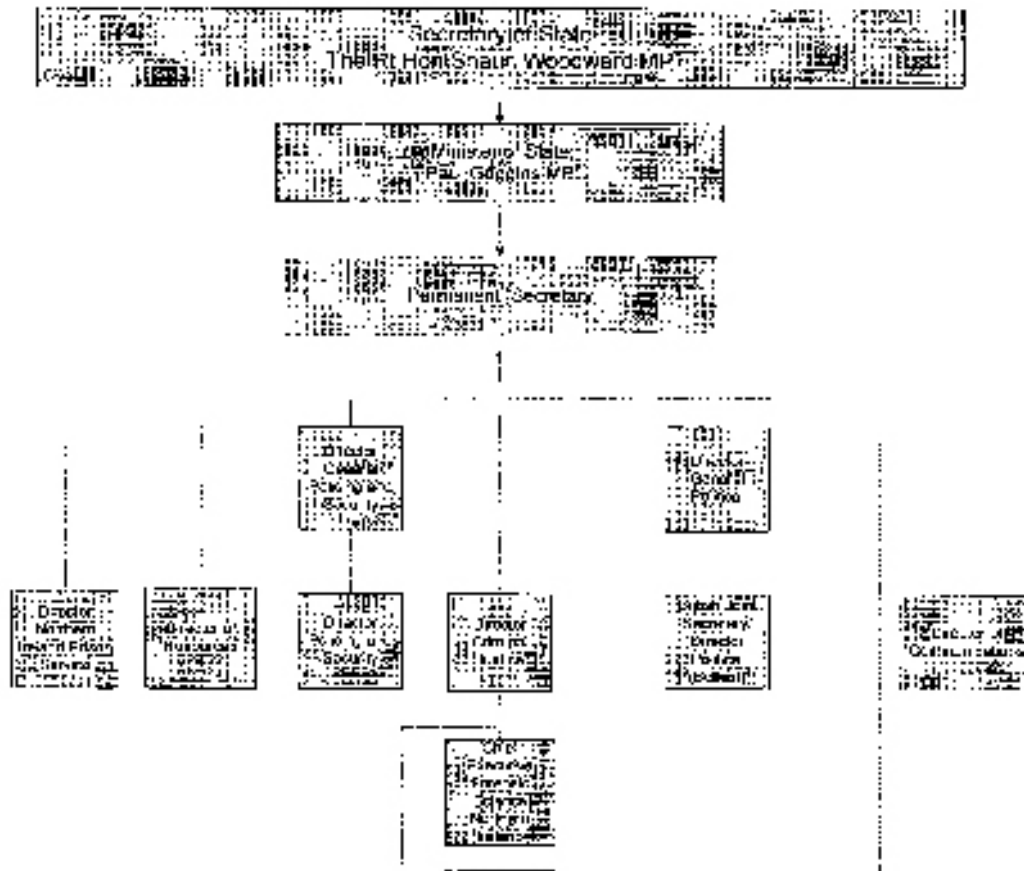
I hope that this information is useful and we remain very happy to brief the Committee further as necessary.

You sincerely,


SIMON MARSH
Principal Private Secretary



Annex A – Organisational Chart for the NIO





1219222

Annex B – Chart of the Organisations in the Criminal Justice and Policing Fields

Body	Current Status	Current Sponsor	2007/08 Resource Available	Future Status	Future Sponsor
N O	Department of State	N/A	1,141,000 In which is included the following:	Northern Ireland Department	N/A
RPE	Non-Ministerial 2000 Fund	Ministerial Department of the Attorney	31,575	Non-Ministerial Department	Consultative relationship with the Attorney General for

		General resources by the NIO			Northern Ireland; resourced by a Northern Ireland Department
Northern Ireland Prison Service	Agency	Fraser Figure: Director General, Policing and Security	122,484	Agency	Fraser Figure within the Department of Justice
Forensic Science Northern Ireland	Agency	Fraser Figure: Director, Criminal Justice	552	Agency	Fraser Figure within the Department of Justice
Youth Justice Agency	Agency	Fraser Figure: Director, Criminal Justice	17,531	Agency	Fraser Figure within the Department of Justice
Compensation Agency	Agency	Fraser Figure: Director, Criminal Justice	27,004	Agency	Fraser Figure within the Department of Justice
PSNI	Police Force (not quite equivalent to any other category)	Policing and Security Directorate	767,817	Police Force	Department of Justice
Northern Ireland Policing Board	Executive NDPB	Policing and Security Directorate	8,414	Executive NDPB	Department of Justice
Office of the Police Ombudsman	Executive NDPB	Policing and Security Directorate	8,814	Executive NDPB	Department of Justice
Northern Ireland Police Fund	Executive NDPB and Company Limited by Guarantee	Policing and Security Directorate	1,500	Executive NDPB and Company Limited by Guarantee	Department of Justice
RUC FC Foundation	Executive NDPB	Policing and Security Directorate	-	Executive NDPB	Department of Justice
Criminal Justice Inspection Northern Ireland	Executive NDPB	Criminal Justice Directorate	1,500	Executive NDPB	Department of Justice
Probation Board	Executive NDPB	Criminal Justice Directorate	14,817	Executive NDPB	Department of Justice
Northern Ireland Law Commission	(Advisory) NDPB	Criminal Justice Directorate	-	(Advisory) NDPB	Department of Justice
Independent Assessor for PSNI Recruitment Applications	Advisory NDPB	Policing and Security Directorate	18,000 (2008/07)	Advisory NDPB	Department of Justice

1219222

Criminal Injuries Compensation Appeals Panel for Northern Ireland	Tribunal NIPPS	Criminal Justice Directorate	655	Tribunal NIPPS	Department of Justice/Courts and Tribunals Service
Roads Commission	Tribunal NIPPS	Policing and Security Directorate	1,590	Tribunal NIPPS	Department of Justice, depending on agreement
Police Rehabilitation and Training Trust	Company Limited by Guarantee	Policing and Security Directorate	2,122	Company Limited by Guarantee	Department of Justice
Independent Monitoring Boards, Maghaberry, Magilligan, Hydebank Wood.	Independent Monitoring Boards	Criminal Justice Directorate	759 (95 set aside for the 1419s)	Independent Monitoring Boards	Department of Justice
Prisoner Ombudsmen	Independent Statutory Body	Criminal Justice Directorate		Independent Statutory Office Holder	Department of Justice
Life Sentence Review Commissioners	Independent Statutory Body	Criminal Justice Directorate	682	Independent Statutory Office Holders	Department of Justice
Commissioner for Hearings Under Prison Rules 1985 (Lias of Pardon Commissioner)	Independent Statutory Body	Northern Ireland Prison Service	12	Independent non-Statutory Office Holder	Department of Justice/Prison Service
The State Pathologist	Employed by the MD	Criminal Justice Directorate	1,515	Employed by the Department of Justice	Department of Justice
Medical Appeal Tribunals	Ad hoc tribunal	Policing and Security Directorate	-	Ad hoc tribunal	Department of Justice/Courts and Tribunals Service

Body	Current Status	Current Sponsor	2007/08 Resources: Baseline Ex.	Future Status	Future Sponsorship
Northern Ireland Civil Service	Department of the Lord Chancellor	N/A	132,400 In which is included the following:	Agency	Fraser Figure within the Department of Justice
Northern Ireland	Executive NDPE	Northern Ireland	72,000	Director's NIPPS	Department of Justice

Legal Services Commission	Court Service		Justice		
Judicial Appointments Commission	Executive NDPB	Northern Ireland Court Service	1600	Executive NDPB	OFMDFM
Judicial Appointments Tribunal	Independent Statutory Body	Northern Ireland Court Service	104	Independent Statutory Office Holder	OFMDFM

1219222

Annex C - Agencies, NDPBs and other sponsored bodies.

Executive Agencies

Executive Agencies take responsibility for individual executive (service delivery) functions within government, leaving their parent departments to concentrate on policy development. They do not usually have their own legal identity, but operate under powers that are delegated from Ministers and Departments. They have a chief executive who reports to the Minister against

specific targets. Most agencies receive their funding from their parent department and, although they are required to publish and lay before Parliament separate accounts, these accounts also form a constituent part of their parent department's accounts.

The NI's agencies are the Prison Service, the Compensation Agency, the Youth Justice Agency, and Forensic Science Northern Ireland.

Executive NDPBs

Executive NDPBs are set up by Ministers to carry out administrative, commercial, executive or regulatory functions on behalf of the Government. They are legally incorporated and have their own legal identity. This means that they are established by Act of Parliament, by Royal Charter, under the Royal Prerogative, or incorporated under Companies Acts legislation and charity law; they employ their own staff and they are allocated their own budgets. They are not Crown bodies and do not have Crown status (with a few exceptions). Appointments to the boards of the bodies are made by Ministers, by officials on behalf of Ministers, by the Prime Minister or the Queen or the advice of ministers. Some may be made by the bodies themselves. Ministers are ultimately answerable for the performance of the bodies and for their continued existence, e.g. ministers have the power (subject to Parliamentary approval if necessary) to wind the bodies up. Legislation is normally required to establish any new Executive NDPB that will

1219222

require continuing government funding. It may also be needed to provide for particular powers or obligations.

The NIO's Executive NDPBs in the reserved field are: the PSNI, Northern Ireland Policing Board, Office of the Police Ombudsman, Northern Ireland Police Fund, RLC GC Foundation, Criminal Justice Inspection Northern Ireland, Probation Board, and the Parades Commission.

The Northern Ireland Court Service's Executive NDPBs are: the Judicial Appointments Commission and the Legal Services Commission.

Advisory NDPBs

Advisory NDPBs are established by Ministers, or by officials working on behalf of Ministers, to provide independent expert advice or to provide input into the policy-making process. They do not usually have staff but are supported by staff from their sponsoring department. They do not usually have their own budget, as costs incurred come within the department's expenditure. They are formal bodies with defined membership and clear terms of reference. They meet on a regular basis (at least once a year) and are standing bodies (ie. in existence for more than twelve months). Appointments to the bodies are made by Ministers, by officials on behalf of Ministers, the Prime Minister, or by the Queen on the advice of Ministers. Some may be made by the bodies themselves. Those appointed to the body are independent of government and drawn from outside the public sector. Ministers are ultimately answerable for the performance of the bodies and for their

continued existence. It is likely that if the body has the above characteristics, it may be deemed to be part of the Crown. Exceptionally, advisory NDPBs can be established through primary legislation or through Companies Acts if the department intends to give the body its own legal personality. Advisory NDPBs with their own legal identity are in most respects akin to Executive NDPBs.

12:5222

The NIO's Advisory NDPB in the reserved field is the Independent Assessor for PSNI Recruitment Applications.

Subject to future confirmation, the Northern Ireland Law Commission will probably be an Advisory NDPB.

Tribunal NDPBs

Tribunal NDPBs have jurisdiction in a specialised field of law. They generally operate under statutory provisions and decide the rights and obligations of

private citizens towards a government department or public authority. They are separate from the formal court system. They are usually supported by staff from their sponsoring department and do not have their own budgets.

The NIO's Tribunal NDPB is the Criminal Injuries Compensation Appeals Panel.

Independent Monitoring Boards of Penal Establishments (the fourth type of NDPB)

Independent Monitoring Boards derive their responsibilities from the Prison and Young Offenders Centre Rules 1995. They are appointed by the Secretary of State under Section 10 of the Prison Act (Northern Ireland) 1953. Independent Monitoring Boards perform a 'watchdog' role on behalf of Ministers and the general public in providing a lay and independent oversight of prisons (including the state of the prison premises, their administration and the treatment of prisoners). The Boards are financed by the sponsoring department.

Independent Statutory Bodies

The NIO also sponsors a number of Independent Statutory Bodies, which are not categorised as NDPBs. These are posts established in statute or by virtue of a statutory power to fulfil a function independent of ministers. They

1219222

may be supported by civil servants where such administrative support is necessary.

The N O's office independent statutory bodies in the reserved field are the Life Sentence Review Commissioners, the Prisoner Ombudsman, the Loss of Remission Commissioner, and the Civil Service Commissioners.

The Northern Ireland Court Service's independent statutory body is the Judicial Appointments Ombudsman

1219222

Annex D

Northern Ireland Office Programme for the Devolution of Policing and Justice Functions

Overview

The Northern Ireland Office is managing twelve projects as part of the Programme for the devolution of policing and justice functions. These are as set out below. This work builds on an initial scoping study undertaken in the 2006/07 period.

Timescales

The objectives of the programme are to ensure devolution is able to take place by May 2008 should the Assembly request it. That means planning for the delivery of all the critical tasks for that date.

Progress

In terms of progress all the individual projects are proceeding and have identified their core tasks and deliverables. The projects involve a range of other relevant organisations outside the NIO. Progress to date remains consistent with the target date of May 2008.

Project portfolio

Legislation

Responsible for the legislation required to give effect to devolution including what functions will and will not devolve. The legislation will also determine to which department transferring functions move.

National Security and Sensitive Information

Responsible for ensuring that national security is properly protected while allowing devolved Ministers all the information required to reach decisions within their areas of responsibility.

1710222

ICT Infrastructure and ICT Applications

These two projects are responsible for ensuring both the FNIO and DoJ have the necessary ICT Infrastructure and networks to operate from day one and that these arrangements are being supported in an appropriate way; and for ensuring the FNIO and DoJ have the applications needed to support business requirements.

FNIO Information Management and DoJ Information Management

The work on information management is divided into two projects on the basis of future organisational arrangements recognising that the FNIO arrangements will need agreement with The National Archive whereas the devolving functions will need to agree arrangements with the Public Records Office Northern Ireland. The projects are responsible for delivery of effective information management arrangements, file review/transfer and development of corporate fileplans for each of the successor organisations.

People

Responsible for the smooth transition of people from the NIO and NI Court Service to the DoJ and FNIO and responsible for the confirmation of terms and conditions for existing and future staff in the two new departments, taking account of the entitlements of current staff and the future needs of the departments.

Organisational Design

Responsible for the design of the FNIO and Department of Justice, setting out new structures to organise the allocation of functions, making sure that the

new departments to organise the provision of services, making sure that all new departments are ready to operate in their new contexts, and ensuring that they have coherent and sustainable identities.

Finance

1218222

Responsible for looking at how the budget should be apportioned between the devolved and non-devolved governments, including how the NI Court Service is financed, and how financial services will be provided post devolution.

Transfer Scheme

Responsible for planning the transfer of assets and liabilities to the devolved administration for those functions which are to transfer, and for apportioning assets between receiving Departments.

Communications

Responsible for developing and implementing a communications strategy to support the delivery of devolution including managing stakeholders,

communicating effectively to staff and addressing awareness and training needs for the future organisations as a result of the devolution exercise.

Office Services

Responsible for ensuring office services are in place for both the DOJ and the FNIO (including accommodation arrangements) and for ensuring the appropriate support arrangements are in place for both future organisations.

Other organisations

In addition to the projects listed above, a number of other organisations have put in place arrangements to manage and coordinate the preparations for devolution which affect them. These include the devolved administration, Court Service, PPS and the Prison Service

1219222



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917

Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

2 November 2007

Dear Simon

**Inquiry into the devolution of policing and justice matters:
Law on the misuse of drugs**

The Assembly and Executive Review Committee received a written submission to the Inquiry into the devolution of policing and justice from the Scottish Cabinet Secretary for Justice on 22 October 2007 (attached).

This submission discusses those matters which are currently 'reserved' under the Scotland Act 1998 and for which the Scottish Government could potentially be responsible. One such matter is 'firearms' which is also a 'reserved' matter under Schedule 3 of the Northern Ireland Act 1998 and, therefore, could also become a devolved responsibility in the context of Northern Ireland.

Another such matter raised by the Cabinet Secretary is the law on the 'misuse of drugs' which is currently reserved under the Scotland Act 1998 (Section B1).

It would assist the Committee greatly if you could clarify what provisions, if any, are in place in relation to responsibility for the law on the misuse of drugs in the context of devolution in Northern Ireland.

Yours sincerely

Stephen J Graham

Committee Clerk

Cabinet Secretary for Justice
Kenny MacAskill MSP

T: 0845 774 1741
E: scottish.ministers@scotland.gsi.gov.uk



Rt Hon Jeffrey Donaldson MP
Chairperson of the Assembly and Executive Review Committee
c/o Room 428
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

—
22nd October 2007

Done Sullivan

Inquiry into the devolution of policing and justice matters

Thank you for your letter of 9 July seeking input to your inquiry on the devolution of policing and justice matters. I am grateful for the additional time allowed to submit this response, as your original request seems to have gone astray.

My comments are particularly directed to the first two items in your terms of reference. They are based on experience in Scotland, in the hope that it may be of assistance to you.

The Scottish Government and Parliament are of course creatures of the Scotland Act 1998, and were not therefore involved in the development of the devolution settlement. That settlement was a matter for the UK Government and Parliament. However it followed the work of the Scottish Constitutional Convention, which set out a blueprint for devolution. As a broad generalisation, the Scottish devolution settlement closely aligned to the areas that were already within the control of the Secretary of State for Scotland and were administered by the Scottish Office. In areas such as justice, where we have a distinct Scottish legal system and, in the main, separate institutions, the boundary was already fairly clear. In effect the devolution settlement drew a line round what the Secretary of State for Scotland and the Scottish Office already did and set out a scheme which devolved that.

On the whole, the justice aspects of the devolution settlement have been made to work well over the last 8 years. Clearly your background and experience is different from that in Scotland, but we can offer a possible model as you build cross-community confidence in the justice and policing systems and the ability of devolved institutions to manage them and hold them to account.

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk



Many criminal justice matters are already devolved to the Scottish Parliament and Scottish Government, but those that are reserved include anti-terrorism legislation and legislation on firearms and misuse of drugs. Inevitably, the setting of boundaries in a system of devolution creates tensions, for example between the fixing of the criminal law on these matters and the enforcement of that law. Further devolution in these areas would enable Scotland to adopt anti-terrorism legislation appropriate to meet the threat faced by the country, balancing the rights of individuals with the needs of national security, in a way consistent with Scotland's own criminal justice system. Scotland could continue to play a full role in United Kingdom and wider European efforts for combating terrorism, including sharing intelligence and cooperation between police forces, as in recent events.

The Scottish Parliament could also be given full responsibility for firearms legislation, which would allow particular Scottish concerns around airguns to be addressed. Similarly, the Scottish Parliament and Scottish Government could take direct responsibility for a particularly Scottish approach to the law on drug abuse, to provide greater protection to Scotland's communities.

I believe you are interested in our relationship with the UK Serious Organised Crime Agency (SOCA). As you know, the creation of SOCA brought together a number of organisations dealing with a mixture of reserved and devolved areas. We already had the Scottish Crime and Drug Enforcement Agency (SCDEA), created specifically to prevent and detect serious organised crime in Scotland. Work done during the passage of the Serious Organised Crime and Police Act 2005 ensured that provisions were included in the legislation which safeguard the role of the SCDEA and the Lord Advocate in Scotland. This involved lodging a Legislative Consent Motion in the Scottish Parliament to seek the agreement of the Scottish Parliament to these particular provisions. As a result, and by virtue of an agreement between SOCA and the Scottish Ministers, SOCA operations in Scotland are principally carried out by or alongside the SCDEA or a Scottish Police Force.

The Scottish Government believes that an independent, sovereign Scotland is the best option for the country's future and that the people should be invited to support that option through a referendum.

We also recognise that there is a range of views on Scotland's constitutional future other than independence and that these are represented in the Scottish Parliament. For this reason, we have initiated a wide-ranging National Conversation that will allow the people of Scotland to make an informed decision on their future. Our White Paper 'Choosing

Scotland's Future: A National Conversation: Independence and Responsibility in the Modern World* is available at <http://www.scotland.gov.uk/Topics/a-national-conversation/White-Paper>

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk



Devolution and
Legislation Division

Northern Ireland Office
Devolution and Legislation
Division
Castle Buildings
Stormont Estate
Belfast BT4 3JG
Telephone 028 8052 8122
Facsimile 028 9052 6434

Jim Kerr
Political Development Unit
Northern Ireland Office

jk.kerr@nio.x.gsi.gov.uk
www.nio.gov.uk

Stephen J Graham Esq.
Committee Clerk
Assembly & Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

20 November 2007

Dear Stephen,

I was grateful for Sinead's note of 29 October covering a copy of the briefing paper you propose to put to the Committee. The paper has been considered by the policy division with responsibility for firearms and explosives matters, and we would offer the following comments.

The Department remains of the view that there are two options for the devolution of firearms and explosives matters, as set out in its discussion document. The Department does not believe that the third option set out in your paper, full devolution of all firearms and explosives policy, is a viable option. In support of this view, the Department would like to make the following specific points.

Prohibited Weapons and Museums Licences

The Department's view remains that policy and legislative responsibility for prohibited weapons should remain reserved. Furthermore the Department also considers that the granting of a licence to a museum to hold firearms without a certificate would also remain reserved. The remainder of firearms legislative responsibilities and functions would however be devolved.

Explosives policy, legislation and functions

Further detailed examination of the explosives policy, legislation and statutory functions, following the Initial Discussion Document, has determined that, while some explosives legislation and functions can be categorised as health and safety related, other are directly related to the security situation and, in particular, counter-terrorism. A great number of functions falling in the health and safety category are already addressed by devolved agencies in Northern Ireland and consequently these are to be devolved (Annex 1).

Security information and the need to counter the threat of terrorism in Northern Ireland was, and remains, a key consideration in the formation of policy and legislation relating to the security aspects of explosives. It is also of crucial significance in some of the Secretary of State's statutory functions, for instance security checks apply before granting licences to shot firers employed at quarries. In addition, since the publication of the Discussion Paper, there have been international developments relating to controls on explosives and the UK, along with all other EU Member States, is currently involved in discussions about the strengthening of explosives controls. Indeed, the EU Commission has agreed that an EU action plan on controlling explosives and other dangerous substances should be ratified by Member States by the end of this year. This will constitute an international agreement and one which is likely to lead to a consistent and more robust approach by all Member States to tackle the threat of international terrorism within the EU. Consequently, those aspects of explosives legislation considered to be security-related will remain reserved (Annex 2).

I hope the above is helpful.

Yours sincerely

Jim Kerr

Annex 1

EXPLOSIVES LEGISLATION PROPOSED TO BE DEVOLVED

1. The **Explosives Act 1875** and the following Orders, which have been made under it-
 - **Orders in Council Nos 9 and 28 (sale of explosive)**
 - **Orders of Secretary of State Nos 5, 5A, 9 (acetylene) and 10 (employment of young persons)**
 - **The Explosives Substances Acetylene Order (Northern Ireland) 1942**
 - **The Compressed Acetylene Order (Northern Ireland) 1957**
 - **The Compressed Acetylene Order (Northern Ireland) 1979**

2. The **Explosives (Amendment) (Northern Ireland) Order 1996**

3. The following **Regulations, which have been made under the Explosives Act (Northern Ireland) 1970** –

- **The Explosives (Fireworks) Regulations (Northern Ireland) 2002**
4. **The following Regulations, which have been made under the Health and Safety at Work (Northern Ireland) Order 1978-**
- **The Explosives Act 1875 (Exemptions) Regulations (Northern Ireland) 1983**
 - **The Classification and Labelling of Explosives Regulations (Northern Ireland) 1991**
 - **The Placing on the Market and Supervision of Transfer of Explosives Regulations (Northern Ireland) 1993**
 - **The Explosives in Harbour Areas Regulations (Northern Ireland) 1995**
 - **The Marking of Plastic Explosive for Detection Regulations (Northern Ireland) 1996**
 - **The Construction (Use of Explosives) Regulations (Northern Ireland) 1997**
 - **The Explosives Substances (Hazard Information) Regulations (Northern Ireland) 2000**
 - **The Carriage of Explosives Regulations (Northern Ireland) 2006**
 - **The Quarries (Explosives) Regulations (Northern Ireland) 2006**
 - **The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006**
 - **The Carriage of Explosives (Amendment) Regulations (Northern Ireland) 2006**
 - **The Construction (Use of Explosives) (Amendment) Regulations (Northern Ireland) 2007**

EXPLOSIVES LEGISLATION PROPOSED TO BE RETAINED

The Explosives Act (Northern Ireland) 1970, as amended and Regulations made under the Act and the Explosives (Northern Ireland) Order 1972, as amended and Regulations made under the Order with one exception

The above legislation concerns the security of explosives. Section 3 of the 1970 Act gives powers to make regulations for controlling and regulating the manufacture, sale, acquisition, transfer, storing, transportation, handling, use or disposal of explosives. These powers are extended to cover substances that could be used as an explosive for unlawful purposes in the 1972 Order.

It is proposed that the powers in this legislation should be retained for the time being while there still remains a local terrorist threat.

It may also be that these powers are retained longer term. As events in Madrid and London in recent years and more immediately in Glasgow and Germany have indicated, terrorism poses a serious threat to the EU and there is much discussion at European level around options to enhance the security of explosives in the fight against terrorism. An EU Action Plan has been drafted (to be agreed by member states by 31 December) and the implementation of measures and actions coming from it may rest more appropriately with the Northern Ireland Office reporting to the Home Office. Many of the actions and measures currently being considered could be implemented in Northern Ireland through existing powers in the 1970 Act and 1972 Order.

The Explosives (No. 2) Regulations (Northern Ireland) 1976 [Shot firers]

It is suggested that these Regulations should be reserved on the basis that ultimate vetting responsibility is likely to rest with the NI Security Vetting Unit, which will form part of FNIO.

**Regulations made under the 1970 Act that could be devolved are the Explosives
(Fireworks) Regulations (Northern Ireland) 2002**



**Northern
Ireland
Office**

Northern Ireland Office
11, Millbank
London SW1P 4QP
Telephone 020 7210 6402
Facsimile 020 7210 0240
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Stephen J Graham Esq.
Committee Clerk
Assembly & Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

27th November 2007

Dear Stephen,

**INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS:
LAW ON THE MISUSE OF DRUGS**

Thank you for your letter of 2 November concerning the law on the misuse of drugs.

Responsibility in Northern Ireland for functions in this area are divided among the Home Secretary and the Lord Chancellor, who exercise certain powers on a UK wide basis, and the Department of Health, Social Services and Public Safety, acting under the direction and control of its Minister. Officials are in contact with Home Office colleagues to clarify certain matters in this regard, and we will write to you again when we have that clarification.

You mentioned firearms in passing and I know you are awaiting a reply from us on a draft briefing paper you hope to put to the Committee. Paul Goggins is shortly to meet officials to discuss the devolution of firearms and explosives, and we will be in a position to reply to you after that meeting.

Yours ever,


SIMON MARSH
PRINCIPAL PRIVATE SECRETARY



Northern
Ireland
Office



Stephen Graham
Clerk to Assembly and Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

StG December 2007

Dear Stephen,

Many thanks for your letter of 15 October 2007, in which you ask for more information about the reference in the Discussion Document published by the NIO in February 2006 to future power to enable the army to operate in support of the police. Please accept my sincere apologies for the delay in replying.

These powers are contained in sections 21 to 42 of the Justice and Security (Northern Ireland) Act 2007. As was made clear during the Parliamentary debates on the legislation, they enable the military to act in support of the police and the civil administration in a wide range of roles (including explosives ordnance disposal work) similar to those they carry out in the rest of the UK. In addition, and consistent with the recommendations of the Patten Report, the military continue to be available to provide support to the police during public disorder. A request for this support would be made by the Chief Constable following an operational assessment. For the time being (and uniquely within the UK), this military capability is provided at no extra cost where it falls within the ambit of OP HELIX (the name for the military's continuing role in Northern Ireland). Support for the 2008 marching season has already been discussed.

As you are aware the military can provide aid to Civil Authorities throughout the UK (known

as MACA) in the case of emergencies such as flooding, Foot and Mouth etc. Any request for such assistance is guided by the following principles:-

- Military aid is the last resort, with mutual aid and private sector support having been discounted;



Northern
Ireland
Office

- The civil authority lacks the capability required and it is unreasonable to expect them to develop it; and
- The civil authority does not have the resources readily available and the need to act is urgent.

MACA requests are made through the NIO to the Ministry of Defence and any MACA support is at full cost.

The armed forces of the Crown are an excepted matter, as provided in paragraph 4 of Schedule 2 to the Northern Ireland Act 1998. Paragraph 4 does not include any matter within paragraph 10 of Schedule 3 to the 1998 Act (public order). The powers contained in the 2007 Act will be used by the military across the whole range of tasks they will be carrying out in Northern Ireland, not just in public order work. The Secretary of State has therefore

decided that it would not be appropriate for the powers contained in the 2007 Act to be devolved to the Northern Ireland Assembly. In general, he does not think it would be appropriate for a devolved administration to determine the powers of the military, who are responsible throughout the UK to the Crown through the Defence Secretary.

Some of the powers conferred on the military in the 2007 Act are also conferred on police officers. The police will be using these powers in a similar range of circumstances to the military. In light of this, and the review and repeal arrangements for the powers, the Secretary of State does not think it would be appropriate to devolve the element of the powers conferred on the police either. Of course, the Secretary of State would seek to involve the devolved Ministers as far as possible in the reviews of the operation of these provisions, and decisions about their repeal.

Sections 29 and 32 of the 2007 Act confer powers on the Secretary of State to take possession of land &c; and to close roads by order. Similar powers to these have historically been used for police stations and army bases; for the management of the marching season; and for erecting physical security measures such as gates and walls to protect the community. The Secretary of State thinks one possible approach may be to confer these powers on the appropriate devolved Minister as well as the Secretary of State. The



Northern
Ireland
Office

Northern Ireland Office
11 Millbank
London SW6 1PE
Telephone: FAX 7210 646
Facsimile: 020 7210 6349
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Secretary of State would only exercise these powers where necessary for non-devolved matters (for example, the closure of roads around military bases).

I trust this information is of assistance to the Committee. Please let us know if you have any further queries.

Yours,
Simon

SIMON MARSH
PRINCIPAL PRIVATE SECRETARY



Northern Ireland Office
Politics Directorate

11 M Bank
London SW1P 4PN
Telephone: 020 7210 9181
Facsimile: 020 7210 1779

Castle Buildings
Belfast BT4 3SG
Telephone: 028 9052 9121
Facsimile: 028 9052 6434

Clare Salters
Deputy Director, Devolution & Legislation
Northern Ireland Office

clare.salters@niax.gsi.gov.uk
www.nio.gov.uk

Stephen Graham
Committee Clerk
Assembly & Executive Review Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

6 December 2007

Dear Stephen

MISUSE OF DRUGS ACT 1971

You had asked for further details about the implications of the devolution of policing and justice for the Misuse of Drugs Act 1971 powers and responsibilities. The attached paper sets out both the current position and the changes that will come about when responsibility for criminal justice transfers to the Assembly.

I apologise for the delay in providing this – as you'll see, the legislation is quite complex and it was important to clear the detail with both the Home Office and the Lord Chancellor's staff.

Best wishes,

Yours sincerely

A handwritten signature in black ink, appearing to read 'CSalters', with a diagonal line drawn through the bottom of the signature.

CLARE SALTERS

Misuse of Drugs Act 1971

1. The purpose of this paper is to explain the current constitutional position of the functions conferred within this Act of Parliament and to outline how these and legislative competence for the subject matter will apply when responsibility for policing and justice devolves in Northern Ireland.

Background

2. The Act was passed prior to the prorogation of the old Northern Ireland Parliament in 1972 and therefore provides an indication of how responsibility should lie under a devolved settlement in Northern Ireland.
3. The Act extends in full to Northern Ireland. For the most part (exceptions are set out below), all the powers conferred upon the Secretary of State (Home Secretary) in the Act in respect of Great Britain were also conferred, in respect of Northern Ireland, on the old Ministry of Home Affairs. There were also roles under the Act envisaged for the Northern Ireland Ministers for Health and Education.
4. When the Ministry of Home Affairs was abolished, these references to it in the Misuse of Drugs Act were changed to references to the then Department for Health & Social Services (now the Department of Health, Social Services and Public Safety – DHSSPS).[\[1\]](#)

Current position

5. What this means in practice is that the Home Secretary is solely responsible for the following matters:
 - (a) classification of controlled drugs [Section 2 and the definition of 'prescribed' in section 37(1)]
 - (b) establishing the Advisory Council on the misuse of drugs, since it is intended to be a single UK-wide body [Section 1 and Schedule 1].
6. In addition, the Lord Chancellor is responsible for appointing legal members of Tribunals and Advisory bodies. [Schedule 3, paras 1(1)(a) and 13(1)(a).]
7. However, in respect of Northern Ireland, the following matters are the responsibility of the DHSSPS, acting under the direction and control of its Minister:
 - (a) issuing a licence for the importation or exportation of specific drugs and to vary the terms of such licences from time to time, though in practice non-domestic licences are let by the Home Office[\[2\]](#); [Sections 3 & 30]
 - (b) regulating the lawful use of controlled drugs in Northern Ireland and to vary these regulations; [Sections 7 & 30]
 - (c) making regulations to prevent the misuse of controlled drugs in Northern Ireland and to vary these regulations; [Sections 10 & 30]
 - (d) giving directions about the proper storage and security of controlled drugs within Northern Ireland; [Section 11]
 - (e) barring individual practitioners or pharmacists from prescribing or supplying controlled drugs if they have been convicted of an offence or in certain other circumstances and referring cases on (to tribunals etc) as appropriate; [Section 12-16 and Schedule 3]
 - (f) obtaining information from a doctor or pharmacist in relation to frequency of prescription or supply of controlled drugs; [Section 17]

(g) making regulations to:

(i) disapply offences under the Act or parts of the Customs and Excise Management Act 1979 relating to the import and export of controlled drugs in specified cases;

(ii) apply directions and investigation procedures under the Act in relation to a proposal to bar individual practitioners or pharmacists from prescribing or supplying controlled drugs if they have been convicted of an offence; and

(iii) apply the Act or subordinate legislation to the Crown. [Section 22]

(h) authorising people (in addition to police constables who are already authorised to do this) to exercise powers of entry to obtain information – this power is exercisable, in relation to Northern Ireland, by both the DHSSPS and the Secretary of State (NB: this power is exercisable by both the Home Secretary and the Northern Ireland Secretary since both can exercise Secretary of State functions); [Section 23]

(i) conducting or assisting with research into any aspect of the misuse of drugs; [Section 32].

8. In addition, the Advisory Council established by section 1 of the Act, has a role – in addition to its role in advising the Home Secretary on issues relating to the classification of drugs – in considering any matter connected with drug dependence or misuse, including public education, that is referred to it by (among others) the Northern Ireland Ministers for health or education. [Section 1(2)-(4)]

9. There are a number of other references to the Secretary of State/Ministry of Home Affairs in the Act that do not contain powers to act; these are:

(a) Section 29 deals with the process for serving documents on someone and provides that the proper address of that person shall be the last address of the person which is known to the Secretary of State (or, in the case of Northern Ireland, the DHSSPS); and

(b) Section 31 makes general provision as to what can be included in regulations made by the Secretary of State (or, in the case of Northern Ireland, the DHSSPS) under the Act.

10. Finally, there are two references to the Secretary of State that are either no longer needed or have minimal continuing value:

(a) Section 39 gives the Home Secretary the power to modify existing local enactments by negative resolution order at Westminster if they are incompatible with the 1971 Act. This has minimal continuing use.

(b) Similarly, the Home Secretary's commencement power in s.40 has been used and is now spent.

11. Regulations made by the Home Secretary (for example, in changing the lists of controlled drugs) are subject to the negative resolution procedure in Parliament. Regulations made by the DHSSPS are subject to the negative resolution procedure in the Assembly, within the meaning of section 41(6) of the Interpretation Act (NI) 1954. [Section 31]

12. Section 35 provides that Parliament may vote money for use under this Act to the Secretary of State (primarily the Home Secretary, though any money required by the police in Northern Ireland for enforcement would come from the Northern Ireland Office vote, which comes to the Secretary of State for Northern Ireland); similarly, section 38 provided for the Northern Ireland Parliament to vote money for use by the Ministry of Home Affairs but that the consent of the Ministry of Finance (now the Department of Finance and Personnel) was required before any money could be spent on research under section 32. What that means in terms of the current arrangements is that the Assembly may vote money to DHSSPS for use in exercising its functions under the 1971 Act but that if DHSSPS wishes to spend any money on research it requires the consent of DFP.

13. It is worth considering also in this context the provisions of the Criminal Justice (International Co-operation) Act 1990, which give effect to the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Section 13 of that Act gives the Secretary of State the power to make regulations regarding documentation and inspection of cargos; section 20 gives the Customs & Excise Commissioners power to enforce these; and section 21 makes provision for connected legal proceedings – in the case of Northern Ireland, such proceedings require the consent of either the Director of Public Prosecutions or the Customs & Excise Commissioners.

Position following the devolution of policing and justice

14. As can be seen, the majority of the functions under the legislation are exercisable by the Home Secretary in respect of Great Britain and the Department of Health, Social Services and Public Safety in respect of Northern Ireland. Therefore the majority of the functions, as they relate to Northern Ireland, are already exercised by the devolved administration; that will continue once policing and justice are devolved.

15. Of the two remaining substantive functions that fall to the Home Secretary on a UK-wide basis (determining the classification of controlled drugs and making appointments to the Advisory Council), there are no plans to devolve these.

16. Of the two functions that fall to the Lord Chancellor, the responsibility for appointing legal members of tribunals will transfer to the First and deputy First Ministers acting jointly, reflecting their responsibility for appointing judges; the responsibility to appoint members of any advisory body will transfer to the Department of Justice.

17. In terms of legislative competence the Misuse of Drugs Act 1971 is primarily about the criminal law and therefore currently falls within the reserved field. While it is right that, in respect of Northern Ireland, the majority of the functions conferred by the Act (including the power to regulate, by subordinate legislation, legal uses of controlled drugs) should be exercised by the devolved administration, we see considerable merit in retaining a common framework within which controlled drugs are dealt with across the UK. We therefore propose that, in terms of legislative competence, the subject-matter of the Act should remain reserved even after policing and justice are devolved in Northern Ireland.

18. The effect of this would be that the Assembly would require the consent of the Secretary of State to amend the Act but that the DHSSPS would continue to exercise the functions conferred on it under the Act acting, as it is required to do, under the direction and control of its Minister. By convention, there would be a need for a Legislative Consent Motion in the Assembly if the Government were to introduce legislation at Westminster that would alter the functions of DHSSPS.

19. This is consistent with the arrangements that obtained at the time that the 1971 Act was passed – it was intended as a UK-wide framework (reflected in the fact that the legislation was passed at Westminster) but with significant discretion for the devolved

authorities in Northern Ireland to implement the legislation, as they saw fit, within their own jurisdiction.

20. Similarly, since the provisions of the Criminal Justice (International Co-operation) Act 1990 deals primarily with import and export controls, which is a reserved matter under the terms of paragraph 20 of Schedule 3 to the Northern Ireland Act 1998, it is not proposed that this should become a transferred matter when policing and justice devolve. The Director of Public Prosecutions – whose role would devolve with policing and justice – would continue to exercise all the same functions that he can at present.

Devolution & Legislation Division
Northern Ireland Office
December 2007

[1] Article 5(a) of, and Part 1 of Schedule 2 to, the Northern Ireland (Departments) (Transfer of Functions and Adaptation of Enactments) Order 1973 (S.R.&O 504)

[2] Import and export controls are reserved under paragraph 20 of Schedule 3 to the Northern Ireland Act 1998.



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917

Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate

BELFAST
BT4 3SG

6 December 2007

Dear Simon

Future powers of the army to operate in support of the police

Thank you for your letter of 5 December 2007 which provides clarification with regard to the NIO Discussion Document of February 2006 and the 'future powers of the army to operate in support of the police'.

I would like to request further clarification on a number of matters raised in your letter.

Powers conferred on the Police by virtue of the Justice and Security (Northern Ireland) Act 2007

It is clear that the Secretary of State believes that the powers conferred on the military under sections 21 to 42 of the Justice and Security (Northern Ireland) Act 2007 should not be devolved.

However, the letter refers to the fact that there are also powers in the Act which apply to the police as well as the military, and that it would not be appropriate to devolve these powers either.

- Does this mean that in order to invoke the powers conferred on the Police (for example the power of 'Entry' under section 23 of the 2007 Act) that the Chief Constable would need to make a request to the Secretary of State?

The letter states that the Secretary of State would seek to involve the devolved Ministers as far as possible in the review of operation of these provisions, and decisions about their repeal.

- Does this mean that the Secretary of State will seek to involve the Minister in individual operational decisions, or in decisions about whether or not these powers should continue to be reserved?

Powers of the Secretary of State to take possession of land and to close roads by order (Sections 29 and 32)

The letter states that the section 23 and 32 powers of the Secretary of State to take possession of land and to close roads by order, could also be conferred on the appropriate devolved Minister.

- Would the devolved Minister have the authority to make a decision under sections 23 and 32 or would this require approval from the Secretary of State?

I would appreciate if you could provide a response in time for the next Committee meeting on 11 December.

Thank you for your continued co-operation.

Yours sincerely

Stephen J Graham

Committee Clerk



Northern
Ireland
Office

Northern Ireland Office
Castle Building
Belfast BT1 3SC
Telephone: 028 9052 2204
Facsimile: 028 9162 2574
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Stephen Graham
Clerk to Assembly and Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast BT4 3XX

10/12/07 December 2007

Dear Stephen

Many thanks for your further letter, which contains a number of technical questions about the Justice and Security (Northern Ireland) Act 2007. I shall deal with each in turn.

Does this mean that in order to invoke the powers conferred on the police (eg the power of entry under section 23 of the 2007 Act), that the Chief Constable would need to make a

request to the Secretary of State?

The powers in the 2007 Act require no additional levels of permission other than those provided for by the statute. The power of entry, for example, is conferred on constables and Her Majesty's Forces, but constables require authorisation from a police officer of a certain rank, as provided for in section 23(3). Provided the constable has the necessary authorisation, or it is not reasonably practicable for him to obtain it, he can exercise the power of entry. No request from the Chief Constable to the Secretary of State is necessary.

Does this mean that the Secretary of State will seek to involve the Minister in individual operational decisions, or in decisions about whether or not these powers should continue to be reserved?

Operational decisions will remain a matter for the Chief Constable. The police and military powers in the Act may be repealed by the Secretary of State by means of statutory instrument (section 41). The operation of the powers must also be reviewed on an annual

JW



INVEST IN PEOPLE



Northern
Ireland
Office

basis (section 40). The independent reviewer would clearly wish to involve devolved Ministers in his examination of the operation of the powers. The Secretary of State would also wish to involve devolved Ministers as far as possible in decisions as to whether or not any of the powers should be repealed. However, the Secretary of State would take the final decision on repeal.

The Secretary of State is of the view that the powers cannot be transferred to the Northern Ireland Assembly for the time being. Should he consider in the future that it may be appropriate to transfer responsibility for them he would clearly wish to discuss the matter with the devolved administration at that time.

Would the devolved Minister have the authority to make a decision under sections 23 and 32, or would this require approval from the Secretary of State?

The Secretary of State thinks that it would be possible for this power to be conferred on both devolved Ministers and the Secretary of State. The devolved Minister would be able to exercise it independently, and there would be no requirement for approval from the Secretary of State. As I set out in my previous letter, the Secretary of State would only wish to exercise this power himself in relation to non-devolved matters and expects that these occurrences would be rare. We would seek to underpin this in a Concordat or similar document between the Secretary of State and the Northern Ireland Assembly or relevant Ministers.

I hope this answers your questions.

A handwritten signature in black ink, appearing to read 'Yvonne Simons'. The signature is written in a cursive style with a large, sweeping flourish at the end.

SIMON MARSH
Principal Private Secretary

11/12



MEMBER OF PARLIAMENT



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917

Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

19 December 2007

Dear Simon

Inquiry into Devolution of Policing and Justice Matters

As you may know, I have already spoken to Peter May and Clare Salters but I am writing to confirm that the Assembly and Executive Review Committee has requested that officials from the NIO attend the Committee's meeting on 8 January 2008 to provide an update on how all aspects of work are progressing in relation to the potential transfer of policing and justice matters. Whilst the Committee recognises that progress on the matters referred to, below, are dependent, to some extent, on the outcome of its own Inquiry, Members are interested to know

- how the various work-streams are progressing;
- what arrangements are being made to replace existing national, and international, concordats, memoranda of understanding, protocols, etc. within, and amongst, the policing and justice system and other jurisdictions; and
- the stage the NIO is at with drafting any legislation which may be required if a request were to be made by the Assembly, to the Secretary of State, to have a range of policing and justice matters transferred.

I should explain that the Chief Constable is due to appear before the Committee at 11.15 on 8 January and I had suggested to Peter and Clare that it would be useful if they were to be available to attend at 12, midday. However, as a result of its deliberations yesterday, the Committee directed that I invite officials from OFMDFM to appear immediately following the session with the Chief Constable. In the circumstances, I would be grateful if officials from the NIO were to make themselves available to appear before the Committee at approximately 12.30.

The Committee meeting on 8 January will take place in the Senate Chamber and the proceedings will be conducted in public session.

It would be helpful, but not essential, if you were able to let me have a 'summary paper' by 5 January 2008.

Yours sincerely

Stephen J Graham

Committee Clerk



**Northern
Ireland
Office**

Northern Ireland Office
Castle Buildings
Belfast BT4 3SG
Telephone: 028 9052 2704
Facsimile: 028 9052 2655

Principal Private Secretary to the
Secretary of State for Northern Ireland



Stephen Graham
Clerk to the Assembly & Executive Review Committee
Northern Ireland Assembly
Room 428, Parliament Buildings
Stormont
Belfast
BT4 3XX

28 December 2007

Dear Stephen,

Thank you for your letter of 19 December requesting that Clare Salters and Peter May appear before the Assembly & Executive Review Committee on 8 January. The Secretary of State is content for them to do so.

You asked, if possible, for a written summary of the position in relation to the specific issues of interest to the Committee. This is attached.

*Yours sincerely,
Paul McMillan,*

PP.
SIMON MARSH
Principal Private Secretary



TYNHOFF IS BUIOIR

.127

MEMORANDUM FROM THE NORTHERN IRELAND OFFICE

1. In advance of the oral evidence session with officials on 6 January, the Committee requested a summary note setting out progress on the various work-streams, particularly with the drafting of legislation, and providing an outline of the arrangements for dealing with international concordats that would lapse at the point of devolution.

2. The objective of the internal programme of preparations is to ensure that the necessary legislative, administrative and organisational changes can be made at the required time to deliver devolution of policing and justice. Work across all the various work-streams is progressing well and we remain on schedule to complete the devolution process in line with the St Andrews timetable, should the Assembly so wish. We recognise that the arrangements will need to be reviewed once the Assembly has reached conclusions about the ministerial oversight arrangements and the policing and justice functions which should transfer.

3. Progress on drafting the legislation is well advanced, and, as the Secretary of State has confirmed, it is our intention to provide the Committee with indicative drafts of the main pieces of legislation – the transfer orders under sections 4 and 86 of the Northern Ireland Act 1998 – in late January/early February. The drafts will be based on the Government's working assumption that the main package of policing and justice functions identified in the February 2006 Discussion Paper will devolve and, for the purposes of drafting, that there will be a single Department dealing with

policing and justice matters, in line with the decision taken by the Transitional Assembly's Preparation for Government Committee. All of these details are capable of being corrected as part of the necessary fine-tuning that will follow the precise terms of the Assembly resolution. As the Secretary of State has explained, we intend to publish a commentary alongside the orders explaining their meaning and implications to enable them to be accessible to a wider audience.

4. In addition a range of other work is being carried out to ensure there are fully operational Departments in place able to support both a Minister of Justice within the NI Executive and, in respect of non-devolving functions, the Secretary of State. This includes consideration of funding, personnel, accommodation and other matters.

5. Simon Marsh's letter of 15 October set out the proposals in respect of North South agreements. This letter still reflects the approach being taken in these areas. In addition, work continues to develop the concordats and Memoranda of Understanding which will need to be in place at the point of devolution. The areas to be covered include the arrangements to protect judicial and prosecutorial independence and how policing and national security related matters will be managed after devolution.

*Northern Ireland Office
21 December 2007*



Devolution and Legislation Division

Northern Ireland Office
Political Directorate

Clare Salters

11 Millbank
London SW1P 4PN
Telephone 020 7210 6591
Facsimile 020 7210 6550

Deputy Director, Devolution & Legislation
Northern Ireland Office

Castle Buildings
Belfast BT4 3SG
Telephone 028 9052 8121
Facsimile 028 9052 8434

clare.salters@nio.x.gsi.gov.uk
www.nio.gov.uk

Stephen Graham
Clerk, Assembly & Executive Review Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

18 January 2008

Dear Stephen

Numbers of Ministerial Offices and Departments

You helpfully pointed out that there was some ambiguity in the exchange between Alan McFarland and myself at the Committee's meeting on 8 January when Peter May and I attended to give evidence. I thought it might be useful to set out the position in more detail for the avoidance of doubt.

The exchange focused on where authority lay to create Departments and with what limitations and what linkages to the number of Ministerial offices.

Under the Northern Ireland Act 1998, the power to create or dissolve Departments lies with the Assembly (sections 21 and, in the case of a Department with policing and justice functions to be overseen by a Minister or Ministers selected other than through the d'Hondt mechanism, 21A) and power to determine the number and functions of Ministerial offices lies with the First and deputy First Minister, with their determination being approved by a cross-community vote in the Assembly (section 17).

However, in practice these are inextricably linked, particularly in numerical terms because section 17(3) of the Northern Ireland Act 1998 requires each Northern Ireland Department to be under the control of a different Ministerial office. It is for this reason that I may have referred to interchangeably the number of Departments and the number of Ministerial offices during the 8 January evidence session – I apologize for any confusion caused by this.

At present, there is an upper limit on the number of Ministerial offices (and therefore also Departments) that can be created. Section 17(4) provides that the number of Ministerial offices cannot exceed ten unless provided for in an Order, made at Westminster by the Secretary of State. In effect this also caps the number of Departments.

There are two exceptions to this upper limit of Ministerial offices:

- The First and deputy First Ministers are not counted within the ten (see section 21(3)(b)). This means that OFMDFM is in addition to the effective limit of ten Northern Ireland Departments as would be any other Department established to be overseen by the First and deputy First Ministers acting jointly (see section 21(3)(a)).
- If the Assembly were to create a Department under section 21A(4) – that is to say a department with policing and justice functions in the charge of two ministers – then the two Ministers would count as a single Ministerial office for the purposes of section 17(4) (see paragraph 5 of Schedule 4A)

What this means in practice is that if the Assembly wanted to create a Department of Justice that is in addition to the current ten Northern Ireland Departments and not under the control of the First and deputy First Ministers, then in order to comply with the provisions of section 17(3) it would be necessary for the Secretary of State to make an order at Westminster under section 17(4) in order to increase the statutory maximum number of Ministerial offices.

However, if the Assembly created a Department of Justice either under the supervision of the First and deputy First Ministers or by reducing the existing Departments from ten to nine, there would be no need for an order at Westminster.

I hope that this clarification is helpful, though obviously am happy to provide further detail if you need it.



Clare Salters

Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428

Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784

Fax: (0)28 9052 5917

Email: stephen.graham@niassembly.gov.uk

Mr Simon Marsh
PS/Secretary of State
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

18 January 2008

Dear Simon

Inquiry into Devolution of Policing and Justice Matters

A number of questions have arisen as a result of the Committee's discussions at its meeting on 15 January about the structure, accountability and the finances for policing and justice organisations, post devolution. These include:

Attorney General

- Whether the role of the Attorney General will be full time or part time.
- The costs associated with this role.

It is likely that the Committee will wish to explore this matter in detail with the Head of the Northern Ireland Civil Service but, if the NIO has given the matter any consideration, it would be helpful if this was shared.

Office of the Police Ombudsman

The NIO Discussion Document (February 2006) states that at present, the Crown is advised by the Prime Minister and Secretary of State on such appointments and that it would be possible for OFMdFM or an NI Minister to have an advisory role in appointments to this office.

The NIO also state that the Secretary of State's role in ensuring high standards of financial propriety and corporate governance will also transfer to the new Department.

Can you please confirm whether the potential role for OFMdFM, or any new Minister, is simply an advisory role in relation to appointments, or whether it is envisaged that the Police Ombudsman will, in fact, be appointed directly by the Assembly?

North/South Agreements

In earlier correspondence, I highlighted concerns about the range of formal, and informal, agreements, Memoranda of Understanding, protocols and so on which might fall, or require to be replaced on devolution. The Committee remains concerned that there might be a hiatus and it would be helpful if you were to supply a list of these agreements, MOU and protocols, suitably annotated, to explain whether, or not, they fall, or will be replaced so as to ensure continuity of arrangements.

Northern Ireland Police Fund

The NIO Discussion Document (February 2006) states that the fund is financed by the Northern Ireland Office (currently receiving around £1.8m a year) and the Department oversees its corporate governance and financial propriety. Following devolution of policing, funding and oversight of the Police Fund would be a matter for the Northern Ireland Executive.

Can you please confirm whether the funding is part of the block grant or whether this is a separate arrangement, and, if it is a separate arrangement, whether this will continue post devolution.

The particular example of the Police Fund gives rise to the wider issue of the dis-aggregation of budgets to support those matters to be transferred and, whilst the baseline figures were identified in your letter of 15 October 2007, the Committee is interested to know if the allocation of monies has been further developed since then and what the details are.

Yours sincerely

Stephen J Graham

Committee Clerk



**Northern
Ireland
Office**

Northern Ireland Office
11, Millbank
London SW1P 4RN
Telephone: 020 7210 6262
Facsimile: 020 7210 0246
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Mr Stephen Graham
Clerk to Assembly and Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

64 February 2009

Dear Stephen,

INQUIRY INTO DEVOLUTION OF POLICING AND JUSTICE MATTERS

Thank you for your letter of 18 January which asked a number of questions about the structure, accountability and the finances for policing and justice organisations, post devolution. I will answer the questions in the order they were asked.

Attorney General

Under the Justice (NI) Act 2002, the working hours, costs and related arrangements for the Attorney General for Northern Ireland are a matter for the First Minister and deputy First Minister. The NIO has no position on these issues, but has made available to OFMDFM any relevant background material which might assist in the reaching of conclusions about the role.

Office of the Police Ombudsman

At present, the logistical arrangements (advertising, interviewing etc) for appointing a new Police Ombudsman are carried out by the NIO. However, the Crown is still required to make the actual appointment, following advice from the Prime Minister

and the Secretary of State. Following devolution, the Police Ombudsman will remain a Crown appointment but the responsibility for arranging and running the appointment competition will transfer to the Department of Justice. The question for consideration is whether the advisory role of the Prime Minister and Secretary of



Northern
Ireland
Office

State should transfer to the Minister of Justice or the First Minister and deputy First Minister acting jointly.

North/South Agreements

Agreements for North/South co-operation exist in both the Policing and Criminal Justice fields.

Section 56 of the Police (NI) Act 2000 states that the Policing Board and Chief Constable shall implement any arrangements made in pursuance of an Agreement between the Governments dealing with co-operation of policing matters between the PSNI and the Garda Síochána. It was subsequently agreed that Patten's recommendation on co-operation would be addressed through the framework of an Intergovernmental Agreement on Policing Co-operation, which was signed by both

Governments on 29 April 2002.

Our intention is to provide the devolved authorities with the maximum amount of flexibility to facilitate closer co-operation between the PSNI and Garda Síochána across all areas of the Agreement, including, inter alia, training, communications, disaster planning and joint investigation teams. As a consequence this Agreement, including the protocols drawn up under the Agreement, will transfer to the devolved administration.

However, the IGA on Criminal Justice Co-operation (copy attached), which establishes a regular pattern of ministerial meetings and official working groups, will cease to be binding on devolution.

Article 5(1) of the Agreement sets out that it only applies to those elements of criminal justice that are not devolved in Northern Ireland, of which there will be few or none. And because it is specifically between the Irish Minister for Justice and the Minister in the UK Government responsible for Criminal Justice in Northern Ireland (Article 1(1)), it does not bind the Northern Ireland Minister for Justice and the Northern Ireland Department of Justice.



Northern
Ireland
Office

The effect of this is only that the Northern Ireland and Irish Ministers will not be required under international agreement to meet or have a work programme or report to the BIGC, and officials will not be required to meet in their working group. However, that is not to say that the pattern of meetings and working groups could not or should not continue, either informally or under new arrangements agreed between the two Ministers in due course; there would be nothing to prevent the existing arrangements being continued outwith the IGA. Of course, any such new arrangements would not include accountability to the BIGC.

Likewise, the Work Programme agreed by both Ministers under the IGA need not be binding upon the Northern Ireland Minister(s) for Justice following devolution. However the practical benefits of the work programme may be lost if it is not followed through under informal agreement between the Ministers.


No protocols have been entered into under Article 3 of this IGA.

Northern Ireland Police Fund

The Northern Ireland Police Fund's budget forms part of the general Policing and Security allocation which in turn is part of the overall NIO grant. There is no separate arrangement.

More generally, we expect budgets for the CSRO7 period to be agreed shortly.

I hope this provides the necessary clarification on the issues. Please do not hesitate to contact me should you have any further questions.

Yours truly,




**SIMON MARSH
PRINCIPAL PRIVATE SECRETARY**

Co-Operation on Criminal Justice Matters

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on Co-Operation on Criminal Justice Matters

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland:

Having regard to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10 April 1998 ("the British-Irish Agreement") and to the Multi-Party Agreement reached at Belfast on 10 April 1998 annexed to the aforesaid Agreement;

Having regard to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Dublin on 8 March 1999 establishing a British-Irish Intergovernmental Conference;

Considering the report of the Review of the Criminal Justice System in Northern Ireland published in March 2000 ("the Criminal Justice Review"), the Justice (Northern Ireland) Act 2002, which enacts certain recommendations of the Criminal Justice Review, and the Criminal Justice Review Updated Implementation Plan published in June 2003;

Taking into account the progress made on co-operation between the relevant agencies in Ireland and in Northern Ireland ("the two jurisdictions") on policing and security matters;

Taking into account also developments within the European Union in respect of co-operation on criminal justice matters;

Recalling the discussions that took place between the two Governments and the political parties at Hillsborough Castle in March 2003

and the Joint Declaration published by the two Governments on 1st May 2003;

Have agreed as follows:

ARTICLE 1

Ministerial Meetings on Criminal Justice Cooperation

- (1) The Ministers of the governments of the United Kingdom and Ireland (hereinafter referred to as “the Ministers”) responsible for criminal justice matters in the two jurisdictions shall meet at least annually for the purpose of facilitating more effective co-operation and coordination on criminal justice matters, including in combating criminal behaviour, working together in the prevention of crime and on community safety issues, and dealing with offenders after conviction. Such meetings shall be referred to hereinafter as Ministerial Meetings on criminal justice cooperation.
- (2) The Ministerial Meetings shall operate under the auspices of, and be accountable to, the British-Irish Intergovernmental Conference. The Ministers shall provide periodic joint reports to the British-Irish Intergovernmental Conference on the Ministerial Meetings.
- (3) The Ministerial Meetings shall operate on the basis of the arrangements set out in the Annex, which shall constitute an integral part of this Agreement.

ARTICLE 2

Working Group on Criminal Justice Cooperation

- (1) A Working Group on Criminal Justice Cooperation comprising officials from the United Kingdom and Ireland shall meet regularly to support the Ministerial Meetings and to take forward work on progressing the relevant recommendations of the Criminal Justice Review, and to identify other areas in which co-operation on criminal justice matters could be enhanced or initiated, as appropriate.
- (2) The Working Group shall prepare, seek the agreement of the Ministers to, and implement annual work programmes on co-operation and co-ordination on criminal justice matters. Such work programmes will be published, including in electronic format.
- (3) The Working Group shall be accountable to the Ministers, and through the Ministers to the British-Irish Intergovernmental Conference, and shall provide reports on progress to the Ministerial Meetings.
- (4) The Working Group shall meet at least twice each year and shall operate on the basis of the arrangements set out in the Annex, which shall constitute an integral part of this Agreement.

ARTICLE 3

Protocols

- (1) Where appropriate, written Protocols may be drawn up between relevant criminal justice agencies in the two jurisdictions addressing detailed aspects of co-operation agreed between them.
- (2) Any such protocols shall be submitted to the Ministers for approval and signature.
- (3) Such protocols shall not constitute international agreements and shall not have binding effect on either Government.

ARTICLE 4

Relationship with other international agreements

This Agreement shall not affect the rights and obligations of the Parties under other international agreements.

ARTICLE 5

Operation and Review of Agreement

- (1) This Agreement shall have effect in respect of criminal justice matters to the extent that they are not devolved to the Northern Ireland Assembly.
- (2) When the criminal justice matters to which this Agreement relates are devolved to the Northern Ireland Assembly, the operation of the Agreement will be reviewed by the Ministers.

ARTICLE 6

Entry into force

Each Government shall notify the other in writing of the completion, so far as it is concerned, of the requirements for entry into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of the two notifications.

In witness whereof the undersigned, being duly authorised thereto by the respective Governments, have signed this Agreement.

Done in two originals at on the day of 2005.

For the Government of the United Kingdom:
Kingdom of Great Britain and Northern Ireland:

Annex

Arrangements for the Operation of the Ministerial Meetings and Working Group Meetings on Criminal Justice Co-Operation

Ministerial Meetings

Terms of Reference

The Ministerial Meetings shall serve as a forum for the Ministers responsible for criminal justice matters in the two jurisdictions to:

- discuss criminal justice matters of mutual interest or concern in the two jurisdictions.
- consider the scope for, and develop plans to achieve, more effective co-operation and co-ordination on criminal justice matters between the two jurisdictions.
- oversee and give direction to the work of the Working Group.
- approve and periodically review progress against the annual work programmes on criminal justice co-operation.

Attendance

The Ministers shall be supported at meetings by the Joint Chairmen of the Working Group or their nominated representatives and by such other officials and representatives from the United Kingdom and Ireland as the Ministers may determine. Both sides shall endeavour to maintain a balance in representation between the two jurisdictions and to keep overall numbers at a manageable level.

Secretariat

Officials from the Northern Ireland Office and officials from the Department of Justice, Equality and Law Reform shall provide administrative support for, and shall produce an agreed record of, all Ministerial Meetings. Any disagreement about the record of a meeting that cannot be resolved through consultation between the two sides shall be referred to the Joint Chairmen and ultimately to the Ministers.

Working Group on Criminal Justice Cooperation

Terms of Reference

The Ministerial Meetings shall be supported by a Working Group comprising officials from the United Kingdom and Ireland who shall meet at least twice a year in order to:

- exchange information and discuss criminal justice matters of mutual interest.
- identify and advise on the opportunities for co-operation on criminal justice matters at government level and between the criminal justice agencies in the two jurisdictions, taking account also of the need for effective co-operation with other parts of these islands.
- prepare and submit annual work programmes on co-ordination and co-operation on criminal justice matters between the two jurisdictions for consideration at Joint Ministerial Meetings, and, where Ministers agree, to take forward the implementation of such programmes.
- take forward consideration of, and where appropriate implement, the recommendations on co-operation on criminal justice matters in the Criminal Justice Review.
- establish and manage projects and initiatives to facilitate and enhance co-operation on criminal justice matters between the two jurisdictions.
- keep under review the effectiveness of the arrangements for facilitating and enhancing co-ordination and co-operation on criminal justice matters between the two jurisdictions, and make appropriate recommendations on these matters to Ministerial Meetings.
- prepare and agree periodic reports for the Ministers on progress in taking forward the Work Programme approved by Ministers.
- prepare and agree reports as appropriate for Ministers to provide to the BIIGC.

Chairmanship

The Working Group shall be chaired jointly by the Director, Criminal Justice of the Northern Ireland Office and the relevant Assistant Secretary from the Department of Justice, Equality and Law Reform, or their nominated representatives.

Meetings of the group shall alternate between the United Kingdom and Ireland. The chairmanship of meetings shall also alternate with their location. The Director, Criminal Justice of the Northern Ireland Office shall take the chair when meetings take place in Northern Ireland, or elsewhere in the United Kingdom. The relevant Assistant Secretary from the Department of Justice, Equality and Law Reform shall take the chair when meetings take place in Ireland.

Membership

Membership of the Working Group shall include such officials and representatives from both jurisdictions as the Joint Chairmen may determine. Both sides shall strive to maintain a balance in representation between the two jurisdictions and to keep overall numbers at a manageable level.

Official support

The Working Group shall be supported by those officials from the DJELR and the NIO who provide administrative support to the Ministerial Meetings.

Records of meetings of the Working Group shall be agreed between the Joint Chairmen.



Northern
Ireland
Office

Northern Ireland Office
Millbank,
London SW1P 3LN
Telephone: 020 7 744 1677
Fax: 020 7 744 1466
www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Stephen Granam
Clerk, Assembly & Executive Review Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

6/1 February 2008

Dear Stephen,

COMPLETION OF DEVOLUTION: PROPOSAL FOR DRAFT LEGISLATION

When he last wrote to your Committee Chairman on 10 December, the Secretary of State promised to share with the Committee, as soon as possible, draft proposals for the legislation that would be used to effect the transfer of functions and legislative competence when the Assembly requests it.

You will know from your discussions with Ian Kerr that officials had been aiming to get texts to you by 1st February but, given the Committee's wish to see texts sooner, I understand that you have agreed with Ian that you will get the texts in two stages:

understand that you have agreed with Ian that you will get the texts in two stages: some initial illustrative text, in confidence now and a fuller set of draft legislation in slightly slower time.

I enclose the first document with this letter. As discussed, it is very much work in progress and not for publication or wider dissemination at this stage. The document consists of a covering commentary and four draft Orders (at Annexes B to E of the document). The first of these is the draft section 4 Order which transfers legislative competence. The second two are the first two draft section 86 Orders which transfer *executive functions* and make other *consequential amendments* to the statute book. The final Order attached here is the draft section 86A Order, which transfers certain administrative functions relating to *extradition and international mutual legal assistance*.



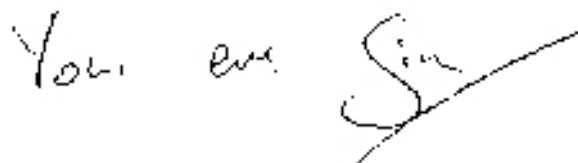
Northern
Ireland
Office

It is our intention to produce an updated version of the documents, covering the missing provisions on explosives and the criminal justice framework, to be published alongside the Committee's report, which I understand it intends to publish on 18 February. This will illustrate, for a wider audience, the way that the transfer

legislation will appear and, we hope, help inform the next series of debates on the subject.

I should clarify that, in describing the texts as illustrative this should not be taken to imply that the Government intends to change its policy on these matters between now and the point at which the Assembly requests the transfer of responsibility. Rather, it reflects the fact that, given the timescales involved, the texts are not yet complete in some areas and the wording has not yet been subjected to the usual thorough scrutiny of Parliamentary Counsel and the Office of the Legislative Counsel. All of this will, of course, be done before the texts are presented to Parliament and work is in hand to ensure that this additional work can be completed in time for devolution in May, if the Assembly so requests.

I understand that the Committee is likely to want to call NIO officials back to discuss the draft texts, on Thursday 7th, and know that both Clare Salters and Peter May will be at the Committee's disposal. The Secretary of State is keen to provide whatever assistance we can to the Committee in taking forward its deliberations.

A handwritten signature in black ink that reads "Yours ever, Simon". The signature is written in a cursive style with a long horizontal stroke at the end.

**SIMON MARSH
PRINCIPAL PRIVATE SECRETARY**

Extract Chapter 3

Criminal Law & Creation of Offences & Penalties

Paragraphs 9(a) & (b) of Schedule 3 to the 1998 Act

3.1 Paragraphs 9(a) and (b) of Schedule 3 to the 1998 Act currently make the criminal law and the related matter of the creation of offences and penalties reserved matters. One of the effects of Article 3(1) of the draft section 4 Order at Annex B is to remove these headings from the list of reserved matters, bringing all of them within the transferred field and therefore within the full legislative competence of the Assembly.

3.2 There will need to be a series of amendments to transfer functions in relation to the criminal law and make other consequential changes to statute added to the draft section 86 Order at Annex C. These will be included in the final version of the document.

3.3 There are some limited exceptions to the general transfer of responsibilities for the criminal law and the creation of offences and penalties, which are outlined below.

National security and counter-terrorism

3.4 The transfer obviously does not affect anything covered by paragraph 17 of Schedule 2, which deals, broadly speaking, with national security and counter-terrorism measures. The law as it relates to these matters, and the creation of any offences or penalties in this field, will remain an excepted matter for the UK Government and Parliament to deal with. This includes the provisions of the Northern Ireland Arms Decommissioning Act 1997 and the Secretary of State's powers under the Northern Ireland (Remission of Sentences) Act 1995.

Misuse of drugs

3.5 Article 3(3) of the draft section 4 Order at Annex B inserts a new paragraph 9ZA into Schedule 3 to the 1998 Act, reserving the subject matter of the Misuse of Drugs Act 1971. The Government believes that there is considerable merit in retaining a common framework within which controlled drugs are dealt with and classified across the UK. The effect of this would be that the Assembly would continue to require the consent of the Secretary of State to amend the primary legislation.

3.6 However, the vast majority of the functions that are provided for in the Act – which the Secretary of State (in practice the Home Secretary) exercises in relation to Great Britain – are already devolved in Northern Ireland. They are conferred upon the Department for

Health, Social Services and Public Safety^[1], including the function of regulating the lawful use of controlled drugs in Northern Ireland by subordinate legislation. There are also already consultative roles for the Northern Ireland Ministers for health and for education outlined in the Act. By convention, there would be a need for a Legislative Consent Motion in the Assembly if the Government were to introduce legislation at Westminster that would alter the functions of DHSSPS or any of the Northern Ireland Ministers in this regard.

3.7 The 1971 Act currently confers four functions solely on UK Ministers:

The Home Secretary is solely responsible for the classification of controlled drugs.^[2] That will remain the case when policing and justice matters devolve in Northern Ireland.

The Home Secretary is responsible for establishing the Advisory Council on the misuse of drugs, which is intended to be a single UK-wide body.^[3] Again, that will remain the case after the devolution of policing and justice.

The Lord Chancellor is responsible for appointing legal members of tribunals. On devolution of policing and justice, Article 4(1)(c) of the draft section 86 Order which deals with the Lord Chancellor and the Courts (at Annex D) provides for this to transfer to the First and deputy First Ministers acting jointly, reflecting their responsibility for appointing judges.

The Lord Chancellor is also currently responsible for appointing members of any advisory body. Paragraph 47 of Schedule 1 to the draft section 86 Order at Annex D provides for this to transfer to the Department of Justice on the devolution of policing and justice.

Chapter 4

Prevention & Detection of Crime

Paragraph 9(c) of Schedule 3 to the 1998 Act

4.1 The prevention and detection of crime is currently a reserved matter under paragraph 9(c) of Schedule 3 to the 1998 Act, though matters connected with counter-terrorism and other national security related matters are excepted under paragraph 17 of Schedule 2.

4.2 One of the effects of Article 3(1) of the draft section 4 Order at Annex B is to remove paragraph 9 – including the reference to the prevention and detection of crime – from the list of reserved matters. Subject to the exceptions set out below, that brings all of these matters within the full legislative competence of the Assembly.

4.3 The majority of the police powers used in the prevention and detection of crime derive either from the common law or are set out in the Police and Criminal Evidence (NI) Order 1989 (PACE). Amendments to PACE to reflect the transfer of functions from the Secretary of State will be set out in the next version of the draft section 86 Order.

Regulation of Investigatory Powers Act and related matters

4.3 The Regulation of Investigatory Powers Act 2000 (RIPA) provides for the regulatory structure governing the acquisition of intelligence information. As such, its subject matter is generally excepted by virtue of paragraph 17 of Schedule 2 to the 1998 Act which deals with national security. However, the provisions on the interception of communications, as they relate to the prevention or detection of serious crime, fall within the reserved field.

4.4 The February 2006 Discussion Paper (paragraph 6.5) highlighted the interface between national security and serious crime and indicated that, for this reason, some aspects of RIPA that are currently reserved might need to remain so. After consideration, the Government has concluded that the techniques and methodologies concerned are of importance in terms of the need to protect national security and that therefore these arrangements should remain reserved. Accordingly, Article 3(1) of the draft section 4 Order at Annex B provides for a new paragraph 9(a) and (b) to be inserted into Schedule 3, keeping within the reserved field the interception of communications (insofar as this is not already excepted).

Regulation of private security industry

4.5 The Private Security Industry Act 2001 (as amended by the Justice and Security (Northern Ireland) Act 2007) enables the regulation of the private security industry in Northern Ireland by the Security Industry Authority. Until SIA regulation is in place, the industry will continue to be regulated under an interim scheme contained in Schedule 6 to the 2007 Act. Because that regulatory regime aims, in part, to prevent paramilitary organisations or individuals connected to them raising funds under the guise of legitimate private security business (and therefore requires national security information to be considered as part of the licensing process) it will not be devolved. However, the regime will automatically be repealed when the SIA take on regulation of manned guarding in Northern Ireland, which should be within the next couple of years. Accordingly, no functions in relation to this are transferred under the draft section 86 Order at Annex C and Article 3(2) provides for a new paragraph 9(d) to be inserted into Schedule 3 to the 1998, providing for the transitional interim arrangements to remain a reserved matter for as long as they are in operation. Sponsorship and funding of the SIA implementation project in Northern Ireland will devolve to the Northern Ireland Assembly, along with other policing and justice functions.

UK-wide bodies involved in tackling criminality in Northern Ireland

4.6 As explained in the February 2006 Discussion Document (paragraphs 6.17 and 6.18), the legislative framework underpinning the work of HM Revenue and Customs (HMRC) and the Borders and Immigration Agency of the Home Office (BIA) will continue to be excepted matters, under paragraphs 8 and 9 of Schedule 2 to the 1998 Act. These agencies will continue to work closely with the police and others in Northern Ireland following devolution, as they already do in Scotland where responsibility for policing and justice is already devolved.

4.7 The Serious Organised Crime Agency will continue to operate on a UK-wide basis, under Westminster legislation.

Independent Commission for the Location of Victims Remains

4.8 The Independent Commission for the Location of Victims Remains (ICLVR) was established by the governments of the United Kingdom and Ireland in 1999. The issue of whether or not responsibility for the commission will devolve is not dealt with in this legislation. There remains further work to be done on this in order to decide if and how this should devolve.

Chapter 5

Prosecutions

Paragraph 9(d) of Schedule 3 to the 1998 Act

5.1 Responsibility for prosecutions in Northern Ireland is currently a reserved matter, under paragraph 9(d) of Schedule 3 to the 1998 Act. One of the effects of Article 3(1) of the draft section 4 Order at Annex B is that the existing paragraph 9(d) is repealed, meaning that the subject matter of prosecutions would fall within the full legislative competence of the Assembly.

5.2 The exception to this is that any legislation that affected any prosecutorial functions of the Advocate General for Northern Ireland – the UK Government's chief law officer in relation to Northern Ireland – would remain excepted by virtue of paragraph 21A of Schedule 2 to the Northern Ireland Act 1998. The Assembly's power to legislate would be subject to the Secretary of State's consent and also to the provisions being ancillary to the main subject matter of the legislation.

5.3 As the February 2006 Discussion Paper explained, significant changes were made to the prosecutorial framework in Northern Ireland following the Criminal Justice Review of 2000, in particular the creation of a new prosecuting authority: the Public Prosecution Service for Northern Ireland (PPS), headed by the Director of Public Prosecutions for Northern Ireland (the DPP(NI)).

5.4 At present, the PPS is subject to the superintendence and direction of the Attorney General, a Minister within the UK Government. Following devolution of policing and justice, and in line with the Criminal Justice Review's key recommendation on prosecutorial independence, the new Attorney General for Northern Ireland – appointed by the First and deputy First Ministers – will have a consultative role and no powers of direction over the PPS, whether in individual cases or matters of policy.

5.5 Accordingly, and in preparation for devolution, the majority of the statutory functions of the (current) Attorney General were, in respect of Northern Ireland, amended by, in particular, the Justice (NI) Acts 2002 and 2004 to provide that they would transfer, after devolution, to the DPP(NI) or, in the case of any matters which are excepted or which remain reserved, to the Advocate General for Northern Ireland. There are a handful of provisions that have not yet been amended in this way. These will be included in the final version of the draft section 86 Order at Annex C.

Chapter 6

Treatment of Offenders

Paragraph 9(e) of Schedule 3 to the 1998 Act

Paragraph 9(e) of Schedule 3 to the 1998 Act currently makes the treatment of offenders (including children and young persons, and mental health patients, involved in crime) a reserved matter. One of the effects of Article 3(1) of the draft section 4 Order at Annex B is to remove this heading from the list of reserved matters, bringing them within the transferred field and thus within the full legislative competence of the Assembly.

6.2 Functions currently conferred on the Secretary of State (or, in some of the older texts, the Minister or Ministry of Home Affairs) are transferred to the [DoJ] or [MoJ] by Articles 3 and 4, and Schedules 1 and 2 respectively to the section 86 Order. The practical effect of these changes is that the devolved administration will assume responsibility for the administration of the NI Prison Service, the Youth Justice Agency, the Probation Board for NI, the NI Prisoner Ombudsman and those aspects of responsibility for mentally disordered offenders that are not already devolved (many are already the responsibility of the DHSSPS).

6.3 There are some limited exceptions to this, which are explained below, all involving national security – either because the matters are directly related to national security or because, it is necessary to have access to detailed national security information (as opposed to a summary) in order to take particular decisions.

Sentence Review Commissioners and Northern Ireland (Remission of Sentences) Act 1995

6.4 The February 2006 Discussion paper (paragraphs 8.21 – 8.23) explained that the work of the Sentence Review Commissioners under the Northern Ireland (Sentences) Act 1998 and the Secretary of State's powers within the Northern Ireland (Remission of Sentences) Act 1995 were explicitly concerned with the treatment of those convicted of offences connected with terrorism which is an excepted matter (see paragraph 17 of Schedule 2 to the 1998 Act). These matters will therefore not devolve.

Life sentence review arrangements

6.5 Paragraphs 8.14 to 8.20 of the February 2006 document dealt with the Life Sentence Review Commissioners and indicated that responsibility for oversight of the LSRC and the operation of their functions would be devolved. It was further noted that new arrangements would be needed to ensure that Commissioners had access to information in the excepted field when required.

6.6 New paragraph 9(c)(ii), inserted by Article 3(1) of the draft section 4 Order at Annex B provides that legislation covering the release, on licence, of offenders serving life sentences (including matters relating to the Life Sentence Review Commissioners) will remain a reserved matter. The effect of is that any future Assembly legislation dealing with the release, on licence, of offenders serving life sentences would require the consent of the Secretary of State. The reason for this is to ensure that any legislation would not cut across the process of securing the Commissioners' continued access to national security information.

6.7 However, many of the functions of the Secretary of State under the Life Sentences (NI) Order 2001 will transfer to the [MoJ] or [DoJ]. The necessary amendments to that Order are provided for in paragraph 4 of Schedule 2 and paragraphs 67 to 69 of Schedule 3 to the draft section 86 Order at Annex C. Further changes – to the Life Sentence Review Commissioners' Rules 2001 – will be made by the further section 86 Order dealing with subordinate legislation, referred to in paragraph 2.7 above.

Parole Commissioners

6.8 The draft Criminal Justice Order published on 8 November 2007 will introduce a new framework of public protection sentences, as well as permitting the establishment of Parole Commissioners. These new arrangements will in due course overtake the current system of Life Sentence Review Commissioners. At this stage, as that legislation is only in draft, it would not be right to include specific provision in the draft Order included with this document. However it is likely that certain aspects of the work of the Parole Commissioners would be dealt with on the same basis as the arrangements for the Life Sentences Review Commissioners discussed

above.

Separated accommodation

6.9 After a report published in September 2003, the Government introduced arrangements for the separation of paramilitary prisoners in the interest of safety. Wings of two houses in Maghaberry Prison have been designated as separated accommodation. Criteria have been published which prisoners must meet to gain entry, including membership of, or support for, a proscribed organisation, and that their admission would not be likely to prejudice their safety or that of others. The separated accommodation scheme is administrative in nature, although it is included in the Prison Rules. Matters which officials and Ministers take into account in deciding whether or not to admit prisoners to (or remove them from) separated accommodation can include detailed and sensitive national security information.

6.10 We propose, therefore, that legislative competence in relation to accommodation in separated accommodation should remain reserved and that the Secretary of State would remain responsible for decisions on whether an individual should be admitted to, or removed from, separated accommodation. This is provided for in new paragraph 9(c)(i) of Schedule 3 to the 1998 Act, inserted by Article 3(1) of the draft section 4 Order at Annex B.

6.11 Similar amendments to Prison Rules will be made by the further section 86 Order dealing with subordinate legislation, referred to in paragraph 2.7 above.

Chapter 7

Compensation

Paragraph 9(g) of Schedule 3 to the 1998 Act

7.1 Paragraph 9(g) of Schedule 3 to the 1998 Act currently makes compensation for the victims of crime a reserved matter. One of the effects of Article 3(1) of the draft section 4 Order at Annex B is to remove this from the list of reserved matters, bringing it within the transferred field and therefore within the full legislative competence of the Assembly.

7.2 There will need to be a series of amendments to transfer functions in relation to compensation and make other consequential changes to statute added to the draft section 86 Order at Annex C. These will be included in the next version of the document.

Chapter 8

Community Safety Partnerships

Paragraph 9(h) of Schedule 3 to the 1998 Act, inserted by section 83 of the Justice (NI) Act 2002

8.1 The February 2006 Discussion Document explained that the twenty-six community safety partnerships (CSPs) that currently existed

in each of the district council areas operated on a voluntary basis. The CSPs listed in Schedule 3 to the 1998 Act are statutory partnerships, provided for in the Justice (NI) Act 2002. The Secretary of State has not yet exercised the powers under that Act to place the existing partnerships on a statutory basis.

8.2 One of the effects of Article 3(1) of the draft section 4 Order at Annex B is to remove the statutory CSPs from the list of reserved matters, bringing them within the full legislative competence of the Assembly. This means that any decisions after devolution about whether to create statutory CSPs would be taken by the Executive and Assembly.

8.3 There will need to be a series of amendments to transfer any Secretary of State functions in relation to CSPs and make other consequential changes to statute added to the draft section 86 Order at Annex C. These will be included in the next version of the document.

Chapter 9

Chief Inspector of Criminal Justice

Paragraph 9A of Schedule 3 to the 1998 Act, inserted by the Justice (NI) Act 2002

9.1 The February 2006 Discussion Document envisaged that responsibility for the Chief Inspector of Criminal Justice would transfer as part of the devolution policing and justice.

9.2 Article 11(1) of the draft section 4 Order at Annex B removes the Chief Inspector of Criminal Justice from the list of reserved matters, bringing it within the full legislative competence of the Assembly.

9.3 There will need to be a series of amendments to transfer relevant Secretary of State functions in relation to the Chief Inspector and make other consequential changes to statute added to the draft section 86 Order at Annex C. These will be included in the next version of the document.

Chapter 10

Public Order

Paragraph 10 of Schedule 3 to the 1998 Act

10.1 The maintenance of public order is an operational responsibility for the police, with the majority of the legislative framework for it falling within the reserved field. The substitutions effected by Article 4 of the draft section 4 Order at Annex B remove the majority of public order matters from the list of reserved matters and bring them within the full legislative competence of the Assembly. The exceptions to this are set out below.

National security, subversion and terrorism

10.2 As the February 2006 Discussion Paper explained, public order matters connected with national security, subversion and terrorism are excepted matters under paragraph 17 of Schedule 2 to the 1998 Act and will therefore not devolve along with policing and justice.

Public order powers etc for the armed forces

10.3 The Justice and Security (Northern Ireland) Act 2007 provided for additional powers for the police and the armed forces. These include powers of entry, search and seizure that go over and beyond common law and existing statutory powers available to the police, for example those granted by PACE. These powers are intended to be time-limited, and there is provision for the Secretary of State to repeal them by way of an Order approved by both Houses of Parliament

10.4 The statutory framework covering the armed forces more generally falls within the excepted field by virtue of paragraph 4 of Schedule 2 to the 1998 Act. Because of the connection between the powers under the Justice and Security (Northern Ireland) Act and the statutory framework – and in view of the temporary nature of the powers themselves – the Government's view is that these matters should remain reserved while the provisions remain on the statute book. Accordingly, Article 7 of the draft section 4 Order at Annex B inserts a new paragraph 10A to Schedule 3 to the 1998 Act, providing that these provisions remain reserved while they are in force.

Parading and the Parades Commission

10.5 The reservation currently at paragraph 10 of Schedule 3 covers the functions and establishment of the Parades Commission. The February 2006 Discussion Paper set out the Government's preference that these matters be devolved along with responsibility for policing and justice more generally.

10.6 However, the Discussion Paper recognised that a subject as contentious as parading had the capacity to reinforce community divisions at a time when the focus of the devolved institutions was on developing a vision of a shared future and therefore acknowledged the possibility that the Assembly might seek to leave these matters – or possibly just the function of making appointments to the Commission – within the reserved field for the time being.

10.7 In the absence of a decision yet from the Assembly as to whether it will wish these responsibilities to transfer in whole or in part, Articles 4-6 of the draft section 4 order at Annex B provides for three possible amendments to Schedule 3:

- Option 1 shows the existing paragraph 10 being removed from Schedule 3 – the effect of this would be for all matters relating to parading would fall within the full legislative competence of the Assembly;
- Option 2 shows whole of the subject matter of the Public Processions (NI) Act 1998 remaining reserved;
- Option 3 shows only arrangements for appointments to the Parades Commission remaining reserved.

10.8 Clearly these aspects of the Order will need considerable revision to take into account the decision of the Assembly, in due course, as to which of these responsibilities it wishes to see transferred. There will also need to be a series of consequential amendments made via the draft section 86 Order at Annex C; these will be provided once the Assembly decides how it wishes this matter to be dealt with.

Chapter 11

Policing

Paragraph 11 of Schedule 3 to the 1998 Act

11.1 As described in chapter 13 of the February 2006 Discussion Paper, paragraph 11 of Schedule 3 to the Northern Ireland Act 1998 currently reserves responsibility for the PSNI and the police accountability framework: the establishment, organisation and control of the PSNI and of any other police force; the Northern Ireland Policing Board; and traffic wardens^[4]. Article 5 of the draft section 4 Order at Annex B removes paragraph 11, thereby transferring those matters and bringing them within the Assembly's full legislative competence, subject to the exceptions set out below.

11.2 Subject to the same exceptions, a series of consequential amendments are made by the draft section 86 Order at Annex C, including those that will transfer functions currently exercised by the Secretary of State. These are outlined in paragraphs 11.3 to 11.6 below. References throughout the rest of this chapter to "Schedule 3" are to Schedule 3 to the draft section 86 Order.

11.3 The Secretary of State's functions in respect of the Policing Board, including funding, the appointment of members and preparation and revision of a Code of Practice for District Policing Partnerships, are transferred by Article 3 of the draft section 86 Order. Related amendments are made by Article 5 of that Order and paragraphs [23 to 25] of Schedule 3.

11.4 Subject to paragraphs 11.7 to 11.16 below, the Secretary of State's functions in relation to the PSNI under Part VI of the 2000 Act will be transferred by Article 3. The Secretary of State's powers in respect of police pay and pensions are transferred by Article 3 and paragraph [3] of Schedule 3.

11.5 The Secretary of State's role in respect of funding and audit arrangements, set out in paragraphs 13.17 to 13.19 of the February 2006 Discussion Paper, is transferred by Article 3. The associated statutory audit responsibility will transfer from the Comptroller and Auditor General to the Comptroller and Auditor General for Northern Ireland under Article 5 (see paragraph 2.15).

11.6 The Secretary of State's functions with regard to the Police Ombudsman, the Police Association and the RUC George Cross Foundation are all transferred by Article 3.

Temporary "50:50" recruitment provisions

11.7 The February 2006 Discussion Paper (paragraph 13.33) explained that, unless the Assembly specifically requested its transfer, responsibility for the temporary "50:50" recruitment arrangements would remain the responsibility for the UK Government and Parliament at Westminster, until such time as the provisions lapsed. We remain on target to achieving our objective of reaching 30% Catholic composition in the PSNI regulars by 2010/11 and ending the provision at that time.

11.8 For this reason, Article 5(2) of the draft section 4 Order at Annex B inserts a new (temporary) reservation covering the temporary

recruitment provisions. The text of Article 5(2) is in square brackets because, if the Assembly votes on a cross-community basis to see these provisions transferred, the Government would be content to do so.

Excepted and reserved policing matters – lines of accountability

11.9 As the February 2006 Discussion Document explained, national security is an excepted matter and will not devolve. As of 10 October 2007, the lead role for national security in Northern Ireland – as in Great Britain – rests with the Security Service, but clearly the PSNI will continue to be involved in a range of activity either directly or indirectly related to national security. In line with current arrangements and the recommendation of the Independent Commission on Policing for Northern Ireland (the “Patten” Commission – see paragraph 6.22 of the Commission’s report), the Chief Constable’s line of accountability in relation to national security matters will continue to be to the Secretary of State, rather than to the Policing Board.

11.10 Article 5(1) of the draft section 4 Order at Annex B inserts a new reservation dealing with “the restriction, in the interest of national security, of the provision of information, submission of reports and holding of inquiries under sections 33A, 59, 60 and 66 of the Police (NI) Act 2000”. This means that the Assembly’s power to legislate on these matters, and to amend those sections, as they relate to national security, will remain subject to the Secretary of State’s consent. The Assembly will have full legislative competence to legislate on other (non-national security) aspects of those sections.

11.11 Sections 59 and 60 of the 2000 Act deal respectively with the Board’s power to require the Chief Constable to report on any policing matter, and its subsequent power to hold an inquiry into that matter. If it appears to the Chief Constable that either such a report should not be submitted or such an inquiry should not be held on any of the grounds listed in section 76A of that Act, he may refer the requirement to report or the decision to hold an inquiry to the Secretary of State who has the power to vary the terms of the request or to set it aside. The grounds on which such a referral may be made are restricted to national security, matters before the courts and sensitive personnel matters.

11.12 Following devolution, the Chief Constable’s avenue of referral in relation to non-national security grounds (sensitive personnel matters and cases before the courts), will be to the [Minister of Justice]. However, in relation to national security, the line of referral will remain to the Secretary of State. The necessary amendments are made by paragraphs [29 and 30] of Schedule 3. These amendments look lengthy because they need, in effect, to separate out the currently intertwined arrangements for referral to the Secretary of State on all three grounds of referral.

11.13 Similar issues arise in relation to section 33A of the 2000 Act, which imposes a duty on the Chief Constable to supply the Board with information and documents, but provides for non-disclosure on several grounds (the same as those listed in paragraph 11.11 above, with the addition of information the disclosure of which could put an individual in danger). In the event that the Chief Constable decides to disclose information to the Board on any of the listed grounds, he is obliged, at present, to advise the Secretary of State that he has disclosed the information. That requirement will remain where the national security ground applies but, in respect of any of the other grounds for non-disclosure, the requirement in future will be to advise the [MoJ]. The necessary amendments are made by paragraph [27] of Schedule 3.

11.14 Section 66 of the 2000 Act imposes a similar duty on the Chief Constable and the Board to provide information to the Ombudsman. Where this is in connection with an investigation by the Ombudsman into police policies or practices under section 60A, [\[5\]](#) the provisions of section 66 allow for non-disclosure on identical grounds to those provided for in section 33A (see paragraph 11.16 above) and, again, include a requirement in such cases to notify the Secretary of State that this sensitive information has been passed

on. In keeping with the amendments above, this requirement will remain where the national security ground applies but in respect of the other grounds the requirement will be to notify the [MoJ]. The necessary amendment is made by paragraph [32] of Schedule 3.

11.15 Section 74A of the 2000 Act makes it an offence for anyone who has received, in the course of their business, certain types of sensitive information defined by the Act to disclose that information beyond a specified set of organisations and individuals. Following devolution, it will be possible, without committing an offence, to share sensitive information – other than that relating to national security – with the Minister and Department of Justice. Paragraph [36] of Schedule 3 makes the necessary amendments.

11.16 Section 61 of the 2000 Act provides for the Secretary of State to require the Chief Constable to submit a report on any matter connected with policing in Northern Ireland. This power will transfer to the [Minister of Justice] and the Secretary of State will no longer have the power to require the Chief Constable to report to him on any matter. Consistent with the current provisions of sections 59 and 60 of the 2000 Act described in paragraph 11.11 above, if the Chief Constable believes that such a report would bear on national security-related information, he may refer the requirement to the Secretary of State. The necessary amendment is made by paragraph [31] of Schedule 3.

Chapter 12

Firearms & Explosives

Paragraph 12 of Schedule 3 to the 1998 Act

12.1 At present, all matters relating to firearms and explosives are reserved by virtue of paragraph 12 of Schedule 3 to the 1998 Act. Article 9 of the draft section 4 Order at Annex B substitutes a new paragraph 12 into Schedule 3, significantly reducing the scale of the reservation and bringing a range of firearms and explosives responsibilities within the full legislative competence of the Assembly^[6]. A series of consequential amendments – including to transfer executive functions – will need to be made by the draft section 86 Order at Annex C; these will be included in the final version of the document.

Firearms

12.2 The February 2006 Discussion Paper suggested that there might be a number of different ways in which firearms responsibilities might be devolved and reflected on the different ways in which these matters had, historically, been provided for in Scotland and Northern Ireland. The Government's current view is that all aspects of firearms responsibility should devolve, subject to the following three exceptions.

Firearms appeals and applications for the removal of statutory prohibition on holding firearms

12.3 At present, while firearms licensing is a matter for the Chief Constable (and will remain so post-devolution, unless the Assembly legislates to change this) appeals against the Chief Constable's decisions and applications for the removal of prohibition are to the Secretary of State. This is different from the arrangements that operate in Great Britain, where firearms licensing appeals and removal of prohibition applications are to the courts. In some cases in Northern Ireland, national security information is a factor in reaching decisions.

12.4 The Government intends to bring the arrangements for appeals and applications in Northern Ireland more closely into line with those in Great Britain whilst ensuring that national security information is protected. There is further work being done to consider the best way to achieve this. Any change to the current arrangements would require legislation. If devolution of policing and justice happens in May 2008 this will be before any such changes would be in place. In those circumstances, it is proposed to retain appeals and applications within the reserved field on a temporary basis (new paragraph 12(a), inserted by Article 9 of the draft section 4 Order at Annex B provides for this).

12.5 The Government's intention would be to transfer responsibility for these matters – assuming that the Assembly has requested their transfer (either as part of the initial resolution requesting the devolution of policing and justice or as a subsequent resolution dealing specifically with this issue) – as soon as the new arrangements are in place.

Prohibited weapons

12.6 Arrangements for authorising the possession, purchase, acquisition, manufacture sale or transfer of prohibited weapons (this includes automatic and semi-automatic weapons) should remain reserved to the UK Parliament, with authority being granted, as now, by the Secretary of State. Accordingly, new paragraph 12(b) of Schedule 3, inserted by Article 9 of the draft section 4 Order at Annex B, reserves arrangements for prohibited weapons. That means that the Assembly's capacity to legislate on these matters remains subject to the consent of the Secretary of State.

Crown servants

12.7 Similarly the Government has concluded that it would not be appropriate to devolve that part of the Firearms legislation that deals with Crown Servants. Article 77(2)(a) of the Firearms (NI) Order 2004 provides that a person in the service of the Crown in right of Her Majesty's Government in the United Kingdom who is duly authorised in writing, may, without holding a firearm certificate, purchase or acquire firearms for the public service. Accordingly, new paragraph 12(c) of Schedule 3, inserted by Article 9 of the draft section 4 Order at Annex B, keeps these matters reserved, meaning that the Assembly's capacity to legislate on them remains subject to the consent of the Secretary of State.

Explosives

12.8 The February 2006 Discussion Paper envisaged that responsibility for explosives regulation would transfer wholesale to the devolved institutions along with other policing and justice functions. On the basis of further consideration of the issues, the Government has concluded that that approach is valid for health and safety matters in the explosives field but that security-related explosives matters should be reserved.

12.9 There is a distinction to be made here between, on the one hand, those aspects of explosives regulation that relate to health and safety matters and to fireworks controls and, on the other hand, those aspects that are primarily security-related.

Health and safety issues and fireworks regulation

12.10 In the case of health and safety matters and controls on fireworks, the Government's intention remains that these should devolve in full. The revised content of Schedule 3 to the 1998 Act, to be inserted by Article 10 of the draft section 4 Order at Annex B, therefore will not include any matters that fall into this category – the effect of this is that they will fall within the full legislative competence of the Assembly.

12.11 In addition, a series of amendments will be necessary to the section 86 Order at Annex C; these will be included in the final version of the document. Pending any specific decision by the Assembly as to whether it would wish to see these matters transfer to the Department of Justice or to some other body (for example, the Health and Safety Executive of Northern Ireland or the Department for Health, Social Services and Public Safety), the text will, for the time being, refer to functions transferring to the [DoJ].

Security considerations

12.12 Given the Secretary of State's continued responsibility for national security matters, the Government has concluded that security-related explosives matters would more coherently remain in the reserved field. This takes account both of national security considerations relating to Northern Ireland and of the moves to harmonise regulatory systems for the security of explosives across the EU in response to the increased international terrorism threat. Any such systems would be more easily implemented on a UK-wide basis.

12.13 For this reason, Article 10 of the draft section 4 Order at Annex B (text to be included in the next version of the draft Order) will provide for these to remain reserved matters and there are no plans to transfer functions in this area under the draft section 86 Order at Annex C. As with other reserved matters, the Assembly's power to legislate in these areas will remain subject to the consent of the Secretary of State.

Chapter 13

The Courts

Paragraphs 14A, 15 and 17 of Schedule 3 to the 1998 Act

13.1 Legislative competence for matters relating to the courts and related judicial functions is currently split between the list of excepted matters and the list of reserved matters. The February 2006 Discussion Paper envisaged that all such matters currently within the reserved field would be devolved as part of the transfer of responsibility for policing and justice.

13.2 Accordingly, Article 11 of the draft section 4 Order at Annex B removes the following matters from the list of reserved matters, bringing them within the full legislative competence of the Assembly:

- all matters relating to the courts including legal aid, the judicial appointments and removals process and rights of appeal to the House of Lords (and when it is established the Supreme Court of the United Kingdom) (paragraphs 14A and 15 of Schedule 3, removed by Article 11 (2) and(3)); and
- the Social Security Commissioners and Child Support Commissioners for Northern Ireland (paragraph 17 of Schedule 3, removed by Article 11(5)).

13.3 Some aspects of the court and judicial system remain excepted and therefore within the remit of the UK Government and Parliament at Westminster. These are:

- the arrangements for non-jury trial provided for in sections 1 to 9 of the Justice and Security (NI) Act 2007 (which, because they concern national security, are covered by paragraph 17 of Schedule 2 to the 1998 Act);
- the appointment and removal of the Lord Chief Justice and the Lords Justice of Appeal (covered by paragraph 11 of Schedule 2 to the 1998 Act);
- the determination of judicial pay, pensions and other terms and conditions (covered by paragraph 11 of Schedule 2 to the 1998 Act as amended by section 82 of the Justice (Northern Ireland) Act 2002);
- the House of Lords (and in due course the Supreme Court of the United Kingdom, provided for in paragraph 11A of Schedule 2 to the 1998 Act, not yet commenced)

13.4 The draft section 86 Order at Annex D transfer relevant functions in relation to the courts that are currently exercised by the Lord Chancellor. [The text is currently incomplete; a full list will be included in the next version of this document.]

13.5 The transfer of some functions has already been provided for in the Justice (NI) Act 2002. For example, on the devolution of policing and justice, specific judicial appointment functions will become the responsibility of the First and deputy First Ministers acting jointly, on advice from the Judicial Appointments Commission. A full explanation of the arrangements that have already been provided for in the 2002 Act was set out in the February 2006 Discussion Paper, chapter 15.

Chapter 14

Northern Ireland Law Commission

Paragraph 15A of the 1998 Act, inserted by section 83 of the Justice (NI) Act 2002

14.1 The February 2006 Discussion Document envisaged that, in line with the Criminal Justice Review recommendation 255, responsibility for the Northern Ireland Law Commission would transfer as part of the devolution policing and justice.

14.2 Article 11(4) of the draft section 4 Order at Annex B removes the Law Commission from the list of reserved matters, bringing it within the full legislative competence of the Assembly.

14.3 There will need to be a series of amendments to transfer any functions of UK Ministers in relation to the Law Commission and make other consequential changes to statute added to the draft section 86 Order at Annex C. These will be included in the next version of the document.

Chapter 15

International Co-Operation

Including the matters covered by Paragraph 11A of Schedule 3 to the 1998 Act, inserted by paragraph 13 of Schedule 4 to the Northern Ireland (Miscellaneous Provisions) Act 2006

15.1 Chapters 17 and 18 of the February 2006 Discussion Paper dealt with matters of North-South Co-operation and wider issues of extradition and international mutual legal assistance in criminal matters. This chapter explains how these are dealt with in the draft Orders at Annexes C and E and in the existing provisions of the 1998 Act.

Criminal Justice co-operation

15.2 The Intergovernmental Agreement on Criminal Justice co-operation between Northern Ireland and Ireland, signed on 26 July 2005, will not transfer at the point of devolution. The Agreement formally set in place a structure for co-operation between criminal justice agencies in Northern Ireland and Ireland. However, article 5(1) of that agreement sets out that it applies only to such functions that are not devolved, of which there will be few or none. And because it is specifically between the Irish Minister for Justice and the Minister in the UK Government with responsibility for criminal justice in Northern Ireland it will cease to be binding at the point of the devolution of policing and justice functions.

15.3 While this will mean that there is no longer a duty on Northern Ireland and Irish Ministers to meet or pursue a work programme, the experience of the Intergovernmental Agreement has shown that there are real practical benefits in cross-border co-operation in the criminal justice field, and the devolved administration will probably wish to consider whether and how to continue and perhaps broaden such co-operation, either informally or under new agreed arrangements.

Policing co-operation

15.4 The Police Service of Northern Ireland and An Garda Síochána already work closely together on matters of mutual interest. As well as this practical police-to-police operational co-operation, more formal co-operation is provided for in the International Agreement on Policing Co-operation, which was signed by both Governments on 29 April 2002.

15.5 The subject matter of that agreement currently falls within the reserved field, under paragraph 11A of Schedule 3 to the 1998 Act. Article 8(3) of the draft section 4 Order at Annex B removes paragraph 11A. This means that arrangements for joint investigations, personnel exchanges and secondments between the two police services would in future fall within the full legislative competence of the Assembly.

Extradition and mutual legal assistance in criminal matters

15.6 As described in chapter 18 of the February 2006 Discussion Paper, extradition is an excepted matter listed as part of 'international relations' under paragraph 3 of Schedule 2 to the Northern Ireland Act 1998. The Discussion Paper explained that historically, special arrangements had existed for the surrender of fugitives between the UK and Ireland. However, with the introduction of the European Arrest Warrant (EAW), provided for in domestic law by the Extradition Act 2003, there is now no difference between the UK's arrangements for extradition to and from Ireland and the arrangements for extradition to and from other EU countries.

15.7 Extradition within the EU is done entirely by the courts and law enforcement agencies and there are no statutory powers in these cases. However, the Secretary of State does still have a role in non-EU extradition cases, which is set out in the Extradition Act 2003.

15.8 There are similar considerations in relation to international co-operation between criminal justice agencies, or Mutual Legal Assistance (MLA), under the Crime (International Co-operation) Act 2003, which is also an excepted matter under paragraph 3 of Schedule 2 to the 1998 Act.

15.9 The 2006 Discussion Paper set out the Government's position that legislative competence for extradition and MLA arrangements would not be devolved to the Assembly, but rather that a single legislative framework for extradition and MLA respectively should be retained throughout the UK. However, the order-making power under section 86A of the 1998 Act makes it possible to transfer some specific administrative extradition and MLA functions to Northern Ireland Ministers.

15.10 The draft section 86A Order at Annex E transfers the following functions under the Extradition Act 2003:

- the Lord Chancellor's functions in relation to the designation of an appropriate judge in both Category 1 (EU) and Category 2 (non-EU) cases, provided for in sections 67(1)(c) and 139(1)(c) of the Extradition Act 2003 respectively, will transfer to the Department of Justice under Article 3(2)(a) and (b);
- the Lord Chancellor's functions in relation to paying for legal aid before the House of Lords and designating judges to grant legal aid under sections 185(4) and (6) of the Extradition Act 2003 will transfer to the Department of Justice under article 3(2)(c) and (d); and
- the Lord Chancellor's regulation making powers in respect of costs for Category 1 and Category 2 cases, provided for under sections 61(8)(b) and 134(8)(b) will transfer to the Department of Justice under Article 3(3)(a) and (b).

15.11 The Secretary of State's functions in relation to MLA are set out in Part 1 of the Crime (International Co-operation) Act. Section 29(1) of that Act makes provision for a power for the Secretary of State to provide by Order for hearing witnesses abroad through television links. Article 3(1) of the draft section 86A Order at Annex E provides for this power to be transferred to the Department of Justice.

[1] Article 5(a) of, and Part 1 of Schedule 2 to, the Northern Ireland (Departments) (Transfer of Functions and Adaptation of Enactments) Order 1973 (S.R.&O 504) transferred the functions of the old Ministry of Home Affairs to the then Department of Health and Social Services (now DHSSPS).

[2] Section 2 and the definition of 'prescribed' in section 37(1) of the 1971 Act.

[3] Section 1 of, and Schedule 1 to, the 1971 Act.

[4] The reference to traffic wardens is obsolete: the Traffic Management (NI) Order 2005 created, among other things, a new group known as 'traffic attendants' who fall under the responsibility of the (already devolved) Department of Regional Development.

[5] The grounds for non-disclosure apply only to Ombudsman's investigations into policing policies and practices, not to Ombudsman investigations into individual police complaints cases, on which there are no grounds for withholding information.

[6] NB: The section 4 Order content relating to explosives has yet to be drafted. Its absence from the current draft should not be taken to imply that explosives responsibilities will transfer in their entirety – aspects relating to the security of explosives will remain reserved: paragraphs 12.8 to 12.13 refer.



Mr Stephen Graham
Clerk to Assembly and
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Tel: (0)28 9052 1784
Fax: (0)28 9052 5917
Email: stephen.graham@niassembly.gov.uk

Mr Peter May
Northern Ireland Office
Block B
Castle Buildings
Stormont Estate
BELFAST

12 February 2008

Dear Peter

Inquiry into the Devolution of Policing and Justice Matters

You stated, in your briefing to the Committee on 12 February, that there were a number of 'memoranda of understanding' being

developed in preparation for the devolution of policing and justice.

The Committee would like to suggest that an additional memorandum of understanding be developed between SOCA, the PSNI, the Assembly, the new Department, the Scrutiny Committee and the Policing Board to provide for the sharing of information in relation to non-terrorist related organised crime.

I would be grateful if you could indicate whether this could be accommodated and whether this document could be made available to the Committee along with the other memoranda in March/April 2008.

Yours sincerely

Stephen J Graham

Committee Clerk



Northern Ireland Office
84.25 Castle Buildings
Stormont Estate
Belfast BT4 3BG
Telephone: 028 905 20073
Email:
peter.nay@nio.ni.gov.uk

Northern Ireland Office

www.nio.gov.uk

Sinead Nash
Assistant Clerk
Assembly & Executive Review Committee
Parliament Buildings
Stormont

14 February 2008

Issues to be Addressed

Thank you for your email and attached paper of 12 February seeking clarification on a range of further issues and other emails seeking additional information. Stephen Graham has indicated that it would be useful if we can provide the answers as we have them rather than in one overall answer in view of the shortage of time. Please find below the responses on all of the issues except those on prosecution policy.

Criminal Justice Board

The Criminal Justice Board currently consists of:

- Director, Criminal Justice in the NIO (Chair)
- Director General of the Prison Service
- Director of Public Prosecutions
- Director General of the Court Service
- Chief Executive of the Youth Justice Agency
- Chief Probation Officer
- ACC Criminal Justice, PSNI

A representative of the Attorney General's Office attends the meetings.

The Board reports to the Ministerial Strategy and Delivery Group, which sets the broad strategic direction for criminal justice. The role of the Board is to enable the principal criminal justice organisations to act collectively in giving strategic consideration to cross-cutting policy and in overseeing the coordinated implementation of cross-cutting strategy (e.g. in tackling delay). It meets every two months. It has no statutory basis, but is the key embodiment of the criminal justice system as a coordinated and coherent whole.

The Board also sponsors a number of subgroups, including the Community Safety Forum and a Public Information Working Group.

There is no requirement upon the criminal justice organisations to meet in this way, but there are clearly benefits in this kind of coordination.

The judiciary, being wholly independent of Government, are not represented on the CJ Board.

Office of the Attorney General for Northern Ireland

The office of Advocate General will be held by whoever holds the office of Attorney General for England and Wales, and as the responsibilities of the Advocate General are in respect of excepted matters, it is appropriate that the Attorney General's Office in London funds the exercise of the Advocate General's functions. It is not considered necessary to set up a separate office for the Advocate General. Support for the Advocate General will continue to be provided by the Attorney General's Office in London, just as it now supports the work of the current Attorney General for Northern Ireland.

On a separate matter relating to costs, various pieces of legislation provide for the appointment of special advocates and special counsel to ensure a fair trial. While the Advocate General makes these appointments, the office does not bear the costs.

Advocate General

The relationship between the Advocate General and the DPP is set out in statute and is one of consultation. The DPP and the Advocate General may consult on matters for which the Advocate General is responsible to Parliament. This mirrors the relationship between the new Attorney General for Northern Ireland and the DPP.

Sentencing

Sentencing in individual cases is of course a matter for the judiciary, taking into account the factual background to the case and the personal background of the offender; but the role of the Northern Ireland Office is to ensure that an appropriate range of disposals is available to sentencers so as to enable the sentence properly to reflect the severity of the crime. In doing so it monitors levels of crime, re-offending, prison population and public confidence and takes into account emerging case law and legislative developments in other jurisdictions. The NIO recently carried out a review of the sentencing framework, out of which were developed the sentencing provisions in the draft Criminal Justice Order, published for consultation in November 2007. We have received and have been considering the Assembly's comments on the draft. The Order will, if approved by Parliament, provide for enhanced public protection in the form of indeterminate and extended custodial sentences.

In view of Northern Ireland's small size, a Sentencing Guidelines Council has not been established. The Court of Appeal publishes guideline cases (currently three volumes) which set out aggravating and mitigating factors and then offer bands of appropriate sentences which may be applied if a case involves one or more of these factors.

Criminal Injuries Compensation Appeals Panel

Responsibility for the Criminal Injuries Compensation Appeals Panel (which is an NDPB) transferred to the NI Court Service on 1 December 2007 as part of machinery of government changes relating to tribunal reform following the announcement made by Peter Hain in March 2006 that the Court Service would assume administrative responsibility for all Northern Ireland tribunals.

The practical effect of the transfer is unchanged by this. The 2006 Discussion Paper said responsibility for the panel would devolve to the DOJ. As the Court Service itself will become an agency of the DOJ following devolution, responsibility for the Panel will in effect still devolve to the DOJ.

Draft clauses facilitating the transfer have not yet been included in the draft s.86 order as work is still ongoing on instructions relating to the Tribunals, Courts and Enforcement Act 2007.

North South Justice Agreement

We have provided under separate cover a copy of the North South Criminal Justice Agreement. We can confirm that there is no further work being done on North South Justice matters outside of that Agreement.

Signed: Peter May

Peter May



Northern Ireland Office
84.25 Castle Buildings
Stormont Estate
Belfast BT4 3SG
Telephone: 028 905 20073
Email:
peter.nash@nio.legal.gov.uk

Northern Ireland Office

www.nio.gov.uk

Sinead Nash
Assistant Clerk
Assembly & Executive Review Committee
Parliament Buildings
Stormont

14 February 2008

Dear Sinead

AERC: Prosecution Policy

Further to my letter of this morning please see below information on prosecution policy as requested in your previous email.

The PPS is currently superintended by the Attorney General. That role covers the PPS' prosecution policy as well as other matters. The Justice Act (NI) 2002 (once commenced), removes the superintendence role from the Attorney General for NI. Following that neither the Attorney General for NI nor any NI Minister will have responsibility for prosecution policy. It follows from this that the Director of Public Prosecutions will then be responsible for prosecution policy (in a way similar to that of other non Ministerial Departments such as the Northern Ireland Authority for Utility Regulation).

The PPS recognises the public interest in prosecution policy. It is required to publish a Code for Prosecutors and Code of Ethics which forms the basis of its policy. It has publicly consulted on a number of areas of policy including its policy on domestic violence cases and on the treatment of victims and witnesses and intends to continue to follow this practice of public consultation.

While the Justice Act makes it clear that the PPS cannot be required to respond with detail of individual cases, the PPS does recognise the proper interest the Assembly may have to consider prosecution policy. It intends to engage with the Attorney General on developments in prosecution policy to ensure the Law Officer is fully informed. This meets Ministerial statements made during the passage of the Justice Bill that it was expected that the Attorney General would answer to the Assembly on matters of prosecution policy. This does not, and is not intended to, prohibit the Director of Public Prosecutions also answering Assembly questions on prosecution policy.

If the Assembly wished to change these arrangements after devolution it could do so by way of primary legislation. The reason for the Law Officer responsibility for prosecution policy (rather than another Minister) lies in its quasi-judicial nature. A separation between the

Executive and the prosecuting authorities has always been seen as important in ensuring prosecutorial independence.

The PPS intend to work cooperatively with the Assembly on other matters of resourcing and administration. The proposed Memorandum of Understanding will include material in this area in due course.

As with other NMDs, Ministers have a responsibility for the overall legislative, policy and management context within which the organisation operates . In this case the Minister for Justice remains responsible for the overall efficiency and effectiveness of the Criminal Justice System and will continue the work of Ministers in terms of promoting reductions in delay and other improvements to the way the CJS operates. The PPS will play a full part in this work and, subject to the need for prosecutorial independence, be guided by the policy intentions of Ministers in overall terms.

I think this now completes the responses to your urgent queries, but we are meeting at 1500 tomorrow and can pick up on any other matters. The issue of the MoU relating to SOCA is, I think of less urgency.

Signed

Peter May

List of Witnesses

Peter May	NIO Officials
Clare Salters	
Mr David A Lavery (Chief Executive)	
Siobhan Broderick	The Northern Ireland Court Service
Jacqui Durkin	
Laurene McAlpine	
Professor Sir Desmond Rea (Chairman)	
Barry Gilligan	Northern Ireland Policing Board
Trevor Reaney	
Sir Brian Kerr	
Alison Houston	Lord Chief Justice
Simon Rogers	
Mr Shaun Woodward MP	The Secretary of State
Mr David Ford	
Dr Stephen Farry	The Alliance Party
Ms Dawn Purvis	
Mr Stewart Finn	The Progressive Unionist Party
Sir Alasdair Fraser	
Ian Hearst	
Raymond Kitson	The Director of Public Prosecutions

Mr P J Fitzpatrick

Professor John Jackson

Sir Hugh Orde (Chief Constable)

Mr Paul Leighton (Deputy Chief Constable)

Sir Nigel Hamilton

Tony Canavan

Neill Jackson

Geoffrey Simpson

Chief Executive of the Irish Court
Service

Queen's University Belfast

Police Service of Northern Ireland

Northern Ireland Civil Service

[Home](#)[Today's Business](#)[Questions](#)[Official Report](#)[Legislation](#)[Site Map](#)[Links](#)[Feedback](#)[Search](#)
