



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper 125/11

10 October 2011

NIAR 646-11

Ray McCaffrey & Tim Moore

Department of Justice Sunset Clause

The information contained in this briefing note should not be relied upon as legal advice, or as a substitute for it.

1 Sunset Clause

During the previous mandate (2007-2011) the Assembly and Executive Review Committee undertook an inquiry into the proposed devolution of policing and justice powers to the Assembly. During the inquiry, the Office of the First and deputy First Minister communicated to the Committee that it had agreed a way forward on the discharge of policing and justice functions. The letter, dated 18 November 2008, stated that: “The...arrangements would be subject to a sunset clause which would bring them to an end not later than May 2012”¹. In its subsequent report on the arrangements for the devolution of policing and

¹Assembly and Executive Review Committee, *First Report on the Arrangements for the Devolution of Policing and Justice Matters* January 2009

justice powers, the Assembly and Executive Review Committee endorsed this position.

The Northern Ireland Act 2009 (the 2009 Act) made a number of changes to the Northern Ireland Act 1998 the Judicature (Northern Ireland) Act 1978 and the Justice (Northern Ireland) Act 2002 to allow for the transfer of policing and justice powers. However, it did not give effect to devolution; for this to happen, further legislation was required both in the Northern Ireland Assembly and at Westminster (in the form of subordinate legislation) to give effect to the transfer of policing and justice powers.

On 9 March 2010 the First Minister and deputy First Minister jointly tabled a motion calling for a resolution by the Assembly that certain policing and justice matters should cease to be reserved. The motion was passed with cross-community support.²

The Department of Justice Act (Northern Ireland) 2010 subsequently provided for the establishment of the Department of Justice and for the appointment of a Northern Ireland Minister to be in charge of that Department. On 12 April 2010 a determination under Section 17 of the Northern Ireland Act 1998 was made and approved by a resolution of the Assembly with cross-community support. The First Minister explained to the Assembly that:

When a new Department is established, a determination of ministerial responsibilities must be made by the First and deputy First Minister and approved by the Assembly. The Northern Ireland Act 1998 requires that, when a new Department is established, a determination of ministerial responsibilities must be made by the First Minister and deputy First Minister and approved by the Assembly. It is also an essential trigger for the election of the Justice Department and Justice Minister. That is why we are jointly moving the determination.

The determination lists the Ministers of the Executive and defines their functions in having charge of the relevant Departments. That was the approach taken when the first determination was made in 1999. Although that original determination will be revoked, the functions and status of the 10 existing Executive Ministers are unaffected by the new determination³.

On the same day (12 April 2010), Mr David Ford of the Alliance Party was appointed Minister of Justice his nomination having been approved by a resolution of the Assembly endorsed by parallel consent.

² Northern Ireland Assembly - Official Report (9th March 2010)
<http://www.niassembly.gov.uk/record/reports2009/100309.htm#a6>

³ Northern Ireland Assembly – Official Report (12 April 2010)
<http://www.niassembly.gov.uk/record/reports2009/100412.htm#a7>

Following the Assembly elections in May 2011, Mr Ford was reappointed to the position of Justice Minister under the same process i.e. having been approved by a resolution of the Assembly and endorsed by a majority of the Members voting, including a majority of the designated and a majority of designated Unionists.

Schedule 1, Part 3, paragraph 8(1) of the 2009 Act makes provision for the dissolution of the first justice department on 1 May 2012 unless the Assembly, by that date, either

- a) Resolves, with cross community support, that the Department is to continue operating from 1 May 2012, or
- b) A 'second Act' of the Assembly provides that the Department is to continue operating from the 1 May 2012.

The following chart sets out the broad legislative framework from which options available to the Assembly in the response to the May 2012 deadline can be identified or derived.

