



Northern Ireland
Assembly

ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE

OFFICIAL REPORT
(Hansard)

**Devolution of Policing and Justice
Matters: Briefing from the First Minister
and deputy First Minister**

18 February 2010

NORTHERN IRELAND ASSEMBLY

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Minister and deputy First Minister**

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Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Nigel Dodds
Mr Simon Hamilton
Mr Danny Kennedy
Mr Alex Maskey
Mr Declan O'Loan

Witnesses:

The First Minister (Mr P Robinson)
The deputy First Minister (Mr M McGuinness)

The Chairperson (Mr Spratt):

I welcome the First Minister and the deputy First Minister. In light of the Hillsborough Castle Agreement, the Committee decided that it wanted to publish its report in time to inform the debate on 9 March. The Committee is grateful to both of you for agreeing to appear at short notice.

The First Minister and the deputy First Minister agreed to appear before the Committee to discuss the category 2 list of issues, in particular the role of the attorney general and the financial implications of devolution. I will ask the First Minister and the deputy First Minister to make

some opening remarks and, as has been the Committee's procedure to date, and as the Ministers' time is limited, members will ask questions in the order in which they indicate to me. If there is any additional time, I will be happy to take further questions. However, will members ask one question initially to allow everyone a chance to ask a question?

I invite the First Minister to make his opening remarks.

The First Minister (Mr P Robinson):

That you very much, Mr Chairman. We welcomed our interaction with the Committee when the subject was discussed previously. We have corresponded, and we took part in the debate in the Assembly on the Committee's initial report, and we welcomed the support that the Assembly gave it. We believe that we can commend the agreement that arose from the Hillsborough Castle talks to the Committee and to the wider community, as it has significant benefits for our whole community. It envisages how we would move forward on a number of key issues, not least policing and justice but also parading and, importantly, some other areas, such as the functioning of the Executive, the delivery of Executive decisions, and looking at outstanding matters from the St Andrews Agreement.

In many ways, we have gone where no man has gone before on reaching agreement on issues that previous negotiations dared not even broach, knowing that they could not reach agreement. We have reached a significant milestone. The agreement removes from devolution in general an issue that has been difficult and which has been an obstacle to progress in other areas. To some extent, we will now be able to flush the system much more cleanly and get matters moving, and that is what those who elected us want to see. They want to see decisions being taken and they want to see devolution working better.

We have set a clear timetable for a motion on policing and justice in the Assembly, and we will be looking for all the parties in the Assembly to give it their support on 9 March. That will be followed by devolution and the election of a justice Minister in early April.

Alongside that, a process is continuing rapidly on parading. As we sit, colleagues are dealing with the parading issue. We have given them a tight timetable to provide us with a report by 23 February.

Soundings from the working group indicate that progress is being made. Indeed, it has already invited interested parties and stakeholders to talk to it about parades.

We welcome this further opportunity to clarify any issues that might have arisen from the Hillsborough agreement or the general issues of policing and justice and parading. If we can be of any assistance to the Committee, we will, and if we cannot give the Committee an answer today, we will do our best to get an answer to it later.

The deputy First Minister (Mr M McGuinness):

Like Peter, I thank the Committee for making this meeting possible. This is the fourth occasion that we have appeared before it since November 2008, when we first presented our assessment of how best to progress the transfer of policing and justice powers.

Like most sensible people in the political process and in our society, I warmly welcome the important developments of the past weeks, particularly the Agreement at Hillsborough Castle. The public, and every Member of the Assembly, will be aware that the transfer of policing and justice powers was highly contentious; it became a millstone round our necks that held up progress on many matters that the Assembly needed to deal with.

I see the outcome at Hillsborough as a chance for a fresh start for the Executive and the Assembly. I agree with Peter: looking across the table at the people who are involved in the negotiations, we can see that they want the process to work; then we can forge agreements and move on. I hope that the outcome at Hillsborough will be a solid foundation on which we can all build.

I want to pay tribute to the Assembly and Executive Review Committee. The work that it has done, at our request, has been invaluable. Without it, we would have been unable to come to the position that we did during the discussions at Hillsborough.

I look forward with considerable optimism and with a strong belief that the motion that the First Minister and I will table on 9 March will lead to the transfer of policing and justice powers on 12 April. As Peter said, despite many people thinking that we would not crack this issue, the fact that we did should inspire everyone with an example of how we can all move forward to resolve other difficult issues.

As the First Minister said, the working group on parades has set about its work with considerable vigour and with a full understanding of the timescale towards which it was working. Many in the media felt that the timescale was unreasonable, given that, according to your view of history, our problems go back hundreds of years. However, we were always confident that the working group would present a report that could be legislated on and put out to public consultation and that the direct rule Ministers would transfer powers on parading to the Assembly.

We were also confident that all the commitments made to that transfer would be honourably met by everyone involved in the process by the end of the year. When making an agreement, it is very important that people honour their word. We are determined to honour our word and to press on to ensure that the new opportunities that the agreement presents can be seized by everyone and that we can begin to instil confidence in the community in the institutions for which it voted.

This represents a new beginning. We are approaching it with renewed vigour and determination. We want the institutions to work; there is no other road to take. We know that there are people outside these institutions who are hell-bent on trying to bring them down. Some are them are within the political process; others are outside the political process and are involved in armed groups, which have no support in our community. Our example has to be that politics is working and that we are moving forward decisively to bring fundamental change to our society and to build a better future for our children and our grandchildren. I thank the Assembly and Executive Review Committee for the role that it has played in all of that.

The Chairperson:

Thank you very much for those comments. We declared interests this morning, but it is important for the record for members to declare them again. I am a member of the Northern Ireland Policing Board.

Mr A Maskey:

I am a member of the Policing Board.

Mr O’Loan:

I am a member of Ballymena DPP

The Chairperson:

I will take questions in the order in which members indicate that they wish to ask them. I will start off the questions. You have both spoken about the ongoing negotiations on parading. Are you satisfied that the signposted timescale in the agreement to deal with the issue of parades can be met in order to draft legislation and all the rest of it?

The First Minister:

We have established a very tight time frame for the working group that we have set up. That group has advice from people who have wide experience, including experience as members of the strategic review of parading group, which was chaired by Paddy Ashdown. The members of the group have been making progress. It is a difficult schedule for them to keep to, but whether they have to burn the midnight oil or not, they are determined to keep to it.

If that is completed by 23 February, the intention is that the draftsmen will start their work, and they will have approximately one month to complete it. The group, as I understand it, has reached a number of elements of agreement already and will, therefore, give those elements of agreement to the draftsmen in advance so that their work can happen in parallel, which will speed it up. The draftsmen have indicated that they should be able to complete their work on time. The deputy First Minister and I have some hard experience in our past of seeing agreements not faithfully represented in legislation. Therefore, we want to ensure that the draft legislation faithfully represents the agreement that will be reached by the working group, so some proofing of that will be required.

We then want to carry out a full-scale consultation on the basis of the draft Bill. The deputy First Minister and I will seek to have the legislation taken through the Northern Ireland Assembly, so all of its stages will be in the Assembly, and the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) will have a considerable role in dealing with the Committee Stage of that Bill. We have already had the opportunity to speak with the Chairperson of that Committee, and we have agreed how we can usefully interact. We will provide the Committee with some of the consultation responses — or rather all of the responses; I had better be very careful here — which will save it from having to carry out duplicate work.

The procedures that we have set in place can meet the timetable. If not, of course, the Chairperson of that Committee is quite happy to forgo his summer holidays and keep his Committee working to ensure that it is done on time.

Mr Kennedy:

I would like that in writing.

The deputy First Minister:

Obviously, the challenge is to ensure that the improved regulatory framework is capable of bringing about cross-community support. When we set the working group the task of coming back to us with the outcome of its deliberations by the end of next week, it was very ambitious in the eyes of many people, but we always thought that it was doable.

The progress reports, which the First Minister and I receive daily, lead us to believe that we will meet the ambitious target some time next week. That will be a tremendous outcome, because that will go forward to be legislated on. It will come back to the Assembly. The Committee will be involved in it, and all the parties will have an opportunity to look at it and to be part of the consultation process.

Even if people think that the task of getting the legislation through by, say, December, is ambitious, it is doable, with goodwill on all sides. We are determined to make that happen.

The Chairperson:

Given that we were involved in the parading issue from the start, should we include that in our report, or are you satisfied that the ongoing talks, the legislation, the framework and the briefing on the issue that you will give to the Assembly will be sufficient?

The First Minister:

We always welcome the Committee's views on matters. If members wish to comment on the issue, we will take their conclusions seriously.

The working group will work on the structures. There will be a full consultation on that, and, at a later stage, the issue will go through the OFMDFM Committee. Therefore, there will be

plenty of exposure to the Assembly throughout the process.

Mr A Maskey:

I thank the First Minister and deputy First Minister for their opening remarks. It was important to remind us of what has been happening in recent weeks and of how we got here. It is encouraging to hear that a certain number of strands of work are in progress and are heading towards a successful conclusion.

A number of protocols, memorandums of understanding and concordats are in place or are to be in place. Are you satisfied that the work around those is progressing, has progressed and will not stand in the way of the successful transfer of policing and justice powers?

The deputy First Minister:

I do not believe that they will stand in the way. All protocols and concordats are kept under review. They are under consideration by us, and I know that you have received some of them in the past number of days and that they will be further considered by the Committee. We are in uncharted territory. The protocols, memorandums of understanding and concordats will be subject to ongoing review. We can be well satisfied that a huge amount of work has been done on the protocols and the concordats. In keeping them under review, we will always be willing to improve their performance on the objective that we are all seeking, which is a proper outcome that will enhance the policing service and will provide the support and assistance that the community clearly needs.

The First Minister:

They are still being considered, but I think that we agree that they are all capable of being resolved. We do not believe that they will be an obstacle to making progress.

Mr Kennedy:

I welcome the First Minister, deputy First Minister and officials. My first question relates to the role and office of the attorney general and his relationship with the Minister, the justice sector and the Assembly. Mr Larkin, who is earmarked as the prospective attorney general, provided you with a report in September 2009. We have not yet received a copy of that report, although we would be interested in getting one. What is your sense about the role and responsibilities of the attorney general?

With regard to the policing architecture of the Department, how will the Minister of policing and justice interact with the Executive, the Policing Board and the scrutiny Committee for the new Department?

How do you envisage the scrutiny Committee being constituted, and what process would you advocate for determining its membership? It has been suggested that the d'Hondt mechanism will be used. Can you confirm that?

It appears that the Chief Constable will continue to be accountable to the Northern Ireland Policing Board and that the Minister will be accountable to the Assembly Committee. Can you provide some clarity on how a balance will be struck?

With your indulgence, Chairman, I have one final question on North/South co-operation and the issue of checks and balances. The justice Minister may attend meetings with his or her counterpart in the other jurisdiction on this island. To what extent will the Minister's reporting back to the Executive and Assembly on those meetings be scrutinised? In the architecture of the Belfast Agreement, and in that of the ongoing arrangements that are in place as a result of the St Andrews Agreement, North/South ministerial contact between the two jurisdictions has always been provided for, as has the balancing act that a unionist Minister be accompanied at meetings by a nationalist Minister. That is not what is being advocated in this case. Therefore, I want to know what checks and balances are in place to compensate for that.

The deputy First Minister:

With your permission, Chairman, I will answer the first set of questions, and the First Minister will answer the second set.

The role of the attorney general will cover a range of functions, including legislative and legal functions such as referring the legislative competence of Assembly Bills to the Supreme Court and defending the public interest in matters of civil law. The role will also include functions that relate to the Director of the Public Prosecution Service; for example, the attorney general will appoint the director and arrange for the Director's annual report to be laid in the Assembly. The attorney general will also have consultative and advisory roles, which include issuing guidance on human rights standards and being consulted on the programme of criminal justice inspections.

In addition, we intend to invite the attorney general to be the chief legal adviser to the Executive. The Justice Act 2002 provides for the attorney general to participate in the proceedings of the Assembly to the extent that is permitted by its Standing Orders. It is envisaged that that participation might involve the attorney general answering questions on the exercise of his responsibilities to the Public Prosecution Service and on the work of his own office. Of course, the attorney general will have no voting rights in the Assembly.

The attorney general will prepare an annual report on the exercise of his functions, which the First Minister and I, acting jointly, must lay before the Assembly. We are considering a report that John Larkin prepared on the establishment of the office of the attorney general and its potential role, after which we will make arrangements with the Assembly authorities for the preparation of suitable Standing Orders. As to sharing the report with the Assembly and Executive Review Committee, we are still considering the report, and we believe that it is best read in conjunction with our response to its recommendations. We intend to provide the Committee with both documents in the near future.

Mr Kennedy asked about the architecture of the agreements. Paragraph 3.1 of the annex to the national security protocol clearly states that nothing in the protocol diminishes the Policing Board's powers or alters in any way the legislation that underpins the board's statutory remit.

As I said earlier, this is uncharted territory. The protocols and concordats, like all protocols and concordats, will have to be reviewed on an ongoing basis; that is exactly what we intend to do.

The First Minister:

As with any new arrangements, everyone wants to have a clear picture of how the jigsaw fits together. The agreement clearly supports the operational independence of the Chief Constable in carrying out his functions. We have no intention of interfering or overlapping with the role of the Policing Board. The Policing Board is protected by statute, and we have no intention of reducing its remit in any way. I hope that there will be a relationship with the Policing Board, because that will be necessary for the smooth operation of policing and justice generally.

It will ultimately be a matter for the Assembly to decide how it elects the Committee.

However, I will not dodge the question. Indeed, the leader of the SDLP put the same question to me in a party-leaders' meeting two days ago. Off the top of my head, and without having done any work on the figures on how the parties might come out of the various permutations, I told her that it would seem most fair for the Assembly to run d'Hondt afresh to determine the Chairperson, the Deputy Chairperson and even the Committee members.

Having taken the time since to consider how that will affect political parties, I think that I gave her exactly the right answer. It seems to be the sensible thing to do. Each party will probably examine how it may come out of a rerunning of d'Hondt and take a position based on that. The new Committee will be very important for the Assembly, and I imagine that it will be an early choice for political parties in the operation of d'Hondt.

The justice Minister will act in the Executive with the same standing as any other Minister. The justice Minister will vote, and have access to all the papers, in exactly the same way as any other Minister. The justice Minister will carry out the same operational role in his or her Department that every other Minister carries out in his or her Department.

Executive agreement could be required for the Minister of justice to deal with North/South issues. That is entirely a matter for the Executive, but the Executive have not reached any agreement on how to deal with those matters. The member is right: arrangements will need to be put in place, and we will need to consider those.

Mr Kennedy:

I have a question for the deputy First Minister regarding the report of Mr Larkin QC. He indicated that he intends to share that report with the Committee. Will it be shared with the Committee in time for us to include consideration of it in our second report to the Assembly?

The deputy First Minister:

We think that that is about two weeks away, but, yes, we hope that we can do that.

The Chairperson:

It will not be included in our report if it will not happen for two weeks. The deadline for our report is probably next Tuesday. We will have to work on our report on a number of occasions next week to allow time for the printing process and so on.

The deputy First Minister:

Our best guess is that it will take at least two weeks to get our response and the report to the Committee.

The Chairperson:

You mentioned, deputy First Minister, that the attorney general will have the right to speak and answer questions in the Assembly. Will those be questions for written answer? There may be occasions when the attorney general will have to address the Assembly. I assume that procedures will have to be put in place to allow the attorney general to do that. We would like clarity on that, because it is one of the issues that came up at Committee from time to time.

The deputy First Minister:

It is our view that that issue would be best resolved by the Assembly; it is entirely within the remit of the Speaker and the Business Committee.

The First Minister:

The prospective attorney general is not a shrinking violet; he would welcome any opportunity that he was given.

Mr O'Loan:

I apologise for being late. As I came in, the deputy First Minister was being very upbeat about the Hillsborough agreement. We all accept that the Hillsborough agreement has a lot of potential, but there has always been a lot of potential. Whether that potential becomes a reality is yet to be tested.

The Hillsborough negotiations produced a date and three working groups. The SDLP will always be constructive in its approach to the work of those working groups and anything else that ensues from the Hillsborough agreement. However, we are equally entitled to highlight weaknesses in what has come before or what is being potentially built into the future. We are entitled to ask why, when the largely two-party system of government failed before, that mechanism was maintained in the talks at Hillsborough and in the structuring of the parades group.

I want to ask a question about parading, and I would appreciate a response from both the First Minister and the deputy First Minister, because their positions might not be the same. What is wrong with the Parades Commission model? It is not enough to say that the Orange Order or the unionist parties do not like it. We need to know what is wrong with it in principle. Are you going to set out to undermine the principles, which are —

The Chairperson:

Will you come to your question instead of making statements?

Mr O’Loan:

I was asking a question. I may have asked it at length, but the issues are, as you would agree, quite important.

The Chairperson:

Will you come to your question, because I am trying to let every member ask questions?

Mr O’Loan:

Yes, but I am raising quite an important issue. Are you going to undermine the principle that the mutually competing interests involved must be brought to the table: the rights of those who want to parade and the rights of communities? Do you support the Ashdown interim recommendations to create a political mechanism to resolve the most contentious parades?

The Chairperson:

Much of what you asked was covered before you arrived, Mr O’Loan.

The deputy First Minister:

First, the Hillsborough agreement was welcomed by President Obama, United States Secretary of State Clinton, the Taoiseach, the British Prime Minister, the Irish Minister for Foreign Affairs, Micheál Martin, and by all the leaders of the parties in Leinster House.

I found it interesting to hear the leader of the SDLP yesterday morning telling radio listeners that she was on her way to Dublin to talk to the leaders of political parties and canvass opposition to the “undemocratic nature” of the Hillsborough agreement. I was gobsmacked that she was prepared to go to Dublin to talk to the very people who applauded the decisions taken by Sinn

Féin and the DUP, which led to the agreement at Hillsborough. I stood beside the Taoiseach, and the First Minister stood beside the British Prime Minister when they applauded the outcome of our deliberations.

The overwhelming majority of people in our community have welcomed the outcome of the deliberations as a real opportunity to move forward to resolve the issues covered by the agreement as well as many other issues that affect them in their daily lives.

For too long, we have been burdened with the failure to agree an outcome on the transfer of policing and justice powers. We have agreed the outcome, which should be welcomed and supported by every political party that participates in the institutions.

Over the past couple of weeks, I noted that a number of SDLP spokespersons said that they were in favour of an improvement to the framework for parading.

Essentially, we hope that an improved regulatory framework will emerge that has, at its heart, an acceptance of the need for dialogue in local communities. I say that as someone who has been involved in trying to resolve parades' issues in my part of the North by encouraging the business community, the Loyal Orders, the Bogside Residents Group and many others in the city to bring about a process of dialogue and respect for each side. The outcome of that has shown that dialogue works. I also agree that we should not transplant a resolution from one part of the North to another. However, we can transplant — I say this without fear of contradiction — the absolute need, in any contentious situation, for people to sit down as sensible, mature human beings and work out solutions to the problems that exist.

Everybody should withhold judgement on the outcomes, which will, hopefully, emerge from the working group in a short while. This is a sincere and genuine effort to deal with the concerns of all sides. Although some people in the broad nationalist community are content with decisions made by the Parades Commission, I have talked to many other people who are very discontented with those decisions. We are trying to improve the situation and to bring about increased dialogue and respect among contending groups and the resolution of an issue that has been to our detriment for many years.

The First Minister:

When the deputy First Minister listed the range of people who support the Hillsborough Castle Agreement, he could have gone beyond the British Government and pointed out that the leader of the Conservative and Unionist — New Force, who is well respected by many people in Northern Ireland, wholeheartedly welcomed the agreement. I am sure that, in doing so, he spoke for everybody who accepts his influence and authority.

Mr Kennedy:

His proper title is the leader of the Conservative and Unionist Party.

The Chairperson:

The Member should speak through the Chair.

Mr Kennedy:

Sorry.

The First Minister:

I am glad that the Ulster Unionist Party identifies with Mr Cameron. I hope that it identifies with his remarks and his very warm welcome for the agreement, as evidenced by what he said in the Chamber of the House of Commons and by what he told me privately. The Liberal Democrats also share that view. Therefore, all the main parties have made it very clear that this is the way forward and have welcomed the agreement.

It was encouraging to hear the confession of the Member for North Antrim, who admits the failure of the two-party system that those parties established and operated when they were the largest in the Assembly. We have chosen to change that system, to embrace it and to make it more inclusive. That is why we have set up the four working groups that are currently operating. It is important that we have a collective responsibility Executive. That collective responsibility Executive has massive potential.

However, it is not good enough for politicians to simply talk about potential. It is up to politicians in every party to show leadership to gain that potential. Sitting on the sidelines or on

your hands and murmuring, whingeing or gurning will not help to gain the full potential that can arise from this kind of agreement. Everybody must pitch in and get behind the agreement rather than try to pick up party political points here and there. The possibilities are massive. However, if people are not prepared to embrace it, and, if political parties do not show the leadership to gain respect and support from the community for it, it could fall and we will do away with devolution altogether. It requires us to grasp the potential and not lose the opportunity that exists.

I can respond to the question about the failings of the Parades Commission. All of us on both sides of the community who have met the Parades Commission can see its weaknesses. We are looking for a system that encourages greater engagement and relies more on mediation and arbitration than on systems of adjudication. However, when we have to go to adjudication, we want a system that provides transparent and open processes and fair outcomes.

Not only does the agreement allow us to look at the adjudication systems, it allows us to recognise that certain parades have had difficulties attached to them, and to the protests that surround them, for a very long time. We recognise that that is not a job that is going to be resolved in the week or two before a parade takes place. It requires all-year-round activity to try to ensure that we have the right atmosphere and the right understanding about how we might move forward. It is a welcome new step, and I trust that it will be embraced by residents' groups and the marching Orders so that we can move forward in a new direction. If one considers the massive costs that there have been, particularly for policing, it is something that we should all encourage rather than being negative about it.

Mr Dodds:

Mr O'Loan asked why people were against the Parades Commission. I refer him to the answer that has been given 10,000 times previously over the past decade. I welcome the First Minister, the deputy First Minister, their officials and staff. I also welcome what they said at the outset of the meeting.

The First Minister talked about the costs associated with parading. The other costs, which were to do with the devolution of policing and justice powers, formed a major part of negotiations in the earlier part of the process. The First Minister gave a comprehensive report on all those matters in a previous Committee meeting. Those costs are a substantial part of our discussions, and they comprise various elements. How will the timescale for all the various elements be rolled

out? Some of those costs will roll out over a number of financial years, such as the hearing loss payments and the payments to part-time PSNI officers. Which costs will be met immediately, and what proportion will be met in the medium and longer term? What are the plans for the military bases? The UK's honouring of its commitments to the plans for the military bases was a welcome development. Three bases are due to be sold, but what will happen in the meantime? How will they be used, and how much will they cost? Who bears that cost?

The First Minister:

The Member is right to draw our attention to the financial agreement. Sometimes I read in the press that there will be £800 million for policing and justice. I remind members that that is an additional £800 million on top of a budget of £1.2 billion —

The Chairperson:

Do you mean £1.2 billion?

The First Minister:

Yes. Do the maths, and you will see how significant it was, particularly in the context of a period of considerable financial restraint. However, the access that we got to the reserve, should there be any increase in expenditure because of an increase in violence, for example, or any other element of the policing and justice responsibilities, was just as important as the additional £800 million. That access was a very important factor, because many of us were concerned that, if there was an increase in activity, the Minister of Finance and Personnel would be required to take money back from health, education, housing and other budgets.

During the negotiations, just by chance, the Chief Constable and the chairman and deputy chairman of the Policing Board were at Hillsborough Castle for a meeting with the Minister of State with responsibility for security. The job that they were there to do was to start looking at their budgets. At that stage, they could not take for granted that there would be an agreement, and they were looking at the likely impact should they have to rely on the existing budget. The Chief Constable and the chairman made it abundantly clear that they could lose 1,200 policemen should the agreement not go ahead.

Most of us know the pressure that exists on the Police Service, and that our constituents feel that there are already not enough police personnel. How would they have reacted had there been

a significant cut in police manpower? It was the view of the Chief Constable that, whereas a loss of 1,200 policemen would be sufficient to deal with the shortfall, the need to pay redundancies might make the figure even greater. It was critically important that the matter was resolved satisfactorily.

The hearing-loss issue will go according to its own timescale. It is a matter for lawyers, medical consultants and the legal processes generally. At least we have procedures in place so that funds will be available. This Committee reckons that that could be up to £400 million, if things go the way most people expect. Does the deputy First Minister want to touch on the issue of the military bases?

The deputy First Minister:

It was critically important during the course of that negotiation to get matters such as the hearing-loss situation resolved. To fail to do so would have had a massive impact on Departments such as the Department of Health and the Department of Education, and all other Departments across the board. The burden would have been unbearable for the Executive and the Assembly.

It is important that the financial package kicks in at the point of transfer of powers; that means it will be delivered in April. Some other issues will kick in at that point, including resources for policing and legal aid, which is very important. The former military bases should also transfer as soon as possible. We are committed to maximising the economic potential of the sites. As many people know, all political parties in the West Tyrone constituency support the educational project at Lisanelly, which is hugely important, not just in developing education in the Omagh area but in freeing up other vital sites in Omagh, which can then be used for the regeneration of Omagh.

Mr Attwood:

I apologise that I was not present for the earlier part of the meeting; I was attending a meeting of the Policing Board.

I do not know whether the deputy First Minister was gobsmacked by what Margaret Ritchie said yesterday. However, I welcome the reliance that he and others now have on democratic government in Ireland, the parties in the South, and democratic governments in America and elsewhere. I welcome the fact that you, like others, now place great faith in the wish and will of democratic governments and recognise that they are important when it comes to how we conduct

our political affairs.

The deputy First Minister referred to improvements in the framework on parading. That is not the language that the SDLP has used. As I am sure you learnt from our meeting with the working group, we tried to make positive proposals about how to upgrade mediation and enhance understanding of the marching tradition. However, we advised that that be done in the context of the Parades Commission, because we, and many others, are concerned that there could be some political fixes on the Parades Commission and some local fixes when it comes to parading issues. You will have picked up on that.

The First Minister made comments about everyone showing leadership. We could have a big conversation about that. However, one of the best examples of leadership in the past 10 years has been what the political parties have achieved around policing and the Policing Board. I have said regularly that, in my view, the Ulster Unionist Party and the Democratic Unionist Party did some of their best political work on the first Policing Board. It would be very easy for people to walk from the Policing Board in the same way that they walked from other institutions. However, none of the parties that made that commitment in 2001-02 reneged on it.

In more recent years, all parties shared that responsibility. The protocol on policing architecture that was drafted by the British Government begins to upset what has been achieved over the past 10 years.

An hour and a half ago, the Policing Board decided to send the British Government the opinion of a Patten commissioner and the Crown Solicitor on the policing protocol. Their comments very much put in doubt the content of the protocol. I ask both of you, given what all our parties achieved, in whatever time frame they achieved it —

The Chairperson:

Do I detect a question coming?

Mr Attwood:

Yes, I have a question. I ask you to seek out that advice and, even at this late stage, try to prevail upon the British Government not to go down the road of that protocol. I ask that because, as the Patten commissioner said in his opinion to the Policing Board, the delicate architecture that was

built was created for a very good reason; that is, because of our experience of policing in the past. That is particularly the case in respect of the relationship between the justice Minister and the Chief Constable, the powers of the justice Minister and the powers of the Committee. He considered that protocol to be extraordinary, given our experience of policing issues in the past, and, to quote him, it “profoundly distorts” how policing would work, and:

“makes the Chief Constable dependent on the goodwill of the justice Minister”.

We have spent a lot of time talking about all that, but I am asking that, given what has happened on policing, together, and, in more recent times, across all the parties, we should be very cautious about that protocol, which you have added to with the power of the justice Committee. I ask you to look at that. The Secretary of State said that he would look at it, and we need to do so urgently if we are to not potentially put in jeopardy some of the achievements on policing of the past 10 years.

The deputy First Minister:

First of all, this is not a politics class. I do not need a lecture from you or anyone else about the history of Ireland or of the North of Ireland. There has been widespread support for the Hillsborough agreement from the President of the United States, Secretary of State Clinton, the Taoiseach and all party leaders in the South. Peter mentioned that the leader of the Opposition in Britain also supports the agreement, as does the British Prime Minister.

That argues for all of us in the Assembly moving forward on the basis of giving support to the need for the transfer of policing and justice powers. The SDLP was particularly confused during a number of stages of the Department of Justice Bill in the Assembly, at one stage voting against, at another stage abstaining, and at the Final Stage voting in favour. I want to see that confusion out of the way.

I hope that when we come to placing the motion before the Assembly on 9 March, all parties represented here will support what the vast majority in our community see as an important agreement, not just in the context of the transfer of policing and justice powers, or even on the issue of parades, but in presenting a new opportunity for us to move forward in a much more positive and constructive way to deliver proper government for people who are suffering as a result of losing their jobs, for elderly people living in fear as a result of attacks on them and for children living in poverty. Those are all issues that we need to address.

When it comes to discussing parades, many people can be concerned about what has been a difficult history of dealing with that issue. According to whatever historian you speak to, you could be going back hundreds of years. However, these are the principles that underwrite the whole approach, and I would like to know which of them the SDLP does not agree with. Those principles include: local people providing local solutions; respect for the rights of those who parade and respect for the rights of those who live in areas through which they seek to parade, which includes the right of everyone to be free from sectarian harassment, while recognising at all times that those are competing rights. There is also the issue of transparency, openness and fairness, and there is the issue of independent decision-making.

We are trying to bring about an improved framework. Many members of the SDLP know that there is a real opportunity to do that. You should try to avoid political point-scoring because it does not really get us anywhere. It certainly will not get the SDLP anywhere because the people whom I represent have made their judgement time and again about the process going forward and the decisions that have been taken by whatever party they wish to represent them in negotiations.

All that we can do is move forward on the basis of trying to be positive and constructive. We are trying to build a better future and trying to tackle head on very difficult issues that affect communities in a small number of places. It must be remembered that there are a couple of thousand Orange and Loyal Order parades in any given year, the vast majority of which pass off peacefully.

You mentioned the issue of architecture. We all know that all of that has yet to be finalised. There is nothing in the policing architecture protocol that changes the Policing Board's statutory remit. The protocol was endorsed by the Assembly's recommendation that devolution should not diminish the powers of the Policing Board. As you and everybody else know well, all those protocols will be reviewed on an ongoing basis. If there is a particular problem at this time, we should be made aware of it, and we should discuss it and attempt to find solutions.

We are trying to move forward on the basis of resolving problems. I think that you talked about fixes. We are not looking for fixes; we are looking for common-sense solutions to issues that have a detrimental effect on the people whom we represent.

The First Minister:

The specific question was about the protocols and the legal advice or opinion that is being passed on by the Policing Board. Neither the deputy First Minister nor I have any emotional capital tied up in the wording of the protocols that came from the NIO. In some respects, we believe that there are areas in which they could be worded better. If there are some specific issues, we would be very happy if correspondence were passed to us so that we can look at the issues and see whether there are suitable ways of dealing with problems that arise.

The deputy First Minister:

Absolutely.

Mr Attwood:

The deputy First Minister asked whether the SDLP disagreed with any of those principles, so I think that I should have the opportunity to reply to that question.

The Chairperson:

Other members want to ask questions. You have had your opportunity.

Mr Attwood:

I would welcome the opportunity to reply.

Mr A Maskey:

You can do that another day, somewhere else.

Mr McCartney:

The purpose of today's meeting was to assist us in formulating our second report. If people want to make political speeches, they should do it elsewhere or ask for a private meeting with the First Minister and deputy First Minister.

The last question that was put to Shaun Woodward this morning was whether everything was in place for the handover of all the apparatus of policing and justice. Are we, at this end, ready to accept everything when it is handed over?

The First Minister:

My party and I are certainly ready, and I think that the deputy First Minister will give a similar answer. I wait to hear the answer from the other parties.

The deputy First Minister:

Yes, absolutely. A tremendous amount of work has been undertaken, not least by this Committee over the past 14 or 15 months. We are as ready as we ever could be to ensure that we move forward very decisively on 12 April. Like everything else, it will be a whole new experience. There will be an entirely new Department. There will be a learning curve, but that is what taking powers and responsibilities is all about. I am well satisfied that the institutions of which we are part are more than capable of managing the transition to devolved policing and the devolving of responsibility for the courts to our Administration.

The Chairperson:

Thank you for the answers that you have provided. There are one or two areas that we have not touched on. The Committee has to clear up the category 2 list of issues after you leave. I wish to ask you both for any views that may inform the discussion that will take place shortly.

The first issue concerns the funding and administration of the Public Prosecution Service. Three different views have been expressed in the Committee: that financing, etc, should lie with OFMDFM, DFP or the Department of justice. Do you have any views on where that responsibility should lie?

There are references in the Agreement at Hillsborough Castle to a review of the Executive's operations. Will that affect the role of this Committee, given its remit under the St Andrews Agreement? Do you envisage any change in the future role of the Committee and the remit that it was given?

Finally, with regard to the appointment of the Police Ombudsman, you have an advisory role in recommending who the Crown might appoint to that office. Do you consider that that should remain the case, or should the justice Minister also provide advice, given that devolution will have taken place before there is another appointment to that office? I ask you to express any views that could be helpful to our discussion.

The First Minister:

I will take the middle question and dump the other two on the deputy First Minister.

On the future of the Assembly and Executive Review Committee, I am pretty sure that the outworking of the task that is being carried out by the working group that is dealing with issues that arise from the St Andrews Agreement will produce a programme of work that, if one were to cast an eye around to see who is best placed to perform some of it, is bound to come this Committee's way. I expect that more work, rather than less, will be heading in the Committee's direction.

Certainly, we have found the Committee's work valuable with regard to our specific remits. Therefore, I expect that, shortly, when you see the outcome of work by the group on the St Andrews Agreement issues, there will be some matters that the Committee will want to address and, hopefully, to progress.

The deputy First Minister:

We support the recommendation in the Committee's report of March 2008 that the PPS should be a non-ministerial body. It will, effectively, be a free-standing body, and funded as such.

The appointment of the Police Ombudsman will not be devolved. However, it will be for the First Minister and me to act jointly to make a recommendation for appointment. We will also be able to call for the ombudsman to resign, in limited circumstances. We will want to take the views of the Minister of justice before we make a recommendation for that appointment, or if, God forbid, we have to call for the ombudsman to resign.

The Chairperson:

Thank you both very much indeed for coming before the Committee this afternoon. We hope to produce a report to assist the debate on 9 March 2010, provided that I can keep a quorum in the meeting for the rest of the afternoon.

The First Minister:

Thank you.

The deputy First Minister:

Thank you.