

Assembly and Executive Review Committee

Review of the Initial Ministerial Provision in relation to the Department of Justice and the arrangements from 1 May 2012

**Together with the Minutes of Proceedings of the Committee
relating to the Report, the Minutes of Evidence and Consultation Documents**

**Ordered by the Assembly and Executive Review Committee to be printed 22 November 2011
Report: NIA 18/11-15 (Assembly and Executive Review Committee)**

**REPORT EMBARGOED UNTIL
Commencement of Debate in Plenary**

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 59 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 is as follows:

Stephen Moutray (Chairperson)
Pat Sheehan (Deputy Chairperson)

Roy Beggs
Gregory Campbell
Stewart Dickson
Pat Doherty ¹
Paul Givan
Simon Hamilton
Raymond McCartney
Conall McDevitt
Sandra Overend ²

1 With effect from 12 September 2011 Mr Pat Doherty replaced Mr Paul Maskey

2 With effect from 26 September 2011 Mrs Sandra Overend replaced Mr Mike Nesbitt

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Executive Summary

1. The Department of Justice Act (Northern Ireland) 2010 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. The 2010 Act provides at section 2(1) the terms of the appointment, setting out the 'Initial Ministerial provision'.
2. Schedule 1, Part 3, paragraph 8 of the Northern Ireland Act 2009 makes provision for the dissolution of the Department of Justice – which dissolves on 1 May 2012 unless before that date, either
 - a. The Assembly resolves, through 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 1 May 2012.

This is commonly referred to as the 'Sunset Clause'.

3. On 10 October 2011, the Northern Ireland Assembly approved a Motion under Standing Order 59(4) b to refer to the Assembly and Executive Review Committee the matter of the Review of the Initial Ministerial provision of the Department of Justice and to make recommendations relating to the provision that should exist from 1 May 2012. The Committee subsequently agreed its Terms of Reference for this Review on this basis, with a view to complete the Review and report to the Assembly w/c 21 November 2011.
4. The timescale for the Review provided for the possibility that a 'second Act' will be required by 1 May 2012. The Committee agreed that its stakeholders for this Review would be the Assembly's Political Parties and independent MLA, OFMdFM and the Department of Justice, including their respective Assembly Committees. All were issued a detailed Stakeholder Options Paper which sets out possible options that flow from the legislation that could be developed but may not necessarily be a practical or viable way forward. Questions sought views from stakeholders on the suitability and adequacy of the Initial Ministerial provision and in relation to the arrangements from 1 May 2012.
5. Stakeholders were asked to indicate their preferred option(s), reasons for these preference(s) and unacceptable options. Four stakeholder responses provided comments on the Initial Ministerial provision and seven stakeholders provided a substantive response on the arrangements from 1 May 2012.
6. On the latter, the Alliance Party favour Option A, that is the Assembly resolves that the Department of Justice is to continue operating from May 2012, while the DUP described Option A as 'worthy of further consideration'. Option B3, that is, a second Act under the Northern Ireland Act 2009 (before 1 May 2012), which repeals the 'Initial Ministerial Provision', with all Northern Ireland Ministers losing their offices (including the Minister for Justice) and these offices being filled by the D'Hondt process, was favored by the Green Party, the SDLP and Sinn Féin – with the DUP stating that this option was 'worthy of further consideration ...subject to a reduction of the number and reorganisation of departments'. No stakeholder selected Option C - to resolve that the Department is to continue operating from 1 May 2012 with a subsequent Act, or Option D – an Act dissolving the Department of Justice pre 1 May 2012, or Option E – 'do nothing'.
7. A number of stakeholder responses (DUP, Green Party, SDLP and UUP) raised the issue that the Review of arrangements in relation to the Department of Justice provides an opportunity to simultaneously review and reduce the number of Government departments in Northern Ireland.

8. Following Committee discussion, a proposal was made, on the basis that there was no broad consensus on any of the options, that the Committee draft a Report that outlines all the different opinions, summarises the consultation outcome in terms of who endorsed which options and why, and any other comments.
9. The Committee agreed to this proposal, with no other proposals raised prior to this agreement.

Introduction

10. 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 justice powers, the Assembly endorsed this position.

11. On 9 March 2010 the First Minister and deputy First Minister tabled a motion jointly for a resolution by the Assembly, under section 4(2A) of the Northern Ireland Act 1998 (“ the 1998 Act”) that certain policing and justice matters should cease to be reserved. The motion was passed with cross-community support².
12. The Department of Justice Act (Northern Ireland) 2010 (“the 2010 Act”) 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. The 1998 Act 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. On 12 April 2010 a determination under Section 17 of the 1998 Act was made and approved by a resolution of the Assembly with cross-community support. Although the original determination was revoked, the functions and status of the 10 existing Northern Ireland Ministers was unaffected by the new determination, with the Minister for Justice being added to their number.³
13. On the same day (12 April 2010), Mr David Ford of the Alliance Party was appointed Minister for Justice, in accordance with the procedures set out in Part 1A of Schedule 4A to the 1998 Act and in Standing Order 44A, his nomination having been approved by a resolution of the Assembly endorsed by parallel consent. 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 designated Nationalists and a majority of designated Unionists.

What may occur by 1 May 2012?

14. In its First Report on the Arrangements for the Devolution of Policing and Justice Matters (6 January 2009), the previous Assembly and Executive Review Committee made the following recommendations:
- Any Member elected as the Minister for Justice, up until May 2012, would require a majority of Assembly Members, present and voting, including a majority of designated nationalists and a majority of designated unionists. In circumstances where a vacancy was to occur, during this period, the vacancy would be filled in the same way.
 - These arrangements would be subject to a sunset clause which would bring them to an end not later than May 2012.
 - Following a period of operation, the arrangements would be reviewed.

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

2 HC Deb NIA 9 March 2010 <http://archive.niassembly.gov.uk/record/reports2009/100309.htm#a6>

3 As per paragraph [ph 6 of Schedule 1 to the Northern Ireland Act 2009

- Permanent arrangements would be put in place by 1 May 2012, and there would be no fall back arrangements. This would require the political parties to agree a way forward, by this time.
15. Schedule 1, Part 3, paragraph 8(1) of the Northern Ireland Act 2009 (“ the 2009 Act”) makes provision for the dissolution of the first Northern Ireland Department established by an Act of the Assembly the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and justice functions. The Department of Justice meets this description and therefore dissolves on 1 May 2012, unless before that date, either-
- a) the Assembly 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 1 May 2012

The Committee's Approach

16. At its meeting on 28 June 2011, the Assembly and Executive Review Committee held discussions in relation to options for its forward work programme. It was agreed that the Chairperson and Deputy Chairperson should meet with the First Minister and deputy First Minister and that, during this meeting, views should be sought on reviewing the arrangements for the appointment of the Minister for Justice.
17. On 10 October 2011, The Northern Ireland Assembly approved the following Motion:
'That, pursuant to Standing Order 59(4)(b), this Assembly refers to the Assembly and Executive Review Committee the matter of a review of the Initial Ministerial provision in relation to the Department of Justice and agrees that the Assembly and Executive Review Committee should make recommendations relating to the provision that should exist from 1 May 2012.'
18. The Committee subsequently agreed the Terms of Reference for this Review at its meeting on 11 October 2011 and agreed that a Stakeholder Options Paper (see Appendix 3) be issued to all of the Assembly's Political Parties and its one Independent Member, OFMdFM, Department of Justice and the corresponding Assembly Statutory Committees for these Departments.
19. The Terms of Reference for this Review are as follows:
 - To review the Initial Ministerial provision in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of the initial provision.
 - To make recommendations relating to the arrangements from 1 May 2012 in relation to the Ministerial provision for the Department of Justice by consulting with key stakeholders on the options that are provided for in legislation.
 - To complete the review and report to the Assembly w/c 21 November 2011.
20. The Committee considered Stakeholder responses (see Appendix 4) at its meetings of 8 and 15 November 2011. It agreed its final position on 15 November 2011 and also agreed to request that its Report on its Review be debated in Assembly Plenary on 29 November 2011. This Report was agreed by the Committee at a subsequent meeting on 22 November 2011.
21. The Minutes of Proceedings and the Minutes of Evidence in relation to the Committee's Review are contained in Appendix 1 & 2 respectively of this Report.

Committee Consideration

Summary of Stakeholder Submissions

22. Summary tables and full copies of stakeholder submissions can be found at Appendix 4 of this Report. The various legal options are explained in the Stakeholder Options Paper at Appendix 3. The paper lists possible options that flow from the legislation that could be developed but may not necessarily be a practical or viable way forward.

Review of the Initial Ministerial Provision in Relation to the Department of Justice

23. The Committee asked Stakeholders to express their views on the suitability and adequacy of the Initial Ministerial provision to inform its review of this provision.
24. Four stakeholders provided a response to this question. A summary of these responses can be found in Summary Table 1, along with full copies of stakeholder submissions, in Appendix 4 of this Report.

25. The **Alliance Party** stated that:

'...the Initial ministerial provision was probably the only suitable compromise position that could secure devolution.'

'The election of the Justice Minister by a vote in the Assembly requiring more than a simple majority is in line with a recommendation by Alliance to the St Andrews talks – for an Assembly vote to ratify the appointment of all Ministers, regardless of their method of nomination. The current system has shown a measure of confidence in the Minister of Justice, which cannot be demonstrated for other Ministers, and has been crucial, given the continuing sensitivities around the administration of Justice.'

'Alliance believes that the Initial Ministerial Provision has successfully provided for the devolution of Justice to the Assembly over the last 18 months.'

26. The **DUP** stated that:

'The present arrangements have operated satisfactorily, however the outcome of the 2011 Assembly elections has led to the position where the Alliance Party, despite having fewer seats in the Assembly than either the UUP or the SDLP, has more seats in the Executive. While this is explained by separate methods of election it does nonetheless give rise to unfairness.'

27. According to the **Green Party** in Northern Ireland, the initial Ministerial provision:

'..was a critical mechanism in engendering confidence for the devolution of policing and justice powers..'

'..has led to what under one analysis might be called the "undemocratic" position of a party currently occupying twice the ministerial positions of a party with twice the number of MLAs..'

Therefore, 'The Green Partybelieves the balance now needs to be towards normalising the justice department and associated ministerial appointment process. We do not believe the initial ministerial provision should continue after May 2012'

28. Finally, **Sinn Féin** stated that:

‘Transfer of powers of policing and justice to the local Assembly was successfully accomplished after the Hillsborough Agreement in February 2010. The transfer of powers on policing and justice was only agreed because there was sufficient cross-community confidence and support for this to be achieved. The initial provisions for appointment of the Minister for Justice were accepted as an interim arrangement. Sinn Féin believes that from May 2012, the appointment of Minister of Justice should be on the basis of d’hondt, as with every other local Minister.’

The Arrangements from 1 May 2012 in Relation to Ministerial Provision for the Department of Justice.

29. The second section of the stakeholder Options Paper laid out ‘possible options’ (A – E) ‘that flow from legislation that could be developed but may not necessarily be a practical or viable way forward’. Stakeholders were asked to select their preferred and rejected option(s) and to provide comments on these selections.

30. Seven Stakeholders provided a response to this section and a summary of these responses can be found in Summary Table 2, along with full copies of stakeholder submissions, in Appendix 4 of this Report. An explanation of Options A-E and the implications for the Assembly of each option can be found in the full copy of the Stakeholder Options Paper in Appendix 3 of this Report.

OPTION A – Assembly resolves that the Department is to continue operating from May 2012.

31. The **Alliance Party** favoured Option A stating that it provided the

‘... obvious benefit of extending the current operation of the Department without further upheaval, and may have the best chance of maintaining the current level of public and political confidence’

and it

‘..would also continue to ensure that the Minister of Justice benefits from an initial and ongoing measure of confidence among a cross-community majority of MLAs, which is crucial given the continuing sensitivities around the administration of Justice.’

‘Since this statement may be considered to reflect self-interest, the current Minister is prepared to offer his resignation to allow the Assembly to elect a different Minister if it wishes, or to subject himself to a motion of confidence.’

32. The **DUP** also described Option A as ‘worthy of further consideration’.

33. The **Green Party** in Northern Ireland was ‘reticent to endorse’ Option A, stating that it

‘perpetuates the status quo without any legislative change’

OPTION B – Second Act under the Northern Ireland Act 2009 (before 1 May 2012)

34. **Option B3** was favoured by the **Green Party** in Northern Ireland, the **SDLP** and **Sinn Féin**. The **DUP** stated that it was ‘worthy of further consideration...subject to a reduction in the number and reorganisation of departments’.

Under **Option B3**:

- a. A ‘second Act’ that repeals the “initial ministerial provision”
- b. A determination of Ministerial offices under section 17(1), would be made. This means that all Northern Ireland Ministers would lose office, including the Minister for Justice.

- c. Those offices would then be filled under section 18 of the 1998 Act (that is, the d'Hondt process).
35. **The following comments and supporting comments were made by the Parties who favoured or supported Option B3; also some additional comments by Parties regarding other sub options within Option B are set out below:**
36. The **DUP** stated that:
- 'Option B (3) – subject to a reduction in the number and reorganisation of departments - (is) worthy of further consideration.'*
- 'Option B1(a) is similar to option B4 though less desirable given the formal requirement of nomination by the First Minister and deputy First Minister, acting jointly. Option B1 (b), (c) and (d) would not represent an acceptable way forward at this time. We do not believe there is any merit in option B2. Option B4 has no obvious advantages over option A. Only Option B3 – subject to a reduction in the number of departments is worthy of further consideration.'*
37. The **Green Party** in Northern Ireland stated that:
- '...we are committed to a normalization of the Justice Department and ministerial appointment from May 2012. We are also confident that the Committee can play its role in ensuring the legislation is progressed through the Assembly by this time'*
- 'If this Option (B3) were advanced by the Committee, we believe that they should **immediately expedite activity to come to a position on a reduced number of government departments and engage with OFMdfM to make such a reduction happen.**'*
38. The **Green Party** also stated that Options B2 and B1(a), are 'entirely unacceptable', stating that:
- 'We are opposed to any option which provides unnecessary control into the hands of the First and deputy First Minister.... undemocratic'*
39. **SDLP** stated that:
- 'It is essential that this matter is progressed by the parties with due regard for the principles of equality and inclusion embedded in the Good Friday Agreement.'*
- 'the SDLP remains committed to a process which would realign the Justice Ministry with all other ministries through the application of D'Hondt to fill all posts.'*
- 'We would envisage, as part of this particular process, talks on the review of the number of ministries and the redistribution of the departmental functions etc. taking place in the context of an all-party debate on institutional reform.'*
40. **Sinn Féin** stated that:
- 'Sinn Féin favours Option B, which makes alternative provision to the present interim arrangements for appointing the Minister of Justice, in line with the safeguards of the Good Friday Agreement.'*
- 'Sinn Féin's first preference under Option B is that the Minister for Justice would be appointed by d'hondt (OPTION B.3)'*
41. The **Alliance Party**, who selected Option A as its preferred option, also made the following comments regarding Option B:
- Options B1 (a-d), B2 and B3 are unacceptable and saw 'no merit' in Option B4, and made the following comments:

‘For all of the reasons set out, Alliance believes that Options B1(a-d) all carry a real risk of destabilizing the functioning of the Department of Justice at a time when devolution is still “bedding in” and when the programme of much-needed reform requires continued momentum.’

(Option B2) ‘...carries with it all of the risks associated with Option B1(b), compounded by the added disadvantage of adding to the existing workload of OFMDFM the duties of one of the most complex (and highest-spending) Departments.’

‘While the Alliance Party would indeed welcome the day when the Department of Justice, and the exercise of its functions, is seen as a normal part of government, the party has consistently maintained its opposition to the use of D’Hondt (Option B3) with no opportunity for the Assembly to endorse the nominations made under that formula through a vote demonstrating cross-community support. The Assembly should be able to demonstrate its support for all Ministers by a suitable weighted majority and this is especially the case for the Minister of Justice.’

(Option B4 is) ‘..unnecessarily cumbersome, when a simple resolution would achieve the same outcome without the need for primary legislation.’

OPTION C – Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act

42. No stakeholder selected this as their preferred option.

43. The **Alliance Party** described this option as ‘ ..unacceptable..’: and went on to state that Option C:

‘..would, in effect, be an attempt to both extend the current provision and provide an opportunity to do something else in due course. While this may be appealing as a compromise between options A and B, Alliance is concerned that it (and all the sub-options within it) appears to run contrary to the spirit of the 2009 Act, which requires the Assembly to either resolve to extend the initial provision or put one of the variations within Option B in its place, but not both. There may be a significant risk of legal challenge in attempting to do both, and the powers of a Justice Minister are such that risks of legal challenge must be avoided. To do otherwise would be destabilizing..’

44. The **DUP** stated that:

‘We believe that in order to avoid any potential legal difficulties that the matter should be dealt with before May 2012 and the option of subsequent legislation should be avoided.’

45. The **Green Party** in Northern Ireland were ‘...reticent to endorse...’ this Option and stated that:

‘The only merit for Option C seems to be to open a longer timescale for legislation’

*‘ (If) Option C is pursued our preferred option is C2 ... **in conjunction with the reduction in number of government departments.**’*

‘...option C1(a) is wholly unacceptable. Options C1(b),(c) and (d) are unnecessary and unacceptable. Option C1(e) does not deliver the change we seek’

46. The **Department of Justice** raised concerns with Option C and stated that:

‘The department is not certain that section 21A was intended to enable new Ministerial provision to be made in these circumstances.’

‘The consequences of a successful legal challenge . . .could be very serious.’

OPTION D – Act Dissolving the Department of Justice pre 1 May 2012

OPTION E – Do Nothing

47. These options were not selected by any stakeholder.

48. The **Alliance Party** stated that both options are ‘entirely unacceptable’ and

‘.....would amount to a statement that devolution of justice had failed; would lead to the re-imposition of Direct Rule in relation to justice powers; and would be a major step backward for the political process.’

49. The **Green Party** in Northern Ireland described both of these Options as ‘entirely unacceptable’ and stated that:

‘we are committed to the continuing devolution of policing and justice’

50. The **Department of Justice** said that these options were not feasible as, to select them would mean that:

‘DOJ would cease to exist and would be unable to discharge its functions....be untenable.’

Review/ Reduction of the Number of Government Departments in Northern Ireland

51. Although this subject was not specified or raised in the Stakeholder Options Paper, several Stakeholders raised the issue that the review of the arrangements in relation to the Department of Justice provides the opportunity to simultaneously review and reduce the number of Government departments in Northern Ireland.

52. The **DUP** stated that:

‘option B (3) – subject to a reduction in the number and reorganisation of departments - ... (is) worthy of further consideration.’

53. The **Green Party** in Northern Ireland stated that:

*‘.. If this option (B3) were advanced .. they (the Committee) should **immediately expedite activity to come to a position on a reduced number of government departments and engage with OFMDFM to make such a reduction happen.** Such a reduction has broad political consensus and is sympathetic to the current budgetary climate. If a reduction in departments could be achieved by May 2012 then d’Hondt could be run under the new number of ministers.’*

54. The **SDLP**, who also selected option B3, stated that:

‘We would envisage as part of this particular process, talks on a review of the number of ministries and the redistribution of departmental functions, etc. taking place in the context of an all-party debate on institutional reform.’

55. The **UUP**, who did not select a specific option from the Stakeholder Options Paper, stated that:

‘...this review now provides an opportunity to reduce the number of government departments in Northern Ireland. This will require more detailed all Party discussions to discuss the out-workings and practicalities of such a decision, which would of course include the Department of Justice...’

Committee Discussion

56. The Committee considered all stakeholder submissions at its meeting on 15 November 2011. Legal advice was provided in closed session at its meetings of 8 and 15 November 2011 on the legal mechanisms that exist to deliver a rationalisation of the number of Government departments in Northern Ireland.

57. One Member raised concerns in relation to the recommendations that the Committee might make in relation to this Review:

“...the DUP’s position(is) conditional on a reduction in the number of Departments. However, our terms of reference do not allow us to report on anything in that area. How can we progress the discussion conditional on something that is outside our terms of reference?”

(The Assembly) ...agreed to a motion, pursuant to Standing Order 59(4)(b), which makes no mention whatsoever about anything else except the Department of Justice. Therefore, how can this Committee make a report that goes beyond what the Assembly has mandated it to report on?”⁴

58. The Committee discussed this issue in both open and closed session. After the Committee heard a summary of the responses to the Stakeholders Options Paper in relation to arrangements from 1 May 2012 for Ministerial provision for the Department of Justice, another Member made the following proposal:

“There is consensus on some matters but not a broad consensus on any of the options. Given the differences of opinion, is it in order to propose that the Committee draft a report that outlines all the different opinions, summarises the consultation outcome, all the options, who endorsed which option and why, and any other comments?”⁵

The Committee agreed to this proposal. Before putting the proposal to the Committee, the Chairperson stated *“There are no other proposals”* – no other proposals were raised.

59. This Report of the Review was approved and ordered to be printed by the Committee on 22 November 2011.

4 Official Report (Hansard)

5 Official Report (Hansard)



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Tuesday 28 June 2011

Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Pat Sheehan MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Gregory Campbell MLA
Mr Simon Hamilton MLA
Mr Raymond McCartney MLA
Mr Conall McDevitt MLA
Mr Paul Maskey MLA
Mr Mike Nesbitt MLA

Apologies: Mr Stephen Moutray MLA (Chairperson)
Mr Stewart Dickson MLA
Mr Paul Givan MLA

In Attendance: Mr Paul Gill (Clerk)
Miss Emma Patton (Assistant Assembly Clerk)
Mr Christopher McNickle (Clerical Officer)

11.05 am The meeting opened in public session.

3. **Forward Work Programme**

The Committee noted Clerk's paper in relation to the forward work programme.

The Committee noted the submissions from the Alliance Party, Sinn Féin, the Social, Democratic and Labour Party and the Ulster Unionist Party.

11.09 am Mr Campbell joined the meeting.

11.12 am The meeting was suspended. to allow members vote in a division in plenary.

11.29 am The meeting reconvened. with the following Members present: Mr Pat Sheehan (Deputy Chairperson), Mr Roy Beggs, Mr Gregory Campbell, Mr Simon Hamilton, Mr Raymond McCartney, Mr Conall McDevitt, Mr Paul Maskey and Mr Mike Nesbitt.

Agreed: The Committee agreed that, prior to finalising its work programme, the Chairperson and Deputy Chairperson should meet the First Minister and the deputy First Minister. The purpose of the meeting would be to seek the views of the First Minister and deputy First Minister in relation to who should carry out a review of the arrangements for the appointment of the Minister of Justice; and to be provided by the First and deputy First Minister with an update on the Efficiency Review Panel.

Agreed: The Committee agreed that the Committee office should carry out provisional research on the issues surrounding the arrangements for the appointment for Minister of Justice.

Mr Pat Sheehan

Deputy Chairperson, Assembly and Executive Review Committee

[EXTRACT]

Tuesday 27 September 2011

Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray MLA (Chairperson)
Mr Pat Sheehan MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Stewart Dickson MLA
Mr Pat Doherty MP MLA
Mr Paul Givan MLA
Mr Simon Hamilton MLA
Mr Raymond McCartney MLA
Mr Conall McDevitt MLA

Apologies: Mr Gregory Campbell MLA

In Attendance: Mr Paul Gill (Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Christopher McNickle (Clerical Officer)

3.02 pm The meeting opened in public session.

5. Forward Work Programme

The Committee noted the Clerk's paper in relation to the forward work programme, a letter to OFMdFM and a memo to the OFMdFM Committee.

The Chair updated the Committee on the outcome of a meeting that he and the Deputy Chair attended with the First Minister and deputy First Minister in relation to who should carry out a review of the arrangements for the appointment of the Minister of Justice.

The Clerk briefed the Committee.

3.06 pm Mr Dickson joined the meeting.

Agreed: The Committee agreed to undertake this review.

3.07 pm Mr McCartney joined the meeting.

Agreed: The Committee agreed to table a motion seeking the Assembly's agreement to it carrying out this work.

Agreed: The Committee agreed the wording of this motion.

Agreed: The Committee agreed that secretariat staff should develop draft Terms of Reference and consultation paperwork. These items will be considered by the Committee at its meeting of 11 October, assuming that the Assembly approves the Committee's motion on 10 October.

Mr Stephen Moutray

Chairperson, Assembly and Executive Review Committee

[EXTRACT]

Tuesday 11 October 2011

Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Pat Doherty
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mrs Sandra Overend

Apologies: none

In Attendance: Mr John Simmons (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Hilary Bogle (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Christopher McNickle (Clerical Officer)
Mr Tim Moore (Senior Researcher)
Mr Ray McCaffrey (Research Officer)
Mr Hugh Widdis (Director of Legal Services)
Ms Tara Caul (Head of Legal Services)
Ms Angela Kelly (Legal Adviser)

11.04 am The meeting opened in public session.

6. Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

The Committee noted the Clerk's memo and the Clerk briefed the Committee in relation to this issue.

The following representatives from Assembly Research and Information Service joined the meeting:

Tim Moore – Senior Researcher

Raymond McCaffrey – Research Officer

The representatives briefed the Committee and this was followed by a question and answer session.

The Committee noted a Research Briefing Note which formed the basis of the presentation.

11.33 am Mr Beggs left the meeting

11.35 am The meeting moved into closed session when the Committee received Legal Advice and considered a draft Stakeholder Options Paper.

Agreed: The Committee agreed that a revised version of the draft Stakeholder Options Paper should be issued to Members by correspondence for approval and issue to Stakeholders later this week.

12.09 pm The meeting moved into open session

Mr Stephen Moutray

Chairperson, Assembly and Executive Review Committee

[EXTRACT]

Tuesday 25 October 2011

Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Pat Doherty
Mr Simon Hamilton
Mr Raymond McCartney
Mrs Sandra Overend

Apologies: Mr Gregory Campbell
Mr Stewart Dickson

In Attendance: Mr John Simmons (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Michael Greer (Clerical Supervisor)
Ms Andrienne Magee (Clerical Officer)
Mr Ray McCaffrey (Research Officer)

11.04 am The meeting opened in public session.

4. Correspondence

The Committee noted the final Stakeholder Options Paper and covering letter/memos in relation to its Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

The Chairperson reminded Members that responses from Political Parties are due with the Committee Secretariat by Friday 28 October 2011 and this deadline is necessary if the Committee is to adhere to its very tight timescale for this Review.

Mr Stephen Moutray

Chairperson, Assembly and Executive Review Committee

[EXTRACT]

Tuesday 8 November 2011

Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Mrs Sandra Overend

Apologies: Mr Pat Doherty

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Christopher McNickle (Clerical Officer)
Ms Angela Kelly (Legal Adviser)
Mr Ray McCaffrey (Research Officer)

11.06 am The meeting opened in public session.

4. Review of the Initial Ministerial Provision in Relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

The Clerk briefed the Committee on the current position in relation to the Review.

The Committee considered Stakeholder responses to date.

11.18 am The meeting moved into closed session to consider legal advice.

Agreed: The Committee agreed that it will request further legal advice.

11.29 am The meeting moved into open session.

Agreed: The Committee agreed to defer taking a decision on its position until the following week to allow all submissions to be received and presented.

11.43 am The Chairperson adjourned the meeting.

Mr Stephen Moutray

Chairperson, Assembly and Executive Review Committee

[EXTRACT]

Tuesday 15 November 2011

Room 144, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Roy Beggs
Mr Stewart Dickson
Mr Pat Doherty
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt

Apologies: Mr Pat Sheehan (Deputy Chairperson)
Mr Gregory Campbell
Mrs Sandra Overend

In Attendance: Mr John Simmons (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Christopher McNickle (Clerical Officer)
Mr Hugh Widdis (Head of Legal Services)
Ms Angela Kelly (Legal Adviser)

11.03 am The meeting opened in public session.

4. Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

The Chairperson reminded Members that the purpose of the meeting was to agree a Committee final position on this Review and also to agree a motion for debate of the Committee's Report of its Review in Assembly Plenary - to be requested for 29 November 2011.

The Chairperson advised Members that the Committee would need to approve its Report of this Review at its meeting the following week, i.e. 22 November 2011.

The Clerk summarised the background to the current position in relation to the Review.

Representatives from each Political Party represented on the Committee then spoke briefly to their Party's submission.

The Committee noted correspondence from the First Minister and deputy First Minister in relation to the Review.

The Clerk summarised the submissions of other Stakeholders not represented on the Committee.

The Committee had a discussion in relation to the Terms of Reference of the Review and what the Assembly has mandated the Committee to report on.

11.26 am The meeting moved into closed session to consider legal advice.

11.56 am The meeting moved back into open session.

The Clerk provided Members with a summary of the Stakeholders' positions.

Mr Hamilton proposed the following:

“that the Committee draft a report that outlines all the different opinions, summarises the consultation outcome, all the options, who endorsed which option and why, and any other comments”

Agreed: The Committee agreed to this proposal and requested that the draft Report be presented to the Committee Members for approval at its meeting on 22 November 2011.

No other proposals were raised.

The Committee considered a draft Motion for the debate of its Report in Assembly Plenary.

Agreed: The Committee agreed that the wording of the draft Motion should be revised and presented to the Committee at its meeting on 22 November 2011 for final approval.

Agreed: The Committee agreed to request that its Report of the Review be debated in Assembly Plenary on 29 November 2011 – for the standard 1 ½ hours.

12.11 pm The Chairperson adjourned the meeting.

Mr Stephen Moutray

Chairperson, Assembly and Executive Review Committee

[EXTRACT]

Tuesday 22 November 2011, Room 21, Parliament Buildings, Ballymiscaw, Stormont

Present: Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Pat Doherty
Mr Paul Givan
Mr Simon Hamilton
Mr Raymond McCartney
Mr Conall McDevitt
Mrs Sandra Overend

Apologies: Mr Stewart Dickson

In Attendance: Mr John Simmons (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Andrienne Magee (Clerical Officer)
Mr Christopher McNickle (Clerical Officer)

Mr Raymond McCaffrey

11.00 am The meeting opened in public session.

4. Review of the Initial Ministerial Provision in relation to the Department of Justice and the arrangements from 1 May 2012.

The Chairperson reminded the Committee of the timescales in relation to this Review and the need to agree the Report today and finalise the Committee's Motion for Assembly Plenary debate of its Report.

The Clerk briefed the Committee.

11.04 am Mr Campbell and Mr Givan joined the meeting.

Agreed: The Committee agreed the wording of its Motion for the debate on the Committee's Report of its Review in Assembly Plenary, scheduled for 29 November 2011.

The Committee considered a draft Report of its Review.

Agreed: The Committee approved its Report, subject to a minor amendment and addition.

Agreed: The Committee agreed to order its Report to be printed and that the Report be embargoed until the debate scheduled in Assembly Plenary on 29 November 2011.

Agreed: The Committee agreed that the number of printed copies of the Report be kept to a minimum.

Agreed: The Committee agreed that a manuscript copy of the Report should be laid with the Business Office by the end of the day.

Agreed: The Committee agreed that, during the debate of its Report in Assembly Plenary, the Chairperson would propose the motion and that the Deputy Chairperson would do the wind.

Agreed: The Committee agreed that the Chairperson write to all relevant stakeholders to thank them for their submissions to this review.

11.08 am Mr Hamilton and Mr Sheehan left the meeting.

11.59 am The Chairperson adjourned the meeting.

Mr Stephen Moutray

Chairperson, Assembly and Executive Review Committee

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

11 October 2011

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
 Mr Pat Sheehan (Deputy Chairperson)
 Mr Roy Beggs
 Mr Gregory Campbell
 Mr Pat Doherty
 Mr Paul Givan
 Mr Simon Hamilton
 Mr Raymond McCartney
 Mrs Sandra Overend

In attendance:

Mr Ray McCaffrey	<i>Research and</i>
Mr Tim Moore	<i>Information Service</i>

1. **The Chairperson:** We will now receive a Research and Information Service briefing from Mr Tim Moore, senior researcher, and Mr Ray McCaffrey, research officer. I welcome you both to the Committee.
2. **Mr Tim Moore (Research and Information Service):** Thanks very much, Chair. Members will have a very brief paper from the Assembly's Research and Information Service, which tries to do two things.
3. **The Committee Clerk:** That paper is being copied at the moment.
4. **Mr Moore:** In the absence of the paper —
5. **The Chairperson:** Just talk slowly.
[Laughter.]
6. **Mr Moore:** I will talk slowly and hope that it arrives. The paper tries to do two things: to give members some background to the so-called sunset clause, which states that the Department of Justice dissolves on 1 May 2012 unless something happens. The paper discusses what those "somethings" might be. It also provides background on the legal framework for the sunset clause.
7. The Committee will shortly be receiving legal advice; this paper is from the Assembly's Research and Information Service, and is something different — we have tried, from a lay person's point of view, to identify the framework that is clear in the legislation. When you look at that, there will be hypotheticals that jump out at you — the "what if?" scenarios. We have not attempted to address those; the Legal Services team will do that. Ray will talk you through the framework.
8. I will start by giving you a brief run through the timeline for the sunset clause. The first mention of the 2012 deadline for the Department of Justice comes in a letter from the First Minister and the deputy First Minister to this Committee in November 2008. There had been ongoing discussions about the devolution of policing and justice, and this Committee had been considering the issue. In November 2008, the First Minister and the deputy First Minister wrote to the Committee to say that although they had agreed a way forward, the arrangements would be subject to a sunset clause. The Committee considered that issue and published a report in January 2009.
9. I will run through the recommendations of that report. It supported the provision for the appointment of the Minister by a majority of Assembly Members voting on a cross-community basis. The Minister would be nominated by Members of the Assembly. However, it was also agreed that the arrangements would be:
"subject to a sunset clause which would bring them to an end not later than May 2012."
10. That was in the Committee's report, which said that the arrangements would be reviewed. The Committee also recommended that, following a period of operation, and prior to May 2012, the arrangements would be reviewed. It was also recommended that permanent

arrangements be put in place in May 2012. Following on from that, in March 2010, a motion tabled by the First Minister and the deputy First Minister to devolve policing and justice powers was voted on and agreed in the Assembly. The Minister was appointed in April 2010. That Minister, David Ford, was reappointed in May 2011.

11. One of the issues that we addressed when we were looking at the historical background was whether it was envisaged that the Department would run for a certain period before it would be reviewed and before it would be possible to come to some judgement. We could find nothing on that. The issue dates back to November 2008 and the letter from the First Minister and the deputy First Minister. That is when the May 2012 deadline emerged. That deadline did not change from then on. The other question is: was a plan B envisaged? In all the parliamentary debates around that, when officials were questioned on whether there was a plan B to dissolution on 1 May, outside of the framework providing the legislation, the answer was no. The legislation is the framework, and there is nothing outside of that.
12. That is the broad historical background. Ray will take members through the framework. As I have said, this is not legal advice; it is from a Research and Information Service standpoint.
13. **Mr Ray McCaffrey (Research and Information Service):** Unfortunately, members do not have the chart in front of them. That makes it slightly tricky, but I will try my best to walk members through the process. We have attempted to present the relevant aspects of the legislation in an accessible manner. As Tim said, Legal Services will, I am sure, address the issues that arise and the consequences of choosing one option over another.
14. The starting point is that the Justice Department will dissolve on 1 May 2012 unless, before that date, one of two options is taken. The question remains: what happens if no action is taken by the Assembly? That is not a matter for the Research and Information Service to speculate on. The first option is for the Assembly to pass a resolution that the Department should continue operating from 1 May 2012. That poses another hypothetical question: if that happens, what happens beyond the resolution with regard to the Assembly's ability to legislate on the matter at a future date?
15. The other option is for the Assembly to pass a second Act. That Act could provide for the Department to continue operating from 1 May 2012, without repealing the initial ministerial provision. Therefore, the Minister would be appointed under the current system. Alternatively, the second Act could repeal that ministerial provision with effect from a specified date. That begs the question of what a reasonable specified date would be. Would it have to be a date in the calendar or could it be timed to coincide with an event such as the next Assembly election, for example? Nevertheless, if a second Act were to repeal that initial ministerial provision, a determination would need to be made under section 17 of the Northern Ireland Act 1998.
16. Members are then left with a range of options to choose from. Unfortunately, you do not have the benefit of having the chart in front of you, so I will quickly run through those options. The first option is for the Department to be in the charge of a Northern Ireland Minister who is nominated by the First Minister and the deputy First Minister and approved by a resolution of the Assembly on a cross-community basis.
17. The second option is for the Department to be in the charge of two Ministers acting jointly, nominated by the First Minister and the deputy First Minister and approved by a resolution of the Assembly on a cross-community basis.
18. The third option is for the Department to be in the charge of a Northern Ireland Minister who is supported by a junior Minister. In that case, the role of the Minister and the junior Minister would rotate at intervals determined under the Act. The Minister and the junior Minister

- would also be nominated by the First Minister and the deputy First Minister and approved by a resolution of the Assembly on a cross-community basis.
19. The fourth option is that the second Act may provide for the Department to be in the charge of the First Minister and the deputy First Minister, acting jointly, with effect from a specified date.
20. The final option is for the Department to be in the charge of a Northern Ireland Minister and a deputy Minister, who would be elected by the Assembly. Any Member could stand, if he or she belonged to the largest or second-largest political designation. Again, those Ministers would be elected on a cross-community basis.
21. However, if none of those options for ministerial provision is put in place, the position would have to be filled according to section 18 of the 1998 Act, under which the other Ministers have been appointed. That means that the positions would be filled under the d'Hondt mechanism.
22. I apologise that the chart was not available. It would have been easier to follow.
23. **The Chairperson:** Are there any questions from members at this point? We are still waiting for the paper.
24. **Mr Beggs:** Should section 18 of the 1998 Act be used, namely d'Hondt, will that require a single post to be filled or the complete running of the d'Hondt mechanism?
25. **Mr Moore:** Let me say first that this is not legal advice; this is just Research and Library Service's understanding. Legal advisers will be here later. If the second Act were to repeal the initial ministerial provision for the way that the Minister is appointed, d'Hondt would be used. A section 17 determination would be made by the First Minister and the deputy First Minister. The d'Hondt system would run for every post once that determination was made. Strangely, our understanding is that if members were to pick another ministerial model, d'Hondt would run for all the other Ministers, but not for the Justice Minister because another model would have been adopted for that appointment. That is if the initial provision were repealed.
26. **Mr Moutray:** Thank you. There are no more questions at this point.
27. **The Committee Clerk:** I would be grateful if Tim and Ray would stay at the table until the paper has been received. Members may wish to ask questions at that point. We can cover some other aspects of this matter now.
28. **The Chairperson:** I remind members that this session is being recorded for the Hansard report. I am sure that members are aware that, yesterday, the Assembly approved the Committee's motion as follows:
- "That, pursuant to Standing Order 59(4) (b), this Assembly refers to the Assembly and Executive Review Committee the matter of a review of the initial Ministerial provision in relation to the Department of Justice and agrees that the Assembly and Executive Review Committee should make recommendations relating to the provision that should exist from 1 May 2012."*
29. I refer members to the Committee Clerk's memo at tab 2, which sets out a suggested approach to this review and includes draft terms of reference, proposed timescales, a draft stakeholder list and a draft stakeholder options paper, plus related papers that have been commissioned from the Research and Information Service and Legal Services. I ask the Committee Clerk to speak to that memo.
30. **The Committee Clerk:** At tab 2, a memo sets out a number of matters, and the Chair will ask the Committee to make a decision on two or three items. I will outline exactly what those are. First, let me turn to the draft terms of reference of the review at tab 3 in members' packs. The purpose of the review is to evaluate the suitability/adequacy of the initial ministerial provision and to make recommendations for the permanent arrangements that should be made in

- relation to ministerial provision from 1 May 2012.
31. The second item is the proposed timetable of the review. That is at tab 4. The timetable, as my note says, is challenging in that we had planned that the Committee might approve today, 11 October, the draft options and consultation papers, but that might not now be possible because there is some final tidying up of legal and technical points that must be checked and cross-checked. The draft options paper that is being tabled now will be spoken to in closed session when we have legal advice before us.
32. The plan was that the consultation paper would go out this week. That would allow the political parties, the independent member, and, indeed, the two Departments — the Department of Justice, and the Office of the First Minister and deputy First Minister (OFMDFM) — and their corresponding Committees to respond. Under this timetable, the response would be expected by 28 October 2011. That is the deadline for stakeholder submissions in the current chart. The secretariat would then put together a paper on the basis of the evidence that is received from stakeholders: the political parties, primarily. The plan is that an agreed position could be decided upon at a meeting of this Committee on 8 November. From there, a motion would be tabled in the Assembly on the Committee's intention to bring forward its report on the basis of agreement reached on 8 November. The first draft would be scrutinised by the Committee on 15 November. If Committee members were content, it would go to print. On 21 November, the Committee's report and its recommendations would be available for plenary debate.
33. Members may ask why there is such haste and why the Committee's report needs to be debated on 21 November. If it is the wish of the Committee and the Assembly that a second Act be in place by 1 May 2012, OFMDFM needs to draw up the Bill, answer on it and process it through scrutiny by this Committee and its various stages. OFMDFM told us that to get an Act in place — to get Royal Assent by 1 May 2012 — would require the Bill's introduction and, indeed, Second Stage prior to Christmas, hence the timetable. Committee Stage, when the Committee for the Office of the First Minister and deputy First Minister would scrutinise the Bill, would be after Christmas. After that would come debates at Consideration Stage, Further Consideration Stage and Final Stage. Then, the Bill would go through the process of achieving Royal Assent. It is necessary to get all that in place by spring 2012 in order to get an Act in place by 1 May; hence the timetable that is before the Committee this morning.
34. I know that the Chairperson is going to put a motion to the Committee. The only other thing that I would say to members concerns the proposed consultation with stakeholders, which is outlined at tab 2. I have already said that the political parties, one independent member, two relevant Departments — the Department of Justice and the Office of the First Minister and deputy First Minister — and their respective Committees are the stakeholders who would be corresponded with in that consultation and who would get the consultation document that members will consider in a moment. I will hand back to the Chairperson, who will seek agreement.
35. **The Chairperson:** Are members content with the draft terms of reference at tab 3?
36. **Mr Beggs:** It is just a pity that so little work was progressed to date. Now, we are faced with an incredible rush. I feel that, as a Committee, we have done little since we were established.
37. **The Chairperson:** Are we agreed on the terms of reference?
38. **Mr Beggs:** Do we have any choice?
39. **Mr Campbell:** In reference to what Roy said, I certainly made the point at the very start that I thought that this would end up with us being — if not bounced — at least rushed, and exceptionally so. There is no doubt that that is what

that timescale will do. However, by the looks of it, we cannot meet the deadline otherwise.

40. **The Chairperson:** That is outside our power. Are we agreed on the terms of reference?

Members indicated assent.

41. **Mr McCartney:** Tim and Ray, are the options that you outlined for the second Act all contained in the 2009 Act?
42. **Mr Moore:** Yes.
43. **Mr McCartney:** So the range of options open to us is legislated for even without a new Act?
44. **Mr Moore:** It would probably be best to put that question to our colleagues in Legal Services.
45. **The Chairperson:** Are members content with the proposed timetable at tab 4?
46. **Mr Beggs:** Reluctantly.

Members indicated assent.

47. **The Chairperson:** Are members content with the proposed stakeholder list at tab 5?
48. **Mr Givan:** I am not so sure that we need to ask the other Committees for their views, given that the members of this Committee will be giving their views. I am a little bit reluctant to take this debate into the Committee for Justice. I am not a member of the other Committee that is to be asked to give its view. However, I do not think that it is necessary for the options to go to the Committee for Justice because we are going to have a discussion about them around this table. It is my view, therefore, that we should not ask the Committee for Justice for its official view on these options.
49. **The Committee Clerk:** The suggestion in the detail of the cover note to the Chairperson of the Committee for Justice, Mr Givan, and the Chair of the Committee for the Office of the First Minister and deputy First Minister, Tom Elliott, is that the respective Departments will copy the Committees

into their responses. At that point, it will be up to those Committees to decide whether they wish to comment. It may be useful for the other Committees to have sight of the options paper in order for them to understand the timetable to which this Committee is operating. However, if a Committee does not want to respond, it, of course, has that option.

50. **The Chairperson:** Are you content with that, Mr Givan?
51. **Mr Givan:** Yes. That is fine.
52. **The Chairperson:** Are members content with the proposed stakeholder list at tab 5?

Members indicated assent.

53. **The Committee Clerk:** I apologise. The research paper that is being distributed should have been at the back of an earlier paper. Indeed, that was what Tim and Ray from the Research and Information Service were talking about earlier. The useful flow diagram that sets out the options in layperson's terms is at the back. Members may want to glance at that and ask further questions.
54. **The Assistant Committee Clerk:** I apologise. Due to a slight change in the options, the latest version of that paper is being copied now. I understand that it will be with members in a moment.
55. **Mr Moore:** There is a further option. We can talk members through this paper, and if the other paper is here in time, we can mention the fifth option. It is a useful framework for members to look at.
56. **Mr Campbell:** I appreciate that the bigger picture is about the timing of how we carry out the business to meet a deadline that was not of our making. Has there been a problem? Why are we getting papers, which seem to be getting copied as the meeting progresses, at such an exceptionally late hour?
57. **The Chairperson:** I will let the Committee Clerk speak to that.
58. **The Committee Clerk:** The answer to that will be provided when the Committee goes into closed session,

- goes through the draft options paper and hears the legal advice.
59. Basically, the 1998 Act and the 2009 Justice Act prescribe — that is my word — the legislation in quite some detail, and that restricts the options very clearly. Given that the paper is very legalistic, it has taken some time to put that out in a user-friendly consultation document, which is what we have attempted to do. We have liaised with the procedural side of the secretariat and with Legal Services to put that document together. Given that the paper has literally just come off the copiers, as you have seen, there is a question about whether we should make some final checks on it. That is a subject that can be addressed in closed session, but that is the reason.
60. **Mr Campbell:** Is that the reason for the lateness of the other papers as well?
61. **The Committee Clerk:** The two interlink in the options that are shown in the diagram. I apologise. The diagram should have been with us a little earlier, but it was changed this morning.
62. **Mr Moore:** Yes, it was changed this morning.
63. **The Committee Clerk:** The legal advice is quite detailed and precise.
64. **The Chairperson:** Members, we are now going into closed session to take legal advice.

8 November 2011

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
 Mr Pat Sheehan (Deputy Chairperson)
 Mr Roy Beggs
 Mr Gregory Campbell
 Mr Paul Givan
 Mr Simon Hamilton
 Mr Raymond McCartney
 Mr Conall McDevitt
 Mrs Sandra Overend

65. **The Chairperson:** We will move on to the review of the initial ministerial provision in the Department of Justice (DOJ) and the recommendations relating to the arrangements from 1 May 2012.

66. **Mr Hamilton:** Sorry, Chairperson, but may I just say that the astute among our Committee members will have noticed that there is not a DUP paper submitted at this stage? Apologies for that, but one will be on its way to the Committee Clerk as soon as possible. A technical glitch, to use a phrase of the week, has happened.

67. **Mr Campbell:** The less than astute may have noticed as well, Chairman.

68. **The Chairperson:** I remind members that the Department of Justice:

“dissolves on 1 May 2012 unless, before 1 May 2012—

(a) the Assembly resolves”

— with cross-community support —

“that the department is to continue operating from 1 May 2012, or

(b) a second Act of the Assembly”

69. provides that the Department is to continue operating from 1 May 2012.

70. I also remind members that the Assembly has referred the issue of the review to the Assembly and Executive Review Committee. The Committee issued a stakeholder options paper

with a deadline for submissions of 28 October 2011, and copies of responses received to date can be found in members’ main folder.

71. **Mr Beggs:** On the timing of the responses, if we were all to decide not to submit our responses until we have seen the responses from all other parties, it would make this Committee, which is already going very slowly, go even slower. This is the second time that there has been no response to a request from parties. Perhaps others will adopt a similar approach.

72. **Mr Campbell:** Our submission not being in has nothing to do with seeing others’ submissions. It is just not in yet, but it will be.

73. **The Chairperson:** I advise members that, if the Committee is content, I will ask the Committee Clerk to summarise the background to the current position. I will then ask a representative from each political party represented on the Committee to speak to his or her party’s submission. Copies of the submissions can be found in members’ packs.

74. I will also ask the Committee Clerk to summarise the submissions from other stakeholders not represented on the Committee. The Committee will then move into closed session so that members can receive and consider legal advice. Finally, the meeting will move back into open session, when the Committee was to be asked to agree its final position on its report’s recommendations. Obviously, that will not now be the case, as we will not know the position of all the parties on the Committee.

75. If members are content that we take that approach, I will ask the Committee Clerk to summarise the background to the current position.

76. **The Committee Clerk:** I will begin by reminding members of the agreed terms of reference for the review. They are:
- “To review the Initial Ministerial provision in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of the initial provision.*
- To make recommendations relating to the arrangements from 1 May 2012 in relation to the Ministerial provision for the Department of Justice by consulting with key stakeholders on the options that are provided for in legislation.*
- To complete the review and report to the Assembly w/c 21 November 2011.”*
77. Further to having agreed to the terms of reference, the Committee agreed that the key stakeholders for the purposes of the review should be the political parties represented at the Assembly, the independent Member of the Assembly, the Office of the First Minister and deputy First Minister (OFMDFM), the Department of Justice and the two respective Statutory Committees. Each stakeholder was written to on Friday 14 October and provided with a copy of the agreed stakeholder options paper, which is in members’ packs. Responses were subsequently received from the Alliance Party, the Green Party, the SDLP, Sinn Féin, the UUP and the Department of Justice. All the responses are included in full in members’ packs, as is a table that sets out the respective positions. However, in addition to that, we have provided a very brief summary table of the views on the different options, and that is included in the papers that have been tabled for Committee members.
78. **The Chairperson:** I will now ask a representative from each party represented to speak to the party’s submission, if members are willing to do so. We do not have anyone present from the Alliance Party at the moment, and we do not have a response as yet from the DUP.
79. Conall, do you want to say anything?
80. **Mr McDevitt:** Given that it appears to be a technical glitch holding up its submission, can the DUP tell us what its position will be so that we have the benefit of hearing it?
81. **The Chairperson:** Are you in a position to do that?
82. **Mr Campbell:** That would pre-empt the paper, would it not?
83. **Mr McDevitt:** Yes, but if the paper is on its way, it will make life a bit faster for the rest of us. It is not a gotcha.
84. **Mr Campbell:** We do not have a draft copy of it, Chairman.
85. **Mr McDevitt:** OK. For the record, I thank the Committee staff for their work, because the summary table makes the different options pretty crystal clear. We favour option B3 and would reject all other options.
86. **Mr Sheehan:** We are in a similar position. We support option B3, which is that the Minister of Justice should be appointed from May 2012 under the d’Hondt process.
87. **Mr Beggs:** We have a rather brief response to make. Essentially, the pressure was on everyone to determine whether new legislation from Westminster was required. Our response simply tries to highlight the fact that, by reducing the number of Departments, we do not need intervention from Westminster. Therefore, there is not the urgency to meet this critical date of 1 May 2012. There is time to resolve the issue by reducing the number of Departments and agreeing a new structure. That is a way of dealing with it.
88. **The Committee Clerk:** If that is the summary from the political parties concluded, I will move on to summarising the responses received from those who are not on the Committee.
89. The Green Party has advised —
90. **Mr Campbell:** Before you do that, I just want to say that Conall was quite definitive when he said that the SDLP favours option B3 and rejects all the other options. Does that mean that there is not even a preferred list of

- options for the party? Are you saying that it is option B3 or nothing?
91. **Mr McDevitt:** I am saying that we believe that the only way in which to make progress on the appointment of the Minister for Justice in a permanent future manner is by doing it in a way that is consistent with the provisions of the Good Friday Agreement, and that way is to apply d'Hondt for all posts.
92. **Mr Campbell:** That is not quite the same.
93. **Mr McDevitt:** No, it is. That is option B3, Gregory, just for clarity.
94. **The Chairperson:** OK. We will return to the other stakeholders.
95. **The Committee Clerk:** The Green Party has advised in its submission:
“the initial Ministerial provision was a critical mechanism in engendering confidence for the devolution of policing and justice powers”.
96. However, the party believes:
“the balance now needs to be towards normalising the justice department and associated ministerial appointment process. We do not believe the initial ministerial provision should continue after May 2012.”
97. Its preferred option is B3; that is, there should be a second Act that should provide for the Minister of Justice to be appointed under d'Hondt from 1 May 2012. The Green Party's submission goes on to say that, were that option to be chosen, there should also be a reduction in the number of Departments.
98. The Minister of Justice responded on behalf of the Department of Justice. The full response is in members' packs. Members should note that it is a separate response from that submitted by the Alliance Party.
99. The DOJ response does not identify preferences for particular ministerial models as such. What it does is set out some of the potential implications of the different models. In particular, I point out that the Department of Justice has said that any option that provides for a model with two Ministers might make it more difficult for the Department to resolve certain issues, and that it is not certain whether section 21A of the Northern Ireland Act 1998 was intended to enable a second Act to be made after May 2012, as per the Committee's option C. The Department goes on to say:
“any new Ministerial provision needs to have legal certainty. The consequences of a successful legal challenge to a Ministerial provision could be very serious.”
100. Finally, the Department of Justice points out that options D and E mean:
“DOJ would cease to exist and would be unable to discharge its functions”.
101. Those functions include prisons, prisoners and the courts, despite the fact that the issues would be devolved. It, therefore, says that options D and E would be untenable.
102. We did not receive submissions from the other stakeholders, although I should mention that the Clerk to the Committee for the Office of the First Minister and deputy First Minister got in touch to say that that Committee had agreed that it would be for the political parties rather than the Committee to comment on the proposals.
103. **The Chairperson:** If members have no more questions or comments, we will move into closed session to hear legal advice.
- The meeting continued in private session.*
- On resuming —*
104. **Mr Beggs:** In deferring the decision on the motion, I am conscious of the deadline that was presented to us. I do not know when the technical glitch will be resolved or whether we will need to have a meeting before the next scheduled meeting. I do not want to be presented with the final option then and be told to make our decision. I want to be able to consult my colleagues as we approach finalising a report.
105. **The Chairperson:** There is the possibility of having a meeting later this week if members —

106. **Mr Beggs:** What does the Committee Clerk advise? What is the schedule? I was told that we would need to get this sorted today.
107. **The Committee Clerk:** I suppose that the Committee has two options. The first is that if the Committee were to defer taking a decision today and were to leave it until next week, every step in the previously agreed timetable would be put back by a week. There are tight timescales in place, but it is fair to say that if the timetable were to slip by a week, that would not prove fatal to the possibility of a second Bill being introduced. It would make things tighter, but it would not prove fatal.
108. Secondly, it might still be possible, if members think it worthwhile, to meet later this week in order to meet as planned next Tuesday to agree the report. That would leave a short space of time in which to draft a report; that is, the time between whenever we had a meeting this week and next Tuesday's meeting. If the Committee were to do that, it would mean that the original timetable could be adhered to, but it would put pressure on us to get a report fully drafted.
109. **The Chairperson:** OK, members, what are your thoughts?
110. **Mr Beggs:** As long as we will have time to finalise the report. That is the issue. We do not want to be presented with an ultimatum that the report has to be agreed. I would like to be able to consult my colleagues.
111. **The Committee Clerk:** If the Committee is content, it would mean things slipping back by a week, but we are confident that that should not prove fatal to a second Act, if that is the option that the Committee were to go for.
112. **The Chairperson:** That is clear enough. Are members content for the Committee to defer taking a decision on its position until next week to allow all submissions to be received and presented?
113. **Mrs Overend:** It depends on how long the DUP submission is going to take to come in. If it is just a technical glitch and it were to come in before the end of today, we could have a meeting tomorrow.
114. **The Committee Clerk:** That is certainly a possibility, if the Committee wishes to consider that.
115. **Mr Hamilton:** Leave it in the hands of the Chairperson and the Deputy Chairperson to call a meeting if they are in a position to do so.
116. **Mr Campbell:** Try to get the lighting fixed so that the technical glitch is sorted out.
117. **Mr Hamilton:** Shine a spotlight.
118. **The Chairperson:** OK, I will leave it at that.
119. **Mr Beggs:** We will need reasonable warning.

Members indicated assent.

15 November 2011

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
 Mr Roy Beggs
 Mr Stewart Dickson
 Mr Pat Doherty
 Mr Paul Givan
 Mr Simon Hamilton
 Mr Raymond McCartney
 Mr Conall McDevitt

120. **The Chairperson:** We move to the review of the initial ministerial provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

121. I remind members that the Department of Justice dissolves on 1 May 2012 unless, before that date, either the Assembly resolves with cross-community support that the Department is to continue operating from 1 May 2012 or a second Act of the Assembly provides that the Department is to continue operating from that date.

122. I remind members that the Assembly has referred the issue of the review to the Assembly and Executive Review Committee. The Committee issued a stakeholder options paper with a deadline for submissions of 28 October, and copies of the responses received can be found in today's folder. I advise members that the purpose of today's meeting is to agree the Committee's final position on the review and to agree a motion for debate on the Committee's report on the review in an Assembly plenary sitting to be requested for 29 November. I advise members that the Committee needs to approve that report at next week's meeting.

123. I remind members that the Committee agreed, at its meeting of 11 October, that all timings have now moved back one week from the initial timetable. That follows the Committee's decision to defer the decision on its position until

today. The timescales are challenging but provide for the possibility that a second Act will be required. For a Bill to receive Royal Assent by 1 May 2012, the Office of the First Minister and deputy First Minister (OFMDFM) indicated that it would want to introduce the Bill and have it reach Second Stage before Christmas. That requires the Committee to conclude its review and to report to the Assembly for debate on 29 November 2011.

124. If the Committee is content, I propose to structure the meeting as follows. I will ask the Committee Clerk to summarise the background to the current position. I will then ask a member from each political party represented on the Committee to speak to their submission. Copies of submissions are in members' packs. Then, I will ask the Committee Clerk to summarise the position of other stakeholders not represented on the Committee, after which the meeting will move into closed session so that members can receive and consider further legal advice. Finally, the meeting will move back into open session, and the Committee will be asked to agree its final position on the report's recommendations and approve the draft motion for plenary debate. If members are content with that approach, I will ask the Committee Clerk to summarise the background to the current position.

125. **The Committee Clerk:** Members, by way of background, the Committee's motion to undertake the review was approved by the Assembly in the plenary sitting of 10 October 2011. The Committee agreed the review's terms of reference, timescales and stakeholder list at its meeting of 11 October 2011. The Committee also agreed its stakeholder options paper, which was issued on 14 October for a response on 28 October.

126. I will remind members of the review's terms of reference. Essentially, it has

- two elements, the first of which is to review the initial ministerial position in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of that initial provision. The second important element is to make recommendations on the arrangements from 1 May 2012 for the ministerial provision for the Department of Justice by consulting stakeholders on the options provided in the legislation. The other element of the terms of reference was to review and to report to the Assembly by week commencing 21 November. However, that date has moved back to 29 November, as the Chair said. At last week's meeting of 8 November, the Committee agreed to defer its decision on its position and recommendations until such time as the DUP response was available. That response is now available for consideration, the agreed timescales having been extended by one week, as the Chair said.
127. Among the paperwork provided for today's meeting, I draw members' attention to two summary tables. The first is a two-page summary. It is set up according to the list of options selected — A, B, or C — and indicates, in the form of a high-level summary, the party and stakeholder positions on those options. The second of the two summary tables is structured by listing the political parties in alphabetical order and, at 10 pages, is somewhat lengthier. Full copies of all eight submissions are also available for members' reference.
128. That covers the paperwork, which I think members might refer to as we proceed.
129. **The Chairperson:** Thank you. At this point, we will ask a representative from each political party to speak to their submission. We will do that in alphabetical order.
130. **Mr Dickson:** Thank you, Chair. The Alliance Party submission is attached to the report. As you can see, option A is the preferred option. As the Minister stated very clearly in the document, that may be considered to be a rather self-interested option for him, in that he would also be presenting himself to the Assembly as the party leader. Therefore, as Minister, he is prepared to offer his resignation to allow the Assembly either to elect a different Minister if it wishes or to subject him to a confidence motion. As far as we are concerned, option A provides the best option for the Assembly to allow the Department of Justice's role to be continued, and it is the best option for the continuation of the stability that that role has brought to the judicial system and other systems in Northern Ireland. All the other options are debated in our document, and I have nothing further to add to that.
131. **Mr Hamilton:** Thank you, Chair. I think that everybody now has our submission; all the technical glitches have been ironed out. We believe that only two options in the paper present possibilities that are worth further consideration. The first is option A, which represents a continuation of the current situation, and the second is option B3. However, I stress that that is an option in the context of the reorganisation of government Departments.
132. **Mr McDevitt:** Thank you, Chair. The SDLP favours option B3, which is the running of d'Hondt for all Northern Ireland Departments, including the Department of Justice. We do not support any of the other options in the paper.
133. **Mr McCartney:** Of the broad options, our preferred one is option B, and within that, we prefer option B3.
134. **Mr Beggs:** We believe that it is important that we, as an Assembly, become more efficient, and reducing the number of Departments is central to doing that. We think that it would be a missed opportunity if we concentrated on only one issue at this time. Therefore, we believe that there should be discussions to look at the totality of Departments to bring about efficiencies, and the Department of Justice should be rolled into that.
135. **The Chairperson:** Tabled this morning is a letter from the Office of the First

- Minister and deputy First Minister in relation to its response. I will ask the Committee Clerk to summarise the submissions of the other stakeholders that are not represented on the Committee.
136. **The Committee Clerk:** I refer to table 1 in the meeting folder, which addresses the other stakeholders that are not represented on the Committee. Not all stakeholders responded to the issue of the suitability and adequacy of the initial ministerial position. However, if members want to refer to the second page of that table, they will see that the Green Party in Northern Ireland gave some responses on that issue, in relation to normalising the arrangements for the Department of Justice. Other submissions, including that of the TUV, were sought but not received. The Department of Justice did not comment specifically on the matter, nor did the two respective Committees: the Committee for Justice and the Committee for the Office of the First Minister and deputy First Minister. As the Chair highlighted, a response was received from the Office of the First Minister and deputy First Minister drawing attention to the fact that the political parties are responding on the matter.
137. As regards comments by other parties on the substantive arrangements to be put into place by 1 May 2012, the Green Party in Northern Ireland responded by selecting B3, with the caveat that it should be in conjunction with a reduction in the number of Departments. The TUV, as I said, did not respond on that. It spelt out the implications of options A and B, as far as the Department of Justice is concerned, but did not state a preference. The Committee for Justice and the Committee for the Office of the First Minister and deputy First Minister did not respond specifically on this aspect.
138. **The Chairperson:** Thank you. Are there any questions at this point?
139. **Mr McDevitt:** I would like to ask a question on a technical point. Simon has articulated the DUP's position as being conditional on a reduction in the number of Departments. However, our terms of reference do not allow us to report on anything in that area. How can we progress the discussion conditional on something that is outwith our terms of reference?
140. **The Committee Clerk:** The options paper highlighted in red that it was a list of possible options within the specific legislation set up, which is commonly called the sunset clause. As far as stakeholders and political parties coming back with riders is concerned, the Committee will have to deal with those as stated. On the question of whether it is outside the Committee's terms of reference, the options paper specifically said that these were the possible options. It is for the Committee to consider the matter.
141. **Mr McDevitt:** It is not the options paper that is of concern. Frankly, that is academic. What concerns me is what the Assembly agreed to. It agreed to a motion, pursuant to Standing Order 59(4)(b), which makes no mention whatsoever about anything except the Department of Justice. Therefore, how can this Committee make a report that goes beyond what the Assembly has mandated it to report on?
142. **The Committee Clerk:** The Assembly agreed to:
"make recommendations relating to the provision that should exist from 1 May 2012."
143. The issue is whether you feel that to go outside the options paper by proposing option B3 plus another point falls within making recommendations. I leave that for debate by members.
144. **Mr McDevitt:** This is quite an important point. I do not consider that to be a loose phrase. When I agreed to it, I was very clear in my mind that what we were dealing with was provision in relation to the Department of Justice, not the arrangement of the Northern Ireland Executive. It may be that we should seek legal advice on what jurisdiction this Committee has or does not have, because I do not want us to waste a lot

- of time having a debate for which we have no locus.
145. **The Committee Clerk:** The member is right to look at the specific terms of reference in respect of the sanction given by the Assembly. However, the Clerk Assistant has just made an important point to me. The remit of the Assembly and Executive Review Committee is much broader, in that it looks at Parts III and IV of the Northern Ireland Act 1998, which could take in such things as the number of Departments.
146. **Mr McDevitt:** I will be very specific about this. The terms of reference do not mention Parts III or IV. That is not the piece of work that we are doing here. That is a separate piece of work that would require, if we wished to report on it, a separate motion to the Assembly that would have to be agreed by this Committee. As I understand it, that is how we do business round here.
147. Therefore, I do not see, either in the motion that went before the Assembly or in the terms of reference that we have been working to in good faith, the opportunity to open up a separate debate on the number of Departments. However, if people can point me to that, that is OK. I am not making a political point; it is a procedural one.
148. **Mr Hamilton:** I feel aggrieved that the DUP is singled out as a party.
149. **Mr McDevitt:** It was not personal.
150. **Mr Hamilton:** The Ulster Unionist Party created option E as well. I am sure that Roy would agree with me that that is the way that this sort of thing works. Conall can live in a technical bubble all he wants; maybe that is where he is happiest. However, even including the options that are laid out, the reality is that if you look at some of the options under option B, you can see that they talk about putting justice powers into OFMDFM. That would constitute a reorganisation of government. I presume that there would not be a situation where you would have a Justice Ministry without Ministers. This has not been explored as an option — I am just taking the point to its natural conclusion — but you would be diminishing the number of Departments by doing that. It would mean a reorganisation of government and a reduction in the number of Departments. So, the options in the consultation paper that went out to parties represented on this Committee and other parties did, in fact, contemplate a reorganisation and a reduction in the number of Departments. Perhaps the paper was not as explicit as that, but that is what it said. People may want to live in a technical bubble, but, even within that, we have contemplated reorganising and reducing the number of Departments.
151. **Mr Beggs:** My understanding is that an Assembly Committee can produce a report on any area over which it has competence, and that includes the wider issues that have been referred to. I must admit that I was surprised that a motion went to the Assembly in the first place, because we already have the authority to make a report to the Assembly in areas for which we are accountable. Ultimately, it is up to the Assembly to decide on the report. I would sound a note of caution around the difficulties that appear to some to have been caused by going to the Assembly to seek approval to produce the report, because my understanding is that we already had the authority to delve into that area and to produce some form of report. Ultimately, it is up to the Assembly to decide whether it wants to accept or to ignore that report. However, provided that we are not stepping on the toes of another Committee that has a specific responsibility in this area, there should not be any difficulty.
152. **Mr McDevitt:** Simon is right; it is a technical point, but it has merit as a technical point. I would like to make a couple of observations. If you follow the logic of Simon's argument, you can only ever be talking about reducing the number of Departments by one, because that is the only potential consequential reduction that can be made as a result

of the options paper. Maybe the DUP should clarify its position. Is it talking about a reorganisation that would be a reduction in the number of Departments by no more than one? If that is the case, they could, technically, construct an argument around the options paper. However, if it is talking about a greater reduction, my point stands.

153. **Mr Hamilton:** For somebody who did not want us to talk about a reorganisation and a reduction in the number of Departments, Conall has now given me the opportunity to do so. I am quite happy to do that. Our position is option A, a continuation of current arrangements, or option B3, with the rider that we look at a reorganisation and reduction in the number of Departments. I am happy to do that and to bring back detailed proposals as to what that would look like in the DUP's view. In fact, I am more than happy to do so.
154. **Mr McDevitt:** I still feel uncomfortable, Chair. I think that we should take advice on this. Roy may have a point, but the fact is that we have chosen to do this process by bringing a motion to the Assembly, and we have agreed terms of reference. I want to know what the parameters of those terms of reference are. If they allow us to stray into broader issues, to what extent do they allow us to do so? Or, do they confine us to the fundamental question, which is about the future operation of the Department of Justice after May 2012?
155. **The Chairperson:** Our next item of business is to take legal advice, so we can incorporate that into that session. At this point, we declare the meeting closed to the public.

The meeting continued in private session.

On resuming —

156. **The Chairperson:** I again declare the meeting open to the public. I ask members and those in attendance to ensure that mobile phones are switched off because there has been interference on the audio feed. I will bring in the Committee Clerk at this point.
157. **The Committee Clerk:** This is basically a summary of the stakeholder responses; it was primarily the political parties that responded. I refer to the two-page table in members' packs, following the memo. That reflects the broad options: A, B, C, D and E. To the right are the stakeholders' views. To take the options in order, option A states:
- "The Assembly resolves that the Department is to continue operating from 1 May 2012."*
158. That means that the Department would continue as is. That option was supported by the Alliance Party and the DUP. Option B, specifically B3, is for a second Act before 1 May 2012. That is a second Act:
- "where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the d'Hondt mechanism in line with other Northern Ireland Ministers."*
159. That was supported by Sinn Féin, the SDLP and the Green Party. It was supported by the DUP, with the caveat that there should be a reduction in the number of Departments. It was opposed by the Alliance Party.
160. That is a high-level summary of where the parties stand on the alternatives. The record of comments on the adequacy and suitability of the initial provision is another element of the review. That was not commented on by a good number of the political parties. If members want to comment on that now or discuss it further, that can be recorded and reflected in the Committee report.
161. **Mr Hamilton:** There is consensus on some matters but not a broad consensus on any of the options. Given the differences of opinion, is it in order to propose that the Committee draft a report that outlines all the different opinions, summarises the consultation outcome, all the options, who endorsed which option and why, and any other comments? I appreciate that one party that is represented here did not pick an option as such, but it did comment in its

- own terms. We have done that before on other issues and it reflects the reality of where we are with this issue at the moment.
162. **The Chairperson:** There are no other proposals. Do we have agreement on Mr Hamilton's proposal?
- Members indicated assent.*
163. **The Chairperson:** Thank you. I remind members that a draft of the Committee's report will be presented at next week's meeting. The Committee will be asked to approve the report at that meeting and order it to be printed so that it will be ready for the debate on 29 November.
164. Turning to the draft motion for debate, the Committee needs to consider whether the usual hour and a half will be sufficient. The Chairperson will have 15 minutes to move the motion and 15 minutes to make a winding-up speech, which will leave only an hour for all other Members who wish to speak. Members may wish to have two hours for debate, and we can put that request to the Business Office.
165. **Mr Hamilton:** Two hours?
166. **The Chairperson:** Two hours. Are we agreed on that?
167. **Mr Hamilton:** An hour and a half would do, Chair.
168. **Mr McDevitt:** On a technical point, an hour and a half squeezes us and the Alliance Party. Do you need 15 minutes on each side, Chair?
169. **The Chairperson:** I do not think so.
170. **Mr McDevitt:** That could get an extra Member in.
171. **The Committee Clerk:** That could be put to the Business Committee. The 15 minutes is convention; I think it depends on the length of the debate. If it is an hour and a half, it is 15 minutes to propose and 15 minutes to make a winding-up speech.
172. **Mr Beggs:** It is 15 minutes to propose and 10 minutes to make a winding-up speech.
173. **Mr Hamilton:** There is no ministerial response. Is that right?
174. **Mr Beggs:** Yes.
175. **The Chairperson:** Two hours, members, or an hour and a half?
176. **Mr Beggs:** We should just stick to normal procedures. If there are several amendments, the time will be widened out a bit.
177. **The Chairperson:** OK. Are we agreed on an hour and a half?
- Members indicated assent.*
178. **The Chairperson:** At tab 4 of members' packs is a copy of the motion for the debate. Are members content with that?
179. **Mr Hamilton:** On a technical point, the motion states: "approves the Report". If we agree a report that does not take a definitive position but instead contains a collection of views, is "approves" the right word? Would "notes" be better? Perhaps we can come back to that.
180. **The Committee Clerk:** On the basis of what the Committee has agreed, it sounds like, if I am right, there will not be recommendations in the report, so "and recommendation(s)" should be removed from the draft motion. Is that the Committee's view?
181. **Mr Beggs:** Technically, does the Assembly approve a report that does not contain recommendations or does it just note it?
182. **Mr Hamilton:** Can we look at what we did at the start of the calendar year with the statutory review of the election of the First Minister and deputy First Minister? It would be interesting to look at the wording of that motion. I cannot remember whether we approved, noted, or whatever.
183. **The Committee Clerk:** I am nearly sure it was "approves".
184. **Mr Hamilton:** There was no agreement by the Committee and no recommendations on that occasion, or if there were recommendations, they were fairly open-ended.

185. **The Committee Clerk:** Another point is whether the report mentions a proposal that there be a second Act. It sounds like — [*Inaudible due to mobile phone interference.*] That dictates the timescale for this report. If the Committee is keeping open the option of a second Act, the Committee needs to move at its current pace of having a debate on 29 November and passing the matter to OFMDFM to draw up the necessary legislation.
186. **Mr Beggs:** Should the motion state that OFMDFM should be urgently considering a second Act, or something to that effect?
187. **Mr Hamilton:** That insinuates that a view is being taken, does it not?
188. **The Committee Clerk:** It would be reflected in the report.
189. **Mr Hamilton:** Yes. It does not have to be in the motion.
190. **The Committee Clerk:** We can check on the point about “notes” or “approves”, and the removal of “and recommendation(s)”. On the possibility of a second Act, the question is whether the Committee wants to leave that in.
191. **Mr Hamilton:** I think that we have to, because everything is on the table, and nothing is off it.
192. **Mr McDevitt:** It strikes me that it is the words “and recommendation(s)” that are getting us into trouble. Everything else simply acknowledges a report that outlines our findings on the options that we have all considered. As long as “and recommendation(s)” is removed, we do not close the door on a second Act; it is implicit that that is an option.
193. **Mr Beggs:** On another technical issue, it is my understanding that if we want to have a debate on 28 or 29 November, the Committee must submit the motion to the Business Office within the next 20 minutes so that it can be placed on the initial Order Paper.
194. **The Committee Clerk:** Yes. A member of staff will hotfoot it to the Business Office very shortly if the Committee is agreed.
195. **Mr Hamilton:** Are we taking out: “and recommendation(s) relating to the arrangements”?
196. Or are we changing “recommendation(s)” to “deliberations” or something similar?
197. **Mr McDevitt:** Chair, I propose that we just delete “and recommendation(s)”, and look at the wording to see whether it is agreeable to colleagues.
198. **The Chairperson:** Are we agreed on that, and on the timing of an hour and a half for the debate?
- Members indicated assent.*
199. **Mr Beggs:** We are agreeing that such a report would go further. Whether we agree with the report has yet to be determined. We are agreeing that it should be debated.
200. **The Chairperson:** That is right.

22 November 2011

Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
 Mr Pat Sheehan (Deputy Chairperson)
 Mr Roy Beggs
 Mr Gregory Campbell
 Mr Pat Doherty
 Mr Paul Givan
 Mr Simon Hamilton
 Mr Raymond McCartney
 Mr Conall McDevitt
 Mrs Sandra Overend

201. **The Chairperson:** We now come to the review of the initial ministerial provision in relation to the Department of Justice and the arrangements from 1 May 2012. I remind members that the Department of Justice dissolves on 1 May 2012, unless, before that date, either the Assembly resolves, with cross-community support, that the Department is to continue operating from 1 May 2012, or a second Act of the Assembly provides that the Department is to continue operating from 1 May 2012.
202. I remind members that the Assembly referred this matter to the Assembly and Executive Review Committee. I also remind members that for a Bill to receive Royal Assent by 1 May 2012, the Office of the First Minister and deputy First Minister has indicated that it wishes to introduce the Bill and have its Second Stage debate before Christmas. That requires the Committee to conclude its review and submit its report to the Assembly for debate on 29 November 2011.
203. I advise members that the purpose of today's meeting is twofold. First, the Committee will be asked to agree the wording of its motion for the debate on the Committee's report in the Assembly plenary sitting on 29 November. Secondly, the Committee will be asked to approve its report so that it can be printed. If members are content with this approach, I will ask the Committee Clerk

to speak briefly on the background and current position.

Members indicated assent.

204. **The Committee Clerk:** At the Committee meeting on 15 November, the members who were present discussed the draft motion and favoured the wording "That this Assembly notes" rather than "That this Assembly approves". Members agreed that reference to "recommendations" should be removed from the title of the report and from the motion to be debated by the Assembly, hopefully on Tuesday 29 November.
205. Members will recall that the Committee agreed a proposal at its meeting on 15 November that the Committee draft a report that outlines all the different opinions, summarises the consultation outcome, who endorsed which option and why, and any other comments. The draft report has been written on that basis. It is a factual account of the Committee's work, drawing on the stakeholders' option paper, which was approved in full by the Committee, and it also draws extensively on stakeholder responses and specific Committee discussions as it agreed its final position. As such, the final Committee discussion section is based on quotations from the Hansard report of that meeting.
206. The full text of the draft report is in members' papers, but to reduce photocopying costs and related work, the appendices are not reproduced. The Chair will refer to those appendices in a moment.
207. **The Chairperson:** I advise members that the Business Committee has agreed that 29 November will be the date for a one-and-a-half-hour debate on the motion. I seek agreement for the wording of the motion, which is in members' papers.

Members indicated assent.

208. **The Chairperson:** I refer members to the draft report, which is also in members' packs. We will go through it. Are members content with page (i), which deals with powers and membership? That is standard text that is lifted from the Assembly website.

Members indicated assent.

209. **The Chairperson:** Are members content with page (ii), which shows the table of contents and, therefore, the proposed structure and content of the report and its appendices?

Members indicated assent.

210. **The Chairperson:** As the Committee Clerk indicated, for efficiency purposes and given that the Committee previously approved all the documents, a full copy of the appendices has not been included in today's meeting pack. However, one copy is in the room should any member wish to view it. Are members content with pages 1 and 2, which cover the executive summary?

Members indicated assent.

211. **The Chairperson:** Are members content with pages 3 and 4, which cover the introduction?

212. **Mr McCartney:** I refer to paragraph 14. From my recollection, there were two reports into the arrangements on policing. Can we date the one that is referred to?

213. **The Chairperson:** OK. Are members content?

Members indicated assent.

214. **The Chairperson:** Are members content with pages 5 and 6, which deal with the Committee's approach?

Members indicated assent.

215. **The Chairperson:** Are members content with paragraphs 22 to 28? Those paragraphs introduce the section on the Committee's consideration and quote extensively from the stakeholder

submissions, which comment on the initial ministerial provision.

Members indicated assent.

216. **The Chairperson:** Are members content with paragraphs 29 to 50, which quote from the various stakeholder submissions on the arrangements from 1 May 2012 for ministerial provision for the Department of Justice? Those start with option A, continue with option B, followed by option C, and end with options D and E.

Members indicated assent.

217. **The Chairperson:** Are members content with paragraphs 51 to 55, which deal with the review or reduction in the number of government Departments in Northern Ireland?

Members indicated assent.

218. **The Chairperson:** Are members content with paragraphs 56 to 59, which deal with the Committee discussions?

Members indicated assent.

219. **The Chairperson:** I seek members' agreement that I, as Chairperson, will approve an extract of the minutes of today's proceedings for inclusion in the report. I also seek members' agreement that the first edition of the Hansard report of today's session will be included in the report of the review, as there is insufficient time for members to review the transcript and provide comments. Are members content?

Members indicated assent.

220. **The Chairperson:** I seek members' agreement that the Assembly and Executive Review Committee should order its report on the review of initial ministerial provision in relation to the Department of Justice and the arrangements from 1 May 2012 to be printed.

Members indicated assent.

221. **The Chairperson:** I seek members' agreement that in the interests of efficiency, printed copies be kept to a minimum.

Members indicated assent.

222. **The Chairperson:** I seek members' agreement for a manuscript copy of the report to be laid in the Business Office later today.

Members indicated assent.

223. **The Chairperson:** I advise the Committee that the report should be returned by the printer and distributed to members on Thursday 24 November 2011. The report will be embargoed until the commencement of the debate, which will hopefully be confirmed today by the Business Committee for the plenary sitting on Tuesday 29 November 2011.

224. I seek agreement that I, as Chairperson, propose the motion and that the Deputy Chairperson makes the winding-up speech, and I seek agreement that, as is convention, I write, as Chairperson, to all relevant stakeholders to thank them for their submissions to the review.

Members indicated assent.



Northern Ireland
Assembly

Appendix 3

Stakeholder List, Stakeholder Options Paper and associated documents

List of Stakeholders

- Alliance Party
- Democratic Unionist Party
- Green Party in Northern Ireland
- Social Democratic and Labour Party
- Sinn Féin
- Traditional Unionist Voice
- Ulster Unionist Party
- Independent
- First Minister and deputy First Minister
- Committee for OFMdFM
- Department of Justice
- Committee for Justice

Stakeholder Options Paper - 14 October 2011



Assembly and Executive Review Committee

Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

Stakeholder Options Paper

Date of Issue: 14 October 2011

Deadline for Submissions: Friday 28 October 2011

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Background to the appointment of the current Minister of Justice

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

On 9 March 2010 the First Minister and deputy First Minister tabled a motion jointly for a resolution by the Assembly, under section 4(2A) of the Northern Ireland Act 1998 (“ the 1998 Act”) that certain policing and justice matters should cease to be reserved. The motion was passed with cross-community support².

The Department of Justice Act (Northern Ireland) 2010 (“the 2010 Act”) 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. The 1998 Act 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. On 12 April 2010 a determination under Section 17 of the 1998 Act was made and approved by a resolution of the Assembly with cross-community support. Although the original determination was revoked the functions and status of the 10 existing Northern Ireland Ministers was unaffected by the

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

² HC Deb NIA 9 March 2010 <http://archive.niassembly.gov.uk/record/reports2009/100309.htm#a6>

new determination, with the Minister for Justice being added to their number.³

On the same day (12 April 2010), Mr David Ford of the Alliance Party was appointed Minister for Justice, in accordance with the procedures set out in Part 1A of Schedule 4A to the 1998 Act, and in Standing Order 44A, his nomination having been approved by a resolution of the Assembly endorsed by parallel consent. 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 designated Nationalists and a majority of designated Unionists.

What may occur by 1 May 2012?

In its report on the arrangements for the devolution of policing and justice powers, the previous Assembly and Executive Review Committee made the following recommendations:

- Any Member elected as the Minister for Justice, up until May 2012, would require a majority of Assembly Members, present and voting, including a majority of designated nationalists and a majority of designated unionists. In circumstances where a vacancy was to occur, during this period, the vacancy would be filled in the same way.
- These arrangements would be subject to a sunset clause which would bring them to an end not later than May 2012.
- Following a period of operation, the arrangements would be reviewed.
- Permanent arrangements would be put in place by 1 May 2012, and there would be no fall back arrangements. This would require the political parties to agree a way forward, by this time.

Schedule 1, Part 3, paragraph 8(1) of the Northern Ireland Act 2009 (“ the 2009 Act”) makes provision for the dissolution of the first Northern Ireland Department established by an Act of the Assembly the purpose of which is to exercise functions consisting wholly or mainly of devolved policing and

³ As per paragraph 6 of Schedule 1 to the Northern Ireland Act 2009

justice functions. The Department of Justice meets this description and therefore dissolves on 1 May 2012 unless before that date, either-

- a) the Assembly 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 1 May 2012

The Assembly and Executive Review Committee's Review of the Initial Ministerial Provision in relation to the Department of Justice.

On 10 October 2011, The Northern Ireland Assembly approved the following Motion:

“That, pursuant to Standing Order 59(4)(b), this Assembly refers to the Assembly and Executive Review Committee the matter of a review of the Initial Ministerial provision in relation to the Department of Justice and agrees that the Assembly and Executive Review Committee should make recommendations relating to the provision that should exist from 1 May 2012.”

The Committee subsequently agreed the Terms of Reference for this Review at its meeting on 11 October 2011 and agreed that this Stakeholder Options Paper be issued to all Political Parties, OFMdFM, Department of Justice and the corresponding Assembly Statutory Committees for these Departments.

The Terms of Reference for this Review are as follows:

- To review the Initial Ministerial provision in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of the initial provision.
- To make recommendations relating to the arrangements from 1 May 2012 in relation to the Ministerial provision for the Department of Justice by consulting with key stakeholders on the options that are provided for in legislation.
- To complete the review and report to the Assembly w/c 21 November 2011.

The Committee is seeking the views of these key Stakeholders by Friday 28 October 2011 in order that it may report to the Assembly by 21 November 2011.

The tight timescales of the Review reflect the very challenging timetable that would exist should the Assembly agree that a 'second Act' must be in place before 1 May 2012

Stakeholder Options

This section details possible options that flow from the legislation that *could* be developed but may not necessarily be a practical or viable way forward.

The Initial Ministerial Provision - Explanation

The 2010 Act provides at section 2(1) that the Department of Justice is to be in the charge of a minister appointed by virtue of a nomination (a) made by one or more members of the Assembly; and (b) approved by a resolution of the Assembly passed with the support of – (i) a majority of the members voting on the motion for the resolution, (ii) a majority of the designated Nationalists voting and (iii) a majority of the designated Unionists voting. This is the model set out at section 21A(3A) of the 1998 Act, as inserted by the 2009 Act and referred to therein as the “initial ministerial provision”. The provision at section 2 (1) of the 2010 Act is therefore the initial ministerial provision.

This is the method by which the current Minister for Justice was appointed.

Broad Options

The options outlined below are usefully illustrated and explained in the Assembly ‘Research and Information Service’ Briefing Note at Annex A. This paper and the paper at Annex A should not be relied upon as legal advice.

The Department of Justice dissolves on 1 May 2012 unless, *before* 1 May 2012 –

- a) the Assembly 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 1 May 2012.

THE OPTIONS AVAILABLE TO THE ASSEMBLY ARE AS FOLLOWS:

OPTION A - Assembly resolves that the Department is to continue operating from 1 May 2012.

The Assembly may pass a resolution, with cross community support, that the first Department of Justice is to continue operating from 1 May 2012. Such a resolution would mean that the “initial ministerial provision” would continue as before as such a resolution will not and cannot, repeal the “initial ministerial provision”.

Should the Assembly resolve that the Department is to continue operating from 1 May 2012, the incumbent Minister for Justice would remain in post until such times as he ceases to hold office under the 1998 Act. The initial ministerial provision does not change.

OPTION B – Second Act under the Northern Ireland Act 2009 (before 1 May 2012)

Before 1 May 2012, a ‘second Act of the Assembly’ may provide that the first Department of Justice is to continue operating from 1 May 2012, under para 8(3) of Schedule 1 to the 2009 Act.

Several sub options are available to the Assembly, should it agree to pass a ‘second Act’.

Option 1

The ‘second Act’ **may** repeal the initial ministerial provision and replace it with a model from section 21A of the 1998 Act, except the model under section 21A (3A), that is to say it may not replace the initial ministerial provision with identical provision.

This means that the second Act may provide for the Department of Justice, with effect from a specified date, to be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and deputy First Minister acting jointly and approved by a resolution of the Assembly on a parallel consent basis (section 21A (3)); or

- b) Two Northern Ireland Ministers acting jointly (section 21A (4));
or
- c) A Minister and junior Minister and for the persons holding those offices to rotate at intervals (section 21A (5));or
- d) A Northern Ireland Minister elected by the Assembly and supported by a deputy Minister elected by the Assembly (Section 21A(5A)).

If the 'second Act' repeals the initial Ministerial Provision, a determination under section 17(1), which relates to Ministerial offices, would have to be made. That is, the First Minister and deputy First Minister would, with cross community support, determine the number of Ministerial offices and their functions. All Northern Ireland Ministers would lose office, including the Minister for Justice. Those offices would then be filled under section 18 of the 1998 Act (that is, the d'Hondt process) except the Minister of Justice who would then be appointed in line with the alternative provision set out under the selected model (a – d above).

Option 2

Alternatively a 'second Act' that repeals the "initial ministerial provision" may provide for the Department to be in the joint charge of the First Minister and deputy First Minister. A determination of Ministerial offices under section 17(1) must be made and section 18 (d'Hondt) will apply, save in respect of the Department of Justice, which will be in the charge of the FM and dFM.

Option 3

If the 'second Act' repeals the "initial ministerial provision" and none of the arrangements described under options 1 and 2 above are put in place, a determination of Ministerial offices under section 17(1), would have to be made. All Northern Ireland Ministers would lose office, including the Minister for Justice. Those offices would then be filled under section 18 of the 1998 Act (that is, the d'Hondt process).

Option 4

If the 'second Act' provides that the Department of Justice is to continue operating from 1 May 2012 but does not repeal the "initial ministerial provision", then the incumbent Minister for Justice would stay in post until such times as he ceases to hold office under the 1998 Act. The initial ministerial provision does not change.

An Act of the Assembly may, under section 21 of the 1998 Act, subsequently dissolve the Department of Justice operating under the second Act; indeed, an Act of the Assembly may dissolve any Northern Ireland department at any time in accordance with section 21.

NB *It is important to note that, in the view of the Assembly and Executive Review Committee, Option B carries with it a risk in terms of timings. In order to meet the 1 May 2012 deadline, the Bill would need to progress through the Assembly and achieve Royal Assent to a very challenging timetable.*

OPTION C – Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.

The Assembly may resolve that the Department of Justice is to continue operating from 1 May 2012 as stated in OPTION A above.

An Act of the Assembly may, under section 21 of the 1998 Act, subsequently dissolve a Department of Justice which is continuing in operation by virtue of a resolution made under paragraph 8(1)(a) of the 2009 Act.

An Act of the Assembly may also make provision for a new Department of Justice, under section 21 of the 1998 Act, and may make provision for the appointment of a Minister for Justice under section 21A of the 1998 Act, using one of the models under section 21A and Schedule 4A as per Option B above. In such a case the Assembly could also use the 'model' provided for in section 21A(3A) of the 1998 Act.

The subsequent Bill would have to comply with section 6 of the Northern Ireland Act 1998 in respect of legislative competence; the mechanisms for appointing ministers are generally speaking excepted matters.

OPTION D – Act Dissolving the Department of Justice pre 1 May 2012

Nothing in the Northern Ireland Act 2009 prevents the Northern Ireland Assembly from dissolving the first Department at any time.⁴ This means that an Act of the Assembly could dissolve the Department of Justice before May 2012.

OPTION E - Do Nothing

If no action is taken, the Department of Justice will dissolve on 1 May 2012. The Ministerial office will remain. The functions in relation to policing and justice will remain devolved.

⁴ Schdeule1, Part 3, paragraph 9 of the Northern Ireland Act 2009.

Guidelines for completion of Submissions

The Committee would ask that Stakeholders submit electronic responses using the enclosed pro-forma.

The pro-forma seeks the views of stakeholders:

- a. On the suitability/adequacy of the initial Ministerial provision and whether it should be continued through a resolution of the Assembly; and
- b. In relation to the arrangement from 1 May 2012 for Ministerial provision for the Department of Justice:
 - i. stakeholders' preferred option(s) ;
 - ii. reasons for this preference(s);
 - iii. options that would not be acceptable to stakeholders; and
 - iv. stakeholders' reasons for 'rejecting' options.

Stakeholders may wish to refer to the Northern Ireland Assembly Research and Information Service Briefing Note – 'Department of Justice Sunset Clause', which is enclosed at Annex a, to assist them when forming views on their preferred options.

Stakeholders are advised that the information contained in this Options Paper or the Briefing Note at Annex a, should not be relied upon as legal advice, or as a substitute for it.

Stakeholders should be aware that their written evidence will be discussed by the Committee in public session and made public by the Committee by publication of its Report or other means.

Stakeholders should also be aware that if they decide to publish their submissions, the publication would not be covered by Assembly privilege in relation to the law of defamation.



Assembly and Executive Review Committee

**Review of the Initial Ministerial Provision in relation to
the Department of Justice and recommendations relating to
the arrangements from 1 May 2012.**

Stakeholder proforma for Submissions

Deadline for submissions Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

Stakeholder

(Party/Department/Committee Name)

Submitted by

Contact Details:

Initial Ministerial Provision

The Committee would like you to express your view on the suitability and adequacy of the Initial Ministerial provision to inform its review of this provision.

(This box will expand as you type)

Broad Options

This section lists possible options that flow from the legislation that *could* be developed but may not necessarily be a practical or viable way forward.

The Assembly must have in place arrangements by 1 May 2012 if it wishes to ensure the continued operation of the Department for Justice. The options for the Assembly, as set out in the Committee's Options Paper, are listed below:

- A. Assembly resolves that the Department is to continue operating from May 2012.**
- B. Second Act under the Northern Ireland Act 2009 (before 1 May 2012)**
- C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.**
- D. Act Dissolving the Department pre 1 May 2012**
- E. Do Nothing**

Please set out your preferred option and unacceptable options using the box below.

NB If either Option B or C is your preferred option, then please **ALSO** complete the appropriate section entitled "Further Options for a 'second Act' under OPTION B or "Further Options for an Act subsequent upon a resolution as per Option C" overleaf.

(This box will expand as you type)

Further Options for a 'second Act' under OPTION B.

Please complete this section if you have indicated that your preferred option is B.

There are further options (Options 1 – 4 below) open to the Assembly, should it pursue Options B.

In addition, Option B1, has four sub options (a – d) in relation to the models that can be selected for Ministerial provision under that option.

OPTION B1 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of the Schedule 4A to the 1998 Act (save for 21A(3A))

Sub Options under OPTION B1

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

OPTION B2 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.

OPTION B3 – A 'second Act' where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers?

OPTION B4 - A 'second Act' that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this achieved through an Act rather than a simple resolution)

Please set out your preferred option and unacceptable options using the box below.

If your preferred option is B1, please also set out your preferred sub option and unacceptable options.

(this text box will expand as you type)

Further Options for an Act subsequent upon a resolution as per OPTION C

Please complete this section if you have indicated that your preferred option is Option C.

There are further options (Options 1 – 2 below) open to the Assembly, should it pursue Options C.

In addition, Option C1, has five sub options (a – e) in relation to the models that can be selected for Ministerial provision under that option.

OPTION C1 - A subsequent Act of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of and Schedule 4A to the 1998 Act.

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.
- e) A Minister appointed as per the provision made at section 21A(3A) of the 1998 Act (ie appointed in the same way as under the Initial Ministerial provision).

OPTION C2 - A subsequent Act where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers.

Please set out your preferred option (C1 or C2) and unacceptable options using the box below.

If your preferred option is C1, please also set out your preferred sub option and unacceptable options.

(This box will expand as you type)

Thank you for your submission

Deadline for submissions is Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper 000/00

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 (9^h March 2010)
<http://archive.niassembly.gov.uk/record/reports2009/100309.htm#a6>

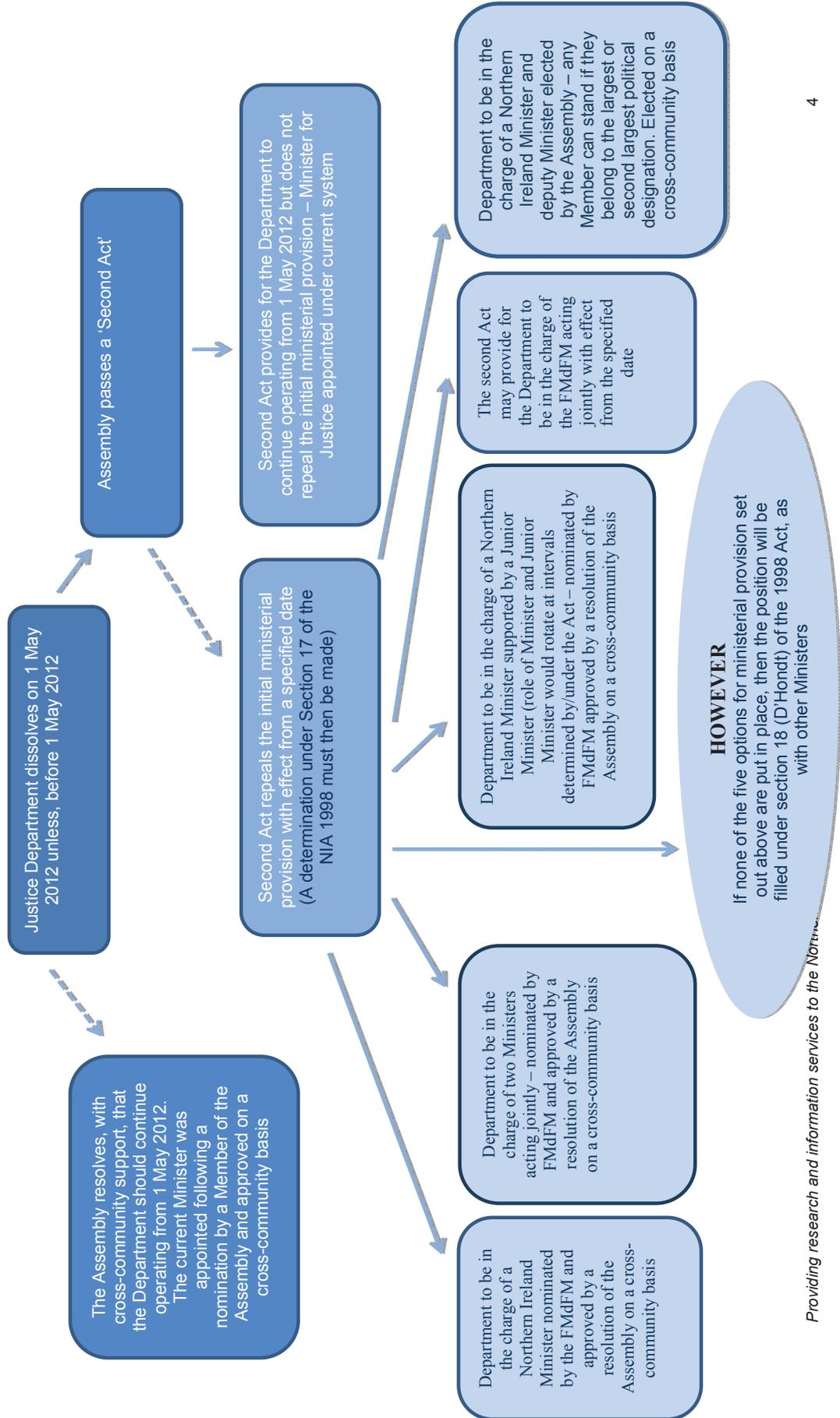
³ Northern Ireland Assembly – Official Report (12 April 2010)
<http://archive.niassembly.gov.uk/record/reports2009/100309.htm#a7>

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.



Providing research and information services to the Northern Ireland Assembly

Example Stakeholder Options Paper Covering Letter



Mr Stephen Moutray
Chairperson
Assembly and Executive Review Committee
Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

14 October 2011

Dear

You will be aware that, on 10 October 2011, the Assembly approved the following Motion:

“That, pursuant to Standing Order 59(4)(b), this Assembly refers to the Assembly and Executive Review Committee the matter of a review of the initial Ministerial provision in relation to the Department of Justice and agrees that the Assembly and Executive Review Committee should make recommendations relating to the provision that should exist from 1 May 2012.”

At its meeting on 11 October, the Committee agreed its Terms of Reference and key stakeholders to be consulted for this Review.

The Committee agreed Terms of Reference for the Review as follows:

- To review the Initial Ministerial provision in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of the initial provision.
- To make recommendations relating to the arrangements from 01 May 2012 in relation to the Ministerial provision for the Department of Justice by consulting with key stakeholders on the options that are provided for in legislation.
- To complete the review and report to the Assembly w/c 21 November 2011.

I now invite your Party/ the Department to submit its views, using the attached Stakeholder Options Paper, for the Committee's consideration. I would highlight that the Options Paper details and lists possible options that flow from the legislation that could be developed but may not necessarily be a practical or viable way forward.

The deadline for written submissions is **Friday 28 October 2011**. May I apologise for the tight timescale in relation to this request; however this is to allow sufficient time for a 'second Act' to be made before 1 May 2012, should the Assembly agree this particular course of action.

Should you have any queries in relation to making a submission, please contact the Committee Clerk or Assistant Clerk in the first instance. Contact details can be found on the attached paper.

Yours Sincerely,

Mr Stephen Moutray
Chairperson

Memo to Chairperson of the OFMdFM Committee

14 October 2011



**Assembly and Executive Review Committee
Room 375
Parliament Buildings**

From: Stephen Moutray, Committee Chairperson, Assembly and Executive Review Committee

To: Tom Elliot, Chairperson of the Committee for the Office of the First Minister and deputy First Minister

Date: 14 October 2011

Subject: Review of the Initial Ministerial provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

1. At its meeting on 11 October 2011, the Assembly and Executive Review Committee (AERC) agreed its Terms of Reference for the above Review as follows:
 - To review the Initial Ministerial provision in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of the initial provision.
 - To make recommendations relating to the arrangements from 1 May 2012 in relation to the Ministerial provision for the Department of Justice by consulting with key stakeholders on the options that are provided for in legislation.
 - To complete the review and report to the Assembly w/c 21 November 2011.

2. The Committee agreed to seek submissions from the Assembly's political parties, its independent Member, OFMdfM and the Department of Justice and their respective Assembly Committees.
3. I therefore invite your Committee to submit its views, using the attached Stakeholder Options Paper, for AERC's consideration. I would highlight that the Options Paper details and lists **all** possible options that flow from the legislation that could be developed but may not necessarily be a practical or viable way forward.
4. The deadline for written submissions is **Friday 28 October 2011**. May I apologise for the tight timescale in relation to this request, however this is to allow sufficient time for a 'second Act to be made, should the Assembly agree this particular course of action.
5. You may wish to ask your Department to copy your Committee in when making its submission to AERC.

Should you have any queries, please do not hesitate to call John Simmons, the Committee Clerk, on extension 21787 or Ashleigh Mitford, the Assistant Clerk, on extension 21928.

Stephen Moutray
Chairperson of the Assembly and Executive Review Committee

Memo to Chairperson of the Committee for Justice

14 October 2011



**Assembly and Executive Review Committee
Room 375
Parliament Buildings**

From: Stephen Moutray, Committee Chairperson, Assembly and Executive Review Committee

To: Paul Given, Chairperson of the Committee for Justice

Date: 14 October 2011

Subject: Review of the Initial Ministerial provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

1. At its meeting on 11 October 2011, the Assembly and Executive Review Committee (AERC) agreed its Terms of Reference for the above Review as follows:
 - To review the Initial Ministerial provision in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of the initial provision.
 - To make recommendations relating to the arrangements from 1 May 2012 in relation to the Ministerial provision for the Department of Justice by consulting with key stakeholders on the options that are provided for in legislation.
 - To complete the review and report to the Assembly w/c 21 November 2011.

2. The Committee agreed to seek submissions from the Assembly's political parties, its independent Member, OFMdfM and the Department of Justice and their respective Assembly Committees.
3. I therefore invite your Committee to submit its views, using the attached Stakeholder Options Paper, for AERC's consideration. I would highlight that the Options Paper details and lists **all** possible options that flow from the legislation that could be developed but may not necessarily be a practical or viable way forward.
4. The deadline for written submissions is **Friday 28 October 2011**. May I apologise for the tight timescale in relation to this request, however this is to allow sufficient time for a 'second Act to be made, should the Assembly agree this particular course of action.
5. You may wish to ask your Department to copy your Committee in when making its submission to AERC.

Should you have any queries, please do not hesitate to call John Simmons, the Committee Clerk, on extension 21787 or Ashleigh Mitford, the Assistant Clerk, on extension 21928.

Stephen Moutray
Chairperson of the Assembly and Executive Review Committee



Northern Ireland
Assembly

Appendix 4

Stakeholder Submissions, Together With Summary Tables

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Stakeholder Responses in relation to the arrangements that should be in place by 1 May 2012– Summary Table A

Broad Options	Sub Options	Stakeholder views
A. Assembly resolves that the Department is to continue operating from 1 May 2012.		Supported by the Alliance Party and the DUP
B. Second Act under the Northern Ireland Act 2009 (before 1 May 2012)	B1: A ‘second Act’ of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of the Schedule 4A to the 1998 Act (save for 21A(3A)) Department of Justice, with effect from a specified date, to be in the charge of:	No explicit support from stakeholders (for B1 a, b, c or d)
	a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act	
	b) Two Northern Ireland Ministers acting jointly (section 21A (4))	
	c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.	
	d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.	
	B2: A ‘second Act’ of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.	No explicit support from stakeholders for B2
	B3: A ‘second Act’ where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D’Hondt mechanism in line with the other Northern Ireland Ministers	Supported by DUP, Sinn Féin, the SDLP and the Green Party. Opposed by the Alliance Party
	B4: A ‘second Act’ that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this achieved through an Act rather than a simple resolution)	No explicit support from stakeholders

Broad Options	Sub Options	Stakeholder views
<p>C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.</p>	<p>C1: A subsequent Act of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of and Schedule 4A to the 1998 Act.</p> <p>Department of Justice, with effect from a specified date, to be in the charge of:</p>	<p>No support from stakeholders (for C1 a, b, c or d)</p>
	<p>a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act</p>	
	<p>b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act</p>	
	<p>c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.</p>	
	<p>d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.</p>	
	<p>e) A Minister appointed as per the provision made at section 21A(3A) of the 1998 Act (ie appointed as per the Initial Ministerial provision).</p>	
	<p>C2 - A subsequent Act where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers.</p>	<p>No outright support. Green Party could support it. However, Alliance, DUP and DoJ raise legal issues.</p>
<p>D. Act Dissolving the Department of Justice pre 1 May 2012</p>		<p>No support from any stakeholders for this option</p>
<p>E. Do Nothing</p>		<p>No support from any stakeholders for this option</p>

Summary of Responses

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REVIEW OF THE INITIAL MINISTERIAL PROVISION IN RELATION TO THE DEPARTMENT OF JUSTICE AND RECOMMENDATIONS RELATING TO THE ARRANGEMENTS FROM 1 MAY 2012.

Table 1 - Summary of Stakeholder Responses in relation to the suitability and adequacy of Initial Ministerial Provision

Stakeholder	Response
<p>Alliance (1 November 2011)</p>	<p>'...the Initial ministerial provision was probably the only suitable compromise position that could secure devolution.'</p> <p>'The election of the Justice Minister by a vote in the Assembly requiring more than a simple majority is in line with a recommendation by Alliance to the St Andrews talks – for an Assembly vote to ratify the appointment of all Ministers, regardless of their method of nomination. The current system has shown a measure of confidence in the Minister of Justice, which cannot be demonstrated for other Ministers, and has been crucial, given the continuing sensitivities around the administration of Justice.'</p> <p>'Alliance believes that the Initial Ministerial Provision has successfully provided for the devolution of Justice to the Assembly over the last 18 months.'</p>
<p>DUP (9 November 2011)</p>	<p>'The present arrangements have operated satisfactorily, however the outcome of the 2011 Assembly elections has led to the position where the Alliance Party, despite having fewer seats in the Assembly than either the UUP or the SDLP, has more seats in the Executive. While this is explained by separate methods of election it does nonetheless give rise to unfairness.'</p>

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<p>The Green Party in Northern Ireland (25 October 2011)</p>	<p>The initial Ministerial provision: ‘...was a critical mechanism in engendering confidence for the devolution of policing and justice powers...’ ‘...has led to what under one analysis might be called the “undemocratic” position of a party currently occupying twice the ministerial positions of a party with twice the number of MLAs..’ ‘The Green Partybelieves the balance now needs to be towards normalising the justice department and associated ministerial appointment process. We do not believe the initial ministerial provision should continue after May 2012’</p>
<p>Mr David McClarty (Ind) SDLP (31 October 2011)</p>	<p>Mr McClarty advised the Committee Office that he will not be making a submission. n/a</p>
<p>Sinn Féin (2 November 2011)</p>	<p>‘Transfer of powers of policing and justice to the local Assembly was successfully accomplished after the Hillsborough Agreement in February 2010. The transfer of powers on policing and justice was only agreed because there was sufficient cross-community confidence and support for this to be achieved. The initial provisions for appointment of the Minister for Justice were accepted as an interim arrangement. Sinn Féin believes that from May 2012, the appointment of Minister of Justice should be on the basis of d’hondt, as with every other local Minister.’</p>
<p>TUV</p>	<p><i>Submission not received</i></p>
<p>UUP (26 October 2011)</p>	<p>n/a</p>
<p>Department of Justice (1 November 2011)</p>	<p>n/a</p>

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Committee for Justice OFMdFM	<i>Submission not received</i>
Committee for OFMdFM	Referred to Political Parties Responding
Committee for OFMdFM	n/a

UPDATED 10 NOVEMBER 2011**Table 2 - Summary of Stakeholder Responses in relation the arrangements that should be in place by 1 May 2012.**

Stakeholder	Preferred Option(s)	Comments	Rejected Option(s)	Comments
Alliance (1 November 2011)	A	<p>‘... (that the Department continues to operate on the basis of the Initial Ministerial Provision from May 2012) would have the obvious benefit of extending the current operation of the Department without further upheaval, and may have the best chance of maintaining the current level of public and political confidence.</p> <p>It is by no means clear that the anxieties around the devolution of Justice (and specifically the relationship between different parties and the Minister) are any less now than in February 2010.</p> <p>Option A would also continue to ensure that the Minister of Justice benefits from an initial and ongoing measure of confidence among a cross-community majority of MLAs,</p>	<p>‘..entirely unacceptable ..’: D, E</p> <p>‘..unacceptable..’: C</p>	<p>‘.....would amount to a statement that devolution of justice had failed; would lead to the re-imposition of Direct Rule in relation to justice powers; and would be a major step backward for the political process.’</p> <p>‘..would, in effect, be an attempt to both extend the current provision <i>and</i> provide an opportunity to do something else in due course. While this may be appealing as a compromise between options A and B, Alliance is concerned that it (and all the sub-options within it) appears to run contrary to the spirit of the 2009 Act, which requires the Assembly to <i>either</i> resolve to extend the initial provision <i>or</i> put one of the variations within Option B in its place, but not both. There may be a significant risk of legal challenge in attempting to do both, and the powers of a Justice Minister are such that</p>

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		<p>which is crucial given the continuing sensitivities around the administration of Justice.’</p> <p>‘Since this statement may be considered to reflect self-interest, the current Minister is prepared to offer his resignation to allow the Assembly to elect a different Minister if it wishes, or to subject himself to a motion of confidence.’</p>	<p>B1(a-d);</p>	<p>risks of legal challenge must be avoided. To do otherwise would be destabilizing.’</p> <p>‘For all of the reasons set out, Alliance believes that Options B1(a-d) all carry a real risk of destabilizing the functioning of the Department of Justice at a time when devolution is still “bedding in” and when the programme of much-needed reform requires continued momentum.’ (see submission for more detail)</p> <p>‘...carries with it all of the risks associated with Option B1(b), compounded by the added disadvantage of adding to the existing workload of OFMDFM the duties of one of the most complex (and highest-spending) Departments.’</p> <p>‘While the Alliance Party would indeed welcome the day when the Department of Justice, and the exercise of its functions, is seen as a normal part of government, the party has consistently maintained its opposition to the use of D’Hondt with no opportunity for the Assembly to endorse the nominations made under that formula through a vote demonstrating cross-community support. The Assembly should</p>
			<p>B2;</p>	
			<p>B3</p>	

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				<p>be able to demonstrate its support for all Ministers by a suitable weighted majority and this is especially the case for the Minister of Justice.'</p> <p>'..unnecessarily cumbersome, when a simple resolution would achieve the same outcome without the need for primary legislation.'</p>
<p>DUP (9 November 2011)</p>	<p>A or B3</p>	<p>'We believe that option A and option B (3) – subject to a reduction in the number and reorganisation of departments - are worthy of further consideration.'</p>	<p>'..not favoured..': '..no merit..' B4</p> <p>(See comments) B1(a-d), B2, B4</p> <p>'should be avoided' C</p>	<p>'Option B1(a) is similar to option B4 though less desirable given the formal requirement of nomination by the First Minister and deputy First Minister, acting jointly. Option B1 (b), (c) and (d) would not represent an acceptable way forward at this time. We do not believe there is any merit in option B2. Option B4 has no obvious advantages over option A. Only Option B3 – subject to a reduction in the number of departments is worthy of further consideration.'</p> <p>'We believe that in order to avoid any potential legal difficulties that the matter should be dealt with before May 2012 and the option of subsequent legislation should be avoided.'</p>

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<p>The Green Party (25 October 2011)</p>	<p>B3</p>	<p>‘...we are committed to a normalization of the Justice Department and ministerial appointment from May 2012. We are also confident that the Committee can play its role in ensuring the legislation is progressed through the Assembly by this time’</p> <p>‘.. If this option were advanced .. they (The Committee) should immediately expedite activity to come to a position on a reduced number of government departments and engage with OFMDFM to make such a reduction happen. Such a reduction has broad political consensus and is sympathetic to the current budgetary climate. If a reduction in departments could be achieved by May 2012 then d’Hondt could be run under the new number of ministers.’</p>	<p>‘... <i>Unacceptable</i>’</p> <p>D, E</p> <p>B2, B1(a), C1(a -e)</p> <p>[the paper implies that B1 b-e are unacceptable]</p> <p>‘...<i>reticent to endorse...</i>’</p> <p>Either C2</p>	<p>‘we are committed to the continuing devolution of policing and justice’</p> <p>‘We are opposed to any option which provides unnecessary control into the hands of the First and deputy First Minister.... undemocratic’</p> <p>‘The only merit for Option C seems to be to open a longer timescale for legislation’</p> <p>‘ (if) Option C is pursued our preferred option is C2 ... in conjunction with the reduction in number of government departments.’</p> <p>‘As above, option C1(a) is wholly unacceptable. Options C1(b),(c) and (d) are unnecessary and unacceptable. Option C1(e) does not deliver the change we seek’</p> <p>‘perpetuates the status quo without any legislative change’</p>
		<p>OR A</p>		

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<p>Mr David McClarty - Independent MLA</p>		<p>Mr McClarty advised the Committee Office that he will not be making a submission.</p>	<p>n/a</p>	
<p>SDLP (31 October 2011)</p>	<p>B3</p>	<p>'It is essential that this matter is progressed by the parties with due regard for the principles of equality and inclusion embedded in the Good Friday Agreement.'</p> <p>'the SDLP remains committed to a process which would realign the Justice Ministry with all other ministries through the application of D'Hondt to fill all posts.'</p> <p>'We would envisage as part of this particular process, talks on a review of the number of ministries and the redistribution of departmental functions, etc. taking place in the context of an all-party debate on institutional reform.'</p>	<p>n/a</p>	

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<p>Sinn Féin (2 November 2011)</p>	<p>B3</p>	<p>'Sinn Féin favours Option B, which makes alternative provision to the present interim arrangements for appointing the Minister of Justice, in line with the safeguards of the Good Friday Agreement.'</p> <p>'Sinn Féin's first preference under Option B is that the Minister for Justice would be appointed by d'hondt (OPTION B.3)'</p>	<p>n/a</p>	
<p>TUV (2011)</p>		<p><i>Submission not received</i></p>	<p>n/a</p>	
<p>UUP (26 October 2011)</p>		<p>None selected from Options Paper at this stage.</p> <p>'...this review now provides an opportunity to reduce the number of government departments in Northern Ireland. This will require more detailed all Party discussions to discuss the out-workings and practicalities of such a decision, which would of course include the Department of Justice...'</p>	<p>n/a</p>	

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Department of Justice (1 November 2011)	n/a	Implications of Options A and B are listed but no preference is stated.	‘ ..could not be supported ..without such (legal) certainty.’ C	‘The department is not certain that section 21A was intended to enable new Ministerial provision to be made in these circumstances.’ ‘The consequences of a successful legal challenge . . .could be very serious.’ DOJ would cease to exist and would be unable to discharge its functions’
Committee for Justice OFMdfM		<i>Submission not received</i>	‘ ..not feasible ..’ D;E n/a	
Committee for OFMdfM (9 November 2011)		<i>Submission not received</i> ‘The Committee believes that this issue is best resolved on a party basis and, as a consequence, the Committee will not be making a response to the options outlined by your Committee.’	n/a n/a	

Alliance Party - 1 November 2011



Assembly and Executive Review Committee

Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

Stakeholder proforma for Submissions

Deadline for submissions Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
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Stakeholder

Alliance Party

Submitted by

David Ford MLA, Party Leader

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Initial Ministerial Provision

The Committee would like you to express your view on the suitability and adequacy of the Initial Ministerial provision to inform its review of this provision.

The Alliance Party's over-riding concern, both in April 2010 and since, has been to secure the devolution of justice powers to the Northern Ireland Assembly.

Given the concerns that existed at the time of the Hillsborough Castle Agreement, the Initial ministerial provision was probably the only suitable compromise position that could secure devolution.

The election of the Justice Minister by a vote in the Assembly requiring more than a simple majority is in line with a recommendation by Alliance to the St Andrews talks – for an Assembly vote to ratify the appointment of all Ministers, regardless of their method of nomination. The current system has shown a measure of confidence in the Minister of Justice, which cannot be demonstrated for other Ministers, and has been crucial, given the continuing sensitivities around the administration of Justice.

Alliance believes that the Initial Ministerial Provision has successfully provided for the devolution of Justice to the Assembly over the last 18 months.

Broad Options

This section lists all possible options that flow from the legislation that *could* be developed but may not necessarily be a practical or viable way forward.

The Assembly must have in place arrangements by 1 May 2012 if it wishes to ensure the continued operation of the Department for Justice. The options for the Assembly, as set out in the Committee's Options Paper, are listed below:

- A. Assembly resolves that the Department is to continue operating from May 2012.**
- B. Second Act under the Northern Ireland Act 2009**

(before 1 May 2012)
- C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.**
- D. Act Dissolving the Department pre 1 May 2012**
- E. Do Nothing**

Please set out your preferred option and unacceptable options using the box below.

NB If either Option B or C is your preferred option, then please **ALSO** complete the appropriate section entitled “Further Options for a ‘second Act’ under OPTION B or “Further Options for an Act subsequent upon a resolution as per Option C” overleaf.

The starting point for Alliance's analysis of the options available to the Assembly is that the Assembly must have in place arrangements by 1 May 2012 if it wishes to ensure the continued operation of the Department for Justice. The Alliance Party remains committed to the devolution of justice powers to the Northern Ireland Assembly, believing that devolution has provided for greater accountability, ownership and effective delivery than was possible under Direct Rule. Our analysis of the options is based on an underlying determination that justice powers must remain devolved.

Options D and E (an “Act dissolving the Department” and “Do Nothing”, respectively) would amount to a statement that devolution of justice had failed; would lead to the re-imposition of Direct Rule in relation to justice powers; and would be a major step backward for the political process. They **are therefore entirely unacceptable to Alliance**.

Option C (a resolution that the department is to continue operating from 1 May 2012 with a Subsequent Act) would, in effect, be an attempt to both extend the current provision *and* provide an opportunity to do something else in due course. While this may be appealing as a compromise between options A and B, Alliance is concerned that it (and all the sub-options within it) appears to run contrary to the spirit of the 2009 Act, which requires the Assembly to *either* resolve to extend the initial provision *or* put one of the variations within Option B in its place, but not both. There may be a significant risk of legal challenge in attempting to do both, and the powers of a Justice Minister are such that risks of legal challenge must be avoided. To do otherwise would be destabilizing, and **is therefore unacceptable to Alliance**.

Option B (a second Act under the Northern Ireland Act 2009) brings with it a range of further options and sub-options. Given the variation between these options and sub-options, it is not possible to simply state a preference for or against option B, and **we therefore set out a more detailed analysis of these options in the section dealing with Option B below**.

In summary, the Alliance Party’s analysis within that section concludes that:

Options B1(a) (Minister nominated by FM and dFM and approved by cross-community vote); **B1(b)** (two Ministers acting jointly); **B1(c)** (a Minister and Junior Minister rotating); **B1(d)** (a Minister and Junior Minister); **B2** (DoJ in the charge of FM and dFM); and **B3** (Minister appointed under D’Hondt mechanism) **are all unacceptable to Alliance**.

Option B4 strikes Alliance as unnecessarily cumbersome, when a simple resolution would achieve the same outcome without the need for primary legislation. For this reason, **while not unacceptable, Option B4 is not favoured by Alliance**.

Option A (that the Department continues to operate on the basis of the Initial Ministerial Provision from May 2012) would have the obvious benefit of extending the current operation of the Department without further upheaval, and may have the best chance of maintaining the current level of public and political confidence. It is by no means clear that the anxieties around the devolution of Justice (and specifically the relationship between different parties and the Minister) are any less now than in February 2010. Option A would also continue to ensure that the Minister of Justice benefits from an initial and ongoing measure of confidence among a cross-community majority of MLAs, which is crucial given the continuing sensitivities around the administration of Justice. **For these reasons, and those set out above**

and in the following section, of the options available to the Assembly, the Alliance Party's preference is for Option A.

Since this statement may be considered to reflect self-interest, the current Minister is prepared to offer his resignation to allow the Assembly to elect a different Minister if it wishes, or to subject himself to a motion of confidence.

Further Options for a 'second Act' under OPTION B.

Please complete this section if you have indicated that your preferred option is B.

There are further options (Options 1 – 4 below) open to the Assembly, should it pursue Options B.

In addition, Option B1, has four sub options (a – d) in relation to the models that can be selected for Ministerial provision under that option.

OPTION B1 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of the Schedule 4A to the 1998 Act (save for 21A(3A))

Sub Options under OPTION B1

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

OPTION B2 - A ‘second Act’ of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.

OPTION B3 – A ‘second Act’ where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D’Hondt mechanism in line with the other Northern Ireland Ministers?

OPTION B4 - A ‘second Act’ that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this achieved through an Act rather than a simple resolution)

Please set out your preferred option and unacceptable options using the box below.

If your preferred option is B1, please also set out your preferred sub option and unacceptable options.

As summarised above, and detailed below, none of the variations under option B are attractive to the Alliance Party.

Option B1(a) (Minister nominated by FM and dFM and approved by cross-community vote) merely replicates the current provisions, adding the requirement that the Minister is nominated by the First Minister and Deputy First Minister. Aside from the fact that there is no reason to believe this would be more acceptable now than it was on 12 April 2010, such an addition could lead to a risk of stalemate, were the First Minister and deputy First Minister unable to reach agreement on a nomination. It also limits the opportunities for other MLAs to make nominations and carries an implication that the Justice Minister somehow “belongs” to the First Minister and deputy First Minister in a way that other Ministers who have not been nominated by them either individually or jointly, are not. **As such, Alliance believes that Option B1(a) would be a step back, rather than a step forward, in comparison to the current provisions, and is unacceptable.**

Options B1(b) (two Ministers acting jointly); **B1(c)** (a Minister and Junior Minister rotating); and **B1(d)** (a Minister and Junior Minister) all carry with

them the risk of varying degrees of paralysis and confusion within the department.

As is reflected by the very fact that the current consultation is taking place, and has been seen from political debate since devolution, the exercise of justice powers in Northern Ireland remains a matter of considerable contention. Expecting two Ministers to run the Department jointly would carry significant risk of stalemate in a far greater range of areas than has been seen, for example, in the office of First and deputy First Minister since that department was established in 1998. In addition, with the benefit of the Alliance Party Leader's experience of serving as Justice Minister since April 2010, it is clear that the exercise of the powers of the Justice Minister often requires swift decision-making. Two Ministers acting jointly does not lend itself to such a scenario.

Having a Minister and Junior Minister rotating at intervals is no more desirable. The necessarily protracted business of policy-making would either be disrupted and potentially reversed as rotations occurred, or, in an attempt to prevent that occurring, would be even more protracted, if not, prevented, due to efforts to broker agreements between the two office holders.

While the scenario of a Minister and Junior Minister is not an uncommon one, they are usually in either a single-party government or in a coalition government with a clearly agreed programme for government in relation to policy matters, and a very clearly established line of authority, with the Junior Minister subject to the authority of the Minister in relation to non-policy functions. Alliance considers it unlikely in the Northern Ireland context that such arrangements would be achievable. Officials within the Department would therefore find themselves in the impossible position of not knowing whose authority they are subject to.

Option B2 (DoJ in the charge of FM and dFM) carries with it all of the risks associated with Option B1(b), compounded by the added disadvantage of adding to the existing workload of OFMDFM the duties of one of the most complex (and highest-spending) Departments.

For all of the reasons set out, Alliance believes that Options B1(a-d) all carry a real risk of destabilizing the functioning of the Department of Justice at a time when devolution is still “bedding in” and when the programme of much-needed reform requires continued momentum. They are therefore unacceptable to Alliance.

Option B3 (Minister of Justice appointed under D'Hondt mechanism) may appear attractive in the sense that it would indicate a “maturing” of the Assembly's approach to Justice, with the appointment of a Justice Minister being achieved on the same basis as other departments. While the Alliance Party would indeed welcome the day when the Department of Justice, and the exercise of its functions, is seen as a normal part of government, the party has consistently maintained its opposition to the use of D'Hondt with no

opportunity for the Assembly to endorse the nominations made under that formula through a vote demonstrating cross-community support. The Assembly should be able to demonstrate its support for all Ministers by a suitable weighted majority and this is especially the case for the Minister of Justice.

Option B3 is therefore unacceptable to Alliance.

Option B4 strikes Alliance as unnecessarily cumbersome, when a simple resolution would achieve the same outcome without the need for primary legislation. For this reason, **while not unacceptable, Alliance sees no merit in that option.**

Further Options for an Act subsequent upon a resolution as per OPTION C

Please complete this section if you have indicated that your preferred option is Option C.

There are further options (Options 1 – 2 below) open to the Assembly, should it pursue Options C.

In addition, Option C1, has five sub options (a – e) in relation to the models that can be selected for Ministerial provision under that option.

OPTION C1 - A subsequent Act of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of and Schedule 4A to the 1998 Act.

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.
- e) A Minister appointed as per the provision made at section 21A(3A) of the 1998 Act.

OPTION C2 - A subsequent Act where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the

Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers.

Please set out your preferred option (C1 or C2) and unacceptable options using the box below.

If your preferred option is C1, please also set out your preferred sub option and unacceptable options.

(This box will expand as you type)

Thank you for your submission

Deadline for submissions is Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

DUP - 9 November 2011



Assembly and Executive Review Committee

**Review of the Initial Ministerial Provision in relation to
the Department of Justice and recommendations relating to
the arrangements from 1 May 2012.**

Stakeholder proforma for Submissions

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OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

Broad Options

This section lists possible options that flow from the legislation that *could* be developed but may not necessarily be a practical or viable way forward.

The Assembly must have in place arrangements by 1 May 2012 if it wishes to ensure the continued operation of the Department for Justice. The options for the Assembly, as set out in the Committee's Options Paper, are listed below:

- A. Assembly resolves that the Department is to continue operating from May 2012.**
- B. Second Act under the Northern Ireland Act 2009 (before 1 May 2012)**
- C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.**
- D. Act Dissolving the Department pre 1 May 2012**
- E. Do Nothing**

Please set out your preferred option and unacceptable options using the box below.

NB If either Option B or C is your preferred option, then please **ALSO** complete the appropriate section entitled "Further Options for a 'second Act' under OPTION B or "Further Options for an Act subsequent upon a resolution as per Option C" overleaf.

We believe that option A and option B (3) – subject to a reduction in the number and reorganisation of departments - are worthy of further consideration.

Further Options for a ‘second Act’ under OPTION B.

Please complete this section if you have indicated that your preferred option is B.

There are further options (Options 1 – 4 below) open to the Assembly, should it pursue Options B.

In addition, Option B1, has four sub options (a – d) in relation to the models that can be selected for Ministerial provision under that option.

OPTION B1 - A ‘second Act’ of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of the Schedule 4A to the 1998 Act (save for 21A(3A))

Sub Options under OPTION B1

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or

- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act

- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

OPTION B2 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.

OPTION B3 – A 'second Act' where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers?

OPTION B4 - A 'second Act' that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this achieved through an Act rather than a simple resolution)

Please set out your preferred option and unacceptable options using the box below.

If your preferred option is B1, please also set out your preferred sub option and unacceptable options.

Option B1(a) is similar to option B4 though less desirable given the formal requirement of nomination by the First Minister and deputy First Minister, acting jointly. Option B1 (b), (c) and (d) would not represent an acceptable way forward at this time. We do not believe there is any merit in option B2. Option B4 has no obvious advantages over option A. Only Option B3 – subject to a reduction in the number of departments is worthy of further consideration.

Further Options for an Act subsequent upon a resolution as per OPTION C

Please complete this section if you have indicated that your preferred option is Option C.

There are further options (Options 1 – 2 below) open to the Assembly, should it pursue Options C.

In addition, Option C1, has five sub options (a – e) in relation to the models that can be selected for Ministerial provision under that option.

OPTION C1 - A subsequent Act of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of and Schedule 4A to the 1998 Act.

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

- e) A Minister appointed as per the provision made at section 21A(3A) of the 1998 Act (ie appointed in the same way as under the Initial Ministerial provision).

OPTION C2 - A subsequent Act where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers.

Please set out your preferred option (C1 or C2) and unacceptable options using the box below.

If your preferred option is C1, please also set out your preferred sub option and unacceptable options.

We believe that in order to avoid any potential legal difficulties that the matter should be dealt with before May 2012 and the option of subsequent legislation should be avoided.

Thank you for your submission

Deadline for submissions is Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

Green Party in Northern Ireland - 25 October 2011



Assembly and Executive Review Committee

Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

Stakeholder proforma for Submissions

Deadline for submissions Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

Stakeholder :The Green Party in Northern Ireland

(**Party**/Department/Committee Name)

Submitted by: Conor Quinn

Contact Details:

The Green Party of Northern Ireland
76 Abbey Street
Bangor
Co. Down
BT20 4JB

Tel: 028 90521467
Email: gareth.brown@party.niassembly.gov.uk

Initial Ministerial Provision

The Committee would like you to express your view on the suitability and adequacy of the Initial Ministerial provision to inform its review of this provision.

The Green Party in Northern Ireland believes the initial Ministerial provision was a critical mechanism in engendering confidence for the devolution of policing and justice powers to Northern Ireland. Looking forward, a judgment must be made as to the level of community confidence in the devolution of policing and justice, but also as to how we are progressing as a society to what might be called “normal politics”. It must be acknowledged that the initial ministerial provision has led to what under one analysis might be called the “undemocratic” position of a party currently occupying twice the ministerial positions of a party with twice the number of MLAs in the Assembly. The Green Party is committed to achieving community confidence and normal politics but believes the balance now needs to be towards normalising the justice department and associated ministerial appointment process. We do not believe the initial ministerial provision should continue after May 2012.

Broad Options

This section lists possible options that flow from the legislation that *could* be developed but may not necessarily be a practical or viable way forward.

The Assembly must have in place arrangements by 1 May 2012 if it wishes to ensure the continued operation of the Department for Justice. The options for the Assembly, as set out in the Committee’s Options Paper, are listed below:

- A. Assembly resolves that the Department is to continue operating from May 2012.**
- B. Second Act under the Northern Ireland Act 2009 (before 1 May 2012)**
- C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.**
- D. Act Dissolving the Department pre 1 May 2012**
- E. Do Nothing**

Please set out your preferred option and unacceptable options using the box below.

NB If either Option B or C is your preferred option, then please **ALSO** complete the appropriate section entitled “Further Options for a ‘second Act’ under OPTION B or “Further Options for an Act subsequent upon a resolution as per Option C” overleaf.

The preferred option of the Green Party in Northern Ireland is Option B3: that the Assembly passes a Second Act under the 2009 Act, that the Department of Justice Continues from 2012, that the initial ministerial provision is repealed and that all ministers are reappointed under d’Hondt in May 2012.

Options D and E are entirely unacceptable to the Green Party as we are committed to the continuing devolution of policing and justice.

We are opposed to any option which provides unnecessary control into the hands of the First and deputy First Minister: consequently the following are entirely unacceptable: Option B2, Options B1(a) and C1(a). This is due to the undemocratic nature of these options.

We are reticent to endorse either option C or option A. The only merit for Option C seems to be to open a longer timescale for legislation while A perpetuates the status quo without any legislative change.

Again, we are committed to a normalization of the Justice Department and ministerial appointment from May 2012. We are also confident that the Committee can play its role in ensuring the legislation is progressed through the Assembly by this time.

Further Options for a ‘second Act’ under OPTION B.

Please complete this section if you have indicated that your preferred option is B.

There are further options (Options 1 – 4 below) open to the Assembly, should it pursue Options B.

In addition, Option B1, has four sub options (a – d) in relation to the models that can be selected for Ministerial provision under that option.

OPTION B1 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of the Schedule 4A to the 1998 Act (save for 21A(3A))

Sub Options under OPTION B1

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

OPTION B2 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.

OPTION B3 – A ‘second Act’ where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D’Hondt mechanism in line with the other Northern Ireland Ministers?

OPTION B4 - A ‘second Act’ that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this achieved through an Act rather than a simple resolution)

Please set out your preferred option and unacceptable options using the box below.

If your preferred option is B1, please also set out your preferred sub option and unacceptable options.

Our preferred option is B3 - that the Minister for Justice would be appointed under d’Hondt. If this option were advanced by the Committee we believe that they should **immediately expedite activity to come to a position on a reduced number of government departments and engage with OFMDFM to make such a reduction happen**. Such a reduction has broad political consensus and is sympathetic to the current budgetary climate. If a reduction in departments could be achieved by May 2012 then d’Hondt could be run under the new number of ministers.

We note the Committee’s concern regarding the legislative timetable for Option B but note also the dearth of legislation which has come before the Assembly since May 2011.

Further Options for an Act subsequent upon a resolution as per OPTION C

Please complete this section if you have indicated that your preferred option is Option C.

There are further options (Options 1 – 2 below) open to the Assembly, should it pursue Options C.

In addition, Option C1, has five sub options (a – e) in relation to the models that can be selected for Ministerial provision under that option.

OPTION C1 - A subsequent Act of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of and Schedule 4A to the 1998 Act.

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

- e) A Minister appointed as per the provision made at section 21A(3A) of the 1998 Act (ie appointed in the same way as under the Initial Ministerial provision).

OPTION C2 - A subsequent Act where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers.

Please set out your preferred option (C1 or C2) and unacceptable options using the box below.

If your preferred option is C1, please also set out your preferred sub option and unacceptable options.

<p>In the event that Option C is pursued our preferred option is C2 and believe this option should be pursued in conjunction with the reduction in number of government departments. As above, option C1(a) is wholly unacceptable. Options C1(b),(c) and (d) are unnecessary and unacceptable. Option C1(e) does not deliver the change we seek.</p>
--

Thank you for your submission

Deadline for submissions is Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

SDLP - 31 October 2011

AERC
07 NOV 2011
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Margaret Ritchie MP MLA
SDLP
Room 272
Parliament Buildings
Stormont Estate
BT4 3XX

28 October 2011

John Simmons
Committee Clerk
Assembly and Executive Review Committee
Room 242
Parliament Buildings
Stormont Estate
BT4 3XX

Dear John,

I refer to the letter of 14 October 2011, from AERC Chairperson Stephen Moutray MLA, regarding the options available in the review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

The SDLP has given the options detailed in the Chairperson's correspondence serious consideration. It is essential that this matter is progressed by the parties with due regard for the principles of equality and inclusion embedded in the Good Friday Agreement. This was our position in 2009 when the Assembly was debating the Bill providing for the devolution of justice and policing, and firmly remains so today.

It is therefore the view of the SDLP that of the options presented, we would favour Option B.3. Consistent with our earlier position on this matter, the SDLP remains committed to a process which would realign the Justice Ministry with all other ministries through the application of D'Hondt to fill all posts.

We would envisage as part of this particular process, talks on a review of the number of ministries and the redistribution of departmental functions,

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Leader
Margaret Ritchie

Deputy Leader
Patsy McGlone

Partí Sóisialta Daonlathach an Lucht Oibre
Member of the Party of European Socialists and Socialist International





etc. taking place in the context of an all-party debate on institutional reform.

Yours sincerely,

Margaret Ritchie MP MLA.

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+44 (0)28 9023 6699

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Leader
Margaret Ritchie

Deputy Leader
Patsy McGlone

Páirtí Sóisialta Daonlathach an Lucht Oibre
Member of the Party of European Socialists and Socialist International



Sinn Féin - 2 November 2011



Assembly and Executive Review Committee

Review of the Initial Ministerial Provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

Stakeholder proforma for Submissions

Deadline for submissions Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

Stakeholder
Sinn Féin

(Party/Department/Committee Name)

Submitted by
Raymond McCartney, MLA & Gerry Kelly, MLA

Contact Details:

**Sinn Féin Assembly Administration,
Room 262, Parliament Buildings**

Email : justice.sinnfein@gmail.com

Initial Ministerial Provision

The Committee would like you to express your view on the suitability and adequacy of the Initial Ministerial provision to inform its review of this provision.

Transfer of powers of policing and justice to the local Assembly was successfully accomplished after the Hillsborough Agreement in February 2010. The transfer of powers on policing and justice was only agreed because there was sufficient cross-community confidence and support for this to be achieved. The initial provisions for appointment of the Minister for Justice were accepted as an interim arrangement. Sinn Féin believes that from May 2012, the appointment of Minister of Justice should be on the basis of d'hondt, as with every other local Minister.

Broad Options

This section lists possible options that flow from the legislation that *could* be developed but may not necessarily be a practical or viable way forward.

The Assembly must have in place arrangements by 1 May 2012 if it wishes to ensure the continued operation of the Department for Justice. The options for the Assembly, as set out in the Committee's Options Paper, are listed below:

- A. Assembly resolves that the Department is to continue operating from May 2012.**
- B. Second Act under the Northern Ireland Act 2009 (before 1 May 2012)**
- C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act.**
- D. Act Dissolving the Department pre 1 May 2012**
- E. Do Nothing**

Please set out your preferred option and unacceptable options using the box below.

NB If either Option B or C is your preferred option, then please **ALSO** complete the appropriate section entitled “Further Options for a ‘second Act’ under OPTION B or “Further Options for an Act subsequent upon a resolution as per Option C” overleaf.

Sinn Féin favours Option B, which makes alternative provision to the present interim arrangements for appointing the Minister of Justice, in line with the safeguards of the Good Friday Agreement.

Further Options for a ‘second Act’ under OPTION B.

Please complete this section if you have indicated that your preferred option is B.

There are further options (Options 1 – 4 below) open to the Assembly, should it pursue Options B.

In addition, Option B1, has four sub options (a – d) in relation to the models that can be selected for Ministerial provision under that option.

OPTION B1 - A ‘second Act’ of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of the Schedule 4A to the 1998 Act (save for 21A(3A))

Sub Options under OPTION B1

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act

- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.

OPTION B2 - A 'second Act' of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.

OPTION B3 – A 'second Act' where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers?

OPTION B4 - A 'second Act' that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this achieved through an Act rather than a simple resolution)

Please set out your preferred option and unacceptable options using the box below.

If your preferred option is B1, please also set out your preferred sub option and unacceptable options.

Sinn Féin's first preference under Option B is that the Minister for Justice would be appointed by d'hondt (OPTION B.3)

Further Options for an Act subsequent upon a resolution as per OPTION C

Please complete this section if you have indicated that your preferred option is Option C.

There are further options (Options 1 – 2 below) open to the Assembly, should it pursue Options C.

In addition, Option C1, has five sub options (a – e) in relation to the models that can be selected for Ministerial provision under that option.

OPTION C1 - A subsequent Act of the Assembly that repeals the initial Ministerial provision and replaces it with provision of the kind mentioned in section 21A of and Schedule 4A to the 1998 Act.

The Department of Justice, with effect from a specified date, can be in the charge of:

- a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and Deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act;or
- b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act
- c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.
- d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A(5A) of the 1998 Act.
- e) A Minister appointed as per the provision made at section 21A(3A) of the 1998 Act (ie appointed in the same way as under the Initial Ministerial provision).

OPTION C2 - A subsequent Act where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers.

Please set out your preferred option (C1 or C2) and unacceptable options using the box below.

If your preferred option is C1, please also set out your preferred sub option and unacceptable options.

(This box will expand as you type)

Thank you for your submission

Deadline for submissions is Friday 28 October 2011

Submissions should be made to the Committee Clerk as follows:

committee.assembly&executivereview@niassembly.gov.uk

OR

Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

UUP - 26 October 2011



A & E R C
28 OCT 2011
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Room 216
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

26th October 2011

Mr Stephen Moutray
Chairperson
Assembly and Executive Review Committee
Room 375
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Dear Stephen

Thank you for your letter requesting a response from the Ulster Unionist Party regarding the Ministerial provision in relation to the Department of Justice.

I firstly wish to note my Party concern at the short timescale available for response to this request. Therefore it has not been possible to incorporate all of our views at this stage.

The Ulster Unionist Party believes this review now provides an opportunity to reduce the number of government departments in Northern Ireland. This will require more detailed all Party discussions to discuss the out-workings and practicalities of such a decision, which would of course include the Department of Justice, and I would ask that these discussions are convened as a matter of urgency.

Yours sincerely

Tom Elliott MLA
Leader, Ulster Unionist Party

Department of Justice - 1 November 2011

FROM THE OFFICE OF THE MINISTER OF JUSTICE



Department of
Justice

www.dojni.gov.uk

Minister's Office
Block B, Castle Buildings
Stormont Estate
Ballymiscaw
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BT4 3SG
Tel: 028 90528121
Fax: 028 90528434
Teletext: 028 90527668
private.office@dojni.x.gsi.gov.uk
Our ref: COR/1987/2011

Mr Stephen Moutray
Chairperson
Assembly and Executive Review Committee
Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
Belfast BT4 3XX

30 October 2011

Dea Styke

Review of Initial Ministerial provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

Thank you for providing me with the opportunity to input as Minister of Justice to the Review of Initial Ministerial provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012, also referred to as the Sunset Clause.

The response attached focuses on the implications for the functioning of the Department and you may wish to note that I have written in response to your request for my views as Alliance Party leader separately.



FROM THE OFFICE OF THE MINISTER OF JUSTICE



Department of
Justice

www.dojni.gov.uk

My response as Minister of Justice is attached at Annex A.

Yours

David Ford

DAVID FORD MLA
Minister of Justice

ENC





Assembly and Executive Review Committee

**Review of the Initial Ministerial Provision in relation to the
Department of Justice and recommendations relating to the
arrangements from 1 May 2012.**

Stakeholder: Department of Justice

(Party/Department/Committee Name)

Submitted by: Jane Holmes

Contact Details:

Minister's Office Department of Justice Block B Castle Buildings Stormont Estate BT4 3SG T: 02890 528272 E: jane.holmes@dojni.x.gsi.gov.uk

Annex A

Sunset Clause – DOJ response to options

Broad Options	Sub Options	Implications
<p>A. Assembly resolves that the Department is to continue operating from May 2012.</p>		<ul style="list-style-type: none"> • DOJ would become a permanent department; • No change in Minister for the time being; • Minister would continue to be selected via cross community vote; and • The ongoing work would continue.
<p>B. Second Act under the Northern Ireland Act 2009 (before 1 May 2012)</p> <p>[NB: any of the options available under B. can be implemented from any future specified date as long as the Act is passed before 1 May 2012]</p>	<p>B1: The DOJ, with effect from a specified date, can be in the charge of:</p> <p>a) A Northern Ireland Minister appointed by virtue of a nomination by the First Minister and deputy First Minister acting jointly and approved by a resolution of the Assembly passed with the support of a majority of the Members voting, a majority of designated Nationalists voting and a majority of the designated Unionists voting as per section 21A(3) of the 1998 Act.</p> <p>b) Two Ministers acting jointly as per section 21A(4) of the 1998 Act</p> <p>c) A Minister who is supported by a junior Minister and for the persons holding those offices to rotate at intervals to be determined by or under the Act as per 21A(5) of the 1998 Act.</p>	<ul style="list-style-type: none"> • The practical arrangements would continue as at present, but the Minister could change; and • It would be beneficial if there was a requirement built in that the nomination must be agreed within a specified period of time.
		<ul style="list-style-type: none"> • DOJ would have 2 Ministers and, therefore, would be treated differently from the other departments, apart from OFMDFM; and • It might be more difficult to resolve certain issues.
		<ul style="list-style-type: none"> • DOJ would have 2 Ministers and, therefore, would continue to be treated differently from the other departments; and • There is a risk that this option could result in policy confusion caused by frequent rotation of the positions of Minister and junior Minister.

Annex A

Broad Options	Sub Options	Implications
	d) A Northern Ireland Minister who is elected by the Assembly who is supported by a junior Minister elected by the Assembly as per section 21A (5A) of the 1998 Act.	<ul style="list-style-type: none"> • DOJ would continue to be treated differently from the other departments; and • Clarification would be required in relation to the powers of the Junior Minister.
	B2: A 'second Act' of the Assembly that repeals the initial Ministerial provision and provides for the Department of Justice to be in the charge of the First Minister and deputy First Minister acting jointly with effect from the specified date.	<ul style="list-style-type: none"> • DOJ would have 2 Ministers and, therefore, would be treated differently from the other departments, apart from OFMDFM; and • There could be issues of loading for FM and dFM.
	B3 – A 'second Act' where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the D'Hondt mechanism in line with the other Northern Ireland Ministers?	<ul style="list-style-type: none"> • The Department would be treated the same way as all other Departments.
	B4: A 'second Act' that does not repeal the initial ministerial provision (i.e. the current arrangements stay in place but this is achieved through an Act rather than a simple resolution)	<ul style="list-style-type: none"> • As per option A, with no added value.
C. Resolution that the Department is to continue operating from 1 May 2012 with a Subsequent Act .		<ul style="list-style-type: none"> • This option would allow the current arrangements to continue until a second Act is brought forward at a later date; and • The Department is not certain that section 21A was intended to enable new Ministerial provision to be made in these circumstances. The Department considers that any new Ministerial provision needs to have legal certainty. The consequences of a successful legal challenge to a Ministerial provision or an appointment could be very serious. This option, therefore, could not be supported by the Department without such certainty.
D. Act Dissolving the Department pre 1 May 2012.		<p><u>Options D and E:</u></p> <ul style="list-style-type: none"> • DOJ would cease to exist and would be unable to discharge its functions including in relation to prisons, prisoners and the courts which would still be devolved. This situation would, therefore, be untenable.
E. Do Nothing		<ul style="list-style-type: none"> • Options D and E are not feasible in terms of the continuing operation of a devolved Justice system.

Annex A

Broad Options	Sub Options	Implications
		DOJ officials are available to brief AERC members on the implications if they would find that useful.

OFMdfM - 14 November 2011



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Stephen Moutray MLA
Chairperson
Assembly and Executive Review Committee
Room 375
Parliament Buildings
Stormont Estate
Ballymiscaw
BELFAST
BT4 3XX

Our Ref: COR/1378/11

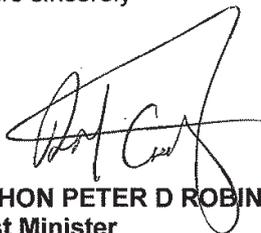
14 November 2011

Dear Stephen,

Thank you for your letter of 14 October inviting views on the Committee's Review of the Initial Ministerial Provision in relation to the Department of Justice.

We understand that the political parties have now responded to the Committee.

Yours sincerely



RT HON PETER D ROBINSON MLA
First Minister



MARTIN McGUINNESS MP MLA
deputy First Minister

APPROVED BY THE MINISTERS
AND SIGNED IN THEIR ABSENCE

OFMdfM Committee - 9 November 2011



**Northern Ireland
Assembly**

**Committee for the Office of First Minister and Deputy
First Minister**

Room 435
Parliament Buildings

Tel: +44 (0)28 9052 1903

**From: Peter Hall
Clerk to the Committee for the
Office of the First Minister and Deputy First Minister**

Date: 9th November 2011

**To: John Simmons
Clerk to the Assembly and Executive Review Committee**

Subject: Options for appointing a Justice Minister post May 2012

Dear John,

At its meeting of the 19th October the Committee for the Office of the First Minister and deputy First Minister considered correspondence you're your Committee Chairperson regarding the options for the appointment of a Justice Minister after May 2012. The Committee agreed that I should indicate that it believes that this issue is best resolved on a party basis and, as a consequence, the Committee will not be making a response to the options outlined by your Committee.

This memo is to formalise the previous verbal transmission of the above information.

Regards,

A handwritten signature in blue ink, appearing to read 'Peter Hall'.

**Peter Hall
Committee Clerk**



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