



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

Department of Justice Bill

14 October 2009

NORTHERN IRELAND ASSEMBLY

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FOR THE OFFICE OF THE FIRST MINISTER AND
DEPUTY FIRST MINISTER**

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Members present for all or part of the proceedings:

Mr Danny Kennedy (Chairperson)
Ms Martina Anderson
Mr Alex Attwood
Mr Tom Elliott
Mr Barry McElduff
Mr Francie Molloy
Mr Stephen Moutray
Mr George Robinson
Mr Jim Shannon
Mr Jimmy Spratt

Witnesses:

Mr Tony Canavan) Office of the First Minister and deputy First Minister
Mr Geoffrey Simpson)

The Chairperson (Mr Kennedy):

Following last week's meeting, the Committee agreed to conduct its clause-by-clause scrutiny of the Bill at this meeting. We have already heard from Eilis Haughey from the Bill Office.

Members' papers contain a copy of a letter from Jim Allister QC, leader of the Traditional Unionist Voice, concerning the Department of Justice Bill. The letter was received into the public e-mail of the Assembly and Executive Review Committee on Thursday 8 October, six days after the closing date for submissions to the Committee.

There are a number of options. We can ignore the letter because it was received late; accept and consider it and include it in the Committee report; or accept and consider it and agree not to include it in the Committee Report, but place it in the Library.

Mr Spratt:

The letter came in after the closing date. No changes can be made for anybody. Everybody was publicly notified of the date by which submissions should be in.

The Chairperson:

Are you saying that we should ignore it completely?

Mr Spratt:

Yes.

The Chairperson:

Are there any other views?

Mr Spratt:

It was not even sent to the right Committee.

Mr Elliott:

I do not think that there is any harm in noting it. We can note it as part of the consideration. How do we stand legally? What is the legal point of view?

Mr Molloy:

If there was a closing date on the submissions, anything received after that date is not valid. Otherwise, we would have to be open to submissions from anybody at any time.

Mr Elliott:

To be fair, whenever the Planning Service has a 14-day period to accept responses to planning applications, it still accepts representations that come in outside of that period. Maybe we should check the legal standpoint. If that is the situation, so be it.

The Chairperson:

We would have to respond to the letter anyway to indicate to the person that it had been received late, and therefore would not form part of the inquiry report.

Mr Attwood:

I have no sympathy with the contents of the letter, but, to stand back, it is a racing certainty that everybody around this table has replied to public consultations out of time at one time or another. We have all done it. We would be rightly annoyed at having gone to the bother of sending a response if we then did not have any recognition that we responded.

Yes, the letter is out of time; we have all been in that place. However, it would not pain anyone to include it in the report. Practically, to choose to go down another road is to give people easy ammunition when they should not be given any ammunition. My sense is that we should include it, not get too preoccupied by it, and move on. It will be buried deep in the memory of this Committee's work.

The Chairperson:

The suggestion is that we either ignore the letter completely and do not publish it anywhere, or include it in the report, but specify that it was too late for inclusion and consideration.

Mr Spratt:

If I heard the conversation right earlier, someone asked for legal clarification; however, I have yet to hear that.

The Chairperson:

We can get a legal view on that for next week.

Ms Anderson:

Am I right to say that the two options are either to ignore the letter or to include it in the report, or is there a third option of putting it the Library?

The Chairperson:

Yes. The letter can be put in the Library in all cases, apparently. Whether this is a legal matter, however, is open to debate; it is for us to decide. I am not sure that there are legal points to be

debated, because the fact is that the letter was received late.

Mr Spratt:

Are we now saying, for example, that it is all right for someone to submit a tender for a procurement contract two or three days late and that it will be considered? If there is a date being worked to, there must be some sort of legal process. If that were allowed to happen, it would make a nonsense of the public procurement process.

The Chairperson:

We are not talking about public procurement.

Mr Spratt:

That does not matter; I am making a point.

The Chairperson:

I accept your point. We have had a discussion. Are there any proposals?

Mr Elliott:

I propose that we accept the letter and put it in the report, as Mr Attwood suggested.

The Chairperson:

Do other members have any proposals?

Mr McElduff:

I propose that we ignore the letter. I am not going to propose that we do not ignore it, so I propose that we ignore it.

The Chairperson:

There are two counter-proposals. I will deal with the first proposal, Mr Elliott's, first. He proposed that the letter be published with a note clearly confirming that it was received late and that it is, therefore, not to be considered for consultation purposes.

Members indicated assent.

The Chairperson:

Mr McElduff, do you still wish to pursue your proposal?

Mr McElduff:

No.

The Chairperson:

Then the decision is made.

The Chairperson:

We now move to the clause-by-clause scrutiny of the Department of Justice Bill. With us today are Office of the First Minister and deputy First Minister (OFMDFM) officials Mr Tony Canavan and Mr Geoffrey Simpson. Good afternoon, gentlemen. Thank you for your attendance and patience. I remind members that this session is being recorded by Hansard for inclusion in the Committee's report.

Mr Canavan and Mr Simpson are here simply to assist with any questions or queries that members might have. Members will have the opportunity to raise concerns and suggest amendments. Members should read the relevant clauses and paragraphs in the Bill along with the relevant commentary in the memorandum.

The Bill has three clauses and one schedule. Each clause will be considered in turn. The Committee has three options: to agree that it is content with the clause as drafted, to agree to recommend to the Assembly that a clause be amended, or to reject the clause as drafted. Members will have the opportunity to consider any amendments to each clause following the reading of the clause.

Clause 1 (The Department of Justice)

The Chairperson:

Clause 1 provides for the establishment of the Department of justice as a Northern Ireland Department, describes its intended functions and makes consequential amendments to other Orders. Paragraphs 1-20 of the schedule detail amendments to legislation to change references to:

“justice department (within the meaning of the Justice (Northern Ireland) Act 2002)”
to “Department of Justice”. Paragraphs 21 and 22 detail amendments to legislation to omit references to:

“the justice department”.

Are there any recommendations for amendments?

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Schedule agreed to.

Clause 2 (Minister in charge of Department of Justice)

The Chairperson:

Clause 2 sets out the arrangements for appointing the Minister of justice. Do members have any recommendations for amendments?

Mr Attwood:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: Leave out clause 2.

This should not detain us too long, because the politics of this have been well rehearsed. My amendment is to delete clause 2, the consequence of which is that the Department of justice will get established, but the provisions for the filling of the post of justice Minister fall to the Northern Ireland Act 1998 and the d’Hondt mechanism for democratic inclusion.

Clause 2 is drafted as it is because, in order to go down that particular road of bypassing d’Hondt and the 1998 Act, one has to put into the legislation and the Assembly one of the prior models that are outlined in a number of pieces of Westminster legislation. The relevant Westminster legislation for the purposes of clause 2 is legislation that was passed in 2006, 2007 and 2009, where there were a family of models for the filling of the justice Ministry. The 2006 legislation, as I recall, laid down provisions for the appointment of the Minister by rotation, the appointment of joint Ministers and the appointment of a single Minister on a cross-community vote.

The 2007 legislation, which is known as the Hain legislation, contained provision for the

appointment of a senior and a junior Minister. The 2009 legislation outlined nine different models for the appointment of the Minister. If clause 2 is deleted, one does not opt in to any of the models that are in the 2006, 2007 or 2009 legislation. In those circumstances, one falls back on the original legislation, namely the Northern Ireland Act 1998, and the provision therein for the appointment of Ministers save OFMDFM, which is the principle of d'Hondt.

I propose to delete clause 2, which deletes the cross-community provision that has been recommended by OFMDFM and reinstates the provisions of the Good Friday Agreement — the democratic wishes of the people of Ireland.

The Chairperson:

Your proposal is, basically, to leave out clause 2 in its entirety. Has anyone any comments or questions for the officials?

Mr Elliott:

I want to ask Mr Attwood a question in respect of his proposed amendment. Would it mean a total rerun of d'Hondt after the appointment, in the first instance, or a follow-on to the appointments that have already been made?

Mr Attwood:

That would be a matter of political judgement for the various parties. D'hondt could be rerun, or there could be an arrangement between parties as to what will happen in respect of the eleventh Ministry, which will be the justice Ministry. We are neutral on whether d'Hondt should be rerun. That is a matter for political judgement. If that is what parties decide to do, so be it. If there is another mechanism for the appointment to the justice Ministry by arrangement between political parties, so be it. That is a matter for political judgement after the legislation has been passed. We are saying that the appointment should be made strictly on the basis of d'Hondt and the principle of democratic inclusion.

Mr Kennedy:

We do not doubt your view. However, I wonder whether Eilis Haughey or any of the officials could guide us. What is your understanding of the consequences of removal of clause 2 for the appointment of a policing and justice Minister?

Mr Tony Canavan (Office of the First Minister and deputy First Minister):

My understanding is that Mr Attwood is correct: the default mechanism would be d'Hondt. It would require a rerun of d'Hondt.

The Chairperson:

That is not what Mr Attwood said.

Mr Geoffrey Simpson (Office of the First Minister and deputy First Minister):

Under section 18 of the Northern Ireland Act 1998, all Northern Ireland Ministers shall cease to hold office in the event of a resolution that causes one or more ministerial offices to become vacant.

The Chairperson:

And the way to correct that under the current law, the 1998 Act, is by d'Hondt?

Mr Simpson:

It would require d'Hondt to be run in totality.

The Chairperson:

Therefore, it is not a matter of adding a ministerial post by d'Hondt: it requires a total rerun of d'Hondt.

Mr Canavan:

That is our understanding. Another consequence that Mr Attwood did not mention is that the 2012 sunset effect would not apply, because that is conditional on the model, which is contained in this legislation, being used.

The Chairperson:

And that is part of clause 2? Therefore, the sunset clause would fall as well, effectively. What is your understanding of how the sunset clause works?

Mr Canavan:

I recall Mr Attwood's comment at the previous meeting. Subsequently, there was a letter from OFMDFM on that subject. We stand by that letter, which is dated 21 September.

At Second Stage, we heard a slightly fuller theory about the application of the sunset clause. After that, we took the opportunity to consult people who were closer to the drafting of the Northern Ireland Act 2009. They stated that it was never the intention that the interpretation that Mr Attwood's Assembly colleague placed on a particular provision in the 2009 Act would apply to frustrate the operation of the sunset clause. It was not intended that there would be a hidden fallback mechanism.

The Chairperson:

Is that the law of unintended consequences?

Mr Canavan:

It would be a matter for the courts to decide on the appropriate interpretation. We have an interpretation of the legislation as it stands. Other people may have a different interpretation. Ultimately, the interpretation would be decided by the courts. We find it hard to see how the clause that relates to the application of the imposed model, which was put into the Northern Ireland Act 1998 in 2007, could apply in the circumstances that have been suggested — to frustrate the sunset clause — because of the condition that is attached to that in the 2007 amendment to the Northern Ireland Act 1998.

The Chairperson:

Is there any way that we can seek certainty on the issue? Should we do so? Can anyone provide certainty on the issue, let alone a judge?

Mr Canavan:

Ultimately, certainty can only be provided by a court, but there may be a range of legal interpretations. We would point to the fact that there is a condition attached to the application of the imposed mechanism — the Minister and junior Minister approach — which Mr Attwood suggests would be imposed by the Northern Ireland Office in advance of the sunset clause's applying. That condition is that the Secretary of State has to be of the view that there is no possibility of the Assembly's passing legislation. The sort of legislation that would be relevant to that is this Bill: should this Bill be passed, our view is that the possibility of imposing a solution would fall, because the condition could not be met.

The Chairperson:

You would then, presumably, rely on the Secretary of State to intervene?

Mr Canavan:

In what sense?

The Chairperson:

Who would fix it? If there was deadlock, and it was clear that the Assembly might not renew the legislation or pass similar legislation, would it be up to the Secretary of State to deal with it? Is that what you are saying?

Mr Canavan:

It would not be the task of the Secretary of State to impose the solution that was created in 2007. The Secretary of State may have other policies and plans; the First Minister said words to that effect in the Second Stage debate. In our view there is no secret fallback position or a hidden default clause in the legislation.

The Chairperson:

If it falls, it falls.

Mr Canavan:

Yes.

The Chairperson:

What would be the consequence of that?

Mr Canavan:

The consequence would be that the Department of justice would be dissolved on 1 May 2012.

The Chairperson:

And revert where?

Mr Canavan:

It would not revert anywhere. It would dissolve.

Mr Elliott:

Where would the powers revert to?

The Chairperson:

Through the Chair — I am the Chairperson, sorry. *[Laughter.]* In your view, where would the powers revert to at that stage?

Mr Canavan:

There is no provision in the legislation for a reversion of the powers.

Mr Elliott:

What are the consequences of that? Do the powers stay with the Executive — if there is a functioning Executive — or do they revert to the Northern Ireland Office or Westminster?

The Chairperson:

Do they simply disappear?

Mr Canavan:

They would disappear in the sense that the responsibility for carrying out those functions would be with the Department that had ceased to exist and had dissolved. It creates a constitutional conundrum, but the theory is that that imposes on the Assembly the requirement to do something about it before that.

Mr Attwood:

In our interpretation, one of the consequences would be —

Mr Spratt:

On a point of order, Chairperson. By asking those questions, I think that you are putting the officials into a position that they should not be put into. You are asking “what if” questions about 2012. It is totally unreasonable to put the officials in that position at this stage.

Mr Elliott:

We are only asking questions. The officials are here to try to answer them, and if they cannot

answer them, so be it. We are trying to get answers today.

The Chairperson:

The officials do not appear to be either unwilling or incapable of answering. That is important. The questions that have been asked so far have been reasonable; they have been about the Bill and its consequences and even its potential. We could say that we are in a “what if” situation. It is possible for such circumstances to prevail.

Mr Attwood:

In the note which I sent the Committee Clerk, I said that I would share my party’s legal advice with members of the Committee and the witnesses. I will now do so, so that you can assess whether the critical part of our legal advice is stronger, given that there are a number of interpretations. I can distribute it now or later in the meeting; it is up to you.

I was going to come back to this after clause-by-clause scrutiny of the Bill but, now that the matter has arisen, these are the points I want to make. I am firmer in my view than I was two or three weeks ago in relation to the legal interpretation of this. The reason for that is that we can take a number of the commentaries on the SDLP view of the legislation. In the debate on 22 September, to which you have referred, it is clear that the First Minister acknowledged that there may be another interpretation. For example, on page 244 of the Hansard report, he says:

“I am aware of the section that he is referring to, and I am aware that it is possible to put on it the construction that he puts on it.”

Then, later, he adds:

“in some legal sense, the Member may be able to construct an argument that that is what might happen”, meaning our view about the default position being election by parallel consent.

What you have said in your evidence to the Committee is that the view that the SDLP has was “never the intention” of the legislation. However, it might be the intention of the legislation. Whether it was designed that way or somehow people fell into it, nonetheless our view is that the First Minister perceives a bit of doubt on that matter, and the fact that you are prepared to say to the Committee that it was never the intention of the legislation to lead to those consequences both suggest that the views that the SDLP has on the matter are correct.

The reason I am so convinced that we are correct is that Westminster does not legislate for a vacuum. You know the parliamentary draftsmen better than I do, but I worked very closely with

the parliamentary draftsmen on various pieces of legislation over the last 10 years, including difficult legislation such as the two Police Acts and the two Criminal Justice Acts, and they got neuralgic about legislating for a vacuum. One has to have certainty. Whatever about the political situation in 2012, one has to have legal certainty in 2009 or at any previous time. So the entire convention of the parliamentary draftsmen in legislating at Westminster is to create certainty. That is why I believe that there is a legal answer to what happens after 2012. Given that this matter is open now, I ask you to consider my party's legal advice and see whether it enlightens you and others as to what happens.

Let me read into the record our view. The Northern Ireland Act 2009, schedule 1, paragraph 5(2)(b) states that paragraphs 6 to 8 are:

“not to apply at all if an Order in Council has been made under section 21A(7C) of the 1998 Act.”

The consequence of section 21A(7C), and the Justice and Security (Northern Ireland) Act 2007, allows the Secretary of State to impose the model of senior and junior Ministers acting by parallel consent. That is our view and I ask you to consider it, for all the reasons that I have outlined. There is marginal doubt in the First Minister's mind; it may not have been the intention of the legislation but, in my view, it is the effect; Westminster does not legislate for a vacuum; and the nature of the parliamentary draftsman's office at Westminster is very demanding.

There is not a vacuum, there is a fallback. The fallback position is that parallel consent from a junior Minister and a senior Minister will come into effect at the same time the sunset clause comes into effect, in 2012. Moreover, parallel consent can be used as a veto by either party, which is the political point that the SDLP has always made.

The Chairperson:

Do you wish to comment on that?

Mr Canavan:

My initial response is the same as before: subsection 7A, the imposed solution, is conditional on the following words:

“If it appears to the Secretary of State that there is no reasonable prospect that the Assembly will pass an Act of the kind described in subsection (1)(a) and (b), he may”.

At that point, the Order in Council process is brought into play. An Act of the kind that is described in subsection (1)(a) and (b) is one that establishes a new Northern Ireland Department to exercise policing and justice functions, which is precisely what the proposed Bill will do.

Mr Attwood:

Until 2012.

Mr Canavan:

Our view is that that condition will be fulfilled until 2012, in which case the condition that would be required to apply subsection 7A would not be valid.

Mr Attwood:

Except in 2012, when it becomes valid and consequences arise. You are applying a judgement about what will transpire between now and 2012, and we are saying that we do not disagree with you. However, in law, and given the volatility of politics in this part of the world — and although I hope that it will not be the case — in 2012 the Secretary of State may determine that there is no prospect for agreement and impose a model, otherwise the situation may arise where the Department is dissolved and the civil servants that make up the entire justice family will not be able to act as such. Some people may think it desirable that some civil servants are not able to act as such, but the more fundamental point is that one cannot have the civil servants in the Department of justice and all the Next Steps agencies not having the authority to conduct their business. It would be chaos. What would happen to the prison system, the courts and the police? Legislators do not legislate for chaos.

Mr Canavan:

Our understanding is that, not simply up to but beyond 2012, subsection 7A cannot be applied, because, in effect, it is spent. The condition will be met from the point at which the Bill is enacted.

The Chairperson:

Therefore, in spite of hearing Mr Attwood's alternative legal advice, you are content with the legal view that you have expressed.

Mr Canavan:

Yes.

Mr Attwood:

I will share this advice with officials and members to see whether any further light can be thrown on the matter.

Mr Spratt:

In the last paragraph of Mr Attwood's e-mail to Cathie White today, he states:

"I have in confidence shared with Eilis Haughey our legal advice on the issue of a sunset clause. I will table an abridged version of the legal advice at Committee."

So, if the Committee is getting an abridged version, where does sharing a party's legal advice leave Assembly officials? I just want to protect the Committee's officials. Perhaps we could hear what the Bill Clerk intends to do with that piece of advice.

The Chairperson:

Earlier, Eilis indicated that her office is available to clarify legal aspects of the Bill for individual members or political parties. Is that correct?

The Clerk of Bills:

It is entirely in order for Members in their own capacity or as a party to approach the Bill Office to seek to pave the way or prepare for amendments that are to be tabled by a party or an individual MLA. At last week's meeting, members anticipated that the Committee might seek some advice from the Bill Office and that other advice would be available to individuals or to parties, should that be sought. Unless I am otherwise instructed, I presume something that I receive from a Member has come from them in their capacity as a Member. I presume that anything that I receive from the Committee comes in its capacity as the Committee.

Mr Spratt:

I am not questioning your integrity; my question is to do with the fact that Committee will be given an abridged version. Why is there a difference? Perhaps Mr Attwood will be good enough to tell us why.

Mr Attwood:

To be very honest with you, the last three lines —

The Chairperson:

Please address the Chair.

Mr Attwood:

Sorry. The last three lines of the legal advice have been deleted because they stray into issues of politics, not issues of law. If the Chairperson and Deputy Chairperson of the Committee wish to review the document that I gave to the Bill Office, I have no difficulty with that. I am sure that they will be in a position to confirm that the last three lines of the document are not issues of law but of politics. That is why I abridged the advice. Other than that, it is the exact same piece of paper.

Mr Spratt:

I am happy with that.

The Chairperson:

That presents an issue for the Committee as to whether it wishes not only to review the legal advice that is being offered by Mr Attwood or anyone else but to refer that legal advice or opinion for further consideration.

Ms Anderson:

If the last three lines of the legal advice give some kind of political opinion, I question the impartiality of the legal advice that has been put forward. I know that we could get legal advice that is contrary to that, depending on who was asked. We could be opening up something that is not necessary.

Mr Elliott:

Mr Attwood has done quite a bit of work on what is an important issue and something that I also have a concern about. Is it not reasonable for the Committee to get its own legal advice on the matter? I think that that would be more useful. I am not discounting Mr Attwood's legal advice, which I am happy also to look at. However, it might be also be useful for the Committee to get our own legal advice.

The Chairperson:

You mean the Committee's own legal advice on the issue, rather than legal advice on Mr

Attwood's legal advice? Independent legal advice.

Mr Attwood:

I agree. I thought that Mr Canavan's information was useful, and I certainly took a note of the comment that the condition's having been met changes things. That is not our view, but I will get our people to reflect upon that, just as you might want to reflect on our comments.

I will not comment on Martina's point. People should get legal advice and be prepared to share it, rather than trying to rely on it in secret. People should be up front and say that there is an issue.

Ms Anderson:

That is only if they think that there is an issue.

Mr Attwood:

Mr Canavan said that there are ways of interpreting this, and the First Minister has also said so. You may think that there is no other way of interpreting it, but I think differently, and the First Minister thinks differently. Mr Canavan said that there is, at least, room for argument on the matter. In those circumstances, the balance should be on seeking independent advice, and that is what we should do.

The Chairperson:

It is not yet a proposal, but the suggestion is that the Committee take its own legal advice on clause 2, particularly on the sunset clause.

Mr Elliott:

We should also take advice on the mechanisms for what happens following that.

The Chairperson:

Is there a consequence to taking that advice?

The Committee Clerk:

Yes: delay. The Committee may want to table a motion to extend the Committee Stage just in case.

The Chairperson:

Would there necessarily be delay? Can the Committee not get legal advice within a prescribed period?

Mr Spratt:

We might need more legal advice.

The Committee Clerk:

We would have to pass that to Legal Services and, as I said, we only have until 10 November to complete the Committee Stage of the Bill. Hopefully, we would get that legal advice before next week's meeting. However, if the Committee agrees to seek legal advice, I advise that it should table a motion to extend the Committee Stage, in case there is any hiccup and we cannot meet that 10 November deadline.

The Chairperson:

Surely it is not unreasonable for the Committee to expect to get legal advice within a prescribed period of time.

Mr Elliott:

I assume that even if we tabled a motion to extend the Committee Stage, that would not mean that it had to be extended.

The Committee Clerk:

Exactly; it would be a contingency.

The Chairperson:

A precaution.

The Committee Clerk:

Bear in mind that if the Committee tables an extension motion, that motion has to go before the Business Committee to get onto the Order Paper.

The Chairperson:

So, the Committee understands, that voting either for or against what it is being asked to vote on comes with that consequence.

Mr Attwood:

A potential consequence; I do not think that an extension will be necessary.

The Chairperson:

So are we in favour of Mr Elliott's proposal?

Members indicated dissent.

The Chairperson:

That is the issue of precise legal advice. Mr Attwood is pressing his amendment to clause 2, which, effectively, wipes out that clause.

Question put.

The Committee divided: Ayes 3; Noes 7.

AYES

Mr Attwood, Mr Elliott, Mr Kennedy.

NOES

Ms Anderson, Mr McElduff, Mr Molloy, Mr Moutray, Mr Robinson, Mr Shannon, Mr Spratt.

Question accordingly negated.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 7; Noes 3.

AYES

Ms Anderson, Mr McElduff, Mr Molloy, Mr Moutray, Mr Robinson, Mr Shannon, Mr Spratt.

NOES

Mr Attwood, Mr Elliott, Mr Kennedy.

Question accordingly agreed to.

Clause 2 agreed to.

Clause 3 (Short title and commencement)

The Chairperson:

Subsection 1 gives the short title of the Bill as the “Department of Justice Act (Northern Ireland) 2009”; subsection 2 provides for the commencement of the Bill. Mr Attwood has proposed an amendment.

Mr Attwood:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 2, line 6, replace “such day or days as the First Minister and deputy First Minister, acting jointly, may by order appoint” with “7 December 2009”.

The impact of the amendment is self-evident. Rather than create further delay and doubt around the devolution of justice, the Committee, and, subsequently, the Assembly, would agree that on Monday 7 December, the last Monday of term before Christmas, the transfer of powers as outlined in the legislation would occur. The purpose of the amendment is to create certainty; to avoid further delay, doubt and mischief-making; and to empower the Assembly to do that which it should always have been doing in respect of justice and policing obligations.

The Chairperson:

Do members have any comments on Mr Attwood’s amendment? Does anyone second that? If not, the amendment falls.

Mr Attwood:

On a point of order, Chairperson. When Mr Spratt and I were on the Committee for Employment and Learning, I understood that as long as there was a proposer, there could be a vote.

Mr Spratt:

That is my understanding. The proposal does not need to be seconded in any Committee.

The Chairperson:

Will the Committee Clerk confirm that?

The Committee Clerk:

Yes, the Committee can take a vote.

The Chairperson:

I am keen to obey the law. We can take a vote.

Question put.

The Committee divided: Ayes 1; Noes 9.

AYES

Mr Attwood.

NOES

Ms Anderson, Mr Elliott, Mr Kennedy, Mr McElduff, Mr Molloy, Mr Moutray, Mr Robinson, Mr Shannon, Mr Spratt.

Question accordingly negatived.

Mr Shannon:

Alex, you are the Lone Ranger.

The Chairperson:

It is getting worse for you, Alex.

Mr Shannon:

All you need is for your horse to run away.

The Chairperson:

The darkest hour is always before the dawn.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 7; Noes 2.

AYES

Ms Anderson, Mr McElduff, Mr Molloy, Mr Moutray, Mr Robinson, Mr Shannon, Mr Spratt.

NOES

Mr Attwood, Mr Elliott.

Question accordingly agreed to.

Clause 3 agreed to.

Question put, That the Committee is content with the long title of the Bill.

The Committee divided: Ayes 7; Noes 2.

AYES

Ms Anderson, Mr McElduff, Mr Molloy, Mr Moutray, Mr Robinson, Mr Shannon, Mr Spratt.

NOES

Mr Attwood, Mr Elliott.

Question accordingly agreed to.

Long title agreed to.

The Chairperson:

To aid with the timescale for the Committee's reporting back to the Assembly, there will be a two-day turnaround for members and officials on the Hansard report of today's meeting. I thank the officials for attending the meetings and for the advice that they were asked to give.

Mr Attwood:

I said last week that other amendments might be tabled today. I have indicated to the Clerk that further amendments on different matters will be proposed to the Assembly in due course.

There was another issue of uncertainty over the Executive status of the justice Minister. Our view is that — and this goes back to Jim's Committee — the justice Minister will have full authority, status and equality in the Executive. That is provided for in sections 20 and 21 of the Northern Ireland Act 1998; to change the status of the justice Minister to be something less than that would require Westminster legislation, which is clearly not going to arise in the situation that we face.

Mr Spratt:

I do not want the business of my Committee discussed at this Committee.

The Chairperson:

Thank you for your input. That appears not to be the remit of this Committee.

Mr Attwood:

It is just for completeness. I raised the point last week.

Mr Spratt:

It is really a political point.

Mr Attwood:

It is only as a matter of courtesy; I would report back at the earliest possible moment.

The Chairperson:

Order, please. I remind members that the discussions, debate, and votes that we have had today do not preclude the possibility of Members or parties bringing forward amendments at the Further Consideration Stage of the Bill.

Thank you. The draft report will be prepared for Committee consideration on 21 October, and the Committee is required to report to the Assembly by 10 November. That concludes the business; thank you for your attendance.