



Northern Ireland  
Assembly

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**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

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**OFFICIAL REPORT  
(Hansard)**

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

8 November 2011

**NORTHERN IRELAND ASSEMBLY**

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REVIEW COMMITTEE**

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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

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**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

**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.

**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.

**Mr Campbell:**

The less than astute may have noticed as well, Chairman.

**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”

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

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.

**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.

**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.

**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.

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.

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

**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.”

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.

**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.

Conall, do you want to say anything?

**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?

**The Chairperson:**

Are you in a position to do that?

**Mr Campbell:**

That would pre-empt the paper, would it not?

**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.

**Mr Campbell:**

We do not have a draft copy of it, Chairman.

**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.

**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.

**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.

**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.

The Green Party has advised —

**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?

**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.

**Mr Campbell:**

That is not quite the same.

**Mr McDevitt:**

No, it is. That is option B3, Gregory, just for clarity.

**The Chairperson:**

OK. We will return to the other stakeholders.

**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”.

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.”

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.

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.

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."

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".

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.

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.

**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 —*

**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.

**The Chairperson:**

There is the possibility of having a meeting later this week if members —

**Mr Beggs:**

What does the Committee Clerk advise? What is the schedule? I was told that we would need to get this sorted today.

**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.

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.

**The Chairperson:**

OK, members, what are your thoughts?

**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.



**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.

**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?

*Members indicated assent.*

**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.

**The Committee Clerk:**

That is certainly a possibility, if the Committee wishes to consider that.

**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.

**Mr Campbell:**

Try to get the lighting fixed so that the technical glitch is sorted out.

**Mr Hamilton:**

Shine a spotlight.

**The Chairperson:**

OK, I will leave it at that.

**Mr Beggs:**

We will need reasonable warning.