



Northern Ireland
Assembly

Research and Library Service Research Paper

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Participation of the Attorney General for Northern Ireland in Assembly Proceedings

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This paper supplements earlier Research Papers on the role of Attorneys General and focuses on the participation of the Attorney General for Northern Ireland in the proceedings of the Assembly following the devolution in April 2010 of justice matters.

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Key Points

This paper has been prepared to assist the Assembly's Committee for Procedures in undertaking its inquiry into 'the Attorney General for Northern Ireland interacting with the Assembly'. The key issues set out below have been identified in that context.

The wording of the primary legislation which provides that 'the Attorney General for Northern Ireland may participate in the proceedings of the Northern Ireland Assembly to the extent permitted by its standing orders' mirrors that which provides that 'the Lord Advocate or the Solicitor General for Scotland (the Law Officers) may participate in the proceedings of the Scottish Parliament to the extent permitted by standing orders'. In neither jurisdiction can non-members vote.

Standing orders in the Scottish Parliament which relate to the Law Officers are both general and specific in scope. Whilst a general standing order provides for participation of the Scottish Law Officers in proceedings, other standing orders refer specifically to the role of the Law Officers in relation to the operation of the systems of criminal prosecution and investigation of deaths in Scotland. These reflect the Lord Advocate's role as head of the systems of prosecution and investigation of deaths.

Following enactment of the Justice (Northern Ireland) Act 2002, the Attorney General for Northern Ireland no longer has a power of 'superintendence' over the Director of Public Prosecutions. Specific standing orders could, however, relate specifically to other statutory and perhaps non-statutory functions of the Attorney General where participation in proceedings of the Assembly might be appropriate.

The Attorney General has identified four potential areas where his participation in the Assembly might be appropriate (1) Explaining decisions under section 11 of the Northern Ireland Act 1998 (2) Making statements from time to time on the work of the Attorney and other matters (3) Explaining guidance made under section 8 of the Justice (Northern Ireland) Act 2004 or any amendments made there under or participating in any debate on that and (4) Answering questions.

The Attorney General has also indicated his preference for a pre-devolution type of arrangement in relation to superintendence of the Director of Public Prosecutions.

Executive Summary

On the 12th April 2010, justice and policing matters were devolved to the Northern Ireland Assembly. With the devolution of these powers, the Justice (Northern Ireland) Act 2002 which, amongst other things, established a new post of Attorney General for Northern Ireland was enacted. This meant that the arrangement whereby the Attorney General for England and Wales was also the Attorney General for Northern Ireland came to an end.

In line with the recommendation made by the Review of Criminal Justice, section 25 of the Justice (Northern Ireland) Act 2002 mirrors the provisions in section 27 of the Scotland Act 1998 and provides that the Attorney General for Northern Ireland may participate in the proceedings of the Assembly to the extent permitted by its standing orders but may not vote.

Explanatory Notes which accompany the 2002 Act state that the effect of section 25 is to make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. Was section 25 to do so, however, it would appear to make the Attorney General accountable for something for which he is not responsible. Section 42 of the 2002 Act provides that the functions of the Director of Public Prosecutions shall be exercised by him independently of any other person.

Following devolution of justice powers and the end of Ministerial responsibility for the prosecution service, the Attorney General has no power of direction or superintendence over the Public Prosecution Service, whether in individual cases or on matters of policy. This situation contrasts with that in Scotland, where the Lord Advocate is the Ministerial Head of the Crown Office and Procurator Fiscal Service, and the head of the systems of criminal prosecution and the investigation of deaths. Post devolution, the relationship between the Attorney General and the Director of Public Prosecutions (the Director) is one of consultation not superintendence. Rather than reflect the position in Scotland this more closely resembles the situation in the Republic of Ireland.

There is no provision in the 2002 Act for the Director of Public Prosecution to be given speaking rights in the Assembly and the Director (and the Deputy Director and members of staff of the Service) may not be required in any proceedings of the Assembly to answer any question or produce any document relating to a matter other than the finances and administration of the Service. The Director is, however, obliged to prepare an Annual Report and the Attorney General is obliged to arrange for its publication.

The recently appointed Attorney General for Northern Ireland has identified four areas in relation to which he suggests his participation in the Assembly would be appropriate (1) Explaining decisions under section 11 of the Northern Ireland Act 1998 (2) Making statements from time to time on the work of the Attorney and other matters (3) Explaining guidance made under section 8 of the Justice (Northern Ireland) Act 2004 or any amendments made there under or participating in any debate on that and (4) Answering questions.

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1 Introduction

On the 12th April 2010, justice and policing matters were devolved to the Northern Ireland Assembly. With the devolution of these powers, the Justice (Northern Ireland) Act 2002 which, amongst other things, established a new post of Attorney General for Northern Ireland was enacted. This meant that the arrangement whereby the Attorney General for England and Wales was also the Attorney General for Northern Ireland came to an end.

This paper, which supplements a number of earlier Research Papers on the role of Attorneys General in the UK and Ireland, focuses on the participation of the Attorney General for Northern Ireland in the proceedings of the Assembly. It also addresses the relationship, following devolution of justice and policing matters, between the Attorney General and the Director of Public Prosecutions.

2. Review of Criminal Justice System in Northern Ireland

Reference to the participation of an Attorney General for Northern Ireland in proceedings of the Assembly can be traced back to the report of the '*Review of the Criminal Justice System in Northern Ireland*,' which was published in March 2000. Addressing the role of a local Attorney General, the report stated that:¹

A number of people have suggested that the head of the prosecution service might be accountable to a local Attorney General. We regard the creation of such a post as raising many issues beyond our terms of reference. But we note that such a figure might have responsibilities as senior legal adviser to the Northern Ireland Executive, be responsible for the legislative draftsmen, be the Executive's link with the Law Commission, and take responsibility for human rights-proofing legislation. We recommend that consideration be given to establishing a locally sponsored post of Attorney General who, inter alia, would have oversight of the prosecution service. We see the Attorney General as a non-political figure drawn from the ranks of senior lawyers and appointed by the First Minister and Deputy First Minister. We would suggest a fixed term appointment, with security of tenure, say for five years, which would not be affected by the timing of Assembly terms. The appointment process should be transparent, enabling people to declare themselves as candidates. We would see such a position as carrying significant status, equivalent to that of a High Court judge, and attracting candidates of the highest possible calibre.

The question of political accountability arises in the event that this proposal is adopted. *We recommend that the formulation in section 27 of*

¹ Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast / Norwich: HMSO, 2000) paragraphs 4.160-4.161
http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

the Scotland Act 1998 be adopted in that, although not a member of the Assembly, the Attorney should be enabled by Standing Orders to participate in Assembly business, for example through answering questions or making statements, but without voting rights.

The following section of the paper provides information on section 27 of the Scotland Act and associated standing orders of the Scottish Parliament.

3. Participation of the Scottish Law Officers in the Scottish Parliament

In Scotland, the Lord Advocate is the senior of the two Scottish Law Officers and the Solicitor General is the Lord Advocate's deputy. The Lord Advocate has four main roles:

- head of the systems of prosecution and investigation of deaths;
- principal legal adviser to the Scottish Government;
- representing the Scottish Government in civil proceedings;
- representing the public interest in a range of statutory and common law civil functions.²

In relation to criminal prosecutions and investigation of deaths, the Law Officers must act independently of other Ministers and, indeed, of any other person. That duty is expressly set out in Section 48(5) of the Scotland Act 1998.

Section 27 of the Scotland Act 1998³ provides for the participation of the Scottish Law Officers in the proceedings of the Scottish Parliament.

27 Participation of the Scottish Law Officers

(1) If the Lord Advocate or the Solicitor General for Scotland is not a member of the Parliament—

(a) he may participate in the proceedings of the Parliament to the extent permitted by standing orders, but may not vote, and (b) standing orders may in other respects provide that they are to apply to him as if he were such a member.

(2) Subsection (1) is without prejudice to section 39.

(3) The Lord Advocate or the Solicitor General for Scotland may, in any proceedings of the Parliament, decline to answer any question or produce any document relating to the operation of the system of criminal prosecution in any particular case if he considers that answering the question or producing the document—

(a) might prejudice criminal proceedings in that case, or (b) would otherwise be contrary to the public interest.

² <http://www.scotland.gov.uk/About/Directorates/Services-Groups/LPS/rolelordadvocate> accessed September 2010

³ Scotland Act 1998 c.46 <http://www.legislation.gov.uk/ukpga/1998/46/contents>

Under section 27 of the Scotland Act 1998, if a Law Officer is not an MSP he or she is empowered to participate in the proceedings of the Parliament but may not vote. The Law Officers can, therefore, be questioned by MSPs about the exercise of their functions, although they may not be required to answer questions or produce documents relating to the operation of the system of criminal prosecution in any particular case if they consider that it might prejudice criminal proceedings or would otherwise be contrary to the public interest.

A table containing the standing orders of the Scottish Parliament which make reference to the Lord Advocate or Solicitor General is set out in Annex 1 to this paper. Set out below, however, are a number of standing orders which specifically address the participation of the Law Officers in proceedings of the Scottish Parliament.⁴

Rule 4.5 Participation of the Scottish Law Officers in proceedings

1. This Rule applies where the Lord Advocate or Solicitor General for Scotland ("the Scottish Law Officer") is not a member of the Parliament.
2. The Scottish Law Officer may (subject always to the provision in section 27(1)(a) preventing him or her from voting) participate in any of the proceedings of the Parliament as fully as any member but he or she may not be appointed as a member of the Parliamentary corporation or the Parliamentary Bureau.
3. These Rules shall apply to the Scottish Law Officer, when he or she is participating in any proceedings of the Parliament, as if he or she were a member of the Parliament.
4. Paragraphs 2 and 3 are without prejudice to section 27(2) (application of rules regarding members' interests) and section 27(3) (questions and documents relating to operation of system of criminal prosecution).

Rule 13.5 Written questions

1. A written question concerning a matter for which the First Minister is alone responsible may be answered only by the First Minister. A written question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland may be answered only by the Lord Advocate or the Solicitor General for Scotland. Other written questions may be answered by any member of the Scottish Executive or by a junior Scottish Minister.

Rule 13.7 Oral Questions in the Chamber

1. An oral question concerning a matter for which the First Minister is alone responsible shall normally be answered by the First Minister but may exceptionally be answered by any other member of the Scottish Executive. An oral question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Executive. Other oral questions may be answered by any member of the Scottish Executive or a junior Scottish Minister. An oral question selected for answer at First Minister's Question Time shall normally be answered by the First Minister but may, if the First Minister is unable to attend First Minister's Question Time or any part of it, be answered by another member of the Scottish Executive.

⁴ Standing Orders of the Scottish Parliament 3rd Edition (4th Revision) (June 2009) <http://www.scottish.parliament.uk/business/so/sto-c.htm> accessed September 2010

Rule 13.8 Emergency Questions

3. An emergency question concerning a matter for which the First Minister is alone responsible shall normally be answered by the First Minister but may exceptionally be answered by any other member of the Scottish Executive. An emergency question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Executive. Other emergency questions may be answered by any member of the Scottish Executive or a junior Scottish Minister

From the standing orders highlighted above, one can see that in the Scottish Parliament written questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable only by the Law Officers, as are oral questions on those matters in all but exceptional circumstances.

In order to illustrate the type and range of written questions to which the Lord Advocate (Elish Angiolini) and the Solicitor General (Frank Mulholland) respond, a selection of recent questions and responses from the Law Officers are provided below.

<p>Lockerbie</p>	<p><u>S3W-35944 - Christine Grahame (South of Scotland) (SNP) (Date Lodged Friday, August 27, 2010)</u>: To ask the Scottish Executive whether it is aware of the reported comments of former FBI scientist Frederic Whitehurst implying that the FBI laboratory in Washington DC may constitute an additional crime scene with regard to the bombing of Pan Am Flight 103 over Lockerbie.</p>	<p>Answered by Elish Angiolini (Friday, September 24, 2010): There is no evidence of any criminal act having been carried out in relation to any of the forensic evidence in the Lockerbie investigation.</p> <p>A fragment of electronic timer recovered from the wreckage of flight Pan Am 103, known as PT35, was taken to the FBI laboratory in Washington DC by Scottish police officers and a British forensic scientist in June 1990 as part of the investigation into the Lockerbie bombing. The fragment remained in the custody and control of the Scottish police officers and the British forensic scientist during the visit to the United States and was subsequently identified as having come from an electronic timer manufactured by a Swiss company, MEBO, to the order of the Libyan intelligence service.</p>
<p>Assisted suicide</p>	<p><u>S3O-10423 - Ian McKee (Lothians) (SNP) (Date Lodged Wednesday, May 05, 2010)</u>: what guidelines the law officers will provide regarding the potential prosecution of a person assisting another to end his or her life.</p>	<p>Answered by Frank Mulholland (Wednesday, May 05, 2010): Any decision to prosecute is a matter for the Lord Advocate acting independently and in the public interest. Every case is considered on its own individual facts and circumstances and the Law Officers do not consider it appropriate to publish definitive prosecution policy guidelines in this area. <i>The Prosecution Code</i>, published by the Crown Office and Procurator Fiscal Service, sets out the principles to be applied by Procurators Fiscal when deciding whether to prosecute.</p> <p>The Prosecution Code is a public document and can be found at: www.copfs.gov.uk/Publications/2001/05/prosecutioncode.</p>

<p>Alcohol</p>	<p><u>S3W-26219 - Bill Aitken (Glasgow) (Con) (Date Lodged Wednesday, July 29, 2009)</u>: To ask the Scottish Executive how many offences of selling alcohol to under-18s have been detected in the last 6 months, broken down by police force; how many have resulted in a (a) prosecution and (b) conviction of licensees operating (i) on-sales and (ii) off-sales premises, and how many prosecutions for these offences are still pending.</p> <p><u>S3O-1082 - Hugh O'Donnell (Central Scotland) (LD)</u>: To ask the Scottish Executive how it is tackling prosecutions for alcohol consumption in public places.</p>	<p>Answered by Frank Mulholland (Wednesday, August 26, 2009): The Crown Office and Procurator Fiscal Service (COPFS) case management system shows that in the first six months of 2009, 238 charges were reported by the police under the provisions of the Licensing (Scotland) Act 1976 concerning the sale of alcohol to under-18s. The available data does not distinguish between on-sales and off-sales premises and cannot distinguish between accused who are licensees and those who are not.</p> <p>Answered by Frank Mulholland (Thursday, November 01, 2007): The Crown Office and Procurator Fiscal Service is responsible for the prosecution of crime in Scotland and does so in the public interest.</p> <p>Recently published figures show that procurators fiscal have taken action in 92% of cases which involve alleged alcohol consumption in public places. The action which can be taken in each case includes issuing a warning, a fiscal fine or taking criminal proceedings in court. The Procurator Fiscal will decide on the appropriate action having considered the circumstances of the particular case as well as the wider public interest such as the concerns of the local community.</p>
<p>Lenient sentencing</p>	<p><u>S3W-23814 - Richard Baker (North East Scotland) (Lab) (Date Lodged Monday, May 11, 2009)</u>: To ask the Scottish Executive how many times the Lord Advocate has exercised the right of appeal against unduly lenient sentences under the Criminal Procedure (Scotland) Act 1995.</p>	<p>Answered by Frank Mulholland (Wednesday, May 27, 2009): Legislation granting the Lord Advocate a right of appeal against a sentence on the ground that it is unduly lenient came into force on 1 August 1997. While information on the total number of appeals lodged since that date is not readily available, a record has been maintained since 1 January 2003 of cases where the right of appeal has been exercised and it has been exercised on 68 occasions since that date. A table of all these cases is published on the Crown Office website, and is regularly updated.</p>
<p>Domestic abuse</p>	<p><u>S3W-22794 - Rhoda Grant (Highlands and Islands) (Lab) (Date Lodged Tuesday, April 07, 2009)</u>: To ask the Scottish Executive what training prosecution service staff receive regarding domestic abuse in order to understand its effects and the likely behaviour of witnesses who have spoken out about their personal experiences after a long period of abuse.</p>	<p>Answered by Frank Mulholland (Friday, May 08, 2009): All new procurators fiscal receive training on domestic abuse during their induction training. This training provides them with a basic understanding of the dynamics of domestic abuse and the policy and practice which should be followed when taking decisions and prosecuting domestic abuse cases.</p> <p>A comprehensive one-day training course on domestic abuse is also provided at the Scottish Prosecution College. That course is aimed at procurators fiscal, precognition officers and Victim Information and Advice (VIA) staff and includes input from the police and Scottish Women's Aid. The course covers the power and control involved in domestic abuse, raises awareness of the different issues which can affect victims, explains the response from the police and prosecution staff and includes practical exercise sessions.</p>

In addition to answering questions, the current Lord Advocate has made one statement to the Scottish Parliament. This concerned the trial of Angus Sinclair in the World's End case. The case concerned the murder of two women who were last seen in the World's End pub in Edinburgh in October 1977. It was not until 30 years later that Angus Sinclair was charged with the murders, but the judge dismissed the case after two weeks of prosecution evidence. There was public outrage over this decision and the Lord Advocate told the Scottish Parliament that she believed there was enough evidence for the trial to proceed. The Lord Justice General, Lord Hamilton, took the unusual step of writing to the Lord Advocate expressing concern about her statement to the Scottish parliament. In the letter, he wrote 'I am, however, concerned that you have thought it appropriate to challenge, in a public and political forum and in the way which you have, a final decision of the court (whether that decision be right or wrong)'.⁵

In 2009, the Lord Advocate (accompanied by the Solicitor General and the Head of Policy Division at the Crown Office and Procurator Fiscal Service) gave evidence to the Justice Committee on the Criminal Justice and Licensing Bill. During the evidence session, she spoke on a range of issues relating to the Bill including:

- alcohol as a factor in committing a crime and subsequent sentencing;
- serious and organised crime;
- allowing witnesses to refer to their original statement when giving evidence in Court; and
- disclosure of evidence.⁶

4. Participation by Attorney General for Northern Ireland in Assembly proceedings

In line with the recommendation made by the Review of Criminal Justice, section 25 of the Justice (Northern Ireland) Act 2002 mirrors the provisions in section 27 of the Scotland Act 1998 and provides that the Attorney General for Northern Ireland may participate in the proceedings of the Assembly to the extent permitted by its standing orders but may not vote.

25 Participation by Attorney General in Assembly proceedings
<p>(1) The Attorney General for Northern Ireland may participate in the proceedings of the Assembly to the extent permitted by its standing orders but he may not vote in the Assembly.</p> <p>(2) The Assembly's standing orders may in other respects provide that they are to apply to the Attorney General of Northern Ireland as if</p>

⁵ [Plenary, 13 Sep 2007: Thursday, September 13, 2007 Angus Sinclair Case](#)

⁶ Scottish Parliament Official Report Justice Committee - *Tuesday 9 June 2009 Criminal Justice and Licensing (Scotland) Bill: Stage 1*
<http://www.scottish.parliament.uk/s3/committees/justice/or-09/ju09-1902.htm>

he were a member of the Assembly.

(3) The Attorney General for Northern Ireland may, in any proceedings of the Assembly, decline to answer any question or produce any document relating to the operation of the system of prosecution of offences in any particular case if he considers that answering the question or producing the document—

- (a) might prejudice criminal proceedings in that case, or
- (b) would be otherwise against the public interest.

(4) [Section 43](#) of the Northern Ireland Act 1998 (c 47) (interests of members of Assembly) applies to the Attorney General for Northern Ireland as if he were a member of the Assembly.

In relation to section 25, the Explanatory Notes which accompany the 2002 Act explain that:

The effect of this section is to make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. He will be allowed to answer questions and make statements pursuant to standing orders, but without the right to vote. Subsection (3) will give him the right to refuse to answer questions or produce documents on public interest grounds or where that might prejudice criminal proceedings. Subsection (4) makes the Attorney subject to the provisions of section 43 of the Northern Ireland Act 1998 (members' interests), under which he will be required to declare any interests in the register maintained by the Assembly before taking part in any relevant proceedings of the Assembly.⁷

In spite of the statement contained in the Explanatory Notes, it is unclear how section 25 can make the Attorney General accountable before the Northern Ireland Assembly for the operation of the Prosecution Service. Following devolution of justice powers and the end of Ministerial responsibility for the prosecution service, the Attorney General has no power of direction or superintendence over the Public Prosecution Service, whether in individual cases or on matters of policy. This situation contrasts with that in Scotland, where the Lord Advocate is the Ministerial Head of the Crown Office and Procurator Fiscal Service, and the head of the systems of criminal prosecution and the investigation of deaths. Post devolution, the relationship between the Attorney General and the Director of Public Prosecutions (the Director) is one of consultation not superintendence. Therefore, were section 25 to indeed make the Attorney General accountable to the Assembly for the operation of the Public Prosecution Service, it would appear to make him accountable for something for which he is not responsible. Section 42 of the 2002 Act provides that the functions of the Director shall be exercised by him independently of any other person and this would include the Attorney General.

⁷ Explanatory Notes Justice (Northern Ireland) Act 2002 (para 50)
<http://www.legislation.gov.uk/ukpga/2002/26/notes/division/1/1?type=en> accessed September 2010

As regards consultation between the Attorney General and the Director, under section 42 (2) of the 2002 Act, the Director must consult the Attorney General for Northern Ireland and the Advocate General for Northern Ireland before issuing or making alterations to a code under section 37⁸ and before preparing his annual report.

In addition to these areas, where the Director must consult with the Attorney General, section 42 (3) of the 2002 Act provides that '*The Attorney General for Northern Ireland and the Director may (from time to time) consult each other on any matter for which the Attorney General for Northern Ireland is accountable to the Assembly*'. The matters for which the Attorney General is accountable to the Assembly are not specified and the Attorney General himself has noted that he is not accountable to the Assembly for the Director.⁹

If the Attorney General is not to participate in the Assembly on issues relating to the system of prosecutions, on what issues might he participate? The Attorney General, giving evidence the Justice Committee, indicated the following four potential issues:

- 1) Explaining decisions under section 11 of the Northern Ireland Act 1998 – under section 11 the Attorney General for Northern Ireland may refer the question of whether a provision of a Bill would be within the legislative competence of the Assembly to the [Supreme Court] for decision;
- 2) Making statements from time to time on the work of the Attorney General and other matters;
- 3) Explaining guidance made under section 8 of the Justice (Northern Ireland) Act 2004 or any amendments made there under or participating in any related debate on that – section 8 (Guidance for criminal justice organisations on human rights standards) states at subsection 1 that 'The Attorney General for Northern Ireland shall issue, and as he thinks appropriate from time to time revise, guidance to organisations to which this section applies on the exercise of their functions in a manner consistent with international human rights standards relevant to the criminal justice system. The Attorney General may by order amend subsection (4) which lists the organizations to which the guidance applies.
- 4) Answering questions.

5. Accountability of the Director of Public Prosecutions

Addressing the issue of the accountability of the Director, the then Minister of State at the Northern Ireland Office, Paul Goggins, speaking in a House of Commons debate during passage of the Northern Ireland Bill (now Act) 2009 stated that:

⁸ Section 37 requires the Director to publish a code of practice for (a) Public Prosecutors, and (b) barristers and solicitors to whom the Director assigns the institution or conduct of criminal proceedings.

⁹ Justice Committee meeting 1st July 2010

The DPP will be answerable to the Assembly for the use of resources and the administration of its office—that is very clear—but not for individual prosecution decisions, which are entirely for the independent DPP. It is important at the point of devolution that that is made absolutely clear and enshrined in the institutions. ...

If a Committee, particularly the Justice Committee, wished to take evidence from the DPP, the DPP could be invited to attend and such evidence could be given. ...

It is not only the DPP who may be invited to give evidence and have to produce an annual report—the Attorney-General, too, may be so invited. Indeed, both will have speaking rights in the Assembly [*sic*] and be able to speak to and respond to Assembly Members, whether in the Assembly or in Committee.¹⁰

In spite of this assertion, there is no provision in the 2002 Act for the Director to be given speaking rights in the Assembly. He may, however, appear before committees and indeed has done. He is, however, protected in such proceedings by section 30 (11) of the 2002 Act which states that ‘The Director (and the Deputy Director and members of staff of the Service) may not be required in any proceedings of the Assembly to answer any question or produce any document relating to a matter other than the finances and administration of the Service’. The Director is, however, obliged to prepare an Annual Report and the Attorney General is obliged to arrange for its publication.¹¹

When considering the accountability of the Director, it is worth revisiting the report from the Review of Criminal Justice which stated that:

We are attracted to aspects of the model in the Republic of Ireland. We recommend that legislation should: confirm the independence of the prosecutor; make it an offence for anyone without a legitimate interest in a case¹² to seek to influence the prosecutor not to pursue it; but make provision for statutory consultation between the head of the prosecution service and the Attorney General, at the request of either. The Attorney General would be answerable to the Assembly for the work of the prosecution service in general terms but we recommend that it be made clear on the face of legislation, as in section 27 of the Scotland Act 1998, that the Attorney could decline to answer questions on individual cases where to do so might prejudice criminal proceedings or would be contrary to the public interest. It may be that the prosecutor and Attorney General would conclude that in no circumstances should they be expected to answer such questions. Nevertheless we do not think that this should be ruled out for all time, as will be apparent from our views on the giving of reasons for decisions. We recommend that the head of the prosecution service should be accountable to the appropriate Assembly Committee for financial and administrative matters relating to the running of

¹⁰ Hansard, 4 Mar 2009: Column 953, available at <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090304/debtext/90304-0020.htm>.

¹¹ Justice (Northern Ireland) Act 2002 s 39.

¹² The report footnoted that ‘People with a legitimate interest could be the defendant, his or her medical or legal advisers, his or her family, professionals with an interest in the case such as teachers or social workers, and the victim. Section 6 of the Republic of Ireland’s Prosecution of Offences Act 1974 contains a possible formulation.’

service. In this event it would be important that Standing Orders made clear the limitations on questioning which might impinge on individual cases.¹³

Republic of Ireland

The Constitution of Ireland 1937 originally provided for the prosecution of all indictable crime to be exercised by the Attorney General, which was the case from 1937- 1974. However, the Prosecution of Offences Act 1974 ('the 1974 Act') established the Office of the Director of Public Prosecutions and transferred to the Director, all functions previously performed by the Attorney General in relation to criminal matters, election and referendum petitions. The 1974 Act specifically states that the Director is independent in the performance of his functions.

The 1974 Act did not create a reporting relationship between the Attorney General and the Director. However, section 2(6) of the Act provides that 'the Attorney General and the Director shall consult together from time to time in relation to matters pertaining to the functions of the Director.'

The Committees of the House of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 governs the compellability of witnesses before parliamentary committees and empowers such committees to summon witnesses to give evidence and to produce or make discovery documents. This Act, however, does not apply to the Director of Public Prosecutions except where the committee is the Committee of Public Accounts. Evidence or the production of documents can be compelled only in relation to the general administration of the Office or in relation to statistics relevant to a matter referred to in a report of and published by the Director of Public Prosecutions in relation to the activities generally of the Office.¹⁴

Despite the fact that the Oireachtas is not entitled to compel the Director or his officers to attend, the Director has voluntarily appeared before Oireachtas Committees on a number of occasions to discuss matters of legal policy on which it was felt that the practical experience of his Office might be of assistance to members of the Oireachtas. Such appearances have always been on the strict understanding that individual cases would not be discussed.

¹³ Criminal Justice Review Group, Review of the Criminal Justice System in Northern Ireland paragraphs 4.163 available at http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

¹⁴ House of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997, section 3(6)

Annex 1: Standing Orders relevant to the Lord Advocate

Rule 4.3 Appointment of Scottish Law Officers	1. The agreement of the Parliament to the First Minister's recommendation to Her Majesty for the appointment of a person as Lord Advocate or Solicitor General for Scotland under section 48(1) shall be sought on a motion of the First Minister that a person specified in the motion be so recommended. The provisions of Rules 8.2.5 and 8.2.6 shall not apply to such a motion.
Rule 4.4 Removal of the Scottish Law Officers	1. The provisions of Rule 4.3 shall apply, with such modifications as are appropriate, in relation to a recommendation for the removal of a person as Lord Advocate or Solicitor General for Scotland as they apply in relation to a recommendation for an appointment.
Rule 4.5 Participation of the Scottish Law Officers in proceedings	<p>1. This Rule applies where the Lord Advocate or Solicitor General for Scotland ("the Scottish Law Officer") is not a member of the Parliament.</p> <p>2. The Scottish Law Officer may (subject always to the provision in section 27(1)(a) preventing him or her from voting) participate in any of the proceedings of the Parliament as fully as any member but he or she may not be appointed as a member of the Parliamentary corporation or the Parliamentary Bureau.</p> <p>3. These Rules shall apply to the Scottish Law Officer, when he or she is participating in any proceedings of the Parliament, as if he or she were a member of the Parliament.</p> <p>4. Paragraphs 2 and 3 are without prejudice to section 27(2) (application of rules regarding members' interests) and section 27(3) (questions and documents relating to operation of system of criminal prosecution).</p>
Rule 8.9 Motions of the First Minister	<p>1. The following motions may be moved, and notice of any such motion may be given, only by the First Minister, namely-</p> <p>(a) a motion seeking the agreement of the Parliament under section 48(1) that a recommendation be made to Her Majesty for the appointment or removal of a person as Lord Advocate or Solicitor General for Scotland;</p> <p>(b) a motion seeking the agreement of the Parliament under section 47(2) or 49(3) that a member be appointed a Minister or a junior Scottish Minister respectively;</p> <p>(c) a motion under section 95(7) that a recommendation be made to Her Majesty for the removal of a judge.</p>
Rule 11.3 Decisions at times other than Decision Time	<p>1. In the following cases the Presiding Officer shall, subject to paragraph 3, put the question immediately after he or she has closed the debate on the motion in relation to that question or, if there is no debate on the motion, immediately after the motion is moved-</p> <p>(a) a motion seeking the agreement of the Parliament to the First Minister's recommendation for the appointment of a</p>

	<p>person as Lord Advocate or Solicitor General for Scotland under Rule 4.3 or for the removal of a person as Lord Advocate or Solicitor General for Scotland under Rule 4.4;</p>
Rule 13.5 Written questions	<p>1. A written question concerning a matter for which the First Minister is alone responsible may be answered only by the First Minister. A written question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland may be answered only by the Lord Advocate or the Solicitor General for Scotland. Other written questions may be answered by any member of the Scottish Executive or by a junior Scottish Minister.</p>
Rule 13.7 Oral Questions in the Chamber	<p>1. An oral question concerning a matter for which the First Minister is alone responsible shall normally be answered by the First Minister but may exceptionally be answered by any other member of the Scottish Executive. An oral question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Executive. Other oral questions may be answered by any member of the Scottish Executive or a junior Scottish Minister. An oral question selected for answer at First Minister's Question Time shall normally be answered by the First Minister but may, if the First Minister is unable to attend First Minister's Question Time or any part of it, be answered by another member of the Scottish Executive.</p>
Rule 13.8 Emergency Questions	<p>3. An emergency question concerning a matter for which the First Minister is alone responsible shall normally be answered by the First Minister but may exceptionally be answered by any other member of the Scottish Executive. An emergency question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Executive. Other emergency questions may be answered by any member of the Scottish Executive or a junior Scottish Minister.</p>
Rule 15.3 Access to the chamber	<p>1. Subject to paragraph 2, no person other than a member may enter the chamber during a meeting of the Parliament except-</p> <ul style="list-style-type: none"> (a) the Lord Advocate or Solicitor General for Scotland (if not a member); (b) a person authorised to do so by the Presiding Officer; (c) a person addressing the Parliament in accordance with paragraph 5; (d) any other person required, invited or permitted by the Parliament to attend a meeting of the Parliament; and (e) the Clerk or any person authorised by him or her. <p>2. If the person holding the office of Presiding Officer or deputy Presiding Officer as mentioned in section 19(2) is not</p>

	<p>a member of the Parliament, he or she may enter the chamber during a meeting of the Parliament but only for the purpose of chairing proceedings for the election of a new Presiding Officer.</p> <p>3. Any person mentioned in paragraph 1(b), (d) or (e) may be required to leave the chamber or prevented from entering the chamber by order of the Presiding Officer.</p> <p>4. During a meeting of the Parliament, only a member, or the Lord Advocate or Solicitor General for Scotland (if not a member), may sit in any seat in the chamber which is reserved for members.</p> <p>5. Any person may, on the invitation of the Parliament, address the Parliament.</p>
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