

COMMITTEE ON THE PROGRAMME FOR GOVERNMENT

Report on the Devolution of Policing and Justice

TOGETHER WITH THE MINUTES OF PROCEEDINGS,
OFFICIAL REPORT, CORRESPONDENCE AND OTHER PAPERS
RELATING TO THE WORK OF THE SUBGROUP AND COMMITTEE

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Committee on the Programme for Government

On 24 November 2006, following a direction from the Secretary of State for Northern Ireland, the Rt Hon Peter Hain MP, the Business Committee established a Committee on the Programme for Government to agree priorities for a restored Executive and to make preparations for restoration. The Secretary of State directed that the Committee should, initially, be chaired by the deputy presiding officers, Mr Jim Wells and Mr Francie Molloy.

Membership

The Committee has ten members with a quorum of six, with at least one representative present from each party on the Committee. The membership of the Committee since its establishment on 24 November 2006 is as follows –

Gerry Adams MP
Jeffrey Donaldson MP
Mark Durkan MP
Sir Reg Empey
Michelle Gildernew MP
Martin McGuinness MP
David McClarty
Ian Paisley Jnr
Margaret Ritchie
Peter Robinson MP

At its meeting on 27 November 2006, the Committee agreed that deputies could attend if members of the Committee were unable to do so.

The Committee met on eight occasions between November 2006 and 22 January 2007. At the first meeting on 27 November 2006, the Committee noted the direction from the Secretary of State dated 23 November 2006 that a Committee on the Programme for Government should be established to agree priorities for a restored Executive and to make preparations for restoration. (A copy of the direction issued by the Secretary of State is attached at Appendix 6).

The Committee agreed to consider the Ministerial Code, Victims and Survivors issues and the Lifetime Opportunities strategy and to set up subgroups to consider and report back on –

- Economic Issues
- Workplace 2010 and Public Sector Job Location
- Policing and Justice Issues

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- Schools Admissions Policy
 - Review of Public Administration and Rural Planning
 - Comprehensive Spending Review; Programme for Government; Rates Charges and Water Reform

Subgroup on Policing and Justice Issues

The Committee agreed the Subgroup's terms of reference on 4 December 2006. The Committee subsequently agreed revised terms of reference for the Subgroup on 18 December 2006. The Subgroup submitted its report on 5 January 2007 and on 17 January 2007 submitted an addendum to it.

Approval of the Report and Further Action

The Committee considered the report and addendum on 22 January 2007 and agreed that it should be printed. The Committee also agreed to write to the Secretary of State and seek clarification of his intentions in relation to the justice minister model and the proposed legislative provisions in the Justice and Security (Northern Ireland) Bill.

Subgroup on Policing and Justice Issues

Membership and Terms of Reference

The Subgroup had six members with a quorum of four, with at least one member from each of the four parties represented on the Committee on the Programme for Government. The membership of the Subgroup since its establishment on 27 November 2006 was as follows:

- Alex Attwood
- Fred Cobain
- Arlene Foster
- Gerry Kelly
- Ian Paisley Jnr
- Kathy Stanton

The Committee on the Programme for Government agreed at its meeting on 11 December 2006 that the Subgroup on Policing and Justice would be chaired by a member from the DUP. Mr William Hay was nominated as Chairperson by the party. Mr Francie Molloy had chaired the initial meeting of the Subgroup on 8 December 2006.

The Committee on the Programme for Government agreed that deputies could attend if members of the Subgroup were unable to do so. The following members attended at various times:

- William Hay
- Danny Kennedy
- Raymond McCartney
- Alan McFarland
- Conor Murphy MP
- Peter Robinson MP

On 4 December 2006, the Committee on the Programme for Government agreed the terms of reference, set out below, for the Subgroup:

To consider -

- the administrative structures for the creation of a new policing and justice department;
- matters or issues relating to the devolution of policing and justice and its timing;
- support for the rule of law; and

To identify the matters to be the subject of a request in relation to the devolution of policing and justice, under section 4(2)(A) of the Northern Ireland Act 1998.

To report to the Committee on the Programme for Government on these issues by 3 January 2007. *

* Extended to 17 January 2007 (as agreed by the Committee on the Programme for Government on 3 January 2007)

On 18 December 2006, the Committee agreed revised terms of reference for the Subgroup, with the following being added to the original terms of reference:

To consider –

- the draft Policing (Miscellaneous Provisions) (Northern Ireland) Order.
- to report to the Committee on the Programme for Government by 12 January 2007.

The draft Policing (Miscellaneous Provisions) (Northern Ireland) Order was dealt with by the Subgroup separately from its work on the devolution of policing and justice, and a response provided to the Committee on the Programme for Government on 11 January 2007.

The Official Report (Hansard) of the evidence session with Minister Paul Goggins on 8 January 2007 and his response of 10 January 2007 can be found on the website of the Transitional Assembly.

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Executive Summary

Introduction

1. At a meeting on 27 November 2006, the Committee on the Programme for Government established a number of subgroups.
2. The Subgroup on Policing and Justice issues met on four occasions between 8 December and 21 December 2006. Its terms of reference were:

To consider:

- the administrative structures for the creation of a new policing and justice department;
- matters or issues relating to the devolution of policing and justice and its timing;
- support for the rule of law; and
- to identify the matters to be the subject of a request in relation to the devolution of policing and justice, under section 4(2)(A) of the Northern Ireland Act 1998.

To report to the Committee on the Programme for Government on these issues by 3 January 2007.

3. On 18 December, the Committee on the Programme for Government agreed revised terms of reference for the Subgroup, with the following being added to the original terms of reference:

To consider:

- the draft Policing (Miscellaneous Provisions) (Northern Ireland) Order.

To report to the Committee on the Programme for Government by 12 January 2007.

The Administrative Structures for the Creation of a New Policing and Justice Department

Ministerial Arrangements

4. With regard to the ministerial arrangements the options considered were:
 - a. A single minister.
 - b. Two ministers with equal status acting jointly.
 - c. A minister supported by a junior minister with the ministerial offices rotating at intervals.

5. The DUP and UUP expressed a clear preference for a single minister based on the limited range of responsibilities to be devolved and the benefits in terms of efficiency. Sinn Féin and the SDLP concluded that, whilst not opposed in principle to a single minister being appointed, the matter of appropriate ministerial arrangements could not be finalised in isolation but were dependent on resolution of the issue of a timeframe for devolution, the role of MI 5 and other matters. Sinn Féin expressed its preference for two ministers of equal status, while the SDLP was not in favour of the model of rotating senior/junior ministers.
6. **The Subgroup was unable to reach consensus on the matter of ministerial arrangements.**

The Appointment Procedure

7. The debate on appointment procedures considered in detail a proposal submitted by the DUP. This involved a preliminary appointment process in which a resolution would be put to the Assembly nominating a named individual for appointment as policing and justice minister. The resolution would require a weighted majority of 70% in order to be successful. If the resolution was successful, the appointment procedure already provided for in the new Schedule 4A of the Northern Ireland Act 1998 would require to be successfully completed. A minister appointed under this process would have no vote in the Executive Committee and should he/she be the subject of a vote of no confidence, they would require cross-community support in the Assembly to remain in office. The SDLP outlined proposals including: appointment of a minister(s) on day one of restoration with a range of powers, thereafter developing with a scrutiny committee remaining matters to be devolved no later than six months; the role of MI 5; the powers to devolve on day one and a range of other matters.
8. The DUP argued that the process outlined in their proposal provided the degree of public confidence that was needed by a person appointed to the office of policing and justice minister. Sinn Féin, the SDLP and UUP concluded that the appointment of a policing and justice minister should be made using the d'Hondt mechanism. Sinn Féin and the SDLP were opposed to the DUP proposal on the grounds that it created a veto for the DUP and represented a device intended to slow progress and create further obstacles to devolution of policing and justice.
9. **The Subgroup did not reach consensus on the appointment procedure for a policing and justice minister.**

The Timing of Devolution of Policing and Justice/Support for the Rule of Law

10. The DUP and UUP concluded that support for the rule of law by all parties involved in devolved government was an essential prerequisite for the establishment of a timeframe for the devolution of policing and justice. Sinn Féin and the SDLP wished to see devolution of policing and justice immediately upon restoration of the institutions. Sinn Féin recognised that the clear articulation of any statement of support for the rule of law was important for

public confidence. The SDLP argued that, in the absence of agreement on full devolution of policing and justice powers, a minister should be appointed on day one of devolution with significant powers, with devolution of the remaining powers no later than six months afterwards.

11. **The Subgroup did not reach consensus on the timing of devolution of policing and justice.**
12. **The Subgroup agreed by consensus that all parties should support the rule of law.**

Matters for Devolution

13. Members considered the matters for devolution identified in the NIO Discussion Paper ‘Devolving Policing in Northern Ireland’ and in the context of Table 1 of the letter dated 15 August 2006 from the NIO to the Committee on the Preparation for Government. The Subgroup concluded that, in principle, all of these matters should be devolved. There were differences between the parties regarding the degree to which some presently reserved and excepted matters should be devolved. In general, the DUP and UUP were content with the NIO proposals while Sinn Féin and the SDLP concluded that all reserved and excepted matters should be devolved. The devolution of responsibility for firearms was an exception and on this matter, Sinn Féin and the SDLP agreed on full devolution while the DUP and UUP had differing positions on the extent to which the responsibility for prohibited firearms should be devolved.

Conclusions

Paragraph	Conclusions
	Ministerial Arrangements
28	The Subgroup was unable to reach consensus on the matter of ministerial arrangements.
	The Appointment Procedure
34	The Subgroup did not reach consensus on the appointment procedure for a policing and justice minister.
	Timing of Devolution/Support for the Rule of Law
40	The Subgroup did not reach consensus on the timing of devolution of policing and justice.
41	The Subgroup agreed by consensus that all parties should support the rule of law.
	Matters for Devolution
43	There was a general view, expressed by all the parties, that devolution of the matters set out in Table 1 of the letter dated 15 August 2006 from the NIO to the Preparation for Government Committee, should be to the maximum extent possible.
46	The Subgroup agreed by consensus that the criminal law and offences and penalties should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.
48	The Subgroup agreed by consensus that the prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.
50	The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving prosecutions was agreed.
52	The Subgroup agreed by consensus that treatment of offenders (including children and young persons, and mental health patients, involved in crime) should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.
54	The Subgroup agreed by consensus that compensation should be devolved as proposed in the NIO letter of 15 August 2006.
56	The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving community safety partnerships was agreed.
58	The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving the Chief Inspector of Criminal Justice for Northern Ireland was agreed.
60	The Subgroup agreed by consensus that public order should be devolved. The DUP and UUP were content that responsibility for the Army should remain as an excepted matter. They concluded that the Parades Commission should be abolished, but if it was to continue, responsibility for appointments should remain as a reserved matter for the time being. Sinn Féin and the SDLP wished to see all powers in this matter devolved with safeguards on appointments where appropriate.

Paragraph	Conclusions
62	<p>The Subgroup agreed by consensus that the police and the policing accountability framework should be devolved. The DUP and UUP were content that responsibility for national security information and for the derogation from the EC Directive on Equality should remain as excepted matters. The DUP and UUP opposed the 50:50 recruitment arrangements to the PSNI but were content that responsibility for them should remain as a reserved matter. Sinn Féin wanted an end to MI 5 in Ireland. MI 5 could have no role in civic policing in the north. All members of the PSNI must be subject to the Patten accountability mechanisms for all police activity and information pertaining to it. The SDLP were of the view that there should be no role for MI 5 in Northern Ireland. Both Parties wished to see all powers in this matter devolved. Sinn Féin and the SDLP wished to see decisions on 50:50 recruitment taken in the Assembly subject, where appropriate, to cross-community safeguards. Both Parties believed that there should be robust accountability mechanisms to the appropriate bodies and office holders in the devolved administration for all national security operations in Northern Ireland.</p>
64	<p>The Subgroup agreed by consensus that co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters should be devolved. The DUP and UUP were content that matters relating to aspects of the Inter-Governmental Agreement on Policing not transferred into the reserved field by the Northern Ireland (Misc. Provisions) Act 2006 and the Inter-Governmental Agreement itself should remain as excepted matters. The DUP and UUP were further content that the reserved matters relating to specified aspects of international co-operation should be devolved. Sinn Féin and the SDLP wish to see all powers in this matter devolved. Sinn Féin's position was that the existing Inter-Governmental Agreement should be only a foundation for increasing integration and harmonisation of policing and justice on an all-Ireland basis. The SDLP proposed that those matters outlined in the various Agreements should be transferred, continue to operate and be enlarged across a range of areas.</p>
66	<p>The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving responsibility for explosives to the appropriate Northern Ireland minister was agreed.</p>
68	<p>The Subgroup agreed by consensus that responsibility for firearms should be devolved. The DUP proposed devolution that excluded legislative responsibility for prohibited firearms. Sinn Féin and the SDLP proposed full devolution of all responsibility in this matter. The UUP proposed devolution that excluded legislative responsibility for all firearms and administrative responsibility for prohibited firearms.</p>
70	<p>The Subgroup agreed by consensus that the Courts should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.</p>
72	<p>The Subgroup agreed by consensus that the Northern Ireland Law Commission should be devolved as proposed in the NIO letter of 15 August 2006.</p>

Introduction

14. On 24 November 2006, following a direction from the Secretary of State for Northern Ireland the Rt Hon Peter Hain MP, the Business Committee established a Committee on the Programme for Government to agree priorities for a restored Executive and to make preparations for restoration. The Secretary of State directed that the Committee should, initially, be chaired by the deputy presiding officers, Mr Jim Wells and Mr Francie Molloy.
15. At its meeting on 27 November, the Committee agreed a work programme up to 30 January 2007. This included the setting up of a number of subgroups to consider:
 - Comprehensive Spending Review; Programme for Government; Rates Charges and Water Reform.
 - Economic Issues.
 - Policing and Justice Matters.
 - Review of Public Administration and Rural Planning.
 - Schools Admission Policy.
 - Workplace 2010 and Public Sector Jobs Location.
16. The Subgroup on Policing and Justice met on 4 occasions between 8 December and 21 December 2006. At the first meeting on 8 December, the Subgroup agreed to structure its discussions around:
 - The administrative structures for the creation of a new policing and justice department including the ministerial arrangements and the appointment mechanism;
 - matters relating to the timing of devolution and support for the rule of law; and
 - matters for devolution.
17. The Subgroup agreed to accept those matters agreed by the Committee on the Preparation for Government in its Report on Law and Order Issues.
18. The Subgroup requested further information from the NIO on a range of matters related to the devolution of particular issues and held an evidence session with NIO officials on 14 December 2006.
19. A number of papers prepared by the Assembly Research and Library Services were also considered by the Subgroup.
20. The Subgroup met on 21 December 2006 and agreed that this Report should be submitted to the Committee on the Programme for Government.

Consideration of Policing and Justice Issues

21. The Subgroup met on 8, 14, 19 and 21 December 2006 to consider the policing and justice issues outlined in the terms of reference. Members agreed to structure the discussion into three parts – firstly, the administrative structures for the creation of a new policing and justice department; secondly, the timing of devolution and support for the rule of law; and thirdly, matters for devolution – but recognised that the issues were interrelated and the discussion was likely to overlap considerably.

The Administrative Structures for the Creation of A New Policing and Justice Department

22. The Subgroup discussed possible ministerial arrangements and appointment mechanisms in the context of a single policing and justice department.

Ministerial Arrangements

23. With regard to the ministerial arrangements the options considered were:
- a. A single minister.
 - b. Two ministers with equal status acting jointly.
 - c. A minister supported by a junior minister with the ministerial offices rotating at intervals.
24. The DUP, emphasising the prerequisite reflected in legislation, for all parties to have signed up to policing and support for the rule of law, favoured a single minister on the basis that there was already substantial devolution of powers to the Policing Board and it was the most efficient model.
25. Sinn Féin indicated that any decision on this issue was interrelated with decisions regarding the appointment mechanism to be used, the timeframe for the devolution of policing and justice and what powers would be devolved. Whilst the party was not opposed in principle to a single minister, its preference was for two ministers of equal status. Sinn Féin was not prepared to make a decision on this issue in isolation and all options should remain open.
26. The SDLP was also of the view that the ministerial arrangements could only be resolved within the context of agreeing a timescale for the devolution of policing and justice, the appointment mechanism, what powers the minister would have, the question of MI 5 and other matters. The party stated that a single minister may be an appropriate model and that it was not in favour of the model of rotating senior/junior ministers. It also noted that while the

single minister option may be a more efficient model, a two minister model may assist in enhancing community confidence.

27. The UUP stated its preference for a single minister for a department of policing and justice. In circumstances where there was the necessary political and community confidence to enable the devolution of policing and justice to take place and given that much of the power relating to policing and justice was already exercised locally by the Chief Constable, the Policing Board, Public Prosecution Service (PPS), the Courts and others, this was the most practical arrangement.
28. **The Subgroup was unable to reach consensus on the matter of ministerial arrangements.**

The Appointment Procedure

29. In relation to the appointment procedure for a minister for policing and justice the DUP put forward the following proposal for a preliminary appointment process:

The proposal involved a resolution in the Assembly proposing a named MLA for the policing and justice ministerial office that would require a weighted majority of 70% in order to be successful. Should such a motion be passed, the procedure set out in the Schedule to the 2006 Miscellaneous Provisions Act would be carried forward i.e. the First Minister and Deputy First Minister would determine whether to submit to the Assembly the motion required to set in process the devolution of the relevant functions. Upon the devolution of the functions, the minister designate would take up office. Any Member of the Assembly who could command the necessary support would be eligible for appointment and would sit on the Executive Committee but would not necessarily have voting rights. Due to the requirement for security and confidentiality in some areas of this department's work, consequential arrangements would need to be put in place to deal with issues which may arise such as accountability and disclosure of information. If, at any time, such a minister was subject to a vote of confidence in the Assembly he/she would be required to command a cross-community vote to remain in office. These arrangements could be reviewed in line with other matters by 2015.

30. The DUP believed that its proposed mechanism would ensure that the minister had widespread support in the Assembly and increase community confidence. An appointment made under the d'Hondt system could result in the nomination of a minister who only had the support of his or her party and this would not provide the necessary community confidence. The Party was satisfied with the current proposals as they stood but was presenting a new proposal with the aim of moving this issue forward and providing a mechanism to establish the necessary community confidence. The proposal should not be perceived as a veto or a procedure to slow the process down.
31. The key factor for Sinn Féin was that the appointment procedure must be under the terms of the Belfast Agreement. The d'Hondt mechanism should therefore be used. The party was totally opposed to the DUP proposal, perceiving it to be aimed at creating a veto to prevent Sinn Féin from holding the policing and justice ministerial office. Sinn Féin wished to make it clear that any party must be able to take up the policing and justice ministerial portfolio.
32. The SDLP wished to see the appointment made using the d'Hondt mechanism following cross-community support in the Assembly for the devolution of policing and justice. The

Party opposed the DUP proposal on the grounds that it could be interpreted as a device intended to slow progress and create further obstacles to the devolution of policing and justice and disadvantage other parties, particularly given the blocking powers already in place. It could also be viewed as a mechanism to enable the DUP to pick and choose who may be nominated for the post. The Party also opposed the parallel consent requirement for devolution of justice. The fact that many policing, and to a lesser extent justice, powers had already been devolved to various bodies such as the Policing Board, the Public Prosecution Service (PPS) and the Judiciary should reduce the perceived sensitivities surrounding the appointment of a policing and justice minister and parties should acknowledge this to help diffuse the devolution issue.

33. The UUP wished to see the appointment made using the d'Hondt mechanism after a resolution from the First Minister and Deputy First Minister for the devolution of policing and justice had received cross-community support in the Assembly. The Party believed that if there was sufficient community confidence to seek the devolution of policing and justice then this was the obvious method of appointment. Community confidence could best be demonstrated by formation of an Executive Committee.
34. **The Subgroup did not reach consensus on the appointment procedure for a policing and justice minister.**

The Timing of Devolution of Policing and Justice/Support for the Rule of Law

35. A substantive discussion took place on issues relating to the timing of the devolution of policing and justice and support for the rule of law.
36. The DUP, whilst supportive in principle of the devolution of policing and justice functions, indicated that it was not possible to set a precise date for this. Community confidence was essential and the key issue for the Party was support for the rule of law, demonstrated over a credible time frame, for a place on the Executive Committee. This was now a prerequisite reflected in legislation. Paragraph 6 of the Agreement at St Andrews set out the essential elements of support for law and order that parties needed to demonstrate.
37. Sinn Féin wished to see the devolution of policing and justice powers immediately upon restoration and no later than six months afterwards and expressed concern regarding the absence of a timeframe from the DUP. The rule of law must apply and be supported on the basis of impartiality, independence and objectivity. The Party recognised the need for a clear articulation of any statement of support for the rule of law.
38. The SDLP also wished to see the full devolution of policing and justice upon restoration. In the absence of this, the Party believed that a devolved minister for policing and justice should still be appointed upon restoration. The minister should have a range of significant devolved powers including in relation to non-controversial matters. The minister should also

have responsibility for preparing proposals around the devolution of the remaining powers, to happen within six months, working with a scrutiny committee to progress outstanding matters.

39. The UUP stated that community confidence was essential and all ministers must support the rule of law before a timescale for the devolution of policing and justice could be agreed.
40. **The Subgroup did not reach consensus on the timing of devolution of policing and justice.**
41. **The Subgroup agreed by consensus that all parties should support the rule of law.**

Matters for Devolution

42. The Subgroup discussed the matters proposed for devolution in the NIO Discussion Paper entitled 'Devolving Policing and Justice in Northern Ireland' and in the context of Table 1 of the letter dated 15 August 2006 from the NIO to the Preparation for Government Committee.
43. **There was a general view, expressed by all the parties, that devolution of the matters set out in Table 1 of the letter dated 15 August 2006 from the NIO to the Preparation for Government Committee, should be to the maximum extent possible.**
44. The discussions on these matters are summarised in the following sub-paragraphs:

The criminal law and offences and penalties

45. The matters discussed in relation to the criminal law and offences and penalties included the indication by the NIO that the law, in relation to treason and terrorist offences, is excepted and will not be devolved. The DUP and UUP took the view that such matters were inappropriate for a regional Assembly and should not be devolved. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved.
46. **The Subgroup agreed by consensus that the criminal law and offences and penalties should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.**

The prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings

47. The matters discussed in relation to the prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings included the indication by the NIO that the law, in relation to counter-terrorism legislation, immigration or revenue and customs and certain aspects of the Regulation of Investigatory Powers Act 2000 (RIPA), is excepted and will not be devolved. The NIO also indicated that responsibility for the Assets Recovery Agency or Serious Organised Crime Agency and certain aspects of RIPA, that are currently reserved, will need to remain in the reserved category. The DUP and UUP took the view that these matters were inappropriate for a regional Assembly and should not

be devolved. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved.

48. **The Subgroup agreed by consensus that the prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.**

Prosecutions

49. The Subgroup noted that the Preparation for Government Committee had agreed this matter in its Report of 13 September 2006 on Law and Order Issues.
50. **The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving prosecutions was agreed.**

Treatment of offenders (including children and young persons, and mental health patients, involved in crime)

51. The matters discussed in relation to the treatment of offenders (including children and young persons, and mental health patients, involved in crime) included the indication by the NIO that the law, in relation to the Northern Ireland (Sentences) Act 1998 (relating to the work of the Sentences Review Commissioners and the early release scheme) and the Northern Ireland (Remission of Sentences) Act 1995, is excepted and will not be devolved. The NIO was asked for additional information on the arrangements for the Life Sentences Review Commissioners to access information which falls into the excepted field and about the proposed changes to the Northern Ireland (Remission of Sentences) Act 1995. The DUP and UUP took the view that excepted matters were inappropriate for a regional Assembly and should not be devolved. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved.
52. **The Subgroup agreed by consensus that treatment of offenders (including children and young persons, and mental health patients, involved in crime) should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.**

Compensation

53. The matters discussed in relation to compensation included the indication by the NIO that the law, in relation to the compensation scheme provided for in the Terrorism Act (which is due to end in 2007), is excepted and will not be devolved.
54. **The Subgroup agreed by consensus that compensation should be devolved as proposed in the NIO letter of 15 August 2006.**

Community Safety Partnerships

55. The Subgroup noted that the Preparation for Government Committee had agreed this matter in its Report of 13 September 2006 on Law and Order Issues.
56. **The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving community safety partnerships was agreed.**

Chief Inspector of Criminal Justice for Northern Ireland

57. The Subgroup noted that the Preparation for Government Committee had agreed this matter in its Report of 13 September 2006 on Law and Order Issues.
58. **The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving the Chief Inspector of Criminal Justice for Northern Ireland was agreed.**

Public Order

59. The issues discussed in relation to public order included the indication by the NIO that matters relating to the operation of the Army in support of the police in maintaining public order are excepted and will not be devolved. The NIO was asked for additional information on the circumstances in which the Army would be deployed in support of the police and about where responsibility lies regarding the approval of the purchasing of weapons that may be used by the police in maintaining public order. The Subgroup also considered the options highlighted by the NIO in respect of the responsibility for making appointments to the Parades Commission. The DUP and UUP took the view that responsibility for the Army was inappropriate for the Assembly and should not be devolved. They further took the view that the Parades Commission should be abolished but that if it was to continue, the responsibility for making appointments to that body should remain in the reserved category for the time being. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved but that there should be no role for the Army in Northern Ireland. The SDLP further concluded that devolution of the power to make appointments to the Parades Commission should be made subject to the establishment of community safeguards and that discussions on such safeguards should be undertaken without delay.
60. **The Subgroup agreed by consensus that public order should be devolved. The DUP and UUP were content that responsibility for the Army should remain as an excepted matter. They concluded that the Parades Commission should be abolished, but if it was to continue, responsibility for appointments should remain as a reserved matter for the time being. Sinn Féin and the SDLP wished to see all powers in this matter devolved with safeguards on appointments, where appropriate.**

The police and the policing accountability framework

61. The matters discussed in relation to the police and the policing accountability framework included the indication by the NIO that matters relating to the sharing of information concerning national security with the Policing Board and any matter related to the derogation

from the EC Directive on Equality (in relation to 50:50 recruitment to the PSNI) are excepted and will not be devolved. The NIO was asked to advise the Subgroup about the relationship/accountability/reporting mechanisms to be established between the devolved administration and MI 5 in respect of its operations in Northern Ireland. The NIO was also asked for additional clarification on the outworking of the arrangements whereby the Secretary of State and the proposed minister for policing and justice would both have the power to issue statutory guidance to the Police Ombudsman. The Subgroup also considered the option highlighted by the NIO in respect of the responsibility for the 50:50 temporary recruitment provisions for the PSNI. The DUP and UUP were opposed to the 50:50 recruitment arrangements but while they existed, took the view that responsibility for 50:50 recruitment was inappropriate for the Assembly and should not be devolved. Sinn Féin wanted an end to MI 5 in Ireland. MI 5 could have no role in civic policing in the north. All members of the PSNI must be subject to the Patten accountability mechanisms for all police activity and information pertaining to it. The SDLP were of the view that there should be no role for MI 5 in Northern Ireland. Both Parties concluded that all powers under this sub-heading should be devolved. Moreover, robust mechanisms needed to be established with regard to all national security operations undertaken in Northern Ireland by the police and MI 5 to ensure appropriate accountability and oversight by the devolved policing and justice minister and other appropriate bodies and office holders. They also concluded that decisions taken in the Assembly on the 50:50 recruitment arrangements should, where appropriate, be subject to cross-community safeguards. The Subgroup wrote to the Assembly Standing Orders Committee asking that steps be taken to ensure that any statutory committee on policing and justice should not include members of the Policing Board and that its remit should not impinge on the statutory duties of the Board.

62. **The Subgroup agreed by consensus that the police and the policing accountability framework should be devolved. The DUP and UUP were content that responsibility for national security information and for the derogation from the EC Directive on Equality should remain as excepted matters. The DUP and UUP opposed the 50:50 recruitment arrangements to the PSNI but were content that responsibility for them should remain as a reserved matter. Sinn Féin wanted an end to MI 5 in Ireland. MI 5 could have no role in civic policing in the north. All members of the PSNI must be subject to the Patten accountability mechanisms for all police activity and information pertaining to it. The SDLP were of the view that there should be no role for MI 5 in Northern Ireland. Both Parties wished to see all powers in this matter devolved. Sinn Féin and the SDLP wished to see decisions on 50:50 recruitment taken in the Assembly subject, where appropriate, to cross-community safeguards. Both Parties believed that there should be robust accountability mechanisms to the appropriate bodies and office holders in the devolved administration for all national security operations in Northern Ireland.**

Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters

63. The matters discussed in relation to co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters included the indication by the NIO that matters, relating to aspects of the Inter-Governmental Agreement on Policing not transferred into the reserved field by the Northern Ireland (Misc. Provisions) Act 2006 and the Inter-Governmental Agreement itself, remain excepted and will not be devolved. The Subgroup noted the matters

relating to the Inter-Governmental Agreement that have been transferred into the reserved field and may be devolved. The DUP and UUP took the view that the excepted matters were inappropriate for the Assembly and should not be devolved but that the currently reserved power to renegotiate the terms of the Inter-Governmental Agreement in certain specified areas should be devolved to the Assembly. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved. Sinn Féin's position was that the existing Inter-Governmental Agreement should be only a foundation for increasing integration and harmonisation of policing and justice on an all-Ireland basis. The SDLP proposed that those matters outlined in the various Agreements should be transferred, continue to operate and be enlarged across a range of areas.

64. **The Subgroup agreed by consensus that co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters should be devolved. The DUP and UUP were content that matters relating to aspects of the Inter-Governmental Agreement on Policing not transferred into the reserved field by the Northern Ireland (Misc. Provisions) Act 2006 and the Inter-Governmental Agreement itself should remain as excepted matters. The DUP and UUP were further content that the reserved matters relating to specified aspects of international co-operation should be devolved. Sinn Féin and the SDLP wished to see all powers in this matter devolved. Sinn Féin's position was that the existing Inter-Governmental Agreement should be only a foundation for increasing integration and harmonisation of policing and justice on an all-Ireland basis. The SDLP proposed that those matters outlined in the various Agreements should be transferred, continue to operate and be enlarged across a range of areas.**

Firearms and Explosives

65. The Subgroup noted that the Preparation for Government Committee had agreed the matter of explosives in its Report of 13 September 2006 on Law and Order Issues.
66. **The Subgroup agreed by consensus to accept the conclusion of the Preparation for Government Committee that the NIO proposal for devolving responsibility for explosives to the appropriate Northern Ireland minister was agreed.**
67. The matters discussed in relation to firearms included the options highlighted by the NIO in respect of responsibility for prohibited firearms. The DUP took the view that full policy, legislative and administrative responsibility for non-prohibited firearms should be devolved and that devolution in respect of prohibited firearms should encompass the administrative functions, including the authorisation of possession of such weapons, but exclude the legislative responsibility. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved. The UUP concluded that there should be no devolution in the matter of prohibited firearms and that devolution in respect of non-prohibited firearms should encompass administrative matters but exclude legislative responsibility.
68. **The Subgroup agreed by consensus that responsibility for firearms should be devolved. The DUP proposed devolution that excluded legislative responsibility for prohibited firearms. Sinn Féin and the SDLP proposed full devolution of all responsibility in this**

matter. The UUP proposed devolution that excluded legislative responsibility for all firearms and administrative responsibility for prohibited firearms.

The Courts

69. The matters discussed in relation to the Courts included the indication by the NIO that certain functions of the Lord Chancellor in relation to the Judiciary, the Human Rights Act 1998 and the Data Protection Act 1998 are excepted and will not be devolved. The NIO was asked for additional information with regard to where the financial burden would rest if the proposals for devolution were accepted. The DUP and UUP took the view that excepted matters were inappropriate for a regional Assembly and should not be devolved. Sinn Féin and the SDLP concluded that all powers under this sub-heading should be devolved.
70. **The Subgroup agreed by consensus that the Courts should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.**

The Northern Ireland Law Commission

71. The matters discussed in relation to the Northern Ireland Law Commission included a proposal by the SDLP that the Assembly may wish to address the powers of the Commission (once established) in due course.
72. **The Subgroup agreed by consensus that the Northern Ireland Law Commission should be devolved as proposed in the NIO letter of 15 August 2006.**

Appendix 1

**Correspondence with the
Northern Ireland Office**



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15 August 2006

PREPARATION FOR GOVERNMENT COMMITTEE

Thank you for your letter of 10 August to Alan Whysall seeking information for the Preparation for Government Committee. We have also since spoken and you have added a couple of additional requests. I will try to deal with each in turn.

There is no legal **definition of national security** but it is generally understood to relate to the safety and security of the state and its people. The protection of national security is one of the Security Service's functions and, as set out in section 1(2) of the Security Service Act 1989, this is defined in particular as protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. The Northern Ireland Act 1998, Schedule 2, lists of some of the areas included under the heading 'national security'. The 1998 Act, together with the discussion paper 'Devolving Policing and Justice in Northern Ireland' provides a fuller picture by indicating which matters will be devolved

and which will not. I know that you were looking to collate a comparison between the 1998 Act, the Scotland Act and the discussion document, and attach a table which may be of help to you.

No **protocols** exist between the Northern Ireland Office and the Security and Intelligence Agencies in GB in relation to the handling of national security matters.

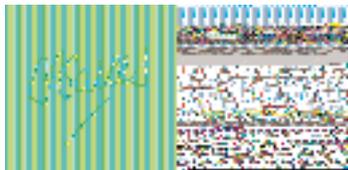
On your separate question about the recent changes in respect of **judicial appointments**, I am grateful to colleagues in the Northern Ireland Court Service, into whose remit this matter falls, for the following explanation:

The Justice (Northern Ireland) Act 2002 made provision for the creation of an independent Judicial Appointments Commission for Northern Ireland ('the NIJAC'). Schedule 3 to that Act already provides for the transfer of the Lord Chancellor's judicial appointment functions to the First Minister and Deputy First Minister.

It was intended that the provisions of the 2002 Act (including the establishment of the NIJAC) would be brought into operation on the devolution of justice functions. However, in the Joint Declaration, the Government undertook to bring forward legislation to allow the NIJAC to be established before devolution. Accordingly, the Justice (Northern Ireland) Act 2004 amends the 2002 Act to provide for the functions of the First Minister and deputy First Minister in relation to the NIJAC to be transferred to the Lord Chancellor, thus enabling the Commission to be established in advance of the devolution of justice functions. The NIJAC was established on 15th June 2005.

It is intended that, when responsibility for justice matters is devolved, these responsibilities would transfer back from the Lord Chancellor to the First and deputy First Ministers. This would require a transfer Order under section 86 of the Northern Ireland Act 1998 Act.

I hope that this provides the clarification you were seeking. Please let me know if there is anything further we can provide.



Clare Salters

TABLE 1: RESERVED MATTERS: IMPLICATIONS FOR DEVOLUTION¹
Summary of Justice and policing issues contained within Schedule 3 to the Northern Ireland Act 1998

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(a) & (b) The criminal law and the creation of offences and penalties ²	The statutory framework governing what constitutes a crime and what appropriate penalties are. It does <u>not</u> cover the law governing treason or terrorist offences because these are excepted (see below).	Everything covered by these paragraphs, including advice to the Crown on exercise of the Royal Prerogative of Mercy for cases falling into what becomes the devolved category.	-	None.
9(c) The prevention & detection of crime and powers of arrest and detention in connection with crime or criminal proceedings ³	The statutory framework in which the police operate, covering the powers available to them over and above those exercisable by ordinary citizens. It does <u>not</u> cover counter-terrorism legislation, immigration or revenue & customs because these are excepted (see below).	Everything covered by this paragraph, including some administrative functions connected with international co-operation on criminal matters, with the exception of the matters listed in the next column	Responsibility for the Assets Recovery Agency or Serious Organised Crime Agency which will remain UK-wide bodies. Those aspects of the Regulation of Investigatory Powers Act 2000 (RIPA) that are excepted together with some aspects that are currently reserved.	Whether some aspects of the Regulation of Investigatory Powers Act 2000 which are currently reserved will need to remain so. Whether the arrangements for dealing with criminal records checks and disclosures are best regulated on an NI or a UK-wide basis. Decisions on which aspects of RIPA that are currently reserved will need to remain so.

¹ Unless otherwise specified, when the table refers to issues devolving it means both that the Assembly will take on legislative competence for this particular area and that any statutory functions or powers currently exercised by the Secretary of State will transfer to NI Ministers.

² This is identical to paragraph 4(a) of Schedule 3 (minimum reserved matters on Appointed Day) to the Northern Ireland Constitution Act 1973

³ This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(d) Prosecutions ⁴	<p>The statutory framework covering the rules applying to the prosecution system, including the roles of the Public Prosecution Service for NI and the Attorney General for NI.</p> <p>It does <u>not</u> cover the role of the Advocate General for NI, which is an excepted matter (see below).</p>	Everything within this paragraph, subject to the agreement of Concordats between the UK Government and the NI Administration on the independence of the prosecution system.	-	Agreeing the Concordat.
9(e) Treatment of offenders (including children and young persons, and mental health patients, involved in crime) ⁵	<p>Everything to do with prisons, youth justice, probation and certain functions to do with mentally disordered offenders (though the majority of these functions, including secure hospital facilities) are <u>already</u> transferred.</p> <p>It does <u>not</u> include the work of the Sentences Review Commissioner.</p>	Everything covered by this paragraph.	<p>The NI (Sentences) Act 1998, which provides for the Sentences Review Commissioners and the early release scheme.</p> <p>The NI (Remission of Sentences) Act 1995.</p>	<p>Arrangements will need to be put in place to allow the Life Sentences Review Commissioners (which will be devolved) to continue to have access not only to relevant information from the devolved administration (from the NIPS and PSNI via NI Ministers) but also to appropriate information which falls within the excepted field.</p>

⁴ This is identical to paragraph 4(b) of Schedule 3 to the Northern Ireland Constitution Act 1973

⁵ This is identical to paragraph 4(d) of Schedule 3 to the Northern Ireland Constitution Act 1973

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
9(f) repealed	-	-	-	-
9(g) Compensation ⁶	The law governing the circumstances in which victims of crime can be compensated out of public funds and the administration of the system to deliver this.	Everything covered by this paragraph, including the Compensation Agency and the Criminal Injuries Compensation Appeals Panel.	The compensation scheme provided for in the Terrorism Act (which is due to end in 2007).	None.
9(h) Community Safety Partnerships	Statutory partnerships provided for in the Justice (NI) Act 2002. These are different from the current voluntary schemes that the local councils operate.	Everything.	-	None.
9A Chief Inspector of Criminal Justice for NI	The Inspectorate & the law governing how it operates.	Everything.	-	None.
10 Public Order <i>The maintenance of public order, including the conferring of powers, authorities, privileges or immunities for that purpose on constables, members of the armed forces of the Crown and other persons (other than the Ministry of Defence Police) but not</i>	The statutory framework governing the maintenance of public order, including responsibility for parades legislation in NI.	Preferably everything (though see also the list of issues remaining) NB: Responsibility for determining which weapons may be used by the police in public order situations will remain an operational decision for the Chief Constable - ie: there is no ministerial function or legislative capacity to	See list of issues remaining	Certain aspects of parades, for example appointments to the Parades Commission and its operation could be kept reserved, if that was the wish of the Assembly. Future powers to enable the army to operate in support of the police are under development since it is unlikely that these would be devolved.

⁶ This is identical to paragraph 4(f) of Schedule 3 to the Northern Ireland Constitution Act 1973

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
<p>any matter within paragraph 17 of Schedule 2 (national security, etc.); the Parades Commission.⁷</p>	<p>devolve.</p>	<p>Everything except those matters listed in the next two columns</p>	<p>The SoS would continue to be responsible for the arrangements for sharing information relating to national security with the Policing Board because national security remains an excepted matter.</p> <p>The 50:50 temporary recruitment provisions, unless the Assembly specifically request that these be devolved. And responsibility for seeking a derogation from the EC Directive on equality would remain an excepted matter for the UK Government, even if responsibility for 50:50 were devolved.</p> <p>The Secretary of State would retain power to issue statutory guidance to the Ombudsman (the Minister</p>	<p>The detail of the relationship between the Policing Board, the Northern Ireland Minister for policing and an Assembly policing committee.</p> <p>The Assembly will need to consider whether to seek devolution of the 50:50 temporary recruitment provisions.</p> <p>Whether responsibility for advising the Crown on the Ombudsman appointment should remain reserved or transfer to FM & DFM rather than the Minister(s) for policing.</p>
<p>11 The Police and the policing accountability framework</p> <p><i>“The establishment, organisation and control of the PSNI and of any other police force (other than the MoD Police); the Northern Ireland Policing Board; traffic wardens.”⁸</i></p>	<p>The statutory framework which provides for the existence of the Police Service of NI and the governance and oversight arrangements which apply to it (the role of the Policing Board, District Policing Partnerships & Police Ombudsman). Also, the funding and corporate governance of a range of statutory and non-statutory bodies within the wider policing field (the Oversight Commissioner, Police Retraining & Rehabilitation Trust, Police Fund, RUC George Cross Foundation and RUC Widows' Association</p> <p>NB. The Oversight Commissioner's term of office comes to an end in May 2007</p> <p>This paragraph does <u>not</u> cover police powers, which are dealt with under paragraph 9(c) above.</p>			

⁷ This is broadly similar to the wording of paragraph 3 to the Northern Ireland Constitution Act 1973.

⁸ This is broadly similar to the wording of paragraph 5 of Schedule 3 to the Northern Ireland Constitution Act 1973, which dealt with the RUC and the Police Authority.

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
<p>11A Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters</p>	<p>This is governed by the Inter-Governmental Agreement on Policing co-operation which is an international treaty and would therefore have been an accepted matter. However the NI (Miscellaneous Provisions) Act 2006 transfers certain aspects of international co-operation into the reserved field, enabling them to be devolved.</p>	<p>Arrangements for co-operation between the PSNI and the Garda Síochána with respect to lateral entry, secondments, exchanges or training of officers; communications (including liaison and information technology); joint investigations; and disaster planning.</p>	<p>for policing would also have this power). The declaration made by independent DPP members will not devolve because it needs to remain the same as the declaration made by candidates standing for local election to local councils, and electoral law will remain excepted.</p>	<p>The Assembly will wish to consider whether, with the UK Government's agreement, they wish in the future to negotiate replacement arrangements with the Irish government.</p>
<p>12 Firearms & explosives</p>	<p>The licensing framework for firearms and explosives.</p>	<p>In principle, everything covered by this paragraph, but see issues remaining</p>	<p>See issues remaining</p>	<p>Should legislation governing automatic & semi-automatic weapons remain reserved (as in Scotland)? Should responsibility for explosives regulation fall to the Minister for public safety or to a Minister for policing or justice?</p>

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
<p>15 The Courts</p>	<p>The administration and oversight of the court system in Northern Ireland.</p> <p>NB: The next two columns focus on the Government functions and responsibilities, not those of the Lord Chief Justice of NI, whose professional responsibilities as head of the judiciary in NI will remain unchanged following devolution.</p>	<p>The NI Court Service (including the Lord Chancellor's functions in respect of court admin)</p> <p>Legal aid</p> <p>Judicial appointments arrangements (subject to the agreement of a Concordat between the UK Government and the NI Administration governing the independence of the judiciary), will become the responsibility of the First Minister & deputy First Minister.</p> <p>Appointment of arbitrators, referees and advisory bodies other than those falling within the remit of the NI Judicial Appointments Commission.</p> <p>Making recommendations to the Crown on the appointment of Queen's Counsel.</p>	<p>Appointment and removal of the Lord Chief Justice of NI and the Lords Justice of Appeal – responsibility will remain excepted (see below).</p> <p>Judicial salaries, pension and terms & conditions will continue to be excepted (see below).</p> <p>UK-wide Lord Chancellor functions relating to the judiciary or international relations.</p> <p>Lord Chancellor functions under the Human Rights Act 1998 or the Data Protection Act 1998.</p>	<p>Agreeing the Concordat.</p>

Schedule 3	What it means	What will devolve	What won't devolve	Issues remaining
15A The Northern Ireland Law Commission	The Criminal Justice Review recommended the establishment of an independent Northern Ireland Law Commission to keep under review both criminal and civil law in Northern Ireland	Everything (once established).	-	None

**TABLE 2: EXCEPTED MATTERS: COMMENTARY ON DEVOLUTION PROPOSALS
Summary of Law and Order provisions contained within Schedule 2 of the Northern Ireland Act 1998 & the
Northern Ireland Act 1973, with reference to similar provisions in the Scotland Act 1998**

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>3.⁹ International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations and extradition, and international development assistance and co-operation, but not –</p> <p>(a) repealed</p> <p>(aa) co-operation between the Police Service of Northern Ireland and the Garda Síochána with respect to any of the following matters –</p> <p>(i) transfers, secondments, exchanges or training of officers;</p> <p>(ii) communications (including liaison and information technology);</p> <p>(iii) joint investigations;</p> <p>(iv) disaster planning;</p> <p>(b) & (c) not relevant to law & order.</p>	<p>3. International relations, including treaties, the making of peace or war and neutrality, and matters connected therewith but not –</p> <p>(a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;</p> <p>(b) & (c) not related to law & order.</p>	<p>(1) The Extradition Act 2003 repealed the old backing of warrants scheme which existed between the UK and Ireland and replaced it with the European Arrest Warrant which, in effect, replicated that system across those participating Member States. The discussion document explained that the Government considered it appropriate to retain a single legislative framework for extradition arrangements throughout the UK and therefore would not intend to devolve legislative competence to the Assembly but intended that some specific <u>administrative functions</u> relating to extradition and international mutual legal assistance on criminal matters should, post-devolution, be exercised by Northern Ireland Ministers instead of the Secretary of State. The 1998 Act was amended by the Northern Ireland (Miscellaneous Provisions) Act 2006 to make it possible to transfer those functions by Order despite this remaining an excepted matter.</p> <p>(2) The 1998 Act was further amended by the NI (MP) Act 2006 to transfer certain aspects of co-operation between the PSNI and the Garda Síochána (which, being governed by an international agreement were excepted) to the reserved field so they were capable of being devolved with the rest of policing matters.</p>

⁹ See paragraph 7 of Part I of Schedule 5 to the Scotland Act 1998, plus also item B11 in paragraph 3 of Part II to that Schedule.

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>4.¹⁰ The defence of the realm; trading with the enemy; the armed forces of the Crown but not any matter within paragraph 10 of Schedule 3; war pensions; the Ministry of Defence Police.</p> <p>7.¹¹ Treason, but not powers of arrest or criminal procedure.</p>	<p>4. The armed forces of the Crown but not any matter within paragraph 3 of Schedule 3 to this Act.</p> <p>6. Treason and treason felony but not powers of arrest or criminal procedure in respect thereof.</p>	<p>Will not devolve.</p> <p>Will not devolve.</p>
<p>11.¹² The determination of the remuneration, superannuation and other terms and conditions of service (other than those relating to removal from office) of judges of the Supreme Court of Judicature of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the Judicature (NI) Act 1978, county court judges, recorders, resident magistrates, lay magistrates, coroners, the Chief and other Social Security Commissioners for Northern Ireland and the Chief and other Child Support Commissioners for Northern Ireland.</p>	<p>9. The appointment and removal of judges of the Supreme Court of Judicature of Northern Ireland, county court judges, recorders, resident magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other National Insurance Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland.</p>	<p>Legislative competence will not devolve, but it is proposed that, on devolution, responsibility for providing administrative support to the Social Security and Child Support Commissioners for Northern Ireland will transfer to Northern Ireland Ministers..</p>
<p>11A. The Supreme Court.</p>	<p>[No specific reference in the 1973 Act.]</p>	<p>Will not devolve.</p>
<p>[No specific reference in the 1998 Act.]</p>	<p>10. The appointment and office of the Director and deputy Director of Public Prosecutions for Northern Ireland.</p>	<p>The Justice (NI) Act 2002 provided that the appointment of the DPP(NI) would, following devolution of policing and justice, be the responsibility of the Attorney General for Northern Ireland (who will be appointed by the FM/DFM). So this will automatically devolve with criminal justice matters.</p>

¹⁰ See paragraph 9 of Part I of Schedule 5 to the Scotland Act 1998

¹¹ See paragraph 10 of Part I of Schedule 5 to the Scotland Act 1998

¹² See item L.1 in paragraph 3 of Part II of Schedule 5 to the Scotland Act 1998

1998 Act (Schedule 2 – excepted matters)	1973 Act (Schedule 2 – excepted matters)	Comment
<p>17.¹³ National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters): special powers and other provisions for dealing with terrorism or subversion; the subject-matter of-</p> <p>(a) the Official Secrets Acts 1911 and 1920;</p> <p>(b) Chapter I of Part I of the Regulation of Investigatory Powers Act 2000, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and</p> <p>(c) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by s.4(2) (crime) & not by any other provision of ss. 1-4.</p> <p>21A The office and functions of the Advocate General for Northern Ireland.</p>	<p>14. Special powers and other provisions for dealing with terrorism or subversion.</p> <p><i>NB: The 1973 Act preceded the Acts which put the intelligence agencies on a statutory footing and publicly acknowledged their existence for the first time.</i></p> <p><i>[No specific reference in the 1973 Act.]</i></p>	<p>Will not devolve.</p> <p>Will not devolve.</p>

¹³ See item B8 in paragraph 3 of Part II of Schedule 5 to the Scotland Act 1998



**Mr Simon Marsh
Principal Private Secretary
Secretary of State
Stormont Castle
Belfast
BT4 3TT**

11 December 2006

Dear Simon

**COMMITTEE ON THE PROGRAMME FOR GOVERNMENT SUB-GROUP
ON POLICING AND JUSTICE MATTERS**

The Committee on the Programme for Government sub-group on policing and justice matters met on Friday 8 December to discuss issues surrounding the ministerial structures for administering policing and justice and the NIO proposals (as set out in the Discussion Paper: Devolving Policing and Justice in Northern Ireland and the subsequent NIO letter of 15 August to the Committee on the Preparation for Government) on what should or should not be devolved.

The sub-group agreed by consensus that the Northern Ireland Office should be asked for the following:

- In the event of some role for MI5 in Northern Ireland clarification of what the relationship/accountability/reporting mechanisms will be between it and the devolved administration including with any Policing and Justice Minister(s), OFMDFM and the Assembly;
- To provide the sub-group with a copy/details of any new papers/proposals being considered/drawn up on a policing/justice department;
- To provide the sub-group with information on all the areas where there are Government Agreements/protocols in place on policing and justice matters;
- To provide the sub-group with information on the current position and a copy of any draft of the Concordat on the independence of the prosecution system referred to at No 9(d) Prosecutions in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;
- To provide the sub-group with information on the current position and a copy of any draft proposals with regard to the arrangements to be put in

place to allow the Life Sentences Review Commissioners to continue to have access to appropriate information which falls within the excepted field as referred to at No 9(e) treatment of offenders (including children and young persons, and mental health patients, involved in crime in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;

- To provide the sub-group with information on what are scheduled offences and what are non-scheduled offences according to the Justice and Security (Northern Ireland) Bill;
- To provide the sub-group with information on the proposed changes to the NI (Remission of Sentences) Act 1995 including the use of parole boards and the effect these proposed changes will have to the devolution proposals outlined at No 9(e) treatment of offenders (including children and young persons, and mental health patients, involved in crime in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;
- To provide the sub-group with clarification of where responsibility currently rests with regard to the approval of the purchasing of weapons which may be used by the police in public order situations and what the position will be following devolution of policing and justice;
- To provide the sub-group with clarification of the circumstances in which the army will be deployed in support of the police and what the accountability mechanisms in respect of the army will be in these circumstances as referred to at No 10 Public Order in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;
- To provide the sub-group with clarification of how the fact that the Secretary of State would retain power to issue statutory guidance to the Police Ombudsman and the Minister for policing would also have this power would work in practice. No 11 – The Police and the policing accountability framework in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government refers;
- To provide the sub-group with clarification of what exactly it is proposed is devolved in relation to firearms, the relevant firearms legislation and the specific types of firearms that are covered by this legislation and exactly what it is proposed will not be devolved. No 12 Firearms and Explosives in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government refers;
- To provide the sub-group with clarification with regard to where the financial burden will fall if the proposals for devolution with regard to No 15 The Courts in Table 1: Reserved Matters: Implications for Devolution

attached to the NIO letter of 15 August to the Committee on the Preparation for Government is accepted;

The sub-group will next meet on Thursday 14 December at 10.00 a.m. in Room 135, Parliament Buildings and I would be grateful if a response could be provided so that we can issue to Members on Tuesday 12 December.

The sub-group has a very tight timescale of 3 January 2007 to report back to the Committee on the Programme for Government. The sub-group agreed by consensus that it would therefore be very helpful if NIO officials could be available at the meeting on 14 December to answer any further questions/provide clarification if necessary on these matters.

Yours sincerely

Christine Darrah

**Mrs Christine Darrah
Clerk to the sub-group on policing and justice matters**

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www.nio.gov.uk

Principal Private Secretary to the
Secretary of State for Northern Ireland

Christine Darragh
Clerk to the sub-group on policing and justice matters
Northern Ireland Assembly
Parliament Buildings
Belfast

13 December 2006

Dear Christine,

**COMMITTEE ON THE PROGRAMME FOR GOVERNMENT SUB-GROUP ON
POLICING AND JUSTICE MATTERS**

Thank you for your letter of 11 December seeking briefing on a range of issues for the sub-group's coming meeting. Our response is attached - I apologise for missing your original deadline. As you will see, work is ongoing in many of these areas, and a final resolution may be some way off.

We recognise the tight timescale you are working to, and are happy for NIO officials to attend on Thursday as you have requested. Unfortunately due to other commitments, in particular the Parliamentary passage of the Justice and Security (NI) Bill, we will not be able to field officials to cover all the subject areas of interest to the sub-group.

However Tom Haire is able to attend, to cover any questions on the Life Sentence Review Commissioners and changes to remission of sentences. David Hughes will cover any questions on the draft Concordats on the independence of the prosecution system and the judiciary, and on future funding for the Court Service, and Rachel Miller will be able to provide any further advice on the Government's Discussion Paper on Devolving Policing and Justice. We are of course also ready to provide written responses to any further questions that the Committee may raise on other areas at tomorrow's meeting.

*Yours,
S*

**SIMON MARSH
PRINCIPAL PRIVATE SECRETARY**

MI5: ROLE, RELATIONSHIPS, ACCOUNTABILITY AND OVERSIGHT

- **In the event of some role for MI5 in Northern Ireland clarification of what the relationship/accountability/reporting mechanisms will be between it and the devolved administration including with any Policing and Justice Minister(s), OFMDFM and the Assembly;**

The Security Service is fully accountable through existing UK-wide Ministerial, Judicial and Parliamentary mechanisms.

Following the transfer of lead responsibility for national security intelligence work there will be no diminution in PSNI accountability. The role and responsibilities of the Policing Board and the Police Ombudsman vis-à-vis the police will not change.

Police officers will remain accountable to the Chief Constable and under the oversight of the Police Ombudsman. Work is ongoing between the Service and the Ombudsman's office to establish arrangements governing access by the Ombudsman to sensitive information held by the Service and relevant to the discharge of the Ombudsman's statutory duties. The Service has already disclosed sensitive information to PONI's office in a number of cases.

The Service has separate comprehensive oversight arrangements. It is open to the Ombudsman to pursue with the Investigatory Powers Tribunal and/or Intelligence Services Commissioner arrangements to enable her office to communicate any areas of concern that might arise. We have allowed time for such arrangements to be worked up.

Although the Chief Constable's main accountability on policing that touches on national security will remain with the Secretary of State, the Policing Board will as now have the power to require the Chief Constable to report on any issue pertaining to his functions or those of the police service. All aspects of policing will continue to be subject to the same scrutiny as now. The Board should receive no less information on police involvement in national security operations than they do currently. It is envisaged that a future Justice Minister will receive the same level of information as does the Board on police involvement in national security operations.

In all circumstances, including where the interest is national security-related, it will be the police's role to mount executive policing operations, make arrests and take forward prosecutions under the direction of the Public Prosecution Service. The Security Service has no executive policing responsibilities, even in countering threats to national security. While

the Security Service will provide the strategic direction, the PSNI's contribution to countering terrorism will remain absolutely central.

Three groups of Commissioners oversee various elements of covert work in NI: the Intelligence Services Commissioner; the Interception of Communications Commissioner; and the Surveillance Commissioner (who oversees covert policing operations).

Complaints relating to the actions of the intelligence agencies are investigated by the Investigatory Powers Tribunal, a panel comprising senior members of the legal profession.

There is also the Parliamentary Intelligence and Security Committee whose remit is to examine the expenditure, administration and policy of the security and intelligence agencies and whose reports are placed before Parliament.

In summary, a whole range of safeguards are and will continue in place: the Policing Board's continuing role in ensuring efficient policing; the safeguards embodied in RIPA; the Ombudsman's role in investigating complaints against police officers; Parliament's scrutiny of intelligence matters through the Intelligence and Security Committee; the various Commissioners' oversight of particular types of covert operations; and the Investigatory Powers Tribunal's remit to deal with complaints. Further Government accepts and will ensure that effect is given to the five key principles which the Chief Constable has identified as crucial to the effective operation of the new arrangements.

Not only are these arrangements comprehensive, they are as transparent as the sensitivity of the issues allows.

FUTURE DEPARTMENTAL STRUCTURE FOR POLICING AND JUSTICE

- **To provide the sub-group with a copy/details of any new papers/proposals being considered/drawn up on a policing/justice department;**

The Discussion Paper published in February 2006 described the Government's suggested framework for policing and justice in Northern Ireland. It set out the Government's view of the scope of devolution and identified some potential future Departmental structures. It also identified a number of areas where further thought was needed.

Although there have been some changes flowing from relevant clauses in the Northern Ireland (Miscellaneous Provisions) Act and the Northern Ireland (St Andrews Agreement) Act (notably to the arrangements for gaining Assembly agreement to the devolution of policing and justice), the Government's position has not changed fundamentally from that set out in the Discussion Paper.

As the Discussion Paper makes clear, a significant amount of detailed planning will need to be done in order to ensure a smooth and successful transfer when devolution is eventually agreed. The NIO, together with other criminal justice agencies, has already begun work on this, and particularly on identifying the practical issues which need to be addressed. However this work is dependant on decisions about what is to be devolved, and to what structures.

Earlier work by the Committee, culminating in the report published in the autumn, has been helpful in clarifying a number of issues, and in particular in confirming the parties' preference for a single department of justice and policing. But we are not yet in a position where it is possible to draw up the detailed implementation plan referred to in the Discussion Document.

NORTH/SOUTH PROTOCOLS

- **To provide the sub-group with information on all the areas where there are Government Agreements/protocols in place on policing and justice matters;**

The **Intergovernmental Agreement on Criminal Justice Cooperation** was signed on 28 July 2005. A copy is attached at Annex A. Terms of reference, etc for both Ministerial and officials' meetings are attached at Annex B. The IGA establishes structures for the ministers responsible for criminal justice in each jurisdiction to meet on a regular basis, and for a group of policy officials to meet in support of cooperative working in the criminal justice field. The Agreement is between the Governments of the UK and Ireland and as such will cease to operate when the minister responsible for criminal justice in Northern Ireland is not a member of the UK Government. However, the terms of the IGA enable the existing structures to be operated by the minister for criminal justice under devolution. The first year's work programme included project groups looking at:

- a. Forensic Science
- b. Public Protection
- c. Registered Offenders
- d. Exchange of Personnel
- e. Support for Victims

For the second year, ministers agreed that work should be taken forward in:

- a. Rehabilitation of offenders (added to the terms of reference of the Public Protection Group)
- b. Policing in a Multi-cultural Society
- c. Youth Justice

The **UK/ROI Memorandum of Understanding on Sex Offenders** was signed on 27 November 2006. A copy is attached at Annex C. This is an understanding between the UK and Irish Governments in relation to sharing information on the movement of convicted sex offenders subject to the notification requirements in the relevant jurisdictions – England and Wales, Scotland, Northern Ireland and the Republic of Ireland. It is therefore not primarily a North-South initiative and has not evolved out of the inter-governmental agreement on criminal justice matters. The policy development is led by the Home Office.

The **Intergovernmental Agreement on Policing Co-operation**, which was signed by both Governments on 29 April 2002, is attached at Annex D, and **Joint Protocols** signed by the

Chief Constable and Garda Commissioner on 21 February 2005 covering administrative measures for both **personnel exchanges** and **secondments** are attached at Annexes E and F. Also included is a **Memorandum of Understanding** between the PSNI and Garda Siochana in terms of developing interchange and co-operation in the area of **training and development**.

ANNEX A

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND ON CO-OPERATION ON CRIMINAL JUSTICE MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland:

Having regard to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10 April 1998 ("the British-Irish Agreement") and to the Multi-Party Agreement reached at Belfast on 10 April 1998 annexed to the aforesaid Agreement;

Having regard to the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Dublin on 8 March 1999 establishing a British-Irish Intergovernmental Conference;

Considering the report of the Review of the Criminal Justice System in Northern Ireland published in March 2000 ("the Criminal Justice Review"), the Justice (Northern Ireland) Act 2002, which enacts certain recommendations of the Criminal Justice Review, and the Criminal Justice Review Updated Implementation Plan published in June 2003;

Taking into account the progress made on co-operation between the relevant agencies in Ireland and in Northern Ireland ("the two jurisdictions") on policing and security matters;

Taking into account also developments within the European Union in respect of co-operation on criminal justice matters;

Recalling the discussions that took place between the two Governments and the political parties at Hillsborough Castle in March 2003 and the Joint Declaration published by the two Governments on 1st May 2003;

Have agreed as follows:

ARTICLE 1

Ministerial Meetings on Criminal Justice Cooperation

(1) The Ministers of the governments of the United Kingdom and Ireland (hereinafter referred to as "the Ministers") responsible for criminal justice matters in the two jurisdictions shall meet at least annually for the purpose of facilitating more effective co-operation and coordination on criminal justice matters, including in combating criminal behaviour, working together in the prevention of crime and on community safety issues, and dealing with offenders after conviction. Such meetings shall be referred to hereinafter as Ministerial Meetings on criminal justice cooperation.

(2) The Ministerial Meetings shall operate under the auspices of, and be accountable to, the British-Irish Intergovernmental Conference. The Ministers shall provide periodic joint reports to the British-Irish Intergovernmental Conference on the Ministerial Meetings.

(3) The Ministerial Meetings shall operate on the basis of the arrangements set out in the Annex, which shall constitute an integral part of this Agreement.

ARTICLE 2

Working Group on Criminal Justice Cooperation

(1) A Working Group on Criminal Justice Cooperation comprising officials from the United Kingdom and Ireland shall meet regularly to support the Ministerial Meetings and to take forward work on progressing the relevant recommendations of the Criminal Justice Review, and to identify other areas in which co-operation on criminal justice matters could be enhanced or initiated, as appropriate.

(2) The Working Group shall prepare, seek the agreement of the Ministers to, and implement annual work programmes on co-operation and co-ordination on criminal justice matters. Such work programmes will be published, including in electronic format.

(3) The Working Group shall be accountable to the Ministers, and through the Ministers to the British-Irish Intergovernmental Conference, and shall provide reports on progress to the Ministerial Meetings.

(4) The Working Group shall meet at least twice each year and shall operate on the basis of the arrangements set out in the Annex, which shall constitute an integral part of this Agreement.

ARTICLE 3

Protocols

(1) Where appropriate, written Protocols may be drawn up between relevant criminal justice agencies in the two jurisdictions addressing detailed aspects of co-operation agreed between them.

(2) Any such protocols shall be submitted to the Ministers for approval and signature.

(3) Such protocols shall not constitute international agreements and shall not have binding effect on either Government.

ARTICLE 4

Relationship with other international agreements

This Agreement shall not affect the rights and obligations of the Parties under other international agreements.

ARTICLE 5

Operation and Review of Agreement

(1) This Agreement shall have effect in respect of criminal justice matters to the extent that they are not devolved to the Northern Ireland Assembly.

(2) When the criminal justice matters to which this Agreement relates are devolved to the Northern Ireland Assembly, the operation of the Agreement will be reviewed by the Ministers.

ARTICLE 6

Entry into force

Each Government shall notify the other in writing of the completion, so far as it is concerned, of the requirements for entry into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of the two notifications.

In witness whereof the undersigned, being duly authorised thereto by the respective Governments, have signed this Agreement.

Done in two originals at on the day of 2005.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of Ireland:

ANNEX B

ARRANGEMENTS FOR THE OPERATION OF THE MINISTERIAL MEETINGS AND WORKING GROUP MEETINGS ON CRIMINAL JUSTICE CO-OPERATION

Ministerial Meetings

Terms of Reference

The Ministerial Meetings shall serve as a forum for the Ministers responsible for criminal justice matters in the two jurisdictions to:

- discuss criminal justice matters of mutual interest or concern in the two jurisdictions.
- consider the scope for, and develop plans to achieve, more effective co-operation and co-ordination on criminal justice matters between the two jurisdictions.
- oversee and give direction to the work of the Working Group.
- approve and periodically review progress against the annual work programmes on criminal justice co-operation.

Attendance

The Ministers shall be supported at meetings by the Joint Chairmen of the Working Group or their nominated representatives and by such other officials and representatives from the United Kingdom and Ireland as the Ministers may determine. Both sides shall endeavour to maintain a balance in representation between the two jurisdictions and to keep overall numbers at a manageable level.

Secretariat

Officials from the Northern Ireland Office and officials from the Department of Justice, Equality and Law Reform shall provide administrative support for, and shall produce an agreed record of, all Ministerial Meetings. Any disagreement about the record of a meeting that cannot be resolved through consultation between the two sides shall be referred to the Joint Chairmen and ultimately to the Ministers.

Working Group on Criminal Justice Cooperation

Terms of Reference

The Ministerial Meetings shall be supported by a Working Group comprising officials from the United Kingdom and Ireland who shall meet at least twice a year in order to:

- exchange information and discuss criminal justice matters of mutual interest.
- identify and advise on the opportunities for co-operation on criminal justice matters at government level and between the criminal justice agencies in the two jurisdictions, taking account also of the need for effective co-operation with other parts of these islands.
- prepare and submit annual work programmes on co-ordination and co-operation on criminal justice matters between the two jurisdictions for consideration at Joint Ministerial Meetings, and, where Ministers agree, to take forward the implementation of such programmes.
- take forward consideration of, and where appropriate implement, the recommendations on co-operation on criminal justice matters in the Criminal Justice Review.
- establish and manage projects and initiatives to facilitate and enhance co-operation on criminal justice matters between the two jurisdictions.
- keep under review the effectiveness of the arrangements for facilitating and enhancing co-ordination and co-operation on criminal justice matters between the two jurisdictions, and make appropriate recommendations on these matters to Ministerial Meetings.
- prepare and agree periodic reports for the Ministers on progress in taking forward the Work Programme approved by Ministers.
- prepare and agree reports as appropriate for Ministers to provide to the BIIGC.

Chairmanship

The Working Group shall be chaired jointly by the Director, Criminal Justice of the Northern Ireland Office and the relevant Assistant Secretary from the Department of Justice, Equality and Law Reform, or their nominated representatives.

Meetings of the group shall alternate between the United Kingdom and Ireland. The chairmanship of meetings shall also alternate with their location. The Director, Criminal Justice of the Northern Ireland Office shall take the chair when meetings take place in Northern Ireland, or elsewhere in the United Kingdom. The relevant Assistant Secretary from the Department of Justice, Equality and Law Reform shall take the chair when meetings take place in Ireland.

Membership

Membership of the Working Group shall include such officials and representatives from both jurisdictions as the Joint Chairmen may determine. Both sides shall strive to maintain a balance in representation between the two jurisdictions and to keep overall numbers at a manageable level.

Official support

The Working Group shall be supported by those officials from the DJELR and the NIO who provide administrative support to the Ministerial Meetings.

Records of meetings of the Working Group shall be agreed between the Joint Chairmen.

ANNEX C

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND ON INFORMATION SHARING ARRANGEMENTS RELATING TO SEX OFFENDERS

Paragraph 1 - Purpose

The Government of the United Kingdom and the Government of Ireland (each a “Participant” and, together, the “Participants”) have reached an Understanding that the information set out in this Memorandum will be shared for the purposes of assisting in:

- (a) the protection of the public from the risks presented by sex offenders;
- (b) the investigation of serious sexual offences.

Paragraph 2- Principles

Any information that is shared in accordance with this Understanding will be:

- (a) treated as confidential information;
- (b) used only for the purposes set out in this Memorandum;
- (c) used only by those authorities with a statutory duty to pursue those purposes; and
- (d) used in accordance with the constraints and safeguards provided by the Participants’ respective domestic laws.

Paragraph 3 - Subject

The Understanding relates to information about persons:

- (a) who intend to travel between Ireland (on the one hand) and Northern Ireland, Scotland, England or Wales (on the other hand); and
- (b) are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 in the United Kingdom or the Sex Offenders Act 2001 in Ireland.

Paragraph 4 - Information

The understanding relates to sharing information (where it is available) necessary to identify:

- (a) the persons specified in Paragraph 3 above;
- (b) the places to be visited and travel arrangements; and

- (c) any other information as may be necessary to achieve the purposes set out in Paragraph 1.

Paragraph 5 - Contact Points

Information will be conveyed through three points of contact, the National Central Bureau for Interpol for England, Wales and Scotland, Police Service of Northern Ireland for Northern Ireland and An Garda Síochána for Ireland.

Paragraph 6 - Review of the Understanding

The Understanding will be discussed at an annual meeting between the Participants which will consider its use and effectiveness.

Paragraph 7 - Status of Other Instruments

The Understanding operates without prejudice to any instruments which may be in force between the Participants, whether bilateral or multilateral.

Paragraph 8 - Commencement

The Understanding will come into effect on signature and will continue in operation until terminated by either Participant giving six months' written notice to the other.

Paragraph 9 - Status of Memorandum

This Memorandum of Understanding does not create binding legal rights and obligations between the United Kingdom and Ireland.

SIGNED in duplicate at on.....

For
THE GOVERNMENT OF
THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN
IRELAND

For
THE GOVERNMENT OF
IRELAND

ANNEX D

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND ON POLICE CO-OPERATION

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland:

Having regard to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland done at Belfast on 10 April 1998 ("the British-Irish Agreement") and to the Multi-Party Agreement reached at Belfast on 10 April 1998 annexed to the aforesaid Agreement;

Having regard also to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland done at Dublin on 8 March 1999 establishing a British-Irish Intergovernmental Conference;

Considering the report of the Independent Commission on Policing for Northern Ireland published in September 1999 ("the Patten Report");

Taking into account the progress made within the European Union on improving police co-operation pursuant to the provisions of Title VI of the Treaty on European Union;

Recalling the discussions that took place between the two Governments at Weston Park in July 2001, the measures announced on 1 August 2001 and the Updated Implementation Plan for the Patten Report published in August 2001;

Noting the establishment of the new Policing Board for Northern Ireland;

Have agreed as follows:

Article 1

Eligibility to apply for posts

(1)

(a) The Government of the United Kingdom of Great Britain and Northern Ireland shall introduce the necessary administrative and legislative measures to enable members of the Garda Síochána to apply for posts at ranks of above Inspector level in the Police Service of Northern Ireland.

(b) When determining the eligibility of a member of the Garda Síochána to apply for such posts in the Police Service of Northern Ireland, appropriate recognition will be given to the rank, experience and qualifications that would be required for an equivalent rank in the Garda Síochána. An eligible applicant will be required to compete in a merit-based selection procedure with all other applicants.

(2)

(a) The Government of Ireland shall introduce the necessary administrative and legislative measures to enable members of the Police Service of Northern Ireland to apply for posts at ranks of above Inspector level in the Garda Síochána.

(b) When determining the eligibility of a member of the Police Service of Northern Ireland to apply for a post in the Garda Síochána, appropriate recognition will be given to the rank, experience and qualifications that would be required for an equivalent rank in the Police Service of Northern Ireland. An eligible applicant will be required to compete in a merit-based selection procedure with all other applicants.

Article 2

Secondment with Policing Powers

(1)

(a) The Government of the United Kingdom of Great Britain and Northern Ireland shall introduce the necessary administrative and legislative measures to enable members of the

Garda Síochána to be seconded to the Police Service of Northern Ireland for periods not exceeding three years.

(b) For the duration of such secondments, the member in question shall have the same powers, duties, rights and obligations, including as appropriate the wearing of the uniform, as an attested member of the Police Service of Northern Ireland. For the duration of the secondment, the member shall not be subject to the direction and control of the Garda Commissioner and shall not exercise police powers within the jurisdiction of the Government of Ireland.

(2)

(a) The Government of Ireland shall introduce the necessary administrative and legislative measures to enable members of the Police Service of Northern Ireland to be seconded to the Garda Síochána for periods not exceeding three years.

(b) For the duration of such secondments, the member in question shall have the same powers, duties, rights and obligations, including as appropriate the wearing of the uniform, as an attested member of the Garda Síochána. For the duration of the secondment, the member shall not be subject to the direction and control of the Chief Constable of the Police Service of Northern Ireland and shall not exercise police powers within Northern Ireland.

Article 3

Police Protocols

(1) The Police Service of Northern Ireland and the Garda Síochána shall, as appropriate, draw up written Protocols between them addressing detailed aspects of co-operation between them, including in particular the issues referred to in Articles 2, 3, 5, 6, 7, 8, 9 and 10 of this Agreement.

(2) Such Protocols shall be signed by the Commissioner of the Garda Síochána and the Chief Constable of the Police Service of Northern Ireland or persons authorised to do so on their behalf. Copies of all such Protocols shall be forwarded to the Minister for Justice,

Equality and Law Reform, the Secretary of State for Northern Ireland and the Northern Ireland Policing Board.

(3) Such Protocols shall not constitute international agreements and shall not have binding effect on either Government.

Article 4

Annual Conference

An annual conference shall be convened between the Police Service of Northern Ireland and the Garda Síochána. It shall be hosted by each service on an alternating basis and the conference topics shall be decided by mutual arrangement between the two services. The costs of the conference shall be met by the host service and each service shall meet their own travel costs in attending the conference.

Article 5

Personnel Exchanges

(1) A programme shall be introduced to facilitate members of the Police Service of Northern Ireland being placed in the Garda Síochána, and members of the Garda Síochána being placed in the Police Service of Northern Ireland for periods not exceeding one year.

(2) The purpose of these placements will be to further enhance links and to transfer experience and expertise, including in the area of training.

(3) Members of the Garda Síochána will, for the duration of their placement, report to and work with the Police Service of Northern Ireland. However the member placed will remain a full member of the Garda Síochána subject to the overall direction and control of the Garda Commissioner and shall not exercise any police powers in Northern Ireland.

(4) Members of the Police Service of Northern Ireland will, for the duration of their placement, report to and work with the Garda Síochána. However the member placed will remain a full member of the Police Service of Northern Ireland subject to the overall direction

and control of the Chief Constable and shall not exercise any police powers in the jurisdiction of the Government of Ireland.

Article 6

Liaison

(1) Officers in both services shall be designated as liaison officers as considered appropriate to enhance co-operation between the Garda Síochána and the Police Service of Northern Ireland.

(2) The Commissioner of the Garda Síochána and the Chief Constable of the Police Service of Northern Ireland shall, in consultation with the respective Governments, explore other methods of enhancing liaison including the possible exchange of liaison officers.

Article 7

Training

The Police Service of Northern Ireland and the Garda Síochána shall enhance structures for co-operation in the area of training.

Article 8

Disaster Planning

The Police Service of Northern Ireland and the Garda Síochána shall, in consultation with other authorities responsible for the emergency services in both jurisdictions, work together in promoting improved joint planning.

Article 9

Joint Investigations

(1) The Police Service of Northern Ireland and the Garda Síochána shall, as appropriate, make full use of existing arrangements for facilitating joint investigations and additional arrangements that are put in place in the context of European Union developments.

(2) An expert group shall be established by both Governments to review the existing arrangements and to make recommendations on legal and administrative measures that could be taken to facilitate further the operation of joint Police Service of Northern Ireland and Garda Síochána investigations.

Article 10

Communications

(1) The Police Service of Northern Ireland and the Garda Síochána shall review communication links on an ongoing basis with a view to establishing and enhancing fast, effective and reliable communications.

(2) The Police Service of Northern Ireland and the Garda Síochána shall, as appropriate, consult with one another in the context of the procurement and development of their communications and information technology systems, and shall take into account the desirability of achieving greater compatibility between their systems.

Article 11

Relationship with other international agreements

This Agreement shall not affect the rights and obligations of the Parties under other international agreements.

Article 12

Entry into force

Each Government shall notify the other in writing of the completion, so far as it is concerned, of the requirements for entry into force of the Agreement. This Agreement shall enter into force on the date of the receipt of the later of the two notifications.

In witness whereof the undersigned, being duly authorised thereto by the respective Governments, have signed this Agreement.

Done in two originals at Belfast on the twenty-ninth day of April 2002.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

John Reid

ANNEX E

For the Government of Ireland:

John O'Donoghue



**PROTOCOL BETWEEN THE COMMISSIONER OF AN GARDA SÍOCHÁNA AND
THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND IN**

**RESPECT OF PERSONNEL EXCHANGES FOR THE FURTHER IMPROVEMENT
OF BILATERAL CO-OPERATION BETWEEN THEIR RESPECTIVE SERVICES**

**PROTOCOL BETWEEN THE COMMISSIONER OF AN GARDA SÍOCHÁNA AND THE
CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND IN RESPECT
OF PERSONNEL EXCHANGES FOR THE FURTHER IMPROVEMENT OF BILATERAL CO-
OPERATION BETWEEN THEIR RESPECTIVE SERVICES**

BACKGROUND

The Independent Commission on Policing for Northern Ireland in its report “A New Beginning: Policing in Northern Ireland” (the “Patten Report”)¹ recommended [Rec. 159: Paragraph 18.10] that:

“There should be a programme of long-term personnel exchanges, such as fixed-term secondments, between the Northern Ireland police and the Garda Síochána, in specialist fields where co-operation between the two services is most needed, such as drugs, and in areas such as training.”

¹ Published on 9th September 1999

INTER-GOVERNMENTAL AGREEMENT ON POLICING CO-OPERATION

It was subsequently agreed that Patten's recommendations on co-operation would be addressed through the framework of an Inter-Governmental Agreement on Policing Co-operation, which was signed by both Governments on 29 April 2002. This protocol which is made under **Article 3 of the Inter-Governmental Agreement**, gives effect to **Article 5 of the Inter-Governmental Agreement – on Personnel Exchanges** which states:

- “(1) A programme shall be introduced to facilitate members of the Police Service of Northern Ireland being placed in the Garda Síochána, and members of the Garda Síochána being placed in the Police Service of Northern Ireland for periods not exceeding one year.
- (2) The purpose of these placements will be to further enhance links and to transfer experience and expertise, including in the area of training.
- (3) Members of the Garda Síochána will, for the duration of their placement, report to and work with the Police Service of Northern Ireland. However the member placed will remain a full member of the Garda Síochána subject to the overall direction and control of the Garda Commissioner and shall not exercise any police powers in Northern Ireland.
- (4) Members of the Police Service of Northern Ireland will, for the duration of their placement, report to and work with the Garda Síochána. However the member placed will remain a full member of the Police Service of Northern Ireland subject to the overall direction and control of the Chief Constable and shall not exercise any police powers in the jurisdiction of the Government of Ireland.”

TERMS OF PROTOCOL

1. The period of the exchange will be agreed between both services before commencement but in any event will not exceed one year in duration.
2. Each service will provide a participant of equivalent rank in so far as is practicable for any mutual exchange. If appropriate, the exchanges will be arranged to allow each two participants to be exchanged concurrently.

3. Participants will be assigned a role which will be conducive to further enhancing links and to the transfer of experience and expertise, including training.
4. The exchange participant will, for the duration of their placement, report to and work with the host service.
5. Participants may be required to sign the relevant sections of the appropriate Official Secrets Act on commencement of their exchange.
6. Each participant will remain a full member of their home service and will continue to be subject to the overall direction and control of the Chief Constable or the Garda Commissioner. The Commissioner and the Chief Constable reserve the right to withdraw a participant during the course of the exchange.
7. Participants shall not exercise any police powers in the jurisdiction in which placed and will perform their public duties in plain clothes.
 - (a) Each officer participating in the exchange programme will retain the terms and conditions including salaries, pensions, allowances, leave and any special entitlement to compensation for injuries or damages to which they are entitled as members of their own service and that service will retain responsibility having regard to these issues.
 - (b) Allowances such as travel and subsistence, to which the Officer is entitled whilst on exchange will be claimed in the same manner and at the same rate as if the duty were performed at the home service. The appropriate "claim form" will be submitted through normal channels of the host service for approval by a person of not less than Superintendent rank or an Officer acting in that capacity who will in turn forward same to the officer's Superintendent/District Officers at the home service.
9. The home service will pay an allowance to participants to meet accommodation costs arising from their placement. Exchange participants will be responsible for arranging their accommodation and will take into account advice provided by the host service.

10. Return visits to the home service during off-duty will be on terms and conditions as agreed with the home service - duty permitting.
11. Participants will be required to submit a Personal Development Plan in advance of their exchange and an evaluation of their exchange to both services after the exchange has been completed.
12. The Chief Constable and the Garda Commissioner will agree any other non financial arrangements not specified in this protocol. Exchange participants in both services will be provided with a statement governing the terms of their exchange.
13. This protocol comes into effect on _____ **day of February, 2005** for an indefinite period. It will continue to have effect until one service informs the other in writing that the understanding herein is no longer to have effect.

Done in two originals at _____ on _____ day
of February, 2005.

**CHIEF CONSTABLE
POLICE SERVICE OF
NORTHERN IRELAND**

**COMMISSIONER
AN GARDA SÍOCHÁNA**

ANNEX F



PROTOCOL BETWEEN THE COMMISSIONER OF AN GARDÁ SÍOCHÁNA AND THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND IN RESPECT OF SECONDMENTS WITH POLICING POWERS FOR THE FURTHER IMPROVEMENT OF BILATERAL CO-OPERATION BETWEEN THEIR RESPECTIVE SERVICES

PROTOCOL BETWEEN THE COMMISSIONER OF AN GARDA SÍOCHÁNA AND THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND IN RESPECT OF SECONDMENTS WITH POLICING POWERS FOR THE FURTHER IMPROVEMENT OF BILATERAL CO-OPERATION BETWEEN THEIR RESPECTIVE SERVICES

Background

The Independent Commission on Policing for Northern Ireland in its report “A New Beginning: Policing in Northern Ireland” (the “Patten Report”) recommended [Rec. 159: Paragraph 18.10] that:

“There should be a programme of long-term personnel exchanges, such as fixed-term secondments, between the Northern Ireland police and the Garda Síochána, in specialist fields where co-operation between the two services is most needed, such as drugs, and in areas such as training.”

Inter-Governmental Agreement on Policing Co-operation

It was subsequently agreed that Patten’s recommendations on co-operation would be addressed through the framework of an Inter-Governmental Agreement on Policing Co-operation, which was signed by both Governments on 29th April, 2002. This protocol, which is made under **Article 3 of the Inter-Governmental Agreement**, gives effect to **Article 2 of the Agreement - Secondment with Policing Powers** - which states:

- “(1) (a) The Government of the United Kingdom of Great Britain and Northern Ireland shall introduce the necessary administrative and legislative measures to enable members of the Garda Síochána to be seconded to the Police Service of Northern Ireland for periods not exceeding three years.
- (b) For the duration of such secondments, the member in question shall have the same powers, duties, rights and obligations, including as appropriate the wearing of the uniform, as an attested member of the

Police Service of Northern Ireland. For the duration of the secondment, the member shall not be subject to the direction and control of the Garda Commissioner and shall not exercise police powers within the jurisdiction of the Government of Ireland.

- (2) (a) The Government of Ireland shall introduce the necessary administrative and legislative measures to enable members of the Police Service of Northern Ireland to be seconded to the Garda Síochána for periods not exceeding three years.
- (b) For the duration of such secondments, the member in question shall have the same powers, duties, rights and obligations, including as appropriate the wearing of the uniform, as an attested member of the Garda Síochána. For the duration of the secondment, the member shall not be subject to the direction and control of the Chief Constable of the Police Service of Northern Ireland and shall not exercise police powers within Northern Ireland.

Terms of Protocol

1. The period of the secondment will be agreed between both police services before commencement but in any event shall not exceed three years.
2. Seconded officers will be appointed to the host service and will become a member of that service exercising the full powers, duties, rights and obligations of an Officer of that service, subject to the overall direction and control of the Chief Constable or the Garda Commissioner, as appropriate.
3. Seconded officers will be required to sign the appropriate Official Secrets Act on commencement of their secondment.
4. Officers will be seconded into specific roles. A role profile, job description and person specification for the seconded role will be provided by the host service for the purpose of internal advertisement and selection by the sending service.

5. Participants on the secondment programme will be required to submit a Personal Development Plan in advance of their secondment and an evaluation of their secondment to both services after the period of the secondment has been completed. The host service will also conduct an evaluation of each individual secondment and submit same to the home service.
6. The Garda Commissioner and the Chief Constable retain the right to terminate a secondment. Breaches of discipline by seconded Officers will be dealt with in accordance with the statutory procedures put in place in respect of same.
7.
 - (i) Each Officer participating in the secondment programme will retain the terms and conditions, including salaries, pensions, allowances, leave and any special entitlement to compensation for injuries or damages to which they are entitled as members of their own service and that service will retain responsibility for these issues.
 - (ii) Allowances such as travel and subsistence, to which the Officer is entitled whilst on secondment will be claimed in the same manner and at the same rate as if the duty were performed at the home service. The appropriate “claim form” will be submitted through normal channels of the host service for approval by appropriate supervising rank who will in turn forward same to the secondees’ HR department in the home service.
 - (iii) Application for leave will be made to and processed within the host service on the form which the applicant uses in the normal course.
8. Travel and subsistence allowance arising from tasks assigned to a participating Officer in the course of his or her secondment will be the responsibility of the host service.
9. The home service will pay an allowance to participants to meet accommodation costs arising from their secondment. Secondees will be responsible for arranging their accommodation and will take into account advice provided by the host service.
10. Return visits to the home service during off-duty will be on terms and conditions as agreed with the home service – duty permitting.
11. Each service will provide the visiting officers with uniform and equipment during the secondment (if required) at no cost to the Officer (unless uniform is lost or not

returned). Officers may only use uniform/equipment provided by the host service whilst on secondment.

12. Each service will provide the visiting Officer with a mobile telephone for official use if necessary.
13. Officers on secondment to the Police Service of Northern Ireland will be required to attend Firearms Training after being appointed. Each training college will assess training requirements for each seconded officer and provide for same.
14. The Chief Constable and the Garda Commissioner will agree any other non financial arrangements not specified in this protocol. Participants on the secondment programme will be provided with a statement governing the terms of their secondment.
15. This protocol comes into effect on _____ **day of February, 2005** and will be reviewed as required but in any event will be reviewed within three years from this date.

Done in two originals at _____ on _____
day of February, 2005.

**CHIEF CONSTABLE
POLICE SERVICE OF**

**COMMISSIONER
AN GARDA SÍOCHÁNA**

CONCORDAT ON INDEPENDENCE OF THE PROSECUTION

- **To provide the sub-group with information on the current position and a copy of any draft of the Concordat on the independence of the prosecution system referred to at No 9(d) Prosecutions in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;**

The Devolving Policing and Justice Discussion Paper indicated (para 7.8) that the Government would put forward a Concordat setting out the core principles of the independence and impartiality of the Public Prosecution Service, which would be agreed with the Northern Ireland Executive before devolution. A draft of such a Concordat is attached below.

DRAFT

CONCORDAT BETWEEN HER MAJESTY'S GOVERNMENT AND
THE NORTHERN IRELAND EXECUTIVE
ON THE INDEPENDENCE OF
THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND

Purpose

1. This concordat sets out arrangements – agreed between Her Majesty's Government and the Northern Ireland Executive – for safeguarding the independence of the Public Prosecution Service for Northern Ireland following the devolution of responsibility for criminal justice matters to the Northern Ireland Assembly and Executive.

2. All references in this Concordat to "the 2002 Act" and "the 2004 Act" are to be taken as references to the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004 respectively.

Independence of the Public Prosecution Service

3. Her Majesty's Government and the Northern Ireland Executive agree that safeguarding the independence of the Public Prosecution Service for Northern Ireland is essential in a democratic society which supports the rule of law. Public confidence requires that decisions on whether to prosecute or not are taken in a fair and impartial manner. This can only be safeguarded if the independence of the prosecuting authority is maintained and protected.

4. In order to safeguard the independence of the Public Prosecution Service for Northern Ireland the following principles and arrangements have been agreed between Her Majesty's Government and the Northern Ireland Executive:

- In accordance with section 42(1) of the 2002 Act, the functions of the Director will be exercised by him independently of any other person. The Director is the head of the Public Prosecution Service, and the Deputy Director, the Public Prosecutors and other members of staff of the Service are subject to his direction as provided by section 29(6) of the 2002 Act. The Director of Public Prosecutions will have operational responsibility and accountability for the Public Prosecution Service for Northern Ireland.

- The Director and Deputy Director of Public Prosecutions will be appointed by the Attorney General for Northern Ireland in accordance with section 30 of the 2002 Act. The relationship between the Director of Public Prosecutions and the Attorney General for Northern Ireland will be consultative only, as set out in section 42(2)-(3) of the 2002 Act. The Attorney General will have no power of direction or superintendence over the Public Prosecution Service, whether in individual cases or matters of policy. The institution or continuance of criminal proceedings shall not be subject to the consent or fiat of the Attorney General. It is an essential and fundamental principle that the Public Prosecution Service for Northern Ireland is independent in the discharge of its functions.
- It is the duty of the Director of Public Prosecutions to take decisions as to prosecution in accordance with law and practice. He will exercise this quasi-judicial function in a wholly independent manner and not be subject to interference, question or pressure by the Northern Ireland Executive or by members of the Assembly in relation to any prosecutorial function.
- As set out in section 32A of the 2002 Act (as amended by section 7 of the 2004 Act) it shall be an offence to seek to influence a prosecutor with the intention of perverting the course of justice.
- The Public Prosecution Service shall be funded from the Northern Ireland Vote in a manner that ensures it can carry out its duties and responsibilities in an efficient and effective manner.
- In accordance with section 30(11) of the Act, the Director of Public Prosecutions, the Deputy Director and members of staff of the Service shall 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.
- As set out in section 39 of the 2002 Act, the Director will prepare a report each year on how he has exercised his functions, and the Attorney General for Northern Ireland will arrange for each annual report to be published and to be laid before the Northern Ireland Assembly.

Inspection of the Public Prosecution Service

5. The Public Prosecution Service for Northern Ireland will be subject to inspection by the Criminal Justice Inspectorate. Any inspection of the Public Prosecution Service shall be subject to the safeguards set out in section 46 of the 2002 Act. The Attorney General for Northern Ireland will be consulted by the Chief Inspector about the work programme of the Inspectorate and any intention to undertake an inspection of the Public Prosecution Service.

Review Arrangements

6. Her Majesty's Government and the Northern Ireland Executive will seek to resolve any issues concerning these principles and arrangements, in the first instance, through normal administrative channels, either at official or ministerial level. If any matter cannot be resolved in this manner, resolution will be sought in accordance with the principles and arrangements set out in the Memorandum of Understanding between Her Majesty's Government and the devolved administration.

SECRETARY OF STATE
HM GOVERNMENT

FIRST MINISTER
NORTHERN IRELAND EXECUTIVE

ATTORNEY GENERAL
HM GOVERNMENT

DEPUTY FIRST MINISTER
NORTHERN IRELAND EXECUTIVE

LIFE SENTENCE REVIEW COMMISSIONERS

- **To provide the sub-group with information on the current position and a copy of any draft proposals with regard to the arrangements to be put in place to allow the Life Sentences Review Commissioners to continue to have access to appropriate information which falls within the excepted field as referred to at No 9(e) treatment of offenders (including children and young persons, and mental health patients, involved in crime in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;**

In the context of developing appropriate overarching arrangements to deal with and protect national security equities, we will consider what arrangements will need to be in place to provide information to the Commissioners.

CLASSIFICATION OF OFFENCES UNDER THE JUSTICE AND SECURITY (NI) BILL

- **To provide the sub-group with information on what are scheduled offences and what are non-scheduled offences according to the Justice and Security (Northern Ireland) Bill;**

The current Diplock system of non-jury trial will be repealed on 31 July 2007. The Justice and Security (Northern Ireland) Bill (which has its Second Reading on Wednesday 13 December 2006) contains a number of provisions designed to tackle the ongoing problems of paramilitary and community-based pressures on a jury. These include a number of reforms designed to reduce the risk of a perverse verdict and to increase the randomness of jury selection. The measures are:

- restrictions on the disclosure of information about jurors;
- balloting jurors by number only (so that personal information is not made public);
- the abolition of peremptory challenge and the restriction of the right of stand-by;
- better routine checking to identify disqualified jurors; and
- other juror protection measures including increased use of screening from the public gallery.

Although these measures will go some way to reducing the risks of perverse verdicts and juror intimidation they will not eliminate it entirely. The Bill therefore makes provision for a new system of non-jury trial. The presumption will be for jury trial in all cases, but the Director of Public Prosecutions for Northern Ireland will be able to issue a certificate for non-jury trial if a case meets a defined statutory test, which is focused on the involvement of paramilitaries and sectarianism (including public disorder). The test is based on the circumstances of the offence (not a defined list of offences) and an assessment of the risk to the administration of justice. This will help to ensure that only those exceptional cases that require it will be tried without a jury in the future.

REMISSION OF SENTENCES

- **To provide the sub-group with information on the proposed changes to the NI (Remission of Sentences) Act 1995 including the use of parole boards and the effect these proposed changes will have to the devolution proposals outlined at No 9(e) treatment of offenders (including children and young persons, and mental health patients, involved in crime in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;**

The Northern Ireland (Remission of Sentences) Act 1995 will remain in force and will continue to apply to those offenders convicted of relevant offences – *i.e.* those that are scheduled in law (broadly, offences related to terrorism) and committed before the commencement of the new legislation announced by David Hanson on 5 December.

However, it is planned that Part VII of the Terrorism Act 2000, which provides for scheduled offences, will lapse in 2007. Thereafter, those convicted of an offence committed after the commencement of the new legislation announced by David Hanson will be dealt with in accordance with that legislation.

Adjustment of the Northern Ireland (Remission of Sentences) Act will not be devolved to the Assembly, since it relates to an excepted matter. But the new arrangements announced by David Hanson (including any new Parole Board-type body) will be.

PURCHASING OF POLICE WEAPONS

- **To provide the sub-group with clarification of where responsibility currently rests with regard to the approval of the purchasing of weapons which may be used by the police in public order situations and what the position will be following devolution of policing and justice;**

Specifically in a devolved context, authorisation for the purchase and use of Less Lethal Weaponry will remain an operational decision for the Chief Constable. The Policing Board does not have any statutory function of approving – or, for that matter, disapproving – the purchase or use by the Chief Constable and his officers of such equipment. However, importantly, the Board is empowered to engage in a process of discussion, debate, communication, recommendation and ultimately to hold the Chief Constable to account in this respect.

MILITARY SUPPORT FOR THE POLICE

- **To provide the sub-group with clarification of the circumstances in which the army will be deployed in support of the police and what the accountability mechanisms in respect of the army will be in these circumstances as referred to at No 10 Public Order in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government;**

The military will continue to be available to provide focussed support to the police and the civil authorities in a number of areas, consistent with the role they perform in the rest of the UK. For example, specialist support in Explosives Ordinance Disposal will continue to be provided by the armed forces. Consistent with the recommendations of the Patten Report, military support will also continue to be available for public order situations.

When and in what circumstances support will be required will be an operational decision for the Chief Constable of the PSNI. His formal request will then have to be approved by a Defence Minister. The details of how these procedures will operate in practice are still being worked through.

The accountability arrangements for the Chief Constable will not change in relation to requests for support for the police from the military. The Secretary of State will be able to ask a reviewer to look at any issues that arise from armed forces deployments (for example, the use of AEP in a public order situation). There will be no change to the method by which allegations of criminal conduct by the armed forces will be dealt with: the existing jurisdiction of the civilian police and the PPSNI over the armed forces will be unaffected.

GUIDANCE TO THE POLICE OMBUDSMAN

- **To provide the sub-group with clarification of how the fact that the Secretary of State would retain power to issue statutory guidance to the Police Ombudsman and the Minister for policing would also have this power would work in practice. No 11 – The Police and the policing accountability framework in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government refers;**

Part VII of the Police (Northern Ireland) Act 1998 makes provision for the Police Ombudsman, in the discharge of her functions, to have regard to any guidance issued by the Secretary of State. We would envisage that the power to issue guidance to the Police Ombudsman, along with other provisions currently charged to the Secretary of State under this Part of the Act, be devolved to the relevant Minister of the Northern Ireland Assembly. The only possible exception to this might be in circumstances involving a national security issue where the Secretary of State could issue appropriate guidance to the Ombudsman.

FIREARMS LEGISLATION, ETC.

- **To provide the sub-group with clarification of what exactly it is proposed is devolved in relation to firearms, the relevant firearms legislation and the specific types of firearms that are covered by this legislation and exactly what it is proposed will not be devolved. No 12 Firearms and Explosives in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government refers;**

1. The firearms licensing framework is contained in the Firearms (Northern Ireland) Order 2004, as amended by the Firearms (Amendment) (Northern Ireland) Order 2005. The Firearms (Appeals and Applications) Regulations 2005 set out procedures for:

- (i) appeals to the Secretary of State under Article 74 of the 2004 Order against decisions of the Chief Constable; and
- (ii) applications for the removal of the statutory prohibition on holding firearms imposed under Article 63 of the 2004 Order.

2. This legislation covers all firearms including prohibited weapons.

Definition

“Firearm” means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes:

- (a) any prohibited weapon, whether it is such a lethal weapon or not;
- (b) any component part of such a lethal or prohibited weapon; and
- (c) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon.

Prohibited weapons are mainly military type firearms but include any weapon “designed or adapted for the discharge of electricity or any noxious liquid, gas or other thing”. A full list of prohibited weapons is defined in Article 45 of the Order.

3. Matters to be reserved:

Authorisation of prohibited firearms;

Museum licences (which include the authorisation of prohibited weapons);

Any other issue which may have implications for national security (such matters are still being considered).

COURT SERVICE: FINANCIAL ARRANGEMENTS

- To provide the sub-group with clarification with regard to where the financial burden will fall if the proposals for devolution with regard to No 15 The Courts in Table 1: Reserved Matters: Implications for Devolution attached to the NIO letter of 15 August to the Committee on the Preparation for Government is accepted;

The Northern Ireland Court Service – which is responsible for courts administration in Northern Ireland – is accountable to and funded by the Department for Constitutional Affairs. As part of the devolution of policing and criminal justice it is to become an executive agency of the devolved Department with policing and justice functions. A budget has now been agreed and will be passed to the devolved administration to fund the courts and pay for the new agency.

Concordat

The Discussion Paper indicated (para 15.16) that the Government would put forward a Concordat setting out the core principles of the independence and impartiality of the Judiciary in Northern Ireland, to be agreed with the Northern Ireland Executive before devolution. (This complements the Concordat on the Prosecution referred to earlier.) A draft of such a Concordat is attached below.

DRAFT

CONCORDAT BETWEEN HER MAJESTY'S GOVERNMENT AND
THE NORTHERN IRELAND EXECUTIVE
ON THE INDEPENDENCE OF THE JUDICIARY
IN NORTHERN IRELAND

Purpose

1. This concordat sets out arrangements – agreed between Her Majesty's Government and the Northern Ireland Executive – for safeguarding the independence of the judiciary following the devolution of responsibility for criminal justice matters to the Northern Ireland Assembly and Executive.
2. All references in this Concordat to “the 2002 Act” are to be taken as references to the Justice (Northern Ireland) Act 2002, and likewise references to “the 2004 Act” are to be taken as references to the Justice (Northern Ireland) Act 2004.

Safeguarding Independence - Respective Responsibilities

3. Her Majesty's Government and the Northern Ireland Executive agree that safeguarding the independence of the judiciary in Northern Ireland from political influence or interference is essential in a democratic society which supports the rule of law. It is of paramount importance that the judicial function remains independent of Government and immune from any partisan or political interest. Public confidence requires that judicial decisions are taken in a fair, impartial, objective and consistent manner. These can only be safeguarded if judges are able to act with independence.
4. In order to safeguard the independence of the judiciary in Northern Ireland, the following principles and arrangements have been agreed between Her Majesty's Government and the Northern Ireland Executive:
 - The Lord Chancellor, Ministers of the Crown, the First Minister, the deputy First Minister, Northern Ireland Ministers and those with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary, in accordance with section 3 of the Constitutional Reform Act 2005 and section 1 of the 2002 Act (as substituted by

section 4 of the Constitutional Reform Act 2005). This duty will operate whatever structures are put in place for administering justice matters;

- Those listed in the list above shall not seek to influence particular judicial decisions through any special access to the judiciary or otherwise;
- The responsible Northern Ireland Minister will ensure that there is an efficient and effective system to support the carrying on of the business of the courts and that appropriate services are provided for those courts.
- The Lord Chief Justice shall exercise the role of the President of the Courts of Northern Ireland and head of the judiciary of Northern Ireland. As provided for at section 12(1) of the 2002 Act (as amended by section 11 of the Constitutional Reform Act 2005), in discharging this role he is responsible for representing the views of the judiciary of Northern Ireland to Parliament, the Lord Chancellor and Ministers of the Crown generally; for representing the views of the judiciary of Northern Ireland to the Northern Ireland Assembly, the First Minister and deputy First Minister and Northern Ireland Ministers; for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Northern Ireland within the resources made available by the responsible Northern Ireland Minister; and for the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts. He will be president of the Court of Appeal, the High Court, the Crown Court, the county courts and the magistrates' courts and head of the judges who sit in them. He will also take responsibility for certain functions relating to the operation of the courts, which are set out at Schedule 5 to the Constitutional Reform Act 2005;
- The Lord Chief Justice may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern Ireland. Those matters do not include transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates;
- The Lord Chief Justice may lay before the Northern Ireland Assembly written representations on certain matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern

Ireland. Those matters are (a) excepted or reserved matters to which a Bill for an Act of the Northern Ireland Assembly relates; (b) transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates;

- The responsibility of the Lord Chancellor shall be recognised in respect of the determination of judges' remuneration, superannuation and other terms and conditions of service other than those relating to removal from office.

Judicial Appointments

5. The appointment and tenure of judges is a determinant factor in ensuring their independence. Appointment must be on merit alone. Judges should not, and should not appear to be beholden to any political office-holder or political doctrine for their appointment or preferment. Likewise, no political office-holder should be able to secure the appointment or determine the tenure of an individual judge. At the same time, and subject to the requirement that appointments and recommendations for appointment are made solely on the basis of merit, appointments should so far as is reasonably practicable be such that those holding listed judicial offices are reflective of the community in Northern Ireland. To further ensure the independence of the judiciary it is agreed between Her Majesty's Government and the Northern Ireland Executive that:

- There shall be transparency and openness in the administration of judicial appointments and removals, as provided for by the mechanisms set out at sections 2-8 of the 2002 Act, as amended by sections 1-5 of the 2004 Act.
- There shall continue to be a Judicial Appointments Commission, which shall make recommendations for appointments to judicial offices listed at Schedule 1 to the 2002 Act – that is, judges up to and including judges of the High Court – in accordance with the provisions set out in Schedule 3 to the 2002 Act.
- The Prime Minister shall make recommendations to Her Majesty The Queen for the appointment of the Lord Chief Justice and Lord Justices of Appeal, first having received a recommendation from the First Minister and Deputy First Minister in the form that the Prime Minister shall specify. Before making their recommendation, the First Minister and deputy First Minister shall consult the Lord Chief Justice, or if the Lord Chief Justice is not available the most senior Lord Justice of Appeal, and

the Judicial Appointments Commission shall advise the First Minister and deputy First Minister as to the procedure they should adopt for formulating their recommendation to the Prime Minister. The First and the deputy First Minister will then determine the procedure, subject to the approval of the Prime Minister.

- Appointments to listed judicial offices and recommendations for appointment shall be made solely on the basis of merit, as required by section 5(8) of the 2002 Act as amended by section 3 of the 2004 Act.
- The Judicial Appointments Commission shall, subject to the principle of appointment on merit, engage in a programme of action designed to secure, so far as it is reasonably practicable to do so, that appointments to listed judicial offices are such that those holding such offices are reflective of the community, as set out in section 5(9)-(10) of the 2002 Act, as amended by section 3 of the 2004 Act.
- The Lord Chief Justice, Lords Justices of Appeal and those High Court judges appointed before the commencement of section 7 of the 2002 Act shall hold office during good behaviour. They may be removed from office by an address presented to Her Majesty The Queen by both Houses of Parliament, only on the basis of a report of a removals tribunal convened under section 8 of the 2002 Act. Such a tribunal can be convened by the First Minister and deputy First Minister after consultation with the Lord Chief Justice or by the Lord Chief Justice after consultation with the First Minister and deputy First Minister. In the case of the removal of the Lord Chief Justice, the tribunal can be convened by the First Minister and deputy First Minister without consultation. A tribunal to consider the removal of the Lord Chief Justice or a Lord Justice of Appeal may not be convened unless the Prime Minister has been consulted.
- A person may be removed from a listed judicial office by the First Minister and deputy First Minister acting jointly, but only on the basis of a report of a removals tribunal convened under section 8 of the 2002 Act and after consultation with the Lord Chief Justice.

Review Arrangements

6. Any difficulties experienced by the Northern Ireland Executive or Her Majesty's Government in operating these arrangements will in the first instance be raised through normal administrative channels, either at official or Ministerial level. Where a dispute or difficulty cannot be resolved in this way, a resolution will be sought in accordance with the principles and arrangements set out in the Memorandum of Understanding between Her Majesty's Government and the devolved administrations.

SECRETARY OF STATE
HM GOVERNMENT

FIRST MINISTER
NORTHERN IRELAND EXECUTIVE

LORD CHANCELLOR

DEPUTY FIRST MINISTER
NORTHERN IRELAND EXECUTIVE



POLICE COLLEGE
of NORTHERN IRELAND



Coláiste an Gharda Síochána

MEMORANDUM OF UNDERSTANDING
BETWEEN
POLICE COLLEGE OF NORTHERN IRELAND
AND
AN GARDA SÍOCHÁNA COLLEGE

The Police College of Northern Ireland and An Garda Síochána College agree upon establishing contacts and developing interchange and co-operation in the area of training and development methods and the development of mutually agreed products on the basis of professional friendship, equality and mutual assistance.

The purpose of this Memorandum of Understanding is to expand the quality and scope of training and development in both organisations. The lead for the PCNI will be provided by the Head of Police College, the lead for An Garda Síochána College will be provided by the Director of Training and Development, An Garda Síochána College.

We agree:

1. To the sharing of materials in the development of training courses.
2. To each college sharing with the other their experiences and expertise in:
 - The delivery of training courses and other training events.
 - Joint training and learning seminars, conferences and meetings to spread good practice and knowledge.
3. Following review of the 'Leadership and Problem Solving Grid' programme materials and the evaluations of all sessions, to conduct a joint 'Leadership and Problem Solving Grid' programme with our Grid International training team. The venue for the programme will be mutually agreed. This will be a week long 'Grid' session. Each session will accommodate approximately forty students (twenty members from each service attending). An assessment of the joint programme will follow.
4. That our respective colleges provide a student award to a top student of the partner police college and be prepared to present such an award at an appropriate ceremony.
5. To provide resources and sharing of good practice in support of the European Union Peace and Reconciliation Project on Diversity Training.
6. That there is real value in a programme of trainer exchanges between our colleges and that the single points of contact will ensure that this initiative is taken forward in 2005/2006.

Under this agreement, each party retains the absolute right to research, develop, implement and market such training products as it sees fit without reference to the other party. Joint ownership of products will only commence when a project has been submitted to, and accepted by a Joint Project Board.

This agreement, made by both parties, will be reviewed after one year and will continue to remain in effect by mutual consent.

The agreement will begin to be effective from the date of it being signed by both parties.

Subject to the approval of both parties within the framework of this agreement, either party may introduce additional topics.

Head of Police College
Police College of Northern Ireland

Director of Training and Development
An Garda Síochána College

Date: _____

Date: _____



**Mr Simon Marsh
Principal Private Secretary
Secretary of State
Stormont Castle
Belfast
BT4 3TT**

15 December 2006

Dear Simon

**COMMITTEE ON THE PROGRAMME FOR GOVERNMENT SUB-GROUP
ON POLICING AND JUSTICE MATTERS**

The Committee on the Programme for Government sub-group on policing and justice matters had a very useful discussion with officials yesterday on a range of issues covered in your response of 13 December 2006. The attendance of officials at short notice was appreciated by the Chairperson and members. A number of questions arose during the session which the officials undertook to respond to in writing and these are outlined below:

MI5: ROLE, RELATIONSHIPS, ACCOUNTABILITY AND OVERSIGHT

- Are any other accountability arrangements considered necessary and are any other measures currently envisaged in relation to accountability?
- A future Justice Minister will receive the same level of information as the Policing Board in respect of national security operations. What is this level of information and who is it shared with in the Policing Board?
- Given the views that the powers and statutory functions of the Policing Board should not be encroached upon in any future arrangements will the fact that a Justice Minister will receive the same level of information as the Board cause a tension and how will this be reconciled?
- Have any proceedings been taken by way of reference to the Investigative Powers Tribunal (IPT) under the Human Rights Act?
- What is the process followed by the IPT when considering complaints?
- What are the rights of complainants in respect of the IPT in relation to the submission of evidence, attendance, representation and hearings including those in private?

- What detail is provided regarding any decision of the IPT and how does it justify any non-disclosure of reasons/explanations?
- With regard to the on-going MI5 recruitment campaign confirmation of the number of new people being recruited, the nature of the jobs they will be doing and the number who will be doing each particular job.
- Is any consideration being given to including a Northern Ireland MP on the Parliamentary Intelligence and Security Committee given the proposed increased role of MI5 in Northern Ireland?

PURCHASING OF POLICE WEAPONS

- What is the impact the Policing Board has on matters such as this given its remit and power in relation to budgetary matters? Can the Policing Board refuse to authorise the financing of particular weapons?

MILITARY SUPPORT FOR THE POLICE

- Further information on all the anticipated examples of when the Army would provide focused support for the police;

COURT SERVICE: FINANCIAL ARRANGEMENTS

- Clarification of whether the budget for the court service (indicative figure of between £130 and £131 million) will be ring-fenced when transferred into the NI Block grant.

I should be grateful if a response could be provided by 3.00 p.m. on Tuesday 19 December to enable it to be issued in members' packs for the sub-group meeting on Thursday 21 December 2006.

Yours sincerely

Christine Darrah

**Mrs Christine Darrah
Clerk to the sub-group on policing and justice matters**

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Principal Private Secretary to the
Secretary of State for Northern Ireland

Christine Darragh
Clerk to the Sub-Group on Policing and Justice Matters
Northern Ireland Assembly
Parliament Buildings
Belfast
BT4 3XX

18th December 2006

Dear Christine,

**COMMITTEE ON THE PROGRAMME FOR GOVERNMENT SUB-GROUP ON
POLICING AND JUSTICE MATTERS**

Thank you for your letter of 15 December. I am glad the sub-group found the discussion with officials helpful, and enclose the further details that we undertook to provide.

May I take this opportunity to wish you a Happy Christmas and a good New Year.

Yours,
A handwritten signature in black ink, appearing to read 'Simon'.

SIMON MARSH
Principal Private Secretary



Clarification of the relationship/accountability/reporting mechanisms between the Security Service and the devolved administration including with any Policing and Justice Minister(s), OFMDFM and the Assembly

Are any other accountability arrangements considered necessary and are any other measures currently envisaged in relation to accountability?

While the Government is satisfied the accountability and oversight arrangements are comprehensive, it acknowledges that some of the Parties have concerns in this area. For that reason we continue to consider what further reassurances can be factored into the new working arrangements.

A future Justice Minister will receive the same level of information as the Policing Board in respect of national security operations. What is this level of information and who is it shared with in the Policing Board?

Although responsibility for national security lies outside the remit of the Board and the Justice Minister, the PSNI will retain key policing operational responsibilities for countering threats to national security. In connection with these matters, the Board and the Justice Minister will receive information to the extent that it is relevant to their functions and would not create a risk of damage to national security interests to release it – in other words, to the extent that it would not expose specific casework, sensitive intelligence, operations, sources, methods or techniques that would affect national security interests. This information will be supplied in confidence to the Board or, as and when constituted, a section 28 sub committee of the Board.

Given the views that the powers and statutory functions of the Policing Board should not be encroached upon in any future arrangements will the fact that a Justice Minister will receive the same level of information as the Board cause a tension and how will this be reconciled?

Ahead of devolution of policing and justice, the detail of the respective roles and powers of the Policing Board, the Justice Minister and the Assembly Committee and how these powers will interplay will be clarified. In terms of the level and type of information about police involvement in national security matters that the Board and the Justice Minister will receive, we do not envisage that the Minister will receive any less information than the Board.

Have any proceedings been taken by way of reference to the Investigative Powers Tribunal (IPT) under the Human Rights Act?

What is the process followed by the IPT when considering complaints?

What are the rights of complainants in respect of the IPT in relation to the submission of evidence, attendance, representation and hearings including those in private?

What detail is provided regarding any decision of the IPT and how does it justify any non-disclosure of reasons/explanations?

The IPT, an independent body, has the power to hear and determine proceedings brought under section 7 of the HRA and to consider and determine any complaints from any person who is aggrieved by any conduct by or on behalf of the intelligence services in relation to the complainant, or his property or communications. At the discretion of the President of the Tribunal, the Tribunal may hear complaints made on behalf of those aggrieved by conduct they believe has been carried out by the intelligence services.

The procedures adopted by the IPT are governed by Part IV of RIPA and The Investigatory Powers Tribunal Rules (SI 2000 No.2665).

The IPT is not required to publish details of the complaints referred to it. However, historic details of the numbers and status of complaints heard by the Tribunal have been published in the separate annual reports of the Intelligence Services and Interception of Communications Commissioners. The Commissioners' reports for 2005 are nearing completion and will be published in the near future.

Organisations which are the subject of a complaint are obliged by RIPA to provide information to the IPT. The IPT will then consider all the information before them. If they consider they do not have all the information required to make a determination they can demand more information, a meeting or an inspection of the organisation concerned or invite the complainant to provide more information. The IPT may hold oral hearings but is not required to do so.

If the complaint relates to a matter relevant to the Intelligence Services Commissioner, Interception Services Commissioner or any Surveillance Commissioner, the IPT must

ensure that the relevant Commissioner is kept informed of any determination, award, order or decision made by the IPT.

The IPT will inform the complainant whether the complaint has been upheld or not. The IPT will also provide the complainant with a summary of that determination including any findings of fact. The IPT must not disclose any information that would be contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well being of the UK or the continued discharge of the functions of any intelligence service.

With regard to the on-going MI5 recruitment campaign confirmation of the number of new people being recruited, the nature of the jobs they will be doing and the number who will be doing each particular job.

For operational reasons the Security Service does not disclose details of its staff numbers and their deployment.

Is any consideration being given to including a Northern Ireland MP on the Parliamentary Intelligence and Security Committee given the proposed increased role of MI5 in Northern Ireland?

The Government has indicated that it is prepared to consider how the Northern Ireland focus of the Committee might be strengthened. The ISC was established in statute in 1994 and its membership cannot be increased nor its functions changed without primary legislation. This limits our scope; however we continue to consider the matter.

Purchasing of Police Weapons

What is the impact the Policing Board has on matters such as this given its remit and power in relation to budgetary matters? Can the Policing Board refuse to authorise the financing of particular weapons?

The Policing Board has a series of significant statutory functions in the realm of financing the police as set out in Sections 9-12 of the Police NI Act 2000 (the 2000 Act). In addition the Secretary of State has issued a Code of Practice, in the form of a Management Statement (copy attached), to the Chief Constable and the Policing Board in connection with the grant for police purposes made under Section 9(1) of the 2000 Act, a copy of which is attached for information. This management statement defines the administrative framework within which the NIO, the Chief Constable and the Board operate to meet their respective roles and responsibilities in regard to the police grant.

As regards Novel and Contentious expenditure the conditions of grant, issued in January 2003, outline (at Paragraph 9) that "any expenditure that is deemed to be novel and contentious as defined by HM Treasury should be notified to the Board and to the Department and Treasury approval obtained before the expenditure is incurred".

Having regard to Sections 9-12 of the 2000 Act, the Board is clearly entitled to examine and consider the particular dimension of financing such weaponry. This is reinforced by Section 28(1) of the 2000 Act which places a duty on the Board to secure continuous improvement in the way which its functions, and those of the Chief Constable, are exercised having regard to a combination of economy, efficiency and effectiveness.

It is therefore open to the Board to consider the subject of purchasing less lethal weaponry and express its views to the Chief Constable. However, the Board's role in this context is one of scrutiny and supervision. This does not include either (a) a right to issue any instruction to the Chief Constable concerning the adoption or use of such weaponry or (b) any functions of approval in this respect.

The issue of the adoption and use of such equipment is an operational matter, where the relevant decision maker is the Chief Constable rather than the Board. However, in its monitoring and supervising capacity the Board can seek to influence the Chief Constable with regard to any operational matter. Nonetheless the final decisions rest with the Chief Constable for the reason that, (a) it is the duty of police officers to, inter alia, protect life and property and preserve order and (b) in the performance of these duties, the police are under the Chief Constable's direction and control. In addition the Chief Constable also has a duty of care to his officers.

Military Support for the police

Further information on all the anticipated examples of when the Army would provide focussed support for the police

The Armed Forces regularly provide support to the police and other civil authorities. Where there is an imminent threat to life, such as a major accident or natural disaster, the authorities can call upon local unit commanders for support. The Armed Forces' organisation, skills, equipment and training make them an extremely valuable national resource with an established and flexible command and control structure.

However, it is wrong to believe that the Armed Forces have large numbers of people available to respond to domestic crises. This is not the case. In the event of an incident, the civil authorities would lead the response. Military involvement would take the form of specific assistance should the civil authorities ask for it.

Military aid requires Ministerial authorisation. The fundamental principle underpinning it is that aid should only be requested, and provided, when the capability to fulfil a task is outside that available to the civil authorities.

Armed Forces capabilities providing support to the civil authorities are divided into two conceptual categories:

Niche capabilities: where, in the view of Defence Ministers, it is in the national interest to guarantee specific Defence capabilities to undertake specific standing operations in the UK.

Augmentation: when MOD Ministers consider it is appropriate to deploy Defence capabilities on operations in the UK, drawing on regular and reserve forces available at the time.

Within these categories there are three broad areas where support may be delivered:

- the provision of military personnel to support a Civil Power in the maintenance of law, order and public safety. Examples of this in practise are the provision of high assurance search support and EOD capability.

- the use of Service personnel on urgent work of national importance or in maintaining supplies and services essential to the life, health and safety of the community. Put simply, this is what was done during the recent fire disputes, and during the foot and mouth outbreak.
- the provision of Military Aid to the Civil Authorities when they have an urgent need for help to deal with a natural disaster, such as a flood, or a major accident, such as a train or air crash.

Where capacity is the issue, the first port of call should always be for mutual aid from neighbouring authorities. While this is the long term aim for Northern Ireland, there are difficulties that do not apply elsewhere in the UK, not least of which is the geographical separation. The provision of assistance is dependent on the availability of troops at the time and in the place they are needed. There is no guarantee that the Armed Forces would always be in a position to help.

The Armed Forces can, and do, make a valuable contribution to the prevention of terrorism in the UK through the support they are able to provide to the civil authorities. This can range from general duties support to some highly specialised capabilities, including the ability to make safe a conventional or CBRN device.

With this in mind, it really is not possible to list all of the eventualities which may see military support to the police and other civil authorities, as theoretically any request is possible. The military only ever provide support to the civil authorities; that is the military never have primacy for operations in the UK.

The Army takes steps to ensure that all incidents involving its personnel are thoroughly investigated. It is important to remember that the military is never deployed under the authority of the Police, rather through the Military Aid to the Civil Power arrangements, under the authority of a Defence Minister.

Members of the Armed Forces act within Guidelines and Rules of Engagement that are consistent with the law, and are subject to Military laws and regulations through the military chain of command. Where a criminal act is alleged the relevant Special

Investigation Branch will investigate or pass the case to the civil police where appropriate.

The Police Ombudsman does not have powers to investigate the military. That office was created to deal with complaints of misconduct against the police. The powers of the Police Ombudsman do not, and were never intended to, extend to the Army.

However the military do co-operate fully with the Ombudsman where appropriate, for instance, where the military can assist an investigation into Police activity. Additionally, the PSNI can investigate any instance of military support where there is reason to believe a crime has been committed.

It is important also to recognise the role of the Independent Assessor of Military Complaints Procedures (IAMCP). The MOD values the Assessor's role highly and has previously made improvements to both training and guidance as a result of his reports.

Looking forward, the use of the powers contained in the Justice and Security (Northern Ireland) Bill will be reviewed on an annual basis and the independent reviewer appointed to carry out that task will also have jurisdiction to look at complaints procedures within the military. The Secretary of State will also be able to task the reviewer to look at any other issues of interest (in much the same way the IAMCP was asked to look at the use of AEP during the violence surrounding the Whiterock parade in 2005).

Court Service: Financial Arrangements

Clarification of whether the budget for the Court Service (Indicative figure of between £130 and £131 million) will be ring-fenced when transferred to the NI Block grant

A sustainable budget for the NI Court Service would be given to the NI administration at the point of devolution. Any ring-fencing would be a matter for the NI Executive. However, it seems unlikely that the Executive would want to constrain their financial flexibilities in this way.

NORTHERN IRELAND OFFICE

MANAGEMENT STATEMENT

for

THE CHIEF CONSTABLE
AND
THE NORTHERN IRELAND POLICING BOARD

in connection with the grant for police purposes made
under Section 9(1) of the Police (Northern Ireland) Act 2000

January 2003

Purpose of the Management Statement

1. This document is a code of practice issued by the Secretary of State for Northern Ireland under Section 27 of the Police (Northern Ireland) Act 2000. Paragraphs 31 to 35 of this document constitute a direction by the Secretary of State under Section 10(1) of the Act.
2. Under Section 9(1) of the Police (Northern Ireland) Act 2000 (the Act) the Secretary of State for Northern Ireland shall make a grant for police purposes (the Police Grant) to the Northern Ireland Policing Board (the Board) for each financial year. In each financial year the Board will put an amount equal to that received by it in the year under Section 9(1) at the disposal of the Chief Constable, together with any amounts borrowed or raised by the Board in accordance with Section 9(4) of the Act in that year. Any amounts received by the Board other than as grant under Section 9(1) of the Act or paragraph 15 of Schedule 1 to the Act, will be applied by the Board as directed by the Secretary of State. Where there is no such direction or statutory provision requiring these amounts to be applied in a particular manner or for a particular purpose, the Board will apply those moneys for police purposes and will put them at the disposal of the Chief Constable in the financial year in which they are received by the Board.
3. This Management Statement defines the administrative framework within which the Northern Ireland Office (NIO or the Department), the Chief Constable and the Board will operate to meet their respective roles and responsibilities in regard to the Police Grant, monies borrowed by the Board and amounts put at the disposal of the Chief Constable. Its purpose is to facilitate working arrangements between the Chief Constable, the NIO and the Board based on an agreed understanding of the detailed requirements and duties required to address appropriate standards of planning, control and public accountability. In that regard it amplifies, as necessary, the statutory requirements of the Act, which should be read with it. This document also points up the importance of the connections between the policing objectives, planning and financial management.
4. This document has been agreed between the Permanent Under Secretary (PUS) in the NIO who is principal Accounting Officer for the Department, the Chief Constable who is accounting officer for the amounts put at his disposal and the Chief Executive of the Board who is NDPB accounting officer for the Board and the grant made to defray the Board's expenses. It has been approved by the Secretary of State for Northern Ireland. It will be published on the NIO web site and those of the Police Service of Northern Ireland and the Board.
5. This Management Statement comes into operation on 4 November 2001. Its terms will be reviewed no later than five years from that date in light of relevant Government guidance. All or any part of it may be reviewed at any earlier time at the request of the Permanent Under Secretary, the Chief Constable or the Chief Executive of the Board.
6. The detailed conditions attaching at any time to the Police Grant are set out in the "Conditions of Grant made to the Northern Ireland Policing Board for police purposes".

Functions of the Chief Constable

Planning

7. The general functions of the Chief Constable are to direct and control the police as set out in the Act. In discharging his functions the Chief Constable shall have regard to the policing plan issued by the Board under Section 26(1) of the Act and to any code of practice issued by the Secretary of State under Section 27 of the Act. He has a responsibility to plan for the operational and financial requirements of the Police Service of Northern Ireland.

8. Having consulted with the Board, the Chief Constable, and such other persons as he thinks appropriate, the Secretary of State may determine or revise his long term objectives for policing in Northern Ireland, and shall lay a statement of any objectives determined or revised before each House of Parliament. Taking account of the NIO's timetable and cycle for financial estimates, the NIO will seek to make the Secretary of State's long term objectives or revisions to them known to the Board and the Chief Constable before the end of September each year (although there will be discussions at official level between the parties before then).

9. Having consulted with the Chief Constable and the district policing partnerships, and having considered any reports received by it under Section 17 or 18 of the Act and any views of the public obtained under arrangements made under part III of the Act, the Board shall determine or revise objectives for policing in Northern Ireland, which may relate to matters for which the Secretary of State has determined or revised his long term objectives, or other matters, but which are consistent with the Secretary of State's long term objectives. Taking account of the Treasury requirements determining the NIO's timetable and cycle for financial estimates, the Board will seek to make its objectives or revisions to them known to the Chief Constable before the end of November each year (although there will be discussions at official level between the parties before then).

10. The Chief Constable will, in accordance with Section 26(4) of the Act, submit a draft of the policing plan to the Board to a timetable to be agreed with the Board. Taking account of the NIO's timetable and cycle for financial estimates, and the requirements of the Board, the Chief Constable should seek to submit the draft plan (for the following financial year) to the Board before the end of December or such earlier date as may be agreed between the parties. The draft of the policing plan should be costed and otherwise in a format to be agreed with the Board. The draft of the policing plan will take account of the Secretary of State's long term objectives for policing in Northern Ireland, the Board's objectives for policing, and regulations made by the Secretary of State under Section 26(2)(b) of the Act regarding the policing plan.

Finance

11. The general and particular responsibilities of the Chief Constable with regard to financial management are summarised in paragraphs 24 to 27 of this document. The procedures to be followed by the Chief Constable with regard to planning and control of the Police Grant are set out in paragraphs 32 and 34 to 51.

Functions on behalf of the Board

12. The Chief Constable will also exercise certain functions on behalf of the Board as set down in the Act, including:

- directing and controlling police support staff;
- providing and maintaining buildings and equipment for police purposes;
- keeping proper accounts and related records;
- preparing and submitting an annual statement of accounts in relation to amounts put at his disposal.

13. The performance of the Chief Constable in carrying out his functions with regard to economy, efficiency and effectiveness will be assessed in accordance with Section 28 of the Act. Having consulted the Secretary of State and the Chief Constable, the Board will prepare and publish a performance plan for each financial year containing details of how the arrangements it will make to secure continuous improvement in the way in which the Chief Constable's functions are exercised will

be implemented. The Board will involve the Chief Constable in the making of the arrangements related to his functions.

14. The performance plan will identify appropriate performance indicators and set performance standards by which the Chief Constable's performance may be measured. It will include a summary of the Board's assessment of the Chief Constable's performance in the previous financial year by reference to the performance indicators and the extent to which any performance standard for that year was met.

Functions of the Board

15. The statutory functions of the Board are set out in the Act. Other than those functions carried out on the Board's behalf by the Chief Constable they are funded by grant made to defray its expenses under Paragraph 15 of Schedule 1 to the Act.

(see 'Management Statement for The Northern Ireland Policing Board in connection with the grant to defray the Board's expenses made under Paragraph 15 of Schedule 1 to the Police (Northern Ireland) Act 2000').

Planning

16. Having consulted the Secretary of State, the Board shall before the beginning of each financial year, to a timetable to be agreed with the Chief Constable and the NIO, adopt and issue a policing plan in accordance with Section 26 of the Act, setting out proposed arrangements for policing in Northern Ireland and arrange for the policing plan to be published in such manner as appears appropriate to the Board. Taking account of the NIO's timetable and cycle for financial estimates, the Board should seek to issue and arrange to publish the policing plan before the end of March each year. The Board may adopt a policing plan either in the form of the draft policing plan prepared by the Chief Constable under Section 26(4) or with such amendments as the Board may, after consultation with the Chief Constable, determine. The policing plan should be costed. The policing plan will contain the assessments for education and training set out in Section 26(2)(a) of the Act and include such statements and particulars of other matters as the Secretary of State, after consulting the Board and the Chief Constable, has prescribed by regulations under Section 26(2)(b).

Finance

17. The general and particular responsibilities of the Board with regard to financial management are summarised in paragraph 28 of this document. The procedures to be followed by the Board with regard to planning and control of the Police Grant are set out in paragraphs 33 and 34 to 51.

18. The performance of the Board in carrying out its functions with regard to economy, efficiency and effectiveness will be assessed in accordance with Section 28 of the Act.

Roles and Accountabilities

The Secretary of State for Northern Ireland

19. The Secretary of State will make a grant for police purposes to the Board for each financial year on such conditions (including the amounts and timing of payment) as he determines. The amount of grant for each financial year will take account of settlements in respect of a review period made by the HM Treasury with the NIO at the conclusion of the Government's biennial or other spending reviews, and of the estimate of income and expenditure, capital investment and disposals, and such other financial information as the NIO requires in respect of planned spending for police purposes, submitted by the Board to the Secretary of State in respect of the NIO Parliamentary Estimates for that

financial year. The Board will put an amount equal to the total amount of the Police Grant at the disposal of the Chief Constable. The Secretary of State is ultimately accountable to Parliament for the Police Grant. Accordingly he needs to be satisfied that the Board's activities and those of the Chief Constable are consistent with their functions under the Act. In carrying out these responsibilities the Secretary of State is assisted by his Ministers and NIO officials.

The Departmental Accounting Officer

20. The Permanent Under Secretary of the Northern Ireland Office is the Department's principal Accounting Officer. His responsibilities are set out in a HM Treasury memorandum "The Responsibilities of an Accounting Officer". He has personal responsibility for the overall organisation, management and staffing of the Department and for department-wide procedures in financial and other matters. He must ensure that there is a high standard of financial management in the Department as a whole; that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the Department; and that financial considerations are fully taken into account in decisions on policy proposals.

21. Specifically the departmental Accounting Officer must be satisfied that the financial and other management controls applied by the Department are appropriate and sufficient to safeguard public funds. More generally he must be satisfied that those being applied by organisations funded by his Department conform with the requirements both of propriety and of good financial management. He must ensure that there are adequate statements of the financial relationship between the Department and the bodies and that the statements are regularly reviewed. He should attach conditions to grants as necessary, ensure that the conditions conform with the terms of the departmental (annual Parliamentary) Estimate and that the Department monitors compliance with those conditions. Under section 9(2) of the Act, the Secretary of State may attach conditions to the grant for policing purposes.

The Department

22. The NIO shares a responsibility for the public funds made available in the Police Grant with the Chief Constable and the Board. The constitutional position of officials in the Northern Ireland Office is to act on behalf of the Secretary of State. Day to day responsibility for managing the relationship between the Government and the Board and between the Government and the Chief Constable lies with the Policing and Security Directorate of the NIO. The Directorate, with the support of the Department's Financial Services Division, has a responsibility to ensure within the limits of available resources:

- that the Chief Constable is funded adequately to carry out his statutory functions; and by way of general oversight and monitoring, through reasonable and practical means,
- that his functions are carried out;
- funds are employed effectively and efficiently for the purposes for which they were given;
- the requirements and standards of accountability for public expenditure set down in the Act, in the HM Treasury Manual "Government Accounting", and elsewhere, are adhered to; and,
- the particular conditions attaching to the Police Grant are adhered to.

23. The NIO will ensure that the Chief Constable and the Board are kept informed in a timely manner about all "Dear Accounting Officer" letters and other relevant HMT directives and all other advice, guidance and requirements relating to their public accountability and responsibility for the use, management and reporting of resources.

The Chief Constable

24. The Chief Constable shares a responsibility for the use of the public funds made available in the Police Grant with the Board and the Department. He will ensure that his functions are carried out in accordance with the Act. As designated accounting officer for PSNI he is directly accountable to the departmental Accounting Officer for all the resources made available to him. In particular he is directly accountable to the departmental Accounting Officer with regard to the functions and activities for which he is responsible, to ensure that:

- he operates within the limits of his statutory authority;
- the requirements and standards of accountability for public expenditure set down in the Act, in the HM Treasury Manual "Government Accounting", in the HMT Memorandum "the responsibilities of a NDPB accounting officer" and elsewhere, are adhered to, and,
- the particular conditions attaching to the Police Grant are adhered to.

25. As designated accounting officer the Chief Constable is directly accountable to the principal Accounting Officer for the use of the all the funds made available to him by the Board and otherwise. His responsibilities are those set out in the Police Act 2000 and as accounting officer in the HM Treasury memorandum "The Responsibilities of a NDPB accounting officer" which is issued to him by the NIO.

26. As the accounting officer he must ensure that there is a high standard of financial management in his organisation as a whole; that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the organisation; and that financial considerations are fully taken into account in decisions on policy proposals. The memorandum also sets out his responsibilities for ensuring that effective management systems are in place. He may be called upon to appear before the Public Accounts Committee from time to time, normally with the principal Accounting Officer.

27. Specifically his responsibilities as accounting officer require the Chief Constable to:

- (a) sign personally the annual accounts of the amounts put at his disposal, and in doing so accept personal responsibility for their proper presentation as prescribed in legislation or by Ministers;
- (b) conform with the requirements of any financial memoranda and ensure that accounts are drawn up in accordance with any conditions set out in legislation, the accounts direction and relevant Treasury guidance;
- (c) ensure that proper financial procedures are followed and that accounting records are maintained in a form suited to the requirements of management as well as in the form prescribed for published accounts;
- (d) ensure that the resources for which he is responsible as accounting officer are properly and well managed and safeguarded, with independent and effective checks of cash balances in the hands of any official;
- (e) ensure that assets for which he is responsible such as land, buildings or other property, including stores and equipment are controlled and safeguarded with similar care, and with checks as appropriate;
- (f) ensure that conflicts of interest are avoided, in his actions and advice and that of his staff;

(g) ensure that, in the consideration of policy proposals relating to the expenditure for which he is responsible as accounting officer, all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account.

The Northern Ireland Policing Board

28. The Board shares a responsibility for the use of the public funds made available in the Police Grant with the NIO and the Chief Constable. The Board will ensure that its functions with regard to the Police Grant are carried out in accordance with the Act. The Board has responsibility to ensure that:

- it operates within the limits of its statutory authority; and, in consultation and agreement with the Chief Constable as to means and procedures, a responsibility with regard to its the functions under the Act and for general oversight and monitoring of the use of resources, to ensure that:
- the requirements and standards of accountability for public expenditure set down in the Act, in the HM Treasury Manual "Government Accounting", and elsewhere, are adhered to, and,
- the particular conditions attaching to the Police Grant are adhered to.

Financial Management

29. This section describes the budgeting and control cycle and mechanisms through which the department ensures that the Police Grant is properly and accurately determined in line with need, assessed, managed and reported in accordance with the Act, Parliamentary and HM Treasury procedures and timetables, disbursed in timely fashion as required, and accounted for fully.

Estimates

30. Paragraphs 31 to 35 are a direction on behalf of the Secretary of State under Section 10 (1) of the Act.

31. The financial year for estimates and the Police Grant ends on 31 March.

Chief Constable's estimates

32. a) In respect of the Government's biennial or other reviews of spending, the Chief Constable will prepare and submit to the Board, in a form and to a timetable agreed with the Board and the NIO in respect of each review, a draft estimate in resource terms of the expenditure and income, capital investment and disposals and such other financial information as the Board and the NIO requires in respect of planned spending for police purposes for the spending period under review.

b) In respect of the annual NIO Parliamentary Estimate, the Chief Constable will prepare and submit to the Board, at such times and in such form as the Secretary of State may direct for each financial year and as agreed with the Board, a draft estimate in resource terms of the income and expenditure, capital investment and disposals and such other financial information as the Board and the NIO requires in respect of planned spending for police purposes for the financial year to which the NIO Estimate relates. The Chief Constable shall prepare the draft estimate and submit it to the Board before the end of the month of October preceding the financial year to which the NIO Estimate relates.

c) In respect of the NIO Parliamentary Supplementary Estimates, the Chief Constable will prepare and submit to the Board, at such times and in such form as the Secretary of State may direct

for each financial year and as agreed with the Board, draft estimates in resource terms of the income and expenditure, capital investment and disposals and such other financial information as the Board and the NIO requires in respect of planned spending for police purposes for the financial year to which the NIO Supplementary Estimates relate. The Chief Constable shall prepare the draft estimates and submit them to the Board to an agreed date in accordance with the Department's timetable for Supplementary Estimates.

The Board's estimates

33. a) In respect of the Government's biennial or other review of spending, the Board will prepare and submit to the NIO, in a form and to a timetable agreed with the NIO, estimates in resource terms of the expenditure and income, capital investment and disposals and such other financial information as the NIO requires in respect of planned spending for police purposes for the spending period under review. The Board shall submit the estimate in the same form as the draft estimates submitted to the Board by the Chief Constable in respect of planned expenditure for the review period, with such amendments to the draft estimates as the Board determines after consultation with the Chief Constable.

b) In respect of the annual NIO Parliamentary Estimate, the Board will prepare and submit to the Secretary of State, at such times and in such form as the Secretary of State may direct, and after consultation with the Chief Constable, an estimate in resource terms of the income and expenditure, capital investment and disposals and such other financial information as the NIO requires in respect of planned spending for police purposes for the financial year to which the NIO Estimate relates. The Board shall submit the estimate in the same form as the draft estimates submitted to the Board by the Chief Constable in respect of planned expenditure for the financial year, with such amendments to the draft estimates as the Board determines after consultation with the Chief Constable. The Board shall submit the estimate to the Secretary of State at such time as may be agreed between the Board and the NIO.

c) In respect of the NIO Parliamentary Supplementary Estimates, the Board will prepare and submit to the Secretary of State, at such times and in such form as the Secretary of State may direct, and after consultation with the Chief Constable, estimates in resource terms of the income and expenditure, capital investment and disposals and such other financial information as the NIO requires in respect of planned spending for police purposes for the financial year to which the NIO Supplementary Estimates relate. The Board shall submit the estimate in the same form as the draft estimates submitted to the Board by the Chief Constable in respect of planned expenditure for the financial year, with such amendments to the draft estimates as the Board determines after consultation with the Chief Constable. The Board shall submit the estimates to the Secretary of State before the end of the months of August and November respectively in the financial year to which the NIO Supplementary Estimates relate.

Classification

34. The estimates in all cases will contain an analysis in resource terms of all planned income and expenditure under the following categories, such other headings as the Board may determine, and capital investment and disposals, capital charges and depreciation, and distinguishing clearly between all revenue and capital items.

Police Officers
Reserve Police Officers
Civilian Staff
Pensions
Incidental Expenses
Transport
Telecommunications and Technology
Accommodation
Supplies, Catering and Publications
Capital Expenditure, and
Receipts

and show separately for police officers and reserve police officers the payments in each case under the following subdivisions of payments:

Pay

Full Time Basic Pay
Part-time Basic Pay
Overtime
Allowances and ERNI

Other information

35. At any time before or after estimates are submitted to the Secretary of State the Board and the Chief Constable will provide the Department with any other information it requires in respect of any of the estimates and the determination of the Police Grant.

Borrowing

36. The Board will inform the Secretary of State about its intention to borrow by way of temporary loan or overdraft from a bank or otherwise under Section 9(4) of the Act at least one month before it intends to take the loan. The Secretary of State will specify to the Board in writing a limit at any time of the total amount owing of money borrowed under Section 9(4). Any sum borrowed under Section 9(4) will be repaid before the end of the financial year in which it is borrowed. The Board will not borrow or raise money other than for police purposes. All amounts borrowed or raised by the Board for police purposes under Section 9(4) will be put at the disposal of the Chief Constable in the financial year in which they are borrowed or raised.

37. The Board will inform the Secretary of State about its intention to borrow or raise money under Section 9(7) of the Act at least two months before it intends to take the loan. The Secretary of State will approve the terms and conditions under which the Board may borrow or raise money upon the security of any property or assets of the Board for all or any of the purposes specified in Section (9)(7)(a)(b)(c) of the Act. The Board will not borrow or raise money other than for police purposes.

38. The Board cannot delegate the power to borrow or raise money under the Act to the Chief Constable or his staff.

Police Grant

39. The Department will confirm to the Board the amount of the Police Grant to be made for police purposes before the end of the month of February preceding the financial year to which the Police Grant relates.

40. The Secretary of State may vary the amount of the Police Grant to be made for any financial year at any time.

41. The Board will inform the Chief Constable as to the amount which it will put at his disposal, equal to the amount of the Police Grant; within one week of being informed by the Department as to the amount of the Police Grant. The Board will inform the Chief Constable of any variation in the Police Grant and the amount to be put at his disposal within one week of the Board being informed of the variation.

Disbursement of funds

42. The Department will arrange to release the Police Grant to the Board in line with the need for funds. Monies will normally be released in instalments as requested from the NIO by the Chief Constable through the Board. Under the Act the Police Grant is made by the Secretary of State to the Board. Because the NIO is required to ensure that the Police Grant is released in line with need, the Chief Constable will be expected to support requests for each instalment of the Police Grant with sufficient evidence of the need for that instalment.

43. The Board will release monies to the Chief Constable in instalments equal in amount to the instalments of grant released to the Board by the Department and within two working days of the receipt of the instalments of grant by the Board.

Accounts and Records

44. In order that the NIO can complete its own monthly accounting records and contribute to databases maintained by HM Treasury, the Chief Constable will provide the Department with a statement in resource terms, in a form to be agreed at any time with the Financial Services Division of the NIO, of income and expenditure and capital investment and disposals for police purposes for each month, within ten working days of the end of that month.

45. The Board and the Chief Constable will provide the Department with any other information it requires in respect of spending for police purposes.

46. The Chief Constable, as accounting officer for the amounts put at his disposal, will, on behalf of and in the name of the Board, maintain proper accounts and records and prepare and submit a statement of accounts for each financial year in respect of the amounts put at his disposal. The accounts will be signed by Chief Constable and will be prepared and submitted in accordance with Section 12 of the Act and all accounts directions issued to the Chief Constable by or on behalf of the Secretary of State.

Financial Delegations

47. The Chief Constable will at any time have the financial delegations set out in the "Conditions attaching to Grant made to the Northern Ireland Policing Board for police purposes and to Amounts to be put at the disposal of the Chief Constable". The Department will review the extent of financial delegations and the conditions applying to the grant in the light of the first year's experience and thereafter will confirm them at the beginning of each financial year.

48. The Chief Constable has no approval for expenditure in any financial year in excess of an amount equal to the Police Grant notified by the Department to the Board or any delegations on expenditure other than set out in the "Conditions attaching to Grant made to the Northern Ireland Policing Board for police purposes and to Amounts to be put at the disposal of the Chief Constable".

Contracts

49. The Chief Constable shall make contracts only on behalf of and in the name of the Board. The terms of the contracts made by the Chief Constable shall, where appropriate, make the goods and services being contracted for deliverable to the "Police Service of Northern Ireland".

Information and access

50. The Chief Constable and the Board will provide the NIO with information, in such form and at such times as the Department requires at any time on behalf of the departmental Accounting Officer, about their systems of internal control related to the management and administration of the Police Grant.

51. The Chief Constable and the Board will provide the NIO with all the information the Department requires on behalf of the departmental Accounting Officer to meet his responsibilities. In this regard the Chief Constable and the Board will give access to all their financial and accounting records as necessary to any persons appointed by the Accounting Officer to act on his behalf.

Internal Audit

52. The requirement for internal audit by the Chief Constable is set out in the separate memorandum "The Responsibilities of a NDPB accounting officer". The Chief Constable will also wish to consider how the police will work with the Board in discharging its responsibilities under Part V of the 2000 Act, when it is in the future commenced.

NORTHERN IRELAND OFFICE

CONDITIONS

attaching to

**Grant to the Northern Ireland Policing Board for Police Purposes
made under Section 9(1) of the Police (Northern Ireland) Act 2000)**

and to

**Amounts to be put at the disposal of the Chief Constable
under Section 10(5) of the Police (Northern Ireland) Act 2000)**

January 2003

Operation of conditions of grant

1. These Conditions of Grant operate from 4 November 2001 until further notice. They describe the conditions which the Northern Ireland Office (NIO or the Department) on behalf of the Secretary of State for Northern Ireland has attached to the grant made to the Northern Ireland Policing Board (the Board) for police purposes (the Grant) and to the amounts put at the disposal of the Chief Constable by the Board.

Purpose and extent of expenditure

2. The Chief Constable will not incur expenditure other than for police purposes and to exercise functions on behalf of the Board in accordance with the Act. The Chief Constable has no approval for expenditure in any financial year other than as set out in the estimate in resource terms submitted to the Secretary of State for that financial year. The Chief Constable has no approval for expenditure in any financial year in excess of an amount equal to the Police Grant notified by the Department to the Board and in turn to the Chief Constable. Within that overall amount the Chief Constable has no delegations on expenditure other than those set out in these conditions.

Loans and Gifts

3. Except as provided for in the Act the Chief Constable will not make loans or gifts of money or assets without the approval of the Department. The Chief Constable will keep a record of all gifts given and received.

Guarantees and Indemnities

4. The Chief Constable will not make commitments to forward funding nor give any guarantee, indemnity or letter of comfort beyond the resource limits agreed with the Department and for liabilities arising in the normal course of business.

External Consultants

5. The Chief Constable will take account of the Department's policy and practice on the use and recruitment of external consultants.

Insurance

6. The Chief Constable will not provide for insurance except as statutorily required to do so or as otherwise approved by the Department.

Waiver of Claims for Compensation

7. The Chief Constable will not make claims under criminal damage and related legislation.

Losses and Special Payments

8. The Chief Constable has no delegation to make extra statutory or extra regulatory payments, or ex gratia or compensation payments except in the nature and to the extent set out below. The Chief Constable will keep a record of all losses and special payments.

Novel Expenditure

9. Any expenditure that is deemed to be novel or contentious as defined by HM Treasury should be notified to the Board and to the Department and Treasury approval obtained before the expenditure is incurred.

Theft and Fraud

10. The Chief Constable will ensure that all practicable measures and controls are operated to prevent theft and/or fraud. In particular the Chief Constable will formulate a policy on fraud to be distributed to all staff. Details of any cases involving theft, fraud or suspected fraud shall be notified to the Board and through it the Department immediately. Where a fraud is of a significant or novel nature details shall also be notified to the Northern Ireland Audit Office.

Disposal of Assets

11. The Chief Constable may dispose of any property, except land, acquired, provided, held or maintained for police purposes, if he is satisfied that it is no longer needed for or of value to police purposes, that the procedures for disposal accrue the greatest benefit possible, and the disposals are properly accounted for and disclosed.

Banking Arrangements

12. In deciding his arrangements for banking the Chief Constable will take account of the arrangements for pool banking administered by the Northern Ireland Department of Finance and Personnel and the contractual commitments made under those arrangements.

Virement

13. For the purposes of these instructions, virement is defined as the transfer of financial provision from one resource category to another, (resource categories to be agreed between the Department and the Police Service). There will be no virement out of the capital category but resources can be vired into capital. Resources can be vired from and to all other categories subject to the above rule. If the Chief Constable wishes to vire in excess of 5% from any exporting resource category he must seek the Department's approval to do so through the Board.

Unexpended Balance of Grant

14. At the end of the financial year any unexpended sums of the amounts put at the disposal of the Chief Constable by the Board for that year, not exceeding ½% of the amounts, may be carried forward to the new financial year. In addition, up to a further 1% can also be carried forward, provided the Department is satisfied that it represents real savings achieved through efficiencies. Should an easement for any financial year be declared by December of that year, then 50% of that easement (or 50% of the easement actually delivered, whichever is the lesser amount) shall be carried over as an entitlement even if the overall amount thereby carried over exceeds the limits above.

Delegations

15. The Chief Constable has the following delegations on expenditure. The exercise of all financial delegation is subject to the provisos that:

- it does not cover novel or contentious issues;
- adequate financial provision and budgetary authority exists to cover the proposed expenditure; and
- the amount indicated represents the limit of authority in individual cases unless otherwise stated.

The NIO should be consulted about any cases where doubt exists as to whether these delegated authorities apply.

DELEGATED AUTHORITIES BETWEEN NIO AND PSNI

<u>RESOURCE CATEGORY</u>	<u>EXTENT OF DELEGATION</u>
<u>Pay, Allowances and Superannuation</u>	
Pay, allowances, overtime and national insurance For members of the Police Service, Police Service Reserve, and civilian staff	All payments with the exception of severance
Payment of superannuation contributions and where appropriate pensions and other benefits	All payments except special and augmented awards and forfeiture
<u>Other Revenue Expenditure</u>	
Supplies, services and maintenance/repair	Subject to budget cover – unlimited except if item is novel or contentious or new proposal over £3m not in the Annual Plan
Service Level Agreements (SLAs)	£2m
Grants, subscriptions to, or contributions towards the costs of institutions whose services are of benefit to the Police Service	£50k
Grants towards expenses of PSNI staff attending events of an extra-curricular nature	£25k
Employment of consultants	£50k
Compensation payments	
For admission claims made under a specific statutory provision or at common law, including claims for personal injury and property damage. Such compensation should normally only be paid on the advice of the Crown Solicitor	£100k
[Legal Fees]	
Defence of Criminal proceedings	No financial limits
Initiation of legal proceedings Board approval in each case. NIO to be informed of any cases which are likely to attract public interest or deemed to be novel or contentious.	No financial limits but expenditure subject to Policing Board approval
Gifts	£100 at the discretion of the Chief Constable
<u>CAPITAL EXPENDITURE</u>	
All capital expenditure	£3m
Contract variations (other than variations on price)	5% or £100k whichever is the greater, subject to internal controls
<u>SPECIAL PAYMENTS</u>	
Extra contractual and ex gratia payments	£10k
<u>LOSSES/WRITE OFF</u>	
Stores losses	£50k per individual Board of Survey
All other losses/write-offs	£25k

NOTE: the amount indicated represents the limit of the authority in individual cases unless otherwise stated. None of the above overrules the requirement to seek NIO approval for any matter which might be deemed novel or contentious regardless of cost.

Financial Relationships
Northern Ireland Policing Board and Police Service for Northern Ireland

The following documents will be provided and procedures will be followed:

1. The biannual three-year spending review bid will be submitted to the NIPB in December/January every other year, which will need to be informed by the long-term policing objectives established by the NIPB.
2. Annual Estimates for the following year (April to March) will be submitted to NIPB by October of the preceding year. These Estimates will be subject to update following the outcome of the annual PSNI joined up planning process to be completed in December each year, which will need to be informed by the annual policing objectives and performance targets established by the NIPB.
3. In-year bids will be submitted to NIPB in accordance with timetables established by the NIO.
4. The Annual Budget Statement for the following year (April to March) will be submitted to the NIPB in advance of that year. A finance section will be included in the Draft Policing Plans submitted by PSNI.
5. Quarterly outturn reports on actual expenditure against budget will be submitted to PSNI within timetables agreed with NIPB for each of the first three-quarters. The annual outturn report will be issued to NIPB within timetables agreed with NIPB. Monthly outturn reports may be provided, normally after they have been submitted to the Chief Constable Policy Meeting. A finance section will be included in the Chief Constable's Annual Report.
6. The annual financial statements (subject to audit by the NIAO) will be submitted to NIPB within timetables agreed with NIPB.
7. Approval will be sought from NIPB for virement between budgets included in the Annual Budget Statement above limits included the Management Statement for the Main Police Grant.
8. Approval will be sought from NIPB for any acquisition or disposal of land not included in the Annual Budget Statement.
9. Section 29(2) of the NI 1999 Act requires compensation claims, and related costs, awarded against the Chief Constable to be approved by the NIPB. Advance NIPB approval will be required for amounts above £100,000.
10. NIPB approval will be required for individual items of expenditure which are considered to be novel and contentious.
11. The NIPB will need to be informed in advance of any projects or significant items of expenditure which are likely to lead to a significant public interest.
12. A draft 'Performance Plan' will be submitted to the NIPB within timetable to be agreed with the NIPB.
13. As sub-Accounting Officer the Chief Constable will maintain an effective Internal Audit Service in compliance with the Governments Internal Audit Manual.

14. PSNI will attend the tripartite Police Resource Group (PRG).
15. PSNI will provide copies of strategic documents on major areas of expenditure for information, such as Estates, IT/Telecom and Vehicles.

Changes in the regulations will be subject to agreement between NIPB and PSNI. These regulations will be subject to review on an on-going basis.

July 2002

Appendix 2

**Other Papers Considered
by the Subgroup**

**Papers from the
Political Parties**

Policing and Justice Matters – a DUP Submission to the Sub Committee

The policing and justice subcommittee of the Programme for Government committee agreed that each party should prepare a paper dealing with each of the four issues identified as part of the work programme. The following paper is the DUP's contribution to that process.

1. Support for the rule of law.

It has been a longstanding DUP demand that support for the rule of law is a prerequisite for a place in any Executive in Northern Ireland. This has now been reflected in legislation and no individual can take Ministerial office without supporting the Police Service of Northern Ireland and all the institutions of policing including the Police Board, the justice system and the rule of law in Northern Ireland. The DUP requires not merely words but actions tested over a credible period of time in this area.

The underlying principle behind this issue has already been settled; it is now a question of delivery.

2. Matters to be devolved.

The DUP supports an extensive devolution of policing and justice functions in the event that the appropriate circumstances exist. Whilst the precise detail can only be worked out nearer the time of devolution we believe that, subject to UK-wide issues, most powers should be devolved in this area.

3. Matters relating to circumstances for devolution of policing and justice functions.

The DUP has repeatedly indicated that it is impossible to set a precise date for the devolution of these functions. It will be determined by circumstances. Clearly the level of confidence in the community will be a crucial issue in this area as will the administrative arrangements to which powers may be devolved.

The Northern Ireland (Miscellaneous Provisions) Act 2006 makes provision which need to be satisfied before any devolution of such functions can take place. We support these provisions and believe that they provide reassurance to the community.

We are satisfied with the present legal position and are prepared to operate within the statutory framework. It is a requirement for all parties to take a pledge of office which gives support to the Police Service of Northern Ireland and the rule of law before they take up Ministerial Office; it is not a requirement to agree a date for devolution.

However, the DUP has consistently indicated its support in principle for the devolution of policing and justice functions in the proper circumstances and it, like the government, wants to see the conditions exist where powers can be devolved. The major task in creating the necessary conditions where community confidence can be established lies with Sinn Fein.

4. **Administrative Structures for the devolution of Policing and Justice.**

In order to move the debate forward we offer for consideration the following proposal.

Proposed mechanism

1. There should be one Department with one Minister to deal with the Policing and Justice functions.
2. The Minister would be elected by a weighted majority vote in the Assembly requiring the approval of seventy percent of Assembly members present and voting.
3. If a resolution proposing a named Assembly Member should be appointed as Policing and Justice Minister attracted support from more than 70% of the Assembly membership the First Minister and deputy First Minister would then determine whether to submit to the Assembly the motion which is legally required under the Miscellaneous Provisions Act and which is necessary to set in process the devolution of the relevant functions.
4. Upon the devolution of the functions the Minister designate would take up office.
5. If at any time such a Minister was subject to a vote of confidence in the Assembly he/she would be required to command a cross-community vote to remain in office.
6. Arrangements would need to be put in place if for any reason a Minister ceased to be in office and a replacement could not be immediately elected to fill the office.
7. Any Member of the Assembly who could command the necessary support would be eligible for appointment and would sit on the Executive Committee.
8. Because of the requirement for security and confidentiality in some areas of this department's responsibilities consequential arrangements would need to be put in place to deal with other issues which may arise such as voting rights, accountability and disclosure.
9. These arrangements could be reviewed in line with other matters by 2015.

Thus far, in the debate surrounding the devolution of policing and justice powers, the central concern has been the fear that an appointment made under the d'Hondt system, or through a shared Department, could lead to an outcome where a Minister who demonstrably did not have the confidence of anyone outside his or her party might be nominated. We believe the grave responsibilities of such a post would clearly necessitate the Minister enjoying widespread support in the Assembly and benefiting from a very high level of community respect and confidence.

The mechanism we have suggested ensures the Minister would have such widespread support. The standard of endorsement set for a post-holder to meet would contribute towards increasing community confidence because the powers would be exercised by a suitable Minister and would, as a consequence, allow the community to be more comfortable about powers being devolved.

The *Miscellaneous Provisions Act* procedures would still have to be met and we would still stress the need for the Assembly and Executive to “*bed down*” before controversial and sensitive functions are introduced, even if those functions were to be handled by an acceptable Minister.

Discussion document by Sinn Fein on Policing and Justice

Cross Community Safeguards

Robust cross community safeguards must be in place within any new justice and policing department.

Oversight

The process of transfer should encompass a review and oversight mechanism, the natural home of this function being the Criminal Justice Inspectorate.

Scrutiny Committee

Scrutiny of the new ministerial functions will require the formation of a scrutiny committee for policing and justice, which should in no way compromise nor diminish the powers and remit of the Policing Board.

All Ireland

Recent issues have acutely demonstrated the need for increased co-operation and action across a range of areas, such as the monitoring of sex offenders.

Substance of Powers

A maximum transfer of powers and full transfer of those powers and responsibilities delineated in paragraph 3.2 of the NIO discussion paper and agreed by the PFG.

Timeframe

Immediate upon restoration and not later than 6 months.

Rule of Law

The Rule of Law must apply and be supported on the basis of impartiality, independence and objectivity.

Acceptable Policing

A stable society at peace with itself, requires a policing service which is effective and efficient, fair and impartial, free from partisan political control, democratically and legally accountable, representative of the community it polices and one which is routinely unarmed.

The Devolution of Justice – SDLP Paper

GETTING REAL ABOUT THE DEVOLUTION OF JUSTICE

- The SDLP wants the devolution of justice. It means this Assembly being able to pass its own laws on justice matters and the justice minister taking control of the justice budget to ensure that it is well spent.
- We encourage all parties to recognise that substantial powers once in the hands of the NIO has now in reality been devolved – to the Policing Board. Also, parties should be clear that a Minister for Justice will not be able to direct the police.
- We believe that Sinn Fein should not use the devolution of justice as a precondition for acceptance of the rule of law. That is contrary to Patten.
- Equally, we encourage the DUP to be upfront about the devolution of justice. As Peter Robinson wrote in the Irish Times in 2004, the devolution of justice is “*no big move for unionists.*” There is therefore no justification for delaying its implementation.

NUMBER OF DEPARTMENTS

- As before, the SDLP believes that there should be one Department of Justice and Law Reform only – as opposed to separate departments of justice/law reform and policing.

SELECTION OF MINISTERS

- The SDLP is open to discussing all the models for the selection of ministers. We are not attracted, however, to the model of rotating senior/junior ministers. Given the need for economy and the fact that the vast majority of the functions of the justice minister will be uncontroversial, there is a good argument for the ministerial office to be allocated out under d’Hondt on the other level, community confidence suggests a different system.

TIMING OF DEVOLUTION

- The SDLP believes that restoration per se and the nature of the powers of a Justice Ministry mean that full devolution of justice powers should happen on day one of restoration. As things stand, this may not be realised. However, the appointment of a Minister of Justice as outlined in the next paragraph leads to the full devolution of justice powers earlier than some would claim. Under this approach, the SDLP submits that a date no later than 1st October 2007 is attainable.

TIMING OF SELECTION

- The SDLP believes, in the event that full devolution of justice powers does not arise upon devolution, a devolved minister for justice should, nonetheless, be appointed upon restoration. He or she would have the following already devolved functions:
 - Office of Law Reform.
 - Office of the Legislative Counsel.
 - Legal services, pending creation of Attorney General for Northern Ireland.
 - Appointments to tribunals.
 - Freedom of Information.
 - Assembly Ombudsman/Commissioner for Complaints.
 - Negotiation of protocols for devolution, including with MI5.
 - Nolan standards.

In addition, he or she would be charged with making further preparations for the devolution of justice, bringing forward proposals to the Executive and also working with a Justice Committee of the Assembly. He or she would also, of course, receive currently reserved justice powers when devolved.

We do not believe, however, that equality should be included among the functions of the Department of Justice and Law Reform. Equality should be mainstreamed by keeping it in the same Department as the Executive Secretariat. That ensures more leverage over all departments to ensure that they follow the equality agenda.

CROSS-COMMUNITY PROTECTIONS

- Cross-community protections must be agreed for a limited number of statutory functions. These include the power to override the Parades Commission, the power to veto Policing Board reports and inquiries and the power to veto 50/50 recruitment.

MATTERS TO BE DEVOLVED

- The minister for justice, upon appointment, would be responsible in particular for working up, on behalf of the executive, issues around devolution. Much of the technical work in this regard would therefore not have to be agreed by the PfG sub-committee.

NORTH SOUTH

- Transfer of justice must have a strong North/South dimension agreed upfront.
- We therefore call for the creation of a new Justice sector of the NSMC, including cooperation and implementation and regular intersectoral meetings involving policing issues on matters such as child protection and drugs.
- In particular, build on current North/South cooperation on criminal justice and policing through, for example:
 - An All-Ireland Criminal Assets Bureau, modelled on the Criminal Assets Bureau in the South, to deprive criminals of their wrongful gains without fear or favour throughout the island.
 - An all-Ireland Law Commission to research and promote harmonisation of laws.
 - All-Ireland police training at the new police training college.
 - North/South police personnel exchanges in the agreed areas.
 - An all-Ireland Sex Offenders register.
 - Building on current arrangements for criminal justice and policing cooperation.
 - An all-Ireland Intelligence Agency serviced by a joint PSNI and Garda unit to combat crime and terrorism North/South. This could be a very important development in terms of all-Ireland policing.

COOPERATION BY BRITISH GOVERNMENT

- British Government to facilitate work by parties in preparation for devolution by sharing all relevant information – including on proposals for MI5's expansion.

PROTECTION FOR PATTEN INSTITUTIONS

- No reduction in role of Policing Board, Police Ombudsman, DPPs, Oversight Commissioner and Inspectorate of Constabulary.

CONTINUED IMPLEMENTATION OF PATTEN AND CJR CHANGES

- Patten and Criminal Justice Review to continue to be implemented pending and post transfer, including new leader and deputy leader of DPP's office.

DUP VETO

- The SDLP is concerned at the veto acquired by the DUP over the devolution of justice as a result of the failed SF/DUP Comprehensive Agreement and as provided for in section 4(2A) of the Northern Ireland Act 1998, inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006.

The SDLP believes that this veto should be removed so that all that is required to devolve justice powers is cross-community support – as was originally the case under the Northern Ireland Act, 1998.

MI5

- The sustainability of the devolution of justice requires the British Government to reconsider fundamentally its approach to MI5.

Appendix 3

**Papers Prepared by the
Assembly Research
and Library Services**

Research and Library Services

12th December 2006

The Assets Recovery Agency: Remit and Status

Library Research Papers are compiled for the benefit of Members of the Transitional Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Executive Summary

The Assets Recovery Agency (the ARA) is a non-ministerial department, established by the Proceeds of Crime Act 2002.¹ Under this Act the ARA was granted the powers to enforce its own cases, whether these be criminal, civil and tax.²

The ARA works to recover assets which are, or represent, property obtained through unlawful conduct in England, Wales and Northern Ireland³. In Scotland, the Financial Crime Unit and Civil Recovery Unit work with colleagues at the Scottish Drugs Enforcement Agency, Scottish Police Forces and HM Customs and Excise to identify and recover such proceeds of crime.⁴

The ARA has offices in London and Belfast. The Assets teams in these offices comprise financial investigators and lawyers.⁵

The Director of the ARA, currently Jane Earl, reports to the Home Secretary, who is responsible for agreeing the business plan every year. The Director also consults the Secretary of State for Northern Ireland on aspects of the ARA's Business Plan concerning Northern Ireland.⁶

In Northern Ireland, the ARA is a member of the Organised Crime Task Force. It also established partnerships with the Police Service of Northern Ireland and HM Revenue & Customs. The ARA also works with the Criminal Assets Bureau (CAB) of An Garda Síochána in the Irish Republic.⁷

¹ *Assets Recovery Agency, Annual Report, 2005/06*

² <http://www.assetsrecovery.gov.uk/WhatWeDo/>

³ <http://www.assetsrecovery.gov.uk/WhatWeDo/CivilRecovery/>

⁴ <http://www.scotland.gov.uk/News/Releases/2006/10/26092927>

⁵ <http://www.assetsrecovery.gov.uk/AboutARA/>

⁶ *Assets Recovery Agency, Annual Report, 2005/06*

⁷ <http://www.assetsrecovery.gov.uk/WhatWeDo/OurPartners/OCTF/>

1. **Background**

- 1.1 The Assets Recovery Agency (ARA) is a non-ministerial department⁸, created by Section 1 of the Proceeds of Crime Act 2002⁹. The ARA has offices in London and Belfast. The Assets teams in these offices comprise financial investigators and lawyers.¹⁰
- 1.2 The ARA works through the courts to recover assets which are, or represent, property obtained through unlawful conduct in England, Wales and Northern Ireland.¹¹ These cases could be criminal, civil or tax related. In Scotland, the Financial Crime Unit and Civil Recovery Unit work with colleagues at the Scottish Drugs Enforcement Agency, Scottish Police Forces and HM Customs and Excise to identify and recover the proceeds of crime in the areas of civil recovery and criminal confiscation.¹² However, the ARA conducts tax investigations throughout all of the UK.¹³
- 1.3 The Director of the ARA, currently Jane Earl, reports to the Home Secretary, who is responsible for agreeing the business plan every year. The Director also consults the Secretary of State for Northern Ireland on aspects of ARA's Business Plan concerning Northern Ireland.

2. **Remit and Aims**

- 2.1 As stated in its annual report, the ARA has three strategic aims¹⁴:
1. To disrupt organised criminal enterprises through the recovery of criminal assets, thereby alleviating the effects of crime on communities.
 2. To promote the use of financial investigation as an integral part of criminal investigation, within and outside the Agency, domestically and internationally, through training and continuing professional development.
 3. To operate the Agency in accordance with its vision and values.

3. **Enforcement**

- 3.1 Under the Proceeds of Crime Act 2002 the ARA was granted the powers to enforce its own cases, whether these be criminal, civil and tax.¹⁵ The ARA works with its partner Agencies to take the profit out of crime through civil recovery action, criminal confiscation or taxation.¹⁶
- 3.2 The ARA has adopted a mixed approach to enforcement, i.e. use of in-house and out-sourced resources. The ARA seeks to enforce as many cases in-house as possible, appointing agents and experts to act on their behalf to realise various assets e.g. auctioneers, valuers, High

⁸ *Assets Recovery Agency, Annual Report, 2005/06*

⁹ *The Proceeds of Crime Act 2002 Ch.29*

¹⁰ <http://www.assetsrecovery.gov.uk/AboutARA/>

¹¹ <http://www.assetsrecovery.gov.uk/WhatWeDo/CivilRecovery/>

¹² <http://www.scotland.gov.uk/News/Releases/2006/10/26092927>

¹³ <http://www.assetsrecovery.gov.uk/WhatWeDo/Tax/>

¹⁴ *Assets Recovery Agency, Annual Report, 2005/06*

¹⁵ <http://www.assetsrecovery.gov.uk/WhatWeDo/>

¹⁶ <http://www.assetsrecovery.gov.uk/WhatWeDo/>

Court Enforcement Officers etc. Where it is not possible to enforce in-house the ARA will nominate a receiver to act as Trustee (civil) or Director's Receiver (criminal) on their behalf. This occurs mainly be in cases where there are significant overseas interests, business(es) to be managed, multiple tenanted properties etc.¹⁷

3.3 The ARA will normally take on cases only on the basis of referral from the Police, Customs and other law enforcement agencies according to agreed criteria.¹⁸

4. **ARA Business Targets**

4.1 In its Annual Report for 2005/06, the ARA published statistics on its progress against its targets over 2005/06. These included¹⁹:

- Disrupt 70 criminal enterprises – 100 disrupted;
- Adopt a further 100 cases – 108 adopted;
- Early restraint of assets to the value of £25 million – £85.7 million of assets under early restraint.

4.2 In relation to timescales, it was noted that the impact of the legal challenges, while inevitable with such complex and new legislation, had delayed the progress of ARA's cases in the High Court. The ARA felt that this has had an adverse impact on their results in the latter stages of the civil recovery process²⁰:

- Obtain recovery orders and issue tax assessments to the value of at least £16 million – £4.6 million in orders granted.
- Realise receipts in civil recovery and tax to the value of £6–12 million – £4.1 million in receipts collected.

4.3 There are no specific Public Service Agreement (PSA) targets on asset recovery, but there was a Government manifesto commitment in 2001 to recover £60 million through the whole asset recovery community by 2003/04. This target was exceeded with £84 million being recovered. The Home Office has a number of commitments in the area of asset recovery, within which the achievement of the ARA's targets is key.²¹

5. **Relationships**

5.1 The ARA works with the police, HM Revenue and Customs (HMRC), other investigating agencies, prosecutors and private sector financial firms. The overarching national policy for asset recovery is contained in the Home Office Strategic Plan, which includes 'recovering more criminal assets' as part of their 'commitments to law-abiding citizens'.²²

17 <http://www.assetsrecovery.gov.uk/WhatWeDo/>

18 <http://www.assetsrecovery.gov.uk/MediaCentre/Publications/>

19 *Assets Recovery Agency, Annual Report, 2005/06*

20 *Assets Recovery Agency, Annual Report, 2005/06*

21 *Assets Recovery Agency, Annual Report, 2005/06*

22 *Assets Recovery Agency, Annual Report, 2005/06*

- 5.2 The Serious Organised Crime Agency (SOCA) commenced operations on 1 April 2006. The ARA has worked with them on their establishment. In its Annual Report 2005/06, the ARA stated that it anticipates that SOCA will become a major supplier of work to the ARA.
- 5.3 In Northern Ireland, the ARA is a member of the Organised Crime Task Force. The Organised Crime Task Force (OCTF) was created in September 2000 by the then Secretary of State for Northern Ireland to develop a coordinated, multi-agency approach to confront the growing problem of organised crime in Northern Ireland.²³ The ARA has also established partnerships with the Police Service of Northern Ireland and HM Revenue & Customs.
- 5.4 In the Irish Republic, the ARA works with the Criminal Assets Bureau (CAB) of An Garda Síochána.²⁴

6. **Scotland**

- 6.1 In Scotland, the Financial Crime Unit and Civil Recovery Unit work with colleagues at the Scottish Drugs Enforcement Agency, Scottish Police Forces and HM Customs and Excise to identify and recover the proceeds of crime, through civil recovery and criminal confiscation.²⁵ However, the ARA conducts tax investigations throughout all of the UK.²⁶
- 6.2 In the financial year 2005-2006 the Financial Crime Unit recouped £3.4m and the courts ordered the recovery of £1.4m following proceedings by the Civil Recovery Unit.²⁷

ENDS

NOTES

²³ *Assets Recovery Agency, Annual Report, 2005/06*

²⁴ <http://www.assetsrecovery.gov.uk/WhatWeDo/OurPartners/OCTF/>

²⁵ <http://www.scotland.gov.uk/News/Releases/2006/10/26092927>

²⁶ <http://www.assetsrecovery.gov.uk/WhatWeDo/Tax/>

²⁷ <http://www.scotland.gov.uk/Topics/Justice/criminal/POCA2002/POCA>

Research and Library Services

12th December 2006

Devolution of Policing and justice: bodies/agencies to be devolved

Library Research Papers are compiled for the benefit of Members of the Transitional Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Executive Summary

- In the document “Devolving Policing and Justice in Northern Ireland: A Discussion Paper”, the Northern Ireland Office (NIO) sets out in broad terms what they mean by justice and policing in Northern Ireland and what is intended to be devolved.
- Using the information supplied in this NIO discussion paper, the table below identifies the bodies/agencies that the discussion paper proposes may become the responsibility of the Northern Ireland Assembly upon devolution.
- The table also outlines the key functions and responsibilities of these bodies/agencies.

1. Introduction

- 1.1 In the event of devolution of policing and justice responsibility for the legislative competence for a number of bodies/agencies will be transferred to the Northern Ireland Assembly.
- 1.2 The Northern Ireland Office (NIO) document, “Devolving Policing and Justice in Northern Ireland: A Discussion Paper”, sets out the areas and bodies/agencies that it is intended may be transferred under devolution. This research paper lists the bodies/agencies that are to be devolved, as set out in the NIO document. The paper also outlines the key functions and responsibilities of these bodies/agencies. The paper also relies partly on the table provided to the Preparation for Government Committee on 15th August 2006 by the NIO. This was used mainly to clarify definitions of key responsibility areas.
- 1.3 Bodies/agencies related to excepted matters are deemed to be exempt from being devolved. Consequently, these bodies/agencies will not be included in this paper.

2. **Scope of Devolution¹**

[ALL BELOW FROM “Devolving Policing and Justice in Northern Ireland: A Discussion Paper”]

As stated in the NIO document “Devolving Policing and Justice in Northern Ireland: A Discussion Paper”, the Northern Ireland Act 1998 divides government responsibility areas into three categories: transferred matters, reserved matters and excepted matters. Generally speaking, transferred matters are those that the Assembly can legislate on of its own accord. Excepted matters are those that are the responsibility of the UK Government and only Parliament at Westminster can legislate on. Reserved matters are also the responsibility of the UK Government and would normally be legislated on at Westminster. However, the Assembly can legislate on reserved matters with the consent of the Secretary of State and such matters could, under certain circumstances, be transferred to the Assembly’s responsibilities in the future.

The overwhelming majority of policing and justice matters fall within the “reserved” category and, along with other reserved matters, are set out in Schedule 3 to the 1998 Act.

The key responsibility areas, as identified in the NIO discussion document , are:

- The criminal law (1);
- The creation of offences and penalties (1);
- The prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings (1);
- Prosecutions;
- The treatment of offenders (including children and young persons, and mental health patients, involved in crime);
- The surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
- Compensation out of public funds for victims of crime;
- Local community safety partnerships;
- The Chief Inspector of Criminal Justice in Northern Ireland;
- The maintenance of public order, the Parades Commission for Northern Ireland;
- The establishment, organisation and control of the Police Service of Northern Ireland and of any other police force (other than the Ministry of Defence Police); the Northern Ireland Policing Board; traffic wardens;
- Firearms and explosives;
- Rights of appeal to the Supreme Court and associated legal aid arrangements;
- The Courts;
- The Northern Ireland Law Commission;
- The Social Security and Child Support Commissioners.

NB Footnote (1): Except in relation to national security, treason and counter-terrorism, which are excepted matters.

¹ The information in this part is derived from the NIO Paper “Devolving Policing and Justice in Northern Ireland: A Discussion Paper”

3. Areas for devolution- bodies/agencies to be devolved

Area to be devolved	Definition of area	Key body/agency	Key Functions / Responsibilities
Criminal Law and Creation of Offences and Penalties	The overall statutory framework governing what constitutes a crime and what the appropriate penalties are.	Criminal Justice Directorate of the Northern Ireland Office	A key part of the work is creating and maintaining the criminal law in Northern Ireland through legislating for the creation of offences and related court procedures (current topics include bail, proceeds of crime, hate crime, mental health review, road traffic offences and sexual crime, including sex offender management). The work also includes development of criminal justice policy in related areas, such as court sentencing and restorative justice, as well as services for victims of crime. Advising the Crown on exercise of the Royal Prerogative of Mercy. In the case of devolution, this would be restricted to cases that fall into the devolved area.
Prevention and Detection of Crime	The statutory framework within which the police – and other law enforcement agencies – operate within Northern Ireland.	The police	The police have a series of statutory powers, including some in common law, that enable them to take forward their crime prevention and detection duties, many of which require judicial authority. For example, they may obtain search warrants or effect a forced entry to premises under certain circumstances. For Northern Ireland, these powers are largely set out in the Police and Criminal Evidence (NI) Order 1989 (known as PACE).
		Forensic Science Northern Ireland (FSNI)	Responsible for the provision of scientific advice and support to enhance the delivery of justice.
		State Pathologist's Department	The State Pathologist's Department (SPD) is a department of the NIO, operating at arms length in providing an independent forensic pathology service for Northern Ireland, as well as providing advice and guidance in other areas of forensic medicine. The core function of the SPD is to conduct autopsies as directed by HM Coroners in Northern Ireland.
		Key Person's Protection Scheme	This is a limited discretionary scheme to protect the homes (and occasionally the workplaces) of certain individuals considered to be under a substantial or greater terrorist threat.
		Following the devolution of policing and justice it is envisaged that: <ul style="list-style-type: none"> ▪ The Assets Recovery Agency; ▪ The Serious Organised Crime Agency; and ▪ The UK Immigration Service will consult with Northern Ireland Ministers, where appropriate, instead of the Secretary of State.	

Area to be devolved	Definition of area	Key body/agency	Key Functions / Responsibilities
Prosecutions	The statutory framework for all rules applying to the prosecution system.	Public Prosecution Service for Northern Ireland (PPSNI)	The Department of Public Prosecutions (DPPNI) was transformed into PPSNI under the Criminal Justice Review 2000. When fully rolled out, the PPSNI will be responsible for all prosecutions previously conducted by the DPPNI and those previously brought by the police. Following devolution and the end of Ministerial responsibility for the prosecution service, the Director's relationship with the Attorney General for Northern Ireland will be one of consultation.
Treatment of Offenders	All matters related to prisons, youth justice, probation and certain functions to do with mentally disordered offenders (including the majority of these functions, including severe hospital facilities) are already transferred.	The Northern Ireland Prisons Service	Responsible for keeping in secure, safe and humane custody those committed by the courts.
		Prisoner Ombudsman	Responsible for the investigation of complaints made by prisoners that cannot be resolved through the Prison Service's complaints procedure and for the independent investigation of any deaths in prison custody. The Secretary of State currently appoints the Prisoner Ombudsman.
		Probation Board for Northern Ireland (PBNI)	PBNI works with offenders who are subject to probation orders, community service orders and combination orders. They are also responsible for supervising those children serving the second half of a Juvenile Justice Centre Order and for the provision of grants for community development purposes.
		Youth Justice Agency	Responsibilities and functions include: <ul style="list-style-type: none"> ▪ Operation of custodial facilities; ▪ Community Orders; ▪ Youth Conferencing Service
		Life Sentence Review Commissioners	Primarily responsible for assessing life sentence prisoners and considering them for release once the minimum period set by the court has expired. NB Responsibility for oversight of the LSRC and the operation of their functions lies within the Criminal Justice Directorate of the Northern Ireland Office. The functions carried out by the LSRC would be devolved and the Northern Ireland Minister for justice would be responsible for appointments to the Commission and oversight of its operation.
Compensation	The law governing the circumstances in which victims of crime can be compensated out of public funds and administration of the system to deliver this,	Compensation Agency	Responsible for the administration of four statutory compensation schemes on behalf of the Secretary of State: Criminal Injuries Compensation Scheme (for injuries before 1 May 2002), Criminal Damage Compensation Scheme, Terrorism Act Scheme, and Criminal Injuries Compensation Scheme (Tariff) (for injuries after 1 May 2002). NB The Terrorism Act Scheme is excepted

Area to be devolved	Definition of area	Key body/agency	Key Functions / Responsibilities
		Criminal Injuries Compensation Appeals Panel	Deals with appeals against decisions about compensation, made under the Northern Ireland Criminal Injuries Scheme (Tariff) 2002, by the Compensation Agency.
Community Safety Partnerships		Community Safety Partnerships	There are 26 Community Safety Partnerships in NI, one in each Council area. They operate on a voluntary basis. A suggested version under devolution could be placed on a statutory basis.
Chief Inspector of Criminal Justice	The Inspectorate and the law governing how it operates	Chief Inspector of Criminal Justice NI	The Criminal Justice Review recommended the establishment of an independent Criminal Justice Inspectorate for Northern Ireland (CJINI) to be responsible for ensuring the inspection of all aspects of the criminal justice system, excluding the courts.
Public Order	The statutory framework governing the maintenance of public order, including responsibility for parades legislation in NI.	The police	The maintenance of public order is an operational responsibility for the police.
		The Parades Commission	Its principal functions are to facilitate mediation between parties to disputes concerning public processions, and issue determinations where agreement between the parties cannot be reached.
The Police and the Policing Accountability Framework	The statutory framework, which provides for the existence of the PSNI and the governance and oversight arrangements which apply to it. Also the funding and corporate governance of a range of statutory bodies within the wider policing field.	The Northern Ireland Policing Board	The Board's principal function is to secure the maintenance, efficiency and effectiveness of the police in Northern Ireland. In discharging this function, the Board must hold the Chief Constable and the PSNI to account for the performance of their duties.
		District Policing Partnerships	<p>The role of the DPPs is a consultative, explanatory and monitoring one. In summary their functions are:</p> <ul style="list-style-type: none"> ▪ To articulate community views on the policing of their district; ▪ To contribute to the formulation on policing plans and priorities; ▪ To monitor police performance at district level; ▪ To report on these matters to the Board and Council; and ▪ To obtain the co-operation of the public with the police with a view to preventing crime.

Area to be devolved	Definition of area	Key body/agency	Key Functions / Responsibilities
		Police Service of Northern Ireland (PSNI)	Issues relating to functions- <ul style="list-style-type: none"> ▪ Funding and audit; ▪ Pay and pensions; ▪ Recruitment and appointments; ▪ Severance; ▪ Alternatives to Plastic Baton Rounds; ▪ Flags and Emblems; ▪ Medals.
		Police Ombudsman for Northern Ireland	To investigate complaints into misconduct by police officers in Northern Ireland.
		Police Oversight Commissioner	Oversee and report on the implementation of the 175 Patten recommendations.
		Lay Visitors	Section 73 of the Police (NI) Act 2000 makes provisions for designated places of detention to be visited and reported on by “lay visitors”. (Designated places of detention are custody suites in police stations used to detain suspects. Criminal and terrorist suspects are detained in separate custody suites.)
		Police Association	Sections 32 & 33 of the Police (NI) Act 1998 provide for the existence of the Police Association to represent members of the PSNI in certain professional matters. The legislation also gives the Secretary of State certain statutory functions in relation to the Association, including the power to regulate its constitution and proceedings.
		Police Retraining and Rehabilitation Trust	Provision of rehabilitation and support services to officers leaving the PSNI, and monitors the use of that grant to ensure value for money and high standards of financial propriety.
		Police Fund	Provide assistance, including financial, to police officers injured or disabled as a direct result of terrorism in Northern Ireland and their families, as well as police widows widowed through terrorism and their dependents.
		RUC George Cross Foundation	The Foundation has a number of statutory functions including the following: <ul style="list-style-type: none"> ▪ The disbursement of funds and funding of projects commensurate with the aim of marking the sacrifices and honouring the achievements of the RUC; ▪ Supporting the professional development of police officers and innovations in policing by means of bursaries and scholarships; ▪ Undertaking joint initiatives with the Widows’ Association and other groups within the police family; and ▪ Taking responsibility for the Memorial Garden and a new police museum.

Area to be devolved	Definition of area	Key body/agency	Key Functions / Responsibilities
		RUC Widows' Association	To foster the social well-being, friendship, health, recreation and leisure of members of the Association and to strengthen and extend facilities for their children.
		Traffic Wardens	The Department for Regional Development (DRD) has overall responsibility for road safety. The functions discharged by traffic wardens are in the process of being transferred to that Department.
Firearms and Explosives		The Secretary of State (The Policing and Security Directorate of NIO)	General policy on firearms and explosives in Northern Ireland- policy development, legislation and general oversight.
The Courts	The administration and oversight of the court system in Northern Ireland	The Lord Chancellor	<p>Lord Chancellor has responsibility for:</p> <ul style="list-style-type: none"> ▪ Matters relating to the courts including procedure, appeals, juries and enforcement of judgments and orders; ▪ Legal aid and the Northern Ireland Legal Services Commission; ▪ Judicial appointments and removals (including the Northern Ireland Judicial Appointments Commission); ▪ Making recommendations to Her Majesty the Queen for appointment as Queen's Counsel; and ▪ A range of UK wide functions.
		Lord Chief Justice	<p>The Lord Chief Justice of Northern Ireland, as head of the Northern Ireland judiciary, is responsible for functions relating to sittings of courts and the times and places of those sittings; assignment of individual judges; appointment of judicial members to court Rules Committees; distribution of business within the same court tier; making of procedural rules for coroners' courts after consultation with the Lord Chancellor; nominations to various posts (for example, Presiding County Court Judge); and handling of complaints against members of the judiciary.</p> <p>NB It is not intended to disturb these arrangements on devolution of justice.</p>
		The Northern Ireland Court Service	The main role of the Court Service is to provide the administration for courts across Northern Ireland (including the Enforcement of Judgements Office, the Fixed Penalty Office, the Court Funds Office, the Office of the Chief and other Social Security Commissioners and the Child Support Commissioners). It also currently provides the Lord Chancellor with policy advice and legislative support relating to his ministerial responsibilities in Northern Ireland.
		Social Security Commissioners and Child Support Commissioners	The Lord Chancellor currently provides administrative support to these bodies.

Area to be devolved	Definition of area	Key body/agency	Key Functions / Responsibilities
		Judiciary	<p>Whilst the majority of this area is currently independent of government, some areas to consider under devolution may be:</p> <ul style="list-style-type: none"> ▪ Judicial independence; ▪ Roles and responsibilities of Lord Chief Justice & Lord Chancellor; ▪ Judicial Appointments; ▪ Removal of Judicial office holders.
		NI Judicial Appointments Ombudsman (soon to replace the Commissioner for Judicial Appointments in Northern Ireland)	<p>Commissioner for Judicial Appointments in Northern Ireland has responsibility for complaints regarding judicial appointments.</p> <p>The Lord Chancellor has general responsibility for recommendations for appointment/salary/removal from office in this area</p>
Northern Ireland Law Commission	The Criminal Justice Review (see recommendations 244-255) recommended the establishment of an independent Northern Ireland Law Commission	Northern Ireland Law Commission	To keep under review both criminal and civil law in Northern Ireland.

Research and Library Services

12 December 2006

Best Practice In Public Appointments In Northern Ireland

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Executive Summary

The Committee on Standards in Public Life (often referred to as the Nolan Committee after its first Chairman Lord Nolan) examined the issue of public appointments.

The Committee set down principles stated to apply to all aspects of public life.

The Committee also recommended that a new Commissioner for Public Appointments should be appointed to monitor, regulate and approve departmental appointments procedures.

Following the Committee's recommendation the post of Commissioner for Public Appointments for Northern Ireland was created in November 1995.

The Commissioner provides guidance for Government departments on procedures for making public appointments, audits those procedures and investigates complaints about appointment processes. The main guidance provided by the Commissioner is in the form of a Code of Practice that sets standards by which appointments should be made. The Code provides a regulatory framework for the public appointments process.

This paper examines the definition of a public body and a public appointment. It also provides relevant background information on the Committee on Standards in Public Life (Nolan Committee). Finally it examines the remit and guidance provided by the Commissioner for Public Appointments for Northern Ireland.

1. Introduction

There was widespread concern over public appointments in 1995. As a result the Committee on Standards in Public Life (often referred to as the Nolan Committee after its first Chairman Lord Nolan) examined the issue and set down principles stated to apply to all aspects of public life (see below at paragraph 4).

The Committee recommended that a new Commissioner for Public Appointments should be appointed to monitor, regulate and approve departmental appointments procedures. This led

to the creation of the post of Commissioner for Public Appointments for Northern Ireland in November 1995.

The Commissioner's remit is to provide guidance for Government departments on procedures for making public appointments,

Audit those procedures and report on them annually and investigate complaints about appointment processes.

The Commissioner provides guidance in the form of a Code of Practice that sets standards by which appointments should be made. The Code provides a regulatory framework for the public appointments process.

This paper examines the definition of a public body and a public appointment. It also examines the recommendations and principles produced by the Committee on Standards in Public Life (Nolan Committee). Finally it examines the remit and guidance provided by the Commissioner for Public Appointments for Northern Ireland.

2. **What is A Public Body¹**

Public bodies are organisations set up to carry out a wide range of functions on behalf of Government. To preserve their independence public bodies operate at arms length from central government, although Ministers are ultimately responsible for the activities of the public bodies sponsored by their departments.

The term 'public body' includes **Nationalised Industries, Public Corporations, Health and Personal Social Services Bodies** and **Non Departmental Public Bodies**. Public bodies are also sometimes known as QUANGOs - Quasi Autonomous Non Government Organisations.

Nationalised Industries and Public Corporations. These bodies are publicly owned and controlled but they have substantial freedom to conduct their own affairs. British Shipbuilders is a nationalised industry. The BBC, Channel Four, the Bank of England, the Civil Aviation Authority and the Northern Ireland Transport Holding Company are all examples of public corporations.

Health and Personal Social Services Bodies. HPSS bodies administer and deliver health and personal social services to the public. They include, for example, Health and Social Services Boards, Health and Social Services Trusts, the Northern Ireland Blood Transfusion Service Agency and the Northern Ireland Health Promotion Agency.

Non-Departmental Public Bodies. More commonly known as NDPBs these are the most common type of public body and there are four main types.

Executive NDPBs generally operate under a specific piece of legislation, employ their own staff and manage their own budgets. They carry out a service or function on behalf of Government. The Northern Ireland Tourist Board, the Equality Commission for Northern

¹ This information is derived from "A guide to public appointments in Northern Ireland", publication from the Central Appointments Unit of OFMDFM.

Ireland, the Northern Ireland Housing Executive and the Sports Council for Northern Ireland are all examples of Executive NDPBs.

Advisory NDPBs advise Ministers and departments on specific issues or services, sometimes in technical or specialist areas. The Historic Monuments Council, the Council for Nature Conservation and the Countryside, the Boundary Commission for Northern Ireland and the Northern Ireland Water Council are all examples of Advisory NDPBs.

Tribunal NDPBs have jurisdiction to operate in a specialised field of the law but do so independently of Government. The Fair Employment Tribunal, Rent Assessment Panels and the Planning Appeals Commission are all examples of Tribunal NDPBs.

Other NDPBs include Boards of Visitors and Visiting Committees who provide independent oversight of prisons on behalf of Ministers and the general public.

Appointments are also made to a number of organisations that are not classed as public bodies, but because these appointments are made on behalf of Ministers they are deemed to be public appointments. These include, for example, the governing bodies of some schools and colleges.

3. **What is A Public Appointment?²**

A Public appointment is one which is usually made by or on behalf of a Minister. However, in practice, many aspects of the process are handled by civil servants or, on occasions, by recruitment consultants.

An example of a public appointment is the Commissioner for Children and Young People.

Most public appointments are part time and many are unpaid, although often travelling or other expenses may be claimed. A public appointment often lasts for between one and five years. Some appointments are renewable for a second term.

4. **Committee on Standards in Public Life (Nolan Committee)**

The Committee on Standards in Public Life (Nolan Committee) spent six months inquiring into standards in British public life. They concentrated on Members of Parliament, Ministers and Civil Servants, executive quasi-autonomous non-governmental organisations (QUANGOS) and National Health Service (NHS) bodies³.

In making its conclusions the Committee identified 7 principles which are stated to apply to all aspects of public life.

² *Ibid.*

³ *The Committee on Standards in Public Life (Nolan Committee) Summary of First Report.*

The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

The Committee concluded the following in relation to QUANGOS (Executive NDPB's and NHS Bodies)⁴:

“Executive Non-Departmental Public Bodies (NDPBs) and National Health Service bodies are public bodies with executive powers whose Boards are appointed by Ministers. They have almost 9000 Board Members and spend some £40bn a year.

⁴ *The Committee on Standards in Public Life (Nolan Committee) Summary of First Report.*

There is much public concern about appointments to Quango Boards, and a widespread belief that these are not always made on merit. The Government has committed itself publicly to making all appointments on merit.

While individual posts should always be filled purely on merit, it is important that the overall composition of boards should represent an appropriate mix of relevant skills and background. This range should be clearly and publicly set out in job specifications.

Ministers should continue to make board appointments, but an independent Public Appointments Commissioner should be appointed to regulate, monitor and report on the public appointments process.

The Government is already taking steps to develop best practice and to ensure that the widest range of candidates is secured. In future the Commissioner should recommend best practice and Departments should have to justify any departures from it.

Formal and impartial assessment of candidates is essential. The advisory panels being introduced in the NHS should become universal, and they should all include an independent element. All candidates whom Ministers consider for all appointments should have been approved as suitable by an advisory panel”.

The Committee also made the following recommendations in relation to appointments to QUANGOS (Executive NDPB’s and NHS Bodies)⁵:

“The ultimate responsibility for appointments should remain with Ministers.

All public appointments should be governed by the overriding principle of appointment on merit.

Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds. The basis on which members are appointed and how they are expected to fulfil their role should be explicit. The range of skills and background which are sought should be clearly specified.

All appointments to executive NDPBs or NHS bodies should be made after advice from a panel or committee which includes an independent element.

Each panel or committee should have at least one independent member and independent members should normally account for at least a third of membership.

A new independent Commissioner for Public Appointments should be appointed, who may be one of the Civil Service Commissioners.

The Public Appointments Commissioner should monitor, regulate and approve departmental appointments procedures.

The Public Appointments Commissioner should publish an annual report on the operation of the public appointments system.

5 The Committee on Standards in Public Life (Nolan Committee) Summary of First Report.

The Public Appointments Unit should be taken out of the Cabinet Office and placed under the control of the Public Appointments Commissioner.

All Secretaries of State should report annually on the public appointments made by their departments.

Candidates for appointment should be required to declare any significant political activity (including office-holding, public speaking and candidature for election) which they have undertaken in the last five years.

The Public Appointments Commissioner should draw up a code of practice for public appointments procedures. Reasons for departures from the code on grounds of 'proportionality' should be documented and capable of review".

5. **The Office of the Commissioner for Public Appointments for Northern Ireland – Best Practice⁶**

The post of Commissioner for Public Appointments for Northern Ireland was established in November 1995, on the recommendation of the Committee on Standards in Public Life (often referred to as the Nolan Committee).

The Commissioner is a statutory office holder appointed by the Secretary of State for Northern Ireland under the provisions of the Commissioner for Public Appointments (Northern Ireland) Order 1995 (as amended)⁷. The Commissioner is independent of Government.

Following a public recruitment competition Felicity Huston was appointed to the post for an initial period of three years. She replaced Baroness Fritchie. The post is a part-time non-pensionable position⁸.

The Commissioner's Remit

The Commissioner's remit is to:

- Provide guidance for Government departments on procedures for making public appointments;
- Audit those procedures and report on them annually; and
- Investigate complaints about appointment processes.

The commissioner regulates, monitors and reports on Ministerial appointments to executive non-departmental public bodies (ENDPB's) and health and personal social services (HPSS) bodies. The Commissioner's remit is restricted to Ministerial appointments within the bodies listed at **Appendix 1**. Therefore there are many public appointments that fall outside the remit of the Commissioner including appointments to advisory bodies and tribunals. The Northern Ireland Departments have agreed, however, to apply the guidance provided by the

⁶ This information is derived from the website of the Commissioner for Public Appointments for Northern Ireland- www.ocpa.gov.uk

⁷ Commissioner for Public Appointments (Northern Ireland) Order 1995 (as amended).

⁸ <http://www.nio.gov.uk>

Commissioner as far as is practicable (paragraph 1.3 Commissioner's Code of Practice for Ministerial Appointments to Public Bodies).

It should be noted that both Scotland and Northern Ireland each have their own Commissioner, who although sharing similar procedures and objectives, are separate from the post of Commissioner for Public Appointments in England and Wales. The Northern Ireland Office executive and advisory public bodies fall within the remit of the Commissioner for Public Appointments in England and Wales.

The Commissioner provides guidance in the form of a Code of Practice (see below) that sets standards by which appointments should be made.

Commissioner's Code of Practice for Ministerial Appointments to Public Bodies

The Code of Practice for Ministerial Appointments to Public Bodies (the Code) provides a regulatory framework for the public appointments process. The Code is stated to be based on the Seven Principles of Public Life recommended by the Committee on Standards in Public Life (Nolan Committee) and reproduced at paragraph 4 above.

The Code is also underpinned by the Seven Principles of Public Appointments that are derived from the recommendations made by the Committee on Standards in Public Life (Nolan; First report, May 1995). These are described in the Code as the "foundations of the public appointments process and are designed to ensure appointment on merit and a quality outcome". They are outlined below. Further detail relating to the procedural aspects of each principle is provided in the Code.

Seven Principles of Public Appointments

The seven principles of public appointments are:

Ministerial Responsibility

The ultimate responsibility for appointments lies with Ministers

Merit

All public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals who, through their abilities, experience and qualities, match the needs of the public body in question.

Independent scrutiny

No appointment will take place without first being scrutinised by an independent panel, or by a group which includes membership independent of the department filling the post.

Equal opportunities

Departments should sustain programmes to promote and deliver equal opportunities principles.

Probity

Board members of Executive Non Departmental Public Bodies (ENDPBs) and Health & Personal Social Services (HPSS) bodies must be committed to the principles and values of public service and perform their duties with integrity.

Openness and transparency

The principles of open government must be applied to the appointments process, its workings must be transparent and information must be provided about the appointments made.

Proportionality

The appointments procedures need to be subject to the principle of proportionality, that is, they should be appropriate for the nature of the post and the size and weight of its responsibilities.

Note; The Code describes both the ‘need for proportionality’ and ‘allowing departments the flexibility they require to deal efficiently and effectively with the diverse range of appointments they make’ as important factors in the procedure.

The Code also provides guidance on the planning, preparation and selection stages of the appointments process in some detail. In addition it provides guidance on audit, the complaints process and statistics and information required to be produced for inclusion in the Commissioner’s annual report.

Complementary Guidance Available to Departments

The code describes the ‘Best Practice Guide for Departments in Northern Ireland’ produced by the Central Appointments Unit of the Office of the First Minister and Deputy First Minister as complementary guidance to the Code. Reference is also made to the potential for individual departments to produce their own internal guidance for staff involved in the appointments process. It is emphasised that such guidance must supplement, rather than replace or change, the Code.

Complete copies of the code may be obtained from Committee staff. It may also be accessed on the website of the Office of the Commissioner for Public Appointments for Northern Ireland at <http://www.ocpani.gov.uk> by clicking on publications.

Appendix 1

The Commissioner regulates appointments to the following bodies:

- Department of Agriculture & Rural Development
- Department of Culture, Arts & Leisure
- Department of Enterprise, Trade & Investment
- Department of Education
- Department of the Environment
- Department of Employment & Learning
- Department of Health & Social Services & Public Safety
- Department of Regional Development
- Department of Social Development
- Office of the First Minister and Deputy First Minister

1.1 Department of Agriculture & Rural Development

- Agricultural Research Institute of Northern Ireland
- Agricultural Wages Board for Northern Ireland
- Livestock and Meat Commission for Northern Ireland
- Fishery Harbour Authority (Northern Ireland)
- Pig Production Development Committee

1.2 Department of Culture, Arts & Leisure

- Arts Council of Northern Ireland
- Fisheries Conservancy Board for Northern Ireland
- National Museums and Galleries of Northern Ireland
- Northern Ireland Museums Council
- Sports Council for Northern Ireland

1.3 Department of Enterprise, Trade & Investment

- General Consumer Council for Northern Ireland
- Invest Northern Ireland
- Northern Ireland Tourist Board
- Health & Safety Executive for Northern Ireland

1.4 Department of Education

- Council for Catholic Maintained Schools
- Education and Library Boards:
 - Belfast Education and Library Board
 - North Eastern Education and Library Board
 - South Eastern Education and Library Board
 - Southern Education and Library Board
 - Western Education and Library Board
- Northern Ireland Council for the Curriculum, Examinations & Assessment
- Staff Commission for Education and Library Boards
- Youth Council for Northern Ireland

1.5 Department of the Environment

- Local Government Staff Commission for Northern Ireland
- Northern Ireland Local Government Officers' Superannuation Committee

1.6 Department for Employment & Learning

- Construction Industry Training Board
- Enterprise Ulster
- Labour Relations Agency
- Ulster Supported Employment Ltd

1.7 Department of Health & Social Services & Public Safety

- Fire Authority for Northern Ireland
- Health and Social Services Boards:
 - Eastern
 - Northern
 - Southern
 - Western
- Health and Social Services Councils:
 - Eastern
 - Northern
 - Southern
 - Western

- Health and Social Services Trusts (19 bodies)
 - Altnagelvin Hospital Trust
 - Armagh & Dungannon Hospital Trust
 - Belfast City Hospital Trust
 - Causeway Trust
 - Craigavon Area Hospital Group Trust
 - Craigavon Banbridge Community Trust
 - Down Lisburn Trust
 - Foyle Trust
 - Green Park Trust
 - Homefirst Community Trust
 - Mater Hospital Trust
 - Newry & Mourne Trust
 - North & West Belfast Trust
 - Northern Ireland Ambulance Service HSS Trust
 - Royal Group of Hospitals & Dental Hospital Trust
 - South & East Belfast Trust
 - Sperrin & Lakeland Trust
 - Ulster Community & Hospitals Trust
 - United Hospitals Trust
- Health & Personal Social Services Regulation & Improvement Authority
- Mental Health Commission for Northern Ireland
- Northern Ireland Practice and Education Council for Nursing and Midwifery
- Northern Ireland Blood Transfusion Service Agency
- Northern Ireland Central Services Agency for the Health and Social Services
- Northern Ireland Guardian Ad Litem Agency
- Northern Ireland Health Promotion Agency
- Northern Ireland Medical and Dental Training Agency
- Northern Ireland Regional Medical Physics Agency
- Northern Ireland Social Care Council

1.8 **Department for Regional Development**

- Northern Ireland Transport Holding Company

1.9 **Department for Social Development**

- Laganside Corporation
- Northern Ireland Housing Executive

1.10 **Office of the First Minister and Deputy First Minister**

- Commissioner for Children & Young People
- Strategic Investment Board Ltd

Firearms – Options for Devolution



FIREARMS – OPTIONS FOR DEVOLUTION

	PROHIBITED WEAPONS AND AMMUNITION Responsibility for legislation, policy, and general oversight	Power to grant authority to possess, purchase, acquire, manufacture, sell	OTHER FIREARMS Full responsibility (legislation, policy, and general oversight)	Limited responsibility
1) Full devolution	✓	✓	✓	
2) Devolution limited in relation to prohibited weapons		✓	✓	
3) The Scottish Model		✓		✓
4) No devolution in relation to prohibited weapons but full responsibility for other firearms			✓	
5) No devolution in relation to prohibited weapons and limited in relation to other firearms				✓
6) Current arrangements	x	x	x	x

In relation to these options **Options 1 to 3** in particular (as they include some element of devolution in relation to prohibited weapons) further options would be possible which indicate that the desire is to have devolution but not “for the time being”.



What constitutes a “Prohibited weapon” and “Prohibited Ammunition” in Northern Ireland is set out in Article 45 of the Firearms (Northern Ireland) Order 2004

Weapons subject to general prohibition

45. - (1) Subject to Article 46, a person who, without the authority of the Secretary of State, has in his possession, or purchases or acquires, or manufactures, sells or transfers -

(a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;

(b) any self-loading or pump-action rifle other than one which is chambered for .22 rimfire cartridges;

(c) any self-loading or pump-action smoothbore firearm which is not an air gun or chambered for .22 rimfire cartridges and either has a barrel less than 60.96 centimetres in length or is less than 102 centimetres in length overall;

(d) any smoothbore revolver firearm other than one which is chambered for 9 mm. rimfire cartridges or a muzzle-loading firearm;

(e) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus;

(f) any weapon of whatever description designed or adapted for the discharge of electricity or any noxious liquid, gas or other thing; and

(g) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in sub-paragraph (f) and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode on or immediately before impact,

shall be guilty of an offence.

Appendix 4

Minutes of Proceedings

Friday, 8 December 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: Alex Attwood
Fred Cobain
Arlene Foster
William Hay
Gerry Kelly
Raymond McCartney

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Paul Woods (Clerical Officer)
Patricia Casey (Senior Researcher)

Observing: Brian Barrington (SDLP researcher)
Richard Bullick (DUP researcher)
Ciaran Kearney (Sinn Fein researcher)
Mark Neale (UUP researcher)

The meeting commenced at 9.33am.

1. **Apologies**

Ian Paisley Jnr (Mr Hay attended the meeting as DUP representative in place of Mr Paisley)

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Introductions**

Members noted details of the secretariat support staff and sub-group membership. The Chairperson outlined the arrangements for chairing the meeting and explained that the Committee on the Programme for Government would give further consideration to the issue at its meeting on Monday 11 December.

3. **Terms of Reference for the Sub-Group**

Members noted the Terms of Reference for the sub-group, as agreed by the Programme for Government Committee.

4. Sub-Group Procedures

Members noted the procedures for the sub-group, as agreed by the Programme for Government Committee.

The sub-group agreed by consensus that meetings would be held in closed session and that the proceedings would not be recorded by Hansard.

The arrangements for future meetings could be changed, by agreement of the sub-group.

5. Declaration of Interests, Privilege and Sub Judice

Members noted the paper on declaration of interests, privilege in the Transitional Assembly and Sub Judice.

Members declared the following interests:

- Alex Attwood – member of Policing Board
- Fred Cobain – member of Policing Board
- Arlene Foster – member of Policing Board
- William Hay – member of Policing Board

6. Draft Work Programme

Members noted the draft work programme and the requirement to report back to the Programme for Government Committee by 3 January 2007.

7. Discussion of administrative structures for the creation of a new policing and justice department

Members discussed issues surrounding the ministerial structures for administering policing and justice.

It was agreed that copies of the Hansards of the House of Commons and House of Lords debates on the St. Andrew's Agreement legislation should be circulated.

Mrs Foster proposed that each of the parties prepare a paper, for circulation in advance of the next meeting, on the four issues outlined in the sub-group's terms of reference. There was consensus and the proposal was agreed.

8. NIO letter of 15 August 2006 on reserved matters contained within Schedule 3 to the Northern Ireland Act 1998

Members discussed the NIO proposals (as set out in the Discussion Paper: Devolving Policing and Justice in Northern Ireland and the subsequent NIO letter of 15 August 2006 to the Committee on the Preparation for Government) on what should or should not be devolved.

It was agreed to request, from the NIO, a copy/details of any new papers/proposals being considered/drawn up on a policing/justice department.

It was agreed to request, from the NIO, further information in connection with national security arrangements.

It was agreed that a paper should be prepared for the sub-group on the composition of a policing and justice department and the bodies/agencies to be devolved.

Paragraph 9(a) & (b) of Schedule 3: The criminal law and the creation of offences and penalties

It was agreed by consensus that this area should be devolved. The DUP and UUP were content with the level of devolvment proposed in the NIO letter of 15 August 2006. Sinn Fein and SDLP wished to see all powers in this area devolved.

9(c): The prevention & detection of crime and powers of arrest and detention in connection with crime or criminal proceedings

It was agreed to request information on all the areas where there are Government Agreements/protocols in place on policing and justice matters.

It was also agreed that a paper should be prepared for the sub-group on the status, remit, etc of the Assets Recovery Agency.

9(d): Prosecutions

It was agreed to request information on the current position and a copy of any draft of the proposed Concordat on the independence of the prosecution system.

9(e): Treatment of offenders (including children and young persons, and mental health patients, involved in crime)

It was agreed to request information on the current position and a copy of any draft proposals with regard to the arrangements to be put in place to allow the Life Sentences Review Commissioners to continue to have access to appropriate information which falls within the excepted field.

It was agreed to request information on the proposed changes to the NI (Remission of Sentences) Act 1995 including the use of parole boards and the effect these proposed changes would have on the devolution proposals outlined.

It was also agreed to request information on what are scheduled offences and what are non-scheduled offences according to the Justice and Security (Northern Ireland) Bill.

9(g): Compensation

The Chairperson proposed that the sub-group agree the proposal for devolution set out in the NIO letter of 15 August 2006. There was consensus and the proposal was agreed.

10: Public Order

It was agreed to request clarification of the circumstances in which the army would be deployed in support of the police and what the accountability mechanisms in respect of the army would be in the circumstances referred to.

It was agreed to request clarification of where responsibility currently rests with regard to the approval of the purchasing of weapons which may be used by the police in public order situations and what the position would be following devolution of policing and justice.

Mr Hay left the meeting at 11.24am.

It was also agreed that a paper should be prepared for the sub-group on best practice in relation to public appointments (taking account of the Nolan principles); and the remit/power, etc of the Public Appointments Commission/Commissioner.

Mr Hay rejoined the meeting at 11.31am.

The meeting was suspended at 11.34am.

The meeting reconvened at 11.40am.

11: The Police and the policing accountability framework

It was agreed to request clarification of how the fact that the Secretary of State would retain power to issue statutory guidance to the Police Ombudsman, and the Minister for policing would also have this power would work in practice.

The Chairperson proposed that the sub-group write to the Standing Orders Sub-Group of the Business Committee asking it to consider the following matters when drafting relevant Standing Orders:

- a) Members of an Assembly scrutiny committee must not be members of the Policing Board.
- b) It must be ensured that the remit of an Assembly scrutiny committee does not impinge on the statutory duties of the Policing Board.

There was consensus and the proposal was agreed.

The Chairperson proposed that the 50:50 temporary recruitment provisions should be devolved. There was not consensus and the proposal fell. The DUP and UUP were content for the power to remain with the Secretary of State. Sinn Fein and the SDLP wished to see it devolved, with decisions being made subject to cross-community support in the Assembly.

11A: Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters.

It was agreed to request information on all the areas where there are agreements/protocols in place between the PSNI and the Garda Síochána.

12: Firearms & explosives

It was agreed to request clarification of what exactly it was proposed was devolved in relation to firearms, the relevant firearms legislation and the specific types of firearms that are covered by this legislation and exactly what it was proposed would not be devolved.

15: The Courts

It was agreed to request clarification with regard to where the financial burden would fall if the proposals for devolution were accepted.

15A: The Northern Ireland Law Commission

The Chairperson proposed that the sub-group agree in principle to devolution in respect of the Northern Ireland Law Commission, however, the Assembly may wish to address the powers of such a Commission in due course. There was consensus and the proposal was agreed.

9. **Any Other Business**

Press Release

Members agreed a press release regarding the formation and work of the sub-group.

10. **Date of Next Meeting**

The sub-group will next meet at 10.00am on Thursday, 14 December 2006 in Room 135, Parliament Buildings.

The meeting adjourned at 12.16pm.

Thursday, 14 December and Tuesday, 19 December 2006 in Parliament Buildings.

In the Chair: William Hay

Present: Alex Attwood
Fred Cobain
Arlene Foster
Gerry Kelly
Raymond McCartney
Alan McFarland
Conor Murphy MP
Ian Paisley Jnr
Peter Robinson MP

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Paul Woods (Clerical Officer)
Sharon Young (Clerical Officer)
Patricia Casey (Senior Researcher)

Observing: Stephen Barr (UUP researcher)
Richard Bullick (DUP researcher)
Leo Green (Sinn Féin researcher)
Michelle McDermott (Sinn Féin researcher)
Jackie McMullan (Sinn Féin researcher)
Mark Neale (UUP researcher)

The meeting commenced at 10.02am in private session.

1. **Apologies**

Meeting on 14 December 2006:

Ian Paisley Jnr (Mr Robinson MP attended the meeting as DUP representative in place of Mr Paisley)

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

Meeting on 19 December 2006:

Gerry Kelly (Mr Murphy attended the meeting as SF representative in place of Mr Kelly)

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Declaration of Interests**

Members declared the following interests:

- Alex Attwood – member of Policing Board
- Fred Cobain – member of Policing Board
- Arlene Foster – member of Policing Board

3. **Chairing of the Subgroup**

The Chairperson advised members that, at its meeting on Monday 11 December, the Committee on the Programme for Government agreed that future meetings of the Subgroup on policing and justice matters should be chaired by a member of the DUP, and that he had been nominated. The Chairperson will not count towards the quorum and will not have a vote. If the Chairperson is unavailable for any particular meeting, it will be the responsibility of the DUP to provide a replacement chairperson for that meeting.

4. **Previous Minutes**

The minutes of the meeting of 8 December 2006 were agreed.

5. **Matters arising**

a) **Revised Procedures for Subgroups**

Members noted the revised procedures for the Subgroup, as agreed by the Programme for Government Committee at its meeting on 11 December 2006.

b) **Letter to the Standing Orders Subgroup**

As agreed at the meeting of 8 December 2006, the Chairperson had written to the Standing Orders subgroup of the Business Committee regarding the relationship between an Assembly policing and justice scrutiny committee and the Policing Board.

6. **Response from the Northern Ireland Office dated 13 December 2006**

A response from the Northern Ireland Office (NIO) dated 13 December 2006 to a request from the Subgroup for information on a range of issues, had been circulated to Members prior to the commencement of the meeting. It was agreed to suspend the meeting for 15 minutes to allow Members to examine the response.

The meeting was suspended at 10.23am.

The meeting reconvened at 10.42am.

The Chairperson proposed that the NIO officials should attend the meeting to give evidence in public session on each of the issues contained in the response, and answer any questions that Members may have. There was consensus and the proposal was agreed.

The meeting moved to public session at 10.47am.

7. Evidence session with NIO officials

The Chairperson welcomed NIO officials Rachel Miller, David Hughes Tom Haire and Jim Strain to the meeting and outlined the format of the session.

Mr Robinson joined the meeting at 11.03am.

The officials answered Members' questions on the information provided in the response dated 13 December 2006, and agreed to provide further information on a range of issues relating to the proposals for the devolution of policing and justice.

The Chairperson thanked the officials for their attendance and they left the meeting at 11.50am.

The meeting was suspended at 11.48am.

The meeting reconvened in private session at 12.04pm.

8. Press Release

Members agreed a press release regarding the evidence session with NIO officials.

9. Papers from the parties

Papers from the DUP, Sinn Féin and the SDLP on issues relating to the devolution of policing and justice were circulated to Members. All four parties then outlined their positions on the range of issues.

Mr Cobain left the meeting at 12.24pm.

The meeting was suspended at 12.24pm.

The meeting reconvened at 1.04pm.

Mr McFarland joined the meeting at 1.04pm.

Mr McFarland declared the following interest: – former member of the Policing Board.

A detailed discussion took place on the issues relating to the administrative structures for the creation of a new policing and justice department, matters for devolution and the timing of the devolution of policing and justice and support for the rule of law.

Mr Robinson left the meeting at 2.09pm.

The Chairperson proposed that the meeting be suspended and reconvene on Tuesday, 19 December 2006 at 12.00 noon. There was consensus and the proposal was agreed.

The Subgroup requested that a summary of the key discussion points be circulated before the meeting reconvened.

The meeting was suspended at 2.27pm.

The meeting reconvened on Tuesday, 19 December 2006 at 12.15pm.

Mr Ian Paisley Jnr declared the following interest: – member of the Policing Board.

10. **Administrative structures for the creation of a new policing justice department**

a) **Ministerial Arrangements**

The sub-group was unable to reach consensus on the matter of ministerial arrangements.

The DUP and UUP were in favour of a single Minister for policing and justice.

Sinn Féin and the SDLP, while not opposed to a single Minister in principle, were of the view that the Ministerial arrangements could only be resolved within the context of agreeing a timescale for the devolution of policing and justice, the appointment mechanism and what powers the Minister would have.

b) **The Appointment Procedure**

The sub-group was unable to reach consensus on the appointment procedure for a policing and justice Minister.

The DUP put forward a proposal for a preliminary appointment process that would ensure that the Minister had widespread support in the Assembly and increase community confidence.

Sinn Féin, the SDLP and UUP wished to see the appointment made using the d'Hondt mechanism.

11. **The Timing of Devolution of Policing and Justice/Support for the Rule of Law**

The subgroup was unable to reach consensus on the timing of the devolution of policing and justice.

The DUP, whilst supportive in principle of the devolution of policing and justice functions, indicated that it was not possible to set a precise date for this. Community confidence was essential and the key issue for the party was support for the rule of law, demonstrated over a credible time frame for a place on the Executive Committee.

Sinn Féin wished to see the devolution of policing and justice powers immediately upon restoration and no later than six months afterwards.

The SDLP also wished to see the full devolution of policing and justice upon restoration. In the absence of this, the party believed that a devolved Minister for policing and justice should still be appointed upon restoration. The Minister should have a range of significant devolved powers in relation to non-controversial matters and responsibility for preparing proposals for the devolution of the remaining powers within six months.

The UUP stated that community confidence was essential and all Ministers must support the rule of law before a timescale for the devolution of policing and justice could be agreed.

12. **Matters for devolution**

The Subgroup considered the matters proposed for devolution in the context of Table 1 of the letter dated 15 August 2006 from the NIO to the Preparation for Government Committee.

The criminal law and offences and penalties

The Subgroup agreed by consensus that the criminal law and offences and penalties should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.

The prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings

The Subgroup agreed by consensus that the prevention and detection of crime and powers of arrest and detection in connection with crime or criminal proceedings should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.

Mr Paisley left the meeting at 1.12pm.

Treatment of offenders (including children and young persons, and mental health patients, involved in crime)

The Subgroup agreed by consensus that treatment of offenders (including children and young persons, and mental health patients, involved in crime) should be devolved. The DUP and UUP were content with the level of devolvement proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.

Public Order

The Subgroup agreed by consensus that public order should be devolved. The DUP and UUP were content that responsibility for the Army and for making appointments to the Parades Commission should remain as excepted and reserved matters, respectively. Sinn Féin and the SDLP wished to see all powers in this matter devolved.

The Police and the policing accountability framework

The Subgroup agreed by consensus that the police and the policing accountability framework should be devolved. The DUP and UUP were content that responsibility for national security information and for the derogation from the EC Directive on equality should remain as excepted matters. The DUP and UUP were further content that responsibility for the 50/50 recruitment arrangements to the PSNI should remain as a reserved matter. Sinn Féin and the SDLP wished to see all powers in this matter devolved and that the devolved administration should have appropriate accountability arrangements for all national security operation in Northern Ireland.

Co-operation between the PSNI and the Garda Síochána in relation to a specific series of matters.

The Subgroup agreed by consensus that cooperation between the PSNI and the Garda Síochána in relation to a specific series of matters should be devolved. The DUP and UUP were content that matters relating to aspects of the Inter-Governmental Agreement on Policing not transferred into the reserved field by the Northern Ireland (Misc. Provisions) Act 2006 and the Inter-Governmental Agreement itself should remain as excepted matters. The DUP and UUP were further content that the reserved matters relating to specified aspects of international cooperation should be devolved. Sinn Féin and the SDLP wished to see all powers in this matter devolved. The SDLP further concluded that the Inter-Governmental Agreement should be left in place as currently agreed.

Firearms & explosives

The Subgroup agreed by consensus that responsibility for firearms should be devolved. The DUP proposed devolution that excluded legislative responsibility for prohibited firearms. Sinn Féin and the SDLP proposed full devolution of all responsibility in this matter. The UUP proposed devolution that excluded legislative responsibility for all firearms and administrative responsibility for prohibited firearms.

The Courts

The Subgroup agreed by consensus that the Courts should be devolved. The DUP and UUP were content with the level of devolvment proposed in the NIO letter of 15 August 2006. Sinn Féin and the SDLP wished to see all powers in this matter devolved.

The Northern Ireland Law Commission

The Subgroup agreed by consensus that the Northern Ireland Law Commission should be devolved as proposed in the NIO letter of 15 August 2006.

13. Any Other Business

a) Format of draft report

Members noted the proposed format for the draft report as agreed by the Committee on the Programme for Government.

b) Draft Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007

The Chairperson informed members that the Northern Ireland Office had written to the Speaker seeking the views of the Transitional Assembly on the draft Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007. The Business Committee had referred the matter to the Committee on the Programme for Government who, at its meeting on 18 December, agreed to refer it to the Policing and Justice Subgroup. Papers relating to the draft Order were circulated to members, along with the revised terms of reference for the subgroup.

To assist the sub-group's consideration of the draft Order, the Chairperson proposed that it hold an evidence session with Mr Paul Goggins MP, Parliamentary Under-Secretary of State for Northern Ireland, and NIO officials on Monday 8 January 2007 at 1.15p.m. in the Senate Chamber. There was consensus and the proposal was agreed.

14. Date of Next Meeting

The sub-group will next meet at 12.30p.m. on Thursday, 21 December 2006 in Room 135, Parliament Buildings.

The meeting adjourned at 1.48pm.

Thursday, 21 December 2006 in Room 135, Parliament Buildings.

In the Chair: William Hay

Present: Alex Attwood
Arlene Foster
Gerry Kelly
Danny Kennedy
Raymond McCartney

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Sharon Young (Clerical Officer)

Observing: Brian Barrington (SDLP researcher)
Ciaran Kearney (Sinn Fein researcher)
Mark Neale (UUP researcher)

The meeting commenced at 2.33pm.

1. **Apologies**

Fred Cobain (Mr Kennedy attended the meeting as UUP representative in place of Mr Cobain)

Ian Paisley Jnr

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Declaration of Interests**

Mr Kennedy declared the following interest: - member of the Policing Board.

3. **Previous Minutes**

The minutes of the meeting of 14 and 19 December 2006 were agreed.

4. **Matters arising**

Further information from the NIO

Members noted the further information provided by the NIO, which had been requested during the evidence session with officials on

14 December.

5. **Consideration of the draft Report from the Subgroup on Policing and Justice matters**

Members considered the draft report from the Subgroup on Policing and Justice matters to the Committee on the Programme for Government on a ‘paragraph-by-paragraph’ basis as follows:

Front Page Agreed

Membership and Terms of Reference Agreed as amended

Introduction

Paragraphs 1 to 7 Agreed

Consideration of Policing and Justice Issues

Paragraphs 8 to 11 Agreed

Paragraph 12 Agreed as amended

Paragraphs 13 to 15 Agreed

Paragraph 16 Agreed as amended

Paragraphs 17 to 19 Agreed

Paragraph 20 Agreed as amended

Paragraphs 21 to 24 Agreed

Paragraph 25 Agreed as amended

Paragraphs 26 to 27 Agreed

Paragraph 28 Agreed as amended

Paragraphs 29 to 44 Agreed

Paragraph 45 Agreed as amended

Paragraph 46 Agreed as amended

Paragraph 47 Agreed as amended

Paragraph 48 Agreed as amended

Paragraph 49 Agreed as amended

Paragraph 50 Agreed as amended

Paragraphs 51 to 58 Agreed

List of witnesses who gave oral evidence and other papers considered by the Subgroup Agreed

Conclusions Agreed as amended

Executive Summary Agreed as amended

It was agreed that the party papers submitted to the Subgroup should be included in the report.

Members then agreed the report from the Subgroup on Policing and Justice matters to the Committee on the Programme for Government, subject to the amendments being made as agreed.

6. **Minutes of the meeting of 21 December 2006**

The Subgroup agreed that it was content for the Chairperson to approve the minutes of the meeting of 21 December, relevant to consideration of the report, to facilitate their inclusion in the report.

7. **Date of Next Meeting**

The Chairperson may, if he believes it necessary, call a meeting early in January 2007. Otherwise, the Subgroup will next meet at 1.00pm on Monday, 8 January 2007 in the Senate Chamber, Parliament Buildings.

The meeting adjourned at 3.16pm.

Appendix 5

Official Report

14 December 2006

Members present for all or part of the proceedings:

The Chairman, Mr William Hay
 Mr Alex Attwood
 Mr Fred Cobain
 Mrs Arlene Foster
 Mr Gerry Kelly
 Mr Raymond McCartney
 Mr Peter Robinson

Witnesses:

Mr David Hughes	}	Northern Ireland Office
Ms Rachel Miller		
Mr Jim Strain		
Mr Tom Haire		

The subgroup met at 10.46 am.

(The Chairman (Mr Hay) in the Chair.)

1. **The Chairman (Mr Hay):** You are all very welcome. I apologise for the delay. I welcome David Hughes, Rachel Miller, Jim Strain and Tom Haire from the Northern Ireland Office. The subgroup decided that the meeting will be open to the public. We will go through each item in the response from the Northern Ireland Office to the request by the subgroup for further information on a range of issues, and members can ask questions on particular sections.
2. **Ms Rachel Miller (Northern Ireland Office):** Are members aware that, unfortunately, we do not have a full board of officials?
3. **The Chairman (Mr Hay):** Yes, we understand that. The subgroup may ask for written clarification on some issues that you are not able to answer today.
4. **Ms Miller:** In addition to what we have set out in our response, Mr Hughes is happy to talk about the intergovernmental agreement on co-operation on criminal justice matters.
5. **The Chairman (Mr Hay):** Let us start with the first section, which is the role of MI5

in Northern Ireland. You have clarified that somewhat in your letter, but perhaps you could go through the section.

6. **Ms Miller:** Do you wish us to go through the document section by section, starting with the section on MI5?
7. **The Chairman (Mr Hay):** Yes.
8. **Ms Miller:** I am afraid that none of us can talk specifically about that section. However, we can take your questions, and we will endeavour to get back to the subgroup in writing as soon as we can.
9. **Mrs Foster:** The response states that the arrangements, as regards the accountability structures concerning MI5, are comprehensive. I have no difficulty with that, although other members may. However, as those arrangements are said to be comprehensive, could you give us clarity now, or in writing, as to whether it is felt that any other arrangements will be necessary and whether any other measures are currently envisaged in relation to accountability?
10. **Ms Miller:** I will take that back to my colleagues and endeavour to get an answer.
11. **The Chairman (Mr Hay):** Does Sinn Féin have any questions?
12. **Mr G Kelly:** No.
13. **Mr Attwood:** I have a lot of questions, but I will ask only two new ones on the NIO document, which states:
“It is envisaged that a future Justice Minister will receive the same level of information as does the Board”.
14. Can you confirm what the NIO, or the British Government, mean by the “same level of information”?
15. Can you also explain how that position can be reconciled with the view of the British Government, and the parties at this table, that the powers and statutory functions of the

Policing Board should not be encroached upon in the future? Sharing the same level of information with a justice Minister who may not have the same level of power could create tension. Should the justice Minister have the same level of information as the Policing Board? If so, what does that mean?

16. The second question is for the British Government: have any complaints to the Investigatory Powers Tribunal (IPT) resulted in any proceedings being taken under the Human Rights Act 1998? The SDLP understands that not one of the 400 cases that have gone to the IPT has resulted in such proceedings, and I would like confirmation of that. I asked that question yesterday, and I would like to have an answer.

17. Thirdly, please explain the process after a complaint has been referred to the IPT. One would expect due process in any complaints procedure; therefore, I would like the Northern Ireland Office to explain the procedure of the IPT, because no one seems willing to do that. What rights does the complainant have with regard to the submission of evidence, attendance, representation, and hearings, even in private?

18. What detail is provided in any decision of the IPT? Of the 400 cases that have gone to the IPT, none has been upheld, and no reasons for that have been given. How does the IPT justify itself to the wider public, when it provides no reasons, explanation, detail or commentary? The IPT fails to live up to any standards that one would expect from any relevant complaints procedure.

19. Finally, given that MI5 is conducting an ongoing recruitment campaign in the North and in Britain, how many new people has it recruited, and what is the nature of the jobs that those people will do? How many people will be doing each of those jobs?

20. **Mr Cobain:** What are their names, addresses and phone numbers? *[Laughter.]*

21. **Mr Attwood:** Funnily enough, yesterday I had to tell the director of MI5 that recruitment was ongoing. When he asked me how I knew, I told him that the information was on his

recruitment website. He did not know how I had accessed that information. *[Laughter.]*

22. Is Hansard covering all of this?

23. **The Chairman (Mr Hay):** Yes.

24. **Mr Cobain:** That has blown your cover.

25. **Mr Attwood:** Nonetheless, the question is relevant. How many people are being recruited, and what jobs will they do precisely? How many people will be recruited to each job description?

26. **Mr Cobain:** First, are the Government considering the inclusion of a Northern Ireland MP on the Westminster Intelligence and Security Committee in order to balance the increased role of MI5 in the Province?

27. Secondly, could we be given a little more information about exactly what security information is shared with the Policing Board? The board was meant to set up a small subcommittee to seek that information, but it was never set up. I would like to know what information is shared, and with whom.

28. **The Chairman (Mr Hay):** If there are no other questions, we will move to the next matter, which concerns the provision to the subgroup of details of any new papers and proposals that are being considered in relation to a policing and justice Department.

29. **Ms Miller:** We do not have any new papers of the type that the subgroup is seeking, other than the discussion document that we produced in February. That was a summary of where we were then on this matter, and it raised a number of questions that we — and members — are working to resolve. That is currently the only document that outlines the direction in which we are going with policing and justice, and the Government's position on possible departmental structures and scope. Obviously, various developments have taken place since then and will continue to do so. I imagine that we will eventually agree the scope and structures of a new Department and that that will lead to further documents.

30. It may be sensible if members ask questions about what we have stated in the

paper. I am not sure that I can add much to what has already been said.

31. **Mrs Foster:** The paper stated that work has already begun with other criminal justice agencies. As you said, we already have that paper. Has any further work been done with other criminal justice agencies?

32. **Ms Miller:** We have not produced new papers or proposals. Everyone understands that the devolution of policing and justice is a very big move, because it involves a number of criminal justice agencies and three Whitehall Departments. Aside from the decisions that must be taken on the exact scope of what will be devolved — we know the broad shape, but not the detail, which members are working on — there is a lot of practical pragmatic work to be done, at whatever point devolution takes place, to deliver a fully functioning, joined-up criminal justice Department. We were very grateful that the Committee on the Preparation for Government stated earlier this year that a single Department of justice was every party's preferred choice. That has been hugely helpful in the planning process.

33. The type of work that has been going on includes matters such as personnel policies, bringing people together in one Department, examining where the Department might sit, buildings, IT, and talking to one another. That is not really policy work; it is a pragmatic planning process. That is the type of work that has been done and that continues to be done.

11.00 am

34. Obviously, it is much easier to complete such work once firm decisions have been taken about what will happen in future. I know that that is everyone's aim.

35. I am not aware of a replacement or successor to the discussion document on the devolution of policing and justice. The work has been fairly practical in nature, considering how the various sections will be joined up. That work is on the practical implementation side of devolution.

36. There are also other preparations that must be done in order to get devolution in place.

One such example is that we have started to identify the primary and secondary legislation that relates to Northern Ireland and replace “the Secretary of State” with “the Northern Ireland Executive”, or whatever term will be used. That work, which is continuing, results from the legislative requirements of transferring responsibilities to a devolved institution.

37. Our ambition is to do as much work as possible so that, when policing and justice are eventually devolved, we will not delay the process. There is much that we can do at the moment. That work has started, but there is a limit. The earlier that decisions are taken on the scope and structure of devolution, the more detailed work that we can do.

38. **Mrs Foster:** Therefore, you cannot do anything more on the implementation plan until you know the scope of devolution.

39. **Ms Miller:** It is not a matter of the NIO not doing anything until the scope of devolution is known, because there is consensus on many issues. However, we could do so much up to a point, but then we would get stuck. We are not there yet, and our work is continuing. We are engaged in a lot of planning work, for example. I want to register the point, which is also registered in the discussion document, that fairly firm decisions are required in order to devise a detailed plan.

40. **The Chairman (Mr Hay):** I remind members that I am calling the parties in alphabetical order. Mr Kelly is next.

41. **Mr G Kelly:** Notwithstanding the model and the time frame, there is consensus on a huge amount of the detail that will be transferred. Has that allowed you to make progress?

42. **Ms Miller:** Yes. As I said, we are doing a great deal of work in bringing organisations together. We are also engaged in a lot of planning work. The consensus has helped us to plan, and we are progressing on that basis.

43. **Mr G Kelly:** My second question is also notwithstanding the outstanding core issues. If a decision were taken today and you were presented with a model for devolution, how long would the entire devolution process take?

44. **Ms Miller:** That is a very difficult question to answer.

45. **Mr G Kelly:** That is why I asked it. *[Laughter.]*

46. **Ms Miller:** I thought so. My answer will not be carefully worked out, as there is not certainty on absolutely everything. The St Andrews Agreement cites May 2008 as a possible time for devolution. Clearly, the Assembly will decide when devolution should begin. It would be quite wrong of the Government to say that all issues will have been resolved and that all matters will be ready to be devolved by May 2008 unless we were sure that we could accomplish everything in that time frame.

47. However, the process does not quite work like that. I cannot say that everything will be ready for devolution in 18 months or two years from now, because certain things can be done only once the Assembly has taken a decision. The model is that the First Minister and the Deputy First Minister will propose something to which the Assembly will agree. That proposal would then go to the Secretary of State, who would lay a devolution Order before Parliament.

48. Even if a devolution Order were prepared and we all knew what was happening, it would take a while for the Order to be passed by Parliament — probably three to four months. In a sense, it is like asking what is the length of a piece of string. If there were absolute certainty today, the process could possibly be completed in 18 months to two years. The earlier that certainty is achieved, the more likely it is that that time frame will be met. That is my guess as to how it would work.

49. **Mr G Kelly:** Are you waiting for certainty before beginning to deal with the detail? You mentioned work on primary and secondary legislation.

50. **Ms Miller:** We cannot begin to prepare devolution Orders until we know more of the detail. It is difficult to do that work without knowing the detail. We know that certain work in relation to secondary legislation will have to be done, and we have started work on identifying the relevant statutes. For example,

we have begun the practical work that will be required in order to create a justice Department.

51. **The Chairman (Mr Hay):** I remind Mr Robinson, who has just joined us, that the meeting is in public and is being recorded by Hansard. Also, will Mr Robinson state whether he has any interests to declare.

52. **Mr P Robinson:** Do you want my criminal record? *[Laughter.]*

53. **Mr Attwood:** I want to probe the timing issue a bit further. Was reference made in the discussion paper to an indicative time frame of 18 months?

54. **Ms Miller:** I do not think that we gave a time frame. We did not do so deliberately because the more preparation work that is done, the better an idea one has of what will be necessary. Therefore we said that we would not give a timescale.

55. **Mr Attwood:** However, given that you issued a discussion document in February and it is now December, and given that you also gave evidence of having done various levels of preparation over the past 10 months, are you saying, two months after St Andrews, that you are still talking about 18 months or more? If that is so, it begs a question about the huge chunk of time that will have passed before you get around to having the administration side satisfactorily in place.

56. Furthermore, given that the outstanding issues are more political than material in nature — and some of the papers that we have been provided with today indicate that — I do not understand how it could take 18 to 24 months in any circumstances, but I do not understand, 10 months after you started doing the work in the discussion document, how it could still take 18 to 24 months, when, clearly, you are doing an enormous amount of work.

57. **Ms Miller:** It is because there is a difference between having a project in which we are certain about the end product, and which can be prepared for, and one where one does not know what the end product will be, the full scope of what will be devolved and the future structure of any Department. In fact, until quite

recently, we did not know whether there would be one Department or two. We do not know when the end product will be introduced.

58. If one has absolute certainty about the scope of a project, one can have definite start and end dates, and it can be run as a proper project. A timetable with milestones and targets can be set, and one could say that the project will be completed by such-and-such a date.

59. We are dealing with something that is much more difficult because it is much fluffier. We are receiving more and more detail, and the subgroup is providing useful pointers on where we might go and what we might do. Therefore, what I am saying is that we can do a lot of preparatory work, which is what we are doing at present and will be doing in the future, but one does reach a point when one has to know what is actually going to happen.

60. That is why it is difficult to provide a timescale. At the moment it is probably fair to say that it will take 18 months; however, that is an estimate and not a detailed implementation date. The earlier that matters become more certain, the more likely we can reduce that timescale, but that is not likely to happen. We are running a project at the moment, which is going —

61. **Mr Attwood:** Let me rephrase my gripe. If all parties in the North agreed tomorrow to have full devolution of justice powers 12 months from today, are you saying that you could not comply with their wishes?

62. **Ms Miller:** What you are trying to ask is what would happen if parties requested devolution tomorrow; I think —

63. **Mr Attwood:** If the parties declared politically that they would want devolution to be in place 12 months from today.

64. **Ms Miller:** Before I could answer that, I would need to know what they had agreed, what the shape of the Department would be and how much change it would involve. I would then need to go away and say —

65. **Mr Attwood:** Let us say, for the sake of argument that there will be one Department, one

justice Minister and devolution of powers relating only to everything that has been agreed so far. Could you do that in 12 months' time?

66. **Ms Miller:** I cannot give you an answer because you have not clarified with certainty what you are asking for.

67. **Mr Attwood:** Do you have a draft implementation plan ready?

68. **Ms Miller:** I have already said in the document that we are not yet in a position where it is possible to draw up a detailed implementation plan.

69. **Mr Attwood:** Do the various Departments and bodies that you deal with have a draft implementation plan? Given that the discussion document came out in February, is there work in progress in those agencies towards producing an implementation plan? Could that work be brought together?

70. **Ms Miller:** Each of the various agencies is examining what is necessary to deliver devolution. How detailed that plan will need to be, and what will need to be done, varies according to the agency, for example, where it is positioned. Also, it is possibly slightly easier if it actually is an agency rather than, say, part of the Lord Chancellor's Department. Therefore the circumstances vary according to the individual agency and where it is situated.

71. Certainly, the agencies have started to examine and work on that. So too has the NIO. However, none has put forward a detailed implementation plan. It is not possible to produce one at present. That is part of the reason that the earlier we have firm decisions on issues, the better.

72. **Mr Attwood:** Given that one party maintains that there must be a period of proof on the issue of policing before devolution of justice can be reached, are you saying that if, for the sake of argument, that period of proof expires only 12 months after the Assembly is restored next March, you would still need a significant period of time after that because, by that stage, many issues that you say must be defined might still be up in the air? Are you saying that even a year after there has been

proof — a year after restoration — you would still need further time in order to bring about devolution of justice and policing?

73. **Ms Miller:** Clearly, the decision on when a request is made lies in the hands of the Assembly, rather than the Government. I am simply saying that a considerable amount of preparatory work must be done. That work has been started. However, as we have said in the discussion document, it will take time. Whatever the date of any request or decision about the timing of devolution, the earlier that is and the more certainty that there is in the scope and structure of the proposals, the easier it will be for us to plan and to begin to process them.

74. I understand that that does not answer your question. However, it is the only answer that I can give you at present.

75. **The Chairman (Mr Hay):** I remind members to keep their questions short. There is quite a bit of work to get through.

76. Mr Cobain, do you have any questions?

77. **Mr Cobain:** I will make it short, Chairman — no.

78. **The Chairman (Mr Hay):** Are there any other questions on that particular subject? If not, we shall move quickly to North/South protocols.

79. **Mr David Hughes (Northern Ireland Office):** Our submission contains a copy of the intergovernmental agreement on criminal justice co-operation, which I am familiar with. I am not in a position to comment on the other agreements on sex offenders and policing and co-operation protocols in other areas.

80. The agreement is quite straightforward in that it sets up a structure that allows the Ministers responsible for criminal justice in Northern Ireland and the Republic of Ireland to meet and to take forward work jointly, to commission work jointly and to have a working group in both jurisdictions. It is actually quite a simple arrangement, which has been designed and drafted with that intention because it is an agreement between the UK and the Irish Government. It would not have effect once

policing and justice is devolved. However, it is drafted in such a way that the decision can be taken by the Minister for justice here to maintain structures and continue the way of working that it sets out. There is nothing to stop that happening.

11.15 am

81. **The Chairman (Mr Hay):** The next section of the paper is quite large. Are there any general questions on the entire section?

82. **Mrs Foster:** The paper mentions that project groups have been working on several areas. Have any of those groups produced papers, or are they still works in progress?

83. **Mr Hughes:** The language that we used when drafting the Intergovernmental Agreement on Criminal Justice Co-operation was designed to set up project groups with specific remits. In practice, the groups have comprised senior operational and policy officials from the respective jurisdictions who meet to discuss issues in general and have become fora.

84. The groups regularly report to the working group and to Ministers. Those reports have been quite basic, outlining when the groups met, what they discussed, noting opportunities to share good practice and identifying areas of work where members can better understand how their opposite numbers operate. That is the nature of their operation. A project has not been the groups' focus.

85. **Mrs Foster:** Did the memorandum of understanding on sex offenders come from one of the working groups, or was it Minister-led?

86. **Mr Hughes:** The memorandum was led by — and jointly issued by — the Home Office and the Department of Justice, Equality and Law Reform. We have an interest in that because it is a particularly pertinent issue.

87. **Mrs Foster:** You said that, if devolved Government comes to Northern Ireland, there are ways of empowering to Ministers to have North/South co-operation. What procedures will be put in place for east-west co-operation? Issues such as the movement of sex offenders affect the whole of the UK. Offenders may

come through Northern Ireland and on to Scotland, England or Wales.

88. **Mr Hughes:** A Minister for justice could decide to maintain the structures that are currently in place under the agreement. There is no requirement to allow for different circumstances where responsibility for criminal justice has been devolved, neither are there any deliberate changes to the way that the system operates to account for devolution. It would be for a Minister for justice to decide whether to maintain those structures, in agreement with the Irish Government, if that is what the Minister wanted to do.

89. I am not aware of any particular plans for east-west procedures in the event of devolution of policing and justice.

90. **Mrs Foster:** If a Minister for justice were to decide to engage in North/South co-operation, are you saying that there will be no east-west co-operation?

91. **Mr Hughes:** I am saying that there is no structure for that. That is not what the intergovernmental agreement (IGA) is about, so I cannot comment on an east-west aspect. I am not aware of what the arrangements would be between a Department of justice in Belfast and the Home Office or Department for Constitutional Affairs in London. I am not aware of the plans in that regard. I am not sure that there are particular plans for that at the moment because, again, the co-ordination and communication that would be required on that issue must be addressed in the preparations for devolution. I am not aware that the issue has been addressed yet.

92. **Mrs Foster:** For example, there may be an issue that will be discussed between London and Dublin, but not with Belfast; that is what I am getting at. There could be a gap. If an issue is being discussed in a European context, and something needs to be discussed between London and Dublin —

93. **Mr Hughes:** I imagine that those issues will have arisen in relation to devolution in Scotland. There must be a precedent for the way in which the Home Office and the Justice Department in Edinburgh ensure communication on issues. If there are issues to be discussed

between London and Dublin, I am sure that those issues may have implications elsewhere.

94. I am being slightly vague because I am not aware of whether there is any formal arrangement at present. It is mostly informal.

95. **Ms Miller:** Those issues are governed by a memorandum of understanding between the constituent parts of the UK. Without having done any preparatory work on the matter, I imagine that such a memorandum would certainly be required between a Department of justice in Northern Ireland and the Home Office, and possibly also between the Justice Department in the Scottish Executive. All issues that need to be covered in that way would be identified in that memorandum.

96. **Mr G Kelly:** I assume that there is an unlimited capacity to expand North/South, and indeed east-west, relationships and harmonisation.

97. **Mr Hughes:** The Minister for justice and the Executive will presumably decide how to progress any structure. The structure that we are describing is simply the one that currently exists.

98. **Mr Attwood:** You characterised how the project groups report to Ministers. Just as a memorandum of understanding on sex offenders exists between the British and Irish Governments, one could anticipate that various initiatives may be taken on any of the issues that the work programme covers. Other than having conversations and scoping issues, is anything concrete coming out of the work programmes?

99. **Mr Hughes:** I am not aware of any memorandum of understanding emanating from those work programmes. Their particular benefit has been increased communication; practitioners and officials have been in touch with each other far more than they were in the past. That has been fruitful because awareness of practices and issues has increased. I am not aware that anything has been formalised or signed by both sides.

100. **Mr Cobain:** I want to pursue the issue of memoranda of understanding and protocols between the British Government and the Government in the Republic. Most police officers believe that sharing information, not

only throughout the islands but also throughout Europe, is probably the best way to tackle large-scale criminal empires. Is it not a bit restrictive to have a protocol between a Minister of justice in Northern Ireland and the Minister for Justice, Equality and Law Reform down South and to have separate protocols between Northern Ireland and the Home Office, Edinburgh and Cardiff respectively? Is there not a case for having protocols between the islands rather than separate relationships? As far as fighting crime is concerned, I do not understand why the relationship is restricted to an island resource.

101. **Mr Hughes:** The document on criminal justice co-operation does not intend to limit communication and co-operation. It describes a structure that encourages them, because it is useful to identify issues that are particularly relevant to both jurisdictions.

102. **Mr Cobain:** When you say “both jurisdictions”, do you mean Northern Ireland and the Republic?

103. **Mr Hughes:** Yes.

104. **Mr Cobain:** Are the issues that are relevant to those jurisdictions not the same in the rest of the United Kingdom?

105. **Mr Hughes:** I hesitate to say that they are necessarily the same.

106. **Mr Cobain:** I assume that the issue of sex offenders, for example, is the same for all jurisdictions.

107. **Mr Jim Strain (Northern Ireland Office):** That is the case because there is coterminous legislation in the South and North, and, indeed, in the rest of the UK, to reflect that. However, although other issues may not be in any way less important, there are some matters on which the South does not have reciprocal legislation. That is why the Home Office pushed for legislation to provide for the registration of sex offenders and the tracking of their movements between the South and the UK. As David said, one can imagine that other matters may be purely North/South issues.

108. **Mr Cobain:** What is the difference between tracking sex offenders and tracking major criminals?

109. **Mr Strain:** As David said, there is no difference as such; it is simply that the legislation on sex offenders exists.

110. **Mr Cobain:** I do not wish to labour the point, but that measure seems somewhat restrictive. It looks as though, purely for political reasons, there are to be protocols for Northern Ireland and the Republic of Ireland, and separate protocols for the rest of the United Kingdom. Major crimes, not only on this island but across Europe, are becoming ever more sophisticated and complex. Police forces throughout Europe and throughout these islands are seeking closer co-operation. Except for political reasons, I cannot see why there should not be protocols throughout these islands, rather than on a North/South basis alone.

111. **Mr Hughes:** I am not sure that we can answer that question.

112. **The Chairman (Mr Hay):** If there are no further questions, we move to the next matter, which concerns a concordat between Her Majesty’s Government and the Northern Ireland Executive on the independence of the Public Prosecution Service for Northern Ireland.

113. **Mr Hughes:** The draft concordat is attached to the NIO paper and sets out the key points of the arrangements provided for in the Justice (Northern Ireland) Act 2002 and the Justice (Northern Ireland) Act 2004. It simply expresses the provisions of a concordat for the purposes of maintaining the settlement provided for in those Acts.

114. **Mrs Foster:** With respect to the Director of Public Prosecutions (DPP), it is important to bear in mind that, if the Bill currently going through the House of Commons is passed, the DPP will have a huge influence on whether a suspect is tried by a jury or by a judge sitting alone. I notice that the DPP will be appointed by the Attorney-General. Are any further accountability mechanisms envisaged in relation to the appointment of the DPP? Can the delegation add anything else on that matter?

115. **Mr Hughes:** I cannot really add anything on that matter. The arrangements are those set out in Justice (Northern Ireland) Act 2002.

116. **Mrs Foster:** I wish to ask a general question about the architecture of the criminal justice system in Northern Ireland, which obviously derives from Westminster. Members have discussed the devolution of criminal law to the Northern Ireland Assembly. Arguments have been made for the maximum degree of devolution, including control over existing and new offences.

117. As far witnesses are concerned, will the architecture of the criminal justice system in Northern Ireland continue to reflect that decided by Westminster or will there be fundamental changes, such as changes to the court system, etc? Will Northern Ireland retain the architecture of the British legal system? When changes are made to criminal law, Northern Ireland has usually been included with England and Wales.

118. **Mr Hughes:** Decisions on the criminal law and the institutional architecture of the criminal justice system will be devolved. Concordats in relation to prosecutions and the judiciary are intended to maintain the appropriate level of independence.

119. **Mr G Kelly:** I would like to take that document away for further consideration. It is a draft, and I will return to it later.

120. **Mr Attwood:** I have just one question, to which I cannot recall the answer. Who appoints the Attorney-General for Northern Ireland?

121. **Mr Hughes:** The First Minister and the Deputy First Minister, acting jointly, make that appointment.

122. **The Chairman (Mr Hay):** If there are no other questions, we can move to the next matter, which concerns the Life Sentences Review Commissioners.

123. **Mr Tom Haire (Northern Ireland Office):** The paper mentions a point of detail about how the review of life-sentenced prisoners will proceed, within the context of a power for confidential information to be deployed. Were that confidential information deployed, arrange-

ments would be in place for the Secretary of State to deploy it, as opposed to a Minister of justice. As the update states, that matter sits within the overarching arrangements on the provision of information on national security. There is no specific draft proposal on that particular provision, which sits within a more general approach to national security information.

11.30 am

124. **The Chairman (Mr Hay):** If there are no questions on that section, we will move on the next section, which is the clarification of offences under the Justice and Security (Northern Ireland) Bill.

125. **Ms Miller:** Again, unfortunately, my colleagues who have more expertise on these policy issues are busy elsewhere. Therefore, it might be best for members to give me their questions on the information that has been provided, and I will take them back to those colleagues who are better able to provide answers.

126. **The Chairman (Mr Hay):** Do members wish to ask any questions?

127. **Mr G Kelly:** I will come back to the officials on this issue.

128. **The Chairman (Mr Hay):** The next issue is the remission of sentences in Northern Ireland.

129. **Mr Haire:** The paper provides information about proposed changes to the Northern Ireland (Remission of Sentences) Act 1995. There are, in fact, no proposed changes to the Act. The sentencing proposals that Mr Hanson announced last week will affect only those offences committed after the introduction of the new legislation. Therefore, the Northern Ireland (Remission of Sentences) Act 1995 will be untouched.

130. **The Chairman (Mr Hay):** Do members have any questions?

131. **Mr G Kelly:** I want to elaborate on that issue. You said that the Northern Ireland (Remission of Sentences) Act 1995 will remain as is, but I was not quite clear as to the meaning of the remainder of your remarks.

132. **Mr Haire:** The Northern Ireland (Remission of Sentences) Act 1995 will continue to apply to

anyone convicted of a qualifying offence committed before the introduction of the new legislation.

133. **Mr G Kelly:** What will happen after that?

134. **Mr Haire:** Any offence committed after the introduction of the new legislation will not come under the provisions of the Northern Ireland (Remission of Sentences) Act 1995.

135. **Mr Attwood:** My question is about timing. Announcements have been made about the new arrangements. Has an indicative time frame for when parole boards might be in place been considered? Is that kind of detail too premature?

136. **Mr Haire:** I can give an indicative timetable. The Minister's intention is to draft and consult on the proposed legislation, and, subject to the outcome of that consultation, enact the legislation in 2007. A parallel exercise to resource the new provisions will have a bearing on the legislation's implementation, but, at the moment, that is the indicative timetable.

137. **Mr Attwood:** What will be the terms of the parole board's structure and accountability?

138. **Mr Haire:** The proposals that I mentioned previously will suggest that the Life Sentence Review Commissioners assume wider responsibilities. There are requirements in law for the commissioners to present annual reports to Parliament and so on.

139. **Mr Attwood:** Is that not an excepted matter?

140. **Mr Haire:** No.

141. **The Chairman (Mr Hay):** Do members have any other questions on this section? The next section is the purchasing of police weapons in Northern Ireland.

142. **Ms Miller:** Again, I am afraid that colleagues from the policing branch were not available to attend this meeting. Therefore, it will be best if I were to take members' questions back to my colleagues. I am aware that, as some subgroup members are also members of the Northern Ireland Policing Board, they may be better qualified than I on this issue.

143. **The Chairman (Mr Hay):** Do members have any questions?

144. **Mr Attwood:** I wish to make the comment that the SDLP does not agree with the interpretation of the law that is presented in this note. Our interpretation of the law, the Patten Report and the Exchequer purchasing requirements is that those matters fall within the Policing Board's authority. The SDLP does not accept the laboured legal advice produced to justify the NIO's assertion.

145. **Ms Miller:** I can certainly take that back to my colleagues.

146. **Mr G Kelly:** If the Policing Board is in charge of the budget, does that have an impact on the Chief Constable's decisions on buying weaponry? What is the impact of the Policing Board having power over the budget on issues such as that? Can the Board refuse to pay?

147. **Mr Strain:** Do you mean a police grant, Mr Kelly?

148. **Mr G Kelly:** For example, could the Policing Board decide not to accept a spend of £2 million on a particular item?

149. **Ms Miller:** I cannot say, because it is not my area of expertise. However, colleagues in the policing division will be happy to expand on that. I am sure that we will address that specific point.

150. **The Chairman (Mr Hay):** Do members have any other questions?

151. **Mr Attwood:** I was not going to elaborate, but I should say that the Policing Board decided to purchase a water cannon and new-issue personal weapons, but when it came to other potential police weaponry, tensions arose between the Policing Board and others about where responsibility for purchasing lay.

152. In addition, the Chancellor's purchasing regulations state that the public body should determine novel or contentious purchases. Clearly, weaponry may well be novel and contentious.

153. The SDLP believes that the interpretation of the law has been stretched in order to conclude that the decision should remain an operational matter. The SDLP thinks that, in

financial and broad policy terms, it is a matter for the Policing Board. That is what we have been advised. The NIO has legal advice suggesting otherwise, although it acted differently before it came up with that legal advice.

154. **Chairman (Mr Hay)**: Do members have any questions? We need to move on quickly to the issue of military support for the police in Northern Ireland?

155. **Ms Miller**: My colleagues who deal with that area are elsewhere, but I am more than happy to reflect questions or comments back to them.

156. **Mr G Kelly**: Sinn Féin is against the British Army being used in public order situations because there is a substantial anomaly. The Police Ombudsman can, at least, investigate policing situations in which plastic bullets — which my party also opposes — are fired. However, the Ombudsman cannot investigate situations where plastic bullets are fired by British Army personnel, even when they are acting in a back-up role to the police. The Police Ombudsman cannot investigate the British Army, which is one of the reasons why the Army should not be there.

157. **Mr Attwood**: Contrary to what a member at this table once claimed, the SDLP opposes any role for the British Army in the North.

158. I always enjoy the way some of these papers are drafted by the NIO and other officials. The words “focussed support to the police” are used followed by examples such as explosives, the Patten Report, and military support in public order situations.

159. I would like confirmation of all the anticipated examples. Somewhere in the system there must be a number of case studies or examples of when the police will be required to call upon Army support. What are those examples — over and above emergency situations, such as a simultaneous strike by all the emergency services, and the examples contained in the Patten Report? In what other circumstances would the military provide focussed support to the police?

160. **Mrs Foster**: I will not defend whatever answer the officials give, but I do not see how

anybody can give an exhaustive list of circumstances in which the military will be required. Nobody knows the circumstances that may arise in any given situation. Indeed, the paper states that:

“When and in what circumstances support will be required will be an operational decision for the Chief Constable”.

161. It is fair enough for Alex to look for more examples, but it is not possible to provide an exhaustive list.

162. **Mr Attwood**: I would like some more examples.

163. **Mrs Foster**: Fair enough.

164. **The Chairman (Mr Hay)**: We will move on to the next section, which deals with guidance to the Police Ombudsman.

165. **Mrs Foster**: This issue was raised because it seemed that two people — the Secretary of State and the Minister for policing — would issue statutory guidance to the Police Ombudsman. That matter has been well enough explained. The only exception might be in circumstances involving a national security issue, in which case the Secretary of State would issue guidance. I am happy enough with the guidance that has been given.

166. **Mr G Kelly**: Given that the Office of the Police Ombudsman is the main accountability mechanism for investigating police action, the power to issue guidance should be taken away from the Secretary of State and devolved to the incoming Minister. The note clarifies the issue, though.

167. **Mr Attwood**: The SDLP believes that the Police Ombudsman should have the power to investigate personal security matters. She has that power at present, as demonstrated this week through the investigation into the murder of Stephen Restorick, which involved national security intelligence and a national security agency. Therefore, the real issue is much less about who issues the advice — although that is important — than it is about maintaining the Police Ombudsman’s current power to deal with complaints involving national security matters.

168. **The Chairman (Mr Hay):** We now move on to firearms legislation.

169. **Ms Miller:** I am afraid that it is the same story with this issue, too. The note gives a reasonable outline of where matters stand, but I am happy to take a note of any further questions and reply to the subgroup later.

170. **Mrs Foster:** Looking back to what we discussed last week, the issue was about whether fireworks would be dealt with in the same way as explosives, and whether responsibility for fireworks should rest with the Minister with responsibility for public safety or the Minister for policing and justice.

171. **Ms Miller:** I can certainly pass on your questions. I am trying to think of what we said in the discussion document, but I do not think that we specifically referred to fireworks. We talked about explosives and public safety.

172. **The Committee Clerk:** The Committee on the Preparation for Government agreed in the summer that responsibility for firearms should rest with the Minister with responsibility for public safety.

173. **Mrs Foster:** That covers explosives and fireworks then?

174. **The Committee Clerk:** Yes.

175. **Mrs Foster:** That is fine then.

176. **Mr G Kelly:** It was later clarified that, for some reason, it was not the Minister in charge of public safety, but the Minister in charge of health.

177. **Mrs Foster:** It is the Minister of Health, Social Services and Public Safety.

178. **The Committee Clerk:** It is to do with employment safety.

179. **Mr G Kelly:** That amounts to the same thing.

180. **The Chairman (Mr Hay):** Mr Cobain, do you have a question?

181. **Mr Cobain:** Can we come back to that issue?

182. **The Chairman (Mr Hay):** OK. As there are no further questions, we will move on to the Court Service and financial arrangements.

183. **Mr Hughes:** As the response document sets out, the Court Service is currently financed by the Department for Constitutional Affairs. When responsibility for justice is transferred, the financial burden for a justice Department will be transferred also. Therefore, the financial burden will rest with the Executive and the Department of Justice, which will be responsible for financing the Court Service.

11.45 am

184. **Mrs Foster:** Is the money for a justice Department additional to money for the block grant?

185. **Mr Hughes:** The block grant would then be added to; the money will go with the functions.

186. **Mrs Foster:** That was the issue.

187. **Mr G Kelly:** Will the money be negotiated for as part of the block grant or will the block grant be sorted out separately and the money for a justice Department, as appropriate to the amount, will be extra?

188. **Mr Hughes:** The money is attached to the functions currently carried out by the NIO, the Court Service, etc. It will be matter of identifying the money that is attached to the function and moving that money from the Whitehall Department that currently operates the function.

189. **Mr Cobain:** How much money are we actually talking about?

190. **Mr Hughes:** The current indicative is between £131 million and £132 million, because it includes the legal aid budget. That sounds quite a lot of money, but it includes legal aid money for the costs of the courts.

191. **Mr Cobain:** Will the money be absorbed into the Northern Ireland block grant?

192. **Mr Hughes:** That is my understanding.

193. **Ms Miller:** Yes, it would transfer into the block grant. It would become part of the Northern Ireland block, so there would be a bigger block.

194. **Mr Cobain:** Would the money be ring-fenced or will it form part of the block grant? Would the Assembly priorities run after that?

195. **Ms Miller:** I do not know the answer to that.

196. **Mr Hughes:** I have never heard anyone discussing ring-fencing and money being attached to functions. It is just the understanding that that is the —

197. **The Chairman (Mr Hay):** It is something that we could clarify.

198. **Mr Cobain:** We need to, because money follows functions.

199. **The Chairman (Mr Hay):** It is something to clarify.

200. **Ms Miller:** I agree with David.

201. **The Chairman (Mr Hay):** We need to clarify whether it is part of the block grant or separate.

202. **Mr Cobain:** The problem is that, once we assume the responsibility for justice, it must be carried through, and we will have to find the money from the grant. If there are any restrictions on the grants, it will have implications for the whole budgetary system. We want to know.

203. **The Chairman (Mr Hay):** We move on to the last section, which is the Northern Ireland Executive on the independence of the judiciary of Northern Ireland?

204. **Mr Hughes:** The draft concordat between Her Majesty's Government and the Northern Ireland Executive on the independence of the judiciary in Northern Ireland is attached to the end of the response document.

205. **The Chairman (Mr Hay):** We are dealing with at the moment. It is the last item on the agenda.

206. **Ms Miller:** That is the last question that I had.

207. **Mr Strain:** Is there another question, Chairman?

208. **The Chairman (Mr Hay):** There is. I have it on my paper.

209. **The Committee Clerk:** It is the draft concordat on the independence of judiciary.

210. **Mr Hughes:** It follows exactly the same as the concordat on the independence of prosecution. It sets out what is currently in the Justice Act 2002 and the Justice Act 2004.

211. **The Chairman (Mr Hay):** Do members have any questions?

212. **Mr G Kelly:** I have not had a chance to read the concordat, so I will come back to it later.

213. **The Chairman (Mr Hay):** I thank the officials very much for their time and apologise for keeping them at the start of the meeting.

The evidence session ended at 11.48 am.

Appendix 6

**Direction from
the Secretary of State**



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Secretary of State for Northern Ireland

Mrs Eileen Bell, MLA
Speaker of the Assembly
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27 November 2006

PROGRAMME FOR GOVERNMENT COMMITTEE

One of the elements of the St Andrews Agreement is a Programme for Government Committee to agree priorities for a restored Executive and to make preparations for restoration. It is intended that the Committee should meet regularly over the coming months, at least once a week.

I, therefore, hereby direct under paragraph 2(2) of Schedule 1 of the Northern Ireland (St Andrews Agreement) Act 2006 that the Business Committee shall establish a Programme for Government Committee to meet at 12:00 noon on Monday 27 November and subsequently at dates and times to be agreed by the Committee.

I also direct that:

- The Committee should be made up of 10 MLAs with the number of members from each party being on the following basis – 3 DUP, 3 Sinn Fein, 2 UUP, 2 SDLP
- The meeting on 27 November should be chaired by one of the Deputy Speakers (Mr Francie Molloy and Mr Jim Wells) (who shall not count for the purposes of the composition set out above) with future chairing arrangements to be agreed by the Committee



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- The Committee's procedures, membership arrangements and arrangements, including charring arrangements, for any subgroups of the Committee shall be such as shall be determined by the Committee.

I am content for officials in OFMDFM and other NI Departments to do all they can to facilitate the Programme for Government Committee and its sub-groups, including attending meetings and providing information, if this would be helpful.

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND

Addendum to the Report

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Introduction

1. On 28 December 2006 the Secretary of State, the Rt Hon Peter Hain MP, wrote to the Subgroup on Policing and Justice outlining a proposed model for the appointment of a justice minister and requesting that the Subgroup consider it as soon as possible.
2. In light of this development the Subgroup on Policing and Justice sought and was granted an extension of its reporting date to the Committee on the Programme for Government on the devolution of policing and justice issues to 17 January 2007.
3. The Subgroup on Policing and Justice met on 4 January 2007 to consider the letter and proposed model. Members agreed by consensus that the Secretary of State should be invited to attend a meeting of the Subgroup at the earliest opportunity to discuss and clarify the proposals. This meeting took place in public session on 9 January 2007.

Conclusions

Paragraph	Conclusions
	Ministerial Structure/Appointment Arrangements
10	The Subgroup was unable to reach consensus on a model for the ministerial structure and appointment arrangements
	Timing of devolution of policing and justice
16	The Subgroup was unable to reach consensus on the timing of devolution of policing and justice

Consideration of the Proposed Justice Minister Model

4. The Subgroup considered the proposed Justice Minister Model at its meetings on 4, 11 and 15 January 2007. During these discussions other possible models were also considered.

Proposed Ministerial Structure and Appointment Arrangements

5. The proposed Justice Minister model outlined in the Secretary of State's letter comprised:
- *One Department with one Minister (from one of the two largest designations) to deal with Policing and Justice functions. In the first term of the Assembly there would also be a Deputy Minister (from the other of the two largest designations) to ensure that there was full community confidence in the new arrangements and that the transfer of power to a new department was effective and efficient.*
 - *In addition to providing overall support to the Justice Minister, the Deputy Minister would have his or her own lead responsibilities, to be agreed between the Minister and the Deputy Minister and FM/DFM but including oversight of the implementation of transfer arrangements and new departmental structures.*
 - *Both ministers would be elected by cross community vote (50/50/50) of the Assembly.*
 - *Any MLA could at any time propose named MLAs to be appointed as Justice Minister and Deputy Justice Minister but the Speaker would convene a plenary session of the Assembly for the purposes of nominating the Justice Ministers before the 27 March 2008 – the date by which the Assembly must report progress on its preparations for devolution to the Government under provisions in section 18 of the Northern Ireland (St Andrews Agreement) Act 2006.*
 - *Following a successful election of the Justice Minister and Deputy Minister, the First Minister and Deputy First Minister would then submit to the Assembly the motion which is legally required under the Northern Ireland (Miscellaneous Provisions) Act 2006 and which is necessary to set in process the devolution of relevant functions.*
 - *If there were no successful election within the timeframe set out at St Andrews the Government would take any necessary steps to ensure that the timescale for devolution was not delayed. This includes the appointment of a Justice Minister and, to ensure cross community representation, a deputy Justice Minister.*
 - *Upon devolution of the functions, not later than May 2008, the two Ministers would take up office.*

- *The Justice Minister would be a full member of the Executive Committee. This would be achieved by:*
 - *Before devolution of policing and justice, FM and DFM would agree a reduction in the number of existing departments by at least one.*
 - *Upon devolution of policing and justice powers, d'Hondt would then be rerun with the Justice Minister (already elected as above) taking up office at the appropriate point in the running of d'Hondt.*
- *The Deputy Justice Minister would be invited to attend Executive Committee meetings as necessary to deal with issues that fell within his/her area of responsibility.*
- *Because of the requirement for security and confidentiality in some areas of the work of a policing and justice department new protocols would need to be developed by the two Justice Ministers and the First Minister/Deputy First Minister in respect of the justice ministers relationship with the Executive Committee and incorporated in the Ministerial Code.*
- *Both Ministers would be subject to the exclusion provisions of section 30 of the 1998 Act, as are other ministers.*
- *These arrangements would be reviewed by 2011 by the Assembly Review Committee.*

Party Positions

6. A summary of the DUP response to the proposed ministerial structure and appointment arrangements follows:
 - The preference of the DUP was for a single department with a single minister, to be appointed according to the procedures set out in the paper it submitted to the Subgroup on 14 December 2006. The party was of the view that the model for administering policing and justice and the process for making ministerial appointments were bound together in establishing the community confidence needed for devolution of these matters. The Party did not accept that shared ministerial arrangements were needed to create the necessary community confidence.
 - The Secretary of State's proposal for a minister for policing and justice with a deputy minister was considered cumbersome and neither efficient nor effective. It was also considered to be designed to appease one section of the community that had concerns about authority being exercised by a single minister. The DUP was concerned that the deputy minister proposal, as described by the Secretary of State on 9 January 2007, amounted in practice to a co-equal ministerial arrangement, in which case the Party would wish to have absolute clarity about the d'Hondt implications. The DUP had also already expressed reservations that the Executive Committee was too large.
 - The reintroduction of d'Hondt into this appointment procedure was considered unnecessary. As indicated in the paper from the DUP, a weighted majority vote in the Assembly was the preferred method and would be sufficient to demonstrate that the appointment commanded a considerable degree of community support.

7. A summary of the Sinn Féin response to the proposed ministerial structure and appointment arrangements follows:
- The preferred model for Sinn Féin, in the absence of trust on both sides of the community, was a single policing and justice department with an arrangement involving co-equal ministers. The Party accepted that this was a compromise position needed only for the initial term of the restored Assembly.
 - The model set out in the Secretary of State's letter was considered helpful and a useful basis for further discussion. It proposed that ministerial appointments should be made on the basis of a cross community Assembly vote (50-50-50), which brought it within the terms of the Belfast Agreement.
 - When considering whether it could support the model proposed by the Secretary of State, Sinn Féin assumed that both the minister and deputy minister for policing and justice would be elected together by the Assembly using a parallel consent vote. Sinn Féin also assumed that the deputy policing and justice minister would not form part of the existing ten ministerial offices that count towards the d'Hondt procedure. In these circumstances, the Party would be interested to explore the status of the '*department*' that would support the deputy policing and justice minister.
 - Sinn Féin rejected the DUP proposal for an appointment process involving the weighted majority vote (70% majority), as this would provide a power of veto to the DUP.
 - Regarding the DUP assertion that an election procedure involving an enhanced voting threshold was needed to create community confidence, Sinn Féin was concerned that, at best, this would result in confidence in an elected individual, while what was actually needed was cross-community confidence in the ability of the two largest parties to successfully work together to administer policing and justice in a professional manner.
 - An arrangement involving the sharing of ministerial responsibility was considered essential to the enhancement of confidence in the oversight of policing and justice across the community and not simply for Unionists. In order to assist discussion of possible short-term arrangements Sinn Féin indicated another option might be the location of policing and justice within OFMDFM, in order to establish joint authority over these matters by the First and Deputy First Ministers. Day-to-day administration could be undertaken by junior ministers (drawn from both traditions but not necessarily from the two largest parties), possibly involving the creation of a sub-department, which would support the junior ministers.
8. A summary of the SDLP response to the proposed ministerial structure and appointment arrangements follows:
- The preference of the SDLP was for a single minister for policing and justice selected through the d'Hondt procedure in the usual way. The SDLP outlined that, if there was sufficient confidence for restoration and given that the greater part of policing powers and substantial justice power had already been devolved, a single department was appropriate. The SDLP acknowledged that arguments had been presented around the need for community confidence including a higher voting threshold and/or shared ministerial arrangements. The Party was prepared to consider further the possibility of shared responsibility and how that might be structured.

- Regarding the Secretary of State's proposal, the SDLP noted that the elevated role envisaged for the suggested deputy minister could not be sustained by existing legislation. Current legislation set out the parameters for the role of junior ministers, who were subject to the direction and control of the departmental minister. The Secretary of State confirmed on 9 January 2007 that the proposed deputy would have a senior post, would be invited to attend Executive meetings as appropriate, and further legislation would provide for powers and responsibilities.
- The Party noted that the Government intended to enact new legislation before 26 March 2007 in order to support the new model.
- The SDLP sought clarification from the Secretary of State about whether a party that had had a member appointed as a policing and justice minister was required to select that person as their initial choice during the d'Hondt procedure or if another ministerial position or positions could be selected first. The Secretary of State confirmed that a party that had multiple choices might defer their selection of the policing and justice position until after its other preferred choices had been made. The Party also wished to explore whether the application of the rotation arrangement envisaged in earlier models involving a junior minister would be applied and, if not, whether the junior minister position should count when applying the formula during the d'Hondt procedure.
- The Party was concerned that the proposals set out in the Secretary of State's letter made no reference to the problems identified by the SDLP regarding the accountability arrangements for MI 5. This had the potential to unpick the entire process for devolving policing and justice. Also of concern was the absence of any mention of the arrangements for North/South co-operation.
- The SDLP was opposed to the proposal that a threshold should be introduced regarding the appointment of a policing and justice minister or ministers. The Party disagreed with the suggestion of a cross-community vote, as this was contrary to the principles set out in the Belfast Agreement, which provided for automatic party appointments to ministerial positions through the d'Hondt procedure. If a cross community vote must be used, it should be on the basis of a 60-40-40 vote rather than the 50-50-50 parallel consent vote proposed.
- Regarding the suggestion that policing and justice could fall within the responsibilities of the First Minister and Deputy First Minister, the SDLP was concerned that the department could be overloaded, could become more difficult to administer, would be subject to further influence from the Civil Service and would not have clear leadership and accountability. The preference of the SDLP would be for a freestanding department. Any consideration of a model involving shared responsibility was best in that context.
- The SDLP outlined opposition to the so-called triple lock in the Northern Ireland (Miscellaneous Provisions) Act 2006 but considered that there was tension between the NIO retaining the triple lock and the NIO proposal that a justice minister(s) might be appointed if the Assembly did not do so.

9. A summary of the UUP response to the proposed ministerial structure and appointment arrangements follows:
- The clear preference of the UUP regarding the administration of policing and justice was that there should be a single department under the direction of a single minister.
 - The UUP rejected the departmental model proposed in the Secretary of State's letter and also rejected the suggested procedure for making ministerial appointments.
 - The UUP had serious reservations about the creation of two offices that were effectively joint offices, but where each had a different status.
 - Regarding the suggestion that policing and justice could fall within the responsibilities of the First and Deputy First Ministers, the UUP considered that this would not be an attractive option since the OFMDFM Department was already an overcrowded office and had failed to generate a lot of confidence in the past.
10. **The Subgroup was unable to reach consensus on a model for the ministerial structure and appointment arrangements.**

The Timing of Devolution of Policing and Justice

11. The timescale outlined in the Secretary of State's letter of 28 December 2008 was:
- *Upon devolution of the functions, not later than May 2008, the two Ministers would take up office.*
 - *If there was no successful election within the timeframe set out at St Andrews the Government would take any necessary steps to ensure that the timescale for devolution was not delayed. This included the appointment of a Justice Minister and, to ensure cross community representation, a deputy Justice Minister.*

Party Positions

12. A summary of the DUP response to the timing of devolution proposals follows:
- The DUP adhered strictly to its position that devolution of policing and justice was entirely dependent on the existence of confidence within the community for such devolution.
 - The Secretary of State's letter implied that he was seeking to unravel the arrangements already incorporated into legislation in relation to the timing of an appointment of a policing and justice minister. The DUP would resist any attempt to unpick these arrangements. The DUP was also concerned by the implied threat in the letter regarding the action to be taken should the Assembly fail to agree an appointment within the timescale set out in the letter and would reject any attempt to formalise such an arrangement.

- The DUP reiterated its view that the timescale for devolution of policing and justice was dependent on the delivery by Sinn Féin of commitment to the rule of law.
13. A summary of the Sinn Féin response to the timing of devolution proposals follows:
- Sinn Féin recognised that the devolution of policing and justice powers to a local minister was a contentious matter and that there was a need for cross-community safeguards.
 - Sinn Féin believed that the devolution of policing and justice should occur at the earliest possible date and no later than six months after restoration. The St Andrews Agreement envisaged these powers being devolved in May 2008, one year after restoration but Sinn Féin would be prepared to discuss this matter further with the parties.
 - Regarding the indication within the letter concerning the action to be taken by the Secretary of State should the Assembly fail to agree an appointment within the timescale set out in the letter, Sinn Féin believed there was an imperative on all of the parties to reach agreement on the ministerial arrangements/appointment procedures and the timing of devolution. However, in the absence of agreement, a mechanism to ensure devolution must be available.
14. A summary of the SDLP response to the timing of devolution proposals follows:
- The SDLP favoured devolution of policing and justice immediately on restoration and that the minister would have substantial powers on day one of restoration pending the transfer of residual powers not later than six months after restoration.
 - The Party had concerns about the NIO paper regarding the fact that ministers would be appointed in March 2008 but the transfer of policing and justice powers would be deferred until May 2008.
 - The SDLP rejected the principle of the triple lock on devolution of policing and justice. Regarding the action to be taken by the Secretary of State should the Assembly fail to agree an appointment within the timescale set out in his letter, the Party wished to explore how this would be achieved in practice.
15. A summary of the UUP response to the timing of devolution proposals follows:
- The UUP believed that policing and justice could be devolved only when there was sufficient confidence within the community. The Party did not believe that this confidence existed now, nor was it likely to exist in the foreseeable future.
 - The UUP strongly objected to the suggestion within the Secretary of State's letter regarding the action to be taken should the Assembly fail to agree an appointment within the timescale set out in the letter. The UUP believed that any action by the Secretary of State to make such an appointment would seriously contaminate the political process.
16. **The Subgroup was unable to reach consensus on the timing of devolution of policing and justice.**

Appendix 1

Letter from the
Secretary of State
dated 28 December 2006



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Secretary of State for Northern Ireland

Christine Darrah
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28 December 2006

THE DEVOLUTION OF POLICING AND JUSTICE GOVERNMENT PAPER

I very much welcome the discussions that are taking place between the parties on a model for the devolution of policing and justice powers. The agreement that was reached in earlier discussions, that there should be a single department, was helpful in moving on the debate and I have had a number of discussions with parties about their ideas on a process for appointing a Justice Minister or Ministers.

I have been struck by a number of points that have been made to me in these discussions. All parties make clear their commitment to the principle of devolution. All parties are concerned that the model for selecting the Justice Minister, or Ministers, should command confidence across the communities. And there is a good deal of agreement about the models that parties do not want.

All this suggests that the parties are not far away from finding a model that they can all accept even though, for reasons that I fully understand, that agreement is proving difficult to achieve.

/YMcl



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I believe all parties are keen to settle this quickly so that discussions can focus on how best to ensure the transfer of powers can happen as quickly and smoothly as possible as soon as the Assembly requests this. The Northern Ireland (St Andrews Agreement) Act requires the Assembly to make a report to me before the 27 March 2008 on progress towards devolution of policing and justice matters including on preparations that the Assembly has made for devolution. There is a good deal of practical work - already started - to complete before that date.

I have, therefore, set out in the attached paper a model which I believe will work and which I believe should meet the concerns and aspirations of the parties. It proposes one Justice Minister as the long term model for devolution but suggests in the early stages that there should be a Deputy Minister to help ensure the effective implementation of the transfer of powers. It provides for designate ministers to be selected by the Assembly by way of cross community vote and for the rerunning of d'Hondt when the transfer of powers takes place with the elected Justice Minister taking up office at the appropriate point in the running of d'Hondt. It provides for these initial arrangements for appointing a Justice Minister and Deputy Justice Minister to be reviewed by the Assembly by 2011.

I hope that this proposal will enable the sub group to reach agreement on a model for the appointment of a Justice Minister and I welcome their views. If that agreement cannot be achieved, however, the model as described in the attached paper is the basis on which I will legislate to provide a means of selecting ministers at the point of the transfer of powers with the option, as noted above, for the Assembly to agree alternative arrangements, if they choose to do so, in time for the second term Assembly.



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I would be grateful if this letter and the attached paper could be considered by the sub group on policing and justice as soon as possible.

A handwritten signature in black ink, appearing to read 'Peter Hain'.

THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland





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JUSTICE MINISTER MODEL

- One Department with one Minister (from one of the two largest designations) to deal with Policing and Justice functions. In the first term of the Assembly there will also be a Deputy Minister (from the other of the two largest designations) to ensure that there is full community confidence in the new arrangements and that the transfer of power to a new department is effective and efficient.

In addition to providing overall support to the Justice Minister, the Deputy Minister will have his or her own lead responsibilities, to be agreed between the Minister and the Deputy Minister and FM/DFM but including oversight of the implementation of transfer arrangements and new departmental structures.

- Both ministers will be elected by cross community vote (50/50/50) of the Assembly.
- Any MLA could at any time propose named MLAs to be appointed as Justice Minister and Deputy Justice Minister but the Speaker will convene a plenary session of the Assembly for the purposes of nominating the Justice Ministers before the 27 March 2008 – the date by which the Assembly must report progress on its preparations for devolution to the Government under provisions in section 18 of the Northern Ireland (St Andrews Agreement) Act 2006.





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- Following a successful election of the Justice Minister and Deputy Minister, the First Minister and Deputy First Minister will then submit to the Assembly the motion which is legally required under the Northern Ireland (Miscellaneous Provisions) Act 2006 and which is necessary to set in process the devolution of relevant functions.
- If there was no successful election within the timeframe set out at St Andrews the Government would take any necessary steps to ensure that the timescale for devolution was not delayed. This includes the appointment of a Justice Minister and, to ensure cross community representation, a deputy Justice Minister.
- Upon devolution of the functions, not later than May 2008, the two Ministers will take up office.
- The Justice Minister will be a full member of the Executive Committee. This will be achieved by:
 - Before devolution of policing and justice, FM and DFM will agree a reduction in the number of existing departments by at least one.
 - Upon devolution of policing and justice powers, d'Hondt will then be rerun with the Justice Minister (already elected as above) taking up office at the appropriate point in the running of d'Hondt.





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The Deputy Justice Minister will be invited to attend Executive Committee meetings as necessary to deal with issues that fall within his/her area of responsibility.

- Because of the requirement for security and confidentiality in some areas of the work of a policing and justice department new protocols will need to be developed by the two Justice Ministers and the First Minister/Deputy First Minister in respect of the justice ministers relationship with the Executive Committee and incorporated in the Ministerial Code.
- Both Ministers will be subject to the exclusion provisions of section 30 of the 1998 Act, as are other ministers.
- These arrangements will be reviewed by 2011 by the Assembly Review Committee.



Appendix 2

**Other Paper Submitted
to the Subgroup**

Statement by Gerry Adams

Sinn Fein Ard Fheis to go ahead on January 28th

Published: 13 January, 2007



Gerry Adams MP

Sinn Fein President Gerry Adams MP speaking following a meeting of the party's Ard Chomhairle in Dublin this afternoon said 'The Ard Chomhairle today backed a proposal for an Extraordinary Ard Fheis to go ahead on January 28th. This is a hugely courageous decision and will ensure that the process continues to move forward.' Mr. Adams said 'I believe that the new beginning to policing promised in the Good Friday Agreement is now within our grasp. Sinn Fein wants to get policing right. The Extraordinary Sinn Fein Ard Fheis is the important next step.'

Mr. Adams said:

Irish republicans and nationalists want, need and deserve proper and accountable policing. On Thursday, December 28, I said that I believe that Irish republicans need now to take the necessary next step on policing - that it is the right thing to do. This was the position I put to today's meeting. In response, the Sinn Fein Ard Chomhairle today took the historic and courageous decision to proceed to an Ard Fheis on policing despite the failure of the DUP to respond positively. If the Ard Fheis adopts the proposed motion then we will have the potential, for the first time ever, for the full involvement by Irish republicans in policing structures across the island.

The Ard Chomhairle has decided to proceed with the planned Ard Fheis on January 28th and on the basis of the motion agreed by the Ard Chomhairle on December 29 which commits Sinn Fein to:

- Support for the PSNI and criminal justice system
- Hold the police and criminal justice systems fully to account both democratically and legally

- Appoint party representatives to the Policing Board and District Policing Partnership Boards to secure fair, impartial and effective policing with the community;
- Authorise Sinn Féin Ministers to take the ministerial Pledge of Office
- Actively encourage everyone in the community to co-operate fully with the police services in tackling crime in all areas and actively supporting all the criminal justice institutions

The Ard Chomhairle is proposing that an Extraordinary Ard Fheis adopts this motion and gives the Ard Chomhairle the responsibility and authority to fully implement all elements of it. The necessary context for this is the re-establishment of the political institutions and confirmation that policing and justice powers will be transferred to these institutions or when acceptable new partnership arrangements to implement the Good Friday Agreement are in place.

It would be entirely wrong to allow the most negative elements of unionism a veto over republican and nationalist efforts to achieve the new beginning to policing promised in the Good Friday Agreement. Sinn Fein will not be paralysed by rejectionist elements of the DUP.

There are also those within the PSNI who are opposed to change. In this context, I have been made aware of incidents in parts of South Derry, Castlederg and County Armagh where local PSNI units are involved in trying to destabilise nationalist communities. This is entirely predictable and needs to be stopped.

Our objective is to secure a proper policing service and to hold that policing service, once achieved, fully to account. We have already achieved enormous progress on the issues of democratic accountability, human rights protections and the ending of political and repressive policing. Over recent days, we have also seen progress and changes on the key issues of the removal of MI5 from local policing structures and on the use of plastic bullets. I believe that the new beginning to policing promised in the Good Friday Agreement is now within our grasp. Sinn Fein wants to get policing right. The Extraordinary Sinn Fein Ard Fheis is the important next step. ENDS

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Appendix 3

Minutes of Proceedings

Thursday, 4 January 2007 in Room 135, Parliament Buildings.

In the Chair: William Hay

Present: Alex Attwood
Arlene Foster
Gerry Kelly
Danny Kennedy
Raymond McCartney
Ian Paisley Jnr

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Paul Woods (Clerical Officer)

Observing: Ciaran Kearney (Sinn Fein researcher)
Michelle McDermott (Sinn Fein researcher)
Mark Neale (UUP researcher)
Philip Weir (DUP researcher)

The meeting commenced at 2.34pm.

1. **Apologies**

Fred Cobain (Mr Kennedy attended the meeting as UUP representative in place of Mr Cobain)

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Declaration of Interests**

Members declared the following interests:

- Alex Attwood – member of Policing Board
- Arlene Foster – member of Policing Board
- Danny Kennedy – member of Policing Board
- Ian Paisley Jnr – member of Policing Board

3. **Previous Minutes**

The minutes of the meeting of 21 December 2006 were agreed.

4. Consideration of letter from the Secretary of State dated

28 December 2006 outlining a proposed Justice Minister Model

A letter from Mrs Foster to the Chairperson dated 2 January 2007 regarding the status of the Secretary of State's letter dated 28 December 2006, and the fact that the contents were in the public domain before the Subgroup had had an opportunity to discuss the matter was circulated.

Members discussed the issues raised in Mrs Foster's letter and how correspondence received by the Subgroup should be treated.

The Chairperson proposed that all correspondence received by the Subgroup should be treated with the appropriate confidentiality.

The meeting was suspended at 3.04pm.

The meeting reconvened at 3.16pm.

There was consensus and the proposal was agreed.

Members gave initial views on the Secretary of State's letter which included a proposed Justice Minister Model.

Mr Kennedy proposed that the Secretary of State should be invited to attend a meeting of the Subgroup at the earliest opportunity to explain the background to the letter and discuss the proposed model. There was consensus and the proposal was agreed.

Mr Attwood proposed that the Subgroup should write to the Secretary of State and the four main political parties and request that they share any conclusions reached between the Government and any of the parties that are relevant to the Terms of Reference and the work of the Subgroup. There was consensus and the proposal was agreed, on the basis that the work of the Subgroup would continue in the meantime.

5. Format of Subgroup Report on Policing and Justice Matters

The Chairperson informed members that in light of the letter from the Secretary of State, an extension on the reporting date to the Committee on the Programme for Government on the devolution of policing and justice issues from 3 January to 17 January 2007, had been requested and granted.

The Subgroup confirmed that its report on the devolution of policing and justice matters, agreed on 21 December 2006, should be submitted to the Committee on the Programme for Government.

The Subgroup agreed by consensus that following the conclusion of its consideration of the Secretary of State's letter and proposed Justice Minister Model, an addendum to the report would be submitted to the Committee on the Programme for Government.

6. **Date of Next Meeting**

The Subgroup will next meet at 1.00pm on Monday, 8 January 2007 in the Senate Chamber, Parliament Buildings.

The meeting adjourned at 4.28pm.

Tuesday, 9 January 2007 in the Senate Chamber, Parliament Buildings.

In the Chair: William Hay

Present: Alex Attwood
Arlene Foster
Gerry Kelly
Danny Kennedy
Raymond McCartney
Ian Paisley Jnr

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Paul Woods (Clerical Officer)
Patricia Casey (Senior Researcher)

Observing: Richard Bullick (DUP researcher)
Ciaran Kearney (Sinn Féin researcher)
Michelle McDermott (Sinn Féin researcher)
Mark Neale (UUP researcher)

The meeting commenced at 12.00 noon in private session.

1. **Apologies**

Fred Cobain (Mr Kennedy attended the meeting as UUP representative in place of Mr Cobain)

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Declaration of Interests**

Members declared the following interests:

- Alex Attwood – member of Policing Board
- Arlene Foster – member of Policing Board
- Danny Kennedy – member of Policing Board
- Ian Paisley Jnr – member of Policing Board

The meeting moved to public session at 12.03pm

Mrs Foster joined the meeting at 12.03pm.

3. **Evidence Session with the Secretary of State on his letter dated**

28 December 2006 outlining a proposed Justice Minister Model

The Rt Hon Mr Peter Hain MP, Secretary of State for Northern Ireland, and Northern Ireland Office officials, Ms Hilary Jackson and Ms Rachel Miller joined the meeting at 12.03pm.

The Secretary of State gave a brief overview of the proposed Justice Minister Model and the background to his letter of 28 December 2006.

The Secretary of State answered members' questions on the proposed Justice Minister Model.

The Chairperson thanked the Secretary of State and officials for their attendance and they left the meeting at 12.54pm.

4. **Date of Next Meeting**

The Subgroup will next meet at 10.30am on Thursday, 11 January 2007 in Room 144, Parliament Buildings.

The meeting adjourned at 12.54pm.

Thursday, 11 January and Monday, 15 January 2007 in Parliament Buildings

In the Chair: William Hay

Present: Alex Attwood
Arlene Foster
Gerry Kelly
Danny Kennedy
Raymond McCartney
Ian Paisley Jnr

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Paul Woods (Clerical Officer)
Patricia Casey (Senior Researcher)

Observing: Stephen Barr (UUP researcher)
Richard Bullick (DUP researcher)
Ciaran Kearney (Sinn Fein researcher)
Emma Lyttle (DUP researcher)
Michelle McDermott (Sinn Fein researcher)

The meeting commenced at 10.50am.

1. **Apologies**

Meeting on 11 January 2007

Fred Cobain (Mr Kennedy attended the meeting as UUP representative in place of Mr Cobain)

Ian Paisley Jnr

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

Meeting on 15 January 2007

Fred Cobain (Mr Kennedy attended the meeting as UUP representative in place of Mr Cobain)

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Declaration of Interests**

Members declared the following interests:

- Alex Attwood – member of Policing Board
- Arlene Foster – member of Policing Board
- Danny Kennedy – member of Policing Board

3. **Previous Minutes**

The minutes of the meetings of 4 January 2007 and 8 January 2007 were agreed.

4. **Response from the Standing Orders Subgroup on Proposed Policing and Justice Committee**

The Subgroup noted the response from the Business Committee Standing Orders Subgroup dated 8 January 2007, outlining a draft Standing Order and a draft Operational Advice Note it intended to recommend to address issues this Subgroup had raised with regard to a statutory committee with responsibilities for policing and justice.

Members were content with the proposals. The Subgroup agreed by consensus that a declaration of interest would suffice in the circumstances where a member of the statutory committee was also a member of a local Policing Partnership Board, but that the matter should be kept under review.

5. **Draft response to the Committee on the Programme for Government on the draft Policing (Miscellaneous Provisions) (NI) Order 2007**

The Subgroup agreed a draft response to the Committee on the Programme for Government on the draft Policing (Miscellaneous Provisions) (NI) Order 2007.

6. **Further consideration of the Secretary of State's letter dated**

28 December outlining a proposed Justice Minister Model

Given the public interest in the evidence session with the Secretary of State on 9 January 2007, the Chairperson proposed that the Subgroup should ask the Committee on the Programme for Government to consider publishing the Hansard of the evidence session as soon as it was finalised. There was consensus and the proposal was agreed.

A detailed discussion took place on the proposed Justice Minister Model outlined in the Secretary of State's letter dated 28 December 2006 and other possible models.

The Chairperson proposed that the meeting be suspended to enable members to give further consideration to a number of issues and reconvene on Monday, 15 January 2007 at 10.30am. There was consensus and the proposal was agreed.

The meeting was suspended at 12.06pm.

The meeting reconvened on Monday, 15 January 2007 at 10.37am.

Mr Ian Paisley Jnr declared the following interest: – member of the Policing Board.

The discussion on possible ministerial structures and appointment arrangements continued.

Mr Paisley proposed that the meeting be suspended to enable members to discuss the issues and obtain clarification informally. There was consensus and the proposal was agreed.

The meeting was suspended at 10.55am.

The meeting reconvened at 12.20pm.

Mrs Foster joined the meeting at 12.20pm.

Further discussion took place on the issues relating to the ministerial structures and appointment arrangements.

A discussion took place on issues relating to the timing of devolution/support for the rule of law. Mr Kelly tabled a statement from Mr Gerry Adams MP MLA outlining the basis of the motion agreed by the Ard Chomhairle on 29 December 2006.

7. Date of Next Meeting

The Subgroup will next meet at 2.30pm on Tuesday, 16 January 2007 in Room 144, Parliament Buildings.

The meeting adjourned at 1.03pm.

Tuesday, 16 January 2007 in Room 144, Parliament Buildings.

In the Chair: William Hay

Present: Alex Attwood
Arlene Foster
Danny Kennedy
Raymond McCartney
Ian Paisley Jnr

In Attendance: Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Neil Currie (Assistant Clerk)
Paul Woods (Clerical Officer)
Patricia Casey (Senior Researcher)

Observing: Michelle McDermott (Sinn Fein researcher)

The meeting commenced at 2.34pm.

1. **Apologies**

Fred Cobain (Mr Kennedy attended the meeting as UUP representative in place of Mr Cobain)

Gerry Kelly

Kathy Stanton (Mr McCartney attended the meeting as SF representative in place of Ms Stanton)

2. **Declaration of Interests**

Members declared the following interests:

- Alex Attwood – member of Policing Board
- Arlene Foster – member of Policing Board
- Danny Kennedy – member of Policing Board
- Ian Paisley Jnr – member of Policing Board

3. **Previous Minutes**

The minutes of the meetings of 9 January 2007 and 11/15 January 2007 were agreed.

4. **Consideration of the draft Addendum to the Subgroup's Report on Policing and Justice matters**

Members considered the draft Addendum to the Subgroup's report on Policing and Justice matters to the Committee on the Programme for Government on a 'paragraph-by-paragraph' basis as follows:

Front Page and Contents Page	Agreed
Introduction	
Paragraphs 1 to 3	Agreed
Consideration of proposed ministerial structure and appointment arrangements	
Paragraphs 4 to 7	Agreed
Paragraph 8	Agreed as amended
Paragraphs 9 and 10	Agreed
Consideration of the timing of devolution of policing and justice	
Paragraphs 11 to 13	Agreed
Paragraph 14	Agreed as amended
Paragraphs 15 and 16	Agreed
List of letters/papers received and witnesses who gave oral evidence to the Subgroup	Agreed as amended
Conclusions Table	Agreed

Members then agreed the Addendum to the Subgroup's report on Policing and Justice matters to the Committee on the Programme for Government.

5. **Minutes of the meeting of 16 January 2007**

The Subgroup agreed that it was content for the Chairperson to approve the minutes of the meeting of 16 January to facilitate their inclusion in the Addendum to the report.

6. **Date of Next Meeting**

As the work of the Subgroup had now been completed, the Chairperson thanked members for their attendance at the meetings and for their contributions to the work of the Subgroup.

The meeting adjourned at 3.03pm.

Appendix 4

Official Report

Tuesday 9 January 2007

Members present for all or part of the proceedings:

The Chairman, Mr William Hay
 Mr Alex Attwood
 Mrs Arlene Foster
 Mr Gerry Kelly
 Mr Danny Kennedy
 Mr Raymond McCartney
 Mr Ian Paisley Jnr

Witnesses:

Mr Peter Hain	}	The Secretary of State for Northern Ireland
Ms Hilary Jackson Ms Rachel Miller		}

The subgroup met at 12.03pm.

(The Chairman (Mr William Hay) in the Chair.)

1. **The Chairman (Mr Hay):** I remind members and the public that the subgroup is now in open session.
2. I welcome the Secretary of State to this meeting of the subgroup. I know that you came at very short notice to be with us. There was certainly a clear consensus in the subgroup that you should be here to discuss with us your letter of 28 December 2006, which we recognise is on a very important subject.
3. We will allow you a few minutes for introductory remarks, and the parties will then have five or six minutes each to ask whatever questions that they feel are necessary. I also welcome your officials, and I thank you all very much for coming.
4. **Mr Peter Hain (The Secretary of State for Northern Ireland):** Mr Chairman, thank you. I am grateful for the opportunity to talk to the subgroup. Hilary Jackson and Rachel Miller

have come along to help me to answer any question that you might try to trip me up with.

5. Given that this is the first opportunity that I have had to address an Assembly subgroup since David Ervine's death, I want to place on record at the beginning that I think his death is a tragic blow, not just to his family obviously, and to him, but to the whole of Northern Ireland's political culture. He was an invaluable part of that, and he helped to make the transition that we have seen put into effect. The best way in which we could salute his memory is to restore the Government here in Stormont on 26 March.

6. I would like to, if I may, correct a basic misunderstanding that I have detected in some of the public comments made by some MLAs on what the Northern Ireland (St Andrews Agreement) Act 2006 actually means. When people talk about postponement of restoration on 26 March, or of the election, or a combination of both, they misunderstand the legislation. The legislation leaves no discretion for changing those dates. On 30 January there will be a dissolution of Stormont under the legislation either to have an election on 7 March, followed by a restoration on 26 March, or to close Stormont down for goodness knows how many years. It is a very clear choice — devolution on 26 March or dissolution. The legislation leaves no scope for any other option.

7. Since the subgroup invited me — and I thank it again for doing so — I shall address briefly one or two points about policing and justice. In particular, I shall discuss the letter that I sent to the subgroup over the Christmas break.

8. First, it is clear to me that all the major parties in the Assembly are committed to the principle of the devolution of policing and justice. Indeed, much is made in public debate about the DUP's position, and I shall quote

from the paper that the party sent to the subgroup:

“However, the DUP has consistently indicated its support in principle for the devolution of policing and justice”.

9. Therefore there is no party that does not agree with the Government that this is the desirable way to go in the future. Everybody wants the model for selecting the justice Minister, or Ministers, to be capable of commanding confidence right across the communities. There is no point in proceeding in any other way. The question of policing, justice, and the rule of law is so important and so sensitive that it must have cross-community support.

10. It remains my hope that the parties will be able to come to an agreement on the type of model that best meets Northern Ireland’s needs. The paper was intended to aid the discussions that the subgroup was having on that model. It was also intended that it would set out a particular model, which, on the basis of the discussions I have had with the parties, is capable of meeting the concerns and aspirations of everybody who is represented at Stormont. Essentially, the proposal is that the long-term model for devolved policing and justice will be a single elected justice Minister in a single Department.

11. However, to ensure that there is a full sense of cross-community confidence in the new arrangements, I also propose that, at least in the early stages and years, the Minister should be supported by a deputy Minister. Those Ministers — a justice Minister and a deputy justice Minister, one from each of the two largest designations — will be elected by the Assembly on a cross-community basis before d’Hondt is run. Other Ministers, of course, would be appointed and would have been appointed in the likely time frame beforehand.

12. All those arrangements would be subject to review by the Assembly by 2011 in the way that has been set out by the Northern Ireland (St Andrews Agreement) Act 2006. My intention in putting forward this proposal was to provide a focus for discussions in the hope that it would enable the parties to reach agreement on the model for appointing a justice Minister or

Ministers. That remains my hope. It is my overwhelming preference that the model decided upon is determined by the subgroup and endorsed by the Assembly, in whatever form, and beyond that by the Programme for Government Committee.

13. In the event that agreement cannot be reached, the second preference is to have that model, or an alternative that the subgroup may wish to advise me on, and then to legislate to provide for either of those as the option that the Assembly could adopt. A variety of vehicles can facilitate that legislation. One could be by way of a Government amendment to the Justice and Security (Northern Ireland) Bill, which is currently before Parliament and which is due to go into Committee in the House of Commons at a later date.

14. In order to introduce the amendment while that Bill, if that is the chosen vehicle, is before the Commons, it would be my intention to make any necessary amendment either in the Committee Stage itself or at the Commons Report Stage, which could happen either at the end of January or in early February. It is important, therefore, that I know as a matter of some urgency what the subgroup’s views are, so that I can take the necessary action and, hopefully, proceed to operate by consensus.

15. I know that there was concern about my issuing the letter to the subgroup during the Christmas break, but I did that because of our deadline. I appreciate that in normal circumstances it would not be ideal to raise such a significant matter during a break or recess, but I am sure that members will understand that the importance of the issue and the desire to reach a consensus was such that it was important for them to have an opportunity to look at the letter as early as possible.

16. I have read and heard all sorts of things about me imposing or forcing a justice Minister down the throats of the Assembly after it had been functioning for over a year — because it could only happen then. That would be a constitutional nonsense; it would not happen. That is not what I have got in mind. I intend to proceed by consensus. However, as the letter

and associated model made clear, if there is wilful obstruction of the process, we will have to look at another way. The idea that I would impose a Minister from any particular party and stuff that Minister down the throats of the Assembly — especially in such a sensitive area — is ludicrous and is a constitutional nonsense. I look forward to the subgroup's conclusions, which I understand intends to produce by 17 January. Given our timetable, that would be helpful.

17. **The Chairman (Mr Hay):** Thank you, Secretary of State. I remind members that the Secretary of State has to leave at 1.00 pm. I will call parties in alphabetical order.

18. **Mr Paisley Jnr:** Secretary of State, I welcome you to the subgroup's meeting. May I also take this opportunity to express the DUP's concern for the family of Mr Ervine. It is important that that is done.

19. Secretary of State, given that you do not have much time, I will cut to the chase. You said that there are twin pillars in the process. It is obvious that the Democratic Unionist Party has measured up and has not been found wanting in areas relating to power sharing. It is equally obvious that, to date, there has not been sufficient delivery on policing and support for the rule of law and the police from Sinn Féin. If that support is not delivered, the process will collapse. Make no mistake about it; if it does collapse, it will do so because of Sinn Féin's failure to live up to what it has got to do.

20. There are other issues, such as financial arrangements, that must be addressed by yourself and the Government. However, when all is cut and dried, there are twin pillars in the process, and Sinn Féin has not yet been able to support law and order. I repeat the view that you stated earlier: this is about delivery. There will be no progress until we get delivery from Sinn Féin.

21. I welcome the clarity of some of your comments, but I want to tease out some of the issues that are important to the DUP. Your paper was not helpful to this discussion. This morning, you said that your paper would aid a discussion and provide focus. If it has done that,

fair enough. However, the details of the paper have not been helpful.

22. As you know, some people, in a juvenile way, have tried to make politics from your paper by suggesting that it was cobbled together in a dark, non-smoke-filled room — as the legislation now dictates — between the Democratic Unionist Party, Sinn Féin and the Government. I want you to confirm that my party did not play any part in such a conspiracy. I do not believe that such a conspiracy existed, and to play politics with such an important issue — as has been done in the weeks up to this discussion — has been unhelpful.

23. Turning to the main proposal, will you confirm that you have no plans, now or in the future, to change what is known as the triple lock in the Northern Ireland (Miscellaneous Provisions) Act 2006? Will you also confirm — and I believe you already have in your opening comments — that you will not impose a justice Minister over the heads of the people? As you said, it would be a constitutional nonsense — it would not work. We must refocus on realisable and realistic discussions. As you know, the DUP produced a detailed paper, which, although not the be-all and end-all of political papers, was put forward for discussion, and discussions should emerge from it. I hope that we can get back to that urgently.

12.15 pm

24. **Mr Hain:** I welcome those points. I noted four, and I hope that that is all of them. First, I welcome the fact that you and Dr Paisley have said that the DUP will not be found wanting, either on the issue of devolution of policing and justice and the time frame, or on the principle of power sharing, subject to —

25. **Mr Paisley Jnr:** Secretary of State, let us not get into the time frame.

26. **Mr Hain:** May I answer your points, and then, by all means, you can come back to me?

27. **Mr Paisley Jnr:** Your boss did this yesterday. Let us not put words into people's mouths on the time frame.

28. **Mr Hain:** I am not trying to put words into people's mouths. I have just taken your phrase about not being found wanting, provided that the second pillar of the St Andrews process — delivery on policing and the rule of law — is agreed. To be fair to Sinn Féin, the *ardchomhairle*, which met a little while ago, was crystal clear about wanting to take things forward. I understand that there are discussions going on within Sinn Féin and its appropriate decision-making bodies to take that forward. I am convinced that there is a desire in the Sinn Féin leadership, as there is in the DUP leadership, to make this process work and to have restoration on 26 March 2007, with the twin pillars of power sharing and support for policing and the rule of law in place.

29. As to whether there was some kind of conspiracy, I agree with you, Ian, that there was no conspiracy between the DUP, the Government and Sinn Féin. In the unlikely event of that being possible, it would be an interesting scenario. There was no such conspiracy. We looked at the DUP's paper, which was welcome, and we looked at the proposals from parties, including Sinn Féin, the SDLP and others, and we tried to distil from those contributions the model that we thought would fly best. That is the model that we have given to the subgroup.

30. The triple lock is so called because, first, the Assembly would have to decide on a cross-community basis to receive the devolution of justice and policing powers; secondly, the First Minister and the Deputy First Minister, or perhaps the other way round, would have to table a motion to the Assembly; and thirdly, Parliament would have to vote for it. That procedure is set out in the Northern Ireland (Miscellaneous Provisions) Act 2006, and there is no proposal to change that, so it remains, as you put it, in place.

31. I have said what I have to say about imposition, and I am glad that that has been welcomed. I will try to explain why we have included that proposal. First, the statement on that is a further expression of the commitment that both Governments gave in paragraph 11 of the St Andrews Agreement. That states:

“default by any one of the parties following restoration of the Executive should not be allowed to delay or hinder political progress in Northern Ireland.”

32. In other words, if there were wilful obstruction, on an unreasonable basis, we would have to find an alternative way forward. I said that, in part, as an inducement for there to be no wilful obstruction by anybody of progress on this agenda. All parties are committed to the principle of the devolution of policing and justice — I quoted earlier from the DUP paper, for example — so it is just a fallback mechanism in case of gratuitous or wilful obstruction, it is an inducement to not do that.

33. I will describe some of the circumstances in which it might be necessary for the Secretary of State to have such a power available. I should add that we do not intend to exercise that power when we put this amendment before Parliament; it would be exercised in the event of a crisis that occurred well into the life of the Assembly. The Government have set a time frame for May 2008; we want the devolution of policing and justice to have taken place by then.

34. However, let us suppose, for example, that the Assembly chose a Minister in the way that I have suggested, or in an alternative agreed fashion put forward by this subgroup, but that that candidate's party leader tried — unreasonably — to block the appointment. Alternatively, the Assembly could decide that an appointment from a party outside the Executive, such as the Alliance Party, was desirable, or the Assembly could take the view that a distinguished person from outside the Assembly and who was acceptable to all the parties, should be the justice Minister in the early years of devolution. All of those ideas have been floated in recent months; ours is a proposal to try to break a possible deadlock on the issue. I hope that that clarification has been helpful, to Ian Paisley Jnr and to the subgroup.

35. **Mrs Foster:** There has been a lot of talk about wilful obstruction, which is a new term of art for us today. What do you mean by wilful obstruction? Is it when one party will not engage in the discussion, or is it something

else? If, in your view, that wilful obstruction has taken place, can you see circumstances in which the triple lock, as we call it — the Northern Ireland (Miscellaneous Provisions) Act 2006 — would be changed?

36. **Mr Hain:** I see no circumstances in which the Northern Ireland (Miscellaneous Provisions) Act 2006 would be changed. All the parties, including the DUP, agree on the principle; the objective is clear. I am trying to envisage circumstances in which, despite that, there was wilful obstruction of the process and I might have to introduce fresh legislation to take those powers.

37. For the reasons that I have described, that is not what I want to do. However, there may be a lack of trust between the parties, either on the ability to deliver power sharing to which all the parties are committed, or on the willingness to deliver — and I stress deliver — support for policing and the rule of law.

38. If, following the *ardchomhairle* — to which all parties are committed in principle — that distrust poisoned the atmosphere, and wilful obstruction made it more difficult to implement what everybody is agreed on, those powers might be necessary; but that is well down the track. Let us try to achieve consensus, which is by far the best option.

39. **Mr G Kelly:** I welcome the Secretary of State, and I wish to put on record my personal condolences to David Ervine's family.

40. The DUP went straight to the blame game. The Secretary of State was asked here to discuss this model. There was a lot of discussion about whether he had the right to put it forward. Personally, I do not care. If the man or woman on the street — or anywhere else — has a model that will help us to move on, it is the job of the PFG to get that model.

41. I welcome the fact that we have another model to discuss. It is up to us. Part of our job was to produce a model. The difficulty is that this is 9 January; we have been given an extension until 17 January; but we have not reached agreement. We have very little time. If

we fail, what are we to do? However, I want to move on.

42. In the previous PFG meeting we argued over whether this paper should be submitted. Let us get down to dealing with the details involved in this model, whether it is a Sinn Féin model, an SDLP model or a DUP model. Let us try to reach some sort of conclusion.

43. Frankly, it is about vetoes. There is a point at which it is OK for the DUP to say that it is a devolutionist party — its members say that ad nauseam. However, there is no evidence of that on the issue of the devolution of policing and justice. They talk about several lifetimes, or about putting it off for ever.

44. That does not signify a belief that a transfer or devolution should take place. We need an indication that that will happen, and if it does not, we need to find a way for it to happen. It might be through that letter, or by another method, but we need to find a way to assure the people of our community that they will be in charge of the democratic accountability of a police service that will hopefully serve them.

45. Referring to the paragraph in the letter that deals with the transfer, I am keen — probably in contrast to the DUP — that the British Secretary of State remains adamant that we find some way to make sure that policing and justice are transferred in this lifetime and not after several lifetimes. In other words, I want him to make a firm commitment to do that, whether it needs legislation. That is my first question.

46. **Mr Hain:** First, I agree with the substance of both your points. There is a short time frame, and that is why we must get our skates on. Mr Chairman, the earlier that I receive feedback from this subgroup, the better. That will be invaluable, because we have already started drafting and thinking about what a possible amendment to the Justice and Security (Northern Ireland) Bill might look like.

47. We will proceed with that legislative amendment, preferably by agreement, but if not, then necessarily by our best call of where we

think consensus lies. I have called it as best I can in my paper on where I think consensus lies, but I genuinely would welcome cross-party agreement. If we get that, we will legislate accordingly.

48. Furthermore, it is important that there is clarity about the model so that we can make the necessary preparation for devolution. That is very important in every respect. On the time frame, both Governments' positions are very clear. We want devolution of policing and justice to be achieved by May 2008. That is why the Northern Ireland (St Andrews Agreement) Act 2006 places a duty on the Assembly to report to the Secretary of State by 27 March 2008 on where things stand. That is very clear. That is the course on which we are set, and we hope that that will be achievable. Provided that there is the necessary delivery on policing and that all parties support policing and the rule of law, I — and the Prime Minister — believe that the timetable is achievable. The Prime Minister made an assessment last week, which was welcomed by the leader of the DUP, in which he said that the timetable was achievable.

49. Therefore we can find words and opportunities to poke each other in the eye and to disagree with each other, but the big prize here is a fantastic prize, which is making what happens in this Building work. It means that decisions will be made by all of you rather than by me. That is in our reach across the policy board and on the issue of policing and justice as well.

50. **Mr G Kelly:** Further to that, different sections of our community clearly have huge issues of trust. On that basis, Sinn Féin has argued that we need strong cross-community safeguards. Indeed, every aspect of the Good Friday Agreement argues for those safeguards. We have argued that the first sitting of an Assembly should introduce a model for ministerial oversight, at least in the short-term.

51. I know that the model that you have put forward is for a justice Minister and a deputy justice Minister. Sinn Féin, on the other hand, argues for a model that accepts two justice Ministers of equal authority, because we believe,

and indeed all parties believe and argue, that that will clearly be an issue of deep worry.

52. Sinn Féin has argued that a model be agreed in the first sitting of the Assembly. We want strong cross-community safeguards that are consistent with the Good Friday Agreement to be included in that model. We have also argued for shared ministerial oversight, which would deal with the trust deficit — at least in the meantime — because at some point we will need to leave the issue of trust behind and instead rely on the fact that, in its absence, we can have agreements and contracts that people will stick to instead.

53. Therefore is there any reason for your going for a justice Minister and a deputy justice Minister instead of having two co-equal Ministers?

12.30 pm

54. **Mr Hain:** I have received two broad propositions from a variety of parties. The first, which Mr Kelly has today confirmed as Sinn Féin's preference, is to have two Ministers who would have joint status and be equal in every respect. The other is for a single justice Minister. However, given the lack of trust and the sensitivity that exists over this matter, it would probably be best to have a Minister from both the major communities — at least in the early years and, probably, during the first term of the Assembly, which would run to 2011. Of course, the length of the term would be for the Assembly to decide.

55. However, the deputy justice Minister would not — as it were — make the tea and do the photocopying; the deputy Minister would have, in every respect, a senior post and the share of responsibilities would be agreed between the Minister, the deputy Minister and the First Minister and the Deputy First Minister. The deputy justice Minister would be invited to sit on the Executive and would have a genuinely important role.

56. The reason for not having two justice and policing Ministers — or whatever their final title may be — is that they would be dealing with an independent judiciary, an independent

Director of Public Prosecutions, and the independent Police Service of Northern Ireland, which, through its procedures, is more accountable than other police force anywhere in the world. The idea that there would be, as it were, two Ministers to whom the Chief Constable would have to report equally would be a recipe for stalemate and logjam. It would be much better to proceed on the basis of a justice Minister and a deputy justice Minister. However, if there were a justice Minister and a deputy justice Minister, the deputy justice Minister would have a significant influence, and that would be recognised.

57. **Mr Attwood:** I also extend my condolences to Jeanette Ervine, her children and the wider Ervine family on David's death.

58. I welcome the Secretary of State. In one way, I welcome his paper because we needed a kick up our collective arses — and some arses, in particular, need a kick. The paper concentrates minds on the big issue when perhaps they were not so concentrated before. However, I have some problems — as, I am sure, the Secretary of State can imagine.

59. If the Secretary of State were to step back from this issue — obviously, there are a lot of politics around the devolution of justice — does he not find it ironic that, although the DUP will not give a date for the devolution of justice, Sinn Féin could be on the Policing Board tomorrow, with a lot more power over policing matters than a devolved Minister would ever have? Is it not ironic that Sinn Féin has made an issue of the devolution of justice, when any policing Minister would have a lot less power than a Sinn Féin member of the Policing Board? Does the Secretary of State not think that when we step back from this issue — regardless of the politics and profile surrounding it — it is ironic that the Policing Board, the Police Ombudsman, and the PSNI will continue to hold the powers over policing, and that those powers will not fall to a policing Minister?

60. **Mr Hain:** I find many things that are said in debates, or through points or postures from various party spokespersons, ironic. Of course, I

could not possibly say that of anyone in the SDLP — that would be an outrageous suggestion.

61. I do not want to single out individual parties on this issue, however, Mr Attwood made an important point and, if I am right, Mark Durkan also made the point eloquently in the House of Commons a few weeks ago. A lot of power has already been devolved to the Policing Board and district policing partnerships. It would be an act of monumental folly if the whole process fell through due to the de jure completion of devolution of policing while forgetting the practical devolution of policing that has already happened. Should all the parties want to take their seats on the Policing Board they would find that the power there is quite significant.

62. Policing Board members have, in a sense, more influence than the Secretary of State over the Chief Constable in operational matters. That is, and has been, the situation for a number of years. Mr Attwood makes a powerful point.

63. **Mr Attwood:** Thank you for that. Your paper states that the deputy justice Minister will have lead responsibility. However, is it not the case that, as with any other junior Minister in the Assembly appointed under the Northern Ireland Act 1998, the deputy justice Minister will be subject to the direction and control of the justice Minister?

64. It would be interesting to hear if the Secretary of State intends to table legislation that will vary the powers of deputy, or junior, Ministers, or if the powers of the deputy justice Minister will be subject to the direction and control of the senior justice Minister and, ultimately, subject to agreement regarding those powers by the First Minister and Deputy First Minister and the justice Minister.

65. Secondly, if a party were to decide to go for the justice Ministry under the 50:50:50 cross-community voting model, which some people claim is consistent with the Good Friday Agreement but which is not, would that party have to make that Ministry its first pick? If a party is entitled to more than one Ministry could it choose the one it wants and try to opt for the justice Ministry later?

66. Thirdly, people say that there is tension between the Secretary of State's assertion that, at the moment, there are no circumstances in which the Northern Ireland (Miscellaneous Provisions) Act 2006 legislation — the triple lock — would be changed, and his assertion that he might legislate to take certain powers to himself to enable the appointment of justice Minister. Some people would say that that is a bit like riding two horses — that the triple lock exists but that it can be taken away.

67. The SDLP would be delighted if the Secretary of State removed the triple lock because it was never justified. How can he convince the members of the subgroup that there is no tension between those assertions?

68. **Mr Hain:** I formed my conclusions about a deputy justice Minister as a result of discussions with the parties. Although provision for junior Ministers already exists, I did not think that it was a helpful prefix in the context of a deputy justice Minister because we are talking about a person who would be of equal status, more or less, to a Minister. Such a provision would need to be made through the amendment that I intend to make because the deputy justice Minister would not be like a junior Minister. We need to examine the issue together and, if we proceed with this model, Chairman, the subgroup's views would be extremely welcome. The matter would be subject to agreement between the justice Minister, the deputy justice Minister and the First Minister and Deputy First Minister. We could proceed by consensus.

69. The position of justice Minister is an important post; it is a most sensitive area, as is shown by the number of problems that we have had over the past few weeks and months. I have outlined the way that we were planning to proceed.

70. Another important point is where the appointment of a Minister for justice and policing would fit into the d'Hondt sequence. As with the other alternative models that are provided for in the Northern Ireland (Miscellaneous Provisions) Act 2006, the appointment will be made outside the d'Hondt arrangements and before ministerial appointments are made. The Minister will be chosen by the Assembly on the

cross-community 50:50:50 process that we have suggested. The party from which the justice Minister is chosen will have that office count towards its total number of ministerial seats under the d'Hondt formula, but it will not affect its first choice. If a Member from party X were chosen as the Minister for justice and policing, and that party were already in the Executive and was entitled to more than one ministerial post, its first choice would be unaffected, and the Minister for justice and policing would count as its second or third choice, depending upon which party it was.

71. I have been asked about the triple lock. That is provided for in the legislation. Parliament has decided that, and there is no proposal to change that, as I said to Mr Paisley at the beginning. I am trying to find a way forward. In the event of having to find a solution, I have signalled that it would be my intention, or the intention of the person occupying my position, to legislate to find a solution in the way that I have described, particularly in respect of some of the options that I have described, including a person outside the Executive, a person from a party outside the Executive, a person outside the Assembly, or some other kind of circumstance. If we did not have a logjam and a deadlock, created by an inability to find consensus here, we would not have to use legislation to find a solution.

72. **Mr Kennedy:** I also express my condolences to the Ervine family.

73. Secretary of State, both your letter and your model are being added to almost daily. On behalf of the Ulster Unionist Party, I must state that we feel that the process that you are engaged in undermines not only the work of this subgroup, but that of the Policing Board. Furthermore, it contaminates the political system. The party is concerned at the continued emergence of side deals and details.

74. This very day, there is an indication that the Prime Minister will be making a major statement, or issuing something tomorrow, on the role of MI5. The subgroup is unaware of the detail or content of that. That is how you are conducting business. You have even moved the

goalposts in your model this morning. You now indicate that the deputy Minister for justice will, in effect, have equal status, which is not stated in your letter or in the model outlined on 28 December. It appears that you are searching about for anything that will give you a political lifeboat, and that is an unsatisfactory way to do business.

75. I have a number of questions for you, Secretary of State. Your letter reads:

“If that agreement cannot be achieved, however, the model as described in the attached paper is the basis on which I will legislate”

76. You have said that that might not be the most desirable position, but that you will clearly proceed on that basis and that if you do not enforce a Minister, you will certainly enforce the model. That would presumably include the devolution of policing to the Assembly by May 2008.

12.45 pm

77. Can you confirm whom you have been talking to in your discussions, which political parties you have spoken to and which, if any, have agreed to this model or these proposals? Have you had discussions with any parties in relation to the need for you to appoint a Minister for justice?

78. There was confusion again yesterday when articles by the Prime Minister were published in various well-known newspapers indicating that it was his view that the leader of the DUP had given an indication and had agreed a timetable for devolution of policing and justice. Is that your understanding? Is your view of that similar to the Prime Minister’s, or do you side with the leader of the DUP? What is your view?

79. If a Sinn Féin ardchomhairle and Ard-Fheis approve its leadership’s recommendations and the party moves on policing, I ask the Secretary of State whether he can confirm that the DUP has given sufficient signals that the election will proceed and that a devolved Administration will be established on 26 March, assuming — and it is a big assumption — that the DUP is the largest party; and that, consequently, there will be agreement that

policing and justice be devolved in May 2008. Is that a yes or a no?

80. **Mr Hain:** Let me answer those questions in order. Without engaging in argy-bargy with you, Danny, which I have no desire to do, I want to point out that, in the past, the UUP has prided itself on being the reasonable party, as it were, that seeks to find a way through rather than create obstacles to progress. I do not find your contributions to be in that spirit, if I may say so.

81. **Mr Kennedy:** That is a badge of honour for us.

82. **Mr Hain:** Fine, but I reject absolutely your accusations and the rhetoric surrounding them that I am somehow undermining the subgroup, or, even more preposterously, undermining the Policing Board, by putting forward a model that is based on discussions between the parties, and that I am somehow contaminating politics by talking to parties.

83. I remind you that, when I sought to meet all the parties on Friday 15 December 2006 at Stormont, your party was unable to attend, although I understand that there were good diary reasons for its not being present. I will meet the UUP this afternoon, and no doubt that that will prompt somebody to say that a side deal is involved.

84. I meet parties, and talk to party leaders, all the time. I am more than happy to talk to your party or to its leader. If I had been able to meet your party on 15 December, it would have been able to contribute to the discussion. I reject flatly that there is any conspiracy to contaminate politics.

85. The Prime Minister is making a statement tomorrow on national security and MI5. I do not want to pre-empt that statement, because it is for Parliament to hear what the Prime Minister has to say rather than any other body, including, with respect, Chairman, this subgroup, for reasons that you understand.

86. I can say that the statement will address various parties’ concerns, including, as it happens, concerns that the SDLP has raised about the respective future roles of the Police

Service of Northern Ireland and the security service. I want to stress that they are separate organisations with distinct roles and separate channels of accountability. However, those organisations will obviously need to liaise closely, as happens right across the United Kingdom, in order to protect the community from international and other forms of terrorism, especially from al-Qaeda, which is a living and present threat. The new arrangements that the Prime Minister will describe tomorrow are meant to facilitate dealing with that threat.

87. On the question of moving the goalposts, I do not want to indulge in textual banter, but as it says in the model that we put to you:

“In addition to providing overall support to the Justice Minister, the Deputy Minister will have his or her own lead responsibilities”

88. “lead responsibilities”, not some kind of office-boy role —

“to be agreed between the Minister and the Deputy Minister and FM/DFM but including oversight of the implementation of transfer arrangements and new departmental structures.”

89. That was a suggestion. Again, if the UUP or the subgroup has a better idea — well, that is why we are here and why we put the model forward.

90. Finally, you asked, essentially, whether we would achieve restoration on 26 March. As I explained earlier, there needs to be clarity of understanding that the legislation provides either for devolution on 26 March via an election on 7 March or for dissolution. There are no other possibilities, no question of postponement, and no other option is provided for in the legislation. Fresh emergency legislation would have to be introduced into Parliament to change that in any way. I put on record to the subgroup that there is not the slightest chance of that happening. I took an emergency Bill through Parliament only a couple of months ago; the idea that I would go back, with the Prime Minister’s support, and say, “Please guys, we got the dates wrong, can we try again?” is preposterous. That will not happen.

91. I think that we are proceeding towards restoration on 26 March, provided that delivery is achieved on the twin pillars of commitment to power sharing and commitment to support for policing and the rule of law. There is every expectation that the DUP and Sinn Féin leaderships want to achieve that.

92. **The Chairman (Mr Hay):** Can you be quick with your question, Mr Kennedy?

93. **Mr Kennedy:** Mr Chairman, thank you for your indulgence. Just in relation to — *[Interruption.]*

94. **The Chairman (Mr Hay):** The Division bell has sounded. Can you ask your question quickly?

95. **Mr Kennedy:** Is the emergence of the Prime Minister’s statement tomorrow an indication of further side deals between the Government and Sinn Féin, and will there be more to follow?

96. **Mr Hain:** As I said, we have talked for days and weeks and months with all the parties on all these matters; people have sought clarity, and we are giving clarity.

97. **Mr Paisley Jnr:** This is an important issue. It is a national intelligence issue, and we should not allow it to be kicked about in such a way that it undermines the community’s confidence in the national — *[Interruption.]*

98. **The Chairman (Mr Hay):** I do not know whether members want to quit or not; if they do not, we can continue. However, the Secretary of State has to leave at 1.00 pm.

99. **Mr Paisley Jnr:** I would like clarification from the Secretary of State. The St Andrews Agreement was supposed to increase the Northern Ireland focus in national security by way of the national intelligence security committee, which, I understand, is an issue that is still being considered. Can you confirm that nothing will be introduced that allows for an independent oversight role in national security, and that political parties in Northern Ireland will be given a greater awareness of what is actually happening at national security level, which is a very different matter?

100. **Mr Hain:** The primacy of national security is an excepted matter. That will be absolutely protected. There is no question of different accountability arrangements. You will have to await tomorrow's statement for the detail, but I think that you will approve of it.

101. **The Chairman (Mr Hay):** Secretary of State, we will end the meeting there. I thank you for your presence today. This subject has generated some lively discussions among the subgroup. Speaking as Chairman, I think that there is unity of purpose to try to solve the problems.

102. **Mr Hain:** Thank you, Chairman. I am at your disposal in future if you need me.

103. **The Chairman (Mr Hay):** I thank you and your officials.

Adjourned at 12.54 pm.

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