



Northern Ireland
Assembly

ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE

OFFICIAL REPORT
(Hansard)

**Devolution of Policing and Justice
Matters: Category 2 List of Issues**

18 February 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Nigel Dodds
Mr Simon Hamilton
Mr Danny Kennedy
Mr Alex Maskey
Mr Declan O'Loan

The Chairperson (Mr Spratt):

Members, we have to address the entire category 2 list of issues. You will understand the importance of that, given that we are now on a tight time schedule. As I said this morning, the Committee staff will work during this weekend and next to get the report to print so that we can produce it to assist the debate on 9 March 2010.

If members are content, we shall move directly to the category 2 list of issues. Relevant declarations of interest were made earlier today. I will take members through the list. There is already agreement on some of the issues.

The first matter is issue A, which concerns the role of the attorney general. Members need to consider the evidence that has been provided by the First Minister and the deputy First Minister on the role that they envisage for the attorney general, and how they expect that office to be set up. The issue of cost is probably outside our remit at this moment. Members also need to consider how the attorney general might report to the Assembly — an issue that

was raised with the Ministers — and the paper that John Larkin submitted to their office, which they told us would not be available for another two weeks, but would be presented to the Assembly, if I understood them correctly.

Are members content to concur on the role of the attorney general as outlined by the First Minister and the deputy First Minister?

Mr Kennedy:

We are at a slight disadvantage in respect of the final compilation of the report, in that we will not have access to that document, although it appears that we will have access to the document before the Assembly debates it. Perhaps it could be published as supplementary evidence as an addendum in some shape or form. However, it would be important to study the content of that document, rather than give it carte blanche approval in advance.

The Chairperson:

I understand that caveat in respect of the report. However, I understood the Ministers to say that the paper would be made available, but probably not for two weeks, which is outside our timescale. With that caveat, do members agree issue A?

Mr Attwood:

That the post should be full time?

The Chairperson:

On all of the issues that I just mentioned.

Mr Kennedy:

There is an important caveat. I urge some caution in reserving our position on that. We would like to see the detail of that paper.

The Chairperson:

We will make that clear in the report. Members will be discussing the draft report over the next week or so.

Mr Kennedy:

It would be helpful if that issue could be reflected in the report.

The Chairperson:

Yes.

The Committee Clerk:

Mr Kennedy has put forward one proposition, which is to publish the document as an addendum, if it were to arrive in time. However, the Committee might wish to write to the First Minister and the deputy First Minister to indicate that, because of the difficulties and challenges with our time frame, the onus and responsibility is on them to publish the paper, rather than it forming part of the Committee's report. That issue could be picked up in the course of the debate on the motion. In the circumstances, the debate will go wider than the content of the report, because the debate will be on the motion to transfer powers. That might be a potential solution. I can explore that option with the Office of the First Minister and deputy First Minister.

The Chairperson:

Are members satisfied that we write to the First Minister and the deputy First Minister with that suggestion? They were pretty clear in indicating that they were happy to share the report.

Members indicated assent.

The Chairperson:

Issue B relates to who might be responsible for appointments to the judiciary. I remind members that that matter was resolved at the Committee meeting on 21 April 2009. On 9 February 2010, members reaffirmed their earlier decision that appointments to the judiciary would continue to be dealt with through current legislation. Do members reaffirm that position?

Members indicated assent.

The Chairperson:

Issue C relates to the Serious Organised Crime Agency (SOCA) and the security services. Members heard the Secretary of State's evidence this morning. Is there any consensus on the memoranda that were discussed this morning?

Mr Attwood:

I doubt it. We do not accept the protocol.

Mr McCartney:

We have reservations, as outlined by Alex Maskey this morning to the Secretary of State.

The Chairperson:

The Secretary of State indicated during this morning's meeting that there will be some continuing discussions, but that national security will remain a matter for Her Majesty's Government. Therefore, the Committee has not reached consensus on that issue, and it will report to the Assembly accordingly. Is that agreed?

Members indicated assent.

The Chairperson:

Issue D concerns the North/South policing and justice arrangements. Are members content that the seven documents that have been supplied by the NIO will ensure the maintenance of existing North/South policing and justice agreements? Sorry, that will be six documents, given that we do not have consensus on the protocol on national security.

Furthermore, is there any consensus on the possibility of a justice sector of the North/South Ministerial Council?

Mr Hamilton:

I would guess not.

Mr Kennedy:

The Secretary of State indicated that he was going to provide additional clarity on the memoranda and concordats. It would helpful to receive that clarity.

The Chairperson:

The NIO indicated that it would write to the Committee by Friday 19 February. That may be a tall order given how long some of the letters have taken to arrive in the past. However, it did indicate that it would write to the Committee by that date, and I impressed again that Tuesday 23 February was the deadline.

The Committee Clerk:

A solution could be that when I am drafting the Committee's report over the weekend, I do not draft that particular section. That would allow the Committee time to discuss the response from the Secretary of State on the clarity of the protocols before it considers the draft report

on 23 February. However, that would require the Committee to meet again later next week, even if there are no other suggested revisions or need to redraft any of the other sections of the report. The Committee will need to reconvene to agree something for me to draft on the back of the discussions at the early part of the meeting on 23 February.

The Chairperson:

Does the Committee agree to that?

Members indicated assent.

The Chairperson:

Issue E relates to finance. Are members content with the answers that the Secretary of State gave about the proportion of the existing NIO budget that will be transferred to the Department of justice? The NIO indicated that it would break that figure down, and I think that the overall figure was £1.328 billion, plus £800 million, which has been classed as additional money. Does the Committee wish to include a recommendation in its report about ring-fencing the police and justice budget?

Mr Attwood:

Yes.

The Chairperson:

Is the Committee agreed?

Mr Dodds:

What do you mean by ring-fencing?

Mr Attwood:

The £1.328 billion must be used for the policing and justice sector.

Mr Dodds:

For ever and a day?

Mr Attwood:

No. However, in the first instance, the money that comes across should stay in the policing and justice sector. You know what I am getting at. The Department of Finance and Personnel may look at that sum and say: "We'll take some of that, thank you very much."

Mr Hamilton:

I am surprised that you are not looking for that money to go to social housing newbuilds.

Mr Dodds:

I am just trying to protect you, Alex. When Margaret Ritchie hears that you have said that, she will go ballistic.

Mr Hamilton:

I am sure that you could build a few houses with that money.

The Chairperson:

Members should remember that the session is still being recorded for the Hansard report.

Mr Attwood:

If you are making that point, you should support my point and ring-fence that money.

Mr Dodds:

In all seriousness, the concept of ring-fencing is an interesting one. All Ministers and all Departments would like to have their expenditure ring-fenced.

Mr Attwood:

It is an interesting concept. There is a distinct budget, with everything save £26 million, plus the money for the Court Service. Given all the issues around policing and justice, it seems prudent to endorse the principle of ring-fencing for policing and justice during the current CSR period. We would have to take our chances with any future Budget.

Mr Dodds:

Do you mean ring-fencing in respect of the transferred powers, but thereafter the budget for them would be treated in the same way as every other budget? I am not saying what should happen thereafter, but is that is what you are saying?

Mr Attwood:

It should be ring-fenced thereafter, but for the purposes of our report —

Mr Hamilton:

For the next financial year?

The Chairperson:

Therefore what is transferred should be ring-fenced; beyond that, it is open for debate. We are agreed that the budget should be ring-fenced for the year 2010-11. We are also content with the information given by the Secretary of State. Does the Committee agree that once it has ordered the report to be printed, the finance section of the report can be provided to the Committee for Finance and Personnel for information?

Members indicated assent.

The Committee Clerk:

Before you move on, Chairperson, given that the Secretary of State said that he will provide a detailed breakdown of the £1.328 billion by tomorrow, will the Committee also give permission for that detailed breakdown to be shared with the Committee for Finance and Personnel, given the work that it will be required to do on the Budget Bill?

The Chairperson:

That stands to reason. Are members agreed?

Members indicated assent.

The Chairperson:

Issue F relates to parading. What comments do members have, especially in relation to section 2 of the Agreement at Hillsborough Castle, to establish how parading should be dealt with in the Committee's report? Should the report simply reflect the fact that parading is now considered to be dealt with in the Agreement at Hillsborough Castle and that no further elaboration is required?

Mr Attwood:

There is no consensus on that.

The Chairperson:

You are making your point. What about everybody else?

Mr Kennedy:

The Hillsborough Castle Agreement supersedes the Ashdown report. No outcomes have been determined. A working group has been set up and is gainfully employed on the issue at the

moment, but there is no known outcome at this stage so we will simply have to reserve our position until an outcome has been determined.

The Chairperson:

Our consideration is what, if any, consideration should be given to the Ashdown report on parading and whether there is a need for further clarity on the powers to be devolved. If so, should they include matters relating to the Public Processions (Northern Ireland) Act 1998, flags and symbols, and recruitment to the PSNI?

Mr Dodds:

That is the crucial point: what consideration should be given to parading? We are content that there is now a requirement that the matter be dealt with as part of the Hillsborough agreement.

The Chairperson:

Are you content that there is a requirement for parading to be dealt with, given the caveat that you have included?

Mr Kennedy:

The caveat is important. There seems to be a requirement, but whether that requirement can actually be met is the issue.

Mr McCartney:

I thought that we agreed at our last meeting that those issues were no longer a matter for the Committee.

The Chairperson:

That was my understanding as well. It was agreed at the last meeting that it was no longer an issue because it was being dealt with by means of the Hillsborough agreement. That was the position.

Mr Attwood:

The minutes state that, at the meeting on 9 February, no consensus was reached on how to proceed on the issue; that was the height of what was agreed. There is no consensus on whether the Hillsborough agreement was the right way to proceed.

The Chairperson:

I am trying to gauge whether there is consensus, and that will be accurately reported. There is no consensus from your position, Mr Attwood.

Mr McCartney:

My recollection is that there was a debate around the phrase “if any”. We said that our work had concluded. However, Alex’s recollection is obviously different.

The Chairperson:

Your position is that the Hillsborough agreement concludes the matter as far as we are concerned.

Mr McCartney:

It may not conclude the matter. However, it concludes our work.

Mr Dodds:

The question is what, if any, consideration should there be of the Ashdown report on parading. We are not going to have a substantive debate and then claim that there was no need for that because the Hillsborough agreement addressed the issue. Therefore, the answer to the question is that there does not need to be any consideration. That takes account of Danny’s point and is why, in those circumstances, the caveat “if any” is relevant.

Mr Attwood:

The minutes of the previous Committee meeting were agreed earlier. Those agreed minutes state that members could not reach consensus on that issue of what consideration there should be. There was absolutely nothing said about the matter being addressed by the Hillsborough agreement and, therefore, that was the way in which it was going to be pursued. That was not agreed.

The Chairperson:

If there is no consensus, I will put this matter to a vote.

Mr Dodds:

It is a question only of what our view on it is. I was not at the previous meeting and, therefore, do not know what was agreed.

Mr McCartney:

The minutes do not reflect what Alex says.

The Chairperson:

I need to resolve this. However, I am not going to get into a long debate about it. I will put it to a vote and that will decide whether it is part of the report.

Mr McCartney:

The question, as it was asked, goes beyond the Ashdown review. That is the point that I am making. We said that we had no more work to do on the Ashdown review.

Mr Hamilton:

I understand that there are divergent views on whether the process that was agreed at Hillsborough deals satisfactorily with the issue of parading. There will be some disagreement over that, as has been expressed today. The point is not whether we agree with the process. The point is whether the Committee thinks that there should be consideration of that issue. Clearly, the answer to that is that a process has been agreed at Hillsborough, whether people like it or not, that deals with the issue of parades and, therefore, takes it away from us. If we agree that that is being dealt with in the agreement, the Committee does not need to consider the issue further.

The Chairperson:

That is my understanding. We can listen to what people have to say and allow them to make their points at the debate that will take place on 9 March. There may be more clarity around the parading issue before that time. However, given the position that we are in today — that of agreeing the report, the question is whether members are agreed that a process is now taking place, as was agreed at Hillsborough. I get the feeling that there is a majority consensus around the table that a process is taking place, and that the issue is whether we need to say anything further. A process is taking place and, therefore, we do not need to do anything further at this time.

You, Mr Attwood, will, undoubtedly, make your points during the debate on 9 March, as everybody has a right to do.

Mr Attwood:

I have no difficulty with the narrative that records the history of what the Committee has or has not done on the issue of parades and the fact that, at Hillsborough, arrangements were

entered into, and that those arrangements were x, y and z. I have no difficulty accepting that there was no consensus around what the Committee should or should not do. That probably captures all members' viewpoints — I see that the Committee Clerk is nodding enthusiastically, so I am sure that I am right — and I have no problem with saying that. However, I am not going to say that the arrangements agreed at Hillsborough are the be-all and end-all.

The Chairperson:

Nor am I asking you to. Can we agree that there is no consensus, but that the issue is being dealt with elsewhere, namely, as part of the Hillsborough agreement?

Members indicated assent.

The Chairperson:

We move to issue G: consideration of the Public Prosecution Service. I refer members to the briefing paper that was requested at last week's meeting. The second paragraph of page 3 of the concordat on the independence of the PPS is based on the assumption that funding for the PPS will be routed through DFP. You heard the deputy First Minister's answer on that. Do members wish to comment on that?

Mr Kennedy:

It should be routed through DFP.

Mr Hamilton:

That is the DUP's position as well. The argument has been put forward that it should come through the Department of justice. I can see an argument as to why that view might be put forward, notwithstanding the concerns that have been raised in the Committee and by others about the potential conflict of interest in that Department. I am keen to hear how that matter would be addressed.

Mr McCartney:

We believe that the funding should be routed through OFMDFM.

Mr Kennedy:

I did not catch that, and it is not Raymond's fault.

Mr McCartney:

Sinn Féin believes that the funding should be routed through OFMDFM; that was our original position.

Mr Attwood:

I could not hear what Simon Hamilton said.

Mr Hamilton:

Perhaps we should hold up cards or throw paper aeroplanes.

Mr Attwood:

Are you DFP?

Mr Hamilton:

I am DUP.

The Chairperson:

Let us not stray off the point. There are a few more issues to discuss. When they have been discussed, you can stay here and have a jolly time for an hour, but I will not be here.

Mr Attwood:

I thought that I heard Simon Hamilton say that there was an argument for funding to come through the Department of justice. That is our position.

Mr Hamilton:

I said that we have heard the argument for the Department of justice, and that we can understand why the argument was made. Perhaps we need megaphones.

The Chairperson:

Obviously, there is not consensus on this matter. The issue was raised through party papers. There is quite a pot of money, and I am sure that somebody will decide where it is going to and where it will be allocated from. For the purposes of the report, can we record that there is no consensus on that matter?

Members indicated assent.

The Chairperson:

Issue H concerns the independence and accountability of the PPS. Are members content that that matter has been covered?

Members indicated assent.

The Chairperson:

We turn to issue I, which concerns the Police Ombudsman, and relates to recommendation 30 of the Committee's original report. The protocol on national security states:

"The Minister of Justice is responsible for the process of appointing the Police Ombudsman ("PONI") and for sponsoring his/her office (although the appointment is made formally by HM The Queen on the recommendation of the First and deputy First Minister). In relation to all devolved matters PONI reports to the Minister of Justice. In relation to reserved or national security matters, PONI reports to the Secretary of State and the Secretary of State may issue guidance to PONI on matters relating to national security."

Is there consensus on that? The deputy First Minister indicated a similar position.

Mr Attwood:

I do not see those words. Are they in the documentation?

The Chairperson:

They are in paragraph 3.2 of the annex to the protocol on national security; it is in my brief. It sounds to me like a direct lift from the present position, and the deputy First Minister reiterated that position.

Mr Attwood:

I need to see the words.

The Chairperson:

I read out the words a second ago. Do you want me to read them again?

Mr Attwood:

I would like to see the words. Given the concerns about the national security protocol, I need to see and understand those words.

The Committee Clerk:

It is on page 6 of the paper at tab 5G in members' packs, at paragraph 3.2.

Mr Attwood:

I may agree to that next week, but I will not agree to it today. I want to check whether —

The Chairperson:

Remember that the report will be drafted over the weekend. I am quite happy to leave that section out and return to it on Tuesday morning.

Mr Attwood:

I want to check whether it is legally correct, because other aspects of the protocol are not legally correct.

The Chairperson:

I will not discuss the rest of the protocol; we have already heard your position on that. I am asking specifically about the position of the Police Ombudsman.

Mr Kennedy:

Are we deferring that matter until Tuesday?

Mr Chairperson:

Yes; we will defer it until Tuesday morning. However, we need agreement on Tuesday morning. I want to reiterate that the schedules are very tight. Members need to either cooperate on the matter or tell us that there is no consensus, and we will happily reflect that in the report.

Issue J relates to the procedures and protocols that will need to exist between the Minister and the Assembly Committee. I remind members that, on 9 February 2010, the Committee reaffirmed its earlier decision that procedures and protocols among the Minister, an Assembly Committee and any newly established Department and its associated agencies, will be the same as those that exist for other Ministers. Are members content to reaffirm that position?

Members indicated assent.

The Chairperson

Issue K concerns the Minister's relationship with the Executive. At the Committee meeting on 9 February 2010, members agreed that that issue was dealt with in the Agreement at Hillsborough Castle and, in particular, in section 1 of that agreement. Are members content to reaffirm that position?

Members indicated assent.

Mr Kennedy:

Was that agreed unanimously?

The Chairperson:

I have not heard any dissenting voices, so I will move on.

Mr Kennedy:

I meant to ask whether it was agreed unanimously at the meeting on 9 February.

The Chairperson:

Yes. Are members, therefore, content?

Members indicated assent.

The Chairperson:

Our Committee had recommended that there should be a Standing Order to preclude members of the Policing Board and the district policing partnerships (DPPs) from holding membership of the justice Committee. The NIO's protocol on policing architecture, which is in members' information packs, suggests that members of the Belfast DPP subgroups also be precluded. Do members agree to that?

Mr Hamilton:

Why should they be precluded?

Mr McCartney:

The subgroups are smaller versions of the DPPs.

The Chairperson:

Yes, they are. Belfast has four subgroups.

Mr Attwood:

Why does it not ask that members of all DPPs be precluded?

The Chairperson:

It is members of all DPPs. The NIO also wants to include the four Belfast subgroups. If members of DPPs and the Policing Board are to be precluded, it makes sense to preclude members of the Belfast DPP subgroups. Do members agree to ask the Committee on Procedures to reflect that?

Members indicated assent.