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COMMITTEES WITH OVERSIGHT RESPONSIBILITIES FOR JUSTICE MATTERS IN UNITED KINGDOM AND REPUBLIC OF IRELAND

Fiona O'Connell

This paper is prepared for the Assembly and Executive Review Committee to facilitate their understanding of the role and work of statutory committees with ministerial oversight responsibilities for Justice issues. This paper considers the work of such committees in other legislatures such as Westminster, the Scottish Parliament and the Oireachtas. This paper also highlights possible issues relating to the remit, membership and work of a future statutory Justice Committee in the Northern Ireland Assembly.

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SUMMARY OF KEY POINTS

- **This research paper has been prepared for the Assembly and Executive Review Committee to facilitate them in their understanding of the work of Parliamentary Committees with ministerial oversight responsibilities for justice matters.**
- **This paper looks at the remit, membership and work of Committees in Westminster, The Scottish Parliament and the Oireachtas.**
- **The paper also sets the legislative context for devolution of policing and justice in Northern Ireland.**
- **This paper highlights that whilst there are general provisions relating to the establishment, functions and powers of Northern Ireland Assembly Committees, that there may be issues relating to remit, membership which will need to be given consideration.**

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1.0 INTRODUCTION

This research paper is prepared for Members of the Assembly and Executive Review Committee, to facilitate their understanding of the work of Committees with ministerial oversight responsibilities for justice matters and highlight possible issues that may need to be considered in discussions about the possible remit and functions of a future Statutory Justice Committee in the Northern Ireland Assembly. This paper considers the remit and role of committees with ministerial oversight responsibilities in other jurisdictions.

Section 2.0 of this paper considers the remit, membership and work of Select Committees that deal with Justice matters in Westminster, such as the Justice Committee and the Northern Ireland Affairs Committee. Section 3.0 examines the remit, membership and work of the statutory Justice Committee in the Scottish Parliament. Section 4.0 discusses the remit, role and work of the Select and Joint Committees on Justice, Equality, Defence and Women's Rights in the Oireachtas. Section 5.0 highlights the legislative context of Ministerial Oversight for policing and justice functions in Northern Ireland when such functions are transferred. This section also considers issues relating to the potential remit, membership and work of a future statutory committee dealing with policing and justice matters. Finally, section 6.0 considers potential issues arising from the previous sections that the Committee may wish to consider further.

2.0 WESTMINSTER

2.1 JUSTICE COMMITTEE

2.1.2 REMIT

The Justice Committee¹ is a Commons Select Committee with a remit to examine the administration, expenditure and policy of the Ministry of Justice, the administration and expenditure of the Attorney Generals Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office². The Committee also scrutinises draft sentencing guidelines issues under the authority of the Sentencing Guidelines Council³. The powers of Commons Select Committees are set out in Standing Order 152 and include powers to send for persons, papers and records, to report from time to time, to appoint specialist advisors and to report from time to time the minutes taken from subcommittees.⁴

2.1.3 MEMBERSHIP

Party membership on committees normally reflects the composition of the House of Commons. The composition of committees is proposed by a Committee of Selection and approved by the House.⁵ Select Committees have a minimum of 11 members; however the Justice Committee is comprised of 14 members.⁶ The membership of

¹ The Justice Committee was previously known as the Constitutional Affairs Committee until November 2007

² http://www.parliament.uk/parliamentary_committees/parliamentary_committees16.cfm

³ http://www.parliament.uk/parliamentary_committees/justice.cfm

⁴ <http://www.publications.parliament.uk/pa/cm200708/cmstords/105/105.pdf>

⁵ <http://www.parliament.uk/documents/upload/P02.pdf>

⁶ Ibid.

the Justice Committee includes 6 Labour members, 4 Conservative members, 2 Liberal Democrat members and 2 Labour Co-op members.

2.1.4 WORK

Select Committees conduct their work by deciding upon a line of inquiry, and gathering written and oral evidence. Their findings are published, reported to the House of Commons and placed on the Parliament website. The Government has 60 days to reply to the Select Committees recommendations.⁷ Some examples of reports published by the Justice Select Committee include: *The Constitutional role of the Attorney General; Towards Effective Sentencing; Draft Constitutional Renewal Bill (Provisions relating to the Attorney-General); Work of the Committee; Protection of Private Data; and Creation of the Ministry of Justice.*⁸

2.2 NORTHERN IRELAND AFFAIRS COMMITTEE

2.2.1 REMIT

The Northern Ireland Affairs Committee is a Commons Select Committee with a remit to examine the expenditure, administration and policy of the Northern Ireland Office, administration and expenditure of the Crown Solicitors Office⁹ and other matters within the responsibilities of the Secretary of State for Northern Ireland. This does not include expenditure, administration and policy of the Office of the Director of Public Prosecutions in Northern Ireland or drafting of legislation by the Office of the Legislative Counsel.¹⁰

2.2.2 MEMBERSHIP

The Northern Ireland Affairs Committee is comprised of 13 members including 7 Labour members, 2 Conservative members, 2 Democratic Unionist Party members, 1 Ulster Unionist member and 1 Social Democratic and Labour Party member.

2.2.3 WORK

The Committee conducts its work in the same way as other Select Committees which have been discussed in section 2.1.4. Some examples of reports published by Northern Ireland Affairs Committee are: *The Northern Ireland Prison Service; Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past; Draft Protocol for Community Based Restorative Justice Schemes; The Functions of the Northern Ireland Policing Board and Functions of the Office of the Police Ombudsman for Northern Ireland.*¹¹

⁷ <http://www.parliament.uk/about/how/committees/select.cfm>

⁸ This is not an exhaustive list of reports published by the Committee and see the following link for further details:

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/cmconst.htm>

⁹ This excludes individual cases and advice given by the Crown Solicitor.

¹⁰ http://www.parliament.uk/parliamentary_committees/northern_ireland_affairs/northern_ireland_affairs_committee_terms_of_reference.cfm

¹¹ This is not an exhaustive list of reports published, see the following link for further details: <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/cmniaf.htm>

3.0 SCOTLAND

3.1.1 REMIT

There are a number of subject committees in the Scottish Parliament whose remits match the competences of the Scottish Executive.¹² Functions of committees in the Scottish Parliament are set out in Rule 6.2 of Standing Orders of the Scottish Parliament. Committees' functions are to "conduct such inquiries into such competent matters as it may consider appropriate or as the Parliament or another Committee may require...."¹³

The Standing Orders state that Committees may: consider the policy and administration of the Scottish Administration on any competent matter; consider proposals for legislation that relate to any competent matter; consider European legislation or instruments or international conventions or agreements which relate to competent matters; consider the need for reform of the law on competent matters; initiate Bills on competent matters and consider the financial proposals and financial administration of the Scottish Administration which relate to competent matters.¹⁴

The remit of the Justice Committee which is a subject committee is to consider and report on the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice and the functions of the Lord Advocate, other than as head of the systems of criminal prosecutions and investigation of deaths in Scotland.¹⁵ The Justice Committee would be precluded from considering matters relating to decisions to prosecute or on individual cases, but would consider general issues such as the efficiency and effectiveness of the Prosecutions Service.¹⁶

3.1.2 MEMBERSHIP

The membership of Committees is proposed by the Parliamentary Bureau and approved by Parliament as set out in Rule 6.3 of the Standing Orders of the Scottish Parliament.¹⁷ The membership of the Justice Committee is comprised of 8 members, including 3 Scottish National Party members, 3 Scottish Labour Party Members, 1 Scottish Conservative Party Member, 1 Scottish Liberal Democrat Member.

3.1.3 WORK

There have previously been two Justice Committees operating concurrently due to the volume of justice related legislation, both with identical remits. At that time consideration was given as to whether the work should be divided into criminal and civil justice areas. However this was decided against and division of work was negotiated between officials of the Committees.¹⁸ There was also a Sub Committee

¹² <http://www.scottish.parliament.uk/business/committees/index.htm>

¹³ <http://www.scottish.parliament.uk/business/so/sto-c.htm>

¹⁴ Ibid.

¹⁵ <http://www.scottish.parliament.uk/s3/committees/justice/index.htm>

¹⁶ Information obtained in a telephone conversation with Justice Committee Clerk from Scottish Parliament on 13 October 2008.

¹⁷ <http://www.scottish.parliament.uk/business/so/sto-3.htm#6>

¹⁸ There was Committee known as the Justice and Home Affairs Committee which ran from 1999 to 2001 and was succeeded by Justice 1 Committee. Justice 1 ran from 2001-2007 and

of Justice Committee 2 which was established to consider the issue of sex offenders which ran until 2006.¹⁹ There is currently only one Justice Committee operating in this session of Parliament

Some examples of the Justice Committee's work in 2008 include: *Report to the Finance Committee on the Draft Budget, 2008-09*; *Legislative Consent Memorandum on the Pensions Bill*; *Legislative Consent Memorandum on the Criminal Justice and Immigration Bill*; *Report on the Judiciary and Courts (Scotland) Bill*; *Report on Inquiry into effective use of Police Resources*; and *Inquiry into Community Policing*.²⁰ The Committee is also considering Damages (Asbestos-related conditions) (Scotland) Bill.

4.0 COMMITTEES IN THE REPUBLIC OF IRELAND

4.1 SELECT COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMEN'S RIGHTS

4.1.1 REMIT

The Order of Reference of the Select Committee on Justice, Equality, Defence and Human Rights as set by Dáil Éireann in October 2007 are: to consider Bills dealt with by the Department of Justice, Equality, and Law Reform and the Department of Defence; consider estimates for public service within the aegis of these departments; proposals contained in any motion which concern Dáil Éireann approving terms of international agreements which involves public funds and other matters referred by the Dáil. The Order of Reference also confers powers on the Select Committee to consider Annual Output Statements produced by the Departments, value for money and policy review conducted or commissioned by the Departments.²¹ The remit of the Select Committee differs from that of the Joint Committee in that it considers matters relating to public expenditure.

4.1.2 MEMBERSHIP

Dáil Éireann may appoint a Select Committee to inquire into any matter under Standing Order 82. Committees are proportionately representative of the House who appoints them.²² There are currently 13 members on the Select Committee which is comprised of 6 Fianna Fáil members, 4 Fine Gael members, 2 Labour Party members and 1 Independent member.²³

4.1.3 WORK

Justice 2 ran from 2003-2007. The Scottish Parliament is currently in session 3. Information obtained from a Researcher at the Scottish Parliamentary Information Centre (SPICE) in a telephone call on 09/10/08.

¹⁹ <http://www.scottish.parliament.uk/business/committees/justice2sub/index.htm>

²⁰ For Further Details on reports published by Justice Committee, see the following link <http://www.scottish.parliament.uk/s3/committees/justice/reports.htm>

²¹ http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/S-JusticeEDWR/Orders_of_Reference/document1.htm

²² <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/leaflet/comm.htm>

²³ <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/S-JusticeEDWR/Membership/document1.htm>

In order to conduct its work, the Select Committee has powers to gather oral and written evidence, to publish minutes of such evidence, and to appoint sub-committees.²⁴

Some of the matters debated by the Committee include: the Immigration Residence and Protection Bill; estimates for public services; Criminal Justice (Mutual Assistance) Bill and the Criminal Law Human Trafficking Bill.

4.2 JOINT COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMEN'S RIGHTS

4.2.1 REMIT

The Joint Committee of the Dáil and Seanad may consider public affairs, which fall under the remit of the Department of Justice, Equality and Law Reform and Department of Defence and matters relating to women's rights.²⁵ As noted above the Joint Committee does not consider matters concerning public expenditure or the approval of international agreements involving a charge on public funds.

4.2.2 MEMBERSHIP

The Joint Committee is composed of the Dáil Select Committee and the Select Committee appointed by the Seanad. Membership of the Committee includes 13 members of the Dáil Select Committee and 4 Senators.

4.2.3 WORK

In order to conduct its work, the Joint Committee has powers to gather oral and written evidence, to publish minutes of such evidence, make recommendations for legislative change, new legislation, require Minister or office holders to appear before the Committee, appoint specialist advisors, and undertake travel.²⁶

In the previous Dáil, the Committee reported on the Dublin and Monaghan bombings in 1974, Childcare, Community Policing and Restorative Justice, among other matters.²⁷

5.0 MINISTERIAL OVERSIGHT AFTER DEVOLUTION OF POLICING AND JUSTICE

5.1 LEGISLATIVE CONTEXT

Policing and Justice matters are reserved under Schedule 3 of the Northern Ireland Act 1998, however there are provisions in the Act which enable the Secretary of State to make an Order in Council to transfer reserved matters.²⁸ The Northern Ireland Act 1998 as amended by the Northern Ireland (Miscellaneous Provisions) Act 2006 includes conditions for devolution of policing and justice matters, the establishment of a Department with policing and justice functions and includes a

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http://www.oireachtas.ie/documents/proceduraldocuments/StandingOrders2007_English_and_Irish.pdf

²⁵ http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-JusticeEDWR/Order_of_Reference/document1.htm

²⁶ http://www.oireachtas.ie/documents/proceduraldocuments/StandingOrders2007_English_and_Irish.pdf

²⁷ <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees29thDail/JustEquDefWomRqts.htm>

²⁸ See section 4(1) and (2) and Schedule 3 of the Northern Ireland Act 1998, available at the following link: http://www.opsi.gov.uk/acts/acts1998/ukpga_19980047_en_2#pt1-l1g4

provision dealing with the power of the Assembly to call witnesses.²⁹ However, there appears to be nothing in these pieces of legislation that makes provision for ministerial oversight of policing and justice functions, for example by Committees. This is presumably because there are general provisions in the Belfast Agreement 1998,³⁰ the Northern Ireland Act 1998³¹ and Standing Orders of the Northern Ireland Assembly³² that set out that Statutory Committees will be established to advise and assist each Departmental Minister in the development of policy, and sets out powers and functions of Statutory Committees. The presumption would therefore be that if a Department with policing and justice functions is established after the transfer of these responsibilities, then a Statutory Committee will be established with a corresponding remit. There may however be potential issues that relate to the remit, membership and work of a Justice Committee which will be considered in the following sections.

5.2 POSSIBLE ISSUES RELATING TO REMIT

Standing Order 48 (2) of the Northern Ireland Assembly states that “Statutory Committees shall have the powers described in Strand One, Paragraph 9 of the Belfast Agreement and may in particular exercise the power in section 44 (1) of the Northern Ireland Act 1998.”³³ One might therefore assume that in the event of a Statutory Justice Committee being established, that it would have the same powers as other Statutory Committees of the Northern Ireland Assembly. One might also assume that the remit of a Statutory Justice Committee would match the competence of a Department with policing and Justice functions. However the remit of any ‘Justice Committee’ established in the Northern Ireland Assembly is likely to differ in a number of ways from the remit of similar committees in other legislatures. Looking at these differences may help in the consideration of the remit and operation of a potential Assembly Committee.

Firstly, the remit of a committee with policing and justice functions may not be the same as the other committees examined in this paper. The Scottish Parliament has a remit to consider criminal and civil Justice matters, one of the examples highlighted was that the Committee is currently considering is the Damages (Asbestos-related Conditions) (Scotland) Bill. The Republic of Ireland committees with responsibility for oversight of justice matters have a wider remit in that they span two departments, the Department of Justice, Equality and Law Reform and the Department of Defence. These are examples of some matters which may not be considered by a statutory Justice Committee in Northern Ireland.

²⁹ See the Northern Ireland (Miscellaneous Provisions) Act 2006, sections 16, 17 and 18, available at the following link:

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060033_en_4#pt4

³⁰ Belfast Agreement 1998, Strand One Democratic Institutions.

³¹ See Northern Ireland Act 1998, section 29.

³² NI Assembly Standing Order 48.

³³ Strand One, Paragraph 9 of the Belfast Agreement specifies that the Committee will have a scrutiny, policy development and consultation role that relates to Department it is associated with, can initiate legislation, consider and advise on Departmental Plans, approve relevant Secondary legislation and take Committee Stage of Primary legislation, call for persons and papers, initiate inquiries and make reports and consider matters brought to Committee by Minister. Section 44 (1) of the Northern Ireland Act 1998 confers powers on the Assembly to call witnesses.

Secondly, some matters will remain excepted or reserved. For instance, counter-terrorism, mutual legal assistance and extradition will remain excepted matters.³⁴ The NIO discussion paper also indicates that some specific matters may not be transferred (e.g. responsibility for the “50:50” recruitment policy in the Police (NI) Act 2000).³⁵ As with the Justice Committee in Scotland, there will be matters that the Northern Ireland Assembly Justice Committee will not have responsibility for ministerial oversight, which will remain with Westminster Committees.

Thirdly, there are some matters considered by Justice Committees in other jurisdictions that may be the responsibility of other scrutiny bodies in Northern Ireland. For example, the Justice Committee in Scotland has published reports on the Inquiry into the Effective Use of Police Resources and the Inquiry on Community Policing. However, in Northern Ireland these issues may fall under the remit of other scrutiny bodies for example the Northern Ireland Policing Board has responsibility for ensuring an effective and Efficient Police Service. Sir Desmond Rea, Chairman of the Northern Ireland Policing Board, highlighted the distinction between the remit of the Policing Board and a future Assembly Justice Committee in his evidence to the Assembly and Executive Review Committee, stating:

“In the current tripartite structure, the Board ensures the delivery of an effective, efficient and impartial police service and holds the Chief Constable to account, while the Northern Ireland Affairs Committee scrutinises the work of the Secretary of State and the Department. The new Assembly Committee would fulfil its scrutiny and policy development roles, assuming responsibility for that function from the Northern Ireland Affairs Committee. It would have a wide brief across the whole criminal justice system in Northern Ireland.”³⁶

However Sir Desmond Rea also stated that “the Committee would play an important role in scrutinising the work of the Northern Ireland Policing Board and how it goes about its activities.”³⁷ Consideration could be given to the relationship between a body such as the Northern Ireland Policing Board and a future Justice Committee.

Finally, the Government in its discussions on the transfer of policing and justice functions has stated that the Director of Public Prosecutions would not be required to answer to the Assembly except in relation to finance and administration.³⁸ The Government makes it clear that the impartiality and independence of the Public Prosecution Service must be guaranteed as a fundamental principle.³⁹ In the Scottish Parliament this principle is guaranteed in that the Justice Committee can examine issues relating to the efficiency and effectiveness of the Prosecution service but not on individual cases or matters relating to decisions to prosecute. Similarly in Westminster the Justice Committee can look at issues relating to the expenditure and administration of the Attorney General and the Crown Prosecution Service in England and Wales, but not on decisions to prosecute or on individual cases.

³⁴ NIO (2006) “Devolving Policing and Justice in Northern Ireland: A Discussion Paper.”, Pg 43-45.

³⁵ Ibid., pg. 27.

³⁶ Evidence given to the Assembly Executive Review Committee on 2 October 2007, see the following link for full transcript:

www.niassembly.gov.uk/assem_exec/2007mandate/moe/071002

³⁷ Ibid.

³⁸ NIO (2006) “Devolving Policing and Justice in Northern Ireland: A Discussion Paper.”, Pg 13.

³⁹ Ibid.

Interestingly, the Westminster Committee has considered the BAE Systems case, but only on issues relating to the broader context of the role of the Attorney General rather than decisions relating to prosecutions.⁴⁰ This Committee has also launched an inquiry into the Crown Prosecution Service and the Attorney General.⁴¹ The Inquiry will examine:

“1) How the CPS contributes to, and fits into the Criminal Justice System—how does it relate to and share information with the police, courts and other services, how does it work with other prosecution agencies such as the Revenue and Customs Prosecution Office, what is its role as regards Anti-Social Behaviour Orders, is there an effective balance between holding it accountable and maintaining its independence, what is the role of the Attorney General?

2) How effectively does the CPS operate and serve its customers—how does it communicate with victims and witnesses, how does it relate to local communities, is it providing a timely and consistent service across the country, do the different staff functions support effective case management, is decision-making on charges or whether to prosecute effective, how is it managing key areas such as prosecuting rape and domestic violence?

The inquiry will not consider decisions to prosecute in individual cases.”⁴²

The Committee may wish to consider the relationship between the Assembly Justice Committee on the one hand and the DPP/Attorney General for Northern Ireland on the other.

5.3 POSSIBLE ISSUES RELATING TO MEMBERSHIP

Statutory Committees in the Northern Ireland Assembly reflect the political party composition of the Assembly and each Committee is comprised of 11 members including the Chairperson and Deputy Chairperson.⁴³ A Statutory Justice Committee would therefore presumably have the same membership composition as other Statutory Committees.

There may however be potential issues as to which members can sit on a statutory committee, for example in his evidence to the Assembly and Executive Review Committee, Sir Desmond Rea indicated that MLAs who sit on the Policing Board, should not sit on the statutory committee as a matter of good practice.⁴⁴

5.4 POSSIBLE ISSUES RELATING TO WORK

As noted when discussing the Justice Committee in Scotland, there were two Justice Committees working concurrently due to the volume of legislation. Consideration may

⁴⁰ Information obtained from Westminster Justice Committee Clerk in a telephone call on 13 October 2008. See also Committee report on the Constitutional Role of the Attorney General available at

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/306/306.pdf> at Pg 19.

⁴¹ Information obtained from Westminster Justice Committee Clerk in a telephone call on 13 October 2008.

⁴² http://www.parliament.uk/parliamentary_committees/justice/jsc170708pn41.cfm

⁴³ Standing Order 48 of the Northern Ireland Assembly:
http://www.niassembly.gov.uk/sopdf/2007mandate/StandingOrders07_08.pdf

⁴⁴ www.niassembly.gov.uk/assem_exec/2007mandate/moe/071002

need to be given as to whether a Justice Committee in the Northern Ireland Assembly would need to make similar arrangements if a large volume of work was anticipated.

The Northern Ireland (Miscellaneous Provisions) Act 2006 inserts a new subsection 4A in section 44 of the Northern Ireland Act 1998. The effect of this is that the powers of a committee to call for witnesses and documents do not apply to a Minister of the Crown, former Minister of the Crown or Crown employee, in relation to the exercise of powers at a time when they were not transferred matters. A future Justice Committee could not therefore call on the Secretary of State for Northern Ireland in relation to the exercise of his powers that were not transferred at that time.

6.0 POTENTIAL ISSUES THE COMMITTEE MAY WISH TO CONSIDER

There are a number of potential issues arising from the previous sections which the Committee may wish to consider in more detail:

1. What will be the remit of a Statutory Justice Committee and how will it relate to other bodies with oversight responsibilities, such as the Policing Board?
2. What will be the relationship between a Justice Committee and the Public Prosecution Service/Attorney General for Northern Ireland?
3. Who will sit on a Statutory Justice committee, given that MLAs also sit on the Northern Ireland Policing Board?
4. Is there any expectation that that there would need to be 2 Justice Committees which happened in Scotland due to the volume of justice related legislation? Would it be desirable to consider establishing sub-committees to look at particular issues, for example as Scotland did to consider the issue of Sex Offenders?