

Supplemental Briefing Note

POLICY RESPONSIBILITIES OF THE COURT SERVICES IN NORTHERN IRELAND, SCOTLAND AND THE REPUBLIC OF IRELAND

Research and Library Service

Introduction

This supplemental briefing is prepared for Members of the Assembly and Executive Review Committee to facilitate their scrutiny of Court Service policy making responsibilities, in their inquiry into the devolution of policing and justice matters in Northern Ireland (NI). Section 1.0 of this supplemental briefing provides some information on current policy making responsibilities of the Court Service in NI and furthermore provides some views on policy making responsibilities in future Court Service arrangements in NI, after the devolution of policing and justice. Section 2.0 provides information on policy making responsibilities in the current Scottish Court Service (SCS) model and in future governance arrangements of the SCS. Furthermore, section 2.0 also considers policy making responsibilities in the existing Court Service model in the Republic of Ireland (ROI). Section 3.0 outlines concluding comments and identifies potential key issues arising from the previous sections.

1.0 Policy making responsibilities in NI

1.1 Existing Court Service responsibilities relating to policy in Northern Ireland

Currently, the NI Court Service functions include providing the Lord Chancellor with policy and legislative advice in relation to his Ministerial responsibilities in NI. These responsibilities include:¹

- *Responsibility for legal aid;*
- *Judicial and quasi judicial appointments;*
- *Matters affecting the provision of legal service to the public;*
- *Deciding the statutory framework for the structure; and,*
- *Jurisdiction and operation of the courts in NI.*

1.1.2 A Discussion on responsibilities relating to policy in future Court Service arrangements.

In its discussion paper on the devolution of policing and justice matters in NI,² the NIO supported the view that the Court Service would become an executive agency of a future Department of Justice, headed by a Chief Executive.³ The NIO indicated in its discussion paper that consideration would need to be given as to whether the Agency would continue to provide policy and legislative support, or whether these functions would be transferred to the core Department of Justice.⁴

¹ <http://www.courtsni.gov.uk/en-GB/AboutUs/>

² NIO (2006) Devolving Police and Justice in Northern Ireland: A Discussion Paper.

³ Ibid, Pg 34

⁴ Id.

The NIO has also indicated in their discussion paper, that responsibilities for legal aid policy and funding and the Northern Ireland Legal Services Commission, (which are currently the responsibility of the Lord Chancellor through the Northern Ireland Court Service), will transfer to the Northern Ireland Minister for Justice.⁵

The Lord Chief Justice, in his oral evidence to the Assembly and Executive Review Committee suggested that the Court Service should be a body at arms length from the government under a Board chaired by the Lord Chief Justice.⁶ The Lord Chief Justice indicated that the Board in his proposed model would not deal with policy, which would be a government responsibility.

2.0 Policy making responsibilities of the SCS and Court Service in ROI

2.1 Policy making responsibilities of SCS

The Scottish Justice Department is the parent Department of the SCS and has responsibility for policy matters affecting the justice system in Scotland, including the operation of the SCS. A number of divisions within the Justice Department have responsibilities which bring them into contact with the SCS on a regular basis. Due to this close working relationship, one of the responsibilities of the SCS is to maintain good working relationships with the Justice Department.⁷

More specifically The Director of Operational Policy and Planning who is a member of the SCS Management Board, is responsible for liaising with the Justice Department on the operational implications of legislative change.⁸ Douglas Osler, in the external review on the structure and effectiveness of the SCS stated:⁹

The Department's responsibility for policy which affects the capacity of the SCS to deliver its services means that policy decisions must be informed by the technical expertise of the SCS. It is therefore important that the SCS is involved at what policy staff call the 'design and build' stage and that they can also raise at a senior level matters which come to their notice through operational experience which could be useful to policy makers.

There are no definite and detailed proposals on a revised court service model. One of the features of the revised governance model of the SCS in the proposals for the Judiciary (Scotland) Bill is:

The Chief Executive would report to the Court Service Board, which would set overall policy for, and monitor the performance of, the Court Service, taking account of strategic priorities agreed between the board and Ministers. Within

⁵ Id.

⁶ See Introductory Remarks made by the Lord Chief Justice to the Assembly and Executive Review Committee's Inquiry into the Devolution of Policing and Justice Matters, Tuesday 2 October 2007.

⁷ Annual Report and Accounts of the Scottish Court Service 2005/06, Pg 3.

http://www.scotcourts.gov.uk/library/annual_reports/docs/annualreport0506.pdf

⁸ Ibid, Pg 22.

⁹ Agency Review of the Scottish Court Service, January 2006 Pg 31

http://www.scotcourts.gov.uk/library/Agency_Review.pdf

*the framework set by the board, the Chief Executive would have delegated authority to take operational decisions.*¹⁰

The preliminary comments in the Draft Judiciary Scotland Bill paper therefore indicates that the Scottish Court Service Board would determine policy for the Court Service, taking account of any priorities agreed between the Board and Ministers. The Scottish Executive plans to flesh out these details once consultations are complete.¹¹

2.2 Policy making responsibilities of Court Service in ROI

In ROI, the Court Service Act 1998 outlines that the function of the Court Service Board is to consider and determine policy in relation to the service.¹² The Board also has to consider or take account of government or ministerial policy or objectives in relation to functions of the court service. The policy responsibilities of the Court Service are in relation to its functions found in section 5 of the Court Service Act which are:

- (a) *Manage the courts,*
- (b) *Provide support services for the judges,*
- (c) *Provide information on the courts system to the public,*
- (d) *Provide, manage and maintain court buildings, and*
- (e) *Provide facilities for users of the courts.*

3.0 Concluding Comments and Potential Issues for Consideration

The existing Court Service in NI does not have a policy making role, however it provides the Lord Chancellor with policy and legislative advice in discharging his ministerial responsibilities.

The proposed SCS and existing ROI models suggest that a Court Service Board makes policy in relation to the functions of the Court Service. However, under both models, the Board in making policy must consider any Government or Ministerial policy or objective (ROI), or any priorities agreed with the Minister (Scotland).

Some potential key issues arising from the previous sections are:

1. In relation to policy areas such as Legal Aid, Northern Ireland Legal Services, Judicial Appointments or Court Operations, who will have responsibilities for *making policy* in these areas? Policy making responsibility might lie with a Minister, or, for example, a Court Service Board (in respect of court operations).
2. What arrangements should be put into place to ensure that the policymaker is accountable to the Assembly?
3. Who will have responsibilities for *offering policy advice* in these areas?

¹⁰ Proposals for a Judiciary (Scotland) Bill 2007, Pg 23

¹¹ Ibid, Pg 25

¹² The Court Service Act 1998, S 13, see the following link
[http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/53B3A30B19BC8AA580256DA60054A032/\\$FILE/Courts%20Service%20Act%2C%201998.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/53B3A30B19BC8AA580256DA60054A032/$FILE/Courts%20Service%20Act%2C%201998.pdf)

4. Are there lessons to be learnt from the proposed SCS model or the ROI model that can be reflected in consultations on policy making responsibilities in future Court Service arrangements?

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