



Northern Ireland
Assembly

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**Devolution of Policing and Justice
Matters: Briefing from the Secretary of
State for Northern Ireland**

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 Simon Hamilton
Mr Danny Kennedy
Mr Alex Maskey

Witnesses:

Mr Shaun Woodward)The Secretary of State for Northern Ireland
Mr Anthony Harbinson)
Ms Hilary Jackson)Northern Ireland Office
Mr Gareth Johnston)

The Chairperson (Mr Spratt):

Good morning, Secretary of State. I ask members to declare any interests. I am a member of the Northern Ireland Policing Board.

Mr A Maskey:

I am a member of the Policing Board.

Mr Attwood:

I am a member of the Policing Board.

The Chairperson:

Thank you for that.

In light of the Hillsborough Castle Agreement, the Committee decided that it wanted to publish its report in time to inform the debate on 9 March. We are grateful to you, Secretary of State, and to your officials for coming along this morning. I know that your flight was delayed and that you are now working to a tight schedule. We will do our best to assist you in any way possible.

The Secretary of State is here to speak about the agreements, the concordats, the protocols and the memoranda of understanding relating to the devolution of policing and justice matters. As I normally do, I intend to allow each member of the Committee to ask a question. Members may ask one question initially, and if the Secretary of State has additional time, I will allow members to come in on a party basis.

Without further ado, I hand over to the Secretary of State to make an opening comment, after which we will ask questions.

The Secretary of State for Northern Ireland (Mr Shaun Woodward):

Thank you very much. My colleagues are Hilary Jackson, who is director general for politics at the Northern Ireland Office; Anthony Harbinson, who is director of resources; and Gareth Johnston, who is deputy director of criminal justice. They will probably have to assist me as I answer the Committee's questions. I apologise for our delay, but it was something beyond our control. I am just glad that our plane had enough fuel to stay in the air for as long as it did, otherwise my colleagues might have had even more work to do this morning.

It might be helpful, on the back of the work on the financial agreement and the Hillsborough Castle Agreement, to say one or two things about the continuing progress and to say something about one or two of the protocols that are before the Committee.

The Committee will want to know that the Assembly's legislation to create the new justice Department was given Royal Assent on 12 February. The necessary Westminster transfer Orders will be completed in the next two weeks, so they could be laid before Parliament as soon as the cross-community vote in the Assembly has been agreed. Our aim, for the benefit of the

Committee, is that the transfer Orders will complete their passage through Parliament by 25 March.

The finances are in place to ensure that when policing and justice powers are transferred, the justice Department will have a secure and sufficient financial basis. The Committee will have questions on those arrangements, but, overall, the sum that will be transferred to the Northern Ireland Executive for policing and justice is £1.328 billion. That is all but £26 million of the NIO's current policing and justice budget, and all of the £132 million of the Northern Ireland Court Service's budget, which is part of the Ministry of Justice, rather than the NIO.

In addition, the Northern Ireland Executive will have the additional £800 million financial package that was agreed by the Prime Minister in October 2009. I do not have to remind the Committee that that money will only be available if the Assembly agrees to the request for the transfer of powers. It is important to remind the Committee that the vote on 9 March is the only way in which that money will be secured. The package covers a number of elements, and includes continued access to the reserve to meet exceptional security pressures relating to policing and justice.

The Committee has previously raised this question, so I wish to clarify that there will be no requirement for that money to be repaid, as is usual with reserve claims. A further ability to access the reserve in respect of the cost of any legacy hearing loss claims, which amount to more than £12 million in any one year, is in the package, and HM Treasury (HMT) has agreed to assist the Executive in meeting that potential pressure. To repeat, there will be no requirement to repay any reserve claim.

The four military sites at Lisanelly, St Lucia, Ballykelly and Ballymena, which will enable the building of the proposed cross-community education campus in Omagh, will be gifted, and additional baseline funding for legal aid has been agreed, which, if required, will allow for even further access to the reserve up to the sum of £39 million. Furthermore, exceptional arrangements for unallocated funding of £30 million in 2010-11 will restore end-year flexibility, and exceptional provision has been made to enable capital budgets in the next comprehensive spending review (CSR) period to complete the police training college, and to allow the Executive to prioritise new capital expenditure, including at Magilligan.

The Committee has received several of the protocols, including now the protocol on national security. The Committee has previously seen all but the protocol on national security, and it has been given the chance to comment on them. Some of those comments have been reflected in the texts that are before the Committee.

Two existing agreements with the Irish Government underpin the now well-established cross-border co-operation on policing and criminal justice matters, and there are also concordats that safeguard the independence of the Public Prosecution Service (PPS) and the judiciary. Those concordats must be agreed by the Executive, but they provide public assurance that the judiciary and the Public Prosecution Service will remain independent of the justice Minister, as is currently the case with me.

The draft protocol on policing architecture was drawn up in consultation with the Policing Board, the PSNI and Office of the First Minister and deputy First Minister (OFMDFM) officials, and it is intended to provide a starting point for the Assembly. Once devolution occurs, the landscape will, of course, change, but clarity about the relationship, which is, understandably, a concern for some Committee members, is a matter on which I am anxious to allay any concerns. However, decisions on how that will work in practice, for example in respect of a future justice Committee, are not a matter for me, but for the Assembly.

It may be helpful to make some comments on the national security protocol. That protocol relates to the justice Minister and the Secretary of State. It is not a legal document, but a practical expression. It is also flexible and is in draft form. Nonetheless, national security means national security for the United Kingdom, and is the responsibility of the British Government.

National security in Northern Ireland is, understandably, viewed through the historical prism of terrorism related to the Troubles. Today, we face a different threat from dissident republicans and, as the Independent Monitoring Commission (IMC) said, the early devolution of policing and justice powers will act as a potent intervention against that form of terrorism. However, we are very realistic about the work, challenges and threats ahead, about which we are not — and never will be — complacent.

However, those threats are not the only ones that Northern Ireland is likely to face now or in the future, and good planning means that we must anticipate the threats that may face us. I hasten

to say that there is no direct intelligence to support that the view that there is currently any immediate threat from al-Qaeda, or related terrorist groups, in Northern Ireland. However, Northern Ireland is a part of the United Kingdom, and the UK faces severe threats from those organisations. Therefore, in considering issues of national security, it is important not only to look to the past and the present, but to where threats are likely to come from in the future, and the arrangements in that protocol must reflect both the present and the future, and the importance of national security. Therefore, national security will remain a matter for the Secretary of State for Northern Ireland, although I am equally conscious that policing and justice matters in Northern Ireland cannot be completely separated from matters of national security.

It is vital, therefore, that the Secretary of State and the justice Minister establish clarity about their respective statutory responsibilities and that the justice Minister have access to information necessary and proper to fulfil those responsibilities.

When issues of national security arise, there will be an interface between the justice Minister and the Secretary of State. That interface needs to be practical, flexible, based on principle, and, of course, ensure that both can meet their statutory responsibilities. The protocol is based on the presumption of consultation and communication and on the sharing of relevant and appropriate information. That means regular meetings, and it places a burden on the Secretary of State to share relevant information with the justice Minister. I remind the Committee that the Secretary of State is, of course, subject to parliamentary accountability. That role cannot be delegated. Should the Secretary of State make a mistake, which is unimaginable, of course, he or she will be held accountable to Parliament. If he or she does not exercise discretion with propriety, he or she will be judicially reviewable.

I also draw the Committee's attention to the role of the independent reviewer contained in the national security protocol. That exceptional role is, I judge, to recognise the exceptional position of Northern Ireland and the need to ensure that everyone maintains confidence in the system. I recognise that matters of national security in Northern Ireland have a complex history that has different connotations for different people, and although I would be the first to say that the security services have played a very important role in protecting the lives of many people in Northern Ireland, there have, of course, been errors. Those errors were on all sides. We can all point to pain and regret. Nonetheless, I understand the suspicion that may exist.

Let us be clear: the Secretary of State and the Home Secretary are responsible and accountable to Parliament. The protocol contains a presumption that there will be communication, and the implied structure points only in that direction. It is a protocol founded on principle. It is flexible and practical. I ask the Committee to consider the protocol with the great care that it has generously given to every matter that we have put before it. I believe that, as confidence in all the arrangements for the devolution of policing and justice grows with the passage of time, people will see that, in the arrangements of this protocol, we have, I hope, anticipated many of the present requirements as well as those that may emerge.

The Chairperson:

Thank you very much indeed, Secretary of State, for those opening remarks. You have partially answered my first question on the budget that the NIO will make available to the justice Department. Can you break down the figures for the various organisations that will deliver the policing and justice functions? Members will then ask questions.

The Secretary of State for Northern Ireland:

I am happy to take specific questions on the budget and to supply information on individual areas. Let me take one example that was in the ether: the so-called long list of additional pressures. That is a matter for the justice Department. In the considerable work that went on through the whole of last year — and I thank the Committee for its help on that — we went through the pressures that were immediately ahead for the Department to make sure that the financial settlement would, if the Assembly requests the transfer of powers on 9 March, ensure that a new justice Department would be stable, and, crucially, able to meet the critical pressures that will arise from dealing with legacy issues.

For example, we judged it extremely important — and the Prime Minister was particularly anxious to ensure that that was the case — that we could enable the justice Department to meet the challenges of claims on hearing loss.

Those need to be individually tested. Nonetheless, it was important, given the potential size of the claim, that the Department of justice would not be fundamentally destabilised at the moment of its inception. That is why the mechanism that was established for the hearing loss cases, and the help that HMT was exceptionally prepared to make in those circumstances, recognised the basis on which we think that the claims are likely to be made; the volume that is likely to come to

the Department of justice; and the way that it is most likely to happen over a period. However, we also recognised that it is possible that exceptional circumstances will arise. In that one example, we have tried to create a package that will ensure stability for the Department.

I remind members that if they want to raise specific issues on that area, I am happy for my colleagues to engage in discussions on those today, or it may be more helpful if members wrote to us with their concerns. We will be happy to respond to them in writing.

The Chairperson:

You said that £1.328 billion would come to the NIO for the Department of justice. It would be helpful if you could provide us with a written breakdown, over the next couple of days, of how that money will be divided between the different areas.

The Secretary of State for Northern Ireland:

I am happy to do that, but I remind the Committee that the financial package does not set the individual budgets. We try to anticipate where the pressures may be, and we try to ensure that the Department of justice will not be destabilised by any exceptional claims or in fulfilling the requirements of dealing with the past.

Mr A Maskey:

I would like to address two issues, at least one of which you have covered to some extent, Secretary of State. It would be remiss of me, as you know, not to put on record that Irish republicans do not define national security interests in the same light as you, and we do not believe that British national security interests are paramount to us.

Notwithstanding that, I would like to see two key points further addressed. First, with regard to protocols or policies, there should always be a presumption of disclosure of any matters of interest to a justice Minister. Sinn Féin suggests that that could be managed or regulated through a consultative framework or a regulatory role performed by the judiciary or the attorney general, for example.

Secondly, I want to address the position of the PPS and the new role for the attorney general. The current arrangement provides for a consultative role, as opposed to a superintendent or directional role. The consultative role has not yet been road-tested here. Given the importance of

ensuring the independence of both facilities, the role should be kept under review as it unfolds and works its way out, with a view to allowing us to move back towards something closer to superintendent or directional, if that is deemed to be more appropriate.

The Secretary of State for Northern Ireland:

Hilary and Gareth will comment on the points that you raised around the attorney general, and I will cover the first question on national security.

This was a set of arrangements, on which, I know, people have different views. However, a firm principle was set at St Andrews that national security must remain, as it does for all the other settlements across the United Kingdom, a matter that rests with the British Government, which is why it is excepted. That said, I am conscious of the need to recognise the concerns that are being raised, as I said in my opening remarks. That is why it was extremely important that we heard the various things that people had to say. However, it was also important that we carefully examined those comments in the light of day.

There were a number of proposals looking at how we might deal with issues around, for example, transparency. One proposition that was put forward was the idea that there should be some presumption for disclosure. The idea is that, in principle, people want transparency and openness wherever possible. The national security protocol has a basis for a presumption for communication. However, we looked at the context for that, and, importantly, looked at it within the context of the separation of powers that exists. It is important that everybody recognises that the split between the executive and judiciary is an important split that is established in British law.

Only as recently as last week, in the Binyam Mohamed judgement — not a judgement that everybody in the British Government is entirely comfortable with according to some newspapers — that separation was set out very clearly. It was stated:

“As a matter of principle, decisions in connection with national security are primarily entrusted to the executive, ultimately to Government Ministers, and not to the judiciary. That is inherent in the doctrine of the separation of powers”.

Precisely because it is recognised that Ministers do have to make those decisions, and are responsible and accountable to Parliament, that separation nonetheless leaves the opportunity for judicial review. What some people may have been proposing would have muddied that distinction. That would not be

helpful if, and I hope that it is not the case, there is a need to seek clarification in the future.

I have considered the national security protocol incredibly carefully. I point out to the Committee that the protocol is a draft. It reflects a great deal of considered thinking to ensure that there is stability about the issue. As such, it is not a legal document, and, in the course of time, it may be that there can be revisions to the document. However, I do not think that there can be revisions to the principles. The principles are very clear: national security is “national” security. There are statutory responsibilities that must be met, and which can be met only in the context of national security being understood as “national” security. Nonetheless, as I pointed out to the Committee, there will be issues, which one can see arising almost immediately, between a justice Minister and a Secretary of State who, after the devolution of policing and justice takes place, has very few responsibilities left other than that of national security. There will be an interface, because the Secretary of State will have information that it is important for the justice Minister to know about.

I stress to the Committee that it is my firm commitment that, as I laid out in the protocol, the presumption is to communicate. Critically, that is the direction of the protocol. The presumption is to consult, and there is a responsibility on the Secretary of State to do so. Not to do so would leave that Secretary of State accountable to Parliament.

For some issues — for example, redactions to ombudsman’s reports in the interest of national security — we have, as a matter of course, included a role for the independent reviewer, so that that can all be checked and so that there can be reassurance, on every side, that we can proceed with confidence. That is not because I have any presumption that people will not do what they should do or that which they are required to. However, it is important to be sensitive to the context. That is why I believe that the role of Lord Carlile will be extremely important. Similarly, and of comfort to everybody on the Committee, whichever particular perspective they may have, if there are instances that arise outside the course of an annual review, it is entirely open to Committee members to ask that those instances be checked by the independent reviewer. I view that as an exceptional arrangement and one that is sensible for and sensitive to Northern Ireland. That does not, in any shape or form, undermine the principles of national security. However, I believe that it will help to establish confidence and build trust.

It is very difficult to make a case that people are doing anything here that could undermine trust. I

want to build trust, and I view that as a helpful mechanism to build and sustain trust and confidence across the community, which I believe will be of enormous value. Hilary or Gareth may wish to comment on the question about the attorney general.

Mr Gareth Johnston (Northern Ireland Office):

In answer to Mr Maskey's question, of course, the Assembly and the Executive can keep the nature of the relationship between the attorney general and the PPS under review.

During the drafting of the current legislation, it was judged that the most important part of building community confidence was the manifest independence of prosecutorial decisions. Therefore, that relationship with the attorney general is consultative, not supervisory. The point that we have made all along is that a consultative relationship can still be very meaningful and challenging, but, ultimately, that relationship remains consultative. There is a wide variety of different models in other jurisdictions for the delivery, management and superintending of prosecution services. That relationship can be kept under review when the Assembly takes on legislative responsibility for justice. It does not have to be the answer for all time.

Mr Kennedy:

I welcome the Secretary of State and his officials. I wish to ask a couple of questions that, hopefully, are relatively straightforward.

There is a variety of agreements, concordats, protocols and memoranda of understanding on the possible transfer of policing and justice. Are you in a position to confirm whether those agreements will become individual agreements between the Northern Ireland Assembly and Executive and their various partners, including the Government of the Irish Republic, at the point of devolution of policing and justice or whether they will remain the ultimate property of Her Majesty's Government?

That leads on to the issue of North/South co-operation, which has been a fairly central tenet of previous agreements under devolution, including the Belfast Agreement and the St Andrews Agreement, and the checks and balances that exist under those agreements, such as the presence of representatives from the two political traditions in Northern Ireland at North/South joint meetings. There has been some silence on that issue and on the North/South co-operation concordat that is linked to it. I would like some clarity on that.

The Secretary of State for Northern Ireland:

What clarity are you seeking specifically?

Mr Kennedy:

I seek clarity in relation to the custom and practice that were established under the Belfast Agreement and the St Andrews Agreement, whereby a Minister from the unionist tradition is accompanied by a Minister from the nationalist/republican tradition at all North/South ministerial meetings. If there is North/South co-operation on matters of policing and justice, will the Northern Ireland Minister for policing and justice attend such meetings without the safety net that was established under the Belfast Agreement for it to be clearly seen that there is unionist participation at such events?

Finally, I wish to ask about the protocol on the handling arrangements for national security-related matters after devolution of policing and justice, which makes for quite interesting reading. The protocol states:

“After devolution of policing and justice, the Northern Ireland Minister of Justice (hereafter referred to as the Minister of Justice) will be responsible for policing and criminal justice policy.”

There is a footnote to that, which states:

“Except in respect of any reserved matters that the Assembly has not requested should be transferred — eg 50/50 recruitment and parading”.

For the sake of clarity, I want to know whether responsibility for both those matters is going to be transferred with the devolution of policing and justice powers.

The Secretary of State for Northern Ireland:

I will take your questions in reverse order and see whether I can provide a bit of light. I cannot guarantee that I will, but I will give it a go.

I am almost encouraged by what you said about 9 March, but I will not be presumptuous.

Mr Kennedy:

Please do not be, because you have had a difficult morning already.

The Secretary of State for Northern Ireland:

Yes, circling round and round and waiting. However, we were eventually cleared to land, so I only hope that the same thing will happen here.

As the timetable in the Hillsborough Castle Agreement shows, progress on parading is envisaged as the year goes on so that a transfer of responsibility could take place. As I understand it, such a transfer is not about to be requested, because it will require a cross-community vote.

We remain responsible for 50:50 recruitment but we anticipate that the requirements for which the policy was established will be met within a year.

Mr Kennedy:

So, the responsibility will not be transferred.

The Secretary of State for Northern Ireland:

Responsibility for 50:50 recruitment will remain with us, but, as I said, the Patten requirements will be met within a year. That is one issue on which we can all hope for the same outcome, because it is a good outcome. We will get to the 30% mark, which all of us will be very pleased to see. The special arrangements that had to be put in place will remain only for another year.

As I said, my expectation about the transfer of responsibility for parades is that there will be a cross-community vote on it at some point in the Assembly. If, as a result of that vote, a transfer of those powers is requested, we will be only too happy to effect that.

I am not sure whether to call any document on North/South co-operation a concordat or an agreement. There was quite a lot of conversation on the plane about the difference between concordats, agreements, protocols and memorandums of understanding.

Mr McCartney:

Is that why you were delayed?

The Secretary of State for Northern Ireland:

That is why we were delayed, because there was a lot for us to cover.

Mr Kennedy, you were correct to make the point that you did. At present, it would be possible for a justice Minister to meet with, for example, the Irish Minister for Justice, unaccompanied by somebody from another group. That is the position at the moment, but it is important to note that if, after the transfer of policing and justice powers — I will be optimistic about that — it is decided that the document should be amended, it can be. There is no requirement for it to remain unchanged, which brings me on to your first question about the status of all the various concordats, protocols, memorandums of understanding and agreements.

Each one is different, because each one has been cast differently. For example, the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on police co-operation is legally binding between those two countries. Therefore, in order to rightly include the request that the Committee has made for the Minister of justice to be a party to that agreement, we have to seek amendment through the British Government to the Irish Government, because only the British Government can make treaties. That is why that agreement has to be changed in that way.

Therefore, it may be helpful if I ask my officials to write to the Committee to provide the status of each of the seven documents. After seeing that, I am sure that you will have been entertained, although I suspect that it will not have fundamentally changed any views that you have. However, clarity is always helpful.

The Chairperson:

It would be a case of writing to the Committee rather than to Mr Kennedy directly.

The Secretary of State for Northern Ireland:

We could do that in the next day or two to give the Committee precise clarity on the status of each agreement, each memorandum, each concordat and, of course, the protocol.

Mr Attwood:

I will make two brief comments, after which I will ask a question. It is not accurate to say that

the requirements of the Patten report will be met when 30% of police officers come from a Catholic background. Patten said that it is necessary to achieve a representative police service and that special measures might need to continue after 10 years were up. In my view, you have chosen not to adopt the Patten model, recommendations or outcome. It will now take up to 30 years to achieve a balance of police officers and, on the basis of current figures, 60, 70 or even 80 years to achieve balance on the civilian side of the PSNI.

You said that the national security protocol was developed with a “great deal of considered judgement”. I do not agree with you. Paragraph 8i of the national security protocol completely misrepresents the relationship between the Minister of justice and the policing and justice agencies. It states:

“Northern Ireland policing and justice agencies are accountable to the Minister of Justice on all devolved policing and justice matters;”.

That is not the case. Therefore, a document that contains a “great deal of considered judgement” has got that point fundamentally wrong.

Alex Maskey asked a good question about the duty to disclose, and you confirmed that there would be a duty only to communicate on national security matters. Paragraph 5 of the national security protocol states that that duty, and on what terms information is provided, will be determined by the British Government. That is not a satisfactory way in which to deal with potentially critical cases such as a collapsed trial in the vein of the Donaldson/Kearney trial, an MI5 operation that goes wrong, or when the Serious Organised Crime Agency (SOCA) seizes assets of a senior republican or a senior loyalist. It will not reassure the public of the North to know that the British Government will decide what information is shared, and on what terms that information is shared. Although I recognise your good intentions, there is nothing concrete in paragraph 5 of the national security protocol to bring about the required level of trust and confidence.

The Good Friday Agreement’s single biggest achievement has been on policing. The Policing Board was never suspended, nor did it reach a position of not meeting for 150 days. It was never on the verge of collapse, because political parties, especially in the first mandate, knew that that institution was too precious to jeopardise. However, the protocol on policing architecture does precisely that.

I have one question: did you not heed the warning in paragraph 6.15 of the Patten report? It states:

“It is ... vital that the clock is not turned back to the situation before 1969, when the police were seen to be subject to direction by the Minister of Home Affairs.”

How do you reconcile that very strong wording in the Patten report with your proposal on the protocol, given the relationship that there is to be between the Minister of justice and the Chief Constable? The danger is that your proposal will replicate the situation that existed before 1969. A wise man has said that the proposal will profoundly distort the effective working of a tripartite structure and will have the effect of ditching the carefully crafted statutory provisions that deal with the termination of the appointment of Chief Constables and that provide the fundamental safeguards to their independence.

I have asked you to consider the protocol, Secretary of State. We have been in correspondence, and, last night, you told me that, at present, the British Government have no intention of imposing it. Today, I ask you to withdraw the protocol. It is so flawed and is in such conflict with good practice on policing over the past 10 years that if you do not withdraw it, you will be leaving a document on the table that is dangerous for the future of policing in the North.

The Secretary of State for Northern Ireland:

Thank you for your comments. You are right to say that we have corresponded. Let us be very clear about this: we share a fundamental commitment to Patten. I do not desist from a word of Patten’s vision, which has, by and large, been achieved. Although it is not the only example of the success of the process, it is one of the greatest successes.

Of course it matters to get this right. I would be foolish if I left this Committee thinking that even though I think that I have got this right, I will not promise to look one more time at our proposals for you. Nonetheless, bear in mind that although this is a high-level description, it is one that tries to make sense of the statutory responsibilities that have been imposed on various individuals and institutions and of the necessary tripartite arrangements. It recognises, for example, the role that a justice Committee would, and should, want, although that is a matter for you to decide, and it does so in a way that does not diminish the responsibility of the Policing

Board but that leaves people with clarity about their responsibilities and accountability.

I do not feel that I am fundamentally, in any shape or form, doing something that is other than in the spirit of Patten. Nonetheless, it is important, notwithstanding my arguments, that I look over our proposals one more time, and I will undertake to do that. However, we need to suggest an architecture by which this can work. It is important to remember, as Patten said:

“that the Secretary of State ... should be able to set long-term governmental objectives or principles; the Policing Board should set medium-term objectives and priorities; and the police should develop the short-term tactical plans for delivering those objectives.”

Patten recognised the difference between scrutiny and accountability. I believe that the arrangements that we have recommended are likely to work. Having said that, I am not deaf, and I will undertake to go back one more time. If specific proposals remain from where we are sitting, Alex, come back to me and let me look at them again. I do not want to create false optimism that I will recommend a different protocol or, rather, a different set of arrangements, but I am happy to consider things again. None of us should be so intransigent that because we think that we have got to a certain point, that is it. I want to think that, but let me look at it again, and if there are specific areas that you think that we need to look at, we will burrow in on those and examine and test them. However, we have to test them against recognising statutory responsibility and against, as you rightly pointed out, the spirit of Patten. I believe that we are much closer to the spirit of Patten than we are apart from it.

Mr Hamilton:

Thank you, Secretary of State. I will try to ask my question with less theatrics. I am sorry, Danny, I should apologise.

Mr Kennedy:

Thank you.

Mr Hamilton:

The national security protocol contains a section on dispute resolution and the power to vary the terms of the protocol. How do you envisage that working in practice if, post devolution of policing and justice powers, there would be any such disputes or agreement that there is a need to vary the terms of the protocol? Are you able to draw on any experience, say from Scotland, as to how such circumstances are dealt with?

The Secretary of State for Northern Ireland:

Again, remember that this is not a legal document. It is a practical arrangement, and, undoubtedly, the relationship between the justice Minister and the Secretary of State will be extremely important in building trust. However, there is a presumption to communicate. There is a regular process that needs to take place, which contains measures to safeguard any concerns that may arise.

This is like the evolution of the Assembly and the devolutionary arrangements. Matters may arise shortly after the devolution of policing and justice, assuming that it takes place, which may raise questions that we have not anticipated. However, I would like to think that we have anticipated them. The member's comparison with Scotland is helpful. However, the problems that Scotland is most likely to face from threats from terrorist organisations are, by and large, likely to be different, which I think is one of Alex's concerns, and which are the sorts of concerns that people have here.

Whatever people's individual views on the matter, this is, for obvious reasons, a much more sensitive issue in Northern Ireland than in Scotland. I am not saying that it is not a sensitive matter in Scotland, but it tends to be sensitive there simply as a matter of principle. Nonetheless, the British Government has maintained their principle that national security is national. In Northern Ireland, for reasons that everyone would and should want to understand, it is different. That is why there are exceptional arrangements here, and why the protocol was required to be drawn up in its current form.

I hope that I or any future Secretary of State would be sensitive to that, because this is about confidence and trust. However, it is not a game to be fought by one side against another. This issue, as everyone here knows, is about people's lives. The reason that we need to deal with the threat from dissident republicans is because everyone in Northern Ireland is at risk; not just a particular community or faith. The last individual who was very nearly murdered was a Catholic police officer. The two soldiers who were murdered last year were not in Northern Ireland to serve any function; they were here as they might be garrisoned in any other part of the world, preparing for a humanitarian mission in Afghanistan.

Therefore, this is an issue for everyone. It does not belong to any one side. No one has

ownership of this in that if one does this, it is a good thing, and if one does that, it is a bad thing. This affects everyone. I put that on the table not because there is any direct intelligence to suggest an imminent threat to Northern Ireland from al-Qaeda or related organisations. However, it is inconceivable that in the coming months and years that the threats experienced in Great Britain or the Republic of Ireland will not also be threats in Northern Ireland. To imagine that there could not, or would not, be such threats, and to take no precautions on that basis, would be very foolish.

These arrangements, therefore, have to stand up to not only where the threats have been in the past and where we may see the threats now but to the threats for the future. The sharing of information with the justice Minister has to ensure that there is confidence for all the politicians in Northern Ireland and the justice Minister, and confidence, for example, that a foreign power, which shares information with us on matters of national security, can be confident that the arrangements in place in any jurisdiction in the United Kingdom will protect the passage of that information. Such information may not come from our service, but from another service, and that passage, and those protocols, have to reassure Governments around the world.

Therefore, this is a test for not only here; it is a bigger test than that. In saying this, however, I do not, in any shape or form, marginalise the concerns being raised here. I respect them.

Mr McCartney:

Thank you for your presentation. You spoke about the timetable for the legislative process. Are you confident that all aspects of that process are in place, and that the transfer will be smooth?

The Secretary of State for Northern Ireland:

Yes. The biggest issue is the vote on 9 March, and if the Assembly has the confidence to pass that vote, I am confident that we will meet all the requirements. However, as I said in my opening remarks, Raymond, Northern Ireland is looking at £800 million that it will not get otherwise. It is looking for a stability that will allow us, as the Independent Monitoring Commission said, to make the most effective intervention on the activities of the very small number of people who refuse to accept that people in Northern Ireland want to follow a peaceful political path wholly and entirely.

Without that vote, regardless of the political difficulties that would follow, we would all lose our ability to make the biggest possible impact to deal with those who want to bring down the political institutions and drag Northern Ireland back to a place to which nobody wants to go. However, they have little or no community support; that is why the vote on 9 March matters so much. It is important that everyone vote for it because it would send a unanimous signal that nobody will allow individual differences to be bigger than the ability to unite in Northern Ireland and for people to take responsibility for everything that they possibly can. It would also send a signal to the men of violence who see a very different future: instability and the disruption and destruction of the peace process.

There is much at stake: £800 million is a great deal of money that would not come otherwise; however, much more is at stake. A unanimous vote would be a signal that politics has won and that we are never going back. It would be a signal that Northern Ireland's politics has so matured that, despite outstanding issues and differences, the time has come to say that we can handle this, we are bigger than this, and that our politics will endure. It would send a signal that, despite the difficulties, Northern Ireland will embrace politics as its future.

The Chairperson:

Thank you, Secretary of State. I know that you have gone almost 15 minutes over a tight schedule. The Committee will be working to a very tight timetable over the next few days on the responses, the breakdown, the budget and the status of the seven documents about which Mr Kennedy asked. We have a deadline of 10.00 pm on Tuesday 23 February to allow us to get the report printed for 9 March.

The Secretary of State for Northern Ireland:

We will try to get that information to the Committee by the end of tomorrow.

The Chairperson:

I appreciate your coming along this morning. All members had the opportunity to ask a question. I am sorry that they did not get a second opportunity, although most of them sneaked in more than one question. Thank you, Secretary of State.

The Secretary of State for Northern Ireland:

Thank you very much.

The Chairperson:

Members, do we need a discussion about what we heard from the Secretary of State? The session was recorded by Hansard.

Mr Kennedy:

The additional information will probably require a discussion. However, we cannot have that until we get the information.

The Chairperson:

It is important to be quorate this afternoon and that members stay to deal with the outstanding category 2 list of issues. We have to reach consensus, or not, today so that that can be recorded in the report in relation to the category 2 list of issues.

I must also impress upon members that we need to meet on a number of occasions next week, given the tight schedule for the report. Committee staff will be working during this weekend and next to get everything in place. I want members' co-operation during the next number of days. We will try our best to schedule meetings to suit members.

If there is no other business, I want to discuss one further issue. At our meeting on 9 February 2010, members agreed to seek views on the issue regarding the Police Ombudsman. I want to revisit that issue this afternoon. It would be helpful if members could have a conversation from their various party perspectives on that issue.

Are members content that we suspend the session until 2.30 pm?

Mr Attwood:

I believe that I informed you, Chairman, that I will have difficulty getting to this afternoon's session. Later, the Policing Board will meet to discuss some important business. At the same time, there is a meeting of the Assembly Commission. Another problem is that Declan O'Loan may have to attend a funeral. I need to flag that up.

The Chairperson:

Quite frankly, I also have urgent business at the board this afternoon, for which I really should be

there. I had to prioritise. Other members have to do the same. If the meeting is quorate this afternoon, which I hope that it will be, it will proceed.

The Secretary of State pulled out the stops to get to the meeting, as did the First Minister and the deputy First Minister. We agreed that the meeting would go ahead to coincide with their diaries, given the tight timescale. I appreciate where you are coming from, Alex. However, there are pressures. We must continue the meeting this afternoon.

Mr Attwood:

I am not saying that we should not have the meeting; I am simply pointing out that it may be difficult.

The Chairperson:

I understand. I also have a funeral to attend, which I am going to now. I will come back here for 2.30 pm. That is the situation. The meeting is suspended until 2.30 pm. Thank you.