



Northern Ireland  
Assembly

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**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

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**OFFICIAL REPORT  
(Hansard)**

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**Review of the Initial Ministerial  
Provision in relation to the Department  
of Justice and the arrangements  
from 1 May 2012**

11 October 2011

**NORTHERN IRELAND ASSEMBLY**

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REVIEW COMMITTEE**

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**Review of the Initial Ministerial Provision in Relation to the  
Department of Justice and Recommendations Relating to the  
Arrangements from 1 May 2012**

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11 October 2011

**Members present for all or part of the proceedings:**

Mr Stephen Moutray (Chairperson)  
Mr Pat Sheehan (Deputy Chairperson)  
Mr Roy Beggs  
Mr Gregory Campbell  
Mr Pat Doherty  
Mr Paul Givan  
Mr Simon Hamilton  
Mr Raymond McCartney  
Mrs Sandra Overend

**In attendance:**

Mr Ray McCaffrey        )        Research and Information Service  
Mr Tim Moore            )

**The Chairperson:**

We will now receive a Research and Information Service briefing from Mr Tim Moore, senior researcher, and Mr Ray McCaffrey, research officer. I welcome you both to the Committee.

**Mr Tim Moore (Research and Information Service):**

Thanks very much, Chair. Members will have a very brief paper from the Assembly's Research and Information Service, which tries to do two things.

**The Committee Clerk:**

That paper is being copied at the moment.

**Mr Moore:**

In the absence of the paper —

**The Chairperson:**

Just talk slowly. *[Laughter.]*

**Mr Moore:**

I will talk slowly and hope that it arrives. The paper tries to do two things: to give members some background to the so-called sunset clause, which states that the Department of Justice dissolves on 1 May 2012 unless something happens. The paper discusses what those “somethings” might be. It also provides background on the legal framework for the sunset clause.

The Committee will shortly be receiving legal advice; this paper is from the Assembly’s Research and Information Service, and is something different — we have tried, from a lay person’s point of view, to identify the framework that is clear in the legislation. When you look at that, there will be hypotheticals that jump out at you — the “what if?” scenarios. We have not attempted to address those; the Legal Services team will do that. Ray will talk you through the framework.

I will start by giving you a brief run through the timeline for the sunset clause. The first mention of the 2012 deadline for the Department of Justice comes in a letter from the First Minister and the deputy First Minister to this Committee in November 2008. There had been ongoing discussions about the devolution of policing and justice, and this Committee had been considering the issue. In November 2008, the First Minister and the deputy First Minister wrote to the Committee to say that although they had agreed a way forward, the arrangements would be subject to a sunset clause. The Committee considered that issue and published a report in January 2009.

I will run through the recommendations of that report. It supported the provision for the appointment of the Minister by a majority of Assembly Members voting on a cross-community basis. The Minister would be nominated by Members of the Assembly. However, it was also agreed that the arrangements would be:

“subject to a sunset clause which would bring them to an end not later than May 2012.”

That was in the Committee's report, which said that the arrangements would be reviewed. The Committee also recommended that, following a period of operation, and prior to May 2012, the arrangements would be reviewed. It was also recommended that permanent arrangements be put in place in May 2012. Following on from that, in March 2010, a motion tabled by the First Minister and the deputy First Minister to devolve policing and justice powers was voted on and agreed in the Assembly. The Minister was appointed in April 2010. That Minister, David Ford, was reappointed in May 2011.

One of the issues that we addressed when we were looking at the historical background was whether it was envisaged that the Department would run for a certain period before it would be reviewed and before it would be possible to come to some judgement. We could find nothing on that. The issue dates back to November 2008 and the letter from the First Minister and the deputy First Minister. That is when the May 2012 deadline emerged. That deadline did not change from then on. The other question is: was a plan B envisaged? In all the parliamentary debates around that, when officials were questioned on whether there was a plan B to dissolution on 1 May, outside of the framework providing the legislation, the answer was no. The legislation is the framework, and there is nothing outside of that.

That is the broad historical background. Ray will take members through the framework. As I have said, this is not legal advice; it is from a Research and Information Service standpoint.

**Mr Ray McCaffrey (Research and Information Service):**

Unfortunately, members do not have the chart in front of them. That makes it slightly tricky, but I will try my best to walk members through the process. We have attempted to present the relevant aspects of the legislation in an accessible manner. As Tim said, Legal Services will, I am sure, address the issues that arise and the consequences of choosing one option over another.

The starting point is that the Justice Department will dissolve on 1 May 2012 unless, before that date, one of two options is taken. The question remains: what happens if no action is taken by the Assembly? That is not a matter for the Research and Information Service to speculate on. The first option is for the Assembly to pass a resolution that the Department should continue operating from 1 May 2012. That poses another hypothetical question: if that happens, what happens beyond the resolution with regard to the Assembly's ability to legislate on the matter at a future date?

The other option is for the Assembly to pass a second Act. That Act could provide for the Department to continue operating from 1 May 2012, without repealing the initial ministerial provision. Therefore, the Minister would be appointed under the current system. Alternatively, the second Act could repeal that ministerial provision with effect from a specified date. That begs the question of what a reasonable specified date would be. Would it have to be a date in the calendar or could it be timed to coincide with an event such as the next Assembly election, for example? Nevertheless, if a second Act were to repeal that initial ministerial provision, a determination would need to be made under section 17 of the Northern Ireland Act 1998.

Members are then left with a range of options to choose from. Unfortunately, you do not have the benefit of having the chart in front of you, so I will quickly run through those options. The first option is for the Department to be in the charge of a Northern Ireland Minister who is nominated by the First Minister and the deputy First Minister and approved by a resolution of the Assembly on a cross-community basis.

The second option is for the Department to be in the charge of two Ministers acting jointly, nominated by the First Minister and the deputy First Minister and approved by a resolution of the Assembly on a cross-community basis.

The third option is for the Department to be in the charge of a Northern Ireland Minister who is supported by a junior Minister. In that case, the role of the Minister and the junior Minister would rotate at intervals determined under the Act. The Minister and the junior Minister would also be nominated by the First Minister and the deputy First Minister and approved by a resolution of the Assembly on a cross-community basis.

The fourth option is that the second Act may provide for the Department to be in the charge of the First Minister and the deputy First Minister, acting jointly, with effect from a specified date.

The final option is for the Department to be in the charge of a Northern Ireland Minister and a deputy Minister, who would be elected by the Assembly. Any Member could stand, if he or she belonged to the largest or second-largest political designation. Again, those Ministers would be elected on a cross-community basis.

However, if none of those options for ministerial provision is put in place, the position would have to be filled according to section 18 of the 1998 Act, under which the other

Ministers have been appointed. That means that the positions would be filled under the d'Hondt mechanism.

I apologise that the chart was not available. It would have been easier to follow.

**The Chairperson:**

Are there any questions from members at this point? We are still waiting for the paper.

**Mr Beggs:**

Should section 18 of the 1998 Act be used, namely d'Hondt, will that require a single post to be filled or the complete running of the d'Hondt mechanism?

**Mr Moore:**

Let me say first that this is not legal advice; this is just Research and Library Service's understanding. Legal advisers will be here later. If the second Act were to repeal the initial ministerial provision for the way that the Minister is appointed, d'Hondt would be used. A section 17 determination would be made by the First Minister and the deputy First Minister. The d'Hondt system would run for every post once that determination was made. Strangely, our understanding is that if members were to pick another ministerial model, d'Hondt would run for all the other Ministers, but not for the Justice Minister because another model would have been adopted for that appointment. That is if the initial provision were repealed.

**Mr Moutray:**

Thank you. There are no more questions at this point.

**The Committee Clerk:**

I would be grateful if Tim and Ray would stay at the table until the paper has been received. Members may wish to ask questions at that point. We can cover some other aspects of this matter now.

**The Chairperson:**

I remind members that this session is being recorded for the Hansard report. I am sure that members are aware that, yesterday, the Assembly approved the Committee's motion as follows:

“That, pursuant to Standing Order 59(4)(b), this Assembly refers to the Assembly and Executive Review Committee the matter of a review of the initial Ministerial provision in relation to the Department of Justice and agrees that the Assembly and Executive Review Committee should make recommendations relating to the provision that should exist

from 1 May 2012.”

I refer members to the Committee Clerk’s memo at tab 2, which sets out a suggested approach to this review and includes draft terms of reference, proposed timescales, a draft stakeholder list and a draft stakeholder options paper, plus related papers that have been commissioned from the Research and Information Service and Legal Services. I ask the Committee Clerk to speak to that memo.

**The Committee Clerk:**

At tab 2, a memo sets out a number of matters, and the Chair will ask the Committee to make a decision on two or three items. I will outline exactly what those are. First, let me turn to the draft terms of reference of the review at tab 3 in members’ packs. The purpose of the review is to evaluate the suitability/adequacy of the initial ministerial provision and to make recommendations for the permanent arrangements that should be made in relation to ministerial provision from 1 May 2012.

The second item is the proposed timetable of the review. That is at tab 4. The timetable, as my note says, is challenging in that we had planned that the Committee might approve today, 11 October, the draft options and consultation papers, but that might not now be possible because there is some final tidying up of legal and technical points that must be checked and cross-checked. The draft options paper that is being tabled now will be spoken to in closed session when we have legal advice before us.

The plan was that the consultation paper would go out this week. That would allow the political parties, the independent member, and, indeed, the two Departments — the Department of Justice, and the Office of the First Minister and deputy First Minister (OFMDFM) — and their corresponding Committees to respond. Under this timetable, the response would be expected by 28 October 2011. That is the deadline for stakeholder submissions in the current chart. The secretariat would then put together a paper on the basis of the evidence that is received from stakeholders: the political parties, primarily. The plan is that an agreed position could be decided upon at a meeting of this Committee on 8 November. From there, a motion would be tabled in the Assembly on the Committee’s intention to bring forward its report on the basis of agreement reached on 8 November. The first draft would be scrutinised by the Committee on 15 November. If Committee members were content, it would go to print. On 21 November, the Committee’s report and its recommendations would be available for plenary debate.

Members may ask why there is such haste and why the Committee's report needs to be debated on 21 November. If it is the wish of the Committee and the Assembly that a second Act be in place by 1 May 2012, OFMDFM needs to draw up the Bill, answer on it and process it through scrutiny by this Committee and its various stages. OFMDFM told us that to get an Act in place — to get Royal Assent by 1 May 2012 — would require the Bill's introduction and, indeed, Second Stage prior to Christmas, hence the timetable. Committee Stage, when the Committee for the Office of the First Minister and deputy First Minister would scrutinise the Bill, would be after Christmas. After that would come debates at Consideration Stage, Further Consideration Stage and Final Stage. Then, the Bill would go through the process of achieving Royal Assent. It is necessary to get all that in place by spring 2012 in order to get an Act in place by 1 May; hence the timetable that is before the Committee this morning.

I know that the Chairperson is going to put a motion to the Committee. The only other thing that I would say to members concerns the proposed consultation with stakeholders, which is outlined at tab 2. I have already said that the political parties, one independent member, two relevant Departments — the Department of Justice and the Office of the First Minister and deputy First Minister — and their respective Committees are the stakeholders who would be corresponded with in that consultation and who would get the consultation document that members will consider in a moment. I will hand back to the Chairperson, who will seek agreement.

**The Chairperson:**

Are members content with the draft terms of reference at tab 3?

**Mr Beggs:**

It is just a pity that so little work was progressed to date. Now, we are faced with an incredible rush. I feel that, as a Committee, we have done little since we were established.

**The Chairperson:**

Are we agreed on the terms of reference?

**Mr Beggs:**

Do we have any choice?

**Mr Campbell:**

In reference to what Roy said, I certainly made the point at the very start that I thought that



this would end up with us being — if not bounced — at least rushed, and exceptionally so. There is no doubt that that is what that timescale will do. However, by the looks of it, we cannot meet the deadline otherwise.

**The Chairperson:**

That is outside our power. Are we agreed on the terms of reference?

*Members indicated assent.*

**Mr McCartney:**

Tim and Ray, are the options that you outlined for the second Act all contained in the 2009 Act?

**Mr Moore:**

Yes.

**Mr McCartney:**

So the range of options open to us is legislated for even without a new Act?

**Mr Moore:**

It would probably be best to put that question to our colleagues in Legal Services.

**The Chairperson:**

Are members content with the proposed timetable at tab 4?

**Mr Beggs:**

Reluctantly.

*Members indicated assent.*

**The Chairperson:**

Are members content with the proposed stakeholder list at tab 5?

**Mr Givan:**

I am not so sure that we need to ask the other Committees for their views, given that the members of this Committee will be giving their views. I am a little bit reluctant to take this debate into the Committee for Justice. I am not a member of the other Committee that is to be

asked to give its view. However, I do not think that it is necessary for the options to go to the Committee for Justice because we are going to have a discussion about them around this table. It is my view, therefore, that we should not ask the Committee for Justice for its official view on these options.

**The Committee Clerk:**

The suggestion in the detail of the cover note to the Chairperson of the Committee for Justice, Mr Givan, and the Chair of the Committee for the Office of the First Minister and deputy First Minister, Tom Elliott, is that the respective Departments will copy the Committees into their responses. At that point, it will be up to those Committees to decide whether they wish to comment. It may be useful for the other Committees to have sight of the options paper in order for them to understand the timetable to which this Committee is operating. However, if a Committee does not want to respond, it, of course, has that option.

**The Chairperson:**

Are you content with that, Mr Givan?

**Mr Givan:**

Yes. That is fine.

**The Chairperson:**

Are members content with the proposed stakeholder list at tab 5?

*Members indicated assent.*

**The Committee Clerk:**

I apologise. The research paper that is being distributed should have been at the back of an earlier paper. Indeed, that was what Tim and Ray from the Research and Information Service were talking about earlier. The useful flow diagram that sets out the options in layperson's terms is at the back. Members may want to glance at that and ask further questions.

**The Assistant Committee Clerk:**

I apologise. Due to a slight change in the options, the latest version of that paper is being copied now. I understand that it will be with members in a moment.

**Mr Moore:**

There is a further option. We can talk members through this paper, and if the other paper is

here in time, we can mention the fifth option. It is a useful framework for members to look at.

**Mr Campbell:**

I appreciate that the bigger picture is about the timing of how we carry out the business to meet a deadline that was not of our making. Has there been a problem? Why are we getting papers, which seem to be getting copied as the meeting progresses, at such an exceptionally late hour?

**The Chairperson:**

I will let the Committee Clerk speak to that.

**The Committee Clerk:**

The answer to that will be provided when the Committee goes into closed session, goes through the draft options paper and hears the legal advice.

Basically, the 1998 Act and the 2009 Justice Act prescribe — that is my word — the legislation in quite some detail, and that restricts the options very clearly. Given that the paper is very legalistic, it has taken some time to put that out in a user-friendly consultation document, which is what we have attempted to do. We have liaised with the procedural side of the secretariat and with Legal Services to put that document together. Given that the paper has literally just come off the copiers, as you have seen, there is a question about whether we should make some final checks on it. That is a subject that can be addressed in closed session, but that is the reason.

**Mr Campbell:**

Is that the reason for the lateness of the other papers as well?

**The Committee Clerk:**

The two interlink in the options that are shown in the diagram. I apologise. The diagram should have been with us a little earlier, but it was changed this morning.

**Mr Moore:**

Yes, it was changed this morning.

**The Committee Clerk:**

The legal advice is quite detailed and precise.

**The Chairperson:**

Members, we are now going into closed session to take legal advice.