



Northern Ireland
Assembly

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

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

15 November 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)

Mr Roy Beggs

Mr Stewart Dickson

Mr Pat Doherty

Mr Paul Givan

Mr Simon Hamilton

Mr Raymond McCartney

Mr Conall McDevitt

The Chairperson:

We move to the review of the initial ministerial provision in relation to the Department of Justice and recommendations relating to the arrangements from 1 May 2012.

I remind members that the Department of Justice dissolves on 1 May 2012 unless, before that date, either the Assembly resolves with cross-community support that the Department is to continue operating from 1 May 2012 or a second Act of the Assembly provides that the Department is to continue operating from that date.

I remind members that the Assembly has referred the issue of the review to the Assembly and Executive Review Committee. The Committee issued a stakeholder options paper with a deadline for submissions of 28 October, and copies of the responses received can be found in today's folder. I advise members that the purpose of today's meeting is to agree the Committee's

final position on the review and to agree a motion for debate on the Committee's report on the review in an Assembly plenary sitting to be requested for 29 November. I advise members that the Committee needs to approve that report at next week's meeting.

I remind members that the Committee agreed, at its meeting of 11 October, that all timings have now moved back one week from the initial timetable. That follows the Committee's decision to defer the decision on its position until today. The timescales are challenging but provide for the possibility that a second Act will be required. For a Bill to receive Royal Assent by 1 May 2012, the Office of the First Minister and deputy First Minister (OFMDFM) indicated that it would want to introduce the Bill and have it reach Second Stage before Christmas. That requires the Committee to conclude its review and to report to the Assembly for debate on 29 November 2011.

If the Committee is content, I propose to structure the meeting as follows. I will ask the Committee Clerk to summarise the background to the current position. I will then ask a member from each political party represented on the Committee to speak to their submission. Copies of submissions are in members' packs. Then, I will ask the Committee Clerk to summarise the position of other stakeholders not represented on the Committee, after which the meeting will move into closed session so that members can receive and consider further legal advice. Finally, the meeting will move back into open session, and the Committee will be asked to agree its final position on the report's recommendations and approve the draft motion for plenary debate. If members are content with that approach, I will ask the Committee Clerk to summarise the background to the current position.

The Committee Clerk:

Members, by way of background, the Committee's motion to undertake the review was approved by the Assembly in the plenary sitting of 10 October 2011. The Committee agreed the review's terms of reference, timescales and stakeholder list at its meeting of 11 October 2011. The Committee also agreed its stakeholder options paper, which was issued on 14 October for a response on 28 October.

I will remind members of the review's terms of reference. Essentially, it has two elements, the first of which is to review the initial ministerial position in relation to the Department of Justice by seeking views from key stakeholders on the suitability and adequacy of that initial provision.

The second important element is to make recommendations on the arrangements from 1 May 2012 for the ministerial provision for the Department of Justice by consulting stakeholders on the options provided in the legislation. The other element of the terms of reference was to review and to report to the Assembly by week commencing 21 November. However, that date has moved back to 29 November, as the Chair said. At last week's meeting of 8 November, the Committee agreed to defer its decision on its position and recommendations until such time as the DUP response was available. That response is now available for consideration, the agreed timescales having been extended by one week, as the Chair said.

Among the paperwork provided for today's meeting, I draw members' attention to two summary tables. The first is a two-page summary. It is set up according to the list of options selected — A, B, or C — and indicates, in the form of a high-level summary, the party and stakeholder positions on those options. The second of the two summary tables is structured by listing the political parties in alphabetical order and, at 10 pages, is somewhat lengthier. Full copies of all eight submissions are also available for members' reference.

That covers the paperwork, which I think members might refer to as we proceed.

The Chairperson:

Thank you. At this point, we will ask a representative from each political party to speak to their submission. We will do that in alphabetical order.

Mr Dickson:

Thank you, Chair. The Alliance Party submission is attached to the report. As you can see, option A is the preferred option. As the Minister stated very clearly in the document, that may be considered to be a rather self-interested option for him, in that he would also be presenting himself to the Assembly as the party leader. Therefore, as Minister, he is prepared to offer his resignation to allow the Assembly either to elect a different Minister if it wishes or to subject him to a confidence motion. As far as we are concerned, option A provides the best option for the Assembly to allow the Department of Justice's role to be continued, and it is the best option for the continuation of the stability that that role has brought to the judicial system and other systems in Northern Ireland. All the other options are debated in our document, and I have nothing further to add to that.

Mr Hamilton:

Thank you, Chair. I think that everybody now has our submission; all the technical glitches have been ironed out. We believe that only two options in the paper present possibilities that are worth further consideration. The first is option A, which represents a continuation of the current situation, and the second is option B3. However, I stress that that is an option in the context of the reorganisation of government Departments.

Mr McDevitt:

Thank you, Chair. The SDLP favours option B3, which is the running of d'Hondt for all Northern Ireland Departments, including the Department of Justice. We do not support any of the other options in the paper.

Mr McCartney:

Of the broad options, our preferred one is option B, and within that, we prefer option B3.

Mr Beggs:

We believe that it is important that we, as an Assembly, become more efficient, and reducing the number of Departments is central to doing that. We think that it would be a missed opportunity if we concentrated on only one issue at this time. Therefore, we believe that there should be discussions to look at the totality of Departments to bring about efficiencies, and the Department of Justice should be rolled into that.

The Chairperson:

Tabled this morning is a letter from the Office of the First Minister and deputy First Minister in relation to its response. I will ask the Committee Clerk to summarise the submissions of the other stakeholders that are not represented on the Committee.

The Committee Clerk:

I refer to table 1 in the meeting folder, which addresses the other stakeholders that are not represented on the Committee. Not all stakeholders responded to the issue of the suitability and adequacy of the initial ministerial position. However, if members want to refer to the second page of that table, they will see that the Green Party in Northern Ireland gave some responses on that issue, in relation to normalising the arrangements for the Department of Justice. Other submissions, including that of the TUV, were sought but not received. The Department of Justice

did not comment specifically on the matter, nor did the two respective Committees: the Committee for Justice and the Committee for the Office of the First Minister and deputy First Minister. As the Chair highlighted, a response was received from the Office of the First Minister and deputy First Minister drawing attention to the fact that the political parties are responding on the matter.

As regards comments by other parties on the substantive arrangements to be put into place by 1 May 2012, the Green Party in Northern Ireland responded by selecting B3, with the caveat that it should be in conjunction with a reduction in the number of Departments. The TUV, as I said, did not respond on that. It spelt out the implications of options A and B, as far as the Department of Justice is concerned, but did not state a preference. The Committee for Justice and the Committee for the Office of the First Minister and deputy First Minister did not respond specifically on this aspect.

The Chairperson:

Thank you. Are there any questions at this point?

Mr McDevitt:

I would like to ask a question on a technical point. Simon has articulated the DUP's position as being conditional on a reduction in the number of Departments. However, our terms of reference do not allow us to report on anything in that area. How can we progress the discussion conditional on something that is outwith our terms of reference?

The Committee Clerk:

The options paper highlighted in red that it was a list of possible options within the specific legislation set up, which is commonly called the sunset clause. As far as stakeholders and political parties coming back with riders is concerned, the Committee will have to deal with those as stated. On the question of whether it is outside the Committee's terms of reference, the options paper specifically said that these were the possible options. It is for the Committee to consider the matter.

Mr McDevitt:

It is not the options paper that is of concern. Frankly, that is academic. What concerns me is what the Assembly agreed to. It agreed to a motion, pursuant to Standing Order 59(4)(b), which

makes no mention whatsoever about anything except the Department of Justice. Therefore, how can this Committee make a report that goes beyond what the Assembly has mandated it to report on?

The Committee Clerk:

The Assembly agreed to:

“make recommendations relating to the provision that should exist from 1 May 2012.”

The issue is whether you feel that to go outside the options paper by proposing option B3 plus another point falls within making recommendations. I leave that for debate by members.

Mr McDevitt:

This is quite an important point. I do not consider that to be a loose phrase. When I agreed to it, I was very clear in my mind that what we were dealing with was provision in relation to the Department of Justice, not the arrangement of the Northern Ireland Executive. It may be that we should seek legal advice on what jurisdiction this Committee has or does not have, because I do not want us to waste a lot of time having a debate for which we have no locus.

The Committee Clerk:

The member is right to look at the specific terms of reference in respect of the sanction given by the Assembly. However, the Clerk Assistant has just made an important point to me. The remit of the Assembly and Executive Review Committee is much broader, in that it looks at Parts III and IV of the Northern Ireland Act 1998, which could take in such things as the number of Departments.

Mr McDevitt:

I will be very specific about this. The terms of reference do not mention Parts III or IV. That is not the piece of work that we are doing here. That is a separate piece of work that would require, if we wished to report on it, a separate motion to the Assembly that would have to be agreed by this Committee. As I understand it, that is how we do business round here.

Therefore, I do not see, either in the motion that went before the Assembly or in the terms of reference that we have been working to in good faith, the opportunity to open up a separate debate on the number of Departments. However, if people can point me to that, that is OK. I am not making a political point; it is a procedural one.

Mr Hamilton:

I feel aggrieved that the DUP is singled out as a party.

Mr McDevitt:

It was not personal.

Mr Hamilton:

The Ulster Unionist Party created option E as well. I am sure that Roy would agree with me that that is the way that this sort of thing works. Conall can live in a technical bubble all he wants; maybe that is where he is happiest. However, even including the options that are laid out, the reality is that if you look at some of the options under option B, you can see that they talk about putting justice powers into OFMDFM. That would constitute a reorganisation of government. I presume that there would not be a situation where you would have a Justice Ministry without Ministers. This has not been explored as an option — I am just taking the point to its natural conclusion — but you would be diminishing the number of Departments by doing that. It would mean a reorganisation of government and a reduction in the number of Departments. So, the options in the consultation paper that went out to parties represented on this Committee and other parties did, in fact, contemplate a reorganisation and a reduction in the number of Departments. Perhaps the paper was not as explicit as that, but that is what it said. People may want to live in a technical bubble, but, even within that, we have contemplated reorganising and reducing the number of Departments.

Mr Beggs:

My understanding is that an Assembly Committee can produce a report on any area over which it has competence, and that includes the wider issues that have been referred to. I must admit that I was surprised that a motion went to the Assembly in the first place, because we already have the authority to make a report to the Assembly in areas for which we are accountable. Ultimately, it is up to the Assembly to decide on the report. I would sound a note of caution around the difficulties that appear to some to have been caused by going to the Assembly to seek approval to produce the report, because my understanding is that we already had the authority to delve into that area and to produce some form of report. Ultimately, it is up to the Assembly to decide whether it wants to accept or to ignore that report. However, provided that we are not stepping on the toes of another Committee that has a specific responsibility in this area, there should not be

any difficulty.

Mr McDevitt:

Simon is right; it is a technical point, but it has merit as a technical point. I would like to make a couple of observations. If you follow the logic of Simon's argument, you can only ever be talking about reducing the number of Departments by one, because that is the only potential consequential reduction that can be made as a result of the options paper. Maybe the DUP should clarify its position. Is it talking about a reorganisation that would be a reduction in the number of Departments by no more than one? If that is the case, they could, technically, construct an argument around the options paper. However, if it is talking about a greater reduction, my point stands.

Mr Hamilton:

For somebody who did not want us to talk about a reorganisation and a reduction in the number of Departments, Conall has now given me the opportunity to do so. I am quite happy to do that. Our position is option A, a continuation of current arrangements, or option B3, with the rider that we look at a reorganisation and reduction in the number of Departments. I am happy to do that and to bring back detailed proposals as to what that would look like in the DUP's view. In fact, I am more than happy to do so.

Mr McDevitt:

I still feel uncomfortable, Chair. I think that we should take advice on this. Roy may have a point, but the fact is that we have chosen to do this process by bringing a motion to the Assembly, and we have agreed terms of reference. I want to know what the parameters of those terms of reference are. If they allow us to stray into broader issues, to what extent do they allow us to do so? Or, do they confine us to the fundamental question, which is about the future operation of the Department of Justice after May 2012?

The Chairperson:

Our next item of business is to take legal advice, so we can incorporate that into that session. At this point, we declare the meeting closed to the public.

The meeting continued in private session.

On resuming —

The Chairperson:

I again declare the meeting open to the public. I ask members and those in attendance to ensure that mobile phones are switched off because there has been interference on the audio feed. I will bring in the Committee Clerk at this point.

The Committee Clerk:

This is basically a summary of the stakeholder responses; it was primarily the political parties that responded. I refer to the two-page table in members' packs, following the memo. That reflects the broad options: A, B, C, D and E. To the right are the stakeholders' views. To take the options in order, option A states:

“The Assembly resolves that the Department is to continue operating from 1 May 2012.”

That means that the Department would continue as is. That option was supported by the Alliance Party and the DUP. Option B, specifically B3, is for a second Act before 1 May 2012. That is a second Act:

“where the initial ministerial provision is repealed but no alternative arrangements are put in place and where the Minister for Justice would be appointed under the d'Hondt mechanism in line with other Northern Ireland Ministers.”

That was supported by Sinn Féin, the SDLP and the Green Party. It was supported by the DUP, with the caveat that there should be a reduction in the number of Departments. It was opposed by the Alliance Party.

That is a high-level summary of where the parties stand on the alternatives. The record of comments on the adequacy and suitability of the initial provision is another element of the review. That was not commented on by a good number of the political parties. If members want to comment on that now or discuss it further, that can be recorded and reflected in the Committee report.

Mr Hamilton:

There is consensus on some matters but not a broad consensus on any of the options. Given the differences of opinion, is it in order to propose that the Committee draft a report that outlines all the different opinions, summarises the consultation outcome, all the options, who endorsed which option and why, and any other comments? I appreciate that one party that is represented here did not pick an option as such, but it did comment in its own terms. We have done that before on

other issues and it reflects the reality of where we are with this issue at the moment.

The Chairperson:

There are no other proposals. Do we have agreement on Mr Hamilton's proposal?

Members indicated assent.

The Chairperson:

Thank you. I remind members that a draft of the Committee's report will be presented at next week's meeting. The Committee will be asked to approve the report at that meeting and order it to be printed so that it will be ready for the debate on 29 November.

Turning to the draft motion for debate, the Committee needs to consider whether the usual hour and a half will be sufficient. The Chairperson will have 15 minutes to move the motion and 15 minutes to make a winding-up speech, which will leave only an hour for all other Members who wish to speak. Members may wish to have two hours for debate, and we can put that request to the Business Office.

Mr Hamilton:

Two hours?

The Chairperson:

Two hours. Are we agreed on that?

Mr Hamilton:

An hour and a half would do, Chair.

Mr McDevitt:

On a technical point, an hour and a half squeezes us and the Alliance Party. Do you need 15 minutes on each side, Chair?

The Chairperson:

I do not think so.

Mr McDevitt:

That could get an extra Member in.

The Committee Clerk:

That could be put to the Business Committee. The 15 minutes is convention; I think it depends on the length of the debate. If it is an hour and a half, it is 15 minutes to propose and 15 minutes to make a winding-up speech.

Mr Beggs:

It is 15 minutes to propose and 10 minutes to make a winding-up speech.

Mr Hamilton:

There is no ministerial response. Is that right?

Mr Beggs:

Yes.

The Chairperson:

Two hours, members, or an hour and a half?

Mr Beggs:

We should just stick to normal procedures. If there are several amendments, the time will be widened out a bit.

The Chairperson:

OK. Are we agreed on an hour and a half?

Members indicated assent.

The Chairperson:

At tab 4 of members' packs is a copy of the motion for the debate. Are members content with that?

Mr Hamilton:

On a technical point, the motion states: “approves the Report”. If we agree a report that does not take a definitive position but instead contains a collection of views, is “approves” the right word? Would “notes” be better? Perhaps we can come back to that.

The Committee Clerk:

On the basis of what the Committee has agreed, it sounds like, if I am right, there will not be recommendations in the report, so “and recommendation(s)” should be removed from the draft motion. Is that the Committee’s view?

Mr Beggs:

Technically, does the Assembly approve a report that does not contain recommendations or does it just note it?

Mr Hamilton:

Can we look at what we did at the start of the calendar year with the statutory review of the election of the First Minister and deputy First Minister? It would be interesting to look at the wording of that motion. I cannot remember whether we approved, noted, or whatever.

The Committee Clerk:

I am nearly sure it was “approves”.

Mr Hamilton:

There was no agreement by the Committee and no recommendations on that occasion, or if there were recommendations, they were fairly open-ended.

The Committee Clerk:

Another point is whether the report mentions a proposal that there be a second Act. It sounds like — [*Inaudible due to mobile phone interference.*] That dictates the timescale for this report. If the Committee is keeping open the option of a second Act, the Committee needs to move at its current pace of having a debate on 29 November and passing the matter to OFMDFM to draw up the necessary legislation.

Mr Beggs:

Should the motion state that OFMDFM should be urgently considering a second Act, or something to that effect?

Mr Hamilton:

That insinuates that a view is being taken, does it not?

The Committee Clerk:

It would be reflected in the report.

Mr Hamilton:

Yes. It does not have to be in the motion.

The Committee Clerk:

We can check on the point about “notes” or “approves”, and the removal of “and recommendation(s)”. On the possibility of a second Act, the question is whether the Committee wants to leave that in.

Mr Hamilton:

I think that we have to, because everything is on the table, and nothing is off it.

Mr McDevitt:

It strikes me that it is the words “and recommendation(s)” that are getting us into trouble. Everything else simply acknowledges a report that outlines our findings on the options that we have all considered. As long as “and recommendation(s)” is removed, we do not close the door on a second Act; it is implicit that that is an option.

Mr Beggs:

On another technical issue, it is my understanding that if we want to have a debate on 28 or 29 November, the Committee must submit the motion to the Business Office within the next 20 minutes so that it can be placed on the initial Order Paper.

The Committee Clerk:

Yes. A member of staff will hotfoot it to the Business Office very shortly if the Committee is

agreed.

Mr Hamilton:

Are we taking out:

“and recommendation(s) relating to the arrangements”?

Or are we changing “recommendation(s)” to “deliberations” or something similar?

Mr McDevitt:

Chair, I propose that we just delete “and recommendation(s)”, and look at the wording to see whether it is agreeable to colleagues.

The Chairperson:

Are we agreed on that, and on the timing of an hour and a half for the debate?

Members indicated assent.

Mr Beggs:

We are agreeing that such a report would go further. Whether we agree with the report has yet to be determined. We are agreeing that it should be debated.

The Chairperson:

That is right.