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THE NIO CRIMINAL JUSTICE REVIEW IMPLEMENTATION PLAN

The Northern Ireland Office published on 12 November 2001 its proposals for wide-ranging reform of the criminal justice system of Northern Ireland. This Research Paper considers the background to the proposals and identifies some themes which appear from them. It is submitted that these themes should, if the proposals are implemented, become characteristics of a reformed criminal justice system for Northern Ireland.

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SUMMARY OF KEY POINTS

- 1 The Criminal Justice Review was established on 27 June 1998 by the NIO, in response to provisions contained in the Belfast Agreement. It published a substantial report in March 2000, when the Assembly and Executive were in suspension.
- 2 The NIO published for consultation on 12 November 2001, its response to the Criminal Justice Review's report. The response is in the form of an Implementation Plan, a draft Justice (Northern Ireland) Bill ('the Draft Bill'), and associated explanatory notes. The consultation was originally intended to close on 12 December 2001 but has been extended to 7 January 2002.
- 3 The Government intends to devolve responsibility for policing and justice functions to Northern Ireland after the Assembly elections scheduled for May 2003.
- 4 Devolution of policing and justice functions will necessitate important structural changes. For example, the NIO agrees with the Criminal Justice Review's recommendation that a Department of Justice will be necessary.
- 5 Some themes can be extracted from the mass of proposals, for example:
 - restructuring of the criminal justice system;
 - openness and transparency;
 - new methods of providing justice.
- 6 Amongst the many specific proposals, the NIO proposes to:
 - establish the office of Attorney General for Northern Ireland;
 - establish a new Public Prosecution Service for Northern Ireland;
 - establish a Criminal Justice Inspectorate;
 - establish a Law Commission for Northern Ireland;
 - establish a Judicial Appointments Commission;
 - require the DPP in some cases to consider giving reasons for a decision not to prosecute;
 - introduce a conferencing system of restorative justice for juveniles; and
 - sanction and accredit community restorative justice schemes – outside the courts and the formal criminal justice system.

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1. INTRODUCTION

1.1 The Northern Ireland Office ('the NIO') published on 12 November 2001 its proposals for wide-ranging reform of the criminal justice system of Northern Ireland. The proposals are contained in a substantial Implementation Plan. A draft Justice (Northern Ireland) Bill, which will give legislative effect to a large number of the proposals, has also been published. The NIO is consulting on the proposals until 12 December 2001.

1.2 The Implementation Plan considers, in turn, each of 294 recommendations made in March 2000 by the Criminal Justice Review, and provides a NIO response. The vast majority are accepted, and the NIO indicates how it – or other bodies, such as the Executive or the judiciary – will implement the accepted changes. A few are accepted in principle, or under further consideration.

1.3 This Research Paper, prepared by Research and Library Services, provides a general examination of the Implementation Plan. It does not consider each and every recommendation. Rather, it considers the background to the Plan, and the wider context of justice reform and devolution. It makes some comments on the consultation process itself. It then identifies some themes which appear from the Plan. It is submitted that these themes should, if the proposals are implemented, become characteristics of a reformed criminal justice system for Northern Ireland.

2. THE BELFAST AGREEMENT

2.1 The Criminal Justice Review ('the CJR') was established on 27 June 1998 by the NIO, in response to provisions contained in the Belfast Agreement. The Agreement provided for a

wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others.¹

2.2 Precise terms of reference were provided for the CJR. They included a review of

the structure, management and resourcing of publicly funded elements of the criminal justice system and will bring forward proposals for future criminal justice arrangements.²

2.3 The CJR was required to take account of the aims of the criminal justice system in performing its work.³ The parties to the Agreement stated that they believed that those aims are to:

- *deliver a fair and impartial system of justice to the community;*
- *be responsive to the community's concerns, and encouraging community involvement where appropriate;*
- *have the confidence of all parts of the community; and*
- *deliver justice efficiently and effectively.⁴*

3. THE CRIMINAL JUSTICE REVIEW

3.1 The CJR performed a substantial amount of work. It distributed over 5,000 copies of its consultation papers, met in plenary 45 times, and held over 70 meetings with interested groups and organizations. It also published a considerable quantity of research,* and visited foreign jurisdictions.⁵ It published a 458-page report, the *Report of the Criminal Justice Review in Northern Ireland*⁶ ('the CJR Report') in March 2000, when the Assembly and Executive were in suspension.

3.2 The NIO has now published, on 12 November 2001, its response to the CJR Report. The response is in the form of an Implementation Plan, a draft Justice (Northern Ireland) Bill ('the Draft Bill'), and associated explanatory notes.⁷ The NIO intends to consult on its proposals until 12 December 2001. A final Bill will be introduced to Parliament later this session.

4. DEVOLUTION

4.1 The proposals should be viewed in the context of impending devolution of criminal justice and police matters to Northern Ireland.

4.2 The CJR Report recommended that a range of criminal justice functions be devolved to the NI Assembly.⁸ The Belfast Agreement also stated that the Government is '*ready in principle ... to devolve responsibility for policing and justice issues.*'⁹

4.3 The NIO confirms in the Implementation Plan that the intention of the Government is to devolve responsibility for policing and justice functions to Northern Ireland.¹⁰ It states that its target is to devolve these functions '*after the Assembly elections scheduled for May 2003*', but does not give a commitment to how soon after those elections devolution would occur. It states that a final decision '*can only be taken at the time taking account of security and other relevant considerations.*'¹¹

4.4 Policing and criminal justice matters were devolved to Scotland on 1st July 1999, the date of the opening of the Scottish Parliament.¹²

4.5 Devolution of these functions will necessitate important structural changes. For example, the NIO agrees with the CJR's recommendation¹³ that a Department of Justice for the devolved executive would be necessary.** The NIO has also accepted the recommendation that a separate Attorney General for Northern Ireland be appointed (currently, the Attorney General for England and Wales acts as Attorney General for Northern Ireland). It is expected that this office will have a particular relationship with and be empowered to appear in the Assembly, without being a Member.¹⁴

* Producing 18 research reports, listed at Annex B to the CJR Report

** It may be noted that the Northern Ireland Act 1998 s 17 (4) limits the number of Ministerial appointments to 10, unless the Secretary of State makes an order providing for a greater number. There are already ten such appointments.

5. A WIDER CONTEXT

5.1 The terms of the Belfast Agreement required the Government to establish the CJR. However, the CJR could also be considered in the wider context of an ongoing reform of the various legal systems – civil as well as criminal – of the jurisdictions of the UK. It is interesting to consider whether, even had the Belfast Agreement not been made, nor any change in the political dispensation occurred – a large part of the reforms proposed in the Implementation Plan might not have been taken forward anyway.

5.2 Although criminal justice reforms elsewhere are most relevant, it is also worth noting that devolution itself is driving structural changes within the legal systems of the UK, for example the extension of proportional representation voting systems, an acceptance of coalition and minority executives, and the abandonment (in Northern Ireland) of the principle of collective cabinet responsibility. Also, substantial reform of the civil justice and legal aid systems is underway.¹⁵

5.3 As regards criminal justice systems, it is worth noting the following reforms.

PROCEEDS OF CRIME

5.4 The Proceeds of Crime Bill, currently before Parliament, applies to England and Wales and Northern Ireland. It makes provision for a method of fighting crime which is new to the UK: focussing on depriving criminals of the profits of their crime, including 'recovery' on the civil standard of proof by the state of such profits.¹⁶ The Financial Investigations (Northern Ireland) Order 2001¹⁷ enhanced existing provision in Northern Ireland in this respect.

REVIEW OF THE DIPLOCK SYSTEM

5.5 The NIO completed a review of the Diplock trial system¹⁸ in July 2000. Although the Government's overall objective remains a return to jury trial, the NIO concluded '*that the time was not yet right for such a move.*' The NIO states in the Implementation Plan that it accepts the CJR statement that '*we fully endorse the principle of jury trial in cases tried on indictment at the Crown Court.*'¹⁹ It is interesting to compare this with possible changes to jury trial in England and Wales, discussed immediately below.

CRIMINAL JUSTICE SYSTEM OF SCOTLAND

5.6 The Scottish criminal justice system underwent change in 1995 following a comprehensive examination. The Criminal Justice (Scotland) Act 1995 introduced changes to bail law, the admission of evidence, and the confiscation or recovery of the proceeds of crime.

CRIMINAL JUSTICE SYSTEM OF ENGLAND AND WALES

5.7 The Government has begun '*a comprehensive overhaul of the [criminal justice system of England and Wales] to lever up performance in catching, trying, convicting, punishing and rehabilitating offenders.*'²⁰ It includes as a priority a '*radical and systematic reform*' of the CJS, especially the Crown Prosecution Service and the youth justice system.²¹

REVIEW OF THE CRIMINAL COURTS OF ENGLAND AND WALES

5.8 The recently completed Review of the Criminal Courts of England and Wales²² (known as ‘the Auld Report’) makes a wide and comprehensive range of recommendations, for example:

- the Crown Court and magistrates’ courts to be replaced by a ‘*unified Criminal Court*’ consisting of three Divisions;
- the defendant should no longer have a right to select trial by judge and jury in certain cases.

5.9 It has been reported that the Government is preparing a bill of 525 clauses to implement changes recommended by the Auld Report,²³ and that the Government intends to restrict the right to trial by jury to such an extent that the number of jury trials will be cut by between 66% and 75%.²⁴

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

5.10 This Act applies to England and Wales and created a new ‘restorative justice’ sentence allowing referral of young people convicted for the first time to a youth offender panel.²⁵ Restorative justice under the NIO proposals is considered below.

ACCESS TO JUSTICE ACT 1999

5.11 This Act provided for the replacement of the legal aid system of England and Wales with two new schemes: a Community Legal Service to replace the legal aid fund in civil and family cases; and a Criminal Defence Service, to replace the legal aid scheme in criminal cases.

THE CRIMINAL JUSTICE AND COURT SERVICES ACT 2000²⁶

5.12 This Act provided for the restructuring of probation services in England and Wales, creating a unified National Probation Service. It also, amongst other measures, provided for the extension of electronic monitoring (‘tagging’) of convicted persons.

CRIMINAL JUSTICE AND POLICE ACT 2001

5.13 This Act applies to England and Wales and provided for, amongst other changes, a new power to police to issue on-the-spot penalties for disorderly behaviour,²⁷ provided additional powers of seizure, a provision requiring reasons to be given for granting bail, measures relating to secure remands and electronic tagging,²⁸ provisions allowing the police to retain fingerprint records and DNA samples.²⁹

INTERNATIONAL CRIMINAL COURT ACT 2001

5.14 This Act incorporates into domestic law certain offences from the Rome Statute of the International Criminal Court, adopted on 17 July 1998,³⁰ and allows for the UK to ratify that treaty. The Act extends to England and Wales, and Northern Ireland. Some provisions of the Act also extend to Scotland.

5.15 The International Criminal Court is intended to be a permanent Court, situated in The Hague, to try individuals for genocide, crimes against humanity and war crimes. The Court will be empowered to investigate crimes committed by UK nationals, or in UK territory.³¹

5.16 Some major reforms are also underway in relation to policing.

POLICING IN ENGLAND AND WALES

5.17 The Home Secretary has just published a White Paper proposing comprehensive reforms of policing in England and Wales, *Policing a New Century: A Blueprint for Reform*³². It proposes, amongst other things, multiple tiers to police services, including:

- uniformed but civilian Community Support Officers; and
- accredited organisations – possibly including private security firms – with new powers to tackle low-level crime.³³

POLICE (NORTHERN IRELAND) ACT 2000

5.18 This Act provided for implementation of some of the recommendations of the Independent Commission on Policing for Northern Ireland in its report, *A New Beginning: Policing in Northern Ireland*.³⁴

5.19 Together these many changes represent a major programme of reform to the criminal justice systems of the UK. They raise interesting questions in relation to how much reform of the criminal justice system in Northern Ireland is driven by a general drive for modernisation or cost efficiency, and how much by the Belfast Agreement and other exclusively local developments. Some of the changes in other jurisdictions affect similar structures and principles of justice as do the proposals contained in the Implementation Plan – in particular in relation to the probation service, restorative justice and young offenders. Members may wish to consider these issues.

6. THE CONSULTATION

6.1 Only 30 days, or just over four working weeks, was originally provided for the consultation.³⁵ After receiving representations that that period was too short, the NIO has now agreed to extend the consultation to 7 January 2002. The NIO is under no legal commitment to provide any particular period for consultation. However, 30 days is considerably less than minimum consultation periods recommended elsewhere, for example:

- the NIO's own Equality Scheme states that *'consultation with groups and individuals will begin as early as possible ... on all issues relevant to the fulfilment of the section 75 obligations ... In consulting representative groups of the section 75 categories the Department will aim to provide a period for response of at least eight weeks and to begin consultation as early as possible. However, exceptionally, there may be circumstances when this timescale is not feasible'*;³⁶
- the Northern Ireland Act 1998 provides that no Order in Council can be made in relation to certain reserved matters unless a draft has first been laid before Parliament for 60 days, and referred to the Assembly for its consideration;³⁷ and
- Criterion 5 of the Cabinet Office Code of Practice on Written Consultation states that *'sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.'*³⁸ This criterion has been adopted by the Executive for its own consultations.³⁹

6.2 Members may wish to consider whether it was appropriate for the NIO to provide the Assembly, and others, with such a short period for consultation, particularly in light of a stated intention to devolve these matters to the Assembly in the near future.

6.3 Members may also wish to consider – in the light of these comparators – the following statement of Mr Des Browne MP, Parliamentary Under-Secretary of State at the NIO, when launching the consultation:

Publication of the draft Bill and plan marks the start of a consultation period which offers anyone interested in the future of criminal justice in Northern Ireland the opportunity to have their say. I would encourage anyone with an interest in how these services are delivered to make their voices heard.⁴⁰

7. THEMES

7.1 As stated above, this Research Paper does not consider each and every point in the Implementation Plan. Instead, it extracts from the mass of proposals three themes to assist Members in their consideration of the Plan. Those are:

- restructuring of the criminal justice system;
- openness and transparency; and
- new methods of providing justice.

7.2 Each is considered in turn. Other themes are also apparent, and this list should not be seen as exhaustive. Research and Library Services are available to assist Members further examination of the proposals.

RESTRUCTURING OF THE CRIMINAL JUSTICE SYSTEM

7.3 The Implementation Plan proposes a considerable amount of restructuring of the criminal justice system in Northern Ireland. Some key elements of the restructuring, all of which derive from recommendations of the CJR, are here considered.

THE ESTABLISHMENT OF A DEPARTMENT OF JUSTICE

7.4 The NIO will work towards the devolution of justice functions, but it will be for the Assembly and Executive to decide which department should take that portfolio. The CJR recommended that a Department of Justice be established and given ‘*all justice functions other than prosecution, responsibility for the Law Commission and judicial matters*’.⁴¹

THE ESTABLISHMENT OF A NEW OFFICE OF ATTORNEY GENERAL FOR NORTHERN IRELAND

7.5 The Office of Attorney General for Northern Ireland (‘AG (NI)’) will be created after justice issues are devolved. The CJR conceived of the AG (NI) as ‘a non political figure’⁴². The NIO proposes that the AG (NI) will be appointed by the First Minister and Deputy First Minister, on consultation with the Advocate General for Northern Ireland.⁴³ He will be answerable to the Assembly, which is expected to provide in Standing Orders for him to participate in its business⁴⁴

7.6 There will also be a new office of Advocate General for Northern Ireland, answerable to Parliament, to exercise equivalent responsibility in respect of excepted and reserved matters.⁴⁵

THE ESTABLISHMENT OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND

7.7 The draft Bill establishes a new Public Prosecution Service for Northern Ireland.⁴⁶ It will be a single, independent prosecution service responsible for undertaking all criminal prosecutions, including those currently undertaken by the PSNI. It will be headed by the Director of Public Prosecutions for Northern Ireland ('DPP (NI)'), and subsume his existing department.⁴⁷

7.8 The DPP (NI) will have powers in some circumstances to prompt investigations by the Police Service of Northern Ireland of suspected offences, but not to direct investigations. He may also advise the Police Service on prosecutorial issues.⁴⁸ He will be answerable to, but fully operationally independent from the AG (NI).⁴⁹

THE LORD CHIEF JUSTICE TO BECOME ADMINISTRATIVE HEAD OF THE COURTS

7.9 The NIO proposes that the Lord Chief Justice will replace the Lord Chancellor as administrative head of the courts in Northern Ireland, following the devolution of justice matters.⁵⁰ A head of each tier of the judiciary will be appointed.⁵¹

RESIDENT MAGISTRATES TO ADOPT NEW FUNCTIONS

7.10 Resident magistrates will be renamed 'District Judges (Magistrates' Courts)',⁵² and assume some of the functions of Justices of the Peace.⁵³

THE ESTABLISHMENT OF A CRIMINAL JUSTICE INSPECTORATE

7.11 The draft Bill establishes a Criminal Justice Inspectorate ('CJI'), with responsibility for inspecting the work of specified criminal justice agencies such as

- the Police Service of Northern Ireland;
- the Public Prosecution Service for Northern Ireland;
- the Probation Board for Northern Ireland; and
- the Northern Ireland Prison Service.⁵⁴

THE REPLACEMENT OF THE JUVENILE JUSTICE BOARD BY A NEXT STEPS AGENCY

7.12 The Juvenile Justice Board, which is currently appointed by the NIO, is responsible for the provision of juvenile justice centres.⁵⁵ A new agency within the NIO will be established, and be responsible for the provision of custodial and community facilities. These will take juveniles under such sentences as juvenile justice orders or attendance centre orders.⁵⁶

THE RE-ESTABLISHMENT OF THE PROBATION SERVICE AS A NEXT STEPS AGENCY

7.13 The NIO proposes that the Probation Service, currently a NDPB, be reconstituted as a next steps agency of an '*appropriate department of the Executive*' following devolution.⁵⁷ This would of course be a matter for the NI Assembly and Executive to decide.

THE ESTABLISHMENT OF A LAW COMMISSION FOR NORTHERN IRELAND

7.14 The Draft Bill establishes Law Commission for Northern Ireland. Its function will be to '*review the criminal and civil law of Northern Ireland, including procedure and practice, with a view to making recommendations to Government for reform, codification, simplification and consolidation of legislation*'.⁵⁸

THE ESTABLISHMENT OF AN 'OVERARCHING PROBATION, PRISONS AND JUVENILE JUSTICE ADVISORY BOARD'

7.15 The NIO accepted this recommendation from the CJR, but proposes to leave the decision to the Assembly and Executive following devolution.⁵⁹

THE ESTABLISHMENT OF A NATIONAL LEVEL INTER-AGENCY BODY RESPONSIBLE FOR YOUTH CONFERENCING

7.16 This body, responsible for coordinating certain restorative justice functions (see below) will be responsible for *'ensuring the availability of programmes across Northern Ireland to support community sanctions, restorative justice generally, and youth conferences in particular. It should deal with the accreditation and setting of standards for restorative justice, including those that apply to community restorative justice schemes, and encourage the spreading of good practice.'*⁶⁰

SOME POINTS FOR CONSIDERATION

7.17 Members may wish to consider how this new network of bodies and authorities will be integrated and coordinated with existing structures. Members may wish to consider what department of the Executive such bodies might be accountable to, and how the Assembly should exercise appropriate scrutiny and control. Members may wish to consider in particular how the offices of Minister for Justice and Attorney General will relate both to each other, and to existing and new criminal justice agencies.

OPENNESS AND TRANSPARENCY

7.18 The CJR's recommendations placed an emphasis on openness, particularly as regards the appointment of judges, but also in other key areas. The NIO has adopted most of the recommendations, and the proposals may result in increased transparency in the workings of the criminal justice system. Some key elements of the Implementation Plan as regards openness, all of which derive from recommendations of the CJR, are here considered.

APPOINTMENT AND REMOVAL OF JUDGES

7.19 A Judicial Appointments Commission ('JAC') will be established by the Draft Bill.⁶¹ It will be responsible for making recommendations on judicial appointments, up to and including the level of High Court Judge, once justice functions are devolved.⁶² It will comprise:

- the Lord Chief Justice;
- five other judicial members, one from each tier of the judiciary (including lay magistrates);
- one member from each of the two legal professions; and
- five lay members.

7.20 The Draft Bill requires that *'the lay members (taken together) are representative of the community'*,⁶³ but does not require that the JAC as a whole, nor the other categories of members, are representative of the community.

7.21 Members of the JAC will be appointed by the First and Deputy First Ministers: lay members in accordance with the standard procedures for public appointments, but the five judicial members on the nomination of the Lord Chief Justice and the two lawyers on the nomination of the legal professions.

7.22 The JAC will make recommendations to the First and Deputy First Ministers as to who should be appointed to judicial office. All judges, except the most senior, would then be appointed by the First and Deputy First Ministers, but only on the recommendation of the JAC. Appointment to the most senior judicial office (those of Lord Chief Justice and Lord Justices of Appeal) will be made by the Queen, on the recommendation of the Prime Minister. He must first consult with the First and Deputy First Ministers. They need not seek a particular recommendation from the JAC, but it is required to advise them on the procedure which they should follow when responding to the Prime Minister.⁶⁴

7.23 Judges may be removed from office. But the Draft Bill proposes that that may occur only on the basis of a recommendation from a specially convened tribunal, and with the consent of the Lord Chief Justice.⁶⁵

7.24 It is interesting to note that the eligibility criteria for appointment to the judiciary are widened,⁶⁶ and the NIO accepts that efforts should be made to stimulate interest in applying for appointment, especially in sectors which are under-represented or where historically applications have been disproportionately low.⁶⁷ The NIO also accepts that it should be a stated objective of whoever is responsible for appointments to engage in a programme of action to secure the development of a judiciary that is as reflective of Northern Ireland society, in particular by community background and gender, as can be achieved consistent with the overriding requirement of merit.⁶⁸ It is interesting to note that this appears to provide less importance to other groups who suffer discrimination, such as the categories of persons listed in section 75 of the Northern Ireland Act 1998.

APPOINTMENT AND REMOVAL OF ATTORNEY GENERAL

7.25 The appointment of the AG (NI) is made by the First and Deputy First Ministers, on consultation with the Advocate General for Northern Ireland. A person is appointed for a term of up to five years. However, once appointed, an Attorney General may only be removed from office before his term expires on the recommendation of a tribunal comprising judges from England, Scotland or Wales, to be appointed by the Lord Chancellor.⁶⁹

REASONS FOR A DECISION NOT TO PROSECUTE

7.5.8 The DPP (NI) will in some cases give his reasons for a decision not to prosecute. It appears that there will be a presumption that reasons will not be given, but the DPP (NI) will consider a request if made. The NIO points out that
*a balance needs to be struck between the proper interest of victims and witnesses and other concerns, including damage to the reputation of or other injustice to an individual, the danger of infringing upon the presumption of innocence and the risk of jeopardizing the safety of individuals.*⁷⁰

PUBLICATION OF ANNUAL REPORTS

7.26 The DPP (NI) will be required to publish an annual report, and also

- a code of practice on deciding whether to prosecute; and
- a code of ethics.⁷¹

7.27 The Attorney General for Northern Ireland will be required to submit an annual report to the First and Deputy First Ministers and lay it before the NI Assembly.⁷²

REPORTS OF THE CRIMINAL JUSTICE INSPECTORATE

7.28 The CJI will be given powers of inspection and the power to request documents. He will be required to investigate the following bodies, and to report on his inspections to the NIO and lay copies of the reports before the Houses of Parliament.⁷³

- the Police Service of Northern Ireland;
- the Police Service of Northern Ireland Reserve;
- Forensic Science Northern Ireland;
- the State Pathologist's Department;
- the Public Prosecution Service for Northern Ireland;
- the Probation Board for Northern Ireland;
- the Northern Ireland Prison Service;
- the Juvenile Justice Board;
- any body or person (other than the Juvenile Justice Board) with whom the Secretary of State has made arrangements for the provision of juvenile justice centres or attendance centres;
- Health and Social Services Boards and Health and Social Services trusts, and
- the Compensation Agency.

ATTORNEY GENERAL ACCOUNTABLE TO THE ASSEMBLY

7.29 The AG (NI) will be accountable to the Assembly for the operation of the Public Prosecution Service. He will answer questions and make statements pursuant to standing orders, but will not have right to vote. He will be required to declare any interests in the register maintained by the Assembly before so doing.⁷⁴

CROSS COMMUNITY SUPPORT IN NI ASSEMBLY

7.30 The NIO has stated that the Bill will provide that no vote, resolution or Act of the NI Assembly on judicial matters should be valid unless it has cross-community.⁷⁵

COURT USER INPUT, AND OUTREACH

7.31 The NIO has agreed to the wider establishment of 'court user fora', comprising the judiciary, the professions, criminal justice agencies, and voluntary organizations representing victims and witnesses, to share good practice and improve the workings of the criminal justice system. It also proposes a certain amount of outreach work on the part of the Northern Ireland Court Service and the judiciary.⁷⁶

SOME POINTS FOR CONSIDERATION

7.32 Members may wish to consider the proposed procedures for the appointment of judges, and the involvement of the First and Deputy First Ministers in that process. Members may wish to consider the composition and powers of the proposed Judicial Appointments Commission. Members may also wish to consider the important development of the DPP (NI) being required in some cases to give reasons for decisions not to prosecute.

NEW METHODS OF PROVIDING JUSTICE

7.33 The CJR explored alternative methods of providing justice, beyond existing or conventional mechanisms. In particular, it gave some considerable attention to 'restorative justice'.⁷⁷ It described restorative justice as

*'a more inclusive approach to dealing with the effects of the crime, which concentrates on restoring and repairing the relationship between the offender, the victim, and the community at large, and which typically includes reparative elements towards the victim and/or the community.'*⁷⁸

7.34 The CJR also described restorative justice approaches as 'inclusive in three main respects':

*'they take account of the interests of victims, offenders and, sometimes, the wider community, in addition to the public interest in deciding how best to deal with a case; they extend the range of those who are entitled to participate in the process of dealing with the offence, and bring the victim and the offender more fully into the process; and they extend the range of potential outcomes of the process to include restoration for the victim and reintegration of the offender back into the community.'*⁷⁹

7.35 Some key elements of the proposals relating to new methods of dispensing justice are here considered.

NIO PROPOSALS: CONCENTRATION ON YOUTH CONFERENCING

7.36 The NIO accepted the specific recommendations that restorative justice approaches should be developed for juvenile offenders, and piloted for young adults and adults, with a view to extending them to Northern Ireland as a whole.⁸⁰ It also accepted the CJR's more general recommendation that the criminal justice system should focus on certain elements, including:

- reparative justice and meeting the needs of victims;
- rehabilitative justice, where what is important is the prevention of re-offending by the young person;
- proportionality, rather than pure retributive justice;
- reintegrative shaming, where the offender acknowledges the harm done, but where the process clearly separates the offender from the offence, and focuses on the potential for reintegrating the offender into the community in the plan and on the prevention of re-offending; and
- repairing relationships which have been damaged or broken by crime.⁸¹

7.37 The NIO has examined various methods of restorative justice for juveniles and opted to introduce a 'youth conferencing' system. It is *designed to address the needs of victims, to focus on offending behavior and proportionality, and to seek to repair damaged relationships. The system will support full participation by the offender and his/her family, empowering conference participants to formulate a plan of action.*⁸²

7.38 It should be noted that the NIO proposes that youth conferences, as recommended by the CJR, could include not just the family of an offender, but other supporters and *'persons who play a significant role in the child's life (such as a community or religious leader) or people who can provide support to the victim.'*⁸³

7.39 The DPP (NI) will be empowered to 'divert' juveniles to youth conferencing rather than proceeding to court. He will retain the right to prosecute if a youth conference fails.⁸⁴

OTHER OPTIONS

7.40 The Draft Bill also provides for a range of other new sentencing options, which the courts will be empowered to make in respect of juveniles, including:

- reparation orders;
- community responsibility orders; and
- custody care orders.⁸⁵

THE PROSECUTORIAL FINE

7.41 The Implementation Plan proposes that the DPP (NI) will also be empowered, in certain cases, to administer a scheme of 'prosecutorial fines'. If a prosecutorial fine is accepted and paid, no prosecution occurs, and no conviction is recorded. If however the fine is declined or not paid, the case proceeds to court as normal.⁸⁶

COMMUNITY RESTORATIVE JUSTICE SCHEMES

7.42 The NIO also agrees with the CJR that 'community restorative justice' schemes – outside the courts and the formal criminal justice system – *'have a role to play in dealing with types of low level crime'*. But it also notes the dangers to *'the human rights of all who come into contact with such schemes'*, stating that *'schemes which set out to deal with criminal matters and which do not attain accreditation pose a serious threat to the human rights of those involved and risk undermining the rule of law.'*⁸⁷

7.43 The Implementation Plan indicates that accreditation and regulation for such schemes will be developed. It does not provide a timetable or any kind but does provide some detail about how such schemes should be regulated:

- they should only receive referrals from a statutory agency, with the police informed of all referrals;
- they should be accredited by and subject to standards laid down by Government;
- they should be subject to regular inspection by the Criminal Justice Inspectorate; and
- they should have no role in determining guilt or innocence.

SOME POINTS FOR CONSIDERATION

7.44 Members may wish to consider how effective restorative justice may be in Northern Ireland. Members may wish to consider how 'community restorative justice' schemes should be regulated so as to ensure that justice is done. Members may wish to consider what procedures or guidance the DPP (NI) or the courts should follow in deciding on a restorative rather than a conventional sentence. Members may wish to consider whether the restructuring described above will provide sufficient support to restorative justice schemes.

HUGH WIDDIS
6 DECEMBER 2001

- ¹ The Agreement reached in the multi-party negotiations in Belfast on 10th April 1998, Section 6 – Rights, Safeguards and Equality of Opportunity, Policing and Justice, para 5
- ² Belfast Agreement Section 6 Annex B
- ³ Belfast Agreement Section 6 Annex B
- ⁴ Belfast Agreement Section 6 para 4
- ⁵ Criminal Justice Review Team 2000 Report of the Criminal Justice Review in Northern Ireland TSO: Belfast paras 1.7 and 1.13-4
- ⁶ Criminal Justice Review Team 2000 Report of the Criminal Justice Review in Northern Ireland TSO: Belfast
- ⁷ Copies are available attached to the NIO press release Government publishes its response to the Criminal Justice Review 12 November 2001 at <http://www.nio.gov.uk/press/011112cj.htm>
- ⁸ Report of the Criminal Justice Review in Northern Ireland Recommendation 256
- ⁹ Belfast Agreement Section 6 para 7
- ¹⁰ Introduction to the IP, p2
- ¹¹ NIO 2001 Criminal Justice Review Implementation Plan Introduction page 2
- ¹² By the Scotland Act 1998 c 46
- ¹³ Report of the Criminal Justice Review in Northern Ireland Recommendation 257
- ¹⁴ Criminal Justice Review Implementation Plan response to recommendation 44
- ¹⁵ See for example: The Civil Justice Reform Group 2000 Review of the Civil Justice System in Northern Ireland – Final Report; the Civil Procedure Rules, made in response to the recommendations of Lord Woolf 1996 Access to Justice - Final Report; Sir Andrew Leggatt 2001 Tribunals for Users One System One Service – Report of the Review of Tribunals; and the Access to Justice Act 1999 c 22
- ¹⁶ See Report of the NI Assembly Ad Hoc Committee - Proceeds of Crime Bill Committee, [Ad Hoc 4/00/R](#); and NI Assembly Research and Library Services Research Paper 03/01 [Proceeds of Crime](#)
- ¹⁷ Financial Investigations (Northern Ireland) Order 2001No.1866 (N.I. 1)
- ¹⁸ Generally, trial by judge without a jury for certain types of offence
- ¹⁹ Criminal Justice Review Implementation Plan response to recommendation 111
- ²⁰ Home Office 2001 Criminal Justice: The Way Ahead Cm 5074, Introduction para 25
- ²¹ Criminal Justice: The Way Ahead Executive Summary para 9
- ²² The Right Honourable Lord Justice Auld 2001 Review of the Criminal Courts of England and Wales, at <http://www.criminal-courts-review.org.uk/ccr-00.htm>
- ²³ The report suggested that work was underway before the completion of the Auld report
- ²⁴ New Statesman Who needs 12 when one will do? 3 December 2001
- ²⁵ Youth Justice and Criminal Evidence Act 1999 c 23 Explanatory notes 7-8
- ²⁶ The Criminal Justice And Court Services Act 2000 Chapter 43
- ²⁷ Criminal Justice and Police Act 2001 c 16 Explanatory notes para 7
- ²⁸ Criminal Justice and Police Act 2001 c 16 Explanatory notes para 3
- ²⁹ Criminal Justice and Police Act 2001 c 16 Explanatory notes 245 246
- ³⁰ Statute of the International Criminal Court, adopted at Rome on 17 July 1998 Cm 4555
- ³¹ International Criminal Court Act 2001 c 17 Explanatory Notes paras 4-7 at <http://www.legislation.hmso.gov.uk/acts/en/2001en17.htm>
- ³² Home Office 2001 Policing a New Century: A Blueprint for Reform Cm 5326
- ³³ Home Office Press Release Policing a New Century: Blunkett unveils radical reforms 5 December 2001, and Guardian Civilian wardens set to police streets 6 December 2001, at <http://www.guardian.co.uk/crime/article/0,2763,614228,00.html>
- ³⁴ NIO 1999 A New Beginning: Policing in Northern Ireland – The Report of the Independent Commission on Policing for Northern Ireland at <http://www.belfast.org.uk/report.htm>
- ³⁵ 12 November 2001 to 12 December 2001
- ³⁶ NIO 2001 Final Draft Equality Scheme para 4.1, emphasis removed
- ³⁷ Northern Ireland Act 1998 c 47 s 85 (3) and (4)
- ³⁸ Cabinet Office 2000 Code of Practice on Written Consultation Criterion 5
- ³⁹ Executive Committee 2001 Draft Guide to Consultation Methods for Northern Ireland Public Authorities at <http://www.consultationni.gov.uk>
- ⁴⁰ NIO Press Release Government publishes its response to the Criminal Justice Review 12 November 2001, at <http://www.nio.gov.uk/press/011112cj.htm>
- ⁴¹ Criminal Justice Review Implementation Plan response to recommendation 257

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- ⁴² [Report of the Criminal Justice Review in Northern Ireland Recommendation 25743](#)
- ⁴³ NIO 2001 Draft Justice (Northern Ireland) Bill Clause 20(2)
- ⁴⁴ [Criminal Justice Review Implementation Plan](#) response to recommendation 44
- ⁴⁵ Draft Bill Clause 25
- ⁴⁶ See Draft Bill Clauses 27-39
- ⁴⁷ See [Report of the Criminal Justice Review in Northern Ireland](#) Chapter 4 and Recommendation 17
- ⁴⁸ [Criminal Justice Review Implementation Plan](#) response to recommendations 22-3
- ⁴⁹ [Criminal Justice Review Implementation Plan](#) response to recommendations 45-6
- ⁵⁰ Explanatory Notes to the Draft Justice (Northern Ireland) Bill para 38, in line with [Report of the Criminal Justice Review in Northern Ireland Recommendation 109](#)
- ⁵¹ Draft Bill Clauses 11, 13, 17
- ⁵² [Criminal Justice Review Implementation Plan](#) response to recommendations 110, and Draft Bill Clause 11
- ⁵³ Particularly, 'the power to extend the period during which a suspect might be held in custody by the police, hear committal proceedings or adjudicate on a range of complaints against adults' see [Criminal Justice Review Implementation Plan](#) response to recommendations 115
- ⁵⁴ Draft Bill Clauses 41-5, and see [Criminal Justice Review Implementation Plan](#) response to recommendation 263, and [Report of the Criminal Justice Review in Northern Ireland](#) para 15.72
- ⁵⁵ [Criminal Justice Review Implementation Plan](#) response to recommendation 185 186
- ⁵⁶ [Report of the Criminal Justice Review in Northern Ireland](#) para 10.101
- ⁵⁷ [Report of the Criminal Justice Review in Northern Ireland](#) Recommendation 222
- ⁵⁸ [Criminal Justice Review Implementation Plan](#) response to recommendation 244 etc EXN 88
- ⁵⁹ [Criminal Justice Review Implementation Plan](#) response to recommendation 187
- ⁶⁰ [Criminal Justice Review Implementation Plan](#) response to recommendation 161
- ⁶¹ Draft Bill Clause 3
- ⁶² [Criminal Justice Review Implementation Plan](#) response to recommendations 81-4 and 104
- ⁶³ Draft Bill Clause 3 (7)
- ⁶⁴ Draft Bill Clauses 2-9
- ⁶⁵ Draft Bill Clause 7
- ⁶⁶ See for example [Criminal Justice Review Implementation Plan](#) response to recommendation 70: 'practice and/or standing requirements for recruitment to all levels of the bench should not differentiate between barristers and solicitors.'
- ⁶⁷ [Criminal Justice Review Implementation Plan](#) response to recommendation 90
- ⁶⁸ [Criminal Justice Review Implementation Plan](#) response to recommendation 69
- ⁶⁹ Draft Bill Clause 21
- ⁷⁰ [Criminal Justice Review Implementation Plan](#) response to recommendation 49
- ⁷¹ [Criminal Justice Review Implementation Plan](#) response to recommendation 50
- ⁷² Draft Bill Clause 24
- ⁷³ Draft Bill Clauses 41 and 44-5
- ⁷⁴ Explanatory Notes to the Draft Justice (Northern Ireland) Bill para 49
- ⁷⁵ [Criminal Justice Review Implementation Plan](#) response to recommendation 76
- ⁷⁶ [Criminal Justice Review Implementation Plan](#) response to recommendations 113, 125-9, 134
- ⁷⁷ See in particular [Report of the Criminal Justice Review in Northern Ireland](#) Chapter 9 – Restorative and Reparative Justice; and Dignan, J., and Lowey, K. 2000 [Restorative Justice Options for Northern Ireland: A Comparative Review](#), Criminal Justice Review in Northern Ireland Research Report 10
- ⁷⁸ [Report of the Criminal Justice Review in Northern Ireland](#) para 9.5
- ⁷⁹ [Report of the Criminal Justice Review in Northern Ireland](#) para 9.7
- ⁸⁰ [Criminal Justice Review Implementation Plan](#) response to recommendations 143-4
- ⁸¹ [Criminal Justice Review Implementation Plan](#) response to recommendation 147
- ⁸² [Criminal Justice Review Implementation Plan](#) response to recommendation 147
- ⁸³ [Criminal Justice Review Implementation Plan](#) response to recommendation 155 and Explanatory Notes to the Draft Justice (Northern Ireland) Bill para 53
- ⁸⁴ [Criminal Justice Review Implementation Plan](#) response to recommendations 165-6
- ⁸⁵ Draft Bill Clauses 50-2

- ⁸⁶ Report of the Criminal Justice Review in Northern Ireland Recommendation 39
⁸⁷ Criminal Justice Review Implementation Plan response to recommendation 168