

Committee on the Programme for Government — Subgroup on Policing and Justice

Monday 8 January 2007

OFFICIAL REPORT

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COMMITTEE ON THE PROGRAMME FOR GOVERNMENT — SUBGROUP ON POLICING AND JUSTICE

Monday 8 January 2007

In attendance for all or part of proceedings:

The Chairman, Mr William Hay

The Chairman, Mr George Dawson

Mr Alex Attwood

Mrs Arlene Foster

Mr Danny Kennedy

Mr Raymond McCartney

Mr Ian Paisley Jnr

Ms Kathy Stanton

Witnesses:

Mr Paul Goggins MP	}	Parliamentary Under-Secretary of State, Northern Ireland Office
Mr Robert Crawford	}	Northern Ireland Office
Mr Steven McCourt	}	

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The subgroup met in private at 1.11 pm.

The evidence session began at 1.16 pm.

(The Chairman (Mr Hay) in the Chair.)

The Chairman (Mr Hay): I declare the meeting open to the public. Minister, it is good to have you here. I know that you have taken time out of your busy schedule to be present. The subgroup welcomes that.

I assume that you know every member here. If not, we can go round the Senate Chamber and ask members to introduce themselves.

Mr Paul Goggins MP (Parliamentary Under-Secretary of State): As I look around, I am pretty familiar with everybody.

The Chairman (Mr Hay): From the outset, it would perhaps be useful if you outlined the Government's position on the draft Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007. After you have made your introduction, I will call the parties in alphabetical order to ask a lead question and to identify the area about which questioning. It will be useful for officials and parties to record that.

Mr Goggins: Thank you very much, Chairman, for the welcome. At the beginning of our deliberations, I want to say that our thoughts are very much with the family of David Ervine at this difficult time.

I am accompanied by two NIO officials: Robert Crawford, the deputy director of policing division, and Steven McCourt, the head of policing policy branch. They may be able to assist us this afternoon. The officials are at the subgroup's disposal and are happy to participate as members require.

The history of the draft Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 goes back almost a year to the day when my predecessor, Shaun Woodward, asked officials on 9 January 2006 to prepare an Order that would suitably amend and modernise existing legislation and, in particular, introduce amendments to the Police (Northern Ireland) Act 2003.

The Order contains several new measures. First, it provides new powers for the Chief Constable to designate civilian staff to certain functions. That breaks down into five categories of staff — investigating officers, detention officers, escort officers, staff custody officers and police community support officers (PCSOs). I want to make a few comments about the last two groups because I believe that they are of particular interest to members.

The model of working with staff custody officers is currently being piloted by the Home Office in nine different areas. We are keen to find out the results of those pilot projects, which, I am sure, will help to inform future policy and decision-making.

Considerable experience has been gained in England from the deployment of police community support officers. Although some of it is anecdotal, impressive evidence is building about the role that PCSOs can play, particularly at neighbourhood level.

From April of this year, 29 community support officers will be working with the police in my constituency. Community safety officers are very effective; they are highly visible and do not get drawn into the bureaucracy that sometimes takes police officers away from the streets. They are able to form relationships with the local community, which, again, is very helpful.

The first set of powers mentioned in the consultation document for the draft Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 will enable the Chief Constable to designate civilian staff to carry out those functions.

A second power allows for the streamlining of police trainee recruitment. As members know, all candidates currently in the recruitment pool must undergo the same level of medical and criminal checks, even though the vast majority of them are never appointed as police officers. We want to allow for the provisional appointment of candidates, subject to medical checks and criminal checks. Candidates will then be formally appointed if they pass those checks. That measure would mean that there would be 1,800 fewer checks every year, which would save about £500,000, and it would make no difference to the quality of the police officers appointed. Therefore, it is a sensible and practical measure.

The third power relates to the vetting of designated civilian staff, to which I referred earlier. It is, of course, important that recruitment standards for civilian staff are the same as those for police trainees. We will therefore be looking at criminal convictions, business interests and other relevant information about civilian staff as well as police officers. I hope that that offers reassurance to members.

The fourth power makes provision for the PSNI to address acute staff shortages by directly recruiting from other police forces. At the moment, direct entry into the PSNI is only through traineeship. We want to enable the Chief Constable to recruit experienced staff from other forces, if there is a need to do so. That is a sensible measure. I am sure that members are aware of the current shortage of detective constables, and we want the Chief Constable to be able to deal practically with that shortage.

The draft legislation contains a proposal relating to the new powers of double jeopardy, where were introduced in the Criminal Justice Act 2003. In fact, I was involved with the later stages of that legislation — it was my baptism as a Minister. Those new powers were introduced so that if there is new and compelling evidence that a serious crime may have taken place, the police can investigate it. In the past, when someone was acquitted of a crime, that was that, but these new powers change that.

In Northern Ireland, those powers apply to the police, but not to the Police Ombudsman, and we obviously want to resolve that inequity. If new and compelling evidence exists that a police officer may have committed a serious offence, we want the Ombudsman to be able to reopen the investigation if necessary. There are also some provisions about road closures and the ability to divert traffic, which are practical and sensible measures.

There are also new powers to enable the police to examine documents and electronic records to establish whether they contain evidence that somebody may have committed, or is planning to commit, a serious crime. The powers allow the police to remove those documents for a limited time.

Essentially, these practical measures will help the police in Northern Ireland to be more efficient and effective in their work. I hope that they will command the support of the subgroup, and I look forward to any questions that members may wish to ask.

The Chairman (Mr Hay): Thank you very much. Minister, I forgot to welcome your officials earlier, so I welcome them now.

I remind members to turn their mobile phones off. It would be useful if members could declare any interests before they ask their questions. I am conscious that some members are also members of the Policing Board.

Mrs Foster: I declare that I am a member of the Northern Ireland Policing Board.

I want to raise the issue of PCSOs. I have long complained about the resources available to the Chief Constable, his constables and the Police Service in general, particularly in rural areas.

On the face of it, I welcome the fact that more resources will be available to the Chief Constable. However, PCSOs should not be substitutes for police officers but should, rather, complement them. I say that for several reasons, not least because people will realise that PCSOs are not police officers. PCSOs from Lancashire Constabulary and Merseyside Constabulary have visited Northern Ireland to talk about their role. However, this is not Lancashire or Merseyside: it is Northern Ireland.

The criteria for the appointment of PCSOs are included in the legislation, which states that the Chief Constable will appoint:

“a suitable person to carry out the functions of a community support officer”.

I am interested to hear from the Minister what he understands by those criteria and whether further work will be done on those.

Mr Goggins: In many respects, the criteria of credibility and the standing of individuals will be the same as for those who apply to be police officers. After the Order has been passed, regulations will set out publicly and clearly the criteria that will be used to assess people's suitability to become PCSOs. Among those criteria are any business connections that applicants may have, which may be important if they are dealing with commercial premises or licensed premises. Checks will be made to ensure that their criminal records are clear.

Initially, the plan is to recruit 400 PCSOs over the first four years, 100 of whom will be appointed in the first year. PCSOs will be an additional resource; they are in no way a replacement for police officers. They will have a range of powers, but not the complete powers of a police officer, to assist policing effectively.

As Northern Ireland moves to ever more normal and peaceful times, the emphasis on neighbourhood policing is important. The Chief Constable often emphasises its importance — and rightly so — and the PCSOs will assist with that.

Mr Raymond McCartney: Is the Minister saying that PCSOs are not a replacement for the fast-tracking of the part-time reserve?

Mr Goggins: They are not a replacement for police officers; they are an additional resource.

Mr Raymond McCartney: What guarantees are in place to ensure that there will be no political vetting, and who will determine the vetting procedures?

Mr Goggins: The criteria used to assess the suitability of PCSOs will be clearly set out in the regulations. There will be no political involvement in the appointment of those staff. They will be assessed according to their skills and suitability for their role in

neighbourhood policing, and normal recruitment procedures will apply.

Mr Raymond McCartney: The Minister said that he envisages that 400 PCSOs will be appointed. Is the money in place for those appointments?

Mr Goggins: Yes, money is available to recruit 400 PCSOs in the first four years. I reiterate that it is not a question of appointing PCSOs to compensate for a reduction in the number of police officers. The Government are not operating under such an equation; PCSOs are an additional resource.

Mr Attwood: The Minister and his officials are welcome. May I ask for some latitude, Chairman, to make one point to the Minister? At last week's meeting of the subgroup, the parties unanimously agreed that any outcomes from ongoing negotiations between the Government and any single political party that were relevant to the business of the subgroup should be brought to its attention. The parties argued for that to happen because the subgroup's terms of reference include the consideration of matters that relate to the devolution of justice and policing, the associated time frame, and so forth.

The Chairman (Mr Hay): Mr Attwood, I want to make it clear that members should focus on today's agenda. The member's point might be appropriate for another meeting. I want to be as liberal as possible and will try to be fair to everybody.

Mr Attwood: My point, which goes beyond liberalism, is that discussions are ongoing. If the outcomes of those discussions are not brought to the attention of the subgroup, it will have difficulty in moving forward on some of the matters that it is entrusted to progress.

The SDLP's view is that one critical issue, regardless of what is, or is not, happening with MI5, is that this subgroup will not have the authority to carry out its business unless issues such as discussions with parties are brought to its attention. Given the speculation about the negotiations around MI5, I ask the British Government to consider very carefully — as the Secretary of State is appearing before the subgroup tomorrow —

Mr Kennedy: Chairman, we are deviating substantially.

1.30pm

The Chairman (Mr Hay): I have already reminded Alex about that. I am trying to be fair to everybody, and it is important that we are fair to the Minister.

Mrs Foster: We could all make political points if we wanted.

Mr Attwood: I am not making a political point; I am making a point that was agreed unanimously by the subgroup.

The Chairman (Mr Hay): Alex, can we get back to the subject?

Mr Attwood: I look forward to hearing from the Secretary of State on that point tomorrow.

I have a number of questions. First, you said that the vetting for PCSOs would be the same, in many respects, as that for regular police officers. Will you confirm that the vetting will be of at least at the standard required for regular police officers in all — not many — respects?

Secondly, you, as Minister, will table legislation in due course legislation. Will you confirm that the work in developing the PCSO model will be led by the Policing Board and the PSNI, assisted by NIO officials and the Government? Two meetings are scheduled, one later this month and one in early February, which will be led by the Board and the PSNI to bring forward details on how PCSOs will actually work. There is a lot of experience in Britain about how they work and we will have to have an appropriate model for our circumstances. In taking this idea forward, it will be important to confirm that the implementation of policing change has, in many regards, been the responsibility of the Board, the PSNI and, where appropriate, the NIO.

I have other questions, but please take those to begin with, Minister.

Mr Goggins: If I came here every time that there was speculation in the press about policing and justice, we would have been seeing a lot of each other recently.

The Chairman (Mr Hay): We take your point.

Mr Goggins: I confirm that the standards of vetting and suitability of PCSOs, particularly in relation to criminal investigations and business interests, will be the same as that for police officers. I am sorry if anything I said cast doubt on that point.

Mr Attwood is absolutely right that the role of the Policing Board is critical. It is carrying out a lot of work, liaising with the operational side of policing and with officials in my Department. The work will, as Alex said, reflect a style of the PCSO that is suitable for Northern Ireland while building on the experience that we are gathering elsewhere. That is a very sensible way to proceed. My job, as Minister, is to make sure the necessary powers are in place. However, developing the model on the operational side is very much based on Policing Board involvement and leadership, and is for the Chief Constable, his officials and my officials to work on.

Mr Attwood: I have two more questions. First, you confirmed that funding over and above the PSNI budget line is in place for the first four years. What happens if the Board and the PSNI agree that, after four years, another 250 PCSOs need to be recruited? That may well be the case depending upon the experience during the first four years. Will that have to be the subject of a fresh bid or will funding have to come from the police budget at that time? Are the Government prepared to consider fresh negotiations on the release of moneys to fund the extra number of PCSOs needed?

Secondly, to go back to Raymond McCartney's question, when the board decided to go ahead with PCSOs it also agreed to proceed with recruitment of part-time reserves in four other areas. Ian Paisley Jnr will remember that.

Mr Goggins: Yes, I can confirm what you have said about funding for PCSOs. It is a case of working out the best and most appropriate model for Northern Ireland.

A fresh funding bid must be made after four years. The initial four-year budget for PCSOs is sufficient, but, beyond that, preparations will have to be made for any fresh funding, because by that time we could be two, or even three, spending reviews on from the current one.

Mr Kennedy: I declare that I am a member of the Northern Ireland Policing Board. Alex did not declare his membership, but I will do so on his behalf. I am friendly like that.

Article 7(2) of the draft Order provides for a proposed new section 30A(2) to be inserted into the Police (Northern Ireland) act 2003, which states that the Chief Constable may designate a person as a PCSO only if he is satisfied that he or she is a "suitable person". Who would be considered an unsuitable person for the position?

Mr Paisley Jnr: Anyone in this room, for instance?

Mr Kennedy: It is a serious question.

Mr Goggins: It is indeed. Anyone with a recent or serious criminal conviction would be an unsuitable candidate for a PCSO position, as would anyone whose conduct, although not criminal, might fall short of what is desirable or acceptable when setting norms and standards in public life and for communities. However, the criteria upon which judgements will be based will be made clear and will be contained in regulations that will be laid when the Order is passed.

In short, we expect PCSOs to be people of high standing, to have an honest background and to be a good calibre of human being.

Mr Kennedy: Thank you, Minister. Will the highly discredited and discriminatory practice of 50:50 recruitment be used in the PCSO recruitment process?

Mr Goggins: As long as 50:50 recruitment operates in Northern Ireland, it will be used for the recruitment of PCSOs. That decision has been subject to a separate consultation on the remaking of powers.

Progress has been made in recent years. A few years ago, there was 8% Catholic representation in the PSNI, but that has risen to 20% representation now. It is hoped that that figure will increase to 30% by 2010 or thereabouts. When that target is achieved, the 50:50 recruitment system will no longer be required, and when it no longer applies for the recruitment of police officers, it will no longer apply for PCSO recruitment.

Mr Kennedy: Minister, do you realise how unpopular the 50:50 recruitment system is viewed, particularly among unionists, who consider the system to be discriminatory. How can you justify its continuing use as a mechanism for the employment of PCSOs?

Mr Goggins: I know that it is an unpopular measure with some sections of the community because representatives from unionist parties and others tell me that regularly. However, I justify its continuation on the grounds that it is transforming the face of policing in Northern Ireland. As I have said, when Patten produced his report, there was an 8% Catholic representation in the police, and that has now climbed to 20%. It is predicted that that percentage will increase to 30% in three years' time. That huge step forward could not have happened without the special arrangements.

When all parties in Northern Ireland actively support the police and encourage people to join the PSNI, and when there is a minimum of 30% Catholic representation, normal procedures will be allowed to take their course. Everyone will be happy when that is the case. I justify the use of the particular recruitment system because of the special and urgent need that existed. The 50:50 recruitment system is having an impact, and I am pleased that helpful progress is taking place.

Mr Kennedy: Minister, you said that there would have to be fresh budget bids after the initial funding period has expired. I am not sure whether you mean that new and separate money will still be made available over and above that which is allocated to the Policing Board, or whomever is in charge.

Are you saying that a portion of money will be kept back and used specifically for that? Alex wondered whether more people would be employed as a result of that. However, on the issue of the basic funding of existing resources at that point, are you still saying that you will treat funding for PCSOs as a separate heading?

Mr Goggins: When the time comes for a comprehensive spending review, all aspects of public services will be examined in great detail. Therefore, if there is a case to be made for increased numbers of PCSOs, that case must be made within the bid that is contained in the review.

Mr Kennedy: I am not talking about additional numbers. I am talking about funding for the employment of PCSOs. Will that continue to be a separate heading and will it be separately funded in the manner in which it will be introduced?

Mr Goggins: It would have a separate heading, but within the overall policing budget.

Mr Kennedy: Would the Policing Board allocate appropriate finance to keep it going?

Mr Goggins: That would be a matter for discussion in the future, but there would have to be a clear bid.

Mr Kennedy: What is your view?

Mr Goggins: I was in the Home Office when PCSOs were first proposed, and, initially, there was great reluctance throughout the country. That attitude was transformed over a short period of time. Pump-priming money to get PCSOs started has come into the mainstream budgets of police forces, and that will be the case here. However, bids for the required level of resources must be made and justified, and I expect that to continue. It is important to emphasise that, at this early stage, we are proposing 400 PCSOs as additional staff, over and above what has already been agreed in the budget.

The Chairman (Mr Hay): Are there any other questions or issues to be clarified?

Ms Stanton: Who will define the criteria for vetting?

Mr Goggins: The criteria will be set out in regulations that will come from the Northern Ireland Office after the draft Order has been passed. There will be complete transparency in that, and those charged with the recruitment process will be required to adhere to those criteria.

Ms Stanton: How will human rights and equality be protected in that process?

Mr Goggins: All proposals in the draft Order have been tested under human rights legislation and have passed with flying colours. No proposals for legislation can be brought forward unless they meet all requirements of human rights legislation. This draft Order fully complies with those.

The Chairman (Mr Hay): Thank you, Minister. We now move on to streamlining of the police trainee recruitment process.

Mr Paisley Jnr: I apologise for being late. I was attending the debate on agriculture in another place, which, as the Minister can appreciate, is important.

Are these provisions not a move away from what Patten recommended, in that there was a deliberate effort to increase the number of part-time reserve officers? That has been limited, and we now have PCSOs.

Article 10 of the draft Order provides for the appointment of constables with special policing skills. That is a lateral entry provision. Will you confirm that the appointment of special constables will not be subject to the 50:50 recruitment process, as it was previously, and that the people who avail themselves of lateral entry will have sufficient skills to address the obvious gaps that have been identified in some areas in detective ability? Those gaps are due to the Patten severance arrangements, the effect of which was to get rid of skilled detectives.

Mr Goggins: Both those measures are sensible, practical changes that are being made to address specific needs that clearly exist. The arrangements for the appointment of constables with special policing skills are outside the 50:50 recruitment requirements. However, it is important that the Chief Constable is able to recruit and deploy staff with the relevant skills and qualifications to ensure that people across Northern Ireland know that the police are working in their communities to overcome criminality. It is important that the Chief Constable has those skills available. Therefore, the introduction of that measure is sensible, as is the streamlining of police trainee recruitment, which will mean that we actually save money. I said before that £0.5 million a year will be saved, with no difference in the end result of who will be appointed as police officers.

1.45 pm

Mr Paisley Jnr: I agree that the measures proposed in article 10 of the draft Order are sensible. Do you have any idea how many constables will be recruited under those measures? Many of those constables will be expatriates who could not get a job in the Police Service here and were recruited by English or Scottish police services, but who would wish to return to Northern Ireland. Do you have any idea how many will return in that way?

Can you also please elaborate on the terms “policing skills” and “specialist skills”? Can you identify where you believe the skills gap exists?

Mr Goggins: I will invite Steven McCourt to comment on the specific skills gaps that may have been identified in the last part of that question.

There are 97 vacancies for detective constables in Northern Ireland at the moment, and it is important

that the Chief Constable is able to fill those gaps as soon as possible. We want to help him bring in people with skills and experience, and we can do that by introducing the draft Order.

Mr Steven McCourt (Northern Ireland Office): The criteria for those posts and the definition of “specialist skills” have not been defined in the legislation. It is up to the Policing Board and the Chief Constable to consider which criteria are necessary.

Mrs Foster: Is it up to the Policing Board to decide whether a gap exists that can be filled through the provisions of article 10 of the draft Order? Is that correct?

Mr Goggins: The shortfall that everyone has clearly identified — the Policing Board, the Chief Constable and myself as Minister — is in the detective constable post. That is the first area on which we will want to see movement. However, there may be other gaps in the future, and we want the police to be able to recruit appropriately.

Mr Kennedy: I would like some clarity on that matter. Are you saying that the measures enable the Chief Constable and the Policing Board to resolve the detail of that matter?

Mr Goggins: As I said, that power will be created through the legislation. The only way to be recruited into the PSNI at the moment is through the trainee programme. We want the police to be able to recruit officers above that level, where there is a gap.

We will create that power, but the practice of that power will be a matter, as Steven McCourt has said, for the Policing Board and the Chief Constable.

Mr Paisley Jnr: The draft Order also deals with the important matter of training. There is no doubt that police officers in Northern Ireland are trained to a very high level and, indeed, are subject to a much more extensive training course than their counterparts in other parts of the UK or in other parts of Europe. The Assembly has debated the important matter of the police training college. Are you in a position to say anything more about that or to respond to the issues that were identified in that debate?

Mr Goggins: I regard the resolution of outstanding issues on the financing of a police college as a high priority for the coming weeks. We have examined the projected costs in great detail to ascertain whether it is possible to reduce some of those costs and whether there may be other potential sources of income. It may be possible to develop joint training facilities. My officials are pursuing all of those ideas, and I will be the first to come forward with further details when I am able to do so. However, I have no further details to share this afternoon.

Mr Paisley Jnr: Do you have any idea when you will share that information with us? We all want Christmas to come early on that matter.

Mr Goggins: Christmas came a bit earlier than I was hoping.

Mr Paisley Jnr: It has come and gone.

Mr Goggins: I hope to be able to share some news with members soon.

Mr Raymond McCartney: I wish to return to a question that Ian Paisley Jnr asked. Can you confirm that 50:50 recruitment will not apply to detectives?

Mr Goggins: There will not be 50:50 recruitment of detectives as part of the specific recruitment process that we have been discussing. When the Chief Constable fills those 97 vacancies through recruitment from other UK forces, the 50:50 criteria will not operate. However, that does not affect the existing powers, the renewal of which, as members know, has been subject to consultation regarding the majority who enter through the trainee system or, indeed, new recruits through the PSCOs recruitment scheme.

Mr Raymond McCartney: Has that measure obtained the approval of the Policing Board?

Mr Goggins: That measure has the enthusiastic support of the Policing Board, which understands the need to fill the gap. I am sure that the board will want us to act on that as soon as possible. At the moment, that cannot happen because the law does not allow it. That is why we want to change the law.

Mr Raymond McCartney: Sinn Féin welcomes designation because it makes people accountable to the office of the Police Ombudsman. Which positions are exempt from designation, and why are they exempt? In particular, why is the Historical Enquiries Team (HET) exempt?

Mr Crawford: It is not a question of exemption. The point is that the HET is not directly employed by the PSNI. No specific exemptions are set out in the legislation.

Mr McCourt: Designation relates to five specific categories of designated civilians with limited police powers. Any civilians working for the HET will not be utilising police powers. They will not be designated.

Mr Raymond McCartney: Are members of the HET also exempt?

Mr Crawford: The officers working for HET are agency staff, not designated civilians. They represent a different class of official.

Mr Raymond McCartney: Why is that?

Mr Crawford: It was the quickest and simplest way to get skilled police officers into the HET posts. The draft Order relates to designated civilians generally.

We have not included anything in the draft Order about agency staff because we expect that the use of agency staff will decrease.

Mr Raymond McCartney: Do you expect to designate agency staff, or will they be exempt?

Mr Crawford: We have not looked at that.

Mr McCourt: One can designate civilians only in the five specific categories where the powers that they can exercise have been stipulated in legislation. We are talking about five specific sets of skills.

Mr Goggins: It is worth remembering that no civilian staff are designated at present. The powers are new and will be introduced very carefully.

I will give you a practical example. If the police are investigating fraud, the best people to carry out some of the detailed investigative work that is involved may not be police officers necessarily but those who are skilled in financial accounting and administration. Such people could be designated with certain police powers. For example, they could have the power to seek arrest warrants or action of that kind.

We are seeking to empower appropriately suitable civilian staff who may be working with, and for, the police. We will do that very carefully. We would not give all powers to civilian staff: only certain powers and under very strict conditions.

Mr Raymond McCartney: Could that include scene-of-crime officers?

Mr Crawford: It could, if they are given the powers set out in the draft Order.

Mr Raymond McCartney: Are they exempt now?

Mr Crawford: It is not a case of exemption. It is simply that they are not designated at the moment. In future, it is likely that they would be designated.

Mr Attwood: To make sure that everybody understands what is happening, I have a number of questions concerning the recruitment of officers from outside the PSNI.

First, when the PSNI is recruiting the potentially very small number of people who are needed, will it be able to recruit not just from Britain, but from the Republic of Ireland?

Mr Goggins: Yes.

Mr Attwood: Secondly, will that provision fall after two years unless the Policing Board unanimously agrees it?

Mr Goggins: Yes.

Mr Attwood: Is it the case that the first time the provision was introduced, approximately 18 officers availed of it?

Mr Goggins: Steven McCourt has confirmed the precise number.

Mr Attwood: Is it the case that the majority of the officers who applied under that provision were Catholic?

Mr Goggins: I cannot confirm that, but Steven may be able to.

Mr Attwood: I am stating for the record that of the 18 officers who applied under that provision when it was first introduced, and which consequently expired, the majority were Catholic.

Mr Kennedy: Chairman, could I ask a sensible question? *[Laughter.]*

Mr Attwood: Some of those matters —

Mr Paisley Jnr: On a point of order, Mr Chairman. Is it appropriate that we reveal the specific religious backgrounds of 18 identifiable officers who are known to have been recruited in a particular way? That is wrong, and the member should be cautious.

The Chairman (Mr Hay): As I have said to Mr Attwood, to be fair to the rest of the members and to the Minister, it is important that we stick to the agenda.

Mr Attwood: I am referring to the agenda. It is on the agenda to discuss the provision to enable recruitment of detectives for short periods.

The Chairman (Mr Hay): You are making an assumption.

Mr Attwood: No, I am not. I am asking questions to get on the record the facts surrounding the first such recruitment — and those are the facts on that recruitment.

I differ with the Minister's view that the board enthusiastically endorsed that measure. The board unanimously endorsed it, because that is the requirement for this variation and because it recognises that there is a shortfall of detectives — not because of severance per se, but, in our view, because of the mismanagement of severance by the former leadership of the police who let too many people go too quickly. However, that is neither here nor there.

Will that provision expire after two years unless the board unanimously asks for it to be extended?

Mr Goggins: Yes.

Mr Attwood: My third question relates to the changes in recruitment procedures governing police support staff. Will the Minister confirm — so that there are no misunderstandings — that rather than everybody being vetted as soon as they get into the applicant pool, only those who come out of that pool will be subjected to vetting and the other standards? That procedure is a consequence of the fact that recruitment has been so successful and that so many applicants have got into the applicant pool. Unfortunately, however, there are

not enough jobs in the PSNI on a year-to-year basis to satisfy all those who have attained the standards of entry to it.

Mr Goggins: I confirm that.

The Chairman (Mr Hay): Mr Kennedy will now ask questions. Unfortunately, I have to leave, as I need to be in another place. My good friend and colleague Mr Dawson will take over. Once again, Minister, you and your officials are extremely welcome.

(The Chairman [Mr Dawson] in the Chair.)

Mr Kennedy: Thank you, Mr Chairman. Mr Attwood referred to the previous arrangement and the 18 appointments that were made. Can the Minister, or any of his officials, confirm whether any of the successful applicants came from the Irish Republic?

Mr Goggins: We cannot confirm that this afternoon. However, I am more than happy to look at that and make sure that every member of the subgroup is aware of the —

Mr Paisley Jnr: None of them came from there; that is just a pedantic point.

Mr Kennedy: Ninety-seven vacancies in the complement of detectives that is available to the Chief Constable is a serious matter. Why have the Government allowed it to happen?

Mr Goggins: It is important to note that the Government have recognised that such a gap requires urgent action. That is why those provisions have been proposed. We do not know why that happened, but it did. We must grasp the nettle and ensure that the Chief Constable is able to recruit the staff that he needs. The important thing is to deal with the problem.

Mr Kennedy: Do the Minister understand the level of concern that there will be once this emerges into the public domain? The Government have somehow allowed the Chief Constable to be deficient of at least 97 detectives at a time when crime is rising.

2.00 pm

Mr Goggins: It is not fair to say that people have sat around and allowed the situation to develop. Recruitment gaps occur in all walks of life and in all elements of the public service. This issue has arisen, and it is important that it is dealt with. That is what we intend to do.

The Chairman (Mr Dawson): Good afternoon Minister.

Mr Paisley Jnr: The issue goes back to article 8 of the draft Order, which deals with recruitment. Under the current arrangements potential recruits must reach an elaborate pool, and once they have been selected for, they are given a medical examination. The potential officer might fail the medical and be out of

the process. Would you consider reconfiguring that arrangement? Once a recruit has had a medical they are deemed fit for recruitment and go into the pool.

Mr Goggins: The Government propose a change that is based on the individual having met all the other competencies for recruitment as a police officer. They are established as a member of the pool and must undergo medical and criminal checks to remain a member. That means assessing many people who will not be appointed as police officers. The Government propose the provisional appointment of a police officer from the pool, provided that they satisfy the medical and other tests. If they do not pass those tests, we move on to the next person.

Mr Paisley Jnr: The Minister has identified important issues, but the process is expensive. It costs £12,000 to recruit an individual to the police — that is almost half a new recruit's salary. It costs the Government a great deal of money to get a potential recruit through the process only for that person to fail the medical. The individual will have paid for various aspects of the recruitment process and will have taken time off work — it is a big commitment, and the individual loses financially.

Mr Goggins: Recruiting staff in any public service, including the police, incurs expense. The Government propose a cheaper recruitment process that should save £0.5 million a year; it is a sensible, practical measure. Our proposal will not affect appointments and will make the process less expensive.

The Chairman (Mr Dawson): If members have no further questions on recruitment, we shall move on.

The third issue for discussion is additional powers for the Police Ombudsman and for the police.

Mrs Foster: In his introductory remarks, the Minister mentioned “new and compelling evidence” with regard to the double jeopardy rule and the Police Ombudsman. I read the memorandum but did not see the word “compelling”; the term was “new evidence”. I have concerns about double jeopardy at the best of times; however, who determines that evidence is new and compelling? Does the Police Ombudsman make such a determination or will criteria be laid down about when evidence is to be treated as new and compelling? There should be criteria, not somebody taking a subjective view about whether evidence is new and compelling.

Mr Goggins: The Director of the Public Prosecution Service (PPS) takes the decision. Under the normal provisions of double jeopardy, if the police believe that they have evidence that somebody committed an offence of which they have been acquitted, they must ask the Director of the Public Prosecution Service for permission to reopen the case.

Mrs Foster: Will the Police Ombudsman have to go through that process?

Mr Goggins: The Police Ombudsman will have to tell the Director of the Public Prosecution Service that she has new evidence and that the investigation should be reopened. The Ombudsman will have to persuade the Director of the Public Prosecution Service that the evidence is sufficient to warrant a reopening.

Of course people were concerned that introducing the new rules on double jeopardy would mean that the police would forever want to reopen investigations, rather than accept that the case could not be proved. Therefore there has to be that high hurdle; the PPS has to be satisfied that there is sufficient new evidence. There are reservations about that. However, I am sure that everyone will be pleased that, the availability of new DNA evidence means that a number of people who committed grave crimes, such as rape, and rape involving young children, can now be prosecuted, even though they were previously acquitted. That is only right. That may affect only a small number of cases, but where the evidence is available, it should be possible to reopen the investigation.

Mrs Foster: As in everything, there must be balance, and this is about a balance of rights. People should not be open to reinvestigation for years and years, but, if something is starkly wrong, reinvestigation is right.

Mr Goggins: It is also important to remember that it must be a serious matter. It has to involve a serious criminal matter, and that applies to the Police Ombudsman as well. A request can be made only in relation to a serious criminal matter.

Mr Paisley Jnr: Following up on that, is the definition of “new evidence”, therefore, evidence that has never previously been relied upon in a previous investigation or trial? Is that correct?

Mr Goggins: It has to be new evidence. It could be that the evidence existed before, but that the means were not then available to interpret it in a way that was helpful.

Mr Paisley Jnr: That would definitely make it new, so I accept that.

Mr Goggins: For example, an item of clothing that existed during the first investigation, but that can now be subjected to new DNA tests, may be able to reveal evidence the relevance of which was not then recognised. It was not as significant then as it is now, since new technology can enable us to interpret it more effectively. It has to be new in that sense. It cannot just be a regurgitation of old evidence.

Mr Paisley Jnr: The Minister will be aware that prior to establishment of the Criminal Cases Review Commission — the body that now sends cases back for

appeals after there has been a trial — the Home Secretary had the power to do that if fresh factors for new evidence were brought to his attention. Obviously, that was a very high threshold to attain. Is the Minister saying that that definition of “new evidence” is within that threshold? Is that what he means by “new evidence”?

Mr Goggins: It cannot be just a fresh look at all the evidence that was considered before. If that evidence was looked at, and the person was acquitted, that is that. The evidence has to be new. Indeed, that is true of cases considered by the Criminal Cases Review Commission, and it would be the case here. However, it is important to recognise a subtle distinction: the evidence may have already existed, but it was not possible to interpret it because DNA had not been analysed. Interpretation of DNA now means we can get more out of that evidence than was the case before. In such cases, the evidence reveals something new.

Mrs Foster: Will the Minister clarify that? It is sometimes argued that the evidence was there but that it was not brought forward, or that it was not argued strongly enough, or that it was not given due weight. Do those arguments not constitute new evidence?

Mr Goggins: That would not be new evidence.

Mr Raymond McCartney: As the Minister will be aware, the genesis of the draft Order was the consultation paper, to which Sinn Féin made a submission raising concerns, including, in particular, those about increased powers. One was on the lowering of the reasonable suspicion for the seizure of documents or electronic records. The second was about the 28-day detention period. In the light of that submission and of concerns raised by other people, have those reservations been taken account of?

Mr Goggins: The 28 days is in relation to the terrorism legislation, rather than the draft Order. Clearly, 28 days is the current position, although there are reviews of terrorism legislation. No doubt the issue will keep coming up for public and parliamentary debate.

As to powers to seize documents, that is obviously a matter to be approached carefully. We cannot simply have police officers going willy-nilly into people’s property, into their houses and business premises and removing items at will. However, where an officer has a reasonable suspicion that certain documents contain evidence that could sustain a prosecution of a serious matter, he needs to be able to access them, and — if it takes some considerable time to analyse the documents — to remove them, initially for 48 hours, and, by extension, for up to 96 hours.

The information may be on the hard drive of a computer or on extensive files. Sometimes it is necessary to remove files to examine them carefully, but that must be done proportionately. Any instance

when evidence is taken away must be properly recorded, and, indeed, items that are subject to legal privilege are exempt from that. Therefore although there are safeguards, if it is strongly suspected that documents contain information, the Government believe that the police should have the power to remove those documents and to examine them thoroughly.

Mr Raymond McCartney: My party welcomes the increased powers for the office of the Police Ombudsman. The Minister will also be aware that the office has been given the power, on the direction of the Public Prosecution Service, to investigate misconduct by PSNI officers. In the light of recent criticism by the judiciary of the way in which some investigations were conducted, is the Minister aware of any referrals by the Public Prosecution Service to the Office of the Police Ombudsman?

Mr Goggins: Do you mean in relation to the double jeopardy rule?

Mr Raymond McCartney: No, just with regard to the general principle.

Mr Goggins: I cannot comment on specific cases that might have been referred.

Mr Raymond McCartney: My final question is on the collection of DNA and fingerprints from children. Is the Minister aware of the numbers of such cases and whether there is a procedure to destroy them, should it not be necessary to retain them?

Mr Goggins: Unless Robert Crawford has an accurate figure, I am happy

to send the subgroup the exact numbers. I realise that a difficult judgement must be made with regard to children. However, children can sometimes do dreadful things. Having the fingerprints of a child who has committed a serious crime may solve that crime. I have spoken to the Chief Constable about that important matter, which he treats very seriously indeed. Nonetheless, if such information is available and a prosecution can be mounted for a serious crime, that is a proportionate response. However, the Chief Constable deals with the matter very carefully.

Mr Attwood: I want to revisit the issue of police powers. We share a sense that some of the past architecture of the legislation on terror offences in the North has been recreated. My party is concerned about the proposal to retain one-judge courts and about how that may develop.

I would like clarification on the police's power to examine documents. Take the example of a police officer who enters a premises to carry out a legal search and remove a document because he has a reasonable suspicion about that document. Can an officer remove such a document for further examination only when he has reasonable suspicion about it? That

is what the Minister indicated. My understanding of the legislation is that a constable's powers will be much wider than that.

Mr Goggins: Let me ask Robert to clarify the details.

Mr Crawford: Reasonable suspicion is required under the Police and Criminal Evidence Act 1984, but it is not required in such a case.

Mr Kennedy: It is difficult to hear the witness.

Mr Crawford: Sorry, I will speak up a little. Reasonable suspicion is not required in that case because the purpose of the power is to allow a police officer to examine documents to determine whether he or she should have reasonable suspicion that they could be evidential or whether they contain information that would allow them to be seized under the Police and Criminal Evidence Act 1984. That is why the power is restricted to a specific time.

An example might be the seizure of complex financial records in a serious crime case, such as fraud, where it may not be immediately apparent to a police officer during a lawful search that the information could be evidential. The officer would still have to justify and substantiate his reasons for seizing documents. It is important to stress that the officer would also be accountable to the Police Ombudsman for his actions.

Mr Goggins: I want to clarify my remarks because it may be helpful to Alex. In practice, a police officer must have a reasonable suspicion that if he or she were to examine documents, he or she would find evidence in them that a crime has been committed. That is the accurate position, which is slightly different from that which I first intimated.

Police officers cannot go round seizing documents willy-nilly. There has to be a rationale behind their actions; they must be able to justify their suspicions.

2.15 pm

Mr Attwood: I appreciate that, but my understanding of the proposal is not the Minister's understanding. My understanding is that any officer would be able to enter a house and seize any document about which he has suspicions. That officer could, for example, seize a document simply because it is in a foreign language — or not even in a foreign language, but in another language; documents in a house in west Belfast could be in Irish, or, in a house in the Shankill, in Ulster Scots. Of course, if it turns out subsequently that there is something in that document, the officer can pursue the matter in the appropriate way. However, the provisions outlined in the draft Order would allow an officer to seize a document simply because he does not understand the language in which it is written. That raises the concern that the power could be interpreted

so widely that officers will have a licence to do what they want when carrying out a lawful search of a house. The draft Order outlines the process that an officer must follow in order to satisfy himself after the event, but there is no standard as regards what happens at the time of the event. That is not a healthy way forward.

Mr Goggins: I do not think that we are a million miles apart. Mr Attwood says that the officer must have a suspicion; I say that that officer must act reasonably at all times, so it must be a reasonable suspicion that something in the document may give rise to the suspicion that an offence may have taken place or is about to take place. In practice, what matters is that we have a memorandum of operation that governs the actions of police officers so that they act proportionately and reasonably.

Mr Attwood: Is that provision currently reflected in British legislation governing England and Wales?

Mr Goggins: It is not; this provision is specific to Northern Ireland and reflects the ongoing need to ensure that we can deal with any situations that may arise.

Mr Attwood: Does that mean that we have a provision in the North that does not apply in England and Wales?

Mr Goggins: That is right.

Mr Attwood: Does that mean that an officer in the Metropolitan Police must have reasonable suspicion before he removes any documents during a search of premises, but, according to the Minister's interpretation of the provision, a PSNI officer would not have the same requirements placed upon his shoulders when carrying out a search of a house in the North. The terrorist legislation here is being repealed, yet this new Order is now being introduced. Why is the North being treated differently from England or Wales?

Mr Goggins: It is true that the Government have clearly had to strengthen UK-wide terrorist legislation and introduce new and more powers across the whole of the United Kingdom at a time when the security situation in Northern Ireland has been improving. We have therefore been in a position to reduce the level of terrorist legislation in Northern Ireland, which is why Part VII of the Terrorism Act 2000 will cease to have effect in July of next year. Nonetheless, we have thought this through very carefully, and we still feel that certain powers are needed to reflect the specific circumstances of Northern Ireland.

Mr Attwood: This is an important question. The terror legislation that was introduced in respect of international threat applies in Northern Ireland as it does in England and Wales.

The Minister outlined that paramilitary violence in the North is changing, to the extent that the Government are getting rid of some of the architecture of past

terrorism, such as anti-terrorism legislation and non-jury courts. At a time when those measures are being removed, why are the Government according even greater powers to a police officer who enters premises to seize any document that he might want? That is inconsistent; there is tension between the Minister's analysis of what is happening in the North and his analysis of how the North compares to Britain.

Mr Goggins: I thought that I had made it clear, Mr Chairman, that although the situation is improving, the remaining threat must be treated seriously. Whether the threat relates to the investigation of bomb-making equipment or to the underlying organised criminality that may fund the remaining elements of a potential terrorist attack in Northern Ireland, the Government consider it necessary to give those powers to the police. The threat is diminishing, but it is still there, and the police must have the powers to deal with it. That is the Government's analysis of the situation, which is why we are introducing those powers.

However, that does not alter the fact that Northern Ireland is moving in the right direction on matters of security and towards a more peaceful society.

The Chairman (Mr Dawson): To be fair to other members who have been patient, we must move on.

Mr Kennedy: The Police Ombudsman's role will now include the investigation of police officers who were acquitted previously of an offence in cases where there is new evidence — again, the absence of the word “compelling” raises concern. Is there any timescale for such investigations or any time limits within which a former officer could be accused of, or charged with, any such offence?

Mr Goggins: There are no time limits. The question is whether there is new evidence. I must check, Mr Chairman, whether the word “compelling”, which is so ingrained in my consciousness, is used. As I explained to the subgroup earlier, my baptism as a Minister was when I was involved with the Criminal Justice Act 2003, and the words “new” and “compelling” are etched in my mind for ever.

The evidence must be new and sufficiently compelling to persuade the PPS that a particular case needs to be reopened. Therefore, in practice, the evidence will have to be new and compelling. That is my defence.

Mr Kennedy: Will that be written into law?

Mr Goggins: I will need to check the precise wording. The key word is “new”, but unless the evidence is also compelling, the case would not be reopened.

Mr Kennedy: Will the Minister check the precise wording and confirm that to the subgroup?

Mr Goggins: Yes.

The Chairman (Mr Dawson): As there are no further questions, I thank the Minister and his officials for coming to today's meeting. The subgroup appreciates his giving of his time. Perhaps members could have been a little tougher on him, but they were quite lenient, which is appreciated.

The Minister has promised to come back to the subgroup on some matters, and members look forward to receiving that information.

Mr Goggins: My officials and I will get a note to the subgroup as soon as we can.

The Chairman (Mr Dawson): That is appreciated. The subgroup will meet tomorrow at 12.00 noon.

Adjourned at 2.23 pm.

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