



Northern Ireland  
Assembly

---

**COMMITTEE  
FOR THE OFFICE OF THE  
FIRST MINISTER AND DEPUTY  
FIRST MINISTER**

---

**OFFICIAL REPORT  
(Hansard)**

---

**Department of Justice Bill**

7 October 2009

**NORTHERN IRELAND ASSEMBLY**

---

**COMMITTEE  
FOR THE OFFICE OF THE FIRST MINISTER AND  
DEPUTY FIRST MINISTER**

---

**Department of Justice Bill**

---

7 October 2009

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

Mr Danny Kennedy (Chairperson)  
Mrs Naomi Long (Deputy Chairperson)  
Ms Martina Anderson  
Mr Alex Attwood  
Mr Tom Elliott  
Mr Francie Molloy  
Mr Stephen Moutray  
Mr George Robinson  
Mr Jim Shannon  
Mr Jimmy Spratt

**The Chairperson (Mr Kennedy):**

We move to our consideration of the Department of Justice Bill. The meeting is being recorded by Hansard, so do not be tempted to switch on your mobile phones. On 9 September 2009, the Committee agreed to give public notice in newspapers, requesting written submissions on the Department of Justice Bill. The Committee will consider those submissions today. I welcome Eilis Haughey from the Bill Office, who is present to assist us. The only response came from the Assembly and Executive Review Committee, which is chaired by Mr Spratt, who is also a member of this Committee.

We shall commence our consideration of the Bill, affording members an opportunity to air concerns and to explore recommendations for amendments, short of taking a formal position on the clauses. Today's discussion will pave the way for formal clause-by-clause consideration next

week, when we will formally record the Committee's position on each clause, schedule and the long title. The Committee must also consider whether to seek an extension to the Committee Stage of the Bill.

The timescale is as follows: next week, the Committee will complete its clause-by-clause consideration, and it will consider submitting its report by 21 October. The closing date for responses is 10 November.

Do Committee members have any comments on a possible extension of the Bill's Committee Stage?

**Ms Anderson:**

Does the Committee Clerk think that we need one? From the time frame that you outlined, it does not seem that an extension is required.

**The Chairperson:**

During the lengthy debate on the Bill's Second Stage, the First Minister said that he was willing to attend the Committee with the deputy First Minister to discuss any issues that members have. Committee members may want to include questions on financial issues at that meeting. If that meeting was planned, diary commitments could lead to an extension of the Committee Stage. However, that is a decision for the Committee.

There is a crossover between the work of this Committee on the Bill and that of the Assembly and Executive Review Committee. However, we are technically scrutinising the Bill.

**Mrs Long:**

Having the First Minister and the deputy First Minister at the Committee to brief us on the finances involved in the devolution of policing and justice is always welcome, and I would have no objection to such a meeting. However, such a meeting is not critical to the discharging of our functions on the Bill.

There is a separate issue, because the Bill is preparing the way for a Department of justice but not creating one. We deferred our decision on a request for an extension of the Committee Stage, because if there were many public submissions, we wanted to ensure that we would have time to

go through them properly. However, there have been none, which shows how important the Bill is beyond the walls of this place. Therefore we do not need an extension.

It would do no harm to schedule a briefing on the finances with the First Minister and the deputy First Minister, but that should not preclude our beginning clause-by-clause consideration. No doubt, the issues will be aired again fully in the Chamber when the Bill reaches its next Stage.

**Ms Anderson:**

I concur with the Deputy Chairperson. A possible extension of Committee Stage was based on the expected volume of responses. Since we have not received a large volume of responses, it is not critical to our work that the First Minister and the deputy First Minister come to the Committee. Of course, we will welcome their attendance at some stage, but we should not delay the Bill's passage.

**Mr Spratt:**

I too agree with the Deputy Chairperson. As you will know, the Assembly and Executive Review Committee has already requested the attendance of the First Minister and the deputy First Minister at one of its meetings. You will also be aware that any discussion at that meeting will be in closed session, and I imagine that the discussion of financial matters at this Committee will be no different.

All the work on financial matters by the Assembly and Executive Review Committee has been done in closed session with the specialist advisor. I would expect the same to happen in this Committee, as doing otherwise would make nonsense of our work. Any meeting of the Assembly and Executive Review Committee remains open to all the parties. That remains the position on any matter to do with the devolution of policing and justice.

**Mr Shannon:**

The Assembly and Executive Review Committee has all-party involvement. We are looking at the skeletal framework of the process rather than at the financial issues.

As other members said, there has not been a massive public response, because people are more concerned about the economy and education. You know that and I know that. Therefore, rather than prolong the process, we need to move it along.

**Mr Attwood:**

I concur with those views. The First Minister and the deputy First Minister should be invited to attend the Committee. However, you may want to give them notice now, because, as Mr Spratt may or may not confirm, they take a little bit of time to respond to an invitation.

**Mr Spratt:**

I could not possibly comment.

**Mr Attwood:**

It is relevant that we enquire of the First Minister and the deputy First Minister details of the process leading up to how clause 2 might work out in practice. It is one thing to vote on clause 2, as approved — as I presume it will be — on the Floor of the House when someone is nominated for the position of Minister of justice. It is not about how we get to that point or how any future Minister will be identified as being suitable, for instance. Beyond the financial matters, which should be brought to the attention of the Committee, there are other matters on which OFMDFM's advice to the Committee would be useful. For instance, it would be useful to know OFMDFM's thoughts on those issues and details on its process.

**The Chairperson:**

Are members content that we do not seek an extension to the Committee Stage of the Bill?

*Members indicated assent.*

**The Chairperson:**

Should we issue an invitation to the First Minister and the deputy First Minister?

**Mr Spratt:**

It is a bit premature.

**Ms Anderson:**

That should be requested, but it has nothing to do with whether the Bill's Committee Stage is extended.

**The Chairperson:**

It has nothing to do with the extension.

**Ms Anderson:**

When we make that request, we should acknowledge that the First Minister and the deputy First Minister have been before the Committee on two or three occasions, which is more often than the First Minister and the deputy First Minister of the previous Executive attended meetings of the former Committee of the Centre. We should acknowledge that our Committee has never experienced undue delay when it made such requests. We would appreciate their attendance within the time frame of the schedule.

**The Chairperson:**

I will leave that stone unturned. Are members content that we invite the First Minister and the deputy First Minister, as necessary?

*Members indicated assent.*

**The Chairperson:**

Do members have any comments?

**Mr Spratt:**

Any discussion of the financial package should be in closed session.

**Mr Shannon:**

The First Minister and the deputy First Minister have said that they are happy to attend when the financial package is in place. Let us leave it until that is done rather than be premature.

**The Chairperson:**

Are members content that we invite the First Minister and the deputy First Minister to attend a meeting in closed session if a financial package is agreed?

*Members indicated assent.*

**The Chairperson:**

Next week, the Committee will complete its clause-by-clause scrutiny, and we will consider the Bill report.

**The Clerk of Bills:**

This is a good opportunity to consider possible recommendations for amendments.

**The Chairperson:**

Do members want to raise issues or suggest amendments?

**Mr Attwood:**

I have three or four queries. The Bill has to be read in conjunction with the primary legislation from Westminster. My first query stems from a previous matter and from the letter from the departmental liaison officer to the Committee on 21 September and relates to what will happen if new legislation is not in place by 2012. Our view on what will happen in 2012, in the absence of new legislation, differs from the advice of OFMDFM.

I remind members of the OFMDFM letter of 21 September, which states that there is no default position if, prior to 1 May 2012, the Assembly has not provided for the continued operation of the Department of justice. OFMDFM seems to be definitive that the Department of justice would dissolve on that date and that there is no default position in such a circumstance. However, we differ for two reasons. It is not the practice of a legislature, least of all Westminster, to legislate for a vacuum.

**The Chairperson:**

I understand that you may have a different view. However, at today's meeting, we are charged with dealing with specific queries on the Bill, which may lead to amendments; it is a technical rather than a political discussion. The political arguments were well rehearsed in the debate on the Bill's Second Stage, and, presumably, they will be rehearsed again in its later Stages. Therefore I do not intend to have the political arguments rehearsed today. We can deal with any technical points or potential amendments that you wish to highlight in preparation for next week's clause-by-clause scrutiny.

**Mr Attwood:**

I will have three points in that regard. We have an obligation to create certainty and avoid doubt so that we are aware of the full consequences of the legislation. Given that the legislation has to be read with Westminster legislation, one can only fully know what it means by understanding what would happen in 2012. There is a need to provide technical clarity on the matter, and a subsequent clause that creates certainty about what happens in 2012 may be required.

**The Chairperson:**

The Bill will be subject to amendment, but we are concerned with the Bill as it is before us. Do you wish to raise any points of clarification or queries on the Bill as it is rather than as you think it should be?

**Mr Attwood:**

You indicated that I should indicate any amendments that we may be minded to table next week.

**The Chairperson:**

You do not have to do that.

**Mr Attwood:**

I have no difficulty with indicating the amendments that we may be minded to table next week. Those may include an amendment that deals with what happens in 2012, and that is germane to today's discussion on the Bill.

**The Chairperson:**

It may be helpful for such amendments to be submitted in advance so that they can be circulated to allow members to have a wider discussion on them.

**Mr Attwood:**

I will comply with that request. I am making the point that the Bill should be amended to clarify what will happen in 2012 so that people are not suddenly hit with a raft of amendments next Wednesday. OFMDFM says one thing, but we have a different interpretation. Let me remind members briefly of that interpretation: it is our view that, when it legislated for a sunset clause, Westminster was not minded to legislate for a vacuum if, on 1 May 2012, the Assembly had not legislated for the Department of justice to continue. Contrary to what OFMDFM says, we believe



that Westminster did provide a fallback: section 44(5) of the Justice and Security (Northern Ireland) Act 2007 inserts new section 21A into the Northern Ireland Act 1998. If we have not legislated by 2012, Westminster can impose a model of electing a senior and junior justice Minister by parallel consent. That is our view; it is not the view of OFMDFM.

Perhaps that difference of interpretation can be clarified next week. If so, I will be happy to walk away from the issue; however, there is a clear difference of interpretation. That is relevant, because it affects what will or will not happen in 2012. The matter needs to be moved on. An amendment to the Bill may need to be legislated for next week.

**The Clerk of Bills:**

I will try to provide the Committee with advice on what amendments can be recommended on that subject. The Committee can recommend that action be taken even if it is beyond the parameters of what the Assembly has the power to legislate on.

**Mr Spratt:**

Mr Attwood is expressing his view and those of his party; the rest of us may not share them. It is not for the Clerk of Bills to advise him on possible amendments. We are happy to discuss any amendments that Mr Attwood wants debated in the House; there will be enough Members there to discuss it. We can discuss it for another nine or 10 hours.

**The Clerk of Bills:**

Forgive me if I was not clear: I was simply offering to provide options for the Committee.

**Mr Spratt:**

I understand that. I am just making a political point because other members made political points.

**The Chairperson:**

I said that our duty today is to concentrate on the technicalities of the Bill, not on its political nature. Please avoid straying into political.

**Mr Attwood:**

First, I am not straying into its political nature; the issue is both technical and legislative. To conclude the aforementioned matter, I will share my opinion with the Committee, and the Clerk

of Bills can share that view with whomever she wants in the Building to see whether the matter can be resolved. I want the issue to be resolved, and I have no doubt that its resolution will be consistent with the SDLP's interpretation.

Secondly, I put the Committee on notice that the SDLP will propose an amendment to clause 2, which gives effect to the election of a justice Minister by cross-community support. That amendment will be circulated to members in due course.

**The Chairperson:**

It would be helpful if it could be circulated before next Wednesday.

**Mr Attwood:**

It will. I will pass it to the Clerk, and she can attend to it.

Thirdly, as Mr Spratt confirmed, some matters remain unresolved by the Assembly and Executive Review Committee. One of those is the status of a future justice Minister and whether that Minister will be a fully fledged member of the Executive with all the authority and powers that fall to an Executive Minister, including attendance at Executive meetings.

**The Chairperson:**

The Bill is silent on that.

**Mr Atwood:**

It is. However, given that we are talking about the nomination and appointment of a justice Minister, the status and authority of such a Minister needs to be clarified. I put the Committee on notice that if the matter is not resolved through the Assembly and Executive Review Committee and through other discussions, we reserve the option of tabling an amendment on the authority and status of a justice Minister so that it is equal to that of other Executive Ministers. That would conclude the matter and create certainty, for at the moment the issue is up in the air.

**The Chairperson:**

You can do that at Committee Stage or later on the Floor of the House.

**Mr Attwood:**

I did say that I reserve the right to table such an amendment, either next week or further down the line.

I again put the Committee on notice that the SDLP is of the view that the status and authority of the Department of justice is so important that, as of day one, it should be a sector in the North/South Ministerial Council. We will propose an amendment to ensure that on the day that the Department of justice becomes live, a justice matters sector of the North/South Ministerial Council will also go live. That has to happen in order to establish the authority of the Department of justice on justice issues on the island of Ireland.

**The Chairperson:**

Will that amendment be submitted at Committee Stage or at a later Stage?

**Mr Attwood:**

I will reserve judgement on that. However, it is likely to come before the Committee rather than be tabled on the Floor of the House. There are other matters that I wish to talk about, but I will save those until next week's meeting.

**Mr Elliott:**

To some degree, Mr Attwood has answered my question regarding clarification of the sunset clause. I felt that the letter of 21 September clarified the 2009 Westminster legislation on which we will have, at some stage, to act. However, at least Mr Attwood said that he will inform us of the issues that he feels to be of concern; when he does, we can take it from there.

**Mrs Long:**

I want to check the authority of the different pieces of legislation on the sunset clause. Mr Attwood referred to the Justice and Security (Northern Ireland) Act 2007. However, the Northern Ireland Act 2009 was the last legislation to deal with the issues, so it is the relevant one. I assume that if the Northern Ireland Act 2009 put in place an arrangement at Westminster, our legislation can only legislate within the framework that it sets out. We would not be competent to amend or change that.

**The Chairperson:**

We are secondary to that legislation.

**Mrs Long:**

All we can do is clarify the legislation; we cannot change it. It is not good practice to duplicate legislation. Where in the Bill would such an issue be considered? I am not sure that it can be considered as part of the Bill, although I understand the concern about confusion.

**The Clerk of Bills:**

First, the Assembly's capacity to amend the Northern Ireland Act 2009 is limited. Much of that legislation is excepted, which means that even if the Assembly asked him, the Secretary of State cannot give consent on certain areas of the Bill, including fundamental aspects of Executive authorities. However, not all the Bill is excepted, and, if the Committee wishes, we can explore possible options.

Secondly, it is within the Committee's remit, if it so chooses, to call upon the UK Government to amend legislation if it feels that it is relevant to the legislation under consideration.

**The Chairperson:**

Is the Bill Office prepared to give advice on such matters?

**The Clerk of Bills:**

I can advise on the scope of the Bill and the Assembly's capacity to amend it.

**The Chairperson:**

That advice is available to all Committee members if necessary.

**Mr Shannon:**

Should any member who anticipates proposing an amendment contact you directly to see whether that can be done rather than go through the process knowing that it may not go anywhere?

**The Chairperson:**

That is the point that Eilis highlighted.

**Mr Shannon:**

I am just suggesting that perhaps members should avail of that opportunity to clarify the matter.

**The Chairperson:**

That is making the horse jump the fence before it is saddled.

**Mr Shannon:**

We will not have to clarify the matter, but some people might have to.

**Mr Elliott:**

It might be worth your while doing that.

**Ms Anderson:**

I know that you want us to stick to the legislation, but you have allowed one or two political comments. I find it confusing that the political party that claims that it secured a sunset clause as part of the St Andrews Agreement now argues that a sunset clause should not be inserted into the Bill. If nothing else, that is somewhat hypocritical.

However, we are dealing with the 2009 legislation. The Houses of Commons Hansard report for 4 May 2009 shows that Paul Goggins said in Westminster:

“The Bill provides no fall-back position beyond May 2012. Frankly, it is not for us in this place to determine any additional model beyond that period”.

He clearly set out the position of Westminster as:

“There is no fall-back position, as I have said, and it is entirely a matter for the Assembly.”

He continued:

“It is important to know that central Government do not have a major hand in determining what happens in a model beyond May 2012.”

He stated quite clearly:

“That is a matter entirely for the Assembly.”

Those were his exact words.

**The Chairperson:**

I do not wish to encourage a further political spat. The technical issues are before the Committee. If members or political parties wish to table amendments and circulate them in advance, it would be helpful. We will take advice on possible amendments from the Bill Office; that facility has been made available. I am loath to discuss the politics of the issue. I have been as lenient as I can reasonably be; we shall move on.

**Mr Elliott:**

Eilis said that not all the Westminster Bill was excepted. Can she provide details on what is excepted and what is not?

**The Clerk of Bills:**

Schedule 2 to the Northern Ireland Act 1998, as amended by the Northern Ireland 2009, shows excepted matters. I can set that out for members.

**The Chairperson:**

That would be helpful.

**Mr Molloy:**

Will information that the Bill Office provides to any Committee member on the Department of Justice Bill be circulated to all members?

**The Chairperson:**

General advice, such as that which has just been raised, could be circulated to all members. However, if an individual member sought specific advice, I am not sure how that could, in fairness, be sent to all Committee members. It will surely emerge before next week anyway. That might put the Bill Office in a difficult position.

**Mr Elliott:**

Any information that is asked for in the Committee could be circulated to every member of the Committee, but if a Committee member were to seek advice on their own behalf, it would not be fair for the Bill Office to have to provide that advice to all Committee members.

**Mrs Long:**

All Committee members should receive any information that the Committee agrees to request. If we leave the requesting of information to individual members, we should not all receive it.

**The Chairperson:**

We will undertake clause-by-clause scrutiny at our next meeting. Thank you very much.