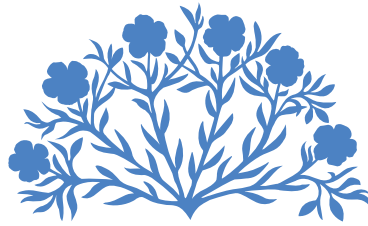


Session 2006/2007



Report on Institutional Issues

**TOGETHER WITH THE MINUTES OF PROCEEDINGS,
OFFICIAL REPORT AND PAPERS SUBMITTED TO THE COMMITTEE
ON THE PREPARATION FOR GOVERNMENT**

Directed by the Secretary of State for Northern Ireland to be printed 26 September 2006

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Committee on the Preparation for Government

Under the terms of the Northern Ireland Act 2006 the Secretary of State for Northern Ireland, the Rt Hon Peter Hain MP, directed on 26 May 2006 that a Committee should be established on the necessary business relating to the preparation for government. On 12 June 2006, the Secretary of State directed that the Committee should be chaired by the deputy presiding officers, Mr Jim Wells and Mr Francie Molloy.

Membership

The Committee has 14 members with a quorum of seven. The membership of the Committee since its establishment on 26 May 2006 is as follows:

Mark Durkan MP	Dr Seán Farren
David Ford	Michelle Gildernew MP
Danny Kennedy	Naomi Long
Dr William McCrea MP	Dr Alasdair McDonnell MP
Alan McFarland	Martin McGuinness MP
*David McNarry	Lord Morrow
Conor Murphy MP	Ian Paisley Jnr

* Mr McNarry replaced Mr Michael McGimpsey on 10 July 2006

At its meeting on 12 June the Committee agreed that deputies could attend if members of the Committee were unable to do so. The following members attended at various times:

Billy Armstrong	Michael Ferguson**	Sean Neeson
Alex Attwood	Arlene Foster	Dermot Nesbitt
Esmond Birnie	William Hay	John O'Dowd
Dominic Bradley	Derek Hussey	Pat O'Rawe
PJ Bradley	Dolores Kelly	Edwin Poots
Francie Brolly	Gerry Kelly	Pat Ramsey
Thomas Buchanan	Patricia Lewsley	Margaret Ritchie
Gregory Campbell MP	Fra McCann	George Robinson
Wilson Clyde	Kieran McCarthy	Peter Robinson MP
Fred Cobain	Raymond McCartney	Caitriona Ruane
Michael Copeland	Nelson McCausland	Kathy Stanton
Rev Dr Robert Coulter	David McClarty	Mervyn Storey
John Dallat	Michael McGimpsey	Peter Weir
George Dawson	Patsy McGlone	Jim Wilson
Diane Dodds	Philip McGuigan	Sammy Wilson MP
Alex Easton	Alban Maginness	
George Ennis	Alex Maskey	

** Michael Ferguson died suddenly on 25 September 2006

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Executive Summary

1. On 26 May 2006, the Secretary of State for Northern Ireland, the Rt Hon Peter Hain MP, directed that a committee should be established:

‘To scope the work which, in the view of the parties, needs to be done in preparation for Government’.
2. At its meeting on 24 July 2006, the Committee on the Preparation for Government agreed to take forward, within the Committee, work on a number of issues identified in the work programme published by the two Governments rather than set up sub-groups to consider the issues.
3. On 26 July 2006, the Committee considered how to take forward work on these issues and decided that the Committee would meet each Monday to address Institutional issues.
4. The first meeting of the Committee dedicated to Institutional issues took place on 31 July 2006. At that meeting the Committee concluded that it should examine each element of the Institutions arising from the Belfast Agreement. A wide range of issues was identified for consideration and, to provide structure for the Committee, these were grouped under the main headings relating to Strand 1, Strand 2 and Strand 3 of the Belfast Agreement. At its meeting on 7 August the Committee revised the list of issues for consideration and agreed to deal with them as follows:

STRAND ONE

The Assembly

- **Accountability/Safeguards** to include accountability and control mechanisms between the Assembly and the Executive.
- **Committee Systems** to include the role and effectiveness of committees.
- **Efficiency/Effectiveness** to include the creation of an Institutional Review Committee, dual/triple mandate and the number of Assembly Members.
- **Stability** to include the mechanisms required to ensure the stability of a future Assembly.

The Executive

- **Accountability/Safeguards** to include the appointment of First Minister and Deputy First Minister, decision-taking within the Executive, collective responsibility and the Ministerial Code.
- **Efficiency/Effectiveness** in relation to the functions of OFM/DFM.
- **Stability** to include the issue of the disqualification of Ministers.

STRAND TWO

- North/South Implementation bodies.
- North/South Ministerial Council.
- Other issues to include North/South Consultative Forum, North/South Parliamentary Forum and other cross border bodies.

STRAND THREE

- British-Irish Intergovernmental Conference.
- British-Irish Inter-Parliamentary Body.
- East/West issues – accountability to the Assembly.
- New Council of the Isles.
- Operation of the British-Irish Council.

STRAND ONE

The Assembly

5. The Committee met on 7 and 14 August to consider the Institutional issues identified under Strand One of the Belfast Agreement.
6. The Committee considered the issue of “community designation and the voting system” and points that were discussed included the perception that the community designation system is divisive and the possibility of removing the designation system and introducing a weighted-majority system. In the absence of agreement on a number of proposals it was agreed that the existing voting system could be referred to a review mechanism of the Assembly (see paragraph 12) in the event that consensus could not be reached by further discussion.
7. The Committee discussed the merits of introducing a voluntary coalition system. There was no agreement on the introduction of such a system and a proposal that the Executive be formed by such a coalition was not carried.
8. There was limited discussion on the election of the Speaker and the Deputy Speakers and there was agreement that the current arrangements under the Northern Ireland Assembly Standing Orders should continue to apply.
9. There was detailed discussion on the election/appointment of the First Minister and the Deputy First Minister. Issues discussed included whether there should be an alternative way of appointing the First Minister and the Deputy First Minister. Following on from this the Committee looked at the possibility of using the same system as currently exists for the appointment of Ministers which does not require a vote in the Assembly. The possibility of endorsing the First Minister and Deputy First Minister by a vote in the Assembly followed by a vote to endorse the rest of the Executive was also considered. In the absence of

agreement on a number of proposals, the issue of the election of the First Minister and Deputy First Minister was identified by at least one party as requiring resolution prior to the restoration of the Institutions.

10. Each party outlined its position with regard to accountability and control mechanisms within the Executive and between the Executive and the Assembly. There was detailed discussion of this issue which looked at how a balance might be achieved between the need for accountability and the need to ensure that Ministers were able to carry out the duties within their areas of responsibility. Other issues that were considered included the possibility that power should be devolved to the Assembly or the collective Executive rather than to individual Ministers. The Committee also considered whether the Ministerial Code could be used to enhance accountability requirements between the Assembly and the Executive. After detailed discussion, the issue of accountability between the Executive and the Assembly was identified by at least one party as requiring resolution prior to the restoration of the Institutions.
11. Discussion on committee systems centred on the role and functions of the Committee of the Centre and it was agreed that this committee should be a statutory committee of the Assembly.
12. Under the broad heading of “efficiency/effectiveness” the Committee considered the possibility of establishing an Institutional Review Committee of the Assembly to examine the operational aspects of Strand One of the Belfast Agreement. The Committee agreed that a mechanism or Institutional review should be established in the Assembly to examine the operational aspects of Strand One of the Agreement. At its meeting on 13 September the Committee agreed that a second mechanism was needed to review the efficiency of the Assembly structures.
13. The Committee considered the issue of MLAs holding dual/triple mandates and agreed that this practice should be phased out with the timing of this to be subject to the mechanism/ Institutional review.
14. The Committee also agreed that the number of MLAs should be reduced and that this matter should be subject to mechanism/Institutional review.
15. There was a detailed debate on stability mechanisms and the need to create stability and avoid continual suspensions of the Assembly. In considering this issue there was discussion on the need for confidence to be built up between the parties to assist the sustainability of the Institutions. Consideration was also given to the possibility of using existing and revised mechanisms of the Ministerial Code and Pledge of Office to promote stability. The Committee agreed that a mechanism was needed to ensure Institutional stability.
16. In discussions about the Executive it was agreed, in principle, that certain public appointments should be brought to the Executive for endorsement.
17. There was general acknowledgement of the need to enhance collective decision-taking within the Executive and that the Ministerial Code should be used to increase this collectivity.
18. The Committee considered the draft Ministerial Code which included possible changes and additions which had been suggested by the Office of the First Minister and Deputy First

Minister. The Committee agreed that further consideration be given, prior to the restoration of devolution, to the draft Ministerial Code or elements of it being given a statutory basis.

19. The Committee considered the functions of OFM/DFM and the existing number of government departments. The Committee concluded that at an early stage and in consultation with all relevant interests in the Assembly, the First Minister and Deputy First Minister should review the number of Ministerial offices to be held by NI Ministers and the functions to be exercisable by the holder of each such office including their own. It was further agreed that the First Minister and Deputy First Minister should bring their recommendations to the Assembly.
20. The Committee discussed the operation, structure and remit of the Civic Forum and agreed to review the ways in which civic society engages with the Assembly.

STRAND TWO

21. The Committee met on 21 August to consider Strand Two Institutional arrangements. Each party gave a presentation on the North/South Ministerial Council and North/South issues in general. This was followed by substantial debate on these issues and it was concluded that consideration should be given to the extent to which nominations to attend the North/South Ministerial Council and the requirement/entitlement to attend meetings of the Council should be addressed in the Ministerial Code.
22. The accountability of Ministers to the Assembly on North/South Ministerial matters was identified by at least one party as requiring resolution prior to restoration of the Institutions.
23. Each party outlined its position and views on North/South Implementation bodies and it was agreed that the number and role of these implementation bodies required further discussion by the parties.
24. Consideration was given to the interdependent relationship of the Strand 1, Strand 2 and Strand 3 Institutions in accordance with the Belfast Agreement.

STRAND THREE

25. The Committee considered issues relating to Strand Three Institutional arrangements at its meetings on 21 and 29 August. Each party gave a presentation and items discussed included whether the support structures for the British-Irish Council could be enhanced by a dedicated secretariat and the need for commensurate levels of business to be undertaken by the Strand 2 and Strand 3 Institutions.
26. The possibility of establishing an overarching Council of the Isles that would embrace both East/West and North/South relationships was discussed. The Committee agreed that further consideration would be given to any proposition for an overarching Council of the Isles.

Conclusions

Proposals agreed by the Committee

Paragraph	Proposal
43	That the issue of the voting system should be referred to a review committee/mechanism of the Assembly if consensus could not be reached by further discussion.
47	That the Speaker and Deputy Speakers should be elected by a cross-community vote.
56	That the Committee was content with the mechanism for a petition of concern as it stands.
60	That the Committee of the Centre should be a statutory committee of the Assembly.
63	That the chairpersons and chief executives of each of the North/South Implementation bodies should report at least once a year to the relevant Assembly committee.
64	That there is a need for a mechanism to undertake a review of the efficiency of the Assembly structures.
68	That a mechanism or Institutional review be established in the Assembly to examine the operational aspects of Strand 1.
70	That multiple mandates should be phased out and that the timing of this should be referred to the mechanism/Institutional review.
72	To reduce the number of MLAs and to defer further consideration of this to the mechanism/Institutional review.
72	That MLAs would continue to be elected by Single Transferable Vote (STV).
74	That mechanisms are needed to ensure Institutional stability.
78	That, in principle, certain public appointments should be brought to the Executive for endorsement.
80	That elements of an agreed Ministerial Code should be put on a statutory footing.
80	That the Ministerial Code should be used to increase collectivity and ensure Ministerial colleagues inform each other of major decisions.
82	That further consideration be given prior to the restoration of devolution to the Ministerial Code or elements of it being given a statutory basis and the extent to which it should comprise issues such as: (a) Increasing collectivity and ensuring Ministerial colleagues inform each other of major decisions. (b) Ministerial accountability and accountability between the Executive and the Assembly. (c) Accountability of Ministers on North/South Ministerial Council matters. (d) Requirement/entitlement of Ministers to attend meetings of the Executive, North/South Ministerial Council and sectoral meetings and the British-Irish Council. (e) A requirement or commitment to uphold the rule of law.
85	That, at an early stage and in consultation with all relevant interests in the Assembly, the First Minister and Deputy First Minister should review: (a) The number of Ministerial offices to be held by NI Ministers, and (b) The functions to be exercisable by the holder of each such office, including their own and bring recommendations to the Assembly.
87	To review the ways in which civic society engages with the Assembly.
90	That consideration should be given to the extent to which nominations to attend the North/South Ministerial Council and the requirement/entitlement to attend should be addressed in the Ministerial Code.
96	That the issue of the number and role of the North/South Implementation bodies required further discussion.
100	That further consideration would be given to any proposition for an overarching Council of the Isles.

Issues identified by at least one party as requiring resolution prior to restoration of the Institutions

Paragraph	Issue
52	The election/appointment of First Minister and Deputy First Minister.
58	The issue of accountability between the Executive and the Assembly.
83	The elements of the Ministerial Code to be given statutory effect; and content of the Ministerial Code.
93	The accountability of Ministers to the Assembly on North/South Ministerial Council matters.

Introduction

27. The Committee on the Preparation for Government met on 40 occasions between 5 June and 25 September. At the first meeting on 5 June the Committee considered the direction from the Secretary of State dated 26 May 2006 and the term ‘consensus’ in the direction relating to decisions of the Committee. A discussion followed and it was agreed that the Committee would regard consensus as ‘general all party agreement’. (A copy of the directions issued by the Secretary of State which are relevant to the work of the Committee is attached at Appendix 7).
28. At the first three Committee meetings the members debated the arrangements for chairing the Committee but were unable to reach consensus on what these should be. The Secretary of State was advised on 7 June that the Committee was unable to select a Chair. On 12 June, the Secretary of State directed that the Committee should be chaired by the deputy presiding officers, Mr Jim Wells and Mr Francie Molloy.

Referral by the Secretary of State

29. At the meeting on 12 June the Committee noted that on 26 May, under the provisions of section 1(1) of the Northern Ireland Act 2006, the Secretary of State had referred the following matter to it:
- ‘To scope the work which, in the view of the parties, needs to be done in preparation for Government.’*
30. During June each of the parties made a detailed presentation on the issues that it considered needed to be scoped in preparation for government. These began with the presentations from the Alliance Party and the DUP on 20 June. The presentation from Sinn Féin took place on 21 and 22 June and was followed by the presentation from the SDLP on 26 June. The presentations concluded with the UUPAG on 28 June. The minutes of proceedings and minutes of evidence relating to these discussions can be found on the Committee web page (http://www.niassembly.gov.uk/theassembly/Committees_Homepage.htm)

Establishment of sub-groups

31. On 3 July the Secretary of State wrote to the Speaker to the Assembly on a number of issues including the establishment of a working group on economic challenges. The Secretary of State advised that he was referring the matter of discussion of economic issues to the Committee on the Preparation for Government under section 1(1) of the 2006 Act and directing them, under paragraph 4(1) of Schedule 1 to that Act, to set up a sub-group and report back to the Assembly in September.
32. The Secretary of State also directed, under paragraph 4(1) of Schedule 1 to the 2006 Act that the Committee should set up two sub-groups on two issues identified in the work plan

published by the two Governments on 29 June (copy attached at Appendix 8). These were on changes to the Institutions and on the devolution of justice and policing.

33. This was followed on 11 July by a further direction from the Secretary of State to the Committee directing the establishment of three sub-groups on:
- the devolution of policing and justice;
 - changes to the Institutions; and
 - the economic challenges facing Northern Ireland.
34. On 17 July the Committee agreed the terms of reference for the sub-group on the Economic Challenges facing Northern Ireland. On 4 September 2006 the Committee accepted the recommendations and conclusions in the sub-group's report and agreed that it should be printed as the first report from the Committee on the Preparation for Government.

Issues to be considered in preparation for government

35. The Committee agreed on 24 July that the issues identified for the two sub-groups on institutions, and policing and justice, should be taken forward by the Committee itself and not by sub-groups. At the meeting on 26 July the Committee considered how to take forward the work on all the issues, including rights and safeguards etc., which had been identified during the party presentations and during discussions as those that needed to be considered in preparation for government. It was agreed that the Committee would meet:
- each Monday to address Institutional issues;
 - each Wednesday to address Law and Order issues; and
 - each Friday to address Rights; Safeguards; Equality issues and Victims.

Institutional Issues

36. The first meeting of the Committee dedicated to Institutional issues took place on 31 July 2006. During this meeting the Committee concluded that an examination of each element of the Institutions arising from the Belfast Agreement should take place. A wide range of issues were identified¹ for consideration and, to provide structure to the discussions, were grouped under the main headings of issues relating to Strand 1, Strand 2 and Strand 3 of the Belfast Agreement. This list of issues, which was revised and agreed at the Committee meeting on 7 August, is attached at Appendix 3.
37. The Committee also considered the question of whether to call witnesses to give evidence on the Institutional issues. It was agreed that witnesses would be called if a need was identified.
38. The Committee met on 9 occasions in August and September to discuss these matters. Its deliberations and conclusions in relation to these issues are set out in this report.

¹ Alliance, DUP and SDLP submissions in Appendix 5 and Official Report 31 July 2006 paragraph 656-965

Consideration of Institutional Issues

INSTITUTIONAL ISSUES RELATING TO STRAND 1 OF THE BELFAST AGREEMENT

39. The Committee met on 7 and 14 August 2006 to consider the Institutional issues identified under Strand 1. Members agreed to structure the discussion into three parts – first, the Assembly, second, the Executive and third, the Civic Forum. While a range of issues had been set out under each of these headings, the Committee agreed that the order would change as the discussion progressed and overlap became apparent or new issues emerged.

The Assembly

Accountability/Safeguards

(a) Community Designation and the Voting System

40. The main issues raised² included:
- The perception that the designation system is divisive and that the vote of members that do not designate as either “Nationalist” or “Unionist” is devalued.
 - The possibility of removing the designation system and introducing a weighted-majority voting system.
 - The need for each community to develop confidence and trust before consideration can be given to removing the requirement to designate.
 - Whether designation is necessary to protect the guarantees of the Belfast Agreement.
 - The need for a system that is flexible enough to accommodate future demographic and political changes is required.
 - The need to consider the appropriate point at which designation should be recorded.
41. The Committee considered a proposal to move to a weighted-majority voting system in the Assembly and the removal of the present community designation system. **There was not consensus and the proposal fell.**

² Official Report 7 August 2006 paragraph 1070 – 1228 and Official Report 14 August 2006 paragraph 2247 – 2266.

42. The Committee considered a proposal to retain the present community designation system and use a weighted-majority and the current cross-community voting system. **There was not consensus and the proposal fell.**
43. **It was agreed that:**
- The issue of the voting system should be referred to a review committee/mechanism of the Assembly if consensus could not be reached by further discussion.*

(b) Voluntary Coalition

44. The Committee discussed³ the merits of introducing a voluntary coalition system. Issues raised included:
- Any voluntary coalition would require wide support and would therefore have to include a cross-community element.
 - How a voluntary coalition could provide strong accountability mechanisms for the public and strong opposition within the Assembly.
 - Safeguards and mechanisms.
 - Whether the Assembly Committee system is the location for much of the challenge that opposition provides.
 - Changes to the system could be considered in the future.
 - Why “inclusivity” was a requirement of the Belfast Agreement.
45. The Committee considered a proposal that the Executive should be formed by a voluntary coalition. **There was not consensus and the proposal fell.**

(c) Election of Speaker and Deputy Speakers

46. The Committee discussed⁴ the current arrangements for the election of the Speaker and Deputy Speakers and the mechanisms available to hold the Speaker to account.
47. **It was agreed that:**
- The Speaker and Deputy Speakers should be elected by a cross-community vote.*
48. This reflects the current arrangements.

³ Official Report 7 August 2006 paragraph 1229 – 1305.

⁴ Official Report 7 August 2006 paragraph 1306 – 1334.

(d) Election of First Minister and Deputy First Minister

49. Issues considered⁵ included:
- Whether there should be an alternative way of appointing the First Minister and Deputy First Minister rather than a nomination and vote for both appointments jointly.
 - The joint nature of the office of First Minister and Deputy First Minister as set out in the Belfast Agreement.
 - Difficulties experienced in the past.
 - The need for an agreed system to be flexible enough to enable the First Minister and Deputy First Minister to be appointed and permit government to work.
 - The representative function for the First Minister and Deputy First Minister on behalf of the Assembly and the people of Northern Ireland.
 - The need for representatives from each community to have confidence in the Minister from the opposite community.
 - The perception that the coupling of the vote for First Minister and Deputy First Minister enhances collectivity and indicates at least a willingness to endorse other people's positions in government.
 - The possibility of using the same system as currently exists for the appointment of Ministers which does not require a vote in the Assembly.
50. The Committee considered a proposal that the positions of the First Minister and Deputy First Minister should be filled by separate nominations. The largest party of the largest designation would nominate to the post of First Minister and the largest party from the second largest designation would nominate to the post of Deputy First Minister. **There was not consensus and the proposal fell.**
51. The Committee considered a proposal that the positions of First Minister and Deputy First Minister should be filled by asking the nominating officer of the largest party of the largest designation and the nominating officer of the largest party of the second largest designation to identify their nominees for the posts of First Minister and Deputy First Minister respectively. **There was not consensus and the proposal fell.**
52. **The issue of the election/appointment of First Minister and Deputy First Minister was identified by at least one party as requiring resolution prior to restoration of the Institutions.**

⁵ Official Report 7 August 2006 paragraph 1335 – 1405 and Official Report 14 August 2006 paragraph 2267 – 2309.

(e) Appointment of First Minister and Deputy First Minister and Executive

53. The issues raised when discussing the election of First Minister and Deputy First Minister were also pertinent to this matter. Other issues⁶ included:
- Whether a vote in the Assembly to endorse the composition of the Executive would enhance a sense of collective responsibility in the Executive from the outset.
 - The possibility of endorsing the First Minister and Deputy First Minister by a vote in the Assembly followed by a vote to endorse the rest of the Executive.
 - The possibility of endorsing the entire Executive, including the First Minister and Deputy First Minister, by a vote in the Assembly.
 - The proposal in the Comprehensive Agreement that would not permit any Minister to remain in the Executive if he or she had not voted in favour of it.
54. The Committee considered a proposal that the entire Executive, including the First Minister and Deputy First Minister, should be subject to collective endorsement in the Assembly by a cross-community vote. **There was not consensus and the proposal fell.**

(f) Petitions of Concern

55. The Committee noted the current arrangements for petitions of concern⁷.
56. **It was agreed that:**
- The Committee was content with the mechanism for a petition of concern as it stands.***

(g) Accountability Mechanisms

57. Each party briefly outlined its position and view⁸ with regard to accountability and control mechanisms between the Executive and the Assembly. This was followed by a substantive discussion covering the following main issues:
- How to achieve a balance between the need for accountability and the need to ensure that Ministers are enabled to carry out the duties within their areas of responsibility.
 - What accountability there is when power rests with individual Ministers.
 - The issue of the Assembly's ability to exercise a veto over Ministerial decisions.
 - The range of requirements and parameters within which Ministers currently operate.
 - The possibility that power should be devolved to the Assembly rather than to individual Ministers or the collective Executive.
 - The possibility of a mechanism to enable the Assembly to refer matters with which it is not content back to the Executive.

⁶ Official Report 7 August 2006 paragraph 1406 – 1492 and Official Report 14 August 2006 paragraph 2313 – 2383.

⁷ Official Report 7 August 2006 paragraph 1514 – 1518.

⁸ Official Report 7 August 2006 paragraph 1519 – 1598 and Official Report 14 August 2006 paragraph 2122 – 2246.

- The possibility of the Assembly having the power, in certain circumstances, to negate a Ministerial decision on the basis of a cross-community vote.
- Reference to the Belfast Agreement which states the principle that Ministers have executive authority in their respective departments/areas of responsibility.
- The equality measure in Section 11 of Strand 1 of the Belfast Agreement which allows the Assembly to appoint a special Committee to examine and report on whether a measure or proposal conforms with any Bill of Rights or the European Convention on Human Rights.
- Whether the Ministerial Code could be used to enhance accountability requirements between the Assembly and the Executive.

58. **The issue of accountability between the Executive and the Assembly was identified by at least one party as requiring resolution prior to restoration of the Institutions.**

Committee Systems

(a) Committee of the Centre

59. Matters discussed in relation to the Committee of the Centre⁹ included:

- How to ensure that accountability of the First Minister and Deputy First Minister is comparable to that of Ministers in other departments.
- Whether the Committee of the Centre should scrutinise the entire remit of the Office of First Minister and Deputy First Minister rather than only parts of it.
- Recognised status of the Chairperson of the Committee.
- Membership numbers.
- The need for the Committee of the Centre to have the same statutory scrutiny rights as other Departmental Committees.

60. **It was agreed that:**

The Committee of the Centre should be a statutory committee of the Assembly.

(b) Assembly Committees

61. Matters discussed in relation to the Assembly Committees¹⁰ included:

- The important role of committees in scrutinising the Executive and initiating legislation and the need for committee work to be adequately resourced.
- Effective functioning of committees in the previous Assembly.
- Methods of appointing chairpersons and deputy chairpersons.

⁹ Official Report 7 August 2006 paragraph 1626 – 1658.

¹⁰ Official Report 7 August 2006 paragraph 1659 – 1758.

- The need for a committee to examine on a constant basis efficiency issues related to devolution and the operation of the Assembly.
 - How to ensure full information on the North/South Implementation bodies is available to relevant committees.
62. The Committee considered a proposal that d'Hondt should be run once only for the appointment of Ministers, committee chairpersons and deputy chairpersons and for membership of statutory and standing committees. **There was not consensus and the proposal fell.**
63. **It was agreed that:**
- The chairpersons and chief executives of each of the North/South Implementation bodies should report at least once a year to the relevant Assembly committee.*
64. At the meeting on 13 September 2006 **it was agreed that:**
- There is a need for a mechanism to undertake a review of the efficiency of the Assembly structures.*

Efficiency/Effectiveness

(a) Creation of an Institutional Review Committee

65. The Committee considered the possibility of establishing an Institutional Review Committee of the Assembly to examine the operational aspects of Strand 1. Issues discussed¹¹ included:
- How the role of such a committee would sit with the Committee on Procedures which examines the Standing Orders of the Assembly.
 - Whether it should be a statutory or standing committee.
 - Frequency of meetings.
 - The existing 4-year formal reviews of the Belfast Agreement.
66. The Committee considered a proposal that an Institutional Review Committee should be established to examine the operational aspects of Strand 1. **There was not consensus and the proposal fell.**
67. The Committee considered a proposal that a mechanism should be established in the Assembly to examine operational aspects of Strand 1. **There was not consensus and the proposal fell.**

¹¹ Official Report 7 August 2006 paragraph 1759 – 1796.

68. **It was agreed that:**

A mechanism or Institutional review be established in the Assembly to examine the operational aspects of Strand 1.

(b) Dual/Triple Mandate

69. The Committee considered the matter of MLAs holding dual/triple mandates¹². Issues raised included:

- Stability of the Institutions is an important issue with regard to the timing of any change.
- The Review of Public Administration will bring changes in relation to local government.
- The Review of Public Administration legislation may address the issue of dual mandates.
- Whether legislation might be required in respect of multiple mandates.

70. **It was agreed that:**

Multiple mandates should be phased out and that the timing of this should be referred to the mechanism/Institutional review.

(c) Number of Assembly Members/Elections to the Assembly

71. The Committee considered a number of issues¹³ under this heading:

- The number of Assembly members.
- The ratio of MLAs to population size.
- The voting system.
- The Review of Public Administration.

72. **It was agreed:**

To reduce the number of MLAs and to defer further consideration of this to the mechanism/Institutional review.

That MLAs would continue to be elected by Single Transferable Vote (STV).

¹² Official Report 7 August 2006 paragraph 1797 – 1831.

¹³ Official Report 7 August 2006 paragraph 1849 – 1888.

Stability Mechanisms

(a) Stability Mechanisms

73. Matters discussed during a detailed debate in relation to the stability of the Assembly¹⁴ included:
- The need to create stability and avoid continual suspensions of the Assembly.
 - The role and powers of the Independent Monitoring Commission (IMC).
 - The Northern Ireland Act 2000.
 - The possibility of amending the legislation so that a negative report from the IMC on a party could trigger removal of that party.
 - The need for mechanisms that enable difficulties to be addressed without the suspension/collapse of the entire Executive and Assembly.
 - The need for confidence to be built up between the parties to assist the sustainability of the Institutions.
 - The importance of collective responsibility in delivering stability of the Institutions.
 - The possibility of using existing and revised mechanisms of the Ministerial Code and Pledge of Office to promote stability.

74. **It was agreed:**

That mechanisms are needed to ensure Institutional stability.

(b) Standing of MLAs

75. The Committee briefly discussed the role and standing of MLAs in the community¹⁵, particularly in relation to contacting and gaining access to Ministers on behalf of members of the public. There were no proposals considered in relation to this matter.

(c) Tax Varying Powers

76. Members noted¹⁶ that the sub-group considering the Economic Challenges facing Northern Ireland would be considering this issue and would report to the Preparation for Government Committee on it and other related matters in due course.

¹⁴ Official Report 14 August 2006 paragraph 1960 – 2110.

¹⁵ Official Report 7 August 2006 paragraph 1889 – 1917.

¹⁶ Official Report 7 August 2006 paragraph 1918 – 1936.

The Executive

Accountability/Safeguards

(a) Appointments to Outside Bodies

77. The Committee discussed¹⁷ the need for transparency and accountability when making appointments to public bodies.
78. **It was agreed that:**
- In principle, certain public appointments should be brought to the Executive for endorsement.*

(b) Collective Responsibility and decision-taking within the Executive

79. There was general acknowledgement within the Committee of the need to enhance collective responsibility and decision-taking within the Executive. Matters raised included¹⁸:
- The possibility of putting the Ministerial Code on a statutory footing.
 - Mechanisms for the Executive to challenge Ministerial decisions.
 - A mechanism to require a Minister to inform his or her colleagues of major decisions and seek Executive approval for proposals.
 - The possibility of establishing subcommittees within the Executive.
 - The possibility of changing the protocols with regard to how Ministers address Executive business with committees.
 - The possibility of introducing a Code of Ethics for the Civil Service that would give Permanent Secretaries the right to notify the Executive and in particular the First Minister and Deputy First Minister where Ministers were in breach of Executive decisions or the Pledge of Office.
 - The possibility of requiring a stronger endorsement of the Programme for Government by all Ministers.
 - The need to achieve a balance between enhancing collectivity within the Executive and ensuring there is not a veto against individual Ministers.
80. **It was agreed that:**
- Elements of an agreed Ministerial Code should be put on a statutory footing.*
- That the Ministerial Code should be used to increase collectivity and ensure Ministerial colleagues inform each other of major decisions.*

¹⁷ Official Report 14 August 2006 paragraph 2388 – 2408.

¹⁸ Official Report 14 August 2006 paragraph 2409 – 2460.

(c) Ministerial Code and Pledge of Office

81. The Committee received a copy of the draft Ministerial Code including possible changes and additions¹⁹ from the Office of the First Minister and Deputy First Minister. The Committee also received a paper from the DUP on the Ministerial Code²⁰.

82. **It was agreed that²¹:**

Further consideration be given prior to the restoration of devolution to the Ministerial Code or elements of it being given a statutory basis and the extent to which it should comprise issues such as:

- (a) Increasing collectivity and ensuring Ministerial colleagues inform each other of major decisions.*
- (b) Ministerial accountability and accountability between the Executive and the Assembly.*
- (c) Accountability of Ministers on North/South Ministerial Council matters.*
- (d) Requirement/entitlement of Ministers to attend meetings of the Executive, North/South Ministerial Council and sectoral meetings and the British-Irish Council.*
- (e) A requirement or commitment to uphold the rule of law.*

83. **This issue was identified by at least one party as requiring resolution prior to restoration of the Institutions.**

(d) Functions of OFM/DFM and the number of Government Departments

84. Issues discussed²² in relation to the number of Government Departments that currently exist and the functions of the Office of the First Minister and Deputy First Minister (OFM/DFM) included:

- The need to review the functions of OFM/DFM to ensure there is not duplication with the work of the other departments.
- The need to have a sensible division of the workload between the First Minister and Deputy First Minister while still regarding it as a joint office.
- The joint nature of the Office of the First and Deputy First Minister was seen as a core safeguard in the Belfast Agreement.
- The need to re-examine the number of departments to ensure effectiveness and value for money.

¹⁹ Letter from OFM/DFM and Draft Ministerial Code in Appendix 6.

²⁰ DUP paper on key issues in relation to the Ministerial Code in Appendix 5.

²¹ Official Report 14 August 2006 paragraph 2464-2590, Official Report 21 August 2006 paragraph 2722-2749 and Official Report 13 September 2006 paragraph 4382-4472

²² Official Report 14 August 2006 paragraph 2606 – 2658.

- The need to take account of any decisions regarding the Ministerial and departmental structures for the devolution of policing and justice when considering the number and functions of departments.
- The need to take account of the implications of the Review of Public Administration in any review of the number of departments.
- The need to give consideration to the number of Junior Ministers required if the number of departments were to be radically reduced.
- Recognition of the benefits of the current system of 10 departments, which enabled a focus to be placed on services that may otherwise not have received the same level of attention if part of a smaller number of large departments.
- It may be more appropriate to consider any change in the number of departments in advance of an election rather than afterwards.

85. **It was agreed that:**

At an early stage and in consultation with all relevant interests in the Assembly, the First Minister and Deputy First Minister should review:

- (a) the number of Ministerial offices to be held by NI Ministers, and*
- (b) the functions to be exercisable by the holder of each such office, including their own, and*

bring recommendations to the Assembly.

Civic Forum

86. The Committee discussed²³ the operation, structure and remit of the Civic Forum and the following issues were considered:

- The overlap of work and areas of responsibility between Assembly committees and the Civic Forum.
- The value of continuous engagement between civic society and the Civic Forum/Assembly.
- The contribution the Civic Forum may be able to make in considering medium to longer-term policy issues.
- The operation and make-up of the Civic Forum may require further consideration.

87. **It was agreed:**

To review the ways in which civic society engages with the Assembly.

²³ Official Report 14 August 2006 paragraph 2659 – 2702.

INSTITUTIONAL ISSUES RELATING TO STRAND 2 OF THE BELFAST AGREEMENT

88. The Committee met on 21 August 2006 to consider the issues surrounding Strand 2 Institutional arrangements. Whilst acknowledging there would be a significant degree of overlap members agreed to structure the discussion into three parts – first, North/South Ministerial Council, second, North/South Implementation bodies and finally other issues relating to Strand 2.

(a) North/South Ministerial Council

89. Each party gave a brief presentation²⁴ on the North/South Ministerial Council and North/South issues in general. This was followed by a substantive debate during which the following points were made:
- Acknowledgement that this is an area of ideological division.
 - There were essential safeguards built into the Belfast Agreement with regard to the North/South Ministerial Council in respect of Ministerial attendance, decision-taking and reporting back to the Executive.
 - The need for efficient and effective practical co-operation on an East/West and North/South basis.
 - The need to recognise the political significance for nationalists of North/South co-operation and for unionists of East/West co-operation.
 - The interdependent relationship of the Strand 1, Strand 2 and Strand 3 Institutions.
 - Recognition that the Belfast Agreement settled the constitutional issues in relation to Northern Ireland and created a framework in which to operate for the foreseeable future.
 - The need for the British-Irish Council to operate on a level commensurate with the North/South Ministerial Council.
 - Whether or not there is a need to improve the accountability mechanisms with regard to the North/South Ministerial Council.
 - The level of accountability that previously existed.
 - The need to ensure the structures are efficient and effective.
 - A review of how the North/South Ministerial Council and North/South Implementation bodies worked would not be appropriate at this time given the limited lifespan of their full operation.
 - The reports from Ministers to the Assembly on North/South matters allowed discussion but no opportunity to change, add to or reject proposals.
 - The difficulties that arose previously with the nomination of Ministers to attend North/South Ministerial Council and sectoral meetings.

²⁴ *Official Report 21 August 2006 paragraph 2750 – 3165.*

- Whether Ministers should have an automatic right to attend North/South Ministerial Council meetings that cover their area of responsibility.
- How the Ministerial Code could be used to enhance accountability requirements of Ministers in relation to North/South matters.
- The possibility of the First Minister and Deputy First Minister reporting either to the full Assembly or to the Committee of the Centre on the North/South Ministerial Council.
- The need to examine how the business at North/South Ministerial Council meetings is structured.
- The question of whether or not an obligation for Ministers to attend meetings of the North/South Ministerial Council, the British-Irish Council and the Executive should be included in the Pledge of Office/Ministerial Code.

90. **It was agreed that:**

Consideration should be given to the extent to which nominations to attend the North/South Ministerial Council and the requirement/entitlement to attend should be addressed in the Ministerial Code.

91. The Committee considered a proposal that the annual report of the North/South Ministerial Council should be presented in person to both the Assembly and the Oireachtas by the First Minister, the Deputy First Minister, An Taoiseach and An Tánaiste. **There was not consensus and the proposal fell.**
92. The Committee considered a proposal that in relation to the North/South Ministerial Council, the First Minister and Deputy First Minister should report either to the full Assembly or to the Committee of the Centre. **There was not consensus and the proposal fell.**
93. **The accountability of Ministers to the Assembly on North/South Ministerial Council matters was identified by at least one party as requiring resolution prior to restoration of the Institutions.**

(b) North/South Implementation Bodies

94. Each party outlined its position and view²⁵ on the North/South Implementation bodies. During a detailed discussion the main issues covered included:
- The need to review and examine the existing North/South Implementation bodies and areas of co-operation.
 - Whether there should be fewer or a greater number of North/South Implementation bodies.
 - The identification of areas where practical North/South co-operation would be of mutual benefit should dictate how many implementation bodies and areas of co-operation there should be.
 - The benefit of creating formal structures for co-operation on particular matters.

²⁵ Official Report 21 August 2006 paragraph 2750 – 3165.

- The role of the Northern Ireland Audit Office in relation to the financial affairs and efficiency of the North/South Implementation bodies.
 - The role of the Assembly committees in calling chairpersons and chief executives of the North/South Implementation bodies to account.
95. The Committee did not identify any areas on which consensus could be reached and no proposals were considered.
96. At the meeting on 25 September 2006 **it was agreed that:**
- The issue of the number and role of the North/South Implementation bodies required further discussion.***

(c) Other Issues relating to Strand 2

97. A number of other issues in relation to Strand 2 were briefly discussed²⁶. These included:
- The failure to establish the North/South Parliamentary forum as set out under the Belfast Agreement.
 - Instead of establishing a North/South Parliamentary forum the possibility of establishing a North/South Parliamentary association.
 - The need to consider the establishment of any North/South Parliamentary forum or association in the context of an overall agreement.
 - Whether or not consideration should be given to establishing a North/South Consultative forum.
98. The Committee considered a proposal that consideration should be given to the setting up of a North/South Consultative forum. **There was not consensus and the proposal fell.**

²⁶ Official Report 21 August 2006 paragraph 3165 – 3277.

INSTITUTIONAL ISSUES RELATING TO STRAND 3 OF THE BELFAST AGREEMENT

99. The Committee considered issues²⁷ relating to Strand 3 Institutional arrangements at its meeting on 29 August 2006. The issues discussed in relation to Strand 2 on 21 August also impinged on this area and were relevant²⁸. Each party gave a brief presentation. Issues discussed included:
- Whether the support structures for the British-Irish Council would be enhanced by a dedicated secretariat.
 - The need for commensurate levels of business to be undertaken by the Strand 2 and Strand 3 Institutions.
 - The need to ensure the structures are efficient and effective.
 - The need for appropriate accountability mechanisms with regard to East/West matters.
 - The possibility of establishing an overarching Council of the Isles that would embrace both East/West and North/South relationships within it.
 - The issue of parties taking their seats on the BIIPB.
 - The need to consider modifications to the BIIPB membership.
 - The need to consider the BIIPB in the context of an overall agreement.
100. **It was agreed that:**
- Further consideration would be given to any proposition for an overarching Council of the Isles.*
101. The Committee considered a proposal that the British-Irish Council should have its own secretariat. **There was not consensus and the proposal fell.**

²⁷ Official Report 29 August 2006 paragraph 3391 – 3453.

²⁸ Official Report 21 August 2006 paragraph 3178 – 3224.

Appendix 1

Minutes of Proceedings Relating to the Report

Monday, 24 July 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: Diane Dodds
Dr Sean Farren
David Ford
Naomi Long
Dr Alasdair McDonnell MP
Alan McFarland
David McNarry
Lord Morrow
Conor Murphy MP
John O'Dowd
Margaret Ritchie

In Attendance: Nuala Dunwoody (Clerk Assistant)
Debbie Pritchard (Principal Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)
Peter Gilleece (Senior Researcher)

Apologies: Mr Durkan MP (Ms Ritchie attended the meeting as SDLP representative in place of Mr Durkan MP)
Ms Gildernew MP
Mr Kennedy
Dr McCrea MP
Mr McGuinness MP (Mr O'Dowd attended the meeting as Sinn Féin representative in place of Mr McGuinness MP)
Mr Paisley

The meeting commenced at 10.06am.

1. **Previous Minutes**

The minutes of the meeting of 17 July 2006 were agreed, subject to the following:-
'Item 9. The date of the next meeting should read - 24 July 2006.'

2. **Sub-groups on Changes to the Institutions and Devolution of Policing and Justice**

The Deputy Speaker asked for nominations from the parties for the sub-groups on Changes to the Institutions and Devolution of Policing and Justice.

The following were nominated as members of the sub-group on Changes to the Institutions:-

Alliance - David Ford Kieran McCarthy

SDLP - P J Bradley Dr Sean Farren

Sinn Fein - Conor Murphy John O'Dowd

The Chairperson advised that party nominations to the sub-group on Changes to the Institutions should be notified to the Clerk by close of play on Tuesday, 25 July 2006. The DUP stated that it would not be nominating members to the two sub-groups.

The Terms of Reference for the sub-group on Changes to the Institutions were agreed.

Mrs Dodds joined the meeting at 10.13am as DUP representative in place of Dr McCrea MP.

Dr McDonnell MP joined the meeting at 10.18am.

Mr McFarland joined the meeting at 10.25am.

Dr Farren proposed that the Preparation for Government Committee continue to discuss the issues identified for the other two sub-groups on Institutions and Policing and Justice and other matters, in this Committee. There was consensus and the proposal was agreed.

It was agreed to advise the Secretary of State of this decision.

The meeting adjourned at 11.25am

Wednesday, 26 July 2006 in Room 144, Parliament Buildings.

In the Chair: Jim Wells (Francie Molloy took the Chair at 12.18pm)

Present: John Dallat
Diane Dodds
Dr Sean Farren
David Ford
Alan McFarland
Martin McGuinness MP
David McNarry
Lord Morrow
Conor Murphy MP
John O'Dowd
Margaret Ritchie
Tom Buchanan

In Attendance: Debbie Pritchard (Principal Clerk)
Martin Wilson (Principal Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)
Peter Gilleece (Senior Researcher)

Observing Francie Molloy (Chairperson) (until 12.18pm)

Apologies: Mr Durkan MP (Mr Dallat attended the meeting as SDLP representative in place of Mr Durkin MP)
Ms Gildernew MP (Mr O'Dowd attended the meeting as Sinn Fein representative in place of Ms Gildernew MP)
Mr Kennedy
Ms Long
Dr McCrea MP (Mr Buchanan attended the meeting as DUP representative in place of Dr McCrea MP)
Dr Alasdair McDonnell MP (Ms Ritchie attended the meeting as SDLP representative in place of Dr McDonnell MP)
Mr Paisley (Mrs Dodds attended the meeting as DUP representative in place of Mr Paisley)

The meeting commenced at 10.10am.

1. **Previous Minutes**

The minutes of the meeting of 24 July 2006 were agreed, subject to the following: -

Item 3, line 1. Delete ‘It was agreed that the Committee should set up’

Insert ‘The Deputy Speaker asked for nominations from the parties for’

2. **Table of issues raised by parties.**

The parties considered the table of issues prepared from their written submissions and presentations.

The meeting was suspended at 10.33am.

The meeting reconvened at 10.55am.

It was agreed that Priorities for Government/Programme for Government would be considered under Agenda Item 3.

It was agreed that ‘(Institutional Issues)’ would be added after ‘Belfast Agreement’

It was agreed to include ‘Voting System’ as an issue within Institutional Issues.

It was agreed to include ‘Peaceful Summer’ within ‘Good Relations’ and to include this in the section on Rights; safeguards; equality issues; victims.

It was agreed to move ‘Parades’ from Law and Order Issues to Rights; Safeguards; equality issues; victims.

It was agreed to include ‘Community Restorative Justice’ within the section on Law and Order Issues.

It was agreed to include ‘Intelligence Services’ within the section on Law and Order Issues.

It was agreed to change ‘Unionist Culture’ within Rights; safeguards; equality issues; victims to -

‘Culture – Ethnic Communities
 Nationalist
 Unionist’

It was agreed that the issue of Victims, Truth and Reconciliation should be treated as two issues, namely, ‘Victims’ and ‘Truth and Reconciliation’.

Mr Molloy joined the meeting at 11.30am to discuss this item.

Under ‘Other’ it was agreed to change the description to ‘Other issues which may be raised that are of concern, or of interest, to the parties.’

It was agreed that the Secretary of State should be asked to invite the Alliance Party, the SDLP and the UUPAG to each nominate a member who, along with the two Deputy Speakers, would comprise a list of chairs for chairing meetings of the sub-group on the Economic Challenges facing Northern Ireland. Those on the list would chair the meetings of the sub-group on an alternating basis.

It was agreed that the two Deputy Speakers should continue to chair meetings of the Preparation for Government Committee.

It was agreed that the Committee would meet on Mondays to address Institutional Issues, on Wednesdays to address Law and Order Issues and on Fridays to address Rights; safeguards; equality issues; victims. Each meeting will start at 10.00am.

It was agreed that one researcher from each party may sit at the back of the room during these meetings.

It was agreed that witnesses would be called, if necessary.

It was agreed that each party would submit a paper on Institutional Issues to the Clerk by lunchtime on Friday 28 July 2006; on Law and Order Issues by lunchtime on Monday 31 July 2006 and on Rights; safeguards; equality issues; victims by lunchtime on Wednesday, 2 August 2006.

Mr Molloy took the Chair at 12.18pm.

3. **Committee Work Programme – referral by the Secretary of State on 3 July (draft Programme for Government and draft Ministerial Code)**

It was agreed to deal with this matter at a future meeting.

The meeting adjourned at 12.24pm.

Monday, 31 July 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: P J Bradley
Gregory Campbell MP
Dr Sean Farren
Arlene Foster
David Ford
Naomi Long
Alan McFarland
David McNarry
Conor Murphy MP
John O'Dowd
Peter Robinson MP
Jim Wilson

In Attendance: Debbie Pritchard (Principal Clerk)
John Torney (Principal Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)

Observing Jim Wells (Chairperson)

The meeting commenced at 10.03am.

1. **Apologies**

Mr Durkan MP (Mr Bradley attended the meeting as SDLP representative in place of Mr Durkan MP)

Ms Gildernew MP (Mr O'Dowd attended the meeting as Sinn Fein representative in place of Ms Gildernew MP)

Mr Kennedy (Mr Wilson attended the meeting as UUPAG representative in place of Mr Kennedy)

Dr McCrea MP (Ms Foster attended the meeting as DUP representative in place of Dr McCrea MP)

Dr McDonnell MP

Lord Morrow (Mr Campbell MP attended the meeting as DUP representative in place of Lord Morrow)

Mr Paisley (Mr Robinson attended the meeting as DUP representative in place of Mr Paisley)

Mr McGuinness MP

2. Previous Minutes

The minutes of the meeting of 26 July 2006 were agreed.

3. Institutional Issues

The Committee considered papers from the Alliance Party, DUP and SDLP and all parties gave a short presentation outlining their views.

It was agreed that the Clerk would produce a list of the institutional issues under the headings of Strands One, Two and Three of the Belfast Agreement for issue to the parties on Wednesday, 2 August 2006. This would allow the parties time to amend the list before the next Committee meeting on institutional issues on Monday 7 August.

Mr Bradley joined the meeting at 11.58am.

It was agreed to ask the Secretary of State to send the Committee a copy of any report prepared following the meetings between the parties and David Hanson, Minister of State, around 6 to 8 months ago as this may assist the Committee in its deliberations on institutional issues.

Mr Wells left the meeting at 12.05pm.

4. Referral by the Secretary of State on 3 July – draft Programme for Government

It was agreed to note this issue for discussion at a future meeting.

5. Draft Committee Work Programme

The Committee agreed to ask the Secretary of State if there is any leeway in the dates for the first plenary meetings after recess, currently suggested as 4 and 5 September 2006 as the Committee and the sub-group on the Economic Challenges facing Northern Ireland have heavy workloads and may not be in a position to put forward any motions in time for debate on 4 and 5 September 2006.

The meeting adjourned at 12.11pm.

Monday, 7 August 2006 in Room 144, Parliament Buildings.

In the Chair: Jim Wells

Present: Gregory Campbell MP
Dr Sean Farren
Arlene Foster
Patricia Lewsley
Naomi Long
Kieran McCarthy
Alan McFarland
Michael McGimpsey
Patsy McGlone
David McNarry
Conor Murphy MP
John O'Dowd
Peter Robinson MP

In Attendance: Debbie Pritchard (Principal Clerk)
Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)

Observing Francie Molloy (Chairperson)
Brian Barrington (SDLP Researcher)
Stephen Farry (Alliance Researcher)
Philip Weir (DUP Researcher)

The meeting commenced at 10.03am.

1. **Apologies**

Mr Durkan MP (Ms Lewsley attended the meeting as SDLP representative in place of Mr Durkan MP)

Mr Ford (Mr McCarthy attended the meeting as Alliance representative in place of Mr Ford)

Ms Gildernew MP

Mr Kennedy (Mr McGimpsey attended the meeting as UUPAG representative in place of Mr Kennedy)

Dr McCrea MP (Ms Foster attended the meeting as DUP representative in place of Dr McCrea MP)

Dr McDonnell MP (Mr McGlone attended the meeting as SDLP representative in place of Dr McDonnell MP)

Lord Morrow (Mr Campbell MP attended the meeting as DUP representative in place of Lord Morrow)

Mr Paisley (Mr Robinson attended the meeting as DUP representative in place of Mr Paisley)

Mr McGuinness MP (Mr O'Dowd attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)

2. Previous Minutes

The minutes of the meeting of 31 July 2006 were agreed.

3. Letter from the Secretary of State dated 3 August 2006.

The Committee noted the letter from the Secretary of State dated 3 August 2006 regarding plenaries in September.

4. Discussion on Institutional Issues

The Committee noted the revised list of issues and agreed the order of discussion.

Mr McGlone left the meeting at 10.46am.

Ms Long proposed a move to a weighted majority voting system in the Assembly and the removal of the present community designation system. There was not consensus and the proposal fell.

Mr Robinson proposed to retain the present community designation system and use a weighted majority and the current cross-community voting system. There was not consensus and the proposal fell.

Mr McGlone rejoined the meeting at 11.15am.

Mr McNarry left the meeting at 11.22am.

It was agreed that the Committee should give further consideration to the Assembly voting system and if consensus was not then reached, the issue should be referred to a review committee of the Assembly.

Mr McNarry rejoined the meeting at 11.30am.

Mr Robinson proposed that the Executive should be formed by a voluntary coalition. There was not consensus and the proposal fell.

It was agreed that the Speaker and Deputy Speakers should be elected by a cross-community vote.

The meeting was suspended at 12.24pm.

The meeting reconvened at 12.47pm.

Mr Robinson proposed that the positions of the First Minister and Deputy First Minister should be filled by separate nominations. The largest party would nominate to the post of First Minister and the larger party from the second largest designation would nominate to the post of Deputy First Minister. There was not consensus and the proposal fell.

Mr McCarthy left the meeting at 1.03pm.

Ms Long proposed that the entire Executive, including the First Minister and Deputy First Minister, should be subject to a collective vote in the Assembly by a cross-community vote. There was not consensus and the proposal fell.

It was agreed that the Committee was content with the petition of concern as it stands.

It was agreed that the Committee would give further consideration to the mechanisms of accountability between the Assembly and the Executive and that this be dealt with under a new fifth heading after 'Stability' on the list of issues.

Mr Molloy left the meeting at 1.53pm.

It was agreed that a paper should be prepared for the Committee on the current situation in relation to Executive power and other options.

It was agreed that the Committee of the Centre should be a statutory committee of the Assembly.

Ms Long proposed that D'Hondt should be run once only for the appointment of Ministers, Committee Chairpersons and Vice-Chairpersons and for membership of Statutory and Standing Committees. There was not consensus and the proposal fell.

Mr Campbell left the meeting at 2.30pm.

It was agreed that Assembly Committees should have the power to summon chairpersons and Chief Executives of North/South Implementation bodies.

Mr McGimpsey left the meeting at 2.45pm.

Mr Robinson proposed that an Institutional Review Committee should be established to examine the operational aspects of Strand 1. There was not consensus and the proposal fell.

Mr Murphy proposed that a mechanism should be established in the Assembly to examine operational aspects of Strand 1. There was not consensus and the proposal fell.

It was agreed that a mechanism or institutional review be established in the Assembly to examine the operational aspects of Strand 1.

Mr Campbell rejoined the meeting at 2.53pm.

Mr McGimpsey rejoined the meeting at 2.59pm.

It was agreed that multiple mandates should be phased out and that the timing of this should be referred to the mechanism/Institutional Review.

The meeting was suspended at 3.02pm.

The meeting reconvened at 3.10pm.

It was agreed to reduce the number of MLAs and to defer consideration on the mechanism for considering this further.

It was agreed that MLAs would continue to be elected by Single Transferable Vote (STV).

Ms Foster left the meeting at 3.35pm.

It was agreed that a paper should be prepared for the Committee on the legal and factual position with regard to the Independent Monitoring Commission (IMC) reports and recommendations when the Assembly is operating.

5. Revised Work Programme

The Committee noted the proposed revised work programme.

The meeting adjourned at 3.45pm.

Monday, 14 August 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: P J Bradley
Gregory Campbell MP
Dr Sean Farren
David Ford
Danny Kennedy
Patricia Lewsley
Naomi Long
Alan McFarland
Michael McGimpsey
Conor Murphy MP
John O'Dowd
Peter Robinson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
Martin Wilson (Principal Clerk)
Christine Darrah (Assembly Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)
David Douglas (Clerical Officer)

Observing Jim Wells (Chairperson)
Brian Barrington (SDLP Researcher)
Stephen Farry (Alliance Researcher)
Mark Neal (UUPAG researcher)
Philip Weir (DUP Researcher)

The meeting commenced at 10.03am.

1. **Apologies**

Mr Durkan MP (Mr Bradley attended the meeting as SDLP representative in place of Mr Durkan MP)

Ms Gildernew MP

Dr McCrea MP

Dr McDonnell MP (Ms Lewsley attended the meeting as SDLP representative in place of Dr McDonnell MP)

Mr McNarry (Mr McGimpsey attended the meeting as UUPAG representative in place of Mr McNarry)

Lord Morrow (Mr Campbell MP attended the meeting as DUP representative in place of Lord Morrow)

Mr Paisley (Mr Robinson attended the meeting as DUP representative in place of Mr Paisley)

Mr McGuinness MP (Mr O'Dowd attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)

2. Previous Minutes

The minutes of the meeting of Monday, 7 August 2006 were agreed.

3. Guidance Notes on Members' and Committee Bills in the NI Assembly

The Committee noted the guidance provided to Members during the last Assembly on the procedures for introducing Members' and Committee Bills, including gaining access to the Assembly Legislative Drafting Service.

4. Discussion on Institutional Issues

Mr Wells joined the meeting at 11.08am.

It was agreed that a mechanism is needed to ensure institutional stability.

It was agreed that, in accordance with the decision of the Committee of 7 August 2006, the issue of the Assembly Voting System should be referred to a review committee/mechanism of the Assembly

The meeting was suspended at 12.19pm.

The meeting was reconvened at 12.50.

Mr Bradley left the meeting at 12.50pm.

Ms Lewsley joined the meeting at 12.50pm.

Mr Robinson MP proposed that the positions of First Minister and Deputy First Minister should be filled by asking the Nominating Officer of the largest party of the largest designation and the Nominating Officer of the largest party of the second largest designation to identify their nominees for the posts of First Minister and Deputy First Minister respectively. There was not consensus and the proposal fell.

It was agreed, in principle, that certain public appointments should be brought to the Executive for endorsement.

It was agreed that an agreed Ministerial Code should be put on a statutory footing.

It was agreed that the Ministerial Code should be used to increase collectivity and ensure Ministerial colleagues inform each other of major decisions.

It was agreed to ask the Secretary of State to provide a copy of the draft Ministerial Code with a view to reaching an agreed position that can be put into legislation.

It was agreed that incorporating support for the rule of law in the Pledge of Office should be considered at the PFG Committee meeting dealing with law and order issues and during detailed consideration of the draft Ministerial Code.

It was agreed that information should be requested for the Committee on the decision making processes within the Executive and the options.

It was agreed that, at an early stage and in consultation with all relevant interests in the Assembly, the First Minister and Deputy First Minister should review:-

- the number of Ministerial offices to be held by NI Ministers, and
- the functions to be exercisable by the holder of each such office, including their own,
- and bring recommendations to the Assembly.

It was agreed to review the ways in which civic society engages with the Assembly.

The meeting adjourned at 3.26pm.

[Extract]

Monday, 21 August 2006 in Room 144, Parliament Buildings.

- In the Chair:** Jim Wells (until 2.05pm)
Francie Molloy (from 2.05pm)
- Present:** P J Bradley
Gregory Campbell MP
Dr Sean Farren
David Ford
Naomi Long
David McNarry
Michael McGimpsey
John O'Dowd
Patricia O'Rawe
Ian Paisley Jnr
Peter Robinson MP
- In Attendance:** Nuala Dunwoody (Clerk Assistant)
Christine Darrah (Assembly Clerk)
Jim Beatty (Assistant Clerk)
Pauline Innes (Clerical Officer)
David Douglas (Clerical Officer)
- Observing:** Francie Molloy (Chairperson)
Stephen Farry (Alliance researcher)
Mark Neal (UUPAG researcher)
Sean Oliver (Sinn Fein researcher)
Philip Weir (DUP researcher)

The meeting commenced at 10.04am.

1. **Apologies**

Mr Durkan MP (Mr Bradley attended the meeting as SDLP representative in place of Mr Durkan MP)

Ms Gildernew MP

Mr Kennedy

Dr McCrea MP (Mr Robinson attended the meeting as DUP representative in place of Dr McCrea)

Dr McDonnell MP

Mr McFarland (Mr McGimpsey attended the meeting as UUPAG representative in place of Mr McFarland)

Mr McGuinness MP (Mr O'Dowd attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)

Lord Morrow (Mr Campbell MP attended the meeting as DUP representative in place of Lord Morrow)

Mr Murphy MP (Ms O'Rawe attended the meeting as Sinn Fein representative in place of Mr Murphy)

2. Previous Minutes

The minutes of the meeting of Monday, 14 August 2006 were agreed.

3. Draft Ministerial Code

The Committee considered the draft Ministerial Code provided in their papers. It was agreed to defer further discussion and to return to this issue later.

4. Discussion on Institutional Issues

Mr McNarry joined the meeting at 10.21am.

It was agreed that information and annual reports from the North/South Ministerial Council, the North/South Implementation Bodies and the British Irish Council should be provided for the Committee, along with relevant analysis and summaries.

Mr Ford proposed that the annual report of the North/South Ministerial Council should be presented in person to both the Assembly and the Oireachtas by the First Minister, the Deputy First Minister, An Taoiseach and An Tanaiste. There was not consensus and the proposal fell.

Mr Robinson proposed that in relation to the North/South Ministerial Council, the First Minister and Deputy First Minister should report either to the full Assembly or to the Committee for the Centre. There was not consensus and the proposal fell.

It was agreed that information on the role of the NI Audit Office in relation to the North/South Implementation Bodies should be provided to the Committee.

It was agreed that nominations to the North/South Ministerial Council and the requirement to attend should be incorporated into the Ministerial Code.

The meeting was suspended at 12.25pm.

The meeting reconvened at 12.53pm.

Ms Long joined the meeting at 12.57pm.

Mr Paisley joined the meeting at 1.05pm.

Mr Campbell left the meeting at 1.15pm.

Mr Robinson proposed that the British Irish Council should have its own secretariat. There was not consensus and the proposal fell.

Mr Campbell rejoined the meeting at 1.41pm.

Dr Farren proposed that consideration should be given to the setting up of a North/South Consultative Forum. There was not consensus and the proposal fell.

Mr Molloy joined the meeting at 1.55pm.

It was agreed that parties would submit papers identifying those elements within a Ministerial Code which should be incorporated into legislation.

5. Referral by the Secretary of State on 3 July re draft Programme for Government

It was agreed that the Secretary of State should be advised that the Programme for Government is not a matter for this Committee.

Mr Wells left the meeting at 2.05pm.

Mr Molloy took the Chair at 2.05pm.

The meeting adjourned at 2.14pm.

[Extract]

Tuesday, 29 August 2006 in Room 144, Parliament Buildings.

In the Chair: Francie Molloy

Present: P J Bradley
Dr Sean Farren
David Ford
Michelle Gildernew MP
Danny Kennedy
Dr William McCrea MP
Alan McFarland
Michael McGimpsey
David McNarry
Alex Maskey
Conor Murphy MP
Ian Paisley Jnr
Peter Robinson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
Debbie Pritchard (Principal Clerk)
John Torney (Principal Clerk)
Christine Darrah (Assembly Clerk)
Jim Beatty (Assistant Clerk)
David Douglas (Clerical Officer)
Peter Gilleece (Senior Researcher)

Observing: Jim Wells (Chairperson)
Richard Bullick (DUP researcher) from 11.40am.
Mark Neal (UUPAG researcher) from 11.40am.

The meeting commenced at 10.08am.

1. **Apologies**

Mr Durkan MP (Mr Bradley attended the meeting as SDLP representative in place of Mr Durkan MP)

Mrs Long

Dr McDonnell MP

Mr McGuinness MP (Mr Maskey attended the meeting as Sinn Fein representative in place of Mr McGuinness MP)

Lord Morrow (Mr Robinson attended the meeting as DUP representative in place of Lord Morrow)

2. Hansard Reports

It was agreed that the Clerk to the Committee should write to the Speaker about the length of time taken to produce Hansard Reports of some of the Committee meetings.

The meeting was suspended at 11.40am.

Mr McNarry left the meeting at 11.40am.

Mr McGimpsey joined the meeting at 11.40am as the UUPAG representative In place of Mr McNarry

The meeting reconvened at 11.57am.

3. Previous Minutes

The minutes of the meeting of Monday, 21 August 2006 were agreed.

4. Matters Arising

The Committee was advised that at the meeting on Wednesday, 23 August 2006, it was agreed that responsibility for firearms and explosives licensing should lie with the Minister for Public Safety.

The Committee noted the information provided on the work of the North/South Ministerial Council, the North/South Implementation Bodies and the British Irish Council.

The Committee noted the information provided on the remit of the Northern Ireland Audit Office in relation to the North/South Implementation Bodies.

5. Discussion on Institutional Issues.

Mr Wells joined the meeting at 12.05pm.

It was agreed that further consideration would be given to any proposition for an overarching Council of the Isles.

6. Any Other Business

The Chairperson reminded members that they had until Friday, 1 September 2006 to submit any comments on the draft Ministerial Code prior to discussion at the next meeting.

The meeting adjourned at 12.25pm.

[Extract]

Monday 4 September 2006 in Room 144, Parliament Buildings.

In the Chair:	Jim Wells
Present:	P J Bradley Sean Farren David Ford Michelle Gildernew MP Patricia Lewsley Naomi Long Dr William McCrea MP Alan McFarland Michael McGimpsey Martin McGuinness MP David McNarry Conor Murphy MP Ian Paisley Jnr Peter Robinson MP
In Attendance:	Nuala Dunwoody (Clerk Assistant) Debbie Pritchard (Principal Clerk) John Torney (Principal Clerk) Alan Patterson (Principal Clerk) Christine Darrah (Clerk) Gillian Lyness (Assistant Clerk) Elaine Farrell (Clerical Supervisor)
Observing	Francie Molloy (Chairperson) Richard Bullick (DUP researcher) Mark Neale (UUPAG researcher)

The meeting commenced at 10.02 am.

1. **Apologies**

Mr Durkan MP (P J Bradley attended the meeting as SDLP representative in place of Mr Durkan MP)

Mr Kennedy (Mr McGimpsey attended the meeting as UUPAG representative in place of Mr Kennedy)

Lord Morrow (Mr Robinson MP attended the meeting as DUP representative in place of Lord Morrow)

Ms Gildernew joined the meeting at 10.03 am

Mr McGimpsey joined the meeting at 10.05am

Mr McFarland joined the meeting at 10.12am

10.27am the Chair instructed Hansard to commence the record of the meeting.

Mr Molloy joined the meeting at 10.32 am

Mr PJ Bradley left the meeting at 11.15 am.

Ms Lewsley joined the meeting at 11.20 am

Mr Paisley Jnr joined the meeting at 11.20 am.

Mr Murphy left the meeting at 11.20 am.

Ms Lewsley left the meeting at 11.32 am

Ms Lewsley rejoined the meeting at 11.35 am

Ms Long left the meeting at 11.45 am

Mr McGimpsey left the meeting at 11.46 am

Ms Long rejoined the meeting at 11.47am

Mr McGimpsey rejoined the meeting at 11.49am

The meeting suspended at 12.10pm.

The meeting reconvened at 12.47pm.

2. Previous Minutes

The minutes of the meeting of Tuesday 29 August 2006 were agreed.

3. Matters Arising

The Chairperson drew members' attention to a letter from the Speaker regarding the production and distribution of the Official Report.

Michelle Gildernew commented favourably on the work undertaken by Hansard staff and asked that this be recorded in the minutes.

Mr Paisley Jnr joined the meeting at 12.59 pm

Mr McNarry left the meeting at 1.00pm

Ms Lewsley left the meeting at 1.08pm

4. Draft Ministerial Code

It was agreed that the paper tabled by the DUP on the Ministerial Code and the additional information to be provided by OFMDFM would be discussed at the meeting on 13 September 2006.

It was also agreed that the Motion “that the Committee believes that a breach of the Ministerial Pledge of Office should be actionable in the courts and followed by disqualification from office” referred from the Committee discussing law and order issues on 30 August should be considered at the meeting on 13 September.

Ms Lewsley joined the meeting at 1.15 pm.

Mr McNarry joined the meeting at 1.19 pm.

5. Institutional Issues deferred from previous meetings

The Committee considered a number of issues deferred from previous meetings.

It was agreed that the Appointment/Election of First Minister and Deputy First Minister was an issue requiring further discussion by the parties in preparation for Government.

It was agreed that the issue of the number and role of the North/South Implementation bodies was an issue requiring further discussion by the parties in preparation for Government.

It was agreed that the issue of accountability between the Executive and the Assembly should be considered when discussing the Ministerial Code at the meeting on 13 September.

It was agreed that collective responsibility/decision-taking within the Executive should be considered when discussing the Ministerial Code at the meeting on 13 September.

It was agreed that the issue of accountability of Ministers to the Assembly on North/South Ministerial Council matters should be considered when discussing the Ministerial Code at the meeting on 13 September.

It was agreed that incorporation of a commitment to uphold the rule of law in the Pledge of Office should be considered when discussing the Ministerial Code at the meeting on 13 September.

It was agreed that an obligation for Ministers to attend meetings of the Executive, the North/South Ministerial Council and the British-Irish Council should be considered when discussing the Ministerial Code at the meeting on 13 September.

Mr Paisley Jnr left the meeting at 1.26 pm.

Mr Paisley Jnr joined the meeting at 1.30 pm.

6. **Committee Work Programme**

The Committee noted the proposed revised work programme and agreed that meetings could be held on the Thursday of particular weeks if this was considered necessary.

The meeting adjourned at 1.36 pm.

[Extract]

13 September 2006 in Room 144, Parliament Buildings.

In the Chair: Jim Wells

Present: Tom Buchanan
Wilson Clyde
Dr Sean Farren
David Ford
Danny Kennedy
Patricia Lewsley
Naomi Long
Alan McFarland
David McNarry
Conor Murphy MP
John O'Dowd
Peter Robinson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
John Torney (Principal Clerk)
Christine Darrah (Clerk)
Jim Beatty (Assistant Clerk)
Gillian Lyness (Assistant Clerk)
Elaine Farrell (Clerical Supervisor)
Observing: Richard Bullick (DUP researcher)
Stephen Barr (UUP researcher)

The meeting commenced at 2.08pm.

1. **Apologies**

Mark Durkan MP (Ms Lewsley attended the meeting as SDLP representative in place of Mr Durkan MP)

Michelle Gildernew MP (Mr O'Dowd attended the meeting as SF representative in place of MS Gildernew MP)

Dr Wm McCrea MP (Mr Clyde attended the meeting as DUP representative in place of Dr McCrea)

Alasdair McDonnell MP

Martin McGuinness MP

Lord Morrow (Mr Robinson MP attended the meeting as DUP representative in place of Lord Morrow)

Ian Paisley Jnr (Mr Buchanan attended the meeting as DUP representative in place of Mr Paisley)

2. Previous Minutes

The minutes of the meeting of 4 September 2006 were agreed.

Mr Buchanan joined the meeting at 2.28pm.

3. Draft Ministerial Code

The Committee noted the paper and further information from OFMDFM on proposed amendments and additions to the Ministerial Code.

Each party gave a short presentation on the draft Ministerial Code and the DUP presented a paper to the Committee.

Mr Robinson proposed that further consideration should be given, prior to restoration of devolution, to the Ministerial Code or elements of it, being given a statutory basis and the extent to which it should comprise issues such as:-

- Increasing collectivity and ensuring Ministerial colleagues inform each other of major decisions.
- Accountability between the Executive and the Assembly.
- Accountability of Ministers to the Assembly on North/South Ministerial Council matters.
- Requirement/entitlement of Ministers to attend North/South Ministerial Council meetings
- An obligation for Ministers to attend meetings of the Executive, the North/South Ministerial Council and the British-Irish Council.
- A commitment to uphold the rule of law.

The proposal was agreed.

4. Consideration of the motion referred by the Committee meeting on 30 August 2006

On 30 August 2006 the Committee referred the following motion for further consideration:-

“That the Committee believes that a breach of the Ministerial Pledge of Office should be actionable in the courts and followed by disqualification from office”

In light of the agreed proposal from Agenda Item 4 above, the Committee decided that there was no need to consider this matter further.

5. Consideration of the motion referred by the Committee meeting on 6 September 2006

On 6 September 2006 the Committee referred the following motion for further consideration:-

“This Committee believes that consideration should be given to incorporating in the Ministerial Pledge of Office support for the rule of law and commitment to urging all others to do so”

In light of the agreed proposal from Agenda Item 4 above, the Committee decided that there was no need to consider this matter further.

6. Consideration of the first draft of the PfG report on institutional issues

It was agreed that the Committee’s deliberations on the draft report would not be included in Hansard.

Ms Lewsley left the meeting at 3.30pm.

During this discussion, Ms Long proposed that there was a need for a mechanism to undertake a review of the efficiency of Assembly structures. The proposal was agreed.

The meeting adjourned at 4.05 pm

[Extract]

18 September 2006 in Room 144, Parliament Buildings.

In the Chair: Jim Wells

Present: P J Bradley
Dr Sean Farren
Danny Kennedy
Naomi Long
Kieran McCarthy
Dr William McCrea MP
Alan McFarland
Conor Murphy MP
John O'Dowd
Ian Paisley Jnr
Peter Robinson MP

In Attendance: Nuala Dunwoody (Clerk Assistant)
John Torney (Principal Clerk)
Jim Beatty (Assistant Clerk)
Gillian Lyness (Assistant Clerk)
Elaine Farrell (Clerical Supervisor)

Observing: Francie Molloy (Chairperson)
Richard Bullick (DUP researcher)

The meeting commenced at 2.33pm.

1. **Apologies**

Mark Durkan MP (Mr Bradley attended the meeting as SDLP representative in place of Mr Durkan MP)

David Ford (Mr Kieran McCarthy attended the meeting as Alliance representative in place of Mr Ford)

Michelle Gildernew MP (Mr O'Dowd attended the meeting as SF representative in place of Ms Gildernew MP)

Dr Alasdair McDonnell MP

David McNarry

Martin McGuinness MP

Lord Morrow (Mr Robinson MP attended the meeting as DUP representative in place of Lord Morrow)

2. **Previous Minutes**

The minutes of the meeting of 13 September 2006 were agreed, subject to the following change:-

Amend references to the 'UUPAG' to 'UUP.'

3. **Consideration of the PfG draft report on institutional issues**

It was agreed that the Committee's deliberations on the draft report would not be included in Hansard.

Mr Robinson left the meeting at 2.57pm.

Ms Long proposed that the Committee read and amend the draft in order to produce a final draft. The proposal was agreed.

Mr Robinson rejoined the meeting at 4.21pm.

Dr McCrea left the meeting at 4.30pm.

Mr Bradley left the meeting at 4.46pm.

Mr Kennedy left the meeting at 4.55pm.

The meeting was suspended at 16.55pm.

The meeting reconvened at 5.06pm.

Discussion of the draft concluded at 5.52pm and Hansard staff rejoined the meeting.

The meeting adjourned at 6.01pm.

[Extract]

Appendix 2

Official Report of Proceedings Relating to the Report

Monday 24 July 2006

Members:

The Chairman, Mr Francie Molloy
Mrs Diane Dodds
Dr Seán Farren
Mr David Ford
Mrs Naomi Long
Dr Alasdair McDonnell
Mr Alan McFarland
Mr David McNarry
Lord Morrow
Mr Conor Murphy
Mr John O'Dowd
Ms Margaret Ritchie

The Committee met at 10.06 am.

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

1. **The Chairman (Mr Molloy):** The minutes of the meeting of 17 July are attached to the papers. The only point that I would make is that the last paragraph of the minutes states that the next meeting will take place on 17 July. That date should be changed to "24 July". Does anyone have any other points to raise about the minutes? Are they agreed?

Members indicated assent.

2. **The Chairman (Mr Molloy):** On the subgroups on changes to the institutions and devolution of criminal justice and policing, I ask members to note that the title of the second subgroup has changed to "subgroup on devolution of policing and justice", as was the term used in the Secretary of State's letter. Are we in a position to proceed?

3. **Lord Morrow:** What was that subgroup's title before this massive change?

4. **The Chairman (Mr Molloy):** It was to be the subgroup on devolution of criminal justice and policing. It is now to be called the subgroup on devolution of policing and justice. Can we proceed to set up those two subgroups at this stage?

Members indicated assent.

5. **The Chairman (Mr Molloy):** We move now to the issues raised in the letter from the Secretary of State to the Chairpersons, and to the terms of reference for each subgroup.

6. Can we have nominations for the subgroup on changes to the institutions?

7. **Dr Farren:** I nominate P J Bradley and myself.

8. **Mr Ford:** I nominate Kieran McCarthy and myself.

9. **Mr Murphy:** I nominate John O'Dowd and myself.

10. **Mr McNarry:** When is the cut-off time for nominating? By what day do you need to know?

11. **The Chairman (Mr Molloy):** That is up to this Committee.

12. **Mr McNarry:** A couple of days were allowed for nominations to be made to the previous subgroup.

13. **The Chairman (Mr Molloy):** Is close of play tomorrow OK?

14. **Mr McNarry:** That is fine.

15. **The Chairman (Mr Molloy):** Maurice, I know that the DUP has had communication with the Secretary of State. When can we expect a reply from your party on its position?

16. **Lord Morrow:** I understood that we had replied at the previous meeting. Did Dr McCrea not state our position? I am sorry, but I was not there.

17. **The Chairman (Mr Molloy):** Yes, he did, but your party had communication with the Secretary of State in between. The DUP said that it was meeting with the Secretary of State to discuss the voting procedures and other issues. I am just seeking clarification as to whether there has been any change in the party's position.

18. **Lord Morrow:** No, there has not been.

19. **The Chairman (Mr Molloy):** I invite members to look at the terms of reference for the subgroup on devolution of policing and justice and to agree them.

20. We shall now consider the terms of reference to see whether we can agree them.

21. **Dr Farren:** Chairman, before we leave the issue, is it correct that four of the five parties will have nominated by the close of play tomorrow?

22. **The Chairman (Mr Molloy):** Yes.

23. **Dr Farren:** I understand that the DUP will not nominate.

24. **The Chairman (Mr Molloy):** That is correct.

25. **Dr Farren:** I just wanted to know where we stand.

26. **The Chairman (Mr Molloy):** Members will have copies of the terms of reference for the institutions subgroup. The terms of reference list several issues, in no order of preference, that came up in proposals and discussions on the institutions. That list can be added to if members have other issues that they wish to discuss, but what we have should suffice to start off with.

27. **Mr Ford:** The list does not cover all the institutions. For example, there is no mention of the inter-parliamentary body between the Oireachtas and the Assembly. However, the list is comprehensive enough to include that body somewhere in the discussions.

28. **The Chairman (Mr Molloy):** Are we agreed on the terms of reference?

29. **Mr Murphy:** Is it a matter for the subgroup to add to the list if it wishes?

30. **The Chairman (Mr Molloy):** Yes.

Members indicated assent.

31. **Dr Farren:** Chairman, is it in order to ask the DUP why it declines to participate in the subgroup?

32. **Lord Morrow:** Which one?

33. **The Chairman (Mr Molloy):** The one to consider changes to the institutions.

34. **Lord Morrow:** I thought that Mr McCrea made it clear that the only subgroup that had been agreed to through the Assembly was the working group on economic challenges; the other two subgroups have not been agreed through the Assembly.

35. **Dr Farren:** We left last week's meeting on the understanding that the DUP was to seek clarification from the Secretary of State. Despite that view being expressed, the door was not closed on the issue, as it were. Are we to understand that now the reason for the DUP's not nominating to the institutions subgroup is that that subgroup did not come through the Assembly? Are the issues to be discussed in the subgroup of no concern to the DUP?

36. **Lord Morrow:** Whatever the subgroups agree must come back to the Committee to be agreed. This Committee is a catch-all. Therefore although we have decided not to nominate to the subgroups, we recognise that the purpose of the Preparation for Government Committee is to scope the issues. That is what the Secretary of State told us at the start, and that is what we are sticking to.

37. **Dr Farren:** Of course that is correct. However, in order to scope the issues in sufficient depth so that we all understand and appreciate them, it is necessary to form the subgroups. The DUP is declining to participate in further elaboration and scoping of the issues in a way that would help the rest of us to understand its position. It is particularly interesting that the DUP, in any comments that it made on the review of the institutions, made great play of those issues. In fact, since the DUP insisted that many issues relating to the operation of the institutions were of concern to it, I would have thought that it should be to the DUP's advantage — and to the advantage of the rest of us — to hear its elaboration and full scoping of the issues, as that might help us to move forward. It is a matter of regret that the DUP has declined to do so.

38. The DUP is abdicating a clear responsibility, as far as the terms of reference of this Committee are concerned, to help the rest of us to understand its position. Since the DUP is not participating in helping the rest of us to

understand its position on those issues, I am sceptical of the views that it expresses.

10.15 am

39. **Lord Morrow:** Will I have to respond to every view expressed around this table? Our position is clear. No one should be under any misapprehension about where we stand on the return of devolution. The dogs in the street know the issues that are holding up the return of devolution. We are not being allowed to have debates in the Assembly because Sinn Féin has said that it will not take part in them, and the Secretary of State obviously takes that line. Therefore what is the point of scoping the issues further? This Committee is designed to scope all the issues. We understood that that had been done and we thought that we had made that clear to everyone around this table, but it seems that we have not.

40. **Dr Farren:** Would the DUP be happy for this Committee to turn itself into a subgroup and continue its work on focusing on institutional and policing issues in a way that would enable us to understand the DUP's approach? Over the next few weeks we would focus sequentially on those two issues in this Committee. The DUP would have the opportunity to focus on the issues here since it will not participate in subgroups.

41. **Lord Morrow:** The DUP has no problem with this Committee. We understood that the role of the Preparation for Government Committee was to identify and scope the issues. Now we are being told that this Committee needs subgroups to identify the issues, and no doubt in a couple of weeks' time we will be told that those subgroups will need subgroups to identify the issues. We are rolling this out into an array of subgroups that will not deliver anything. This Committee was quite capable of identifying and scoping the issues no matter what they were. We have been sitting on this Committee — even though it has been difficult over the holiday period to get Members to sit on it due to holiday arrangements. However, we have been able to muster people for every meeting. We see no need for the subgroups on the two issues that are being identified this

morning. The economic working group is different as it was agreed following debate in the Assembly.

42. **The Chairman (Mr Molloy):** Seán, are you making a proposal?

43. **Dr Farren:** At the moment the matter is up for discussion. Either these issues are important and need further elaboration and discussion or they are not — and if there is no consensus that there is anything to be discussed then I must accept that. However, it is very curious that the DUP, which went to considerable lengths to express concerns about the operation of the institutions, is declining to avail of the opportunity to let the rest of us — who would have to operate those institutions together with the DUP — hear its position.

44. Although I may not agree with the positions that the DUP was putting forward, I am anxious to hear them. My party had an exchange with the DUP at Leeds Castle to which that party did not respond in any detail. Given that experience, I am anxious that we know its response to our proposals. We have never gone through the issues in any detail at our meetings here. Even if the DUP is frightened of negotiating and wishes to remain at the level of scoping, surely it should be more than anxious to let the rest of us hear what it has to say.

45. We are not going to bend over simply to accommodate the DUP, but I am making a suggestion that might be discussed here for a few minutes before it turns into any kind of proposal, because that may not be what we should do. My suggestion is that this Committee should focus on the two issues on which the DUP will not participate in subgroups. Members can be represented by one, two, or all of their delegates as they choose, and they can send whomever they like — it is not necessary to have the same faces around the table on those issues. Effectively, this Committee could become the subgroups. It is a device to get around our difficulty. Perhaps, of course, we should proceed without listening to the DUP.

46. **Lord Morrow:** You have done that for years.

47. **Dr Farren:** Now that you are being given the opportunity, I cannot imagine that you want to scorn it.

48. **Mr Ford:** I am at a loss to know quite where we are. Last week the DUP conceded the establishment of the subgroup on economic challenges as a subgroup of this Committee, despite previously maintaining that it should be set up by the Assembly and the Business Committee. I accept that as a gesture on their part towards the rest of us to enable something to get under way.

49. Maurice Morrow now seems to be saying that there is some concern about further scoping the issues, but we do not agree on the mechanism for that. Interesting though they were, the five sets of inquiries, when proposals were teased out over a few days, did not actually constitute dealing in full detail with every outstanding issue. There is much “mining down further” — in Alan McFarland’s elegant phrase — to be done. The view from the DUP this morning is that that is so, but the structures to do it have not been agreed.

50. Can the DUP confirm that it is content that there is further scoping out in detail to be done on some issues, and that it is simply a matter of the mechanism by which we do it? Or does the DUP believe that the job is now completely finished?

51. **Lord Morrow:** I repeat — perhaps I did not make it clear — that my understanding was that this Committee was to identify and scope the issues. Is that the Alliance Party’s understanding?

52. **Mr Ford:** That was certainly our understanding; however, as I thought I had made clear a few moments ago, it was not our understanding that the process had been clarified. Scoping the issues is more than publishing a list that says: “Party A believes items 1 to 27”, and: “Party B believes items 28 to whatever”. It is a matter of establishing in greater measure, through discussion, any overlaps and differences between parties that may not be immediately apparent. That is a valid job to continue, either in this Committee or in subgroups.

53. **Lord Morrow:** The DUP has never seen this as a negotiating committee.

54. **Mr Ford:** No, and, conscious of your concerns, I did not suggest that it was. I suggested that it was a committee for further elaboration of where parties stood.

55. **The Chairman (Mr Molloy):** Referring to what Seán said, there is no reason why the possible ongoing work of this Committee should not deal with some of the issues that are not being discussed in subgroups.

56. **Mr Murphy:** That reinforces the DUP’s position all along with regard to this Committee, which has been that it is a tactical engagement with no serious intention to work to prepare for Government here but to secure plenary debates in the Assembly.

57. Ironically, the DUP, in many of its submissions and interventions, accused the rest of us of running away from issues, particularly policing and justice. Now it has a chance to join a subgroup to deal with those issues. The DUP asked that it might raise all sorts of issues, and that was granted. Yet it still does not want to get down to work. The DUP accused the rest of us of not facing up to the issues; now it spurns a chance to get down to them. That reinforces the view that we have had throughout our engagement with this Committee: the DUP’s approach has been merely tactical; it goes through the motions without doing any real business.

58. I have sympathy with Seán’s frustration, and I would be prepared to explore other ways of doing business. The difficulty is that we have a direction from the Secretary of State to set up two subgroups to do the work. We would have to look at ways of trying to get around that. We can dance around the issue to try to find a more amenable way to get the DUP to do business. However, since coming onto this Committee the DUP representatives have shown themselves consistently unwilling to get down to any serious engagement with the rest of us. They are not prepared to negotiate on any institutional issues; neither are they prepared to negotiate on any of the issues in order to prepare for the devolution of policing and justice. They are consistent in refusing to engage in the subgroups.

59. **Mr McNarry:** Chairman, I hope that we are not going to get into another two-hour wrangle about business that we have covered repeatedly. The way that we work here is clear: there is consensus or there is not. There seems to be a proposal from Seán Farren, which may or may not be a way ahead. I am uncomfortable with the DUP position on the Committee, because we operate on consensus. If Seán has a proposal, we need to know whether there is consensus for it.

60. We began the proceedings by establishing consensus to set up two subgroups, and there was no disagreement. Trouble arose only when we moved to nominations. What Maurice Morrow has reported is no surprise, as the signals given by William McCrea were clear. Therefore it should be no surprise that my party has discussed the potential of the DUP position — we picked up those clear signals. William McCrea also clearly said that the DUP would abide by the rules, yet it does not do to criticise what you have been a part of.

61. We do not have control of this Committee; that is our weakness. When we encounter a problem, we run like children to the Secretary of State, who issues letters that are contrary to previous letters, and we do not know what the hell we are working to. We have bowed to Sinn Féin on debates — no debates because Sinn Féin does not want them — a position that has been facilitated by the Secretary of State. We now have an economic subgroup, which, I must say on behalf of those of us who attended it, worked very well. It seemed to have a good programme; it had agreed a very full agenda; and the participation in it seemed of the highest quality. What do we do now? We allow the Secretary of State to tinker and to take control away from us, while we sit here like plebs.

62. We have to get a grip on that, because we are now tinkering with it. I understand and I sympathise with Seán's proposal, because the tinkering is intended to keep us together so that we do not go into subgroups from which one party is absent. As Maurice said, quite rightly, a subgroup would report to this Committee; and

then this Committee — after some of the people on it had changed their hats — would decide whether or not it would adopt the report. The essential thing, unless I am wrong, was that we agreed that all reports on the three issues would be debated in the Assembly.

63. I challenged Conor Murphy last time, and he gave me as good an answer as he could — by quoting Martin McGuinness. Hansard will have recorded my reaction to that.

10.30 am

64. Could we perhaps get to the point? Assurances were given, which I took in good faith, that the reports would be debated in the Assembly. The objective of this Committee to ensure that reports are completed remains. The problem is which mechanism is used to complete those reports.

65. To facilitate colleagues in the DUP, as we facilitated colleagues in Sinn Féin in relation to participating in Assembly debates, is there something within Seán Farren's proposals that would retain those issues within this Committee or a subgroup of its membership? I am a bit concerned about the loose talk about having a subgroup with different faces. That changes the entire outlook of this Committee. There are substitutes in this Committee today, but those members came as substitutes. We should not send members to be surrogate PFG Committee members. That must be clarified.

66. If, in the interests of collectivity and co-operation, there is a proposal to allow this Committee to deal with the two outstanding issues, which the DUP is prepared to accept and which we all accept, is there consensus to explore that? I appreciate Conor Murphy's words that he would be prepared to explore that. It was very interesting and helpful, and I appreciate it. Could that exploration be tied to Seán's proposal?

67. If there is no consensus, we go back to what the Secretary of State said, which was: "I am directing; I am the boss; I am the overseer; and I am the colonial custodian of Northern Ireland at the moment". Ha ha, big deal. The Secretary of State also introduced new rules to

help some people and offend others. One new rule was that consensus was unnecessary in a subgroup. Would that rule apply to a subgroup of this Committee dealing with those issues? He also said that there did not need to be consensus and that a majority vote would do. Those issues need to be clarified, Chairman.

68. **The Chairman (Mr Molloy):** A subgroup of this Committee is what we were directed to set up. Whatever term people wish to use, they are all subgroups of this Committee.

69. **Mrs D Dodds:** I have a number of points; I will ask Seán for clarification on his point in a moment.

70. First, this party never agreed with the consensus to set up subgroups last week. The establishment of subgroups was directed by the Secretary of State. That is apparent from his letter, which is included in the papers for today's meeting. The Secretary of State directed us to do that, whether or not I like subgroups.

71. Maurice Morrow has made our party's position clear; we are not running away from any of the issues. We have sat on this Committee for a number of weeks; we have scoped issues and prepared a lengthy report for the Committee, which seems to have disappeared into the ether.

72. There is much work to be done, which involves a wide range of issues, but the subgroups' remits are narrow. Other issues, such as criminality and paramilitary activity — which parties in this room want to run away from — are exceptionally important to the DUP and must be dealt with extensively.

73. I would like Seán Farren to clarify his point; if he would like this Committee to deal with the issues assigned to the subgroups, does he agree that the Committee should deal with all the issues that have been scoped to date, not just the couple of issues that have been identified in the Secretary of State's directives?

74. **Dr Farren:** The SDLP is not afraid to address the issues on which you focused — paramilitarism and criminality. The Secretary of State explicitly included those issues on the agenda for the subgroup on policing and justice, so it will deal with those concerns of the DUP.

There is no question of them, or any other issues, being avoided. If parties wish to address any other issues, there is absolutely no reason why, under the broad umbrella of preparing for Government, they should not be on the agenda of this Committee or one of its subgroups.

75. I raised the possibility of the PFG Committee addressing the issues earmarked for the two remaining subgroups to ensure that the DUP would be able to participate, given its refusal to nominate to those subgroups — its reasons are beyond me; nonetheless, the party seems to have adopted that position and is not budging from it. Notwithstanding his directions, if the Secretary of State heard that this Committee was anxious to continue discussion on those issues, I would not imagine that he would insist that they be dealt with by the subgroups simply because he directed that they should be established. Let us remember, directions were only issued because this Committee has been unable to reach any consensus. The Secretary of State took it upon himself to provide a way for us to continue to operate.

76. I recognise that my suggestion is really a contrivance, but sometimes contrivances are necessary in politics to hide parties' shame or to protect them from their own intransigence, which backs them into corners.

77. We must first establish whether there is a clear acceptance that the issues on the two subgroups' agendas need to be scoped, discussed, explored or whatever word one wants to use — Alan McFarland uses the word “mine”. If we can agree on that, then, as David said, the mechanisms become just a way of achieving our goal and are of lesser importance than the agreement that we should continue to discuss, explore, mine, scope, identify — or whatever the suitable word.

78. **The Chairman (Mr Molloy):** When we started the discussion this morning about setting up the subgroups, I asked whether there was any problem with setting them up this morning, and there was no objection. The Secretary of State's direction may mean that we do not need consensus.

79. **Lord Morrow:** Members could not object to them. He has made it clear. The Secretary of State is the boss. He will tell us what we should or should not do, and that is what he has been doing. He has determined that the Assembly cannot meet. He has said that. His words are: “I have directed.” He is not asking for agreement.

80. **The Chairman (Mr Molloy):** I am just clarifying the point that Diane raised. Diane, do you want to respond? The Secretary of State is really asking whether, if this Committee were to deal with the issues, the DUP would be happy to sit on it to deal with them?

81. **Mrs D Dodds:** This Committee has set itself a very large programme of work. Our statement earlier in the week said that this Committee is perfectly capable of dealing with the issues. However, that will be all of the issues — every issue that has been identified, on an issue-by-issue basis, and it will not be confined to the narrow remit of subgroups. There is no need for subgroups.

82. **The Chairman (Mr Molloy):** The problem I have is that we have been trying to expand, or have been accused of expanding, the remit of this Committee. Now members have been told that it has too narrow a remit.

83. **Mrs D Dodds:** No. I am sorry. The remit of this Committee is very wide. It is to scope the issues. Members have already spent weeks and weeks doing that. Now you say to us that we are going to expand the Committee. I am interested to see how you want to expand the remit of the Committee.

84. **Mr O’Dowd:** The wider the scope or remit of this Committee, the greater the need for subgroups to break down that work and look at it in a detailed manner and report back. However, I wish to clarify the position for the DUP. Our party is more than keen — indeed, champing at the bit — to discuss the issue of criminality and paramilitary activity. If that helps the DUP’s deliberations, we are more than happy to do that.

85. **The Chairman (Mr Molloy):** That could be done in the Subgroup on Devolution of Criminal Justice and Policing.

86. **Mr McFarland:** I apologise for being late this morning. We had a meeting with the Secretary of State at 9.15 am, which overran. Mr Kennedy sends his apologies.

87. Forgive me if I cover ground already covered. This Committee was tasked with identifying the issues. It has perhaps identified most of them, but we do not know. It was decided that we should break into three subgroups to try to find out whether, within those areas, there are other issues that have not yet been identified; and to expand those areas and find out whether we have identified all the issues that are important. As Lord Morrow said while I was coming in, this is not a negotiating Committee. That is absolutely clear. Negotiation will take place elsewhere. We still have work to do on identifying issues. There are lots of sub-parts of these issues that we have not yet got round to examining, because we have been operating at a more macro level.

88. Rightly or wrongly, the Secretary of State has said that we should have three subgroups. It is in the middle of summer. Mr Kennedy, for example, has now left for a fortnight’s holiday. I have no doubt that colleagues will be back and forward over the summer. We cannot operate this Committee and the subgroups at full pace, because the Secretary of State has decreed that each member is to sit on a subgroup. Therefore it is not possible, with holidays and everything else, to run these two organisations side by side. There is a logic in moving it down to a more micro level to examine what is going on within those issues.

89. We had a difficulty with the phrasing of the terms of reference, because it looked as though we were involved in dealing only with the Government’s paper on policing. We have enormous problems with that. The five options are not the only options; there are many others, but that is a matter for negotiation.

10.45 am

90. We identified many sub-areas within the issue of policing and justice. When criminality and paramilitary activity were not being discussed in that subgroup, William McCrea said that the DUP wanted those issues on the agenda. That

makes a lot of sense, because there are many areas within criminality that we need to explore in a subgroup — whether organised crime is carried out by individuals, who sanctions such activities, and other questions.

91. There is work to be done. However, I am still confused about whether the DUP is refusing to take part in the subgroups as a matter of principle — no matter how useful the work might be or how important it is to identify and scope the detail of these issues. Why? It is not ideal that the Secretary of State has ended up directing the subgroups. Is the DUP objection on principle or does it object because it does not have control, in that subgroup decisions are not based on unanimity?

92. No other system operates on the consensus basis of this Committee, and if we are ever to succeed as an Assembly or a Government, we must realise that. In the Assembly last week, Peter Robinson said that parties operating outside unanimity would take hits that they do not like on certain matters, but that is the way it is. That seems sensible.

93. If we approach the issues in an adult and sensible fashion through subgroups, I cannot see why we cannot do some more good work in identifying the issues — not negotiating — that can be brought before the Assembly for debate. We must keep reminding ourselves why we are here: it is so that the DUP can have an enormous four or five days of debate in the autumn.

94. **Lord Morrow:** Do you not want a debate also, Alan?

95. **Mr McFarland:** I absolutely do; but if there are no subgroups, there will be no debate. The problem is that we are trying to get debates. We need debates in the Assembly, with everybody present, so that the public can see that we are operating properly. If the subgroups do not identify detailed areas of discussion, the Secretary of State will have problems producing debates. That will be unfortunate.

96. **Mrs Long:** Further to what David Ford asked earlier, the DUP seems to agree that the scoping exercise, which is the job of this Committee, is incomplete, in that there is still

further work to be done. The question is how we go about doing that.

97. I am unclear whether the DUP's objection is to the idea of subgroups. I understood that its fundamental objection was that subgroups could end up negotiating. If the subgroups are set up with the same remit as this Committee — to further scope the issues — I do not see how that is any different from our discussing matters in this Committee or in a subgroup. That is why I am slightly confused by the DUP's current position. It has no fundamental principled objection to subgroups, as such — by the DUP's own admission, the Subgroup on Economic Challenges is working well.

98. The issue seems to be where subgroups blur into negotiation. That is what I am asking. If the remit of subgroups is to further scope the issues, is it not sensible to proceed so that the subgroups can report to this Committee, where reports would be agreed by unanimity, if that is part of the objection?

99. Diane mentioned the issues that would not be dealt with under the remits of the subgroups. I would have thought that any outstanding issues from the subgroups would be better dealt with through this Committee. That way, no issues would be left outstanding. It would simply be a case of the subgroups further scoping those issues that fit comfortably into their remits, while those issues not within the remits of the subgroups remain with this Committee. That would be a way of addressing all the issues. Clearly, we all agree that they have not all been scoped in any depth.

100. **Lord Morrow:** There are a couple of points that Mrs Long has got right, and others on which she is wrong. She said that, by our admission, the Subgroup on Economic Challenges was working well. I never mentioned that subgroup in our deliberations, and neither did Diane Dodds. I do not know whether it is working well.

101. In relation to the subgroups that have been born of this Committee, I said that there would no doubt be subgroups out of subgroups.

102. How many subgroups do we need?

103. Secondly, you said that we did not object to the subgroups. I am sure that you have read the correspondence, so you will know that the Secretary of State directed the subgroups to meet. Therefore, there was no need to object or to agree; he is the king of the castle. The DUP did not initiate this debate — others sitting around this table did that. We simply said that we would not nominate members to two of the subgroups. Where is the ambiguity in that?

104. **Mrs Long:** That is the point. The ambiguity lies in the fact that the DUP will not nominate members to sit on two of the three subgroups. It is willing to nominate members to sit on one of the subgroups, but not the other two.

105. **Lord Morrow:** Yes, because we made it clear —

106. **Mrs Long:** And —

107. **Lord Morrow:** If I can interrupt you —

108. **The Chairman (Mr Molloy):** One at a time.

109. **Mrs Long:** I would like to finish my point. That is where the ambiguity lies.

110. **Lord Morrow:** She will not listen.

111. **Mrs Long:** It seems that the issue is not with the subgroups; rather it concerns what they will be dealing with.

112. **Lord Morrow:** That is not what I said. I said that the economic subgroup was born out of the Assembly debate.

113. **Mr Ford:** It is a direction from the Secretary of State.

114. **Lord Morrow:** It was born out of the Assembly debate; the Assembly requested it, and the Secretary of State acceded to that request.

115. **Mrs Long:** Not as a subgroup of this Committee.

116. **Mr McFarland:** I am confused as to why Maurice is unhappy with the subgroups. I could understand his objections if the subgroups had powers to negotiate, in the same way as I could understand objections to this Committee having those powers. However, if the subgroups will not be negotiating, but rather scoping and

identifying issues in finer detail, what is the difficulty with them? Is it because they will operate a non-consensual voting system or because the terms of reference are not right? I am trying to understand why the DUP is saying that it will not sit on the subgroups.

117. **Lord Morrow:** We believe that the PFG Committee could adequately deal with the issues.

118. **Mr McFarland:** Chairman, the problem is that the PFG Committee will not meet because, as directed by the Secretary of State, its work areas have been divided among the three subgroups. It will be impossible for members of this Committee to sit here and on the subgroups. The subgroups will discuss the work areas in more detail, and party experts on those matters will sit on the subgroups. The Secretary of State is expecting the subgroups' work to be fed back to this Committee so that it can decide on matters for debate in September. Without the work of those subgroups, how does Maurice think that those debates can be arranged? Is he not concerned about whether we can arrange five debates in the autumn?

119. **Lord Morrow:** Sinn Féin is already on record as saying that it will determine whether there will be any debates.

120. **Mr McFarland:** The Secretary of State has already determined that the debates will take place.

121. **Lord Morrow:** You are right. The Secretary of State has said many things. Your colleague, David McNarry, said that every time we get a letter from the Secretary of State it contradicts and changes what he said in previous letters. Therefore, do not set too much store by what the Secretary of State has determined or not determined because he will change his mind at the next call.

122. It is time that we moved on from this issue.

123. **The Chairman (Mr Molloy):** We are reaching that stage now.

124. **Lord Morrow:** We are just going round in circles, and there is nothing around this circle.

125. **Mr McFarland:** I do not understand the DUP's objection.

126. **Lord Morrow:** We will not sit on negotiating subgroups. We have made that quite clear from day one, and, Alan, you know that.

127. **Mr McFarland:** They are not negotiating subgroups.

128. **Lord Morrow:** That is Mr McFarland's interpretation. One of his colleagues said in the newspaper recently that negotiations were going on in this Committee. Who is right? I understand why he looks bewildered.

129. **The Chairman (Mr Molloy):** For clarification, rather than have a subgroup, the consensus was that there would be a working group, which would produce a report — a majority report or a minority report — until voting procedures are established. The subgroup on policing and justice would deal with issues such as criminality and paramilitaries. The Committee's agenda could be expanded to include those issues further if there is agreement. The subgroups would have a clear line as to what they can deal with.

130. If the subgroup is set up, the Secretary of State's direction will be fulfilled. The reports will come back to the Committee — where consensus comes back into play — so the majority issue is not damaging in any way in the subgroup. A debate in the Assembly will follow the submission of the subgroup's report.

131. **Mr McNarry:** It is vital that the Committee reach a decision to get down to work. The outcome that I am looking for is that we produce reports for debate. The Secretary of State has given dates in September for debates, and I take it that we are still working towards having those debates. I presume that they will cover the reports that the Committee will have approved, or will have been part of approving, and that there will be a report on rural planning. We must find a compromise whereby those reports can be compiled through the Committee.

132. I feel privileged to be here, but I share my party colleagues' anxiety to know what the Committee is doing and how it is progressing with issues. There are not 108 MLAs in this room, and the only place where there will be 108 MLAs is in the Assembly, where all

Members will have the right to discuss the issues and reports that the Committee discusses.

133. This is the Committee on the Preparation for Government, yet it is extraordinary that the scoping issues so far have not included such matters as education, health and development. I have some sympathy with that view. If we are serious about preparing for Government, we should discuss the issues that we will inherit; for example, we may have ideas on how to design the future of the institutions and of policing and justice. However, there are other issues, and that is why I am glad that there is a subgroup on the economy.

134. We have come to today's Committee sitting on the back of news that the Government have frittered away millions on consultation. They are suffering from "consultation-itis" and cannot move without consulting the people. However, when the Government have consulted people on issues such as education, they ignore them. Would we have done that? We need to prepare for Government by establishing the background to that consultation.

135. The levels of consultation prove to me that the Government cannot govern properly. That is lamentable, and their management of Northern Ireland is dreadful, but that is also part of preparation for Government. I know that we have timescales and that people are going on holiday, etc, and those should be facilitated, but I hope that we can deal with such issues in order to get to the wider issues in the lifetime of the Committee. Therefore, that seems to put pressure on the Committee to make decisions here and now.

136. Do we go for a subgroup that my party may not participate in, or do we try to facilitate to keep us all together? It seems a nonsense that people may abstain — my party included — from a subgroup and yet discuss the reports of the subgroups on changes to the institutions and the devolution of criminal justice and policing — a point that has already been made.

137. Can we either decide to move on with the subgroups without parties, or find a compromise that will keep us together on these issues?

11.00 am

138. **Dr Farren:** I plead guilty to initiating this procedural debate. I understood from initial comments made by the DUP that it would not be nominating members to the two subgroups on changes to the institutions and the devolution of criminal justice and policing, although last week we were given to understand that it might be in a position to do so following consultations with, and clarification from, the Secretary of State.

139. The DUP is not nominating to those subgroups, and, rather than have those two subgroups, I thought that we might continue to debate the issues related to those two agenda items in this format. The DUP seems anxious that these matters should be discussed, but, rather than say: “Yes, that would be a way forward”, it seems to be trying to find ways to obscure the issue, and it will not make a commitment to have the issues scoped further — to use its language — within this Committee.

140. However, if it is saying that this Committee could do so, then there would be no need for the subgroups, whatever the directions of the Secretary of State. We would tell the Secretary of State that we have agreed to continue to discuss those issues in this format and that we do not need the other two subgroups.

141. Will the Secretary of State say that we must have those two subgroups? Will he not be pleased that we will be discussing the matters further in this format?

142. **Mr McNarry:** I said before that we should get the Secretary of State to come to this Committee and answer those questions.

143. **Dr Farren:** He is unlikely to accede to that request. However, we could agree to scope those issues in this Committee. Would the DUP be happy for us to proceed without the subgroups and to scope the issues in here in this format?

144. **The Chairman (Mr Molloy):** We need to reach a conclusion. If Dr Farren’s proposal were put forward and we had consensus that we do not need the subgroups, we would need legal opinion and the opinion of the Secretary of State, as we would not be complying with his direction.

145. **Dr Farren:** We would suspend the implementation of the direction. Is there a serious suggestion that the Secretary of State will say that we must operate those two subgroups even though we have decided to continue with those issues in this Committee? It may be that some other party will object to that procedure. I began by saying that I was thinking off the top of my head as to how we might proceed with these two issues — if they are important to the DUP in particular — and how we might overcome the problem that the DUP has with nominating.

146. **The Chairman (Mr Molloy):** Dr Farren, are you making that a proposal?

147. **Dr Farren:** I am making a proposal in order to bring this to a head. It will test whether or not people are happy to proceed.

148. **Mr Murphy:** It should be brought to a head. We are in danger of talking this to death. The DUP has not shown any willingness to deal with these matters as agenda items here, and it is unwilling to go into subgroups.

149. David McNarry has suggested that the UUP might abstain, and that would mean that the subgroups would not be workable anyway. Alan McFarland challenged the DUP as to why it would not join the subgroups, and David McNarry said that his party might abstain anyway. It is getting ridiculous.

150. David McNarry is out of the room now, but he has suggested several times before, and also today, that the other parties facilitated Sinn Féin in not having Assembly debates. I have to correct him: they did not facilitate us.

151. Sinn Féin objected to every plenary session of the Assembly except for the failed attempt to elect the First Minister and the Deputy First Minister. On four or five occasions, our objections were overruled, overlooked or ignored, and the Secretary of State proceeded with his plans. No one facilitated Sinn Féin in that regard.

152. Sinn Féin has made clear its position on this Committee: it is a Preparation for Government Committee, not a preparation for debates committee. It seems that Alan thinks that the emphasis of this Committee is on facilitating a

debate in September. The emphasis from our perspective is to get down to talking about some of the serious issues that need to be discussed in order to meet the deadline for restoration on 24 November. That is Sinn Féin's purpose. If part of that work involves debating some of those matters in the Assembly, and those are genuine debates in relation to work that has been done in this Committee, we are happy to co-operate.

153. The objective of this Committee is to do the required work. However, we have been talking for an hour, and I have seen no indication yet of any progress on the two topics. The other subgroup is up and running, and there is no indication of the other two getting under way. If the UUP abstained from participation in the subgroups, as it seemed to indicate earlier, they could not function anyway. It is time for some straight answers. Is this work going to happen or not? Frankly, we could be doing something more useful than sitting here in circular discussions every Monday.

154. **Mrs Long:** The Alliance Party does not care whether the discussions take place in the Committee or a subgroup, so long as they take place and do so quickly. At present, we seem to be going round in circles and getting nowhere. If having the discussions in the Committee makes it easier for other people to participate, we are happy to have them here, and if it is easier to do it in subgroups, that is fine. The meat of the issue matters, not the structure of the discussions. We must focus on that.

155. Following the questioning of the DUP's position, I was surprised to hear the Ulster Unionists suggest in the last intervention that they might not participate in the subgroups. That question was asked of them earlier today, and no indication of their position was given until the end.

156. If we are going to proceed with the subgroups, there must be a commitment from all parties to be present. We could proceed with the subgroups without the DUP — and I understand its frustration with this discussion — but that would be pointless, because all parties around the table need to make some kind of submission and be party to the discussions.

The non-participation of any party would not be helpful to any of us, and that is why we are having this hour-long circular discussion.

157. We want to see how we can do business, with the DUP and everyone else at the table contributing something, because we all believe that that is not only positive, but necessary. That is why we have been teasing this out, but there must be a commitment from all five parties that they will sit around the table and be willing to get on with the business, wherever it may take place.

158. **The Chairman (Mr Molloy):** That is the key point. If the subgroup is not set up and the topics are to be debated here, it must be established whether all parties will participate.

159. **Dr Farren:** I will put my proposal, in that case.

160. **The Chairman (Mr Molloy):** Alan wanted to speak first.

161. **Mr McFarland:** Seán asked Maurice whether the DUP would take part in the discussions if they took place in this format. It would be useful to know the answer to that before we take decisions.

162. **Dr Farren:** It is a rhetorical question, because they are members of this Committee. If they do not turn up —

163. **Mr McFarland:** If the DUP objects to negotiating policing and justice in a subgroup, it is as likely to be neurotic about discussing it in this Committee — or perhaps not, as the case may be. I am curious to get an answer.

164. **Mr Ford:** I asked that question directly in my first contribution to this discussion. If we are merely scoping further — or in your terms, mining down — is there a suitable format in which to do that? I was trying to see whether we could assist the DUP in getting engaged in that, while accepting that it would not engage in anything that it regarded as negotiations.

165. **The Chairman (Mr Molloy):** We need a commitment from all parties, not just the DUP, that they will be happy to discuss policing, justice and other issues in this Committee if there is not going to be a subgroup.

166. **Lord Morrow:** Under what circumstances would Alan McFarland or his party not participate in subgroups?

167. **Mr McFarland:** Hold on for a moment. We are back to Seán Farren's question: if those issues were kept in this Committee and in this format, would the DUP take part?

168. **Lord Morrow:** We have made it quite clear from day one that we see this as a scoping Committee. We can scope whatever issue under the sun that members wish.

169. **Mr McFarland:** The subgroups scope at a micro level. The DUP disagreed with that and said that that was negotiation. Is the DUP happy to do micro-level scoping in this format?

170. **Lord Morrow:** I am sure that Alan McFarland will answer my question in a moment or two. If there is further scoping of the issues within this Committee, we expect that to include all the issues that have been raised in the Committee but that we were never allowed to debate in the Assembly.

171. **Mr McFarland:** So the answer is that the DUP is happy to discuss institutions and policing and justice in this Committee as part of a scoping exercise. That seems to be a yes.

172. **Lord Morrow:** It is your turn to reply.

173. **Mr McFarland:** Hold on; I am trying to go through the logic of this. The DUP's objection to the subgroups was nothing to do with scoping, because what was to be discussed in the subgroups is the same as what we discussed in this format. Therefore, the objection must be to the lack of a requirement for consensus on the subgroups, because the issues and the terms of reference are the same. The difference is in the formats of this Committee and the subgroups. If the DUP is happy with that, its problem must be something other than the scoping exercise.

174. **Mrs D Dodds:** I am very anxious to allow Alan McFarland to reply to Maurice Morrow's question. Our objection is not to subgroups per se, but to the voting system in the subgroups. It is interesting to see that so many parties in this room are now content with majority rule in some cases.

175. **Mr McFarland:** That is how the first Assembly operated, and the next Assembly will operate in that way.

176. **Mrs D Dodds:** Before the end of June, this Committee prepared a comprehensive list of issues that had been scoped and identified as the obstacles to the return of devolution in Northern Ireland. For example, on the matter of debates, we had a report that quite easily could have gone to the Assembly for a valuable debate that would have allowed 108 Members to contribute. I entirely share Mr McNarry's frustration at the way in which that has been handled and blocked by parties in this room and by the Secretary of State.

177. We have a full report and a full list of issues. We cannot pick and choose those issues, which are far too narrow as defined by the remits for the two subgroups. We will not agree to those remits.

178. Maurice Morrow asked some time ago — and I would really like to get round to Alan McFarland's answer — on what basis the Ulster Unionists would not nominate to the two subgroups. We have already made our position quite clear.

179. **Mr McFarland:** All the issues that we identified fit into one of the three subgroups. You can see that. That is why we have established subgroups. The Secretary of State wants subgroups to identify particular issues. We are trying to agree the format because, as others have said, to have one of the major parties, the DUP, not playing its part clearly does not help the work of this Committee at all.

180. Why does the DUP not want to play its part? It is not because of the scoping exercise that the subgroups could do, because the DUP is happy to do that in this format. There must be some other reason, to do with the voting system or whatever, for its not being happy to sit on subgroups.

11.15 am

181. **Mrs D Dodds:** I am sorry, I am still waiting —

182. **Dr Farren:** I have a point of procedure, Chairman. The debate is moving away from the proposal. Whether one, two or three parties decide not to nominate to subgroups is not the point; it is whether we have a format in which the issues can be addressed. My proposal aims to establish whether there is consensus for such a format; that is, this Committee. That is all. After the proposal has been put, members can question each other as to whether they would participate in subgroups, were they to exist. However, my proposal would probably push the subgroups aside and render them unnecessary.

183. **The Chairman (Mr Molloy):** I will put your proposal to the Committee.

184. **Dr Farren:** My proposal should be put, because it does not require any further debate, in my view.

185. **Mrs D Dodds:** For weeks, we have openly discussed these issues and answered parties' questions. Maurice put a question to the Ulster Unionist Party, and I would really like to hear the answer.

186. **Mr McFarland:** The answer is absolutely irrelevant, because the subgroups will not function. There cannot be a situation whereby only four parties sit on a subgroup and produce a report that must come back to this Committee for consensual agreement before it goes before the Assembly. If the DUP does not sit on the subgroup, there is no subgroup. Asking silly questions about who else might sit on the subgroup and what its terms of reference might be is —

187. **Mrs D Dodds:** I did not raise that issue. It was raised by a member of Mr McFarland's party, and I am keen to know his view.

188. **Mr McFarland:** But it does not matter.

189. **Lord Morrow:** There is an inference that everyone else is asking silly questions and that only questions asked by Alan are intelligent.

190. **Mrs D Dodds:** It is a particularly pejorative way of speaking.

191. **The Chairman (Mr Molloy):** Will you restate your proposal, Dr Farren?

192. **Dr Farren:** I propose that this Committee continues to discuss issues other than those being discussed in the Subgroup on Economic Challenges. Whether we decide that subgroups are necessary is an aside at this point. Let me make it simple: I propose that we continue to discuss the issues identified for the other two subgroups, on institutions and policing and justice, and other matters, in this Committee. That is all.

193. **The Chairman (Mr Molloy):** Is there consensus?

194. **Mr Murphy:** I am sceptical, given the DUP's refusal to give a direct answer to whether it would get down to business in this Committee. The DUP seems to be evading that. If we try to have some sort of micro-discussion on those issues, as Alan suggested, the DUP will use that to introduce other issues in order to avoid getting down to the serious issues.

195. Nonetheless, in order to advance this discussion, which is what we are trying to do, Sinn Féin is prepared to go along with the proposal. I must say, however, that I am quite sceptical about the outcome, but we are prepared to consent to Seán's proposal and see how this process develops. If we are to try to do some serious work on the issues outlined in the terms of reference, and people just play with that, we will obviously have to reassess our position. However, in order to move this discussion on, and with that health warning attached, Sinn Féin is prepared to go along with Seán's proposal.

196. **Mr Ford:** We certainly agree with Seán Farren's proposal. There is clearly no way in which subgroups can function at this stage. Whether issues can be scoped in greater detail in this Committee will have to be demonstrated by those who participate. The fact that people are playing games is not much of a reason for walking out — otherwise this Committee would never have started.

197. **Lord Morrow:** We need clarification that further scoping will be wide-ranging and on an issue-by-issue basis. We also need clarification that, if members — and I include the DUP in that — feel that it is necessary, further scoping

is possible on the report that has already been produced. In fairness, Seán Farren mentioned “any other issues”.

198. **Mr McFarland:** We are happy with the proposal.

199. **The Chairman (Mr Molloy):** Is that agreed?

Members indicated assent.

200. **The Chairman (Mr Molloy):** All right, we will refer that to the Secretary of State. Perhaps we can delay the establishment of subgroups rather than clear them from the table completely.

201. **Dr Farren:** Perhaps the secretariat could help us to identify those issues that require further scoping and circulate them to us. We can then agree an order and add to that list if necessary. Obviously, the Secretary of State may have a view, but I would be surprised if he should intervene when we have reached a rare level of consensus.

202. **Mr McFarland:** I presume that it is open for parties to bring their subject experts into the subgroup as substitutes for other members?

203. **Mrs D Dodds:** What subgroup?

204. **Mr McFarland:** Sorry, I meant the Committee.

205. **Mr Murphy:** I assume that the topic for discussion at a PFG Committee meeting will be clearly identified from now on. We must know whom to bring along.

206. There are two main topics listed for our attention. I am not averse to anyone raising something new, as that is his or her entitlement. However, if we get into the business of listing, as Seán Farren has suggested, and dabbling into a wide range of issues, it will be difficult to produce a report in the time allotted. It will be possible to report on the two main issues if the proper work is done and the Committee meetings are structured in such a way that we know what topic is coming up and who is to be sent along. Otherwise, the chances of our producing a report for September are very slim.

207. **The Chairman (Mr Molloy):** Do members wish to propose a first item at this stage, or should the Clerks decide?

208. **Mrs D Dodds:** I propose that we go back to the list that the parties produced, correlate that with the issues that were identified during the scoping exercise and the tentative report that resulted, and thus identify a running order.

209. **The Chairman (Mr Molloy):** The Clerks will do that and circulate it to members. Agreed?

Members indicated assent.

210. **The Chairman (Mr Molloy):** We must also agree a date for the next meeting.

211. **Mr Murphy:** Can I presume that that is item 3 out of the water and that the draft programme for work is not going to be referred to us?

212. **The Chairman (Mr Molloy):** Yes, although it could become part of that discussion too. The Secretary of State mentioned working in the context of the Programme for Government.

213. What will be the date of our next meeting?

214. **Dr Farren:** We would need to meet not later than next Monday.

215. **The Chairman (Mr Molloy):** We could meet on Wednesday. The economic subgroup will meet tomorrow and on Thursday.

216. **Mr McFarland:** We now have a chunky programme of work to discuss: the institutional issue; the policing and justice issue; and all that relates to those topics. We must report by 18 August, is that correct?

217. **Dr Farren:** We should meet on Wednesday.

218. **Mr McFarland:** I should think we would need to meet twice or even three times a week.

219. **The Chairman (Mr Molloy):** Will we try for Wednesday at 10.00 am?

220. **Mr Murphy:** I have a difficulty.

221. **The Chairman (Mr Molloy):** Is there a time that is suitable for everyone?

222. **Mr McNarry:** Will both Chairmen be able to sit in for continuity?

223. **The Chairman (Mr Molloy):** Yes. Jim Wells is off today and sends apologies for the economic subgroup tomorrow too. I am not sure of his arrangements after that, but we will endeavour to ensure continuity.

224. **Mr McNarry:** I am just mindful of the workload of the two Deputy Speakers. If that becomes a problem, will we be advised?

225. **The Chairman (Mr Molloy):** Yes, and then we will look at alternative arrangements.

226. Wednesday at 10.00 am, is that OK?

227. **Mr Murphy:** That is to look at all these issues and decide how we are proceeding from there?

228. **The Chairman (Mr Molloy):** Yes.

229. **Mr McNarry:** Can “Slab” Murphy be the first witness to be brought forward?

230. **Mr Murphy:** If you can find him.

231. **The Chairman (Mr Molloy):** The meeting is closed.

Adjourned at 11.25 am.

Wednesday 26 July 2006

Members:

The Chairman, Mr Jim Wells
Mr Thomas Buchanan
Mr John Dallat
Mrs Diane Dodds
Dr Seán Farren
Mr David Ford
Mr Alan McFarland
Mr Martin McGuinness
Mr David McNarry
Lord Morrow
Mr Conor Murphy
Mr John O'Dowd
Ms Margaret Ritchie
Observing: Mr Francie Molloy

The Committee met at 10.10 am.

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

232. **The Chairman (Mr Wells):** We will get cracking. We have been asked not to wait for the Alliance Party delegation, but they will be here. Who are the deputies?
233. **Ms Ritchie:** I am representing Dr McDonnell.
234. **Mr O'Dowd:** I am representing Michelle Gildernew.
235. **Mr Buchanan:** I am representing Rev Dr William McCrea.
236. **Mr Dallat:** I am representing Mr Durkan.
237. **Lord Morrow:** Diane Dodds will be here later, and she will be representing Ian Paisley Jnr.
238. **The Chairman (Mr Wells):** Apologies have been received from Mr Kennedy who is on holiday. Mrs Dunwoody is also on holidays, so the Clerks for today's hearing are Principal Clerks Mrs Pritchard and Martin Wilson.
239. Hansard has been effective in producing the report on the meeting of 24 July. Does anyone have any amendments or additions to make to it or the minutes?
240. **Mr O'Dowd:** The comments attributed to me on page 18 — while I wholeheartedly agree with them — were spoken by my colleague Mr Murphy.
241. **The Chairman (Mr Wells):** That would be more properly addressed by contacting the Hansard staff and making certain that it is corrected before it becomes the official version that goes on the website. However, you have put it on the record, and that is a handy way of letting the folk upstairs know that the correction should be made.
242. Is everyone else content?
- Members indicated assent.*
243. **The Chairman (Mr Wells):** I was not present on Monday, but I understand that the Committee decided not to form the two additional subgroups and that the subjects that they were to cover would be dealt with by full meetings of the Preparation for Government (PFG) Committee. The Clerks have advised the Secretary of State of that decision, and he is content with that. He says that that is in accordance with his direction.
244. **Mr McFarland:** Perhaps I am being dozy here, but it states in item 3 of the minutes:
- "It was agreed that the Committee should proceed to set up the subgroups on Changes to the Institutions and Devolution of Policing and Justice".*
245. I thought that the Committee had agreed not to set up the subgroups but that those issues would be dealt with by the PFG Committee.
246. **The Chairman (Mr Wells):** Dr Farren came in at that stage and made his proposal. He felt that as one party at least would not be attending, there was no sense in going ahead with the subgroup, so he proposed that it would be dealt with by the full PFG Committee.

247. **Mr McFarland:** Are we dealing with the minutes of the last meeting?

248. **The Chairman (Mr Wells):** Yes.

249. **Mr McFarland:** It says in the minutes that this Committee, which operates by consensus — including the DUP — agreed that the Committee should proceed to set up subgroups on institutions and policing and justice. The Committee did not agree to set up subgroups; it objected to subgroups. It agreed to deal with policing and justice and institutions in this forum.

250. **The Chairman (Mr Wells):** You did agree to set up the subgroups and then changed your mind.

251. **Lord Morrow:** That is not right. We were never asked to agree to set up subgroups. We were never asked that question. The Secretary of State made a directive that they would be set up, therefore we were not asked to approve or disapprove them. We said that we would not nominate.

252. **Dr Farren:** It would more accurately reflect what happened by saying that we nominated members to the subgroups.

253. **Mr McFarland:** That is not what is stated in the minutes.

254. **Dr Farren:** I know that. It would be more accurate to leave out “agree” and say that we nominated members to the subgroups. Since the minutes only record decisions, it would be right to say that we nominated members. Those parties who were content to nominate members did so. However, I made my proposal when it was discovered that there would be no participation by one party.

255. **The Chairman (Mr Wells):** You could get round this by deleting the first paragraph of item 3.

256. My reading of the situation is that, when it became apparent to Dr Farren that one party was not going to nominate, another motion was more or less tabled.

257. **Mr McFarland:** That may well have been the case. However, in order for paragraph 3 of the minutes to state that it was “agreed”, consensus must have been reached that the

Committee should proceed to set up subgroups. I arrived late to the meeting, but I was present to hear members make it clear that they were not going to set up subgroups. Therefore, the minutes should not say that there had been any agreement on the subgroups.

10.15 am

258. **The Chairman (Mr Wells):** Mr Morrow made it very clear that the DUP would not be nominating.

259. **Mr McFarland:** I suggest that we take that line out. If someone from outside the Committee were to read it, they would think it really odd that the Committee had agreed by consensus — because it operates by consensus — to set up the subgroups and then had two hours of rows about not wanting to set them up. The first paragraph does not make sense. Dr Farren’s suggestion should be adopted: the paragraph makes sense only if it reflects the fact that members simply nominated to the subgroup.

260. **The Chairman (Mr Wells):** Are members content with that proposal?

261. **Lord Morrow:** That is not a true reflection. The Committee was never asked to agree or disagree on the setting up of subgroups. The Committee received a simple direction from the Secretary of State that subgroups would be set up: the DUP simply said that it would not nominate to them.

262. **The Chairman (Mr Wells):** Are there any other comments? Mr Morrow, are you objecting to the deletion of that comment?

263. **Lord Morrow:** It should clearly state that the Secretary of State directed that subgroups be established.

264. **The Chairman (Mr Wells):** The difficulty that I have with that, Mr Morrow, is that on page 1 of Hansard, Mr Molloy, who was in the Chair, said:

“It was to be the subgroup on devolution of criminal justice and policing. It is now to be called the subgroup on devolution of policing and justice. Can we proceed to set up those two subgroups at this stage?”

265. It continues:

“Members indicated assent.”

266. Then Mr Molloy called for nominations.

267. **Lord Morrow:** What happened then?

268. **The Chairman (Mr Wells):** Mr Farren nominated Mr Bradley and himself, and three of the parties provided nominations. The difficulty is that “Members indicated assent” suggests that consensus was reached.

269. **Mr Murphy:** There was consensus to begin the proceedings to set up a subgroup, and that is when the parties nominated. David McNarry said that the UUP would nominate by close of play the following day, and the DUP said that it would not nominate. We then discussed ways of working around that. If one is splitting the difference, we agreed to begin the proceedings to have the subgroups in operation, and that is when the nominations were asked for. We did not have to agree on the establishment of subgroups because they were already established.

270. **The Chairman (Mr Wells):** How do we get around this?

271. **Lord Morrow:** Mr Deputy Speaker, why is there no mention of the Secretary of State’s directive in the minute?

272. **The Chairman (Mr Wells):** It is not mentioned because at the previous meeting we spent about 40 minutes assessing the exact meaning of the directive and the accompanying letter. By that stage, it was taken that people were very clear about what the Secretary of State meant.

273. **Lord Morrow:** Yes, but to get an understanding of the situation, it must be re-established in the minute that, following the Secretary of State’s direction, subgroups were to be established.

274. **The Chairman (Mr Wells):** A phrase could be inserted stating that the Committee agreed to implement the Secretary of State’s direction to set up the subgroup.

275. **Lord Morrow:** We were not asked to agree that. You do not have to agree a directive,

Mr Deputy Speaker. We were given no choice in the matter. We were told to get on with it and make nominations, and parties started to do that.

276. **Dr Farren:** I would have thought that this problem could be very easily solved. Could we say that it was agreed that nominations be invited from the parties? That is what happened.

277. **The Chairman (Mr Wells):** Would that be acceptable?

278. **Dr Farren:** The nominations that were made could be recorded.

279. **Lord Morrow:** It should be recorded that the Deputy Speaker asked for nominations.

280. **The Chairman (Mr Wells):** Of course, Lord Morrow, your remarks will be put on the record anyhow, and will now appear in Hansard. Are folk happy with that suggestion?

281. The Deputy Speaker asks for nominations to the subgroups on institutions and on the devolution of criminal justice and policing. Can we have agreement on that in order to get the minutes out of the way?

282. **Mr M McGuinness:** Does it matter one way or the other? It is down to whether the DUP is prepared to accept that formula.

283. **Lord Morrow:** We are happy as long as the minutes clearly reflect that we were never asked to agree or disagree anything. The problem arose when we said that we would not nominate.

284. **Mr M McGuinness:** That is clear enough. We appear to be agreed on a form of words that has just been suggested by the Deputy Speaker. I suggest we sensibly move on.

285. **The Chairman (Mr Wells):** Have we consensus?

Members indicated assent.

286. **The Chairman (Mr Wells):** Good.

287. We have agreed the minutes. I have allowed Mr McFarland to come back in on the minutes when, really, we had gone past them. A nice try and it succeeded.

288. We have reported to the Secretary of State and he is content that we go forward as we have

planned, so there does not seem to be any difficulty there. On tab 2 of your papers the Clerks have helpfully devised a table of issues raised by parties during the presentations and the submissions.

289. **Mr McNarry:** Before we get into that, may I raise an issue. On the radio this morning, it was related that the Secretary of State had set up a group to deal with rates, and in particular with industrial derating. Should we ask the Secretary of State whether he intends to set up other groups outside the remit of this Committee? I ask because industrial derating has been discussed by this Committee and forwarded to the Subgroup on the Economic Challenges facing Northern Ireland, which has it in mind to invite that lobby group on industrial derating. I am totally in favour of that group being set up by the Secretary of State. However, on the one hand, he directs us to carry out work; on the other, he meets people and sets up groups without acknowledging to this Committee what he is doing. In view of the long list of issues that we have now to discuss, would it be proper to seek his mind and ask whether he is engaged in any issues outside this Committee and, if so, would he make us aware of them?

290. **The Chairman (Mr Wells):** The Subgroup on the Economic Challenges facing Northern Ireland meets tomorrow morning at 10.00 am and I am in the Chair. Derating is a relevant and important issue for the work of that subgroup. It is any Committee member's right to raise it first thing tomorrow morning; and if the Committee votes by a majority to do so, it could ask the Secretary of State to give evidence on this issue so that Committee members can express whatever concerns they may have. It is not a matter with which the PFG Committee should be dealing directly.

291. **Mr McNarry:** Chairman, in case you misunderstood, I meant that it is relevant because the subgroups are under the auspices of this Committee. That is why I raise it. I am not raising it as an issue for this Committee, although tomorrow I intend to do what you suggest. However, as we move down the long list, it appears inconceivable for the Secretary

of State to speak to others about these issues with a view to setting up groups, as he has done on the derating issue. It would only be proper for us to seek his mind.

292. **The Chairman (Mr Wells):** Yes, if your concern is that, as we work through these issues, we find that the Secretary of State has set up an ad hoc group to deal with some or all of those matters. It is unlikely that we will start the work today, but as soon as we do, we could well agree to write to the Secretary of State.

293. **Mr McNarry:** I appreciate that.

294. **The Chairman (Mr Wells):** I can see the difficulty that that causes. Of course, the Secretary of State may have made that decision before he was aware of the progress that the Committee has made.

295. **Mr McNarry:** I do not think so.

296. **The Chairman (Mr Wells):** Mr Murphy, do you have the list?

297. **Mr Murphy:** Yes. Over the past week, we have received three broad remits for the subgroups, one of which is the economic subgroup referred to by David McNarry. It strikes me that the bulk of items on the list fall into those three categories. Perhaps we should identify those items, allocate them to categories, decide what is left over and agree a focused series of meetings to deal with the outstanding issues.

298. The Committee has agreed to deal with two of those issues — the devolution of policing and justice and the establishment of the institutions. Some of those items rightfully belong to the economic subgroup, which is meeting. We should identify which of the remaining items fall into the other two broad remits and see what is left, so that we can set an intensive timetable of work to achieve some progress on those two issues before the end of the summer.

299. **The Chairman (Mr Wells):** The Clerks have helpfully drawn up a table. I will talk through it while it is being distributed. We have tried to bring the issues under four main headings: Government; institutional issues; law and order issues; and rights, safeguards,

equality issues and victims. It is purely for guidance, but it might help us to focus on how to deal with the issues. I have had a brief look: some of issues sit comfortably in the groups, while others are perhaps open for debate. Members might want to consider the table to decide whether it shows a way forward in tackling the issues in groups of eight to 11.

300. **Mr McFarland:** The Secretary of State tried to put three areas into subgroups. The Committee decided to deal with two of those, but that does not mean that they cannot be dealt with separately.

301. One could argue that the safeguards and rights issues would sit well in the institutional issues category, in that they are related directly to the agreement and the comprehensive agreement and involve setting up institutions. For example, the bill of rights is related directly to the Northern Ireland Human Rights Commission, which is part of the institutional side. Policing and justice and the institutions could be dealt with in alternate Committee meetings. That would package things up easily.

302. **Mr Ford:** I take the point made by both Conor and Alan. However, the matters covered under the final heading of rights, safeguards, equality and victims are distinct and discrete. The needs of victims and building a shared future do not sit that easily with discussions on the structure and architecture of the institutions. There would be merit in keeping those matters out as, in effect, a fourth pillar.

303. **Dr Farren:** I had begun a similar exercise and I came up with broadly the same headings. Human rights, parades and equity issues form a cluster, which can be addressed as a whole. I identified victims and the past as a separate matter, but institutional issues, policing and justice, paramilitarism, criminality and decommissioning — as far as we can deal with them — flow from the Committee's remit. As I said, I identified human rights, parades and equity issues and victims and the past as two further subheadings.

304. However, we should try to get under way with the first two, which, by common assent, are at the top of the list. We will not get any

more than an interim report finalised before the end of August.

10.30 am

305. **The Chairman (Mr Wells):** Part of the reason why we were constrained was that if we had set up subgroups to deal with the issues, it would have taken two weeks for us to consider their reports. However, the PFG Committee will produce the report, so that will free up some time. We could produce an interim report in September charting the progress and then perhaps report a month later. That would relieve some of the pressure we have in dealing with the issues more carefully.

306. **Dr Farren:** The Committee should have some type of report ready by the end of August whether it be an interim or final report. That will take a great deal of time, and the Committee will probably have to meet twice a week for quite some time to get through all the issues that are covered by the various headings insofar as it is possible to make any progress in the next four weeks.

307. **The Chairman (Mr Wells):** Are there any other views? There seems to be slight disagreement about the groupings.

308. **Mr McFarland:** I am happy to go with that grouping. I was simply trying to keep it logical on the basis of what we have discussed before. It will be a matter for the Committee to decide whether we deal with those headings in turn.

309. **The Chairman (Mr Wells):** There seems to be some support for Mr Ford's view that "rights" and "safeguards" do not sit easily under the heading "Institutional issues".

310. **Lord Morrow:** Would it facilitate the meeting if we had a short adjournment to let the groups retire and go through the list for 10 minutes? It would be helpful to come back after each group has discussed the issues.

311. **Mr McNarry:** I have no objection to what has been said, but I express my sensitivity at seeing "Parades" under the heading of "Law and order issues". That is not where I would put it.

312. **Lord Morrow:** That is the sort of issue that an adjournment would facilitate.

313. **Mr McNarry:** That would be helpful. I am pleased that the list has been drafted and it is well intended, but we need some cohesive thinking that parades are not a law and order issue.

314. **Mr M McGuinness:** Does the member think that we should put “Parades” under the heading of “Hillwalking”?

315. **Mr McNarry:** We had a discussion on walking, and I would prefer to see the heading “Walking”. I am glad that the Member has learned from that discussion.

316. **The Chairman (Mr Wells):** The Committee has a precedent of granting a brief adjournment to any group that requests it. That is entirely acceptable.

317. **Mr McFarland:** The category “Other” covers “Other issues raised with the Government which require delivery for the return of devolution”. It would be helpful if those who have raised those issues with the Government would let us know what they are. Presumably, unless there is something magical that we have not spotted yet, they are already reflected in this list. All parties have made their submissions and the issues have been listed. What could appear under the category “Other”?

318. **The Chairman (Mr Wells):** That was part of the DUP’s submission. The party may wish to expand on that following the adjournment.

319. **Mr McFarland:** Most of the topics come under one of the headings, unless there is something that no one has thought of.

320. **The Chairman (Mr Wells):** I am sure that the DUP will expand on that when it returns.

The Committee was suspended at 10.33 am.

On resuming —

10.55 am

321. **The Chairman (Mr Wells):** The meeting is reconvened. Members have had a chance to look at the list. As I have not heard any dissention on the principle of trying to group items, can I take it that members are happy that we go down the list and make sure each is in the right pocket, as it were?

322. Obviously the first item on the list will be referred to the Subgroup on the Economic Challenges facing Northern Ireland, and the first section could also be dealt with by the subgroup.

323. The Secretary of State has made reference to the Programme for Government and we will come back to that later as a separate item.

324. Are we content that the Belfast Agreement is an institutional issue?

325. **Lord Morrow:** Could I have clarification? I missed what you said in relation to Government.

326. **The Chairman (Mr Wells):** This matter arose at a previous meeting. The Secretary of State referred three sets of issues for discussion by subgroups, but he has also referred to the Programme for Government separately in a letter dated 3 July, which is in your pack. At two previous meetings, Mr McCrea made it clear that he objected to this Committee dealing with that issue, so it will be dealt with as a separate issue today because of the strong views on the subject. I suggest that we come back to it later, because if we start debating it now we will be very slow in dealing with the other issues.

327. **Lord Morrow:** The DUP does not see items 2 and 3 as blockages to the restoration of devolution. We believe that the priorities for Government and the Programme for Government come after devolution and will be worked out by those who will be forming the Government.

328. **The Chairman (Mr Wells):** There will be an opportunity to make that point at the end of the meeting. Do we accept that the Belfast Agreement is an institutional issue?

329. **Lord Morrow:** A very bad one, but yes.

330. **The Chairman (Mr Wells):** Dr Farren, do you accept that?

331. **Dr Farren:** There are institutional issues within the Good Friday, or the Belfast Agreement. The Belfast Agreement is much more comprehensive than the institutional issues that it contains. It deals with constitutional and human rights issues. As long as it is clear that it is only the institutional matters that fall under this heading then, in one sense, specific reference to it is redundant, but I am happy to keep it there as long as that is what is understood by it. Aspects of the Good Friday Agreement come in under each of the headings. If we are discussing institutional issues, let us confine ourselves to institutional issues of the agreement under that heading, and deal with the human rights issues, and any other issues, under the appropriate headings.

332. **Mrs D Dodds:** The Belfast Agreement is an extremely important issue for unionists. My party has never supported the Belfast Agreement, and, indeed, the majority of unionists do not now support the Belfast Agreement. Any committee set up to look at the blockages to devolution, which did not take into account the Belfast Agreement, and the lack of support within the unionist community for the Belfast Agreement, would be denying reality. Therefore it is important that we discuss these issues.

333. **Mr M McGuinness:** A number of parties were involved in the discussions that took place during the greater part of the autumn of 2004: the British Government, the Irish Government, Sinn Féin and the Democratic Unionist Party, albeit at some distance. Anyone who was there could come to no other conclusion than that, during those discussions, the Democratic Unionist Party accepted the Good Friday Agreement as the template for future politics on this island, and specifically in the North.

11.00 am

334. The Good Friday Agreement has effectively been accepted as an international agreement between two Governments. The broad headings allow, as they should, all parties on the Preparation for Government Committee to discuss any issue of their choice. The DUP can spin that

how it likes, but the agreement is the template from which all participants on this Committee are working.

335. **The Chairman (Mr Wells):** I have a slight concern: we are not debating the merits, or otherwise, of the Belfast Agreement. If we go down that route, we will occupy the next six hours.

336. **Mr M McGuinness:** That is why I do not intend to prolong my contribution, except to say that all participants have a right to express their views and opinions. Let us not fool ourselves, however — the template from which we are all working is the implementation of the Good Friday Agreement.

337. After all parties met with the Taoiseach and the British Prime Minister in Parliament Buildings a number of weeks ago, the two leaders issued a joint communiqué that clearly indicated that the job of work ahead for all of us was to restore the institutions by 24 November 2006. The Secretary of State set out a programme of work. That is why we are sitting on this Committee, and that is the basis on which we will move forward these discussions.

338. **The Chairman (Mr Wells):** All we need to establish is whether all Committee members agree that the institutional issues in the Belfast Agreement — it would almost be better to put institutional issues in brackets after each point — is a subject that falls neatly into the institutional issues section and should be debated in that category. We do not require people to suggest what they feel that the Belfast Agreement means.

339. Is there any objection to that?

340. **Mr McFarland:** Chairman, may I suggest that you ask whether there are additions to be made to the list or points that can be moved elsewhere? If you go down the list, one by one, each party feels that it must say something about each of them, and we will be here until 5.00 pm.

341. **The Chairman (Mr Wells):** I suggest that members comment only on whether they feel that a particular point should be included in that category, rather than what they feel about

the issue. There will be ample opportunity for comment when we debate the issues.

342. Do members accept that the Belfast Agreement should be there? Do they accept that the Civic Forum should be there as an institution? What about the comprehensive agreement?

343. **Mr McFarland:** May I suggest that you ask the parties which points they do not want included?

344. **The Chairman (Mr Wells):** Do all members feel that every point from 1 to 11 is totally relevant, should be there and should not be moved?

Members indicated assent.

345. **The Chairman (Mr Wells):** OK, so we believe that every point under institutional issues should remain. Does anyone have any additions, or has anything been missed?

346. **Mr Ford:** Given all the Alliance Party's remarks on the subject, particularly since November 2001, I am disappointed that the Assembly voting system is not listed as a separate point.

347. **The Chairman (Mr Wells):** Yes, that could come under point 7 on the list. We hold the view that if a certain issue is important to a party, it should be considered. You are talking about the d'Hondt voting system.

348. **Mr Ford:** We have made it clear that it is a key issue.

349. I am not blaming the Committee staff. Despite what the Alliance Party has said to the Northern Ireland Office (NIO) over the past five years, the NIO still does not realise the significance that our party attaches to the voting system — that is obvious from correspondence that we receive from it. We consider the voting system significant enough to be listed individually.

350. **The Chairman (Mr Wells):** A great many items come under "Institutional issues".

351. **Mr McFarland:** The voting system can be number 12.

352. **The Chairman (Mr Wells):** If we get consensus, I am happy to put it in at number 12,

because it is an important issue for the Alliance Party. Is there consensus?

353. **Mr M McGuinness:** I think that there is an acceptance — although I do not wish to tempt providence — that some of the headings allow for all sorts of issues to be discussed. Sectarianism and racism are important issues that will have to be dealt with at some stage of our deliberations. The broad headings adequately deal with all the issues that are of concern to all parties around the table. If we try to outline the detail of each issue, we will be making unnecessary work for ourselves.

354. **The Chairman (Mr Wells):** That suggests that we do not have consensus on number 12.

355. **Mr M McGuinness:** I am not saying that I oppose it.

356. **Mr McFarland:** The Alliance Party has raised this from day one, and if it is something that it feels strongly about I have no objection to making it number 12.

357. **Mr M McGuinness:** I have no objection, but we should resist the temptation of expanding all the issues.

358. **Mr Ford:** Chairman, I assure you that I will resist the temptation to put any of my other general concerns. However, since the Assembly voting system is the one part of the agreement that failed to work when implemented in good faith on 2 November 2001, it merits individual mention.

359. **The Chairman (Mr Wells):** Have we consensus that the voting system be number 12?

Members indicated assent.

360. **The Chairman (Mr Wells):** Those are the 12 points under "Institutional issues".

361. We move on to "Law and order issues". Mr McNarry has a concern about parades being in this category.

362. **Mr McNarry:** We would like "Parades" and "Peaceful summer" to be removed from that list.

363. **The Chairman (Mr Wells):** Do you want them moved to "Rights; safeguards; equality issues; victims", or do you want them deleted?

364. **Mr McNarry:** We do not want them deleted; we would like them to be put into another category.

365. **The Chairman (Mr Wells):** It might sit under “Rights; safeguards; equality issues; victims” — particularly the third category.

366. **Mr McNarry:** It is not an equality issue. It would stand alone in a discussion in which equality was included, but it is not an equality/parades issue.

367. **Mr Ford:** In the past, Mr McNarry suggested that parading is a human rights issue. Since “Rights” appear as the first part of that heading, does he accept that parades could fit in there?

368. **The Chairman (Mr Wells):** Or as part of “Unionist culture” perhaps.

369. **Mr McFarland:** Parading has been mentioned through many a discussion. It is an issue for several parties for different reasons, and it would merit being added as point 9 under “Rights; safeguards; equality issues; victims” so that it can be discussed discretely. There are issues connected with it that are not directly connected with equality or human rights — although there are connections. However, as a stand-alone issue it is one that exercises many people for different reasons.

370. **The Chairman (Mr Wells):** Do you want it as number 9 in the third category?

371. **Mr McNarry:** Yes.

372. **The Chairman (Mr Wells):** “Unionist culture” is number 7 in that category.

373. **Mr McFarland:** That might relate to Ulster Scots being part of the unionist culture, for example, which is not connected to parading. Parading is a separate issue.

374. **The Chairman (Mr Wells):** Therefore you are content for “Parades/Peaceful summer” to be number 9 under “Rights; safeguards; equality issues; victims”. That deletes two items from “Law and order issues”.

375. **Mrs D Dodds:** We should not lump “Parades” and “Peaceful summer” together. Parading is an important issue. It is an issue of

human rights, culture and identity for the unionist community. It is extremely important, and it must be dealt with on its own. It must be sorted out, as it poses an important question.

376. **Mr McNarry:** As we approached the summer, we discussed whether it would be peaceful.

377. Conor Murphy is not present, but I am mindful of the fact that he said — and I am paraphrasing — that Sinn Féin’s attitude to the Committee and the Assembly would depend on what happens over the summer. That is what I understood from his comment.

378. Discussions on a “Peaceful summer” would give us an opportunity to find out from Sinn Féin what it thought of the summer and what its attitude is. I will not talk about this issue in depth, but I agree with Diane Dodds; “Parades” should be a stand-alone category.

379. **Mr McFarland:** Do we need the “Peaceful summer” category at all? I agree that it is not necessarily connected to parades. It is on the list because the issue was raised in June as we led up to the compilation of this list. It is now approaching the end of July, and it will soon be August. Events to come may influence whether we have a peaceful summer, but by the time the Committee gets beavering on the list, the issue may not need to be treated as a discrete topic, although it can be mentioned in passing. “Parades” should be dealt with separately at point 9. We could simply abandon “Peaceful summer” as a separate category and include it in the rest of the discussions.

380. **The Chairman (Mr Wells):** At the rate we are going, we will be talking about a peaceful winter.

381. **Mr O’Dowd:** I would like to respond to David’s comments by clarifying what Sinn Féin said, which was that a peaceful summer would facilitate a better atmosphere for this Committee to carry out its work on the wider preparation for Government. I do not think that Sinn Féin said that it was a precondition — in fact, I know that it did not.

382. **Mr McNarry:** I am sorry to interrupt you, but you need to read Hansard.

383. **Mr O'Dowd:** That is one of the few advantages of having Hansard in the room; we can go back and read the record.

384. If some parties want to place "Parades" at point 9 and "Peaceful summer" at point 10, treating them as separate categories, Sinn Féin is more than happy to do that. The summer is rolling on, but Sinn Féin wants to work towards an even better summer next year. If we can deal with the matter, we should do so.

385. **Mr McNarry:** To conclude on the "Peaceful summer" category, it would be remiss of anyone not to recognise the summer that we have had so far and the work, from many quarters, that went into that — particularly in certain parts of Belfast, where people worked very hard to achieve objectives. Perhaps under a separate "Peaceful summer" category, recognition can be duly given. People in those areas would appreciate it.

386. **The Chairman (Mr Wells):** Mrs Dodds, would two separate headings at points 9 and 10 address your concerns?

387. **Mrs D Dodds:** There certainly should be two separate headings. A peaceful summer is not simply identified with parades and unionist culture; if you lived on the Suffolk estate on Black's Road, you would know that a peaceful summer is dependent on whether nationalists and republicans will stop stoning your house or coming to your estate with hurley bats at 5.30 am, as happened at the weekend.

388. I object to the two categories being lumped together because they are not completely linked. It would be remiss of me not to object; I would not be doing my duty for those constituents who voted for me if I said that the two categories should stay together. I will be very interested to see how the summer progresses, especially in west Belfast in August.

389. **The Chairman (Mr Wells):** We seem to have consensus.

390. **Dr Farren:** Although, in one sense, the issue of a peaceful summer is of grave concern, it sits uneasily among the issues to be addressed in order to prepare for Government. Sectarianism, of whatever kind, is, of course, an

issue. I could cite incidents in North Antrim that are not dissimilar to those to which Diane referred, but the shoe was on the other foot, if I can put it that way.

391. An entire nest of issues related to community relations and sectarianism underlie what I understand to be the concerns about a peaceful summer. Chairman, as you said, it may be a case of a peaceful winter, or, as John said, a better summer next year. However, none of that will happen unless we get community relations right. Therefore, I would rather discuss community relations issues, if they are what really underlie the notion of a peaceful summer.

392. **Mr M McGuinness:** We can become fixated with where different items are categorised in the course of this work; however, more important is what we do about the issues. There is no point in Mrs Dodds's referring to an incident, which she says occurred recently, because that just invites people to come forward with other incidents that happened in different parts of the North. A young man, Paul McCauley, is critically ill at the moment as a result of a severe beating that he received on the Chapel Road in Derry some time ago. The attacks on Catholic churches and schools and on orange halls are disgraceful. All members of the Committee have a duty and a responsibility not to select one particular incident and proclaim it worse than all the rest.

11.15 am

393. Despite the type of society that we live in and the difficult circumstances that we have all faced, we have experienced a relatively peaceful summer. Many parties contributed to that. Many within the broad Unionist community, the UUP, MLAs, our own party, people such as Gerry Kelly and others worked hard to ensure that we came through many difficult situations in a way that the vast majority of our people find satisfactory.

394. However, let us not fool ourselves that that resolves the difficulties: violence is still taking place against orange halls, schools and Catholic churches. It is despicable and it must stop. This Committee must give a lead; so I am not that concerned about how we categorise

individual issues. I am more concerned about what we do about them.

395. **The Chairman (Mr Wells):** Again, we are in danger of starting a debate on sectarian attacks on halls or parading or whatever. The only issue that members are addressing here is whether they perceive an issue to be of such importance to one party that it should have a separate heading. Remember, and I am sure Mr Molloy will agree with me on this, when it comes up for debate at the hearings, no Chairman will stop any member raising these valid points under whatever heading they feel fit, because these are important issues. Everyone accepts that.

396. **Mrs D Dodds:** I shall refrain from further comment, except to say that I cannot accept Sinn Féin's eulogy to some of the people whom they credit with producing a peaceful summer, when they were the very people who went out of their way in the past to create the problem. Picking up on Seán Farren's point, perhaps a "Peaceful summer" more readily sits under the title "Good relations".

397. **The Chairman (Mr Wells):** Mr McNarry, are you happy with that suggestion?

398. **Mr McNarry:** Yes.

399. **The Chairman (Mr Wells):** We are getting somewhere.

400. **Ms Ritchie:** Mrs Dodds's suggestion has resolved the problem. However, we should be looking at the causes of where we are today; what members have been suggesting in the past few minutes are perhaps symptoms. We have to look at the causes before applying solutions. "Good relations" covers many facets, including respect for difference, which we should be trying to address.

401. **The Chairman (Mr Wells):** You have squared the circle. We have two separate new items under "Rights"; one is "Parades" and the other is "Good relations". Is everyone happy?

402. **Lord Morrow:** Have you left "Law and order issues"?

403. **The Chairman (Mr Wells):** No. As we move issues into other categories, we go back to

the original category to see whether anything in it needs to be changed or deleted. We have consensus on that. Now we are back to "Law and order". We have "Criminality", "Decommissioning", "Devolution of Policing and Justice", etc. "Parades" has gone; "Paramilitarism" stays, as do "Policing" and "Rule of Law." Are there any issues to be added?

404. **Lord Morrow:** We would like to add "Community Restorative Justice" as number 9.

405. **The Chairman (Mr Wells):** That would be new number 7. Does anyone have any problems with that suggestion?

Members indicated assent.

406. Right, that is 7. Is anyone looking at 8?

407. **Mr M McGuinness:** Yes, MI5.

408. **The Chairman (Mr Wells):** MI5?

409. **Mr McNarry:** Are you going to be a witness on that, Martin?

410. **The Chairman (Mr Wells):** Does anyone have any views on that as an issue?

411. **Dr Farren:** Is that not included under policing issues?

412. **The Chairman (Mr Wells):** Yes, I would say —

413. **Mr M McGuinness:** Well, is Community Restorative Justice (CRJ) not included under policing?

414. **Dr Farren:** I did not object. I am only asking a question. If that is the response, OK, but —

415. **The Chairman (Mr Wells):** There is absolutely no doubt that a Chairman would allow that issue to be discussed.

416. **Dr Farren:** I have absolutely no objection to discussing that issue separately, but I just asked. There seems to be no answer to the question in the terms that I asked it.

417. **The Chairman (Mr Wells):** Do we have consensus on MI5 going in as number 9?

418. **Ms Ritchie:** To cover MI5, would it not be better to have "policing and intelligence services", or a separate title under intelligence

services? That would cover any other matter under that umbrella.

419. **The Chairman (Mr Wells):** That would cover a wider area. “Intelligence services” sits a bit more neatly. Are there any problems with that? Do we have consensus? It is instead of MI5 — “Intelligence services”.

420. **Mrs D Dodds:** Just to clarify: you are putting policing and intelligence services together? They are not necessarily the same thing.

421. **The Chairman (Mr Wells):** No, they are separate. Is there consensus on that?

Members indicated assent.

422. **The Chairman (Mr Wells):** Right, OK. We shall move on to rights and safeguards etc. We have added the parades issue and good community relations. Are there any issues? We may have to use this as a catch-all for anything that has been missed.

423. **Dr Farren:** The Good Friday Agreement refers to the two dominant cultures here. If we are going to discuss one, we must discuss the other. However, in the light of the significant migration of other ethnic communities that has occurred in Northern Ireland since the Good Friday Agreement in particular, we should widen the cultural debate.

424. I have no objection to discussing what is referred to here as “Unionist culture”, but we should include recognition and expression of all the different cultural traditions that are here. How we label that without getting long-winded can be left to the wordsmiths in the secretariat, but there is a cluster of issues that can be taken together, because it relates back to issues on good relations and sectarianism.

425. Martin mentioned the need to address the issue of racism. There is a negative and a positive side to that matter. If we are going to debate issues of culture, we must do so comprehensively and not just focus on one. In case someone on the other side of the table thinks I am trying to smother it, I am not saying that we should not give explicit recognition to unionist culture.

426. **The Chairman (Mr Wells):** I am looking for a snappy title for all of that, Seán.

427. **Dr Farren:** That is why I said I would leave it to the wordsmiths.

428. **The Chairman (Mr Wells):** One suggestion is “Cultural issues”, but I am sure there are —

429. **Mr McFarland:** The essence of what Seán is saying is that this is about ethnic communities. We have covered most of the other traditions and cultures. Seán used the words. Is “Ethnic communities” too broad a term?

430. **Ms Ritchie:** “Ethnic communities and culture”?

431. **The Chairman (Mr Wells):** We have to get round Seán’s difficulty that there is reference to unionist culture but none to nationalist culture.

432. **Mr Ford:** If the Clerks are suggesting “Cultural issues”, that seems to cover everything that Seán raised. We can all refer back to Hansard to all the things he raised.
[Laughter.]

433. **The Chairman (Mr Wells):** “Cultural issues”? Is that agreeable? It is instead of unionist culture or in addition to unionist culture.

434. **Mr M McGuinness:** “Multicultural issues”.

435. **Mr McNarry:** Could we perhaps take stock? There is a specific reason why the unionist culture is there. It is something that we spent time discussing, and there was agreement that it would be there. Without offending anyone else — and I understand what Seán was saying — could we have “Other cultures”?

436. **Dr Farren:** No. If you name one, you need to name them all.

437. **Mr McNarry:** But you are only raising this now. You did not raise it at the time, and there was no discussion of it. This is an extraction, a compilation, of headings of issues raised by parties during presentations.

438. **Dr Farren:** But we are not excluded from introducing additional issues.

439. **Mr McNarry:** I am not saying that they should be excluded, but —

440. **The Chairman (Mr Wells):** Dr Farren is wise, because that issue could arise. It could be argued that it was not implicit that we would discuss ethnic issues or nationalist culture. One suggestion was to have a broad heading of “Unionist culture, nationalist culture and ethnic communities”. That would give the two Chairmen clear direction that those issues would have to be discussed. Even though nationalist culture was not raised in the scoping exercise, it will be discussed. The Ulster Unionist Party and the DUP raised the issue of unionist culture, but there was no reference to nationalist culture.

441. The view of this Committee has always been that if a party considers an issue to be important, we allow them to include it for discussion. Would the subheadings of unionist culture, nationalist culture and ethnic communities be helpful?

442. **Mr M McGuinness:** That will cover everything.

443. **Mr McFarland:** Would those headings be on one line?

444. **The Chairman (Mr Wells):** Those issues can be listed separately or on one line under the heading of “Unionist/nationalist culture and ethnic communities”. Do members want them on one line or as three separate headings?

445. **Mr M McGuinness:** Let us be united for once.

446. **The Chairman (Mr Wells):** Are members agreed to list those issues on one line?

Members indicated assent.

447. **The Chairman (Mr Wells):** That leaves us with 10 points for discussion, which is a manageable amount. Are there any other issues?

448. **Lord Morrow:** The DUP moved the issue of parades from the heading of “Law and order issues” to “Rights; safeguards; equality issues; victims”. We also consider victims and truth and reconciliation to be separate issues. I am interested to hear what Mr Ford has to say about that.

449. **The Chairman (Mr Wells):** That puts us up to 11 points. Are members happy to split those two issues? The subject of victims is a big issue in its own right.

Members indicated assent.

450. **The Chairman (Mr Wells):** Do members feel exercised about any other items that have been left out?

451. **Dr Farren:** We are free to add to the list at any time.

452. **The Chairman (Mr Wells):** No reasonable issue will be excluded from these categories simply because it is not listed. If we listed everything, we would have pages and pages of headings.

453. **Lord Morrow:** The heading of “Other” can safely accommodate issues not yet included. It is hard to envisage a subject that has not yet been mentioned, but it has been known to happen.

454. **Mr McFarland:** If it were open to members to introduce additional issues into each of those categories, we would not need “Other” as a separate category.

455. **The Chairman (Mr Wells):** I will ask Mr Molloy’s opinion. I have expressed my views on how I see this going forward, but he may wish to agree or disagree. It is important that we agree, as we both chair the Committee.

456. **Mr Molloy:** I have no problems. The main thing is that all the issues are listed; the overarching heading of “Other” is useful for subjects that may arise during discussions.

457. **Mr M McGuinness:** Under the heading of “Other issues”, it is only sensible to ask what the issues are that have been raised with the Government and require delivery before the return of devolution. The rest of the packages dealing with financial business, institutional issues, law and order issues, and rights and safeguards all have explicit headings. I presume that whoever wrote the “Other” heading knows what those other issues are. They should share them with the rest of us.

11.30 am

458. **The Chairman (Mr Wells):** Am I right in thinking, Lord Morrow, that that is in case another issue emerges? Perhaps an issue will develop in the media which has not been included in any of these headings, and despite the assurances that I have given that I would allow it, you want a catch-all category just in case.

459. **Lord Morrow:** That is exactly it. If someone has an afterthought, he or she would not feel that the subject is blocked out, and it can be accommodated here. There is nothing more sinister about it than that.

460. **Dr Farren:** I take it, Chairman, that the term “raised” does not refer to matters that have already been raised, but matters that may be raised? If it concerns matters which have been raised and of which we were unaware, we should be made aware of them. However, if they were matters that may be raised and which we have not anticipated, then they should appear on our agenda. Is that how I should understand “raised”?

461. **Mr M McGuinness:** That is specifically what I am referring to. We need an explanation of what these terms actually mean. If “raised” means “may be raised”, then we should specify that. If these issues have already been raised then the Preparation for Government Committee is entitled to know what they are.

462. **Mr McFarland:** Peter Robinson said in the media recently that the DUP had additional issues that it was raising with the Government in relation to the reduction in Departments and the number of seats for MLAs. Presumably those issues would be discussed under item 7 of institutional issues.

463. **Lord Morrow:** Yes, that is probably right. I suspect that some of those issues might have been raised already under the comprehensive agreement.

464. **The Chairman (Mr Wells):** If members fear that issues will be ruled out of order by the two Chairmen because members were not given advance notice about them although they are relevant, I can reassure them that I think that will not happen.

465. **Mr McNarry:** I will need to read the DUP’s submission on this.

466. **Mr McNarry:** I want to come back to what I said earlier about the Secretary of State’s role in this. As that category is included, it is incumbent on the Secretary of State that he does not go on “Lone Ranger” jobs during the course of our deliberations, and that the Committee might be given some advance notice — even if it is through the Deputy Speakers. There should be no surprises.

467. A statement from somebody that is contrary to something that may have been discussed the day before could destroy any of these meetings. I am anxious about that.

468. **The Chairman (Mr Wells):** The DUP’s original submission states:

“In addition to these matters” —

469. meaning the DUP’s list —

“there are also a significant number of issues which we have raised with the Government which also require delivery before the return of devolution. We intend to raise the matters again with the Government in the future.”

470. I assume that the DUP wants to raise those issues at various points. I presume that this is a reference to confidence-building measures.

471. **Mr McFarland:** Logically, they should have been part of the DUP’s original submission. If there are secret issues that are subject to deals with the Government and have not appeared here — and presumably there are not — it would be useful for the Committee to be made aware of them. However, there may be side games going on. We might ask ourselves why we are bothering if issues are being identified and raised separately with the Government.

472. **Mr M McGuinness:** The extract that the Chairman read out from the DUP’s submission was enlightening and helpful. It brings us to the heart of the problem. The DUP’s contribution clearly refers to these issues being raised with the Government in the context that there will be no devolution if they are not resolved. The Committee is entitled to know what those issues are.

473. If, as Maurice has said, there is a more benign interpretation of what that means, the sentence should be changed to refer to dealing with other issues that may be of concern or interest to the parties. It is important that the DUP offer some clarification on the “issues”. The import of the last sentence of what you read from the DUP’s submission is that the issues are preconditions for the return of devolution. If so, this Committee is entitled to know that they are.

474. **The Chairman (Mr Wells):** Lord Morrow, have you any comments on that?

475. **Lord Morrow:** Some around this table will try to see something sinister in everything that we say. They will try to twist and turn it to mean something different. Seán Farren is close to the mark in his interpretation. The “Other” category is for issues that may have been missed, or which suddenly become relevant but have not been listed. It is there so that no member from any political grouping feels obstructed in raising a particular issue, simply because it does not appear on the list.

476. New issues may arise. As David has said, we run the danger of having the “Lone Ranger” in the Northern Ireland Office issuing a statement every now and again. The Secretary of State told us yesterday that the Provos are now cleaner than clean. I suppose that the next statement will be that they are reforming into a Boy Scout organisation.

477. We will go through that whole process between now and 24 November. Things are undoubtedly being done deliberately to unsettle this Committee and to hinder the restoration of devolution. Therefore, as issues arise it may be that a member feels he wants to raise them here. That is purely what the “Other” section is for.

478. **The Chairman (Mr Wells):** Are members content with that assurance?

479. **Dr Farren:** Maurice referred to what I said. I asked for clarification on how to understand the sentence. I said that if “issues” are to be understood as issues that have been raised, we should know about them. If the submission refers to issues that may be raised in the future, no one will know what those are

until they have been raised, at which point they can be logged with this Committee.

480. If the issues have already been raised and are additional to what we have heard about from the DUP, we should be told what they are. It is as simple as that. Is Maurice now saying that the interpretation should be that the submission refers to issues that may be raised but that we have not yet anticipated? If that interpretation is correct, I am happy to leave the list as it has been agreed. However, if the other interpretation is correct, we are entitled to know what those issues are.

481. **Mr M McGuinness:** I agree with Seán Farren. It is essential that we know whether the DUP is speaking about issues it has raised with the Government and that require delivery, or, as Maurice has indicated in the course of this, that the submission refers to future issues.

482. **Mr McNarry:** Is it not fair to say that it is essential that we all know what each party is doing? Martin may be talking to the Taoiseach. Sinn Féin could be doing some sort of deal down there. Goodness knows, it has done it before. *[Laughter.]*

483. We should not become involved in a conspiracy theory. Lord Morrow has been clear, and we are prepared to accept what he has said about future issues. You have introduced the other Deputy Speaker so that you are clear on how to interpret “issues”.

484. **The Chairman (Mr Wells):** That is why I did that.

485. **Mr McNarry:** I think that was worthwhile, and I suggest that we move on now.

486. **Mr M McGuinness:** I propose that the heading reflect Maurice Morrow’s contribution, on which there appeared to be agreement.

487. **The Chairman (Mr Wells):** I have a suggestion. Lord Morrow’s comments are now on the record, and we understand their import. The Committee Clerks are suggesting a heading: “Other issues that may be of concern or interest to the parties”. Mr Molloy and I have listened to the discussion, and we understand those issues. If an issue emerges like a rabbit

from a hat, we will know whether it meets Lord Morrow's assurance.

488. **Mr M McGuinness:** I am content with the Committee Clerks' suggestion.

489. **Lord Morrow:** Do other parties have to give the same assurance?

490. **The Chairman (Mr Wells):** If a party raised an issue that we had been notified about and that had not emerged out of the blue, we would have to apply the same criteria.

491. **Lord Morrow:** I suspect that, from time to time over the next couple of months, all the political groupings around this table will air their concerns at meetings with the British or Southern Governments. Perhaps the parties will have meetings with other people or organisations. Nobody could deny the parties those meetings. Parties are good at putting their concerns into the public domain.

492. **The Chairman (Mr Wells):** We have a suggestion for a heading: "Other issues that may be of concern or interest to the parties". We understand the context of that suggested heading. Do we have consensus?

Members indicated assent.

493. **The Chairman (Mr Wells):** Mr Molloy, do you agree with what has been established? We need to understand how we are to proceed.

494. **Mr Molloy:** Some of the issues may have been raised with the Secretary of State, or someone in the Northern Ireland Office may raise other issues. It might be worthwhile for the Committee to write to the Secretary of State asking that his views come through to this Committee. He may not do that, but at least he would have the opportunity to do so.

495. **The Chairman (Mr Wells):** That is Mr McNarry's point. We should let the Secretary of State know exactly what we are doing, although I suspect that he will know five minutes after this meeting is over. We ask him not to take on any initiatives that may pre-empt or torpedo our work, at least not without consulting us.

496. **Mr McNarry:** We do not want any surprises.

497. **The Chairman (Mr Wells):** We want no surprises from the media.

498. **Dr Farren:** Does that mean that the DUP no longer stands over the penultimate sentence of its initial submission to the Committee? It reads:

"In addition to these matters there are also a significant number of issues which we have raised with the Government which also require delivery before the return of devolution."

499. The unidentified issues referred to in that sentence are the bone of contention.

500. **Mr McNarry:** We have dealt with that issue. This is the second time that Dr Farren has come back on an issue after consensus had been reached.

501. **Dr Farren:** Correct me if I am wrong, but has consensus not been reached on issues that may be raised in future?

502. **Mr McNarry:** Consensus has been reached about the wording of this heading. A proposal was made, and it was accepted.

503. **Lord Morrow:** Mr Deputy Speaker, I want to reinforce what David has said. Did you not invite the second Deputy Speaker, Mr Molloy, for his clear understanding, which was to draw a line under the entire issue?

504. **Dr Farren:** With all due respect, Mr Chairman, I must ask for clarification. If the Chairman says that I am incorrect, I will stand corrected. I accept that we now understand the meaning of the sentence concerning matters that may be raised in the future. I am not referring to that sentence but to the penultimate sentence of the DUP's initial submission. It reads:

"In addition to these matters there are also a significant number of issues which we have raised with the Government which also require delivery before the return of devolution".

505. Will all those matters be included under the various headings outlining the Committee's future business? Is that what is being said?

506. **The Chairman (Mr Wells):** I think that I raised that point and that the DUP said that it came under confidence-building measures in point 2. Those have been well highlighted

publicly. However, perhaps I picked up Lord Morrow wrong on that.

507. **Lord Morrow:** No.

508. **Dr Farren:** I apologise for wasting the Committee's time if I did not pick up on that point. However, I thought that it was very important that I had the meaning clarified. Like other members, I do not want the SDLP to find itself in the situation in which matters that have already been addressed by the two Governments and that are pertinent to the restoration of the institutions are not being addressed here.

11.45 am

509. **The Chairman (Mr Wells):** I can see the logic of what you are saying — we need to get the point clarified.

510. **Mrs D Dodds:** There are no issues that have not been discussed over and over again. This is an irrelevant discussion.

511. **The Chairman (Mr Wells):** That is the real issue, Dr Farren; you do not want to see the rabbit out of the hat.

512. **Dr Farren:** I am sorry if I have misunderstood.

513. **The Chairman (Mr Wells):** It is a valid point to want to have clarified.

514. We seem to have reached agreement on the main headings of what we will discuss. However, we have not agreed how we will discuss those matters. Before I ask Mr Molloy to return to his normal position, I will check whether members have any other problems with the headings. In fact, I will ask Mr Molloy to stay because we will have to move on to the nitty-gritty of how to proceed. Do members have any final points about the headings? I am sure that this section of Hansard will be well quoted in future, especially if anything is brought up that members feel is unacceptable.

515. **Mrs D Dodds:** Will we return to points 2 and 3 under the "Government" heading?

516. **The Chairman (Mr Wells):** Yes; it is a separate item.

517. Are we agreed on the content?

Members indicated assent.

518. **The Chairman (Mr Wells):** I thank members for their help on that.

519. We now have to agree the modus operandi of how we proceed: how often we will meet; whether we will call witnesses; and whether we will ask parties to submit papers in advance of the meetings. We have a heavy schedule ahead of us, and we should expect to meet at least twice a week as a full Committee over the next few weeks. I am sure that you are all very pleased to hear that — I can see why Mr Kennedy went on holiday.

520. Can we perhaps get the practical points out of the way? Should we meet twice a week or more? When should we meet?

521. **Mr McFarland:** The Committee now has three issues with which to deal. We agreed that we would bring in our experts on these issues — we have people who deal with human rights, victims, and so forth, who would obviously want to attend meetings on those matters. The logic is that we would have at least three meetings a week, with one on each topic. Ideally, we would want two meetings a week on each topic. That would mean that we would have six meetings of this Committee a week, plus the twice-weekly meetings of the subgroup on the economy. That adds up to at least eight meetings that Mr Wells and Mr Molloy will chair. A while ago it was suggested that we have more chairmen in order to facilitate such meetings. That idea was rejected at the time, but I wonder whether it is worth revisiting. Otherwise, Chairman, you will be fairly ragged if you have eight meetings a week — there are only five days in a week.

522. **Dr Farren:** There are seven days in a week.

523. **Mr McFarland:** There are five working days. Members will have spotted immediately that that does not compute with two Chairmen.

524. **Dr Farren:** Why not?

525. **The Chairman (Mr Wells):** Today is my twenty-third wedding anniversary, and I have lost brownie points for being here instead of at home.

526. **Mr McFarland:** The question is whether, with the experts involved, we will run the

meetings in parallel. On some days, this Committee may meet several times and in different formats. If it remains in the one format, there will be time constraints for the Chairmen, for example. We could follow the standard Assembly procedure of calling witnesses and hearing evidence, but members will know from previous experience that if one particular witness is called and not everybody else, we could get into the most awful trouble in the media for not taking things seriously. I am thinking of victims' groups, for example.

527. There are major issues to be discussed as to how we deal with this.

528. **The Chairman (Mr Wells):** There was a proposal for additional Chairmen, but there was no consensus.

529. **Mr McFarland:** Might we revisit it now in the light of current developments?

530. **The Chairman (Mr Wells):** I am advised that we can revisit it. The proposal that the Secretary of State suggested was that with our agreement by consensus we could have one SDLP, one Alliance and one Ulster Unionist Chairman, which would give us five — one per working day, basically.

531. I will put that proposal again. Is it acceptable to the Committee?

532. **Dr Farren:** Yes.

533. **Mr McFarland:** It would certainly ease the burden that the two current Chairmen will carry in trying to cover what is potentially eight Committees a week.

534. **The Chairman (Mr Wells):** If there were consensus on this we would advise the Secretary of State, and he would then ask the parties to nominate their representatives.

535. **Lord Morrow:** Deputy Speaker, you are going down the road of —

536. **The Chairman (Mr Wells):** I stress that that is if there were consensus.

537. **Lord Morrow:** But that is tantamount to going into subgroups and taking it away from the Committee.

538. **Mr Ford:** Even in the terms that Maurice has just outlined, presumably it would not be objectionable to him to have alternate Chairpersons taking the Chair of the economic matters subgroup, which would relieve the two of you of a share of the burden.

539. **The Chairman (Mr Wells):** You mean keeping the same two Chairmen for the PFG Committee?

540. **Mr Ford:** Yes. I do not accept Maurice's argument, but if that is his feeling, surely it still merits considering alternate Chairs for the subgroup.

541. **Mr McFarland:** This is a difficult issue in that if the PFG Committee adopts different guises, as in this case, the make-up of the Committee will be different for each subject it tackles. We will have different party experts in to explore institutional issues, policing, human rights and equality. Although they are not subgroups, the make-up of the Committee will change. Each of these "Committees" will try to get on with the issues involved, some of which are extremely difficult to identify. If we get into hearing witnesses, each of these groupings might work for three or four days a week. This is a major problem, particularly in terms of chairmanship.

542. Also, when we had subgroups, the Secretary of State had decreed that each should be made up of one member of the Committee and one expert. Presumably that is no longer the case, because there is no rule in the PFG Committee to stop substitution. The three SDLP members currently in attendance need not stay; Dr Farren, who is almost always here, could technically leave and have two substitutes sitting here as members.

543. Although one member from this Committee from each party must sit on a subgroup, because the subgroups on changes to the institutions and on policing and justice do not exist, the make-up of the delegations that attend the Committee on the Preparation for Government can be different for each of the issues to be discussed. Is not that correct? It is up to the parties to choose their representatives.

544. Therefore, it is possible that different pairs from each party will be looking at each of the three areas for discussion. Sittings will not constitute meetings of subgroups but rather meetings of this Committee. However, if three different pairs can represent each party at those meetings, and the Committee is under time constraints, the issue arises about how meetings can be chaired by two people only.

545. **The Chairman (Mr Wells):** It would be helpful if the role of Chairman of the Subgroup on the Economic Challenges facing Northern Ireland could be rotated. That is a separate group that deals with economic rather than political issues. A compromise would be to spread that load and continue with two Chairmen for the PFG Committee.

546. **Mr McNarry:** What is the Speaker's position? What is she doing?

547. **The Chairman (Mr Wells):** The Speaker will have absolutely nothing to do with this. She has made it very clear that she will not be participating. It was only on the Secretary of State's directive that the Deputy Speakers are here.

548. Do we have consensus on rotating the chairmanship of the Subgroup on the Economic Challenges facing Northern Ireland?

549. **Mr M McGuinness:** What would that mean? Would the chairmanship rotate between the five parties on the subgroup or the three parties that do not chair this Committee?

550. **The Chairman (Mr Wells):** It would rotate among the five parties. It is to be hoped that to do so would make it less onerous for Mr Molloy and me, who will be locked up here for most of the week chairing this Committee. The problem is that Mr Molloy and I are present at almost all meetings. Although we may miss the occasional meeting, we have effectively signed up for all of them. It is very difficult to take the Chair the following day unless we are present to watch developments.

551. **Mrs D Dodds:** You definitely make the point about your needing to chair this Committee by emphasising the need for continuity in the Chair.

552. **The Chairman (Mr Wells):** I said that continuity in the Chair is not as important for the Subgroup on the Economic Challenges facing Northern Ireland.

553. **Lord Morrow:** You still make the point.

554. **Mrs D Dodds:** We see the difficulty, but you make the point very well for the two Deputy Speakers to chair this Committee continuously.

555. **The Chairman (Mr Wells):** What is your view on sharing the chairmanship of the Subgroup on the Economic Challenges facing Northern Ireland among the five parties?

556. **Mrs D Dodds:** That could be shared between the five parties.

557. **The Chairman (Mr Wells):** It looks as though we have agreement to nominate three other Chairmen to rotate as part of the five for the Subgroup on the Economic Challenges facing Northern Ireland.

558. **Mr McFarland:** Will you be one of the five, Mr Chairman?

559. **The Chairman (Mr Wells):** Yes. Mr Molloy and I will be among the five.

560. **Mr McFarland:** Therefore, we have four groups. Each group can meet once a week, and one can meet for a second time each week, unless we are to meet in both the morning and the afternoon.

561. **The Chairman (Mr Wells):** Yes. There could be a Committee meeting in the morning and a separate Committee meeting in the afternoon.

562. **Dr Farren:** It was generally understood that, given the volume of work that seems to be before us, it is unlikely that we will produce final reports by the end of August. Let us not overload people, particularly the secretariat, which will have work to do before and after each meeting. I suggest that the Subgroup on the Economic Challenges facing Northern Ireland meet as it can determine and that this Committee, meeting three days a week, deal with the other three issues.

563. Let us leave it to the parties to nominate whom they wish. That is not a matter for us. If

they wish to send the same people or different people to all three meetings, that is their business.

564. If this Committee were to meet three days a week and the Subgroup on the Economic Challenges facing Northern Ireland were to meet twice a week, that would mean a meeting on each day of the working week.

565. We might need advice on whether we could be serviced if we met quite so extensively and frequently.

566. **The Chairman (Mr Wells):** The Clerks had developed a system for covering three subgroups.

567. **Dr Farren:** Are they saying that they could —

568. **The Chairman (Mr Wells):** The Hansard reports would be slow, because a large burden would be placed on the staff. However, the meetings would have been recorded.

569. **Dr Farren:** I can certainly live with that.

12.00 noon

570. **The Chairman (Mr Wells):** Have we reached consensus on the appointment of three additional Chairmen for the economic subgroup?

Members indicated assent.

571. **The Chairman (Mr Wells):** Debbie Pritchard will inform the Secretary of State of that, and he will ask the parties to make nominations. That will help to relieve the load on Mr Molloy and me.

572. Dr Farren has made a scaled-down proposal, to the effect that rather than meet twice a week — as Mr McFarland suggested — we meet every day, with the economic subgroup meeting twice a week. In other words, on Monday, we would deal with institutional issues; on Tuesday, we would deal with law and order; and on Wednesday, we would deal with rights and safeguards, etc.

573. **Dr Farren:** Or whatever.

574. **The Chairman (Mr Wells):** Yes; that is not hard and fast. Perhaps we could meet on Monday, Wednesday and Friday, with the economic subgroup meeting on Tuesday and Thursday.

575. **Mr M McGuinness:** From a practical point of view, given that parties will send different people to the various meetings, and given that you and the other Deputy Speaker will chair most of those meetings, are you both available to do that throughout August?

576. **The Chairman (Mr Wells):** I am. Mr Molloy?

577. **Mr Molloy:** Yes.

578. **Mr M McGuinness:** You are gluttons for punishment.

579. **The Chairman (Mr Wells):** We shall meet on Monday, Wednesday and Friday. The economic subgroup will meet on Tuesday and Thursday. I presume that those meetings will begin at 10.00 am. The staff will rejig their rotas accordingly.

580. How shall we deal with the running order? Shall we start with institutional affairs or with law and order?

581. **Dr Farren:** Start with the institutions.

582. **The Chairman (Mr Wells):** The first week will be institutions, law and order, and then rights, safeguards, etc.

583. **Mr McFarland:** Law and order on Wednesday, and rights on Friday. Is that correct?

584. **The Chairman (Mr Wells):** Yes. We have got that out of the way.

585. **Mr Ford:** I wish to follow on from a point that Alan made about parties sending their experts to meetings. Some time ago, we discussed the question of parties' entitlement to bring research staff, or whomever, as back-up to their negotiators — I am sorry; I should not use that word in front of the DUP.

586. Given that we are seeking to go into some detail, I wonder whether other parties have a view at this stage on allowing party staff to attend as note-takers, note-providers, or whatever.

587. **The Chairman (Mr Wells):** That is entirely up to the parties. We took that decision before we decided to bring in Hansard. Everything is a matter of public record, so there is nothing to be gained by secrecy.

588. **Mr Ford:** Not only has that changed, but so has the intensity of the work that we are planning.

589. **Mr McFarland:** Another issue is that parties have various people who are away. It would be useful to have some form of continuity. Perhaps someone could sit at the back of the room to ensure that members do not drop bombs — metaphorically speaking — on different weeks.

590. **The Chairman (Mr Wells):** If parties have whizz-kids who are experts in particular issues, they could sit at the back of the room. We may need to move to a bigger room. That raises the difficult issue of whether we allow the press to sit in on meetings.

591. **Mr McFarland:** One of our successes is that, although we have Hansard reports, we are building relationships through people's ability to speak to one another. If a press chap is here, the moment a member says something outrageous, he will be out the door, and when we leave the Committee, it will be on the one o'clock news.

592. The workings of the Committee will be easier if the reports are in Hansard, and we can do our stuff later. However, if we effectively do it live, we will all be bouncing in and out of meetings to make comments to the press or to appear on 'Talkback', or whatever. That stands to wreck our work, which is building quite sensibly among the parties. We are getting some proper work done.

593. **The Chairman (Mr Wells):** There is much merit in what you say, Mr McFarland.

594. The Committee Clerk has suggested that we decide whether we discuss institutional affairs on a Monday, and revisit it on consecutive Mondays, or whether we discuss institutional affairs three days in a row next week. Institutional affairs will be the time-consuming issue. What sort of continuity will we have if we discuss institutional affairs on a Monday, have another bite at it a week later and a further bite the week after that?

595. **Mr McFarland:** Chairman, you are involved in only two of every five meetings.

The Subgroup on Economic Challenges facing Northern Ireland is to meet twice a week.

Technically, there is nothing to stop this Committee discussing institutional affairs on a Monday. If somebody other than you or Mr Molloy were to chair the Tuesday meeting of the economic challenges subgroup, you would both be free on Tuesdays and Thursdays to chair another meeting of this Committee.

596. **The Chairman (Mr Wells):** Remember that the only difficulty is that a substantial proportion of the membership of this Committee will also sit on the economic challenges subgroup.

597. **Mr McFarland:** No; they are different. I said that different people are involved in this.

598. **The Chairman (Mr Wells):** At least one member from each party must sit —

599. **Mr McFarland:** No. That was the case for the two proposed subgroups, which no longer exist.

600. **The Chairman (Mr Wells):** The economic challenges subgroup was established under the regulations for subgroups.

601. **Mr McFarland:** Yes, and Mr McNarry represents our party on that subgroup. He is the only person who is out of the loop. *[Laughter.]*

602. My point is that, in discussions on institutional issues, law and order issues and safeguards issues, our party can be represented by two Members other than Mr Kennedy, Mr McNarry or me. There are no rules in this Committee about that, because substitute members can sit on the PFG Committee.

603. **Dr Farren:** We will need to have a big recruitment drive.

604. **Mr McFarland:** Had the subgroups been formed, either Mr Kennedy or I would have had to sit on it.

605. **The Chairman (Mr Wells):** On that basis, 99 of the MLAs will have eventually sat in this room.

606. **Mr McFarland:** Absolutely. There are no rules for this Committee, other than that substitute members can sit on it.

607. **Mrs D Dodds:** Would it not be wise to leave the make-up of the delegations to the parties?

608. **Mr McFarland:** Yes, but the make-up of party delegations is directly related to how many times a week we can meet.

609. **Dr Farren:** Parties must answer to themselves.

610. **The Chairman (Mr Wells):** Is there anything, for example, to stop this Committee meeting on Tuesday to discuss institutional affairs?

611. **Dr Farren:** No.

612. **The Chairman (Mr Wells):** The economic challenges subgroup would meet in the morning and this Committee could discuss institutional affairs on Tuesday afternoons, if needs be. Are you suggesting that as a practical way forward, Mr McFarland?

613. **Mr McFarland:** A programme needs to be set out. If you chair a meeting on a Monday, Mr Molloy is present. Similarly, if Mr Molloy chairs a meeting on a Wednesday, you are present. If both Chairmen attend a Committee meeting, they cannot chair another meeting. Although it is useful to have the other Chairman present, it is neither effective nor efficient. If you were a time and motion man, you would be sacked for suggesting that.

614. The question is whether both Chairmen can afford to continue attending the same meetings. I argue that they cannot. It is very useful and helpful, but you will not be able to sustain that if there are other meetings because, logically, if you chair a meeting on a Monday and Mr Molloy chairs a meeting on a Wednesday, you cannot chair the economic challenges subgroup. Do you see what I mean?

615. **Mr M McGuinness:** As we have agreed the number of groups and so forth, I am not that sure that we should begin to work out the detail of how the issues will be taken forward. A more sensible way to proceed is for the two Deputy Speakers to meet a representative from each party to devise a programme for the coming

weeks. If we continue as we have, we will be here until midnight.

616. **Mrs D Dodds:** There is no reason why we cannot agree to Seán Farren's suggestion that this Committee meet on Mondays, Wednesdays and Fridays and the economic challenges subgroup meet on Tuesdays and Thursdays. This Committee can sit into the afternoon, if it so desires.

617. **Lord Morrow:** Or into the night.

618. **Mrs D Dodds:** That would resolve the issue.

619. **Mr Molloy:** If it is decided on a Monday that the Preparation for Government Committee must meet on Tuesday, members who do not sit on the economic subgroup could attend the Committee. If membership of the economic subgroup were kept separate from that of this Committee, the Committee could meet on any day of the week.

620. **Mr M McGuinness:** The problem is that we are thinking on our feet about this matter. Members must reflect on today's discussion and send a representative to meet the Chairmen to work out a programme of meetings. The arrangements for how and when the Committee and the economic subgroup will meet are likely to be made through an ongoing process of amendment and change.

621. **Mr McNarry:** Members of the economic subgroup were issued with a schedule. Therefore, they know what commitments they have until 18 August. A similar schedule would be helpful for the business of the Committee. Members have other commitments at their constituency offices and other people to meet. Committee staff should be able to organise a schedule for future meetings.

622. **The Chairman (Mr Wells):** The Committee is staffed by two experienced Clerks, who have formulated schedules for other Committees. We need to decide whether we wish to spend three days in a row discussing one topic, such as institutions, followed by, if required, three days in a row on law and order, or do we want to take forward business on a Monday-Wednesday-Friday basis? For

example, each week, the Committee could concentrate on institutions on a Monday, law and order on a Wednesday, etc.

623. What is the best way to deal with those issues? That is the only guidance that the Clerks need. Beyond that, we should let them use their expertise. What do members think? Should the Committee discuss institutions every Monday, or should it take one subject and discuss it on Monday, Wednesday and Friday?

624. **Dr Farren:** I can see the attraction of trying to achieve much on one of the issues in one week. However, we need to engage others. Next week, we should start with institutions on Monday, use Wednesday for law and order, and discuss rights and safeguards on Friday. One subject — for example, institutions — may gather a head of steam and need more and more time devoted to it. If we address the issues in parallel, the other subjects are less likely to get pushed down the agenda.

625. **The Chairman (Mr Wells):** Are members agreed that we must build in flexibility to ensure that if one issue needs further discussion, that can take place?

626. **Dr Farren:** Yes.

627. **Mr M McGuinness:** Absolutely.

628. **The Chairman (Mr Wells):** That is a good compromise.

629. **Dr Farren:** That would be wise.

630. **The Chairman (Mr Wells):** Members must decide whether to ask the parties to submit papers. May I assume that we will call witnesses?

631. **Mr McFarland:** Time is against our inviting witnesses, unless they could substantially enlighten the Committee. Members have been discussing many of these issues for four or five years, or longer. In some areas, we may need expert witnesses, but we have no time. If we are to have one meeting a week on each of the issues, and we have to report in three weeks' time —

632. **The Chairman (Mr Wells):** Can we leave it that, in principle, if we decide that we need to call witnesses, we will do so? That does not mean

that we must call witnesses, but that the mechanism is there should witnesses be required.

12.15 pm

633. **Mr McFarland:** We should err on the side of caution with witnesses because of the time factor and the trouble that we could get into by not inviting of all the interested parties who may wish to give evidence.

634. **The Chairman (Mr Wells):** That brings us to an important issue. To assist the Committee, do parties wish to produce papers for each meeting? If so, papers for Monday meetings will need to be with Committee staff by the previous Friday.

635. **Mr McFarland:** There is an awful shortage of time and many different topics to cover. Parties will be pushed enough to get this done with the personnel that they have. Hansard is recording the meetings, and, obviously, parties will be organised within their own systems.

636. If we are to produce papers for each of the topics, the key people will have to spend all their time engaged in that when they should be at one of the subgroups. Parties may need to submit a paper on a particularly complex issue, but if we have to produce a paper on each topic, we will run out of time, effort and hours available.

637. **Dr Farren:** The institutional issues are essentially inter-party ones, and we should not have to call expert witnesses on them. The parties had already prepared papers, some long and some short, in the run-up to the Leeds Castle discussions and what flowed from them and during the review that was undertaken a few years ago. There is unlikely to have been a great deal of change since. We have already initiated the procedure to produce a briefing paper on the issues, and if anything is missing, we will take it from the list that the Committee Clerks have prepared and from what we have prepared ourselves. We can have a paper ready for circulation on Friday. It is helpful if parties can produce brief papers on the issues. Otherwise, no one is very clear about people's approaches until they start to talk.

638. **The Chairman (Mr Wells):** The problem is that we need to have some structure for

Monday's meeting. At the moment, all we have is 10 or 11 points. It would help if the parties could at least provide sub-headings to each point.

639. May I apologise to the Committee: I simply have to attend an incapacity tribunal in Newry, so Mr Molloy will be taking over from me in five minutes' time.

640. Do the parties agree that they will be able to produce something for the Clerks on the institutional issues, no matter how brief, by lunchtime on Friday? Then at least we will have some structure to the discussions that Mr Molloy will be chairing. I do not have to worry too much about it. Is everyone happy with that?

Members indicated assent.

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

641. **The Chairman (Mr Molloy):** Could we have papers on the law and order issues by lunchtime on Monday and papers on rights and safeguards by lunchtime on Wednesday? It is also helpful for Hansard if the parties, and any witnesses that they may call, provide papers in advance.

642. The next item of business is the future work programme. Members will have the work plan that was issued by the Secretary of State after the meeting held by the Prime Minister and the Taoiseach. There is also the suggested work plan for the Programme for Government, which is to be dealt with today.

643. Can we take the work plan issued by the Secretary of State?

644. **Mrs D Dodds:** Mr Deputy Speaker, are there spare copies of the work plan?

645. **The Chairman (Mr Molloy):** Yes.

646. Can we close the windows? There is a terrible smell of diesel.

647. The Committee needs to decide whether to accept the work programme and how our work will fit into it. Do members have any views?

648. **Mr McFarland:** Originally, it was discussed whether the Committee would report by 18 August. Can I get an update? Is there a date by which the Committee must have its

work completed in order for the debates on the report to be held at the beginning of September?

649. **The Chairman (Mr Molloy):** We need to go the Business Committee by 25 August in order to meet the date of the proposed plenary meeting on the report.

650. **Mr McFarland:** Working back from that date, at what stage do we have to meet as a full Committee to agree the report?

651. **The Chairman (Mr Molloy):** The deadline for the economic challenges subgroup is 18 August. Because this Committee is not forming subgroups, it will have a wee bit of extra time to meet. The date that we are working to is 25 August, at which time we will go to the Business Committee, provided that the report is finalised by that date.

652. **Mrs D Dodds:** This Committee must also consider the report from the economic challenges subgroup.

653. **Dr Farren:** How fixed in stone are the dates of the plenary meetings? In order to gain a little more flexibility in the Committee's work programme, and that of the subgroup, would the Secretary of State concede a week's delay?

654. **The Chairman (Mr Molloy):** My understanding is that, unless the Preparation for Government Committee proposes subjects for plenaries, the dates are not fixed at this stage. If the completion of the report were to be delayed by a few days, the Business Committee and the parties, rather than the Secretary of State, would be flexible in arranging plenary meetings.

655. **Dr Farren:** It would allow us a little flexibility, and we would not be shackled to dates to which we need not be shackled.

656. **The Chairman (Mr Molloy):** There could be another way around it: if the economic challenges subgroup's report were ready, it may be debated in a plenary meeting before the debate on this Committee's report. The economic challenges subgroup has been asked to submit a report early so that this Committee can consider it. That will take slightly longer than the other way.

657. The Programme for Government is one of the tasks set by the Secretary of State for this Committee to conclude by October. A draft Programme for Government and a draft ministerial code will be finalised. That will obviously be completed after the September deadline.

658. Do members have any opinions on that? Parties obviously need to agree the order of work.

659. **Mr O'Dowd:** I am getting a headache from the diesel fumes. Can we adjourn to get some fresh air?

660. **The Chairman (Mr Molloy):** The fumes could be coming from a generator.

661. **Mr McFarland:** It seems that the fumes are being pumped into this room.

662. **The Chairman (Mr Molloy):** The order of work is the final issue to be dealt with. Shall we discuss it at a future date?

663. **Mr O'Dowd:** Perhaps we can discuss it in future.

664. **The Chairman (Mr Molloy):** We can note the issue today, and parties can return to the Committee with an opinion. We obviously cannot decide everything today. We will meet again next Monday at 10.00 am.

Adjourned at 12.24 pm.

Monday 31 July 2006

Members:

The Chairman, Mr Francie Molloy

Mr P J Bradley

Mr Gregory Campbell

Dr Seán Farren

Mrs Arlene Foster

Mr David Ford

Mr Alan McFarland

Mr David McNarry

Mr Conor Murphy

Mr John O'Dowd

Mr Peter Robinson

Mr Jim Wilson

Observing: Mr Jim Wells

The Committee met at 10.03 am.

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

665. **The Chairman (Mr Molloy):** Welcome to this morning's meeting. The minutes of the meeting of 26 July are attached to the papers. Would members like to raise any issues about the minutes? Are the minutes agreed?

Members indicated assent.

666. **The Chairman (Mr Molloy):** I will deal with apologies and changes of personnel.

667. **Mr O'Dowd:** I am here on behalf of Michelle Gildernew.

668. **The Chairperson (Mr Molloy):** Is anyone else from your party coming?

669. **Mr O'Dowd:** No.

670. **Dr Farren:** P J Bradley will join me for Mark Durkan.

671. **Mr Ford:** Naomi Long is on her way.

672. **Mr McFarland:** Mr Wilson is standing in for Mr Kennedy.

673. **Mr P Robinson:** Gregory Campbell and I are standing in for somebody or other. Arlene Foster is the new Willie McCrea.

674. **Mrs Foster:** Thanks. Has that been minuted?

675. **The Chairman (Mr Molloy):** Hansard will have noted that.

676. As the meeting is being reported by Hansard, I remind members that they must switch off their mobile phones because they affect transmission, even if they are on silent mode.

677. Today we will discuss the institutional issues. Parties were given the option to provide papers. I propose that each party takes five minutes to go through its submission, and then we will start the discussion.

678. **Mr Ford:** According to the note that the Committee has been given, two parties do not intend to provide papers. How does that fit into the plan that everybody will talk to their papers?

679. **The Chairman (Mr Molloy):** It will be a challenge.

680. **Mr McFarland:** It was proposed at the end of the previous meeting that parties would provide papers. The UUP representatives agreed to that, as we were effectively going out the door. I thought about it afterwards, and I am confused about the purpose of providing papers. At the beginning of this exercise parties submitted papers stating the issues, and they spent many hours questioning one another about what they meant. The DUP was questioned for five hours; Sinn Féin for six; and the UUP for four and a half. Unless there are new issues, which, as we discussed at the previous meeting, people are quite entitled to bring to the table, I am not clear about the purpose of providing new papers.

681. Issues with which we must deal were identified in the first round. The purpose of the Committee in this format is not to negotiate but to mine down into those and identify whether there are further matters that we have not yet spotted or that need clarification and expansion.

682. **The Chairman (Mr Molloy):** My impression is that we are to narrow discussions to institutional issues and that members could put forward a paper — to structure the meeting more than anything else — or they could simply talk about the issues that they think affect the preparation for government.

683. **Mr McFarland:** The logic is that we have our list of issues already, and some will be important and extensive while others will be minor and fairly limited. For example, the Civic Forum is on the list. There are strong views about the Civic Forum, but it is not particularly complicated and could be dealt with relatively quickly. However, when the Committee comes to items such as the comprehensive agreement and the Belfast Agreement, discussions will be fairly extensive because different parties raised those matters. Matters that are issues for one party may not be for another. I thought that, having got this list, it would be logical for us to decide the order in which we want to deal with the items and then mine down and expand upon them.

684. Technically, parties could bring forward a whole raft of new issues that did not derive from the first round. If that happens, we will be redoing the scoping exercise.

685. **The Chairman (Mr Molloy):** I agree that there could be other issues; however, if parties feel that some matters are important and should be raised, the Committee should recognise that and deal with them. Issues may have been lost while the Committee was considering the bigger picture.

686. Can we agree that we open the discussion with five minutes for each party to present their paper or talk about the issues that they feel are relevant?

Members indicated assent.

687. OK, Mr Ford, over to you.

688. **Mr Ford:** I will touch on the issues that the Alliance Party raised in writing or verbally in June 2006. Key issues revolve largely around the Assembly and the Executive. Other issues that we have mentioned, such as the Civic Forum, North/South and east-west bodies, appear to be relatively straightforward in comparison.

689. The Alliance Party believes that the fundamental issue of ensuring that there is a fair and effective voting system in the Assembly has not been addressed. Such a system is possible only if voting is based on a weighted majority. The removal of designations remains a priority to getting a working voting system.

690. Although issues on the composition of Committees and the election of Chairpersons are not crucial, fundamental difficulties have been shown with the ineffective and unfair d'Hondt formula, which is currently being used to compose the Executive and which will be used to recompose the list of Committee Chairpersons on at least two separate runs.

691. The Alliance Party is not content with the current scrutiny of Executive functions, and we are particularly concerned that the Committee of the Centre does not cover all the functions of the Office of the First Minister and the Deputy First Minister (OFMDFM). That is, of course, subject to any future functions that OFMDFM may have. We want scrutiny of the North/South Ministerial Council (NSMC) to extend from Ministers merely reporting on meetings to their compiling an annual report on which detailed questioning of the Council's work could be based.

692. In certain circumstances, the Assembly should be able to use a weighted vote to reverse ministerial decisions. That proposal is somewhat different from that which states that ministerial decisions would stand only if they attracted a weighted majority.

693. Under the heading of "Executive", there seems to be broad agreement on the need for a statutory ministerial code. The Alliance Party supports that, but there is also a need to enhance the ministerial Pledge of Office. There are major problems with the formation of the Executive and the Assembly's endorsement of it. Those problems were touched on in some respects by the so-called comprehensive agreement, but they have not been dealt with properly.

694. There is also a huge issue about the lack of and need for Executive collectivity. Discussions on the devolution of justice have highlighted that point, while other issues have illustrated that there are too many Departments.

The structure of Government is ineffective, and that point ties in with the functions of OFMDFM.

695. There is scope for enhancing the role of the Civic Forum, which perhaps should have the statutory right to be consulted on proposed legislation. There is also scope for ensuring that civic society has a more effective input in the government process.

696. There is a need to re-examine the scope of the various aspects of North/South co-operation to ensure that opportunities to derive more practical benefits are taken. The comprehensive agreement's recommendation to form a parliamentary tier between the Assembly and the Oireachtas should be advanced. The Alliance Party proposed that in the Assembly some years ago, but it was never implemented.

697. Similarly, the effectiveness of the British-Irish Council (BIC) on east-west issues should be enhanced. An annual report would be beneficial, but I suspect that we would not get the leaders of all the Governments that are represented to debate that report.

698. **Mr P Robinson:** I sympathise with Alan McFarland's point about us being in danger of going over the same material. If the hope is to grind the discussion down further, we must talk about the issues that are listed under the heading of "Institutional issues" on a subject-by-subject basis. We are content to do that.

699. However, the DUP stands apart from all the other parties who supported the institutions in the Belfast Agreement, although I expect that even the parties that supported that agreement will have recognised, through experience, that it was not a perfect document and that there is scope for improvement. Therefore, between our proposals to change fairly significantly some of the structures of the Belfast Agreement and the view that there is some improvement, some work can be done.

700. Like the Alliance Party, the DUP is not content with a system that is mandatory and that ensures that all the major parties are in government for all time. A mandatory system in an emergency or other special circumstance could be justified — for instance, in wartimes,

all Westminster parties came together in a war Cabinet. One could also reverse the analogy and justify having all the parties sticking together in situations in which a country comes out of war. However, the system must exist for a limited time, and the Belfast Agreement gave the impression that this one was for ever.

701. One way of doing that is to adopt the Alliance party's suggestion of looking at the voting system, because that leads inevitably towards coalitions that are voluntary, provided they can get the necessary support. I assume that the weighted majority would be struck in such a way as to ensure a level of cross-community support. The DUP is quite content to look at those ideas, and its policy document 'Devolution Now' already advocates a voluntary coalition, which can be brought about by weighted majorities.

10.15 am

702. As far as the general principles are concerned, the DUP divided its misgivings about the structures of the Assembly under the Belfast Agreement into four — whether they were accountable, stable, effective and efficient. They were demonstrably not accountable, either to the Assembly or the Executive. I enjoyed that free rein as much as some other Ministers, but it obviously meant that decisions could be taken within a Department; the Committee, the Assembly and the Executive could do nothing about it — the only person who could do anything about it was the nominating officer, if he or she determined to do so. That is not a satisfactory situation and, in the long term, could lead to all sorts of democratic perversions. For example, I could foresee one Education Minister leading policy in one direction, only for it to be moved in a completely different direction by another Minister appointed after the next running of d'Hondt — even though the Executive might remain constant. Therefore, there must be some collective responsibility, and the Government's proposals in the comprehensive agreement sought to bring about a greater degree of such responsibility. It is essential that we do that.

703. If accountability is important at an Assembly level, it becomes more important, at least theoretically, at a North/South level, where decisions should be in keeping with the view of the Executive and the Assembly, rather than the view of the Minister who happens to be present at the time. I understand that the previous Executive did discuss some issues that were intended for discussion at North/South meetings, although in working practice, as opposed to under any legal requirement. Accountability must be on a clear legal basis so that everybody has the comfort of knowing that the decisions taken will have been aired and, hopefully, agreed before such meetings take place.

704. I do not think that I need to argue the case too much in relation to stability. The repeated suspensions of the previous Assembly, and this Committee's existence, show that we do not have that stability, and a series of issues fall under that heading.

705. As regards efficiency, even the Secretary of State seems to be wising up to the need to streamline the institutions. The SDLP's paper mentions the Civic Forum. The existing Assembly rules allow for a most massive consultation mechanism whereby any member of the community can be consulted about any initiative. I am not quite sure if there is any benefit in adding to the structures and making the whole process more cumbersome and less efficient. As the Secretary of State has recognised, the issue of efficiency clearly falls around the number of Departments. That does not necessarily go to the heart of the issue of the number of Ministers, because there can be more than one Minister to a Department, as is often the case.

706. As far as Departments are concerned, there is duplication of work between the Office of the First Minister and Deputy First Minister and not just the Department for Social Development, but other Departments such as the Department of Finance and Personnel. It is hard to separate some of the roles given to Departments, and we had experience of that in particular with regard to planning, where area plans were separated from the regional plan. Similarly, road safety was separated from the Roads Service.

707. Through running the system even over the short period that we did, that kind of issue arose across a range of subjects. One would have drawn lines between departmental responsibilities differently. It was hard to justify the existence of the Department of Culture, Arts and Leisure, which did not have sufficient work. Reducing the number of Departments would have made good sense and would have saved money, allowing funding to go to front-line services to the benefit of the whole community.

708. I move on to the issue of effectiveness. I suppose it is better openly discussed around the table that although Sinn Féin and the DUP were involved in discussions leading to the publication of the proposals for a comprehensive agreement by the two Governments, neither party signed them off. I suspect that there are elements that Sinn Féin would like to have had otherwise; there are certainly elements that the DUP would like to have had a different way. By and large the proposals sought to address some of the issues of accountability, stability, effectiveness and efficiency.

709. Criticisms by other parties were made, probably because they were not involved as much, or as much as they should have been, by the Government, rather than because of the content of the document. Most criticism centred on how the First Minister and Deputy First Minister were to be put into their posts; the impact that that might have subsequently on ministerial positions; and whether there was any requirement for the Assembly's approval. I saw less criticism of the processes used to ensure accountability. I must say I found them a bit cumbersome.

710. We have sympathy with the general principles of the institutional changes that were suggested in the comprehensive agreement, although in many cases we thought they could have been done better.

711. Issues relating to the North/South structures are seen as those in which nationalists are most interested. I have no difficulty in having a better relationship with the Irish Republic, particularly with respect to mutually advantageous co-operation. The line that the

DUP draws is that we want the relationship to be practical, rather than politically motivated. We do not share an ideology where the purpose of institutions and structures is simply to suck Unionists into all-Ireland processes with an eventual political goal. For practical purposes we want to co-operate and be good neighbours. The best way of putting it is that we want to be their friends, not their family. The DUP is happy to go into detail on each of the issues, but I suspect I have run out of time in this brief run around the course.

712. **Mr Murphy:** As Alan McFarland has said, parties tabled papers at the start of this exercise. Part of our paper detailed the outstanding institutional issues. We were questioned for some six and a half hours on that aspect. Not all of that time was spent on institutional issues, but there was quite an airing of them. We are not convinced of the need to submit a further paper on these issues. They are well documented.

713. The institutional issues arise out of the formal review of the Good Friday Agreement, which was the mechanism used by the parties some years back. Those discussions paved the way for the Leeds Castle talks and, eventually, the two Governments' proposals for a comprehensive agreement, which were tabled in December 2004. Several issues were raised at that time in the expectation that the institutions would get back up and running in a short time frame. The DUP was to be involved in that, and, as we made clear when we talked about those issues at the start of this Committee's work, that context no longer exists.

714. The proposals for a comprehensive agreement no longer exist in their original context. Therefore, at the beginning of this year, when we were asked to submit suggestions to the two Governments relating to outstanding institutional matters, we presented several issues that needed to be addressed. I must stress that, in our consistently held view, none of those issues are an excuse for not setting up the institutions now. All of those matters can be dealt with in the context of functioning institutions. Although we are highlighting issues

that we would like to see addressed, our clear view is that that can be done when the institutions are up and running. There is no need to use the matter of outstanding issues to delay the setting up of the institutions.

715. Nevertheless, in the context of this Committee's work, some of the issues that we highlighted to both Governments when we met them in February to discuss outstanding institutional matters concerned stability. We put forward our long-held view that the Northern Ireland Act 2000, which allowed for suspension, should be repealed because it was the primary cause of instability in the institutions.

716. On accountability, we asked for legislation to create a requirement for Ministers to attend Executive meetings, which was not the position in the last Executive, when the Democratic Unionist Party did not attend them. That legislation would also require Ministers to attend the North/South Ministerial Council and British-Irish Council meetings, when appropriate. We wanted legislation to create an automatic entitlement for all Ministers to attend North/South or British-Irish plenary meetings, and for Ministers with relevant responsibilities to attend the sectoral meetings of those bodies. Members will recall that the former First Minister interfered with that process and refused to allow my colleagues to attend the appropriate and relevant sectoral meetings of the North/South Ministerial Council.

717. We also suggested putting the Committee of the Centre on a statutory footing, which it did not have in the previous Assembly. There was a sense that the scrutiny that applied to the Office of the First Minister and the Deputy First Minister was not as strong, or did not have the same authority, as the other statutory Committees that scrutinised Departments.

718. We argued that the Ministerial code should have a statutory basis in order to improve accountability. Issues of that nature arose within the previous Executive, and there was a general sense during the formal review discussions, and in any discussions on institutional matters since, that accountability

mechanisms needed to be tightened up. We shared some of those views.

719. Peter Robinson referred to the proposition on the election of the First Minister and the Deputy First Minister. In our view, the context for the proposition put forward by the two Governments in paragraph 9 of annex B of their comprehensive proposals no longer exists. We argue that the Good Friday Agreement's position on the election of a First Minister and a Deputy First Minister should be adhered to and should not be changed. We have also argued for the convening of a bill of rights forum.

720. We have outlined several issues. We are content, however, to listen to the ideas advanced by other parties and see where that takes us. There is a general view — which was brought to the formal review of the Good Friday Agreement — that there are areas of agreement that can be tightened up, such as accountability and stability, and we are prepared to look at all of those. However, to be clear, the context for the issues put forward by the Governments in their comprehensive proposals no longer exists.

721. Sinn Féin will pursue the outstanding institutional issues as we see them, and I hope that we will reach agreement on all of those matters. However, agreement on those matters does not necessarily predate the establishment of the institutions. That should happen as a matter of urgency. There is nothing that stands in the way of the re-establishment of the institutions.

10.30 am

722. **Dr Farren:** I am not as concerned about repetition or revisiting issues as some people seem to suggest, notwithstanding the lengthy discussions and interrogations that parties have had with each other over the past few weeks. I have been involved in these kinds of exercises long enough to realise that repetition is probably the least of our problems. We should not be afraid to revisit issues if necessary, especially given the kind of agenda that we set ourselves last week.

723. The SDLP's submission follows, in numerical order, the main items listed for discussion last week under the heading of

“Institutional issues”. I do not intend to go through them all in detail now. A significant proportion of the electorate, North and South, endorsed the Good Friday Agreement, and it remains the bedrock on which we need to move forward. I have always recognised that there are shifts in opinion on the agreement. However, those are more to do with the failure to operate and maintain the institutions because of matters that were extraneous to them rather than any that were inherent in them.

724. That is not to say that the SDLP has not recognised during the review of the agreement and, more recently, during discussions in this Committee, the need to examine some matters to ensure greater degrees of accountability, effectiveness and efficiency with respect to how the Assembly; the Executive; the North/South Ministerial Council; the east-west structures and the Civic Forum operate, and that is reflected in our submission.

725. The SDLP believes that the Civic Forum still has a useful role to play. It came into existence in the later stages of the operation of the institutions and, therefore, took some time to find its feet. Given the nature of the Civic Forum, it was never going to be a major public body that would operate in a blaze of publicity: it would be one that would do useful work in bringing together all the strands represented on it. Those strands would not otherwise have an opportunity to hear from each other or to express their views, insofar as they were collective views, to the Executive, the Assembly and the wider public, thereby acting as a challenge on medium- and longer-term policy matters. There would be no obligation on the Assembly or the Executive to adopt the Civic Forum's views but it would still have a useful role to play and should continue to receive our support.

726. The parties who were centrally involved in comprehensive agreement will say that they did not sign off on it. However, at the time they greeted the proposals from both Governments as historic, and a major breakthrough, and seemed to think that there was considerable potential for progress.

727. The SDLP was not involved centrally. It made its views known to the Governments and it engaged in discussion with other parties — notably the DUP, and, at times, Sinn Féin — but it had no hand, act or part in the final draft of the proposals, has never accepted them, nor does it regard them as having any formal standing. Some aspects of the proposals could attract the SDLP's interest and support, however, it does not support the proposals for a comprehensive agreement, and it is trying to make the necessary improvements to the operations of the institutions as set down in the Good Friday Agreement.

728. The SDLP welcomes this opportunity. I am not sure how the Committee will organise its business from now on, and that may be the next issue we will have to address when the initial round of contributions have been concluded.

729. **Mr McFarland:** The UUP's detailed views are in the Official Report of 28 June, and I will not go into those again.

730. The statements made by our Government and the Irish Government continue to say that the Belfast Agreement is the basis on which all parties are having discussions with a view to getting Government up and running. As Peter Robinson said, there are areas in the agreement that did not work properly in the first Assembly. There are areas that in light of our experience of the first Assembly could be tweaked and improved, and it is clear from the first round of discussions in the Committee that most parties are not uncomfortable with that. There is disagreement about which areas need to be improved, but there is agreement that improvements must be made.

731. There are common issues where agreement has already been reached. For example, no party is uncomfortable with the need for a ministerial code to tie Ministers into exactly what they will do and what their responsibilities will be. Most parties broadly agree that North/South issues should be dealt with on the basis of sensible, practical politics and policies between the two jurisdictions — as Peter Robinson said — and that the east-west part of the agreement was an orphan child

because the Governments refused to have a secretariat. The east-west structures must be treated on an equal basis with the North/South structures. Those are obvious issues, and should not cause an enormous amount of disagreement.

732. There is confusion over the comprehensive agreement. For the past month and a half William McCrea has said that it is inviolate; it is a DUP document, and it has been agreed with the Government and must be delivered. The Minister of State, Mr Hanson, said in the House of Commons that his Government had a deal with the DUP and it would be delivered later in the year. I was encouraged by Peter Robinson's statement the week before last when he said that the DUP was not tied to it.

733. There is confusion about the status of the comprehensive agreement and the undertakings that have been given on it. It would be useful to get an update, because the comprehensive agreement is a modified version of the Belfast Agreement. Like the SDLP, the UUP was not part of the comprehensive agreement negotiations. We understand that some parties that were part of the negotiations on the comprehensive agreement are not signed up to it. Sinn Féin is on record as saying in this Committee that it is not signed up to the comprehensive agreement, and Peter Robinson is on record in the House as saying that the DUP is not signed up to it. It will be interesting to see where we are with it now, because the comprehensive agreement is the last document that we are examining to establish any useful areas on which we can all agree; and whether those areas on which there is clearly no agreement require tweaking.

734. The Civic Forum was the enthusiastic brainchild of the Women's Coalition. Arlene Foster will recall that in discussions following the signing of the Belfast Agreement in 1998, we were all so fed up that we went along with the idea of a Civic Forum without having any enthusiasm for it. When the Assembly was first up and running, the Civic Forum proved largely useless. I have spoken to people who sat on it and they agreed that it was largely useless. The

comprehensive agreement includes a proposal for an all-Ireland Civic Forum, and I find that even more disturbing. We must discuss that.

735. The question of dual/ triple mandates is tied in with the Review of Public Administration (RPA) and the number of Departments. They are inter-related issues because large super-councils would have devolved powers, and that will raise effectiveness and efficiency issues for the Assembly. On Wednesday, the Committee, in dealing with policing and justice issues, will discuss whether we need more or fewer Departments. The number of Departments is vital and we need to discuss it. The RPA forbids, by law, Members of the Assembly to be councillors. Interestingly, in Scotland the media led the charge against dual mandates. The media questioned whether MSPs could be doing good work for Scotland if they were sitting in Westminster.

736. I understand why, at the moment, MLAs may wish to be MPs or councillors. However, if the Assembly were fully up and running, it would be difficult for MLAs to serve their constituents properly at Westminster or in a council while trying to do good work at Stormont. We need to examine how an MP can also be an MLA and a councillor and any combination thereof.

737. Issues concerning the First Minister and the Deputy First Minister are tied up with the comprehensive agreement. I talked in depth about them and the question of whether the unionist or nationalist veto on who is First Minister or Deputy First Minister should be removed. At the moment, unionists must put their hands up for the nationalist or republican Deputy First Minister and republicans and nationalists must agree on the First Minister. In a way, that is a safeguard because it locks people into a system of jointly supporting the Office of the First Minister and the Deputy First Minister. The voting system is complicated and we have discussed weighted majorities at various stages. That would lend itself to a full and fruitful discussion of the different options, and we may need some advice on that.

10.45 am

738. **The Chairman (Mr Molloy):** Do members want to ask questions or are there issues that they want to raise?

739. **Mr McNarry:** I have a question with which the secretariat might be able to help. Despite the Government facilitating the prevarication and vetoes that we have had to endure — which has contributed to a magnificent hatchet job on our credibility with the public — we are trying to create space in which to recover our credibility. My understanding is that the public welcomes the fact that Committees such as this are meeting and working; it sees that as a clear change. Such progress is also building public confidence in our abilities.

740. The decision to discuss the issues detailed in the schedule — institutions, law and order, rights and economic challenges — separately seems to have been agreed by this Committee. What we are doing here perhaps bodes well for the integrity of a future institution. That is crucial to the points that every member made about stability, efficiency and co-operation. As the Committee discusses the issues, it is important that it presents a report to the Assembly for its approval. We have agreed that, but I merely underscore the importance of doing so.

741. I am sure that the Prime Minister would embrace the recommendations of a report by this Committee and by the economic subgroup. I assume that a report would contain recommendations. We should also give some thought to establishing the status of such a report. I would not want it to be used simply to promote a debate that we have been calling for in the Assembly. I note, too, that those who previously said that they would not take part in such a debate now say that they will do so. I would not want a report of this Committee to be merely a pitch; it should not be merely an aspiration for a debate. I hope that during the discussions we will think about the outcome of the report.

742. I do not wish to run a sprint before we get into the marathon, but it is vital that we give some thought to what agreement can be reached on the recommendations that such a report

might contain and how those recommendations might be put before all 108 Members and before those in government. That is very important, and it would be a proper signal to send to the public.

743. Is there some direction percolating in the background about the status of a report to which this Committee would agree?

744. **The Chairman (Mr Molloy):** The content of the report — as opposed to using it merely to get a debate — and the work that goes into it are important.

745. **Mr P Robinson:** I assume that the report will indicate the parties' views on each of the issues and where there is, and is not, some agreement among the parties. The report cannot go much further than compiling the level of agreement on each of the subject matters. Some questions were posed during the course of members' contributions, and clearly there were some misunderstandings, so it might be worthwhile touching on some of those.

746. If anyone can talk about a context no longer existing, surely the context that no longer exists is one where there is support for the Belfast Agreement — the kind of support that is necessary for it to exist. The whole structure of the Belfast Agreement required that there be support from both sections of the community. That support does not exist. There is ample evidence from the last four elections that the Belfast Agreement does not have the support of the unionist community. Indeed, opinion polls indicate that there is some draining away of support even beyond that. Each of us can put our spin as to whether we believe that that is because it was not implemented or because people, having had more time to examine it, recognise that it was folly to have supported it in the first place. The end result is that the Belfast Agreement does not have the support of the unionist community.

747. The Belfast Agreement, of course, is more than the institutions. It was a series of other decisions about policing and prisoners, and with regard to the institutions, about the fact that people could be in those institutions irrespective of their relationship with paramilitary organisations that may be active.

The end result is that it is a context that does not exist. There is no support for the Belfast Agreement in the unionist community. Therefore if people say that no context exists for the comprehensive agreement, we have to face the reality: it is only what we agree here and now that matters. Whatever we call it, that is the only basis on which we can move forward.

748. As regards the DUP's position on the comprehensive agreement, I thought that that had been made very clear. However, it does not seem to have been understood so I will repeat it. The comprehensive agreement was the product of the two Governments, arising out of extensive discussions with two political parties, separately. We understood, although clearly to a lesser extent with other parties, that the result was not signed off by either Sinn Féin or the DUP. However, the DUP, then and now, regards the proposals contained in the comprehensive agreement as being progress from what had occurred beforehand. It would be a very foolish person who would say that proposals that are not signed off should be implemented if they cannot be improved on. We want to improve on the proposals in the comprehensive agreement, and if we can, we shall — it is as simple as that.

749. The all-Ireland consultative forum contained in the comprehensive agreement was clearly not a DUP proposal, although anyone in the DUP would regard that as much less worrying than the proposals for an all-Ireland executive body agreed by others. I see no danger in a forum that is consultative; I see it as a waste of time and money. However, in order to get an overall agreement, people will be prepared to take decisions that allow some wastage into the system.

750. I believe that there is no real benefit in having either a Northern Ireland or an all-Ireland consultative civic forum, although neither of them is particularly damaging to the constitutional position of Northern Ireland.

751. **Dr Farren:** David McNarry raised the nature of the report. It would be helpful to gain some clarity on what we can achieve, although some of Peter's earlier remarks clarify at least part of that.

752. If the Committee is to make a report at this stage, it is unlikely to point to much agreement. The report could outline the parties' positions on various issues. To some extent, there may be degrees of convergence within those positions; in other respects, there will not be convergence. That will be clear to see when the report is presented. We may well have to settle for a fairly modest report, which could form the basis for whatever negotiations will take place in the autumn — unless, of course, we agree to become a negotiating body. However, some parties have clearly set their minds against that at this stage.

753. Nonetheless, I would like to hear what parties think we can and are likely to achieve with the initial report that we will finalise at the end of this month or in early September. By identifying the issues and detailing parties' respective views, greater clarification will be gained and degrees of divergence and convergence will be more sharply presented. That will be a very helpful exercise and will probably be as much as we can achieve over the next few weeks.

754. **Mr P Robinson:** As a possible follow-up to that, the report could list each issue that makes up the component parts of the institutional structures. The report could express each party's views on those issues to gauge the level of convergence.

755. **Dr Farren:** The initial list was presented at our meeting last Wednesday — there was some modification to that, but not a great deal. That list is a series of headings, which may need to be further ordered in a more logical way, but it certainly provides scope for a report to be compiled that details the views of the SDLP, the DUP, the Alliance Party, Sinn Féin and the UUP. If we cannot agree to go further than that, people will see for themselves to what extent there is convergence or divergence among the parties. Those speaking about the report in any subsequent Assembly debate may wish to focus on areas where they think there is potential for movement.

756. That would be a modest report, but possibly the only type that the Committee is

likely to be able to present — unless, of course, we turn ourselves into a Committee that wants to go further than simply identifying in more detail where each party stands on the issues. I am ready and anxious to do that, if others are happy to engage in more detailed discussion on where we can — and should, and probably have to — achieve a high degree of convergence and agreement.

11.00 am

757. **Mr Murphy:** Seán Farren is correct to say that it would be a modest attempt at producing a report to simply list the issues and individual party positions. The Committee has done that already. Several weeks ago, there was an attempt to complete a report simply because the Committee had met x number of times and had been recorded by Hansard.

758. In Sinn Féin's opinion, any report should be an attempt, at least, to resolve some of the institutional issues. There are issues on which there could be broad agreement, and it is important that those be identified. If there are other issues on which there cannot be agreement, and that members feel would be better left to later negotiations, the Committee should agree that. However, if the Committee's purpose is to identify issues and to hear the views of each party, it has done that and it is doing it again today. It could do it in more detail, but that would set the Committee's sights very low. The Committee should attempt to put at least some of the issues to bed and to state that because the parties are in agreement on them, they do not need to clutter up any future discussions. That is the sort of report that the Committee should aim to publish.

759. David McNarry made the point that Sinn Féin has gone public at last with its position on Assembly debates. Its position has been clear since 15 May. If there were genuine business, concerning preparation for government, Sinn Féin would be quite prepared to debate it in the Assembly. Its objection was that Assembly debates were being tabled on issues over which the Assembly has no responsibility. Of course, given its reaction to some of the proposed

topics, it has been proven that the Northern Ireland Office takes no heed of party suggestions.

760. The Committee should not simply be going round the houses, listing issues and saying were it stands with them. It should be considering whether resolution could be achieved on the issues that parties have identified. Members need to ask: Can the Committee move forward? Can it use its time constructively? Can the Committee contribute to getting the institutions to function before 24 November? As I see it, that is the Committee's purpose. Otherwise, why are members — all of whom are busy in their own rights — spending the summer sitting around a table discussing these issues? Why are they doing that if not to achieve some form of resolution?

761. Peter Robinson remarked that the context for the Belfast Agreement/Good Friday Agreement has altered. The fact remains that it is a sovereign agreement between the two Governments. It was mandated, and the two Governments were mandated to implement it. No such status exists for the 'Proposals by the British and Irish Governments for a Comprehensive Agreement', which were published in 2004, and that should further drive on the Committee to reach an agreement whereby the Assembly can be working again before 24 November.

762. If the Committee does not reach such an agreement by 24 November, Northern Ireland will find itself with the Good Friday Agreement minus the Assembly, the element to which, I suppose, unionism was most attached. That is what is shaping up for us beyond 24 November. Sinn Féin would prefer that the Assembly was up and functioning, which is why its members have attended this Committee to clear away some of the issues that people feel are outstanding.

763. The Committee needs to aim for a report that shows the work that has been done, the issues that have been discussed and resolved, and, maybe, highlights those issues that need further work. To produce a report that simply lists how each party feels on the issues would be to ask the Assembly to debate the Hansard report. Members attempted to do that a number

of weeks back. Sinn Féin wants to see a genuine report that reflects genuine work.

764. **The Chairman (Mr Molloy):** Will members consider how the issues could be grouped?

765. **Mr McFarland:** The task of the Committee in this format is to mine down into the issues and to identify whether there are other more complex issues that members have not spotted. A number of the issues fit together or are included under the same heading. It would be helpful if members could extract the broad headings. In his document, Peter Robinson listed accountability and institutional issues.

766. If we agree to extract broad headings and make a list within those, we can find out whether there are further issues to be identified. I do not know whether we can agree. The word "negotiation" has been neuralgic. At every meeting of this Committee, William McCrea confirmed that the DUP is not negotiating, although he agreed that the party would identify issues. We should stick to that for the moment to see whether there are other issues within these broad topics that need to be identified and whether they can be solved by this Committee.

767. We should not become excited about some of the issues that are not solvable by the parties or by the Committee. We should simply log those issues. In negotiations, the parties may be able to solve other matters. If we identify those issues and the party positions, we will be well placed to take decisions eventually.

768. **Mr Ford:** Peter Robinson commented that support for the agreement continues to drain away. In recent polls — which I do not have in front of me — there was a clear indication of a significant body of people — a majority — who wanted to reform the agreement rather than do away with it. That is entirely consistent with the position of this Committee.

769. The parties have set out their priorities in different ways and at different times. The party documents are set out in different ways. They do not differ hugely, but there is no easy way to read across. Seán Farren's modest first step would at least mean that we set out the parties'

positions on the topics that have been identified. We might well take some of them to a further stage where we could record that there was a broad measure of agreement. For example, we have already highlighted issues such as the ministerial code.

770. If we start by putting parties' views together on the individual topics, we might find ourselves at the point where some matters could be resolved in a relatively straightforward way. On other matters we would record a set of conflicting opinions, which would inform an Assembly debate. I would hope that the Committee might have made some decent progress by early September. A report would provide information in real negotiations led by the two Governments, at whatever point the Prime Minister and the Taoiseach decide to parachute in on us.

771. **The Chairman (Mr Molloy):** There are 12 items on the list. Perhaps we could link them together. The Belfast Agreement and the comprehensive agreement are linked. First Minister and Deputy First Minister issues, the voting system in the Assembly, partnership in government — can we link these together to narrow them down? Is that possible? Understandings and undertakings perhaps fall outside the remit.

772. **Mr P Robinson:** This list constitutes not much more than a whinge list that we have produced collectively. If we want to find out the extent of convergence among the various parties on the component parts of the institutions, we need to examine those components. Presumably, there is at least convergence on the belief that there should be an Assembly. We might start falling apart on whether there should be 108 Members, whether it should be elected by single transferable vote, or whether it should have scrutiny Committees. Surely we should examine each element of the institutions to find out what we are agreed on and what we are not.

773. **Dr Farren:** Many of these issues were discussed during the review of the operation of the agreement. The types of headings that Peter suggests are probably more appropriate than our current loose and unlinked set of headings. The

secretariat has extracted this list from presentations and interrogations in this Committee.

774. **Mr P Robinson:** By its nature, therefore, this is where we disagree rather than agree.

775. **Dr Farren:** Yes. However, I would not present these for any further elaboration in the manner in which they have been presented. That would lead to a lot of unnecessary repetition. However, we do need to look at the institutions.

776. I questioned whether we could address the Belfast Agreement and the comprehensive agreement under "Institutional issues". I do not think that I will ever convert the DUP into saying that it formally accepts the Good Friday/Belfast Agreement. That will not happen. However, we must address the operation of the institutions that were established under the Good Friday Agreement, because both the parties that accepted the agreement and those that did not have identified how the operation of those institutions might be improved.

777. We can look at whether the Assembly should be of the same size as it is at present, or whether it should be larger or smaller. Parties gave different views about that during the review. There are also issues relating to the Office of the First Minister and the Deputy First Minister — the election of the Ministers to those offices and their functions. There are also concerns about collectivity and accountability within the Executive, and we may also have to examine the need for the Government Departments that exist.

778. We could order the debate that we might enter into over the next few weeks by taking the various headings of the institutions and working through from the Assembly and the Executive to the North/South and the east-west. That would sweep up issues related to the voting systems, etc, that are listed. One issue that is outside that scope is the reform of the RPA; that could be taken separately.

779. If we were to proceed in some way similar to what I have attempted to outline, we might be able to have all of the parties' positions identified where there is agreement on the kind of changes — if any — that we want, or no

changes but agreement to keep things as they are. That could be stated explicitly, but it would be clear anyway from what the parties had said. The debate would then be honed down to the issues where there is no convergence. These discussions will not finish at the end of August.

780. **Mr P Robinson:** There are issues on which people will want to see some movement before devolution takes place, but they will not necessarily expect them to be in operation. For instance, people might think that 108 Members is too many for the Assembly, but they would not expect that to be resolved before devolution. In some cases, it would be sufficient to have a process under way, rather than having all issues resolved for the date of devolution.

781. **The Chairman (Mr Molloy):** How do we want to proceed?

782. **Mr McFarland:** Some sensible ideas have been suggested, and if we proceed as Peter and Séan have outlined, then we have a logical structure to move through, and we can record positions as we go.

783. **The Chairman (Mr Molloy):** The list includes the Belfast Agreement, the Assembly, the Executive, departmental Committees, Government Departments, the North/South Ministerial Council, the North/South implementation bodies, east-west issues, the British-Irish Council, the British-Irish Intergovernmental Conference, the Civic Forum, the Human Rights Commission, the Equality Commission and the RPA, which falls slightly outside the remit of the Preparation for Government Committee, but it certainly affects us —

784. **Mr Murphy:** The British-Irish Inter-Parliamentary Body should also be on that list.

785. **Dr Farren:** Are human rights issues not being addressed at the meetings on Fridays?

11.15 am

786. **The Chairman (Mr Molloy):** They will be, yes.

787. Do members want the Committee Clerks to draw up a list under those headings or do they want to suggest a list?

788. **Mr P Robinson:** We are not just talking about the institutions; there are issues about the voting system to, and within, the Assembly and the ministerial code. They are issues in themselves.

789. **The Chairman (Mr Molloy):** Do members want to make suggestions?

790. **Mr P Robinson:** Officials could produce as comprehensive a list as possible, which could be open-ended so that members can add to it.

791. **The Chairman (Mr Molloy):** Would members like to call witnesses or have presentations from outside organisations on any of those issues?

792. **Mr McFarland:** At the last meeting we spoke about time not being on our side. The Committee may wish to call witnesses who have a particular expertise, but colleagues around this table are aware that we have been at this for years; most members know the ins and outs of most of the issues. The Committee may wish to seek professional advice on particular aspects, legal or whatever, but we may waste too much time because all witnesses within a certain grouping must be called, otherwise people get upset.

793. **The Chairman (Mr Molloy):** If the Committee wishes to call witnesses, even at a later stage, the Committee Clerks must be given a list as early as possible. If parties have suggestions, the Committee Clerks can make applications.

794. **Mr Murphy:** I am not convinced that we need any witnesses. The institutional issues need to be resolved by the parties. I am not quite sure whether somebody can introduce an imaginative suggestion about some other way of resolving this matter.

795. **Chairman,** you have a list of headings. Under “Assembly”, for example, parties have identified a number of topics; they could be broken down into subheadings, under which we could agree issues for discussion. That might be a way to move forward. We could move down through the institutions one by one, list the issues of importance to parties and work through them

to find areas of agreement, putting to one side those issues on which we cannot reach agreement.

796. **The Chairman (Mr Molloy):** Peter has made the point that some issues must be resolved before the institutions could get up and running. At this stage, they could be listed and prioritised because they may stop the institutions from getting up and running.

797. **Mr Murphy:** Mr Chairman, there would be differences of views on that. In our view, none of the issues has to be resolved before the institutions are restored. If we have time, it would be practical and welcome to resolve some of them, but none of them, we would concede, would be a precondition to re-establishing the institutions. However, I do not see any reason that parties cannot identify issues that they wish to see resolved before the institutions are returned.

798. **Dr Farren:** I want to make a similar point. Parties will identify issues that, if not resolved, they believe will prevent devolution. In earlier presentations, the SDLP has said that the basic conditions that brought about the collapse of the operation of the institutions no longer exist and that we should, therefore, be back in business.

799. I recognise that we cannot be. If there are issues that we can resolve, and that it would be helpful to resolve, let us try to do that. There will be no agreement among parties on which issues must be resolved before devolution can happen. Therefore, we should just go ahead with discussing the issues and let parties say whatever they wish.

800. **Mr P Robinson:** Agreement is not necessary. If there is an issue that you believe must be resolved before devolution, it is not just your problem; it is mine as well. Likewise, if we have problems and we indicate that we cannot see how powers can be devolved until x, y and z are resolved, it becomes your problem as well. Agreement is not necessary. It is sufficient for parties to state their case.

801. **Dr Farren:** Agreement on what the issues are is unnecessary. That is what I am saying.

802. **The Chairman (Mr Molloy):** The DUP say that there are some issues that must be resolved. It is important to have those matters clarified, whether people agree with them or not. At least we will know that those are the priorities for one party.

803. **Mr P Robinson:** Are we then saying that, for every party except the DUP, nothing needs to be resolved before devolution?

804. **Mr McFarland:** We have identified a raft of issues that people have problems with. However, as Peter Robinson said, we can solve this problem only when everyone is in agreement, or when everyone can live with whatever is proposed. This is a scoping exercise aimed at identifying issues; if we start delving too deeply into the psychology of who is comfortable with what, we will not get past first base. We were going well until now.

805. **The Chairman (Mr Molloy):** I do not wish to create problems, but it is important to place the issues up front, so that members can prioritise them, and so that we can try to deal with them. I do not think that that is point scoring.

806. **Mrs Long:** Unless we identify and address the issues, it will not be possible to restore devolution. However, it would be folly to say that other issues that could lead to the restored institutions being continually destabilized are not as important as the major barriers to setting up an Executive. We have already heard reference to the matter of public confidence in the institutions and in members around the table and colleagues outside the room. Constant instability within restored institutions will not help to boost public confidence. We should try to make the restored institutions as stable as possible. There are issues that may not be barriers to the setting up of an Executive, but which limit the ability of that Executive to function normally, well, and in the best interests of the people of Northern Ireland. From that perspective, it is equally important to address those matters.

807. The lowest common denominator — identifying the issues — has been discussed, but we must also try to identify some solutions to those problems. That is part of our

responsibility. If we come up with problems, we must also come up with potential solutions. We must be prepared to discuss and question one another about those potential solutions. We may not want to negotiate, but most members, when they are discussing problems, can see at the back of their minds ways to resolve those problems. That should be placed on record, so that it is clear where each party stands on individual issues.

808. **The Chairman (Mr Molloy):** How do members wish to proceed? Can we reach agreement that clerks provide a paper on identifying the issues within the sections that we discussed: the Assembly; the Executive; North/South issues; east-west matters; and the Review of Public Administration?

809. **Mr P Robinson:** There has been a question-and-answer session of five or six hours for two of the parties, and of I do not know how long for the others. If, in that period, the parties have not set out the issues that they require to be addressed, they have not been doing their job very effectively.

810. I presume that if the officials search through all the Committee's work thus far, they will see all the issues that need to be resolved before devolution can be restored. A list compiled on that basis should surely cover everything.

811. **Mr McFarland:** In our various discussions parties raised issues that did not necessarily have to be resolved before restoration. They also raised issues that had arisen from the first Assembly: suggestions that might have helped the Assembly to run better but not necessarily matters over which people would die in a ditch. There were degrees of concern about those.

812. **Mr P Robinson:** I return to Naomi's point. I do not know whether the list comes in two columns rather than one — a list of issues that have to be resolved before devolution can move forward; and issues that would improve devolution when it was restored.

813. **Mr Ford:** It is potentially then a list of three —

814. **Mr P Robinson:** Alternatives.

815. **Mr Ford:** No. The list should contain that which has to be resolved; that which, if it is not resolved, could destabilise the Assembly after restoration; and that which we might need to do something about at some stage in the future.

816. **The Chairman (Mr Molloy):** I do not think that the Clerks can be expected to do that, because they would be making a political judgement.

817. **Mr Ford:** I agree.

818. **Mr P Robinson:** They make a political judgement when they decide in which column items belong.

819. **The Chairman (Mr Molloy):** When the parties were cross-examined, we found that there was no clear line on most of the issues: did a particular issue have to be resolved before 24 November or could it be discussed in future? That is where it becomes more difficult.

820. **Mr P Robinson:** If each of the parties was asked to make a written submission about issues that it saw as obstacles —

821. **The Chairman (Mr Molloy):** There were quite a few obstacles, and some of them had longer tails than others.

822. **Mr McFarland:** If the staff list the issues, we can have a meeting to put them into columns; then the parties can highlight issues that are neuralgic to them.

823. **The Chairman (Mr Molloy):** Surely the list is not so long that each party cannot spell out its priority issues now. That would give the Clerks some political guidance from the parties instead of leaving them to make judgements.

824. **Dr Farren:** I am a wee bit concerned about the direction in which we propose to move. As I tried to say earlier, a more acceptable and neutral exercise for our secretariat would be to make a list of the institutions. Let us take, for example, the number of Members. If a party does not agree with the number 108, it will say so. It is not a case of saying, "Unless we start with 70 or 80 and have an election before devolution, we will not agree to devolution." I

do not think that that will happen. I am just using it as an illustration.

825. Parties may say that unless nominations for First Minister and Deputy First Minister are as set out in the proposals for a comprehensive agreement, they will not allow devolution to take place.

826. Parties will set out their positions on the items listed under the various institutional headings, such as the Assembly, the Executive and so on. We should not set up columns and leave the secretariat to decide which unresolved issues would be obstacles to devolution. That would put the secretariat in an invidious position. It is not the most helpful way to proceed.

827. **Mr McFarland:** Returning to when we were producing the broad headings and preparing to discuss them in turn may reveal the parties' positions. It would be slower, but it would be useful to have time to think as we go along. When we talk round the table, some issues may become less important, as some parties may have received reassurances or other parties' positions may have moved. If we go back to producing a list of headings and begin to discuss them —

11.30 am

828. **The Chairman (Mr Molloy):** My only concern is that we will continue to produce lists without resolving the issues. There have been two lists and there may be a further one, but, if that is how members wish to proceed, that is not a problem.

829. **Mrs Long:** Dr Farren's suggestion on how to proceed is sensible. The factors that parties believe must be addressed prior to restoration will become apparent only during a negotiation process in which all the issues are brought into the mix. Some issues may be interconnected, therefore, if some are partially addressed, others may become less important. It would be wrong to put those into fixed lists, because that would create barriers before we even begin.

830. It would be more constructive for parties to state the difficulties that they perceive are in the current arrangements and then try to move

that on to their suggested solutions rather than listing things in order of importance. If we did that, we would automatically begin to tie parties into particular positions, and that would not be useful.

831. **Mr Murphy:** I share the Chairman's concern about producing more lists; however, the list that we have now does not allow for a step-by-step discussion through the institutional issues, because we could hop from one item to another and add various topics. Therefore some restructuring may be necessary. Stating the issues within those broad headings may assist the Clerk and Committee staff who are compiling the list.

832. I am not averse to discussing the RPA, but I wonder how such a topic fits under the institutional discussion. How can we achieve consensus on it or resolve any of the outstanding issues? Representatives from political parties sit on various RPA committees, but, if people wish to discuss the matter at this Committee, I will not shy away from it. However, we may be biting off more than we can chew by including the RPA, especially given our time frame and the number of headings that we already have.

833. **Mr McFarland:** It is of direct interest to the Assembly to discuss the RPA in relation to issues that impinge upon the Assembly, such as the number of Departments and what will transfer from Departments to the RPA or to councils, because if we are trying to find —

834. **Mr P Robinson:** The number of Departments is the issue, not the RPA. The RPA is a factor that will determine how many Departments there will be. The more power that goes to local government, the less need there will be for so many Departments.

835. **Mr McFarland:** The number of Departments can be discussed under the RPA. However, the powers that will be passed to councils from the Department of the Environment (DOE) or the Department for Regional Development (DRD), for example, may impinge upon whether it is worthwhile amalgamating Departments. The RPA is an item under the "Institutional issues" heading, but it

may not need to be a separate point, given that parties are dealing with the function of the RPA elsewhere. However, it may impinge upon the issue of Departments and how the Assembly functions.

836. **The Chairman (Mr Molloy):** It is important that the Committee discusses the Assembly and the institutions and the knock-on effects that those will have on the RPA, as I do not wish to sideline the RPA.

837. Do members wish to list any items, or do they want to leave that to the Clerks?

838. **Dr Farren:** Although we have not yet used the terms, we are essentially considering the institutional issues under strand one, strand two and strand three of the agreement. They seem to be the most comprehensive headings and will likely form an agenda — unless there is something outside those that I have not mentioned. If we took the issues relating to strands one, two and three and spent the next two or three meetings working through those issues as best as we can, we would identify all —

839. **Mr P Robinson:** Are you suggesting strands one, two and three as headings?

840. **Dr Farren:** Yes, and sub-headings would come from each of those.

841. **The Chairman (Mr Molloy):** To link those groups together?

842. **Dr Farren:** It seems that that is what we are addressing.

843. **Mr Campbell:** Surely that would have to be in the broadest sense; you are talking about very broad headings.

844. **Dr Farren:** They are broad headings, but within each heading are particular aspects of the Northern institutions, the North/South institutions, the all-Ireland institutions and the east-west institutions, and, insofar as there are inter-relationships between them, they would have to be addressed.

845. **Mr P Robinson:** Everything will fall under those three headings.

846. **Dr Farren:** That is what I thought. Strands one, two and three are set out in the

Good Friday Agreement and could be used as headings. Parties may be happy with a particular issue and want it to continue, or, if they want an issue changed, they should say so. We should proceed in a logical and structured way.

847. **Mr P Robinson:** If we use strands one, two and three as headings, what are the sub-headings under strand one?

848. **Dr Farren:** The Assembly, the Executive and the voting systems are all issues.

849. **Mr P Robinson:** Are we leaving the headings to the Committee Clerks?

850. **The Chairman (Mr Molloy):** It would be much easier if we could decide the headings, which the Committee Clerks could then tweak out.

851. We are considering strand one of the Belfast Agreement. Will the comprehensive agreement be part of that discussion?

852. **Mr McFarland:** I thought that we agreed that the Belfast Agreement and the comprehensive agreement contain all the issues we would discuss: the Belfast Agreement is the original document; the comprehensive agreement seeks to change aspects of it. Those two issues could be taken out, given that we have decided on a format based on strands one, two and three. There may be other issues of particular concern that may need to be spelt out within those three headings.

853. If strands one, two and three are the headings, we need to ask the parties for their particular issues for discussion and see whether they fit under those headings. Does that make sense?

854. **Mr P Robinson:** If we agree that there should be an Assembly elected by single transferable vote and multi-member constituencies, are we not better to say that we agree? Or are we only talking about issues on which we disagree?

855. **Mr McNarry:** We need a structure to follow; otherwise we will jump from one issue to the next. We have been prone to that over the past few weeks. If we are agreed on the headings and are looking for columns to follow, are we saying — and I hope that we are — that there

are issues that we accept, issues on which we will seek improvement and on which we will largely focus, and problem issues? We need to present the issues and allow the columns to be filled in from our discussions.

856. **The Chairman (Mr Molloy):** I would like the parties to present the issues, if that is possible. The Committee Clerks can put the issues together and fill in the columns. We accept that the workings of the Assembly are part and parcel of the issues.

857. **Mr McNarry:** We should focus on the positives as well as the negatives. If the template is strands one, two and three, will strand one be discussed at the next meeting? Do we look at the positive and negative aspects of strand one and see what needs to be improved?

858. **Mr P Robinson:** Before the Committee meets again, can we agree the template and issues for discussion on strand one? It is a case of whether members leave it to the Clerks — and I am sure that they are delighted at the prospect — or whether we put forward a list of issues for discussion.

859. **The Chairman (Mr Molloy):** It would be useful if the Committee provided a list of issues for the Clerks. If the Clerks were to draw up a list of issues, the Committee would lose a day either scrapping half of it or adding to it.

860. **Mr McFarland:** Under strand one, the Assembly and Executive are sub-headings, and voting falls into one of those. Is there a third sub-heading?

861. **Mr McNarry:** Departments.

862. **Mr Murphy:** That comes under the Executive sub-heading.

863. **Mr McFarland:** Under the Assembly heading are First Minister and Deputy First Minister issues, voting systems and so on.

864. **The Chairman (Mr Molloy):** The Committee structure and scrutiny Committees would also come under that sub-heading.

865. **Dr Farren:** There are issues relating to safeguards. The sub-headings under strand one of the Good Friday Agreement are: “The Assembly, Safeguards, Operation of the

Assembly, Executive Authority, Legislation, Relations with other institutions.”

866. Those encompass most issues that parties have raised. Other matters may fall outside those sub-headings, but they already exist and have been agreed. Whatever the level of disagreement now, the Good Friday Agreement has been the basis on which we have operated the institutions, insofar as we were able.

867. **Mr P Robinson:** There have been Assemblies, Committees and Executives in existence before the Belfast Agreement was conceived. Their roots are not particularly in the Belfast Agreement.

868. The list of issues for discussion starts with the election to the Assembly, the number of Assembly Members, the election of the Speaker and Deputy Speakers, the formation of Committees and proportionality.

869. **The Chairman (Mr Molloy):** The setting-up of the Executive would also be part of that.

870. **Mr P Robinson:** I was taking the Assembly and Executive as two separate categories.

871. I assume that the ministerial code, and whether it should be a statutory duty or should be revised, comes under the Executive heading. Also under that heading are: the number of Departments; how Ministers are appointed; how the First Minister and Deputy First Minister are appointed — if, indeed, there is to be a First Minister and Deputy First Minister; how decisions are taken within the Executive and how appointments to outside bodies are made.

872. **Dr Farren:** I want to mention safeguards, by which I mean issues relating to the petition of concern.

873. **Mr Murphy:** The establishment of the Committee of the Centre also comes under the Assembly sub-heading.

874. I am not sure that legislation relating to suspension necessarily falls under Assembly or Executive, but we need to discuss that under the sub-heading of institutions.

875. **Mr P Robinson:** The role of Committees, which concerns the Committee of the Centre and its power to scrutinise and call Ministers, is another issue.

876. **Mr Ford:** I appreciate the effort to put issues into either the Assembly or Executive categories. However, given that Seán referred to safeguards and that we have discussed accountability, it may be necessary to examine those two issues, which, in many senses, lie between the Assembly and the Executive, as a separate category.

877. We have also missed out, possibly deliberately, the Civic Forum, which is a stand-one institution.

878. **The Chairman (Mr Molloy):** We are taking the Assembly as one part. The Executive and the Civic Forum would be other parts.

879. **Mr Ford:** We need to discuss safeguards and accountability as a specific issue. If we discuss matters pertaining to the Executive, we may deal with some of those issues, but we need to flag them up.

11.45 am

880. **Dr Farren:** Did we mention the issues relating to the Pledge of Office and the ministerial code of conduct?

881. **Mr P Robinson:** There is a ministerial code and a ministerial code of conduct; they are separate issues.

882. **Dr Farren:** Yes, that is what I meant.

883. **Mr P Robinson:** The relationship between the Assembly and the Executive does not fall into either category, but it combines both.

884. **Mr Ford:** That is the accountability point.

885. **The Chairman (Mr Molloy):** Accountability both ways.

886. **Mr McFarland:** The issue of the role and effectiveness of Committees arose in the first Assembly. I do not know whether it is worth chucking it into the mix, but, technically, Committees were able to introduce legislation in their own right. However, their budget was extremely limited. A Committee that wanted to introduce legislation would have needed legal

advice and a team to develop legislation, and that was not available. As far as I am aware, no Committee introduced legislation in the first Assembly.

887. **The Chairman (Mr Molloy):** The Clerk has just told me that that was being developed at the time. The role, powers and resources of Committees will be examined as part of our discussions.

888. **Mr Murphy:** It was more a question of resources than powers: they had the powers, but they did not have the resources.

889. **Dr Farren:** They had powers over secondary legislation but not over primary legislation.

890. **Mr P Robinson:** The review process is also an issue. We talked earlier about issues that had to be resolved for devolution to be restored and about issues that could be dealt with later. The comprehensive agreement set up an institutional review committee to deal with issues that were not essential at the beginning of discussions. It was felt that that was a better way of proceeding than waiting for five-year reviews and so forth.

891. **The Chairman (Mr Molloy):** So there would be a committee dealing with ongoing reviews?

892. **Mr P Robinson:** It is up to us to consider whether it should, but we should at least include it as a heading on the list.

893. What about the issue of community designation? Does that not need its own heading?

894. **Mr Ford:** I thought that that issue was fairly well highlighted in discussions on voting systems. However, if the DUP wishes to include the abolition of designations as a priority, I am happy to agree.

895. **The Chairman (Mr Molloy):** We will include designations and voting patterns and structures as an overall issue.

896. **Mr McFarland:** Have we included the number of MLAs and the question of dual mandate?

897. **Mr P Robinson:** We should.

898. **The Chairman (Mr Molloy):** Dual — or triple — mandate.

899. **A Member:** Or quadruple.

900. **The Chairman (Mr Molloy):** Any other issues? We have a list, albeit not a full one, but, as we said earlier, other issues may arise from it. If we are flexible, we can add to it. The Clerks can identify issues as they come up in the submissions.

901. **Mr P Robinson:** It would put more responsibility on the parties if, rather than wait until next Monday, they contact the Clerks if issues occur to them.

902. **The Chairman (Mr Molloy):** That would be easier.

903. **Mr McFarland:** Are we dealing with the Executive separately?

904. **The Chairman (Mr Molloy):** At this stage we are dealing with categories. We dealt first with the Assembly and strand one. The Executive comes into that as well.

905. **Mr McFarland:** There are several issues concerning the Executive. The first — where power is vested — arose when the Assembly was suspended. We discovered that, in 1921, power was not vested in Parliament or its Ministers, but in the Departments.

906. Therefore it did not matter what happened, and that was why it was so easy to suspend the Assembly. Power is vested from Westminster into the Departments and exercised by the permanent secretaries. If the Assembly is to fly properly, we need to consider whether that power should be seconded from Westminster to the Assembly and from the Assembly to Ministers. That is not at all clear.

907. **The Chairman (Mr Molloy):** That would come under the suspension legislation as well.

908. **Mr McFarland:** It is also about the Executive and how it functions and about Ministers' powers. If power is not given to the Minister but to the Department and the permanent secretary, the Minister can be disposed of at any time and, indeed, the Assembly ignored. An Assembly in which

power was vested would be slightly more difficult to dismiss.

909. **Mr P Robinson:** Let us be clear about where we are going on this. The issue came up in November 2004. If power were vested in the Assembly, ultimate authority would rest with it. That is completely different from either the Belfast Agreement or the proposals in the comprehensive agreement. It is a more sensible and democratic proposal. We would be vesting power in the Assembly, and only the Assembly could discharge that power. It would no doubt do it on the basis of ministerial recommendations, just as Westminster does. The comprehensive agreement and the Belfast Agreement were more Executive-based devolution. Vesting power in the Assembly would make it very much as I would like it to be — a parliamentary democracy.

910. **Mr McFarland:** At present, power rests with the Departments and the permanent secretaries and has done since 1921. Whether we want it to move from there to the Executive or to the Assembly is an issue that needs to be examined.

911. **The Chairman (Mr Molloy):** It is part of the discussion, although we cannot cover it entirely today.

912. **Mrs Long:** Chairman, I do not wish to add to the list. I simply want to clarify when the parties will receive a draft of the list so that we can add to it if we need to before next Monday. It would be helpful for all of us to see the complete list as soon as possible.

913. **The Chairman (Mr Molloy):** It might be available on Wednesday. If members have additional items, they can be included for next Monday's meeting.

914. **Mr P Robinson:** May I tiptoe and drop in the subject of disqualification as well.

915. **The Chairman (Mr Molloy):** Why not? We have had everything else. We need more detail on disqualification.

916. **Mr P Robinson:** It could be disqualification of Members, of the Executive, or of parties.

917. **The Chairman (Mr Molloy):** We now need to consider issues relating to strand two.

918. **Dr Farren:** We have to address the issue of the nomination of Ministers in a way that obviates the difficulties that were encountered when the First Minister refused to nominate Ministers from a particular party to participate in meetings of the North/South Ministerial Council.

919. **Mr Murphy:** I presumed that that was addressed under ministerial code and ministerial code of conduct issues such as rights of participation and the requirement to participate. I suppose that it can be dealt with under either heading.

920. **The Chairman (Mr Molloy):** The Assembly and the Executive have to deal with a ministerial code and a ministerial code of conduct. However, there would be a knock-on effect on strand two through the North/South institutions, so it is a matter of linking the two.

921. **Mr Murphy:** That could be dealt with under either heading.

922. **Mr Ford:** We have highlighted that, in any event, there will be a certain amount of overlap, but, to me, the strand two issues concern the operation of the NSMC and other cross-border bodies. Compared to the amount of discussion that we have had on strand one matters in the past, I would have thought that those two issues would subsume most North/South points.

923. **Mr Campbell:** Further to David's point, the line of accountability of NSMC issues to the Assembly is another point of discussion.

924. **Mr Ford:** Yes. I am conscious of your concerns about accountability and of Seán's points about the practical operation of the NSMC.

925. **Mr McFarland:** We need to discuss the interdependency of the institutions. After November 2002, we discovered that, in theory, the NSMC should have been suspended but was not. Sanctioned by both Governments, the North/South bodies intended to beaver ahead, when they were supposed to be operating on a

care-and-maintenance basis. There was quite a row at the time because they were pressing on with issues. If the Assembly is not functioning, the NSMC should not function. That needs to be either reiterated or discussed.

926. **Mr P Robinson:** Certain issues relate to the implementation bodies.

927. **Dr Farren:** Are you suggesting that their number should increase?

928. **Mr P Robinson:** Under efficiency grounds, we may want to reduce their number.

929. **Dr Farren:** I see.

930. **The Chairman (Mr Molloy):** Do members want to raise any other strand two issues?

931. **Mr P Robinson:** In the context of strand two, there is the question of whether a North/South body is a stand-alone creature or whether it should be part of the British-Irish Council.

932. **Mr Ford:** The North/South parliamentary tier also occurred to me, but there may not be that much fuss about it.

933. **The Chairman (Mr Molloy):** We will move on to strand three issues.

934. **Mr McFarland:** The operation of the British-Irish Council and its secretariat come under strand three.

935. **Mr P Robinson:** Whether there should be a new Council of the Isles is another issue.

936. **Dr Farren:** In addition to the present one?

937. **Mr P Robinson:** Encompassing the British-Irish Council.

938. **Mr McFarland:** The British-Irish Interparliamentary Body (BIIPB) is a strand three issue, and it takes its genus from the Anglo-Irish Agreement of 1985. It would be logical if it took its origins from the Belfast Agreement or whatever, because everyone could then participate in it. Of course, that was not the case in the first Assembly. There were problems, such as when the BIIPB discussed transport and the Committee for Regional Development was unable to meet it.

939. **The Chairman (Mr Molloy):** That relates to the workings of the BIIPB.

940. **Dr Farren:** You can suggest whatever you like, obviously, but I did not hear any justification for that.

941. **Mr McFarland:** The British-Irish Interparliamentary Body is a creature of the Anglo-Irish Agreement of 1985. Neither my party nor the DUP sat on it because of its origins. We tried to persuade the First Minister and the Deputy First Minister to talk to the London and Dublin Governments to redesignate it as a body that originated from the Belfast Agreement, with the result that everybody could join it. However, that never happened. If an all-islands interparliamentary body is to be created, everyone must be able to comfortably join it.

942. **Mr P Robinson:** Whether everyone can join is also an issue. Under the present process, only a select number are appointed. Any Member of Parliament can join any of the other parliamentary bodies in which we are involved. However, other Members of Parliament are denied access to the BIIPB because only the chosen few are invited to sit on it.

943. **Dr Farren:** Members who need to be involved in any discussions that we might have on strands two and three do not participate on the Committee on the Preparation for Government. They would therefore need to be apprised of what we intend to discuss, and we might need to provide an opportunity for them to be present.

12.00 noon

944. **The Chairman (Mr Molloy):** Yes, particularly if they were to appear as witnesses or to give evidence.

945. **Dr Farren:** They are part of the decision-making process for any changes to the operation of the institutions. Therefore, it would be rather presumptuous of the Committee to —

946. **Mr McNarry:** Whom do you have in mind, precisely?

947. **Dr Farren:** The two Governments, of course.

948. **Mrs Long:** Is it not the case that the Committee was formed to scope the issues from the perspective of its members? Its findings will be matters for later negotiation. Members of the Committee are not here to take decisions; they are here to scope the issues, to state their party positions, and to put forward any suggestions. Indeed, members may reach agreement, which would be nice for a change. However, although members may reach agreement in Committee, they then have to negotiate with others to bring about those changes. That is fine, but the Committee is here to scope the issues as they are seen from the perspective of its members.

949. **Mr P Robinson:** Otherwise, Seán would have wanted Her Majesty's Government at the strand one negotiations. *[Laughter.]*

950. **Dr Farren:** I would have had no objections to that. The British Government are not essential to the operation of the Assembly and the Executive. They are essential to whether the Assembly and the Executive can operate, but that is a different matter.

951. **Mr Campbell:** Of course, for strand three issues, it may be difficult logistically to bring over the Manx Government and the authorities from the Channel Islands.

952. **Dr Farren:** At the same time, does the Committee not need to hear the voices of all those who are entitled to be present?

953. **The Chairman (Mr Molloy):** It may be possible to request submissions from the relevant bodies.

954. **Dr Farren:** It may well be.

955. **Mr P Robinson:** If the Committee were reaching agreement, that would be a good idea.

956. **Mr McFarland:** It is scoping.

957. **The Chairman (Mr Molloy):** The options available to the Committee are that it can call witnesses or it can request papers from relevant bodies.

958. **Dr Farren:** To make a useful contribution at the scoping stage, it would not be unhelpful for the Committee to hear the voices of those who could also be involved in the process.

959. **Mr McNarry:** Perhaps Seán could leave that suggestion in abeyance until such times as the Committee reaches that point and decides whether it would like to apprise those who could also be involved?

960. **The Chairman (Mr Molloy):** The Committee is not taking decisions. It is suggesting issues that may be discussed. Members do not have to finalise those issues today.

961. **Mr P Robinson:** Could the Clerks contact the NIO to ask Minister Hanson to provide them with a copy of his report of the detailed discussions that took place about six to eight months ago with all of the parties? I understood that such a report had been, or was being, prepared. It would cover a lot of those issues, and the Committee might find some useful headings in it.

962. **The Chairman (Mr Molloy):** Are members agreed that the Clerks ask whether such a report is available?

Members indicated assent.

963. **Mr P Robinson:** We might all want to see it.

964. **The Chairman (Mr Molloy):** It might be useful to see what has been said.

965. Members have produced quite a substantial list of issues. As was said at the start of the meeting, time is one of the main factors in putting all of this together. Therefore, perhaps we should move on. Parties can approach the Clerks if they have issues that they want to raise. Alternatively, they can bring them up at next Monday's meeting.

966. The next item of business is the Secretary of State's draft Programme for Government, which he suggested that the Committee considers. Members discussed it briefly at the last meeting and decided to leave it on the agenda for this meeting.

967. **Mr McNarry:** May I propose that the Committee notes the issue.

968. **Mr P Robinson:** Chairman, can you continue to keep the topic on the agenda? Am I right to think that the Committee has enough to keep itself going?

969. **The Chairman (Mr Molloy):** The main reason that I can give to keep the item on the agenda is to allow the Clerks adequate time to complete any preparatory work that they need to do in advance of a discussion. Do members have any other issues that they feel should be included?

970. **Mr McFarland:** At the last meeting, Seán mentioned timescales. Four debates have been timetabled for 4, 5, 11 and 12 September. As I recall, Seán suggested that, as the Committee is firming up its programme of work, it should, perhaps, give early warning that it might need an extra week or so before it publishes its report.

971. It would give us a bit of leeway. The economic subgroup has to make its report by 18 August. That seems to be quite tight. You might ask for an extra week or more. If the Committee were to take that decision now, it would allow us to plan better.

972. **The Chairman (Mr Molloy):** Any views? The Secretary of State has indicated that the first debates will take place on 4 and 5 September. That means that the Business Committee would need to be notified by 25 August, and this Committee would have to have its work done before that. Are the parties agreed that we should contact the Secretary of State in relation to having an extra week to draw up the reports?

973. **Mr Murphy:** He gave us a directive to establish two subgroups, and we have not done that either. The directives do not seem to matter that much. Regardless of the Secretary of State's schedule, or that of the NIO, if we feel that this is becoming a fruitful exercise then we should take whatever time we need.

974. **The Chairman (Mr Molloy):** Can we advise the Secretary of State that the parties are in agreement that we need an extra week, but still work towards the programme that we have, so as to meet that if possible?

Members indicated assent.

975. **Mr McNarry:** The economic subgroup is also looking for an extension. Has it contacted this Committee regarding the process that we have just agreed?

976. **The Chairman (Mr Molloy):** No.

977. **Mr P Robinson:** If things are getting very tight, we could ask the Secretary of State to put back the 24 November deadline. *[Laughter.]*

978. **The Chairman (Mr Molloy):** I think that that is beyond the remit of this Committee.

979. **Mr McNarry:** On the point that I raised, what is the mechanism? Somewhere in Hansard you are reported as saying that there was flexibility on those dates.

980. **The Chairman (Mr Molloy):** We have noticed all along that the Secretary of State will accommodate this Committee if it has a programme of work. The mechanism would be that the economic subgroup would contact this Committee and ask for an extension of time.

981. **Mr McNarry:** Could this Committee write to the economic subgroup?

982. **The Chairman (Mr Molloy):** I will be at the economic subgroup tomorrow, so perhaps we can get the Clerks to deal with it.

983. **Mr McNarry:** Will you deal with that, then?

984. **The Chairman (Mr Molloy):** Yes.

985. **Mr McNarry:** Thank you.

986. **The Chairman (Mr Molloy):** Moving on, a draft programme of work has been set out by the Clerks. Any comments on that?

987. **Dr Farren:** Can we anticipate morning and afternoon sessions next week?

988. **The Chairman (Mr Molloy):** I think that that will probably be necessary if we are to get the business through. We are talking about one day per issue, although there is the possibility of extending into the next day. Look at it on the basis of having a full day. Lunch will be provided in the room. You are not going to get out at all.

989. Any other business? Do parties want to submit further papers on law and order issues or equality, or are we happy to proceed as we are?

990. **Mr McFarland:** We have spent hours and hours, and the issues are there. We should start by going through the same exercise that we

have just had, for both policing and justice and the rights issue, of fitting those into some structure in order that they can be discussed.

991. **The Chairman (Mr Molloy):** If parties want to bring researchers, they can be part of the meeting as well, at the back. Madam Speaker suggested this morning that her adviser might also attend, if members are content with that.

992. Any other issues?

993. **Mr P Robinson:** Did I understand you to say that parties can bring an adviser or researcher?

994. **The Chairman (Mr Molloy):** Each party can bring an adviser or a researcher who can sit at the back. That will afford some continuity of party presence, and it will be of benefit should a party wish to receive advice on any of its papers. That is an additional resource for a party when dealing with a particular item at the Committee on the Preparation for Government.

995. **Mr McFarland:** That is a reasonable suggestion, considering that the people attending the Committee are changing, due to the holidays. That gives some parties a degree of continuity, knowing that they can have people in different meetings to keep track of what is going on and being discussed.

996. **Mr P Robinson:** That is a sensible decision; I was not aware of it.

Adjourned at 12.11 pm.

Monday 7 August 2006

Members:

The Chairman, Mr Jim Wells
Mr Gregory Campbell
Dr Seán Farren
Mrs Arlene Foster
Ms Patricia Lewsley
Mrs Naomi Long
Mr Kieran McCarthy
Mr Alan McFarland
Mr Michael McGimpsey
Mr Patsy McGlone
Mr David McNarry
Mr Conor Murphy
Mr John O'Dowd
Mr Peter Robinson
Observing: Mr Francie Molloy

The Committee met at 10.02 am.

(The Chairman (Mr Wells) in the Chair:)

997. **The Chairman (Mr Wells):** As members will be aware, the meeting will go on until 4.00 pm. I propose that we break at 12.20 pm to enable the caterers to bring in the food; however, after a short break we will work through lunch. I hope that everyone is happy with that. I hope that you all have your diaries cleared until 4.00 pm.

998. We should go through apologies and deputies.

999. **Mr Campbell:** I am here, Chairman, but I do not know whom I am representing.

1000. **Mr P Robinson:** I am representing whomever Gregory is not representing.

1001. **The Chairman (Mr Wells):** We will make Mr Campbell represent Lord Morrow; Mr Robinson will be Dr McCrea. Are you expecting Mrs Foster?

1002. **Mr Campbell:** Yes.

1003. **Mr McFarland:** I am expecting Mr McGimpsey to join me on behalf of Mr Kennedy.

1004. **Mr McCarthy:** I am representing David Ford.

1005. **Mrs Long:** I am just myself.

1006. **Ms Lewsley:** I am representing Mark Durkan.

1007. **Mr McGlone:** I am representing Alasdair McDonnell.

1008. **Mr Murphy:** John O'Dowd is representing Martin McGuinness; Michelle Gildernew will not be here.

1009. **The Chairman (Mr Wells):** We wrote to the Secretary of State about the issue of Chairmen for the Subgroup on Economic Challenges facing Northern Ireland. He has written back to confirm that Naomi Long, Jim Wilson and Alban Maginness have been added to the panel to chair the subgroup's meetings. The subgroup has been advised of that decision. When those individuals slot in, that should free up the two existing Chairmen to chair this Committee. It has been quite an onerous task this past week or two.

1010. **Mr McFarland:** We have had a difficulty with Mr Wilson's appointment. I am hopeful that he will be replaced later today, but it is difficult to get in touch with people on holiday.

1011. **Dr Farren:** Are you calling a press conference?

1012. **Mr McFarland:** No, he has other commitments.

1013. **The Chairman (Mr Wells):** You will have to notify the Secretary of State. It would be helpful if Mr Maginness, as the next person on the list, could chair tomorrow's meeting, so that we are not prevented from adhering to the new schedule. It is either that or Mr Molloy and I are in the Chair every day every week, which is perhaps a bit much.

1014. The minutes of the meeting of 31 July have been tabled. I hope that members received

them in reasonably good time. Does anyone have any additions or corrections to the minutes? Do members agree that they are a true and accurate record?

Members indicated assent.

1015. **The Chairman (Mr Wells):** There is one other matter to get out of the way, simply because we do not know when this meeting will end. Members will recall that we wrote to the Secretary of State to ask him to move the first plenaries from 4 September and 5 September to 11 September and 12 September. He has written back to us, in a letter dated 3 August, stating that he is minded to agree to that. The Speaker has been informed accordingly. Therefore, both this Committee and the economic challenges subgroup appear to have a bit more time in which to deliberate. Is everyone content with the Secretary of State's decision?

Members indicated assent.

1016. **The Chairman (Mr Wells):** I hope that members will inform their Whips and parties that the first plenary is likely to be on 11 September.

1017. Mr Robinson had asked for a copy of a report that was prepared following meetings some months ago between Mr Hanson and the parties. The Secretary of State has referred the Committee to the list of institutional issues that we already have. Do members wish to comment on the Secretary of State's decision?

1018. **Mr P Robinson:** Is the Secretary of State saying that Minister Hanson did not do any work after he spoke to the parties, or that he did work but will not show it to us?

1019. **The Chairman (Mr Wells):** From my reading of the letter, I think that it is the latter. It is clear that the Secretary of State is not prepared to give us anything more than the briefest outline of the issues. What do members feel about that?

1020. **Mr P Robinson:** It is a very poor performance by the Secretary of State. One would have thought that he would have had some desire to assist us in our work; it is regrettable that he does not.

1021. **The Chairman (Mr Wells):** What do other parties feel about that issue, or do they have no views on it? Dr Farren, do you have any views on that?

1022. **Dr Farren:** I think that it is mainly our own responsibility at this stage. I agree with the dates for the first plenaries being changed.

1023. **The Chairman (Mr Wells):** The Secretary of State will no doubt read this meeting's Hansard, in which he will find Mr Robinson's comments.

1024. Having got those preliminaries out of the way, we now move on to the substantive issue, which is the list of institutional issues that the parties agreed at the previous meeting. The up-to-date list is contained in your papers.

Members were given an opportunity to point out any problems with the list and to request additions, corrections or deletions, but we have not had any comments.

1025. Therefore we will use it as the basis for this morning's discussion. The issues to be discussed have been placed under headings and sub-headings within strands one, two and three of the Belfast Agreement, and, as no changes were received by 4 August, I consider the list to be agreed.

1026. Both Chairmen gave the commitment that any relevant issues that are raised will be discussed. Therefore, do not feel that we will prevent someone from raising a legitimate issue because it does not fit neatly under one of the headings.

1027. Are members content with the list?

Members indicated assent.

1028. **The Chairman (Mr Wells):** We will start with strand one, and "The Assembly" and the sub-heading "Accountability/Safeguards". The items listed have been included because all parties stated that they were important issues; that is the only reason. No item has been given priority, because they are listed alphabetically, and I propose that we go through them in order. Members should feel free to speak on whatever issues they feel are important.

1029. I want to avoid a repeat of the material that was raised during the intensive question-and-answer session that we had last month. Do not regard this meeting as an opportunity for a rerun of what has already been said, because that will not achieve much. The objective of these sittings is to dig deeper and expand on what has already been said on the matters.

1030. **Mr McFarland:** Chairman, I understand that the list is in alphabetical order, but it would be logical to discuss the election of the First Minister (FM) and the Deputy First Minister (DFM) before discussing the approval of the First and the Deputy First Minister. It seems illogical to discuss the “Approval of FM/DFM and Executive” before there has been any discussion on their election. It would be useful if we could discuss the election before the approval.

1031. **The Chairman (Mr Wells):** Your point is entirely in order. The alphabetical list does not fit neatly into discussions, so I am happy to take “Election of First Minister and Deputy First Minister” first. Does anyone have anything to add?

1032. **Mr P Robinson:** If we are to discuss the issues in chronological order, “Voting system” should be taken before “Election of First Minister and Deputy First Minister”.

1033. **The Chairman (Mr Wells):** Discussions on “Voting system” followed by “Election of First Minister and Deputy First Minister” would be the obvious order.

1034. **Mr P Robinson:** There is also an issue about the number of MLAs, but I am not sure what that would come under.

1035. **The Chairman (Mr Wells):** “Number of Assembly members” currently falls under the sub-heading “Efficiency/Effectiveness” in strand one.

1036. **Mr McFarland:** On one level, I agree with Peter Robinson that there is logic to tackling the issues chronologically. However, our deliberations will not affect the number of MLAs that there are at present before another election, whereas other issues could be agreed in the autumn, as they are practical measures

that could be introduced before the Assembly fires up again. That said, if there is an election before the Assembly returns, the issue of the number of MLAs becomes more urgent.

1037. **The Chairman (Mr Wells):** OK.

1038. **Mr P Robinson:** Chairman, I assume that some of these matters will require little more than a sentence from members when they are giving their opinion, but discussion on some other areas will take longer.

1039. **Mr McFarland:** Some discussions might take days.

1040. **Dr Farren:** I get worried when members start to rearrange lists. We have set out the list alphabetically, and the way in which parties attack or speak to the issues will depend on the importance or emphasis they put on the need for change or the need to keep things as they are.

1041. The initial presentations that parties made several weeks ago were not as focused as this agenda invites members to be. Perhaps we will distil our significant points of difference from this exercise, if we do not know them already, but I cannot imagine that we will overcome those differences today. We may come to a greater understanding on parties’ differences, but we should defer the challenge of trying to overcome them for some other discussion. I suggest that we leave that as it is and let parties speak to the issues as they consider appropriate.

10.15 am

1042. **The Chairman (Mr Wells):** That is one view. Mr Robinson’s view is that we should go through the list in chronological order, as if we were sitting down in September 1998.

1043. **Dr Farren:** What is chronological?

1044. **The Chairman (Mr Wells):** We would start with “Voting system”, followed by “Election of First Minister and Deputy First Minister”, followed by “Approval of FM/DFM and Executive”, and so on.

1045. **Mr McGlone:** “Election of Speaker and Deputy Speakers” should come under that list.

1046. **Mr Murphy:** “Community Designation” should come before “Voting system”. The

Committee could try to rearrange the list almost by working off Standing Orders. “Community Designation” should be the first item before “Election of Speaker and Deputy Speakers”, followed by “Election of First Minister and Deputy First Minister”. They all fall under one broad topic. I imagine that members will dip in and out of each item as we discuss them.

1047. **The Chairman (Mr Wells):** “Community Designation” should be followed by “Voting system”, followed by “Election of First Minister and Deputy First Minister”, followed by “Election of Speaker and Deputy Speakers”. In fact, the latter would come before “Election of First Minister and Deputy First Minister”. The Speakers are more important even than the First Minister and the Deputy First Minister, so that would be the third item. That would be followed by “Approval of FM/DFM and Executive”, so that would get up and running.

1048. **Mr P Robinson:** Yes, but would it be up and running by a voluntary coalition?

1049. **The Chairman (Mr Wells):** “Voluntary Coalition” would be next on the list. There is logic to going through the sequence of events that would occur if devolution were restored. I am loath simply to throw out all those topics and start a general discussion on them, because it would result in an endless series of contributions on disparate issues.

1050. **Mr Campbell:** Many phrases have been used to describe what we are doing — scoping, identifying, defining —

1051. **Mr P Robinson:** Grinding down.

1052. **Mr Campbell:** Apart from getting some order and logic to the way in which we address the issues, does a great deal depend on where the items appear and how we deal with them?

1053. **The Chairman (Mr Wells):** It would have helped the flow of the discussion, but it is clear that we will not reach agreement on it.

1054. **Mr P Robinson:** I have no emotional capital tied up in the order in which we address the issues, except that some items will be subject to the outcome of others.

1055. **Mr McNarry:** I agree. I have participated in other meetings, and it seems that, with all due respect to Seán, members go round the table — it is something that we all indulge in — and then we become confused. We need some sort of order and a strike system, because there are items that we will not spend a great deal of time on. However, there may be serious obstacles and members will probably need to refer to other parts of the list of “Institutional Issues” for further discussion. I wish that we could reach some consensus and approach things in a logical step-by-step way, as it would help me to follow things more clearly.

1056. **The Chairman (Mr Wells):** Could we consider starting with “Community Designation”, followed by “Voting system”, followed by “Voluntary Coalition” — though it is a difficult one — followed by “Election of Speaker and Deputy Speakers”, followed by “Election of First Minister and Deputy First Minister”, followed by “Approval of FM/DFM and Executive”.

1057. **Mr P Robinson:** Presumably the voting system to the Assembly should come before “Community designation”.

1058. **The Chairman (Mr Wells):** “Voting system” means the voting system in the Assembly. Yes, “Community Designation” must come before that. The Alliance Party flagged that up as a major concern.

1059. From that point on, the order becomes not quite so difficult because the remaining issues relate to the mechanics of a working Assembly and could come anywhere on a chronological list.

1060. **Dr Farren:** I am happy that members go with the order that you suggest, Chairman. We will not reach agreement if we all put forward our preferred options.

1061. **Mr Campbell:** Seán, do you think that we will abide by any direction from the Chairman?

1062. **Dr Farren:** Let us see how it goes for today.

1063. **Mr McNarry:** Willie McCrea was not buying into that last week.

1064. **Dr Farren:** I will object if I do not find the Chairman's direction appropriate.

1065. **The Chairman (Mr Wells):** The order is as follows: "Community Designation"; "Voting system"; "Voluntary Coalition"; "Election of Speaker and Deputy Speakers", which is a most important issue; "Election of First Minister and Deputy First Minister"; and "Approval of FM/DFM and Executive".

1066. Every point after that concerns the workings of the Executive and Assembly. The order in which we put those points does not really matter, because they could come anywhere in the sequence.

1067. We have now agreed six topics, and I will throw the rest open to discussion. This could be our tenth consensus in a row, which would be remarkable. Dare I ask whether there is consensus?

Members indicated assent.

1068. **The Chairman (Mr Wells):** Good, I am glad to hear it.

1069. As the Alliance Party highlighted community designation as a major issue, it is only fair to give it the opportunity to lead the discussion.

1070. **Mrs Long:** As community designation is almost inseparable from the voting system in the Assembly, it would be almost impossible to deal with one without the other. If members will indulge me, I will probably cross the line between the two at different points.

1071. At present, the Alliance Party probably feels the impact of community designation most acutely. However, it is conceivable that any party that chooses not to designate itself as "Unionist" or "Nationalist" in future could also experience the same discrimination that Members from my party have experienced over the term of the agreement. It is an anomaly, and recognised by the community at large, that, in a so-called cross-community vote in this Assembly, the votes of the Alliance Party are discounted, although it is the only cross-community party. That anomaly must be dealt with.

1072. One of our main concerns about community designation is that in recent correspondence from the Secretary of State and in discussions about the comprehensive agreement, reference was made to MLAs stating their community designation at the time of nomination for election, as opposed to on arrival at the Assembly after election. That would further entrench the divisions in our society rather than address them. The community-designation system was put in place in order that the voting system could function and to offer protection to minorities in the Assembly. However, the most significant minority within this Assembly is those who are neither unionist nor nationalist, and the voting system affords them no protection.

1073. The Alliance Party believes that the voting system can provide protection for minority communities and viewpoints within the Assembly without entrenching division. The voting system should deal with the deeply divided nature of Northern Ireland society and its political system. We accept that there is a need for checks and balances and that a strict 51% majority would not be acceptable, particularly on contentious issues.

1074. However, the system must be designed in such a way as not to entrench further the divisions in society. If this Assembly is about anything, it is about trying to bring the community together to work towards a single aim or purpose. The introduction of what the Alliance Party believes to be a discriminatory voting system encourages people to regress into tribal camps. Those who may wish to break through the barriers and cross those lines may feel inhibited because of the voting system. The system must also be flexible enough to accommodate demographic and political change.

1075. The current voting system is designed to protect the nationalist minority. However, it is clear that demographics, time and politics will change, and the voting system must be flexible enough to deal with such change.

1076. The Alliance Party does not want a system that would allow a minority in the Assembly to hold the entire operation of the

Assembly to ransom — that was most starkly evidenced when the anti-agreement minority in unionism barred decisions that would otherwise have been carried by a majority of Members. However, that is not exclusively the case, as other Members have used the veto to their own end.

1077. The voting system must be democratic. The votes of all Members of the Assembly must count at the same level as every other Member. It is a basic right that should be reflected in the voting system. It should also be easily understood; therefore, that the way to marry all those concerns would be to remove the designation system — other than for party membership — completely and move to a weighted-majority vote system. The weight of that majority would have to be closely considered. A threshold of between 60% and 70% has been suggested.

1078. In cases in which the unionist majority was much larger and stronger, the argument of 70% was very strong. A cross-community vote could meet the 60% threshold, without having the approval of the nationalist minority. Therefore 60% is too low and 70% too high. About 67% would ensure that everyone's votes are counted equally and would allow every Member to exercise that vote, and that no section of the Assembly, or the community that Members represent, would be excluded from any part of the voting system.

1079. In particularly sensitive votes, such as the establishment of an Executive or the election of a First Minister and Deputy First Minister, the cross-community threshold — the percentage of weighted majority — could be set higher than for other votes. It would therefore be possible to have a structure in which, if people felt that there was need for more cross-community support from Members who would have a particular responsibility, the threshold could be set slightly higher in order to ensure that those Members would feel fully included in the system.

1080. The number of MLAs has been raised and will be discussed later, but if we have 108 MLAs, the Petition of Concern should remain at the threshold of 30 Members.

1081. **The Chairman (Mr Wells):** You are right, Naomi. There is clear overlap between designation and the voting system, so I am happy to allow members to deal with both. I cannot see how we can deal with one and not mention the other.

1082. The Alliance Party has stated its position.

1083. **Mr McFarland:** Designation was brought in because the communities did not trust each other. Have we reached the stage where the communities fully trust each other and that each in turn should have a veto on what goes on? Would changing the percentage to 67% guarantee, in all scenarios, that communities could stop agreement being reached on something that they did not like?

1084. **Mrs Long:** The voting system should not be used by Members to bar something that they did not like: that would be like setting up a series of vetoes for parties, and it would not be a constructive way to move forward in Government. The voting system should protect the rights of minorities to express their views democratically on issues debated in the Chamber and in the Executive. That is not the issue. Building trust and confidence is not enhanced by people having to regress into tribal designations at the very outset. More confidence would be built if people had the freedom to build allegiances across the community, as opposed to along tribal divides. The Alliance Party believes that that would enhance cross-community support and would encourage people to move out of entrenched positions and build across the community. A threshold of 67% would ensure that people's views were properly taken on board and that the issues of minorities were properly dealt with. The Assembly would need a minimum number of unionists or nationalists on board.

10.30 am

1085. You simply could not reach that degree of cross-community consent without the co-operation of unionists and nationalists. Sixty per cent would be too low because it would be feasible to reach agreement without the co-operation of nationalists. Therefore there is an issue around which weighting must be set. In

order to build confidence in particular offices, for example the election of the First Minister and the Deputy First Minister, a higher threshold may be desirable. Members elected to such offices require a higher level of approval and acceptance by the whole community to facilitate them in discharging their duties.

1086. The current system may provide a veto for some parties, but it has not enhanced confidence or co-operation — we are sitting around this table during a suspension of the Assembly.

1087. The argument that a particular system will build confidence is folly, but it is possible to protect minorities and provide safeguards for them. Weighted majority, without designation, provides such safeguards and avoids further entrenching existing division.

1088. **Dr Farren:** We may consider what happens in other Assemblies, but our responsibility is to address the situation that faces us. The evidence is that most people in Northern Ireland regard themselves as either unionist or nationalist, and they use religious affiliation — Catholic and Protestant — as shorthand to describe their identity. Representation in the Assembly has been like that since Northern Ireland was created: it was the cause of its creation in the first place.

1089. However they may be defined and however distasteful others might find it, we have to live with those communities and seek to reconcile each to the other. A clear principle, then, underlies the adoption of designation. Mr McFarland referred to the practical point that each community has to grow and develop confidence and trust across the divide. Members recognise that there are problems with respect to designation, particularly as to the voting system to be adopted and whether designation should be used in perpetuity. Had things worked out otherwise, I would have hoped that, at this point, we might be some way towards changing the form of some of the safeguards for minorities in the Assembly, the Executive and the other institutions. However, we have not been able to achieve that, and we are faced with a task — perhaps all the greater now — of creating trust

and confidence between our “communities”, as they have been traditionally described.

1090. There is a sound principle of building trust and confidence between our communities that applies not just to how we describe our affiliations but how generally we work the institutions of government. However, that is not without its problems in selecting a voting system.

1091. I note that when Naomi talked about weighted majorities, it was essentially with the intent of safeguarding either unionism or nationalism. Therefore in a sense, the same objective was underlined.

1092. **Mrs Long:** Seán has misunderstood my point. The Alliance Party fully recognises the need, in a divided society, to accommodate divisions. However, the party’s main aim is to protect and place on an equal footing those who choose not to be part of that divide.

1093. **Dr Farren:** Naomi will note that I said that I recognise that anomalies and difficulties must be addressed. Therefore the SDLP is prepared to consider voting systems that will ensure that all Members and parties in the Assembly are treated equally and fairly. All parties should set themselves that challenge when exploring alternatives to the current system. However, at this point in time and history, the basic principle of designation is necessary, so we should stick with it. I certainly hope that we can work towards something different and better in the future. The SDLP stands by the principle of designation, although it recognises its operational problems and is prepared to explore options with other parties to see if a different — and perhaps better — means of implementing the principle can be found.

1094. **Mr P Robinson:** The practice of community designation is a Northern Ireland attempt to meet the South African principle of sufficient consensus. Nobody has indicated that we do not want a system that ensures that any decisions taken have the support of the broad swathe of the community, and, as it is a divided community, that the decisions are broadly acceptable to those on both sides of the divide.

1095. The difficulty with the community-designation proposal is that it tends to be divisive; it sets the two communities up as two separate communities at all times. On a practical level, the Assembly voting system is fairly complex. However, I am not sure that the two proposals — weighted majority and community designation — are necessarily mutually exclusive. Two different voting mechanisms flow from the community-designation system to provide that cross-community support. It is clear that a weighted majority, if struck at the right level, will require community support as well. Why should we have alternative systems? Why not have the ability to use whichever system? Thus a proposition would be agreed if it met requirements under the community-designation mechanism or the weighted-majority mechanism.

1096. We must recognise that a section within the Assembly does not designate as either “Unionist” or “Nationalist” and that, to some extent, its vote is excluded — perhaps not excluded, but devalued. An alternative would be the weighted-majority system, which, if set at a particular level, could exclude the DUP. However, that is democracy and that is politics. If that is the direction in which the vote goes, so be it.

1097. However, it would be set at such a level that it would bring both sections of the community — although perhaps not a majority of both sections — along with it.

1098. **The Chairman (Mr Wells):** Regarding the structure for the rest of this meeting, I will be asking the party that feels most strongly about a subject and which required it to be on the list to speak on it. Then members can question that party; when we have finished, the lead party can have its final say and perhaps make a proposal that can be put in the normal way and made subject to consensus.

1099. After Mr Murphy and Mr McNarry, we will return to Mrs Long to summarise, then we will put a proposal to the vote.

1100. **Mr Murphy:** The safeguard mechanisms in the agreement are complicated and the designation mechanism can be blunt. However, they are also necessary, given the experience of

nationalists in institutions such as this and their ongoing experience in some councils across the North. Stringent safeguards and mechanisms to protect rights in this institution were necessary to get people to sign up to the agreement in the first place. We might wish that that were not the case, but the voting and community designation system that was designed to offset abuse or denial of rights of any sector in the Assembly reflects experience. Designation may be a blunt instrument, but Sinn Féin believes that, unfortunately, it continues to be necessary.

1101. One could be flippant and say that because the voting system works through a majority of Members, unionist and nationalist, being present and voting in the Chamber, there are not enough “Others” — if they constituted a majority on their own, they too would have a veto. However, that is the system that we must have. I recognise the difficulty that it creates for those who have not designated as “Nationalist” or “Unionist” and that they feel that their vote is devalued. However, I have not yet heard any alternative proposition, including Naomi’s, which offers the safeguards that we needed to get people to sign up to the agreement. Therefore Sinn Féin is not in favour of any change to the system.

1102. Nevertheless, Sinn Féin is willing to discuss the issue. The Alliance Party put this forward in the review of the Good Friday Agreement that took place some years ago, and there was lengthy discussion on it. Parties were willing to explore the Alliance Party’s alternatives with it. Thus far, however, I have not heard an alternative that provides the requisite safeguards; therefore the present ones cannot be abandoned yet. We are moving on to issues such as voluntary coalitions, but we must recognise that one person’s voluntary coalition is another person’s exclusion. I accept the bluntness of the designation mechanism and the difficulty that it poses for “Others”, and we will continue to discuss alternatives to it. However, only the current safeguards protect the guarantees of the Good Friday Agreement.

1103. **Mr McNarry:** Provided that we are still here and working, there are unlikely to be any

consequential challenges to an Assembly on the constitutional position for the foreseeable future. Unionists have worries about what might happen if there were no Assembly.

1104. The Assembly that we would like to talk about is one that delivers devolved rule in both legislative and administrative forms.

10.45 am

1105. Does Naomi think that there is there any difference between voting on legislative matters and voting on administrative matters? Would both matters need to carry the 67% to which she has referred?

1106. The utopian position would be that we had matured sufficiently — my colleague Alan McFarland mentioned this issue — for there to be a simple-majority vote on most issues. If we are to reduce the level of difference, will Naomi consider whether the Assembly could have a simple-majority vote on this issue and let us get on with it?

1107. **Mr Chairman (Mr Wells):** I will ask Peter to come in briefly, after which, Naomi can sum up her case. We will then proceed to a proposal.

1108. **Mr P Robinson:** I had assumed that, whether we were discussing community-designation voting or weighted majorities, they were introduced only when required by a petition of concern or a statutory obligation. All other votes would be by simple majority. Mr Murphy referred to his experience of abuses of the system. I too have some experience of abuses of the system, when designations were changed fraudulently. A particular Assembly vote could not be carried unless there was a fraudulent change. Does Naomi agree that that type of abuse does nothing to commend the system?

1109. **Mr Chairman (Mr Wells):** Naomi, I suppose your defence is that you were not an MLA at that time.

1110. **Mrs Long:** I do not wish to distance myself, in any way, from decisions that my colleagues have taken. I do not wish to duck the issue, and I will return to it.

1111. A couple of issues have been raised. Seán said that the SDLP would be willing to re-

examine the voting system; that is important. However, he also said that most people are happy to use the shorthand of “Unionist” and “Nationalist” to describe their position in society or the group to which they belong. Most people may be happy, but a recent Northern Ireland Life and Times Survey concluded that up to 14% of people are not happy with those designations. When people refuse to state a designation, civil servants spend much time examining the religion of people’s referees, the sports that people played at school and, indeed, the schools that they attended to try to force people into community boxes when, clearly, those people are not happy to designate themselves. The fact that, by your standards, a minority is a small minority does not lift our responsibility, as elected representatives, to treat those people with equality. The suggestion is that, because most people are happy with the system, the minority who are not happy should accept the inequality.

1112. **Dr Farren:** I do not think that I used a word such as “happy”. It would not occur to me to use that word to describe people’s feelings about our society. The SDLP wants to ensure that parties do not feel excluded and that no attempt is being made to devalue their vote. In the framework laid down by designation, the SDLP is willing to explore ways whereby anomalies could be addressed. It will not be easy to arrive at a satisfactory situation, but we should try to take that small step forward. Community designation is a reflection of, if not the entire reality, a considerable reality. It is the reality on which a large majority of people are represented in the Assembly.

1113. **The Chairman (Mr Wells):** Mrs Long, before you conclude, it would be useful if you were to deal with the issue that Mr Robinson raised about there being three options: a simple majority, a weighted majority, and —

1114. **Mrs Long:** I intend to do that. I am attempting to deal with the issues in the order in which they were raised. I shall not argue about whether the word “happy” was used. I wrote down that word, and Hansard will reflect whether I incorrectly transcribed it.

1115. From our perspective, just because equal voting rights are afforded to those who designate as “Other” in the Chamber, that in no way diminishes the rights that other parties around the table currently enjoy. That is the point that the Alliance Party is trying to make. We understand the current realities of our society; we acutely understand the divisions that exist and the protections that communities wish to have. However, we are not dealing only with the current reality but — we hope — a changing reality, in which people increasingly wish to move away from old divides and form new allegiances with one another in order to move society forward. We must have a voting system that can accommodate that change if we are to encourage such change in wider society.

1116. I do not believe that anyone at this table believes that it would make one less of a unionist or a nationalist if one did not have to write that in a book in the Chamber when one signs the Roll of Membership. This is not a matter of attempting to diminish anyone’s position, but simply of affording equality of representation to everyone around the table.

1117. Peter Robinson raised the idea of a weighted-majority vote being run in parallel with the designation system. We have a fundamental objection to the designation system, but if weighted-majority voting were introduced in tandem with it, that would at least be a step forward, and it would represent progress. Although that would not be our mechanism of choice, it would be preferable to not addressing the issue at all.

1118. We accept that safeguards are necessary, and I entirely accept what Conor Murphy said about the necessity of safeguards in order to get certain parts of our community to buy into the agreement. Our argument is not with safeguards but with their current form, which we believe discriminates against our Members. This is not simply a question of the number of Members that we have, because I accept that, as a party, we can cast only six votes. I do not object to that but to the fact that those votes do not carry the same weight in the Chamber as six Sinn Féin votes or six DUP votes. That is the issue at

stake, not the number of seats that our party holds, which is a matter for the electorate and for our party to address.

1119. When we were discussing that matter, Conor said that the denial of rights of any member of this society would not be acceptable. Surely it can be no more acceptable to Sinn Féin that my rights or Kieran’s rights or any of our colleagues’ rights in the Chamber are in any way more diminished than anyone else’s. That is the point that we are making. We are not arguing that there should be no safeguards but that those safeguards should be designed to protect my rights every bit as much as other MLAs’ rights. That is a fairly simple point.

1120. David McNarry mentioned the difference between legislative and administrative functions. The current position is that, unless there is a petition of concern, a simple-majority vote carries. That should continue to be the case. It is certainly our wish that there should be fewer petitions of concern, because, as business becomes more normalised in our society, they should be less necessary. However, when a petition of concern is laid, there is an opportunity for a weighted-majority vote to ensure cross-community support for whatever measures are under discussion.

1121. As I have already outlined, that weighted majority does not need to be a consistent majority for all types of votes. The particular weights that would apply to particular types of votes — whether they be administrative or legislative, or, indeed, the election of an Executive and a First Minister and a Deputy First Minister — should be set out in the structures beforehand.

1122. It is clear that there is no consensus around the table. Therefore my proposal only exposes that lack of consensus; it does not move the process forward. However, we certainly wish to see the issue of designations and the voting system dealt with in a way that would bring about weighted-majority voting on those matters that require a petition of concern.

1123. We propose that the Committee move to that now. However, we are open to the discussions, to which Seán Farren and Peter

Robinson referred, about how it could be introduced as one of several Assembly voting mechanisms. We are happy to engage in those discussions with other parties in order to further that objective.

1124. **The Chairman (Mr Wells):** Is that a formal proposal?

1125. **Mrs Long:** It is a formal proposal that we change the voting system in the Assembly to weighted majority and that the weighting should be set by further discussion.

1126. **The Chairman (Mr Wells):** Would that replace the present system?

1127. **Mrs Long:** Yes.

1128. **Mr McFarland:** Chairman, we are discussing “Community designation”; we have not reached “Voting system”. Are you taking the two together? I am happy to do so if you are.

1129. **The Chairman (Mr Wells):** I think that we have to, because I cannot see anything new arising when we move on to discuss “Voting system”; we will get exactly the same arguments. There is nothing there that is not relevant to “Community designation”.

1130. **Mr McFarland:** Are we dealing with the topics and ticking them off one by one? Is there consensus to change community designation? My sense is that there probably is not. The question then is: is there consensus that we look at the voting system? You may get consensus if parties are happy to re-examine whether we have weighted majority, etc.

1131. **Mrs Long:** The issue of designation is not simply about people stating whether they are “Nationalist” or “Unionist”; most of us can work that out before people sign a book. The issue is that the voting system should work. The two things are intimately entwined and cannot be separated. That is why I raised the issue of the voting system along with designations, which exist to facilitate the voting system. It would be a pointless exercise unless the voting system actually used the designations.

1132. **Mr P Robinson:** At our last meeting, there was a vision that we kept in mind, which was whether the issues that we were discussing

were of such enormity that they were an obstacle to our agreeing to devolution. Is this issue such an obstacle that Naomi would not agree to devolution taking place if it were not changed?

1133. **Mrs Long:** None of the Alliance Party’s proposals is a precondition for devolution; we are making proposals on the basis that I described last week. There will be issues that some parties feel are a precondition; we do not have such issues at this time.

1134. **Mr P Robinson:** Therefore it is not an obstacle to devolution.

1135. **Mrs Long:** No. However, if devolution were restored, it would be an obstacle to good governance and to the stability of the Assembly. Given recent instability and the frustration of the community at our inability to stabilise the institutions, we believe that these are valid issues to raise.

1136. **Mr Campbell:** Chairman, before we take the proposal from Naomi, I want to try to get my head round this. At the end of the series of issues that we have identified, will we have proposals on which there is consensus? What, in effect, will that mean? If we have two or three issues on which there is consensus — “Community designation” and “Voting system”, for example — and a series of other matters on which there is no consensus, what will we have at the end of our discussions?

1137. **The Chairman (Mr Wells):** We will have a report that will go before the Assembly on 11 September, where it will be noted that the Committee reached agreement on some issues and not on others.

1138. **Mr P Robinson:** Then there might be a need for more than one proposal. Naomi could propose that community designation be scrapped in favour of weighted majority.

1139. **Mrs Long:** Which I have done.

1140. **Mr P Robinson:** Equally, I could propose that I am content with weighted majority as an additional voting mechanism.

1141. **The Chairman (Mr Wells):** I would be happy to take that proposal. As I said, we are not excluding anything. The discussion is

structured this way to give it flow, and that has worked quite well. We can take a vote if any member wishes to do so; if we do not get consensus, I am willing to take another proposal.

11.00 am

1142. **Mr McFarland:** I was very interested in what Peter said at the previous meeting. When our report goes to the Assembly, it could help the parties, when we hold negotiations in the autumn, if we identify the areas that are unlikely to be neuralgic and the areas on which some negotiation will be needed. It will clear the decks and distinguish between the clutter and the serious aspects, and that will be quite useful. It will assess what is a major problem and what is unlikely to be a major problem.

1143. **Ms Lewsley:** I would like some clarification. I assume that Naomi is proposing that we scrap community designations and go for weighted majority. Is she asking us to return to the Chamber and sign the Roll without designating?

1144. Moreover, is Peter Robinson suggesting that we keep community designations but introduce weighted majority, so that we would have both simultaneously? My worry is what the consequences will be if we get the community designations but do not get weighted majority, or vice versa.

1145. **Mr P Robinson:** First, I am content with the Alliance proposal. A weighted majority is a much more understandable system. It is a system that operates in other parts of the world for key votes. For many reasons, it is a more sound system. I made the other proposition because I thought that it was more likely to get a wider degree of support from other parties. However, there would be no difficulty operating it. The Speaker would simply hold a vote. The Speaker could determine from the Members who had voted whether by way of one or both mechanisms the proposition had passed. It is as simple as that. It is a mathematical, computer exercise, which would take no more time than the present arrangements.

1146. **The Chairman (Mr Wells):** We could go down the route of having three proposals: one

from Alliance to remove the designation system completely; one to move to a weighted-majority vote; and the third to have the option of any one of three voting systems.

1147. **Mrs Long:** Mr Chairman, we could not divorce the first proposal from the second. Unless designations are removed and weighted-majority voting introduced, the current voting system will not work. For example, if, by some miracle, the first proposal were agreed and the second were not, the Assembly voting system would be in chaos, because the designations are necessary to operate the system as it is. Our argument is that we should introduce weighted-majority voting, which does not require community designations. That is our principal proposal.

1148. **The Chairman (Mr Wells):** I detect that there is some opposition to that.

1149. **Mrs Long:** I detect that also, but it still remains our position.

1150. **Mr P Robinson:** I want to comment on one or two other issues under the joint heading that we now have. In her presentation, Naomi referred to the time when it is necessary for elected representatives to designate. The argument that it should be done at election time seems to me to be altogether reasonable. If candidates are to take a major decision on what designation will apply to them for all Assembly votes, it might be a tad unreasonable for the community not to be aware of it. Designations should be part of the nominating process, so that people know exactly for whom they are voting. It would also stop abuse of the system whereby people designate as one thing on one day only to change their designations on the next. That is not something that many of us would do, but some Members were prepared to do it before. The public would then have a mandate to vote on that designation as well.

1151. Other issues arise out of the voting system. Although we have a separate heading for it, one issue would be the petition of concern, which is an integral part of the voting system. We start blending together the various headings on the list.

1152. It is a central part of the voting system; indeed, it is an essential part in a community designation or weighted majority system. I presume that there is support for the general principle of a petition of concern. It was referred to, but nobody else mentioned it.

1153. **The Chairman (Mr Wells):** Naomi said that she was happy with the rule that 30 Members' names would be required to trigger a petition of concern.

1154. **Mrs Long:** That is on the assumption of an Assembly of 108 Members.

1155. **Mr P Robinson:** On the assumption that my party continues to have no less than 32 Members, 30 Members seems reasonable.

1156. **Mr McNarry:** Some big assumptions are being made here.

1157. **Mrs Long:** A point was raised about whether candidates should designate when they are nominated for election. That simply further entrenches division. People are aware of the politics of the candidates for whom they vote; therefore the idea that candidates should have to designate before they stand for election is nonsense. Indeed, the names of at least three parties at this table already give an indication of whether they vote "Unionist" or "Nationalist".

1158. Given that some members of Peter Robinson's party went to the electorate under a different party designation but have changed party since the election, it seems ironic that the DUP would press for candidates to declare their stance in advance of an election. I would defend the right of a Member to change parties; I would also defend the right of Members to change designation, if they wished. However, it is not something that my party intends to do in any future Assembly session.

1159. **The Chairman (Mr Wells):** Can we move to the proposals made by Mrs Long and Mr Robinson? I definitely sensed a hint of dissension in the Committee on some of those issues.

1160. **Mr P Robinson:** What finely tuned antennae you have. *[Laughter.]*

1161. **The Chairman (Mr Wells):** We may not get consensus on the proposals anyhow.

1162. First, Mrs Long's proposal was to move to a weighted majority system and remove the present community designation system. We will vote on that. Does everyone support that?

Members indicated dissent.

1163. **The Chairman (Mr Wells):** I see that there is no consensus on that.

1164. **Mr P Robinson:** Do you want to quantify the dissention?

1165. **Mr Murphy:** My earlier remarks made it clear that Sinn Féin was willing to discuss this issue, as we did at length during the review of the Good Friday Agreement when the Alliance Party put forward various propositions. We are happy to discuss this further, following the reinstatement of the institutions, but I do not support a change to the community designation system at this time.

1166. **The Chairman (Mr Wells):** Not that it is needed, but can parties outline their position on this proposal?

1167. **Mr McFarland:** In previous meetings Mr McCrea got slightly fraught that dissention was recorded. However, if there was not consensus, there was not consensus. In fact, most decisions were four votes to one. Mr McCrea quietly objected to votes being recorded. The agreement was that, where there was not consensus from any one party, the proposal fell. We did not vote on whether there was consensus. I do not mind what we do.

1168. **The Chairman (Mr Wells):** If a party wishes to record its view, it should be allowed to do so. Does any party wish to record its view on Mrs Long's proposal formally?

1169. **Mr P Robinson:** We consider that we have done so.

1170. **The Chairman (Mr Wells):** It will be apparent from the text of the Hansard report.

1171. Mr Robinson's proposal was to keep the present community designation and use a weighted majority and the current cross-community voting system. Does anyone have views for or against that?

1172. **Mrs Long:** Given that our proposal was unsuccessful, we see Mr Robinson's proposal as a step forward — albeit a small one — from our perspective. Therefore we welcome the proposal.

1173. **The Chairman (Mr Wells):** Any views against?

1174. **Mr Murphy:** The proposal may need further explanation. Under the current arrangement in the Good Friday Agreement, there are the cross-community consensus and the weighted majority systems. Perhaps there is some difference between Peter Robinson's proposal and the current arrangements. I am not quite so sure.

1175. There are two possible voting mechanisms. One would require a simple majority from the "Nationalists", "Unionists" and "Others" present at the vote; the other would follow the weighted-majority system for which, to achieve an "Aye" vote, 60% of members must vote in favour of the motion, and, of that 60%, at least 40% of "Nationalists" and 40% of "Unionists" must vote in favour of the motion.

1176. Is the suggestion that the designation requirement be scrapped completely, leaving a simple weighted majority, without any reference to the 40%? I would like to be clear that that is the proposition.

1177. **The Chairman (Mr Wells):** It is worth reminding members of the four statutory votes that currently require the cross-community voting system to be triggered. They are the election of the First Minister and the Deputy First Minister; the election of the Speaker and the Deputy Speakers; the vote on the Budget; and a vote when a petition of concern, which must be signed by 30 Members, has been lodged.

1178. **Mr P Robinson:** Our suggestion is for a weighted majority, without reference to designations, but set at a level that would require cross-community support.

1179. **Mr McFarland:** It is worth separating the four statutory votes, because the vote for the First Minister and Deputy First Minister requires a 50:50 outcome, while the other three votes need a 60:40:40 outcome.

1180. **The Chairman (Mr Wells):** That is right. They are different votes, but they still require a mechanism to reflect cross-community support.

1181. **Mr McFarland:** Yes.

1182. **Mr Murphy:** This proposition is to do away with the 40:40 element. The weighted majority in that system is 60%. There is no proposition as to what the weighted majority would be in a new system.

1183. **Mr P Robinson:** We have suggested 70%.

1184. **The Chairman (Mr Wells):** Naomi suggested 67%.

1185. **Mrs Long:** We determined 67% as the level at which cross-community support would be required. It would achieve cross-community support; 67% could not be achieved without cross-community support.

1186. **Mr McFarland:** Would that change if the unionist/nationalist weighting of the Assembly were to change? I presume that the level at which cross-community support would be achieved would fluctuate and would, therefore, have to be changed for each Assembly. It might need to be changed repeatedly, whereas, regardless of the number of "Unionists", "Nationalists" or "Others" in the Assembly, the current system is easily understandable. Logically, if a percentage that would guarantee cross-community support were adopted, each Assembly would have to reassess the necessary level.

1187. **Mrs Long:** Yes.

1188. **The Chairman (Mr Wells):** Such a decision would probably require legislation, or at least a change to Standing Orders.

1189. **Dr Farren:** There should be a mechanism that applies in almost every circumstance.

1190. **Mr P Robinson:** The requirement for 70% would do that.

1191. **Dr Farren:** I am happy to explore the issue in a little bit more detail than it might be possible to do so at the moment. I would not be unhappy if members decided to consider the situation in the context of the review. I am easy enough with either doing that in the next few weeks or after the report has been presented to

the Assembly. However, the issue needs further exploration.

1192. The exploration should be based on the principle that I outlined earlier and on the recognition that there are anomalies and some inequities in the present voting mechanisms that leave parties unhappy and, in a sense, that devalue their votes. To address that, we should commit ourselves to overcoming those difficulties. However, at present, I do not approve of, or support, any of the changes that have been suggested in Committee.

1193. **The Chairman (Mr Wells):** Mr Robinson's proposal has not achieved consensus. However, perhaps it was a bit stark. Can members agree on the suggestion that further consideration be given to a change to the Assembly's voting system? I think that it was a Sinn Féin proposal.

1194. **The Committee Clerk:** It was Seán Farren's.

1195. **The Chairman (Mr Wells):** I am sorry. I noted it as a proposal made by "SF".

1196. **Mr Murphy:** You need to change your designation.

1197. **The Chairman (Mr Wells):** Could everyone sign up to the proposal that further consideration be given to a change to the Assembly voting system?

1198. **Dr Farren:** I am not necessarily committing myself to change. It may be that we have to live with what we have. I am certainly open to exploring the voting systems in order to remove anomalies, but I cannot make an a priori commitment to change.

11.15 am

1199. **Mr McFarland:** The various scenarios have implications for parties: if the Assembly were to be reduced to 90 Members, or to 72 Members, or if the balance between the communities changed. It might be worth parties having a think. We could revisit it in our discussions when we have had more time to study possible outcomes.

1200. **The Chairman (Mr Wells):** The way to square that circle is for the parties to give further consideration to the Assembly voting system.

1201. **Mr McFarland:** Do we lodge that as part of the report and revisit it after examination or do we leave consideration until the autumn? How do we leave it? What goes into the report — is it that the parties are considering the matter or that we will revisit it to come to a decision?

1202. **Mr P Robinson:** There is another alternative. In the two Governments' proposals for a comprehensive agreement, it was proposed that there be a standing institutional review Committee. The matter could be referred to such a Committee — as might several others.

1203. **Mr McFarland:** As we said at the beginning of our discussions, it would be beneficial to sort out the issues that need to be sorted before the Assembly fires up again. Clearly, some issues cannot be sorted out, and they may have to go to a review Committee. However, if there are issues that can be sorted out in time for restoration — and if there are more effective and efficient ways of operating — it would be worth trying to get them into action.

1204. **Mr Campbell:** I took it that the proposal amounted to further consideration of possible changes to the voting system in the Assembly. Is anyone saying that there is not consensus on that?

1205. **The Chairman (Mr Wells):** It is a fairly mild proposal.

1206. **Mr Campbell:** I cannot think of a more vague, indefinite proposal.

1207. **Mr P Robinson:** Does anyone refuse to consider this any further?

1208. **Dr Farren:** I am not saying that.

1209. **Mr Murphy:** Is it also clear that, given the suggestion of a formal mechanism for considering this and other issues after the restoration of the institutions, that this is not considered a blockage to the return of devolution?

1210. **Mrs Long:** I have already set out our position with regard to this being a blockage.

1211. **Mr Murphy:** You have made your case clear. However, should there be consensus to revisit the issue, it might be helpful if there were also consensus that we do not consider it an issue that blocks the return of devolution.

1212. **Mr P Robinson:** It might also be helpful to the Alliance Party if everyone were to say that this matter could be considered by a review Committee.

1213. **Dr Farren:** Including the words “should be considered” would make it a little stronger.

1214. **The Chairman (Mr Wells):** Is that the way forward? Does anyone have any problems with that suggestion?

1215. **Mr McFarland:** What if it were possible to get changes to the Assembly’s voting system decided before the Assembly fires up again so that it could tackle proposals that would make it more efficient and effective straightaway? The issues were identified in the last Assembly, and we examined them in some detail in the review in 2002. We did not take a decision at that stage, but parties were aware that there might be better ways of doing things.

1216. Will it be possible to get a decision on change — if change is the parties’ wish — before the Assembly fires up again? It would make sense to do that, rather than leave a whole swathe of issues to bubble up in the middle of the next Assembly — if there is a next Assembly — because we were still reviewing matters. Some issues will have to be left to a Committee such as Peter suggests. Is this one? Can we deal with it so that it comes into effect when the Assembly fires up again?

1217. **The Chairman (Mr Wells):** There are two suggestions. We can consider the voting system in more detail later in our deliberations; or we can refer it to a review Committee. At this rate we will still be discussing the matter at Christmas.

1218. **Mr Campbell:** Which Christmas?

1219. **The Chairman (Mr Wells):** Exactly. We have spent 45 minutes getting to point 2. We need a quick decision.

1220. **Mr Murphy:** The best-case scenario is that there are issues that we can identify that we can agree on and get out of the way. There are other issues that need further work, but we can agree that they are not a blockage to devolution and, therefore, we do not expect them to be

raised in the autumn as issues that have to be sorted out before we can get the Assembly functioning again. Then there are those issues that people want resolved before the Assembly can function again.

1221. Whatever the chosen mechanism — an institutional review Committee or something else — this issue could be resolved in an agreed format by the Assembly following restoration of devolution, if it is not possible to resolve it now. Equally, it is not a blockage to the return of devolution. It can be referred to whatever mechanism is agreed for resolving this and any other issues that we decide need to be resolved when devolution returns.

1222. **Mrs Long:** The Alliance Party is not saying that this is a barrier to devolution, but it is a destabilising influence on the Assembly. That must be borne in mind. The fact that we are not placing roadblocks in the way of devolution does not mean that we give this any less weight than those who do attach roadblock status to their issues. It needs to be addressed if the Assembly is to be stabilised. It would be preferable if it could be addressed before devolution, as Mr McFarland suggests. If it cannot, devolution can still occur, but the Assembly will not function efficiently.

1223. **The Chairman (Mr Wells):** I will have to call this section of the discussion to a halt. I will put two proposals —

1224. **Mr P Robinson:** Chairman, may I say one thing, because there is a distinction to be made. It would not be unhealthy for the Assembly, on a continuing basis, to look at improving the way it does business. One of the problems with the Belfast Agreement was that everything was permitted to run along and then suddenly there was a review every four years, or whatever it happened to be.

1225. It is better to have a review as part of an ongoing process, rather than happening every four years or after a fixed period. Therefore, there is a need for a standing Committee to look at those issues. If consensus is not reached today, I do not think that it will be reached between now and the restoration of devolution. It is better to identify issues that can be the

business of such a standing Committee, rather than pretend to ourselves that we will return to them when everyone knows that we will not.

1226. **The Chairman (Mr Wells):** That leads on neatly to Dr Farren's proposal that further consideration be given by this Committee to the Assembly voting system, and Mr Robinson's proposal that voting systems should be referred to a review Committee.

1227. **Dr Farren:** I do not want to prolong this discussion, but are the proposals mutually exclusive? If the Committee has the time and the will to do so, there is no reason why we cannot come back to the matter, and if it is not resolved at that point it can be referred to the type of Committee that Peter suggests. Rather than create division, could not the two proposals be melded together?

1228. **The Chairman (Mr Wells):** Are members content that further consideration be given to the Assembly voting system by this Committee and, if consensus is not reached, that the matter should be referred to a review Committee of the Assembly?

Members indicated assent.

1229. **The Chairman (Mr Wells):** Having effectively parked that issue, we move on to "Voluntary Coalition". This featured prominently in the evidence given by the DUP in the question-and-answer session in June, as well as more recently when we were discussing the headings for today's deliberations. I will ask Mr Robinson or Mr Campbell to speak to this issue, and then we will go round the parties as usual.

1230. **Mr P Robinson:** The best kind of Government is one into which all the participants have freely entered because they recognise that those whom they are partnering in Government share basic principles and, therefore, have chosen to work together. It is the system that works in virtually every democratic country in the world; where one party cannot secure sufficient support to be in Government, it seeks a partner. It is a system known to us all. It operates on democratic norms without mandatory requirements and will provide the best form of Government.

1231. In Northern Ireland there will, of necessity, be some stipulations, and that is why the weighted-majority issue has been a requirement. However, whether you have a weighted majority or community designations, a voluntary coalition would be unable to get up and running unless it received wide support. Clearly, it would be a voluntary coalition that would have a cross-community ingredient. If the system of voting is satisfactory, why should it be mandatory? If a voluntary coalition can get the degree of support that the voting system requires, let us remove the mandatory requirement.

1232. **The Chairman (Mr Wells):** Are there any views on that proposal?

1233. **Mrs Long:** The Alliance Party also raised the issue of voluntary coalition in 'Agenda for Democracy'. We raised it for the reasons that Peter Robinson has outlined — it provides for stable governance and provides direction to Government. For Government and the Executive, in particular, to function well, there must be a collective view about the future of the Executive.

1234. Leaving aside the unionist/nationalist divide, there are other divides in our society. For example, it is hard to imagine how conservative, socialist and liberal perspectives could be melded together inside one Executive on all occasions. There is also an inability to negotiate priorities in the same way as there would be in setting up a voluntary coalition in other societies, because the coalition is mandatory and, therefore, people's participation in it is not based on whether they are content with programmes for Government. It is actually done in reverse, and we do not believe that that gives stable guidance.

1235. This impacts on other issues. The Assembly was set up so that everyone could participate in Government. In a healthy society, it is not Government that everyone should participate in, but governance. It is possible to be part of the governance of a country without being in Government. That distinction is unclear in our current structures.

1236. Strong opposition is key to good Government. The current mandatory coalition system does not provide for larger parties to be

represented in opposition. In the current Assembly, a maximum of nine Members do not belong to parties that would be in Government. That does not lead to a healthy opposition, notwithstanding that, as one of those parties, Alliance has challenged on the basis of good opposition. There is a role for strong opposition.

1237. The corollary of having no opposition is that there is little opportunity for the public to change the Government. They can change the internal make-up and complexion of it, in terms of the numbers of seats apportioned to different members of the Executive, but under the current arrangements for mandatory coalition it would be very difficult to have a wholesale change of Government. That could permit stagnation and many other things to creep into Government that would not happen in a voluntary coalition, where there would be negotiated outcomes.

1238. A voluntary coalition allows for good government and strong accountability mechanisms for the public, and it ensures that, ultimately, people have the sanction to change the Government.

11.30 am

1239. **Mr McFarland:** By way of a philosophical question, suppose that, by the autumn, Sinn Féin has passed all the tests that it has been set and that the DUP considers it to be fit for government —

1240. **Mr Murphy:** And is considered fit for government by the UUP too.

1241. **Mr McFarland:** If we got to the stage at which Sinn Féin is acceptable to everyone, would Peter and the DUP be comfortable with Sinn Féin, the Alliance Party, the SDLP and the UUP forming a voluntary coalition that left the DUP out of government? I wonder whether it is acceptable to the DUP that the major party in unionism would be excluded from government.

1242. **The Chairman (Mr Wells):** Would Mr Robinson like to answer that?

1243. **Mr P Robinson:** I thought that I had answered the question before it was asked. During the discussion on weighted majorities, I pointed out that a voluntary coalition could lead

to the Democratic Unionist Party not being in government. That is a fact of life. If the other unionist party wanted to run with the nationalists rather than with its partner in unionism, that would be an obvious outcome.

1244. **The Chairman (Mr Wells):** Are we reaching consensus on a voluntary coalition? I have not heard any opposition.

1245. **Dr Farren:** I indicated my opposition to the idea few minutes ago. As with the previous issue, it is a question of where we would like to be and from where we start in order to get there. Whatever the parties' views on the Good Friday Agreement, I like to think that we all subscribe to the aspiration of creating a society that is "peaceful", "exclusively democratic" and in which the question of greater understanding, respect and reconciliation between our communities is being addressed.

1246. Given the clear and prolonged absence of consensus on the structures of government, we have an overriding responsibility, as political representatives, to ensure that we achieve as much consensus as possible on the new structures. At the end of the day, that is a matter for political judgement.

1247. In the initial stages, a clear degree of support for, and participation in, the institutions is required. The level of participation must reassure all sides of the community that they are represented at the highest levels of decision-making and, therefore, that respect for their identities and aspirations is being fully upheld.

1248. The whole notion of the inclusivity of the Executive flows from that type of thinking. We do not necessarily have to see ourselves wedded to that for ever and a day, but the experience of our recent and not-so-recent history indicates the need for a high level of participation in decision-making by representatives from all sides.

1249. The inclusive formation of an Executive is not quite as mandatory as people tend to represent it: it is represented negatively rather than positively. Parties have the option of not participating. However, the option is there for the parties that qualify on the basis of their mandate to participate and lend support to

building consensus. That is essential in the initial phase, which will be as long or as short as we make it. The greater the degree of consensus, the more fluidity that can be achieved in our political system, and the more rapidly people want to move to different ways of structuring our political system, the better.

1250. With respect to the loss of opposition in the Assembly that an inclusive Executive would seem to suggest, a strong Committee system would be the location for much of the challenge that opposition can provide. People should remember that we are not a sovereign territory; we do not have the same responsibilities or degrees of discretion with respect to a whole range of matters that sovereign parliaments have.

1251. The consensus that is needed here overrides the issues related to left/right politics that apply in other situations. The inclusivity principle is essential to the successful working of the Assembly and other institutions because of the nature of our society and the consensus required for those institutions.

1252. **Mr Murphy:** As with the community-designation system, the safeguards around the ability to participate in Government according to mandate were a necessary part of the agreement. We are not operating under democratic norms in this state, and never have. Therefore safeguards and mechanisms that allow people to participate as of right in the institutions and the Executive are necessary to get past that experience. The right to participate in Government has the potential to form an inclusive Executive that, ultimately, with people working together on issues — and having to work together in order to make it work — leads in the longer term to better working relationships and ways of addressing issues such as reconciliation, trust, confidence, and other issues that people currently find to be blockages to the return of the institutions.

1253. Ironically, the next item on the agenda is the election of the First and Deputy First Ministers.

1254. **The Chairman (Mr Wells):** Correction: it is the Speaker and the Deputy Speaker — a much more important issue.

1255. **Mr Murphy:** I suppose that that should have come before “Voluntary Coalition”. Unless the voting system is changed, the First and Deputy First Ministers require 50% of nationalist votes and 50% of unionist votes, so the only people that would potentially be excluded under a voluntary coalition mechanism would be the smaller parties on each side of the community designation. The votes of the larger parties would be required to elect the First and Deputy First Ministers.

1256. Sinn Féin has never been in favour of excluding parties. Whether we like what parties stand for or not, we have always argued that in the system that we have under the Good Friday Agreement it is their democratic mandate that entitles them to be part of the Government — or not, as the case may be.

1257. We stand by that. We are not in favour of exclusion at local government level, or any other level. We contend that a party’s right to be part of Government, according to its mandate, is a central issue for this institution and for the Good Friday Agreement as a whole. It should be adhered to.

1258. **Mr McNarry:** We should establish that the principle of voluntary coalition should not be an impediment to good government. Many unionists, myself included, are sceptical of an imposed mandatory Government or an agreed voluntary coalition that includes those who have not yet convinced us of their commitment to good government. I wonder whether that brings us to the role of a formal opposition. A significant party may opt for voluntary exclusion. One of the matters that is not covered here is whether a party excluding itself, and playing the role of the official party of opposition, would be formally recognised as such. I do not suggest that such a role would be totally similar to that played by Her Majesty’s Opposition. Colleagues may have a view on that or wish to consider it either now or later.

1259. **The Chairman (Mr Wells):** Is there any reaction to that?

1260. **Mr P Robinson:** Dr Farren and Mr McNarry have both misunderstood. This is a mandatory coalition. Neither Sinn Féin nor the

DUP can choose to be in opposition. If they so chose, there would be gridlock. Both would have a veto under the voting mechanisms that we have talked about. It is not a matter of choosing to be in opposition. It is a requirement to be in government. It is a mandatory system. That answers Mr McNarry's point.

1261. **Mr McNarry:** That applies only where a party finds itself in the position currently occupied by Sinn Féin or the DUP.

1262. **Mr P Robinson:** Yes.

1263. **Mr McNarry:** It does not apply to a party such as my own.

1264. **Mr P Robinson:** And?

1265. **Mr McNarry:** There is no formal provision for such a party to exclude itself from Executive positions.

1266. **Mr P Robinson:** There is. You do not nominate anyone.

1267. **Mr McNarry:** I accept that. I do not want to get into technicalities. There would then be no formal recognition that an opposition could be posted in the Assembly.

1268. **The Chairman (Mr Wells):** Any other views on that? Again, I detect opposition to this proposal. All the parties have stated their positions, which are in Hansard.

1269. **Dr Farren:** What is the proposal?

1270. **The Chairman (Mr Wells):** The proposal is that the Executive should be formed by voluntary coalition. That is Mr Robinson's view, and it is supported by Mrs Long.

1271. **Mrs Long:** Mr Murphy referred to voluntary coalition as a mechanism for the exclusion of parties. The Alliance Party has never viewed it in that way. It has always been viewed in the context of inclusive governance, where parties actively participate in governance through the mechanism of opposition. That is a role that the Alliance Party does not diminish in any way, as it is a role that my party has fulfilled. It is an important role in government.

1272. It has never been about including or excluding any specific party. That is not where

we are coming from. It is a suggested way to have stability and good governance.

1273. **Mr P Robinson:** It also comes from a peculiar view of democracy. There seems to be a view that a vote at an election entitles one to a share in government. That flows from what Dr Farren said. One can support institutions without being in government. I support the institution at Westminster, but I am not in the Government.

1274. One does not have to be in government to support the institutions; therefore inclusive government is not a requirement. It is the politicians whom people most trust who form a government, and they are required to meet a certain standard — the rest are in opposition. That is the best way of keeping government on its toes. It allows continual scrutiny of what government is doing and continuing examination and questioning of what Ministers are up to. That is the stuff of democracy, and it is a most certain way of ensuring that there is no abuse in the system.

11.45 am

1275. Mr Chairman, you look as if you are dying to say something.

1276. **The Chairman (Mr Wells):** I am. The Committee has received an encyclical from Hansard. Once again, somebody in this room has kept their mobile phone on, and it is causing problems with the recording system. We recently lost a complete section of the Hansard report because somebody had left their phone on. Please turn them off completely; they cannot even be left on silent mode to receive messages. We just cannot afford to lose this important material.

1277. I am sorry, Mr Robinson, for interrupting you.

1278. **Mr P Robinson:** I am not guilty on that score; I turn my phone off.

1279. I would not like anybody to miss my comments in the Hansard report, so I hope that whoever has left their phone on will turn it off now rather than wait until I have finished.

1280. Collective responsibility is also one of the imperatives of government. It is nonsense for

one Government Minister to oppose what another Government Minister has brought before the Assembly. That is absurd, and it would not happen under a voluntary coalition. A Minister who moved away from the collective decision of the Executive would be fired.

1281. We must also look beyond the immediate. The best that can be said of the arguments that have been presented against a voluntary coalition is that some special, peculiar and immediate need must be addressed because we are a divided society, full of instability and distrust. The argument is that that necessitates an inclusive and mandatory form of government. If that is accepted, the next question is bound to be: will that be the position for ever? A voluntary coalition, however, allows a cross-community system, and it allows us to grow into the norms of democracy and to establish a normal democratic society in Northern Ireland. On the other hand, if we become entrenched in a mandatory system, moving to the next stage means stopping, wrecking what we have, and creating something else.

1282. **The Chairman (Mr Wells):** I will ask Gregory Campbell to speak, followed by Alan McFarland. Rather than simply go round and round, I will then see whether the Committee can reach consensus.

1283. **Mr Campbell:** I will be brief, Chairman.

1284. The concept of voluntary coalition, like many concepts in Northern Ireland, suffers as a result of being viewed in completely different ways by those who are either in favour of it — as the DUP is — or those who totally oppose it. The purpose of a voluntary coalition is to ensure that there is not an implacable veto on establishing a government. The DUP believes that the formation of a government should not be prevented because one party is inextricably linked to criminality, gangsterism, terror, the importation of guns, and punishment beatings. Government should not be held up because of that, irrespective of the size of the mandate of those who advocate that type of activity, and, in some cases, take part in it.

1285. That is how the DUP views voluntary coalition. Others claim that a voluntary

coalition will circumvent the need for support across the community — which is why we had a discussion about the voting system and community designation. Peter outlined the issues regarding mandatory coalition. We must grasp the nettle and establish a system that allows government to function. Just as others have talked of their background and their history of resentment about how institutions were governed in the past, some of us remember how systems were run in the more recent past.

1286. We want to arrive at some form of voluntary coalition — some system of government — that is not held, almost literally, to ransom by one party that will not budge and that says that there will be no Government without its endorsement. We need a device to ensure that if the operation and interaction of one party is unacceptable, the system of government can nevertheless get up and running and will not grind to a complete halt due to the position that that party adopts.

1287. **Mr McFarland:** In a normal society, Governments operate by voluntary coalition. If a party can form a government, it does so; if it cannot, it joins with others to form it. However, the Belfast Agreement is, rightly or wrongly, the template that we are discussing. The Prime Minister said so, so we are discussing how we can modify and improve it. The Belfast Agreement does not cite a voluntary coalition but a mandatory coalition.

1288. Earlier, the Committee heard from the SDLP, which made it quite clear —
[*Interruption.*]

1289. **The Chairman (Mr Wells):** Do you wish to take a point of information?

1290. **Mr McFarland:** Yes.

1291. **Mr P Robinson:** For goodness' sake, that is a crazy argument. Is Alan saying that we should not consider the Belfast Agreement because it does not mention a voluntary coalition? The Belfast Agreement does not and will not include any of the other changes that we want either. Is he saying that we should not look at making changes because they are not in the Belfast Agreement?

1292. **Mr McFarland:** No. As Peter said earlier, we are here to modify and improve the Belfast Agreement.

1293. **Mr P Robinson:** I do not think that I said that.

1294. **Mr McFarland:** The SDLP made it clear earlier in Committee that it is not prepared to enter into a voluntary coalition. It is an aspiration for us all for when society here allows everyone to be comfortable with discussing their politics and trying to form a Government with those of a like mind. The political reality is that we are not currently at that point.

1295. The SDLP has made it clear that it will not exclude Sinn Féin and go into government with the rest of us. That is the only voluntary coalition that is likely to happen, for the reasons that Gregory has just outlined. The DUP finds Sinn Féin not to be acceptable. The only other cross-community way in which the DUP could go into government is with the SDLP; and the SDLP said on the Hansard record at the beginning of the proceedings that it will not do that. However aspirational it may be at the moment, it is not achievable. We would like to see it happen down the line, but it will not happen immediately.

1296. **The Chairman (Mr Wells):** Of course, the eloquence of the DUP is such that it could persuade the SDLP.

1297. **Mr McFarland:** Absolutely.

1298. **Mr McGlone:** Or vice versa.

1299. **Mr P Robinson:** Or something else might persuade the SDLP. I have had private meetings with the SDLP in which it was nuanced, somewhat. It was not saying that there were no circumstances in which it would participate in a voluntary coalition. If, for instance, the IRA were to take off on a terrorist campaign akin to that in 1972, would the SDLP really hold out for Sinn Féin to be in government?

1300. **Dr Farren:** Let us deal with the realities that face us rather than get into hypothetical discussions.

1301. **Mr P Robinson:** That indicates that there are circumstances in which it would be possible.

1302. **Dr Farren:** Many things are possible if the premise upon which we are working is changed. However, we are not changing it; the premise is the premise.

1303. **Mr P Robinson:** Others could change the premise.

1304. **The Chairman (Mr Wells):** The proposal is that the Executive should be formed by voluntary coalition. Do we have consensus?

Members indicated dissent.

1305. **The Chairman (Mr Wells):** We do not have consensus; one if not two groups are opposed to it.

1306. The next issue — a very important one — is that of the election of Speaker and Deputy Speaker.

1307. **Mr Campbell:** Jim, that is twice that you have described that as important business.

1308. **The Chairman (Mr Wells):** This is a big issue.

1309. **Ms Lewsley:** A declaration of interest? *[Laughter.]*

1310. **Mr P Robinson:** As a first question, do we need Deputy Speakers?

1311. **Ms Lewsley:** And if so, how many?

1312. **The Chairman (Mr Wells):** They are absolutely essential.

1313. As members know, the election of Speaker and Deputy Speaker is an issue that requires a cross-community vote. That has not occurred in the Assembly, because both Speakers were —

1314. **Mr P Robinson:** Imposed.

1315. **The Chairman (Mr Wells):** They were arrived at by other means. We have had elections for the Deputy Speakers when three of them were elected in 2000.

1316. Several parties, including the DUP, flagged up that issue. It has not featured prominently in cross-examinations. Does any party feel that the issue (a) poses an impediment to devolution or (b) should be dealt with after devolution?

1317. **Mr P Robinson:** Some of us resent the fact that the Secretary of State appoints the Speaker and the Deputy Speakers. The Assembly should elect its Speaker and Deputy Speakers, whatever voting system is used.

1318. **The Chairman (Mr Wells):** Are members content that the Speaker and the Deputy Speakers be elected by a cross-community vote?

Members indicated assent.

1319. **The Chairman (Mr Wells):** There seem to be no burning issues about this topic.

1320. **Mr McFarland:** May I raise an issue for further discussion? Who holds the Speaker to account? During the Assembly's first mandate, questions were asked about the absolute power of the Speaker, with the Speaker having a budget and the Assembly having no input into what it thought the Speaker should be doing. Is there an issue about the Assembly's ability to advise, influence or control the Speaker?

1321. **The Chairman (Mr Wells):** I clearly remember the day when a motion of no confidence was brought against the Speaker, and Jane Morrice had to take over the Chair. That mechanism exists, as do the Assembly Commission and the Business Committee, both of which the Speaker chairs. Should the Assembly have more control over the Speaker's activities?

1322. **Mr McFarland:** Ministers must agree a Programme for Government, and so forth, with the Executive. Committees and other areas of the Assembly have oversight mechanisms. During the first mandate, there was no oversight mechanism, and the Speaker could not be challenged, other than by tabling a motion of no confidence, which is fairly high on the seriousness scale.

1323. **Mr P Robinson:** That is the mechanism, and it is also the mechanism that is used elsewhere. Under the Northern Ireland Act 1998, there are several circumstances under which a Speaker can be replaced, one of which is that the Assembly can elect a member to hold the position of Speaker. What decisions does the Speaker take beyond his or her judgement in the

Chair during debates? The Speaker is subject to controls on every other issue: he or she is under audit controls; he or she is in the Chair at meetings of the Assembly Commission, but only members of the Commission can vote. Where are the dangers in the system?

1324. **Mr McFarland:** Peter sat on the Shadow Assembly Commission, and, at that time, members commented on the jaunts around the world and the amount of money that was being spent. It may well be that the auditors audited the books, but my understanding is that the Speaker had a budget, and he could decide when and where he went, and what he said about the Assembly. There was no mechanism in place to report back on what he had been doing and why he was doing it. It seemed to be outside the Assembly's control.

1325. **Mr P Robinson:** Surely the Commission should have controlled that.

1326. **Ms Lewsley:** Or the Assembly.

1327. **Mr McCarthy:** The past Speaker, the present Speaker and the Deputy Speakers have been people of the highest integrity. There is no problem. They have conducted their business impeccably.

1328. **Mr P Robinson:** He really could not say anything else, could he?

1329. **Mr McCarthy:** Absolutely not.

1330. **Ms Lewsley:** Surely the Speaker is ultimately accountable to the Assembly? Any questions about inappropriate action could be raised in the Chamber.

12.00 noon

1331. **Mr P Robinson:** On spending matters, the Speaker is accountable to the Assembly Commission, which holds the voting power to take decisions. As regards adjudicating in the Assembly, the Speaker is ultimately subject to the will of the Assembly.

1332. **The Chairman (Mr Wells):** This does not seem to be a burning issue. Is the Committee content with the present arrangements in Standing Orders for the election of the Speaker and Deputy Speakers?

Members indicated assent.

1333. **Dr Farren:** If we could just agree the nomination.

1334. **Mr Campbell:** That is a slightly different matter. *[Laughter.]*

1335. **The Chairman (Mr Wells):** The next issue is perhaps slightly more complex: the election of the First Minister and the Deputy First Minister, which several parties, including the DUP, have raised as an issue of concern. This matter brings us back to the earlier discussion about designations, voting systems and so on. Does any member wish to lead the discussion by outlining what they feel is unsatisfactory with the present arrangement?

1336. **Mr P Robinson:** If you want the get the row going, I will start. If there is a mandatory system, with the resultant requirement to ensure automaticity in everything, then why have an element that is subject to something other than a mandatory system? Ministers are automatically nominated by a process, but, from somewhere out of the blue, having recognised that there is a need for a mandatory form of Government, people say that the First Minister and the Deputy First Minister should be elected via a different process. There is a nonsense in that contradiction.

1337. If anyone has looked at the difficulty that we had in trying to agree a Speaker, or the difficulties that we had in trying to determine who should chair meetings of this very Committee, they will know the difficulties that there would be in reaching agreement on a First Minister and a Deputy First Minister. On that basis, why put measures into place that will cause, at least, an obstacle, if not gridlock, and why not continue with an automatic system such as the one for Ministers? That is the obvious way forward. Many mechanisms could be used to do that, but I have explained the principle behind our position.

1338. **Mr McFarland:** The essence of the agreement was that parties were pushed, so to speak, into sorting themselves out. The essence of the office of First Minister and Deputy First Minister, which is clear right the way through

the legislation, is that it is a joint post, and that the Assembly votes for the pair. Members may not like the people concerned, but the posts are voted for as an entity because the office operates as an entity. It does not operate as two separate entities — there is no separate First Minister or Deputy First Minister. The office comprises both the First Minister and the Deputy First Minister.

1339. If we are to completely move away from that situation and have a separate Prime Minister and a Deputy Prime Minister, then that is a different matter. However, in the comprehensive agreement, as I understood it, the DUP and Sinn Féin accepted that the office was joint — that is what it says in the agreement — but there was an attempt to have the election of that joint office done separately. Why was that? Why would we wish to do that?

1340. One interesting thing about electing the office jointly is that unionists, nationalists and republicans have a veto over who their First Minister or Deputy First Minister will be. If they are not happy with the person nominated, they can refuse to vote. The process continues until such times as a pair that is acceptable is voted into office. If we get to a stage where the DUP accepts Sinn Féin as partners for Government — the only scenario in which this becomes relevant — it could be that the DUP will find Martin McGuinness unacceptable.

1341. Under the current system, the DUP could ask Sinn Féin to reconsider its nomination if it were not happy to have Martin McGuinness as Deputy First Minister. It could ask Sinn Féin to put forward Conor Murphy, for example, if it felt it could vote for that option. Similarly, Sinn Féin could be neuralgic about Rev Ian Paisley as First Minister and could ask for someone else to be nominated. Therefore there is a degree of cross-community say in who is nominated.

1342. In the comprehensive agreement, it looks as though the DUP was unhappy about public perception if it had to vote for Martin McGuinness. They came up with a cunning system in which unionists could vote for unionists and nationalists for nationalists, so that they would not have to stand up in public

with dirty hands, having voted for Martin McGuinness. How would that operate in a joint-office situation as the two people nominated to those posts must operate jointly? That seems to be a bit of a smokescreen in order to avoid voting for the opposition. There was another strange system suggested in which the Ministers all went out, and there was a wrap-up vote.

1343. The difficulty with the comprehensive agreement, which was negotiated by the DUP and Sinn Féin, was that if the SDLP and the Ulster Unionists did not support the candidates for First Minister and Deputy First Minister, they would be excluded from government for the entire life of that Assembly, leaving the DUP and Sinn Féin in government together. As I understand it, it is the DUP's worst nightmare to be left in government with Sinn Féin and with no other cover. Therefore the system negotiated in the comprehensive agreement, and which was within a hair's breadth of implementation in December 2004, seems slightly daft, and negotiated for all the wrong reasons.

1344. **Mrs Long:** We are not exercised about the decoupling of the First Minister and the Deputy First Minister — having them coupled did not show that they had a good working relationship. However, we do believe, having lost the argument this morning on voluntary coalition, that we should now examine how to increase coherence and collectivity in the mandatory coalition. We want to move from a situation in which there is power dividing among parties in the Executive to one in which there is power sharing. At the bare minimum, that requires all members of the Executive to be willing to support the collective responsibility of the Executive and to recognise all other participants as equal members. At the sharp end, that requires parties to recognise those who are sharing power with them in that Executive and, indeed, in the Office of the First Minister and the Deputy First Minister. It should be part of a collective vote in the Assembly to approve the First Minister and Deputy First Minister. We would prefer to see that vote coupled, because it would enhance collectivity.

1345. We realise that a vote will not make people work together, but it would indicate a willingness to take the first steps towards working together. If people are not willing, at a bare minimum, to endorse other peoples' positions in the Government, yet will go into government with those same people, there is something inherently unstable about that. Our argument is that there should, therefore, be a collective vote on electing the First Minister and Deputy First Minister. The office should remain coupled in the way that it is at present.

1346. **Mr McNarry:** The discussion so far says to me that we need to redefine the role of the Office of the First Minister and the Deputy First Minister (OFMDFM). My experience in the First Minister's Office told me that "jointery" between the Ulster Unionists and the SDLP simply did not work. I cannot recollect that I could compile a list of great successes. With regard to redefinition, it was inappropriate that, apart from other duties of little consequence, the First Minister and the Deputy First Minister had — and the Civil Service and the back-up team wanted to prove "jointery" more than anyone else — responsibility for community relations.

1347. Consultation documents came out of that office as if paper had just been invented and was something novel to play with. In effect, nothing of any substance or benefit to the community came out of it. The First Minister and the Deputy First Minister spent their time fire-fighting community disputes. I thought that it was menial that the two titular representatives of the Government of Northern Ireland — and I am not belittling community relations as a departmental issue; it is very important — had that responsibility but could not make a decision between them.

1348. The First Minister — and what is the point in calling him that if that is not what he is? — could say or do nothing without the approval of the deputy. In one instance, the First Minister could not visit a Protestant area, because the Deputy First Minister would not go with him. The First Minister was told that he could not and must not go — it was not "jointery". One would have thought that the

relationship between the two parties at that time and the personnel involved would have been pretty amenable to sorting things out. Given who we might have as First Minister and Deputy First Minister, I see a crazy situation arising; obstinacy would kick in, and that would be that.

1349. There is an interpretation of the working of this office in which “jointery” is key. If asked, the last First Minister would not agree that he operated a joint office, and that is the problem: the First Minister is the First Minister, and the deputy is deputy. The First Minister should always have a deputy, but it might be better if he or she chose the person rather than have the crazy “jointery” with which the office is bedevilled. Unless we agree and recognise that, we are going nowhere. We need to redefine the workings of that office.

1350. **Mr Campbell:** My contribution is a variation on what David said. It is clear that, under the old system, the Office of the First Minister and the Deputy First Minister was not just about the establishment of a Department. It was also about the perception of the “representatives” of the two communities and of the two largest parties acting in unison, and that gave out a particular message, whether said or unsaid. It was said many times, and left unsaid some times, but that was how it was perceived. Its practicalities under the old system were as David McNarry said.

1351. My party knows less about it than David does, but if that was the case under the old system, will anybody claim that under any new system such a projection would be anything other than a pretence? Any system that we agree must acknowledge and allow for the difficulties of the past; it must be sufficiently fluid and flexible to permit Government to continue and to permit the First Minister and the Deputy First Minister to be elected. It must not perpetuate the urban myth that this is a joint office with the two Ministers acting only after prior consultation and agreement with each other with neither able to do anything without the consent of the other. Either we accept that that did not work or we do not, and most people accept that it did not.

12.15 pm

1352. **The Chairman (Mr Wells):** Mr McNarry has provoked much interest. Mrs Long, Dr Farren, Alan McFarland, Peter Robinson and Mr Murphy wish to speak. As there is quite a lot of debate forthcoming, members will please try to keep it as snappy as possible.

1353. **Mrs Long:** The issues concerning the functions of the Office of the First Minister and the Deputy First Minister need to be resolved later. This debate is specifically about how that office is elected. The Alliance Party has some firm proposals as to how the office should be shaped. We oppose Members simply being put into those positions — particularly such responsible positions within the Executive — on the basis of simple mandatory coalition rules, where Members are placed in positions and that is the end of the line. There should be a joint election for the posts of First Minister and Deputy First Minister, in the context of the Executive also being subject to an Assembly vote to endorse it. It is important that that should take place.

1354. The DUP has said that it would not be in favour of a joint election of First Minister and Deputy First Minister. The position between that and simply adopting a mandatory template is to choose a First Minister and a Deputy First Minister, fill the remaining Executive posts and endorse them on the Floor of the Assembly. Is the DUP suggesting that position, or does it propose that those posts should simply be filled on a mandatory basis with no endorsement from the Assembly?

1355. **The Chairman (Mr Wells):** The DUP can either interject with a point of information or wait until its next turn.

1356. **Mr P Robinson:** I have other things to say, so I will take Mrs Long’s views on board as well.

1357. **Dr Farren:** Experience has much to teach us in this matter as in others. I am not sure that all the bedevilment of the Office of the First Minister and the Deputy First Minister that has been mentioned can be attributed to the joint nature of the office. Indeed, it is a challenge to the principle on which the joint nature of the

office is based. I also recognise that we can point to anomalies, as Peter has done, in respect of the operation of the election of Ministers under the mandatory principle.

1358. Let us look at what we expect of the First Minister and the Deputy First Minister and why we would have two such Ministers on a coequal basis. In a sense, it comes back to the underlying objective of what we are trying to achieve: reconciliation; respect; and co-operation between our communities.

1359. The Office of the First Minister and the Deputy First Minister is not, therefore, a functional set of responsibilities for each office-holder, whereby business of the Executive is managed. However, there is a clear representative function on behalf of the Assembly as a whole and, indeed, on behalf of the entire enterprise — the people of Northern Ireland. Therefore, for the Assembly to jointly elect both posts goes some way to endorsing that particular representative responsibility, in that representatives of each community have confidence in the Minister from the opposite community who holds one or other of the two offices.

1360. There is no doubt that, if two people and two parties are involved, more than two parties will be involved in any decision-making process. Before we get too tied up with the problems that arose in the past and directly attribute them to the joint nature of the office, we should recognise that reaching a decision in this case will necessarily be a little more complex and lengthy than if there were only one person and one party.

1361. The most efficient form of Government might well be one that is run by a dictator, who simply tells the rest of us what to do. However, when parties and their representatives are involved in the decision-making process, we must accept that there will be some inherent complexities and, if nothing else, delays in the way in which decisions are reached. That is part and parcel of that type of process. Indeed, in this society, it is probably an essential part of building consensus and ensuring that reconciliation will flow from that consensus.

1362. Therefore, before we rush to address the practical difficulties, let us not lose sight of the underlying principles that have informed some of the procedures adopted in the Good Friday Agreement. I have some fairly close experience of the way in which things operated. Decisions were reached, meetings were held under joint chairmanship, and the process of government was conducted in such a way that gave at least the prospect of matters improving. However difficult, complex, tedious and lengthy some of those procedures and processes, we must weigh them against our ultimate goal.

1363. **The Chairman (Mr Wells):** Gentlemen, ladies, it is 12.21 pm, and the food is about to arrive. I am looking for your guidance.

1364. **Mr Campbell:** The food wins the vote, Chairman.

1365. **Dr Farren:** On this one.

1366. **The Chairman (Mr Wells):** The next members to speak will be Alan McFarland, followed by Peter Robinson. Are members happy to break for lunch now, or would they rather conclude the meeting first?

1367. **Dr Farren:** How long will it take to finish the meeting?

1368. **The Chairman (Mr Wells):** At the rate we are going, we will be having food in about two hours' time.

1369. **Dr Farren:** Let us have the food. It will be sustenance for the battle that lies ahead.

1370. **The Chairman (Mr Wells):** We will take a 15-minute break.

The Committee was suspended at 12.23 pm.

On resuming —

12.47 pm

1371. **The Chairman (Mr Wells):** The Clerks arranged a very pleasant lunch. If that trend continues, it will be very welcome.

1372. We broke after Dr Farren's contribution; Mr McFarland is next, followed by Mr Robinson and Mr Murphy. After that we want to move quickly on to the next topic.

1373. **Mr McFarland:** The joint nature of the Office of the First Minister and the Deputy First Minister (OFMDFM) was a core safeguard in the agreement. David McNarry has highlighted various problems. There were major problems with the personalities involved in the first Assembly. That does not mean that the actual joint nature was wrong; rather, it did not work particularly well because those involved were, shall we say, not comfortable with each other.

1374. Many issues were assigned to that office that perhaps should not have been. There are issues that are outside the office, but that might reasonably be put in. There is a whole discussion to be had about what OFMDFM as a Department should contain. There is also an issue about the oversight of that Department, but it is hard to see how we can move away from the essential safeguard of the joint nature of the office. It is not ideal — in many ways it is far from ideal — but it was put there because the communities did not trust each other to operate independently.

1375. It is difficult to see how one could interfere with the joint nature of the office, which is in the legislation, without having a complete renegotiation of the entire agreement. I do not think anyone is suggesting that; it would take years. The chances of us getting agreement on anything similar ever again are nil, I should think.

1376. **Mr P Robinson:** I have a slight distaste for people who put forward propositions without explaining how they are so. How is it a "core safeguard"? What is it safeguarding? What does one method of electing a First Minister and a Deputy First Minister safeguard over another? You still end up with a First

Minister and a Deputy First Minister. There is no safeguard within the election.

1377. **Mr McFarland:** I think that Peter has misunderstood. I have moved on to the essence of the Department. I agree that we should go back to the issue of elections. My comments were in relation to the essence of the Office of the First Minister and the Deputy First Minister and the joint nature of it; they were not specifically to do with the voting mechanism for it, which I covered earlier.

1378. **Mr P Robinson:** I agree with David McNarry. He has identified something that is not on our agenda: the role of the First Minister and the Deputy First Minister. When there was a First Minister and a Deputy First Minister, I was startled to see that they felt that they had to go about hand in hand and even go to the toilet together. It seems absurd that there could not be a sensible division of the workload and still have it considered to be a joint office. That should be done.

1379. We do not expect the two of them to stand up and answer questions by chanting the same answer at the same time, so they do not have to do everything together at the same time. The Office of the First Minister and the Deputy First Minister has a joint responsibility rather than the two Ministers being expected to do everything jointly together.

1380. Therefore it would be worth having the role of the First Minister and the Deputy First Minister as an item on the agenda.

1381. **The Chairman (Mr Wells):** The functions of OFMDFM are included under "Efficiency/Effectiveness", and they would be better discussed under that heading.

1382. **Mr P Robinson:** I will perhaps return to it when we are discussing that heading.

1383. **The Chairman (Mr Wells):** We are currently discussing the mechanism for electing the First Minister and the Deputy First Minister.

1384. **Mr P Robinson:** The definitions of the functions are distinct from how those functions are exercised, and David McNarry's point was about how the functions are being exercised.

Therefore as long as you are happy to add “the exercise of those functions” we can deal with this point under “Efficiency/Effectiveness”. I am not sure that it is a matter of efficiency, but it is certainly a matter of effectiveness.

1385. I will deal with the principle of the election of the First Minister and Deputy First Minister and its practice. With regard to the principle, I would contend that no violence is being done to the institutions by the mechanism that is used for the election, and no underlying principle is harmed by having it elected in a different way.

1386. Someone asked how the elections would be carried out. The most obvious way is to use the same kind of format that exists for the election of Ministers. Therefore the nominating officer from the largest party in the largest designation will make the appointment of the First Minister and the nominating officer for the largest party in the second largest designation will make the nomination for the Deputy First Minister. Just as there is no requirement for a vote to elect Ministers under the existing practice, so it would be for the First Minister, the Deputy First Minister and other Ministers.

1387. The SDLP and the Ulster Unionists protested about the fact that if they did not vote for the ministerial state, at the end of the day they would be excluded from Government. They did not explain to me how they felt it would be proper for them to be a part of an Executive that they were not prepared to vote for. If they answered that for me, they would probably give me a stick to beat them with where the First Minister and the Deputy First Minister are concerned.

1388. If they were willing to serve in an Executive with those who have been nominated by other nominating officers, I cannot understand why they would not be prepared to vote collectively for that Executive. If, however, that is the case, they add to the argument that there should be no similar requirement in respect of the appointment of the First Minister and the Deputy First Minister.

1389. I now turn to the practice of this election. The DUP preferred a voluntary coalition; in that

way you can choose whom to take along with you. If we do not have that system, why should one be asked to vote for people whom one did not choose to be in Government? It is as simple as that. If members want a mandatory system, let it be a mandatory system; if they want a voluntary system, let it be a voluntary system; but let us have consistency in one or the other. That is the principal argument. Just as this Committee was deadlocked in its decision to elect a Chairman, MLAs will be deadlocked if they have that requirement for a future Assembly. Is that really what members want?

1390. **Mr Murphy:** There are two discussions: one is on the mechanism for electing the First Minister and the Deputy First Minister, and the other is on the operation of that office. The previous incumbents did not operate as well as they could have, but they managed to agree to limit the scope of the scrutiny function of the Committee of the Centre. They also agreed to take matters that related to the Strategic Investment Board into the Office of the First Minister and the Deputy First Minister. They found agreement on issues that the rest of us had difficulties with, but that is not an argument for changing the current mechanism.

1391. There are anomalies in the Good Friday Agreement. The issue of electing the First Minister and the Deputy First Minister was meant to have symbolic significance, but the operation of that office by the former First Minister and Deputy First Minister did not lend itself to that. Nonetheless, Sinn Féin does not believe that there is an argument to change that now. We advocate that it stays as it is, under the Good Friday Agreement.

1392. Alan McFarland mentioned ideas that had been put forward by the two Governments in the latter half of 2004. Sinn Féin has made it clear time and again that any proposals that were considered at that time were in the context of the situation that pertained at that time. We also made it clear that our approach to matters involving the Executive or the First Minister and the Deputy First Minister was one of inclusivity and of locking people into the Executive; it was not about locking anyone out

of the Executive. Sinn Féin is unique among all the parties in that it has no history of the practice of exclusionist politics.

1393. On the election of the First Minister and the Deputy First Minister, we advocate sticking with the Good Friday Agreement as it is.

1394. **Mrs Long:** The Alliance Party has stated its position on a voluntary coalition. However, if we were to have a mandatory coalition, our argument would be different to that of the DUP. We would try to amend that coalition to increase and enhance the amount of collaboration and collectivity within it, rather than diminishing those on the basis that if it is mandatory, let it simply be mandatory and nothing more. The Alliance Party would like that collective role and nature to be enhanced.

1395. The Alliance Party proposed that the Executive should be subject to a vote of support in the House, and that Members who enter into a mandatory coalition could choose to absent themselves from nominating to ministerial posts if they are unhappy with the make-up of the mandatory coalition. However, if Members are going to nominate to that coalition, it is important that they at least acknowledge that other Members have a right to be at the table with them.

1396. The DUP seems to prefer not to have a joint election for the posts of the First Minister and the Deputy First Minister. Is the DUP therefore willing to vote for them as a collective with the rest of the Executive or is it simply a matter that that would be mandatory and nothing more?

1397. **Mr P Robinson:** The terms of the proposal are what would matter. The terms of the proposal that we agreed to vote for in December 2004 were that those who are nominated would be in the Executive. That is slightly different.

1398. **The Chairman (Mr Wells):** Everyone has had adequate opportunity for discussion. There seem to be two proposals: one from Mr Robinson and one from Mrs Long. I shall put the first to members. Mr Robinson proposes that the positions of First Minister and Deputy First

Minister be filled by separate nominations. The largest party would nominate to the post of First Minister, and the second largest party would nominate to the post of Deputy First Minister.

1.00 pm

1399. **Mr P Robinson:** No, that is incorrect. The largest party would nominate to the post of First Minister, and because the two largest parties may be from the same designation, the larger party from the second largest designation would nominate to the post of Deputy First Minister.

1400. **The Chairman (Mr Wells):** Yes, sorry, I get your point. The proposal, therefore, ends with the second largest designation nominating to the Deputy First Minister post. Do we have agreement on that?

Members indicated dissent.

1401. **The Chairman (Mr Wells):** As there is no agreement, that proposal falls.

1402. **Mr P Robinson:** I assure you, Mr Chairman, that it does not fall.

1403. **The Chairman (Mr Wells):** It falls as far as getting the agreement of this Committee is concerned. It will arise again in future discussions.

1404. **Mr P Robinson:** May I identify that as an issue that must be resolved?

1405. **The Chairman (Mr Wells):** OK.

1406. Mrs Long's proposal is that the election of the First Minister and the Deputy First Minister be the subject of a collective vote in the Assembly.

1407. **Mr McFarland:** That is the current position.

1408. **Mrs Long:** No, I raised two issues. The Alliance Party's preference is for the First Minister and Deputy First Minister to be elected with a collective vote, which is the current situation. However, we recognise that at least one party has significant issues with that, and we wish to seek a compromise that does not diminish the collectivity of that joint office, but increases the collectivity of the entire Executive. Therefore the Alliance Party's proposal is that

the entire Executive, including the First Minister and the Deputy First Minister, should be endorsed by a vote in the Assembly.

1409. **The Chairman (Mr Wells):** In that case, “the entire Executive” must be added to your proposal.

1410. **Mr Murphy:** The election of the Executive is included in the next item on the agenda.

1411. **The Chairman (Mr Wells):** How should we deal with this?

1412. **Mrs Long:** I am indifferent as to how we deal with it.

1413. **The Chairman (Mr Wells):** Is it still a proposal?

1414. **Mrs Long:** If it would be better to consider the proposal under the next point, I am happy to defer it until then.

1415. **The Chairman (Mr Wells):** Thank you.

1416. We move on to the next item, which is the approval of the First Minister and the Deputy First Minister and the Executive. Clearly, there is a high degree of overlap between this discussion and the one we have just had, so we do not wish to rehearse all those points again. Does anyone from the DUP wish to say anything? Other parties raised this issue, but the DUP made the lengthiest submission.

1417. **Mr P Robinson:** We have dealt with at least part of this point, and my comments referred to the approval of the First Minister and the Deputy First Minister and the Executive. There can be no argument for requiring the approval of the nominations for the First Minister and the Deputy First Minister but not of the Executive. That seems to be a point made by both the Ulster Unionists and the SDLP.

1418. **The Chairman (Mr Wells):** Is there any reaction to that?

1419. **Mr McFarland:** I want to clarify whether the vote on the nominations to the Executive would be cross community. Presumably it would be.

1420. Secondly, what would happen if the cross-community vote were to go against the

nominations? Technically, a particular party or designation may be unhappy with one Minister only. What mechanism would there be to tell the party that nominated the so-called objectionable Minister that its nomination had been rejected and that to get approval for that position, it might have to nominate again? What would be the consequential outflow of a vote against the collective Executive? The vote may have been against one Minister, two Ministers or whatever, but how could that problem be identified?

1421. **Mr P Robinson:** There is a further issue: are we saying that we would operate a system in which a nominating officer could be overruled?

1422. **Mr McFarland:** The current system for electing the First Minister and Deputy First Minister is that a nominating officer can be overruled in the Assembly by a party of another tradition saying that it is not happy.

1423. **Mr P Robinson:** There is no nominating officer for the election of First Minister and Deputy First Minister.

1424. **Mr McFarland:** The Assembly can express a view on the election of First Minister and Deputy First Minister and it does not matter who the nominating officer has put forward. The Assembly can tell the nominating officer that it is not happy with the nomination, and to think again.

1425. Effectively, there is a nominating officer: the largest party puts forward person A to represent its party, and the other tradition puts forward person B to represent it. They are nominated but not by a nominating officer — although presumably they are nominated within their party.

1426. The Assembly does not have the ability to say that it is not happy with the ministerial choice.

1427. **Mr P Robinson:** It could have.

1428. **Mr McFarland:** Yes, but how could that be identified? Everybody could be happy with nine of the 10 Ministers, but how could the Assembly identify the Minister that one or more parties, of whatever tradition, are not happy with, and tell the party concerned to think again.

1429. **Mr P Robinson:** Presumably a party would say whom it is opposed to. What happens after the Assembly has identified that person, or persons?

1430. **Mr McFarland:** There would be a debate.

1431. **Mr P Robinson:** You want the nominating officer to change the nomination.

1432. **Mr McFarland:** There is no point in voting if the Assembly does not have that option.

1433. **Mr P Robinson:** Absolutely. There must be consistency one way or the other. Either the Assembly has the right to choose its First Minister and Deputy First Minister and its Ministers, or it is mandatory throughout.

1434. **Mr McFarland:** But you are choosing your First Minister and Deputy First Minister with the current system.

1435. **Mr P Robinson:** You are. I am proposing something different.

1436. **Mr McFarland:** Chairman, the First Minister and the Deputy First Minister share joint office and they are voted for jointly. The Assembly can say that it is not happy with that pair being in the lead. That is the choice at the moment. It has been suggested that there should be a vote for the Ministers as well. However, Peter Robinson seems to be saying that even if the Assembly says that it is not happy with those Ministers, it cannot gainsay the nominating officer of a particular party by saying that the Assembly may not be happy with that Minister. What is the point of having a vote if the Assembly cannot influence the choice, and how does the Assembly identify whether it is a particular Minister that the Assembly is not happy with, or whether the Assembly is not happy with five of the Ministers?

1437. **The Chairman (Mr Wells):** Presumably there would be a debate.

1438. **Mr McFarland:** That was my question. There should be a debate after the nominations, in which case, Members could say who they like or dislike, and have a vote. What would

that achieve if you were gainsaying the nominating officer?

1439. **Mr P Robinson:** That is why it should be either mandatory or voluntary, throughout the system. Mr McFarland seems to think that because the Belfast Agreement says that this is a joint office and they must be elected jointly, that that is it. I do not accept that. I accept that it should be the same system for the election of First Minister and Deputy First Minister as it is for the Ministers.

1440. **Mr McFarland:** Chairman, we have a system — *[Interruption.]*

1441. **Mr P Robinson:** We do not have a system. We have deadlock at the moment.

1442. **Mr McFarland:** A system is laid down in law, and the only way to get away from that — in theory — is by some sort of consensus that we need to move away from it. We are trying to work out the blockages that people have problems with, and whether there is any consensus to sort them out or not. Sinn Féin is deemed to be acceptable in Government, but we will not progress unless those problems can be sorted out and there is consensus.

1443. I am not trying to argue, I am just trying to tease out the position on the various proposals, and the consequences of those proposals. If a vote were taken in the Assembly on the election of Ministers, could the Assembly do anything if a party refused to re-nominate? How could we identify which Minister the Assembly is not happy with? I am speaking to the people who proposed the system.

1444. **The Chairman (Mr Wells):** Dr Farren and Ms Lewsley have been waiting a long time.

1445. **Dr Farren:** I am interested in whether Peter will answer those questions.

1446. **Mr P Robinson:** My proposition is that nominating officers should nominate for all positions, including First Minister and Deputy First Minister.

1447. **Dr Farren:** We have little of substance to add. I have outlined reasons why the process of nominating the First Minister and the Deputy First Minister should remain the same. If we

move to a situation where nominating officers nominate Ministers from the parties entitled to hold office, I am unsure as to what purpose a vote after that would serve. If there were a negative outcome, the only way of disapproving of the nomination of one Minister would be to disapprove of them all, identify during the debate the identity of the Minister in questions and hope that the nominating officer would act accordingly. However, I cannot imagine that any nominating officer would.

1448. The alternative might be for a party so minded to enter a vote of no confidence naming a particular Minister. Again, that would not have the intended effect. Disapproval of a Minister would have to achieve a level of cross-community support for it to have any impact.

1449. **Ms Lewsley:** With respect to the collective voting of Ministers, it would be hard to identify which Minister is disapproved of, unless he or she is named in a vote of no confidence, which Seán mentioned. My concern is that it would descend into a personality contest. If parties enter an Executive in good faith, how can one party say that it does not accept a nomination from another? Parties will make recommendations for their own reasons. It is unreasonable for a party to claim that it does not agree with another's nomination because they believe that that person is unsuitable for the job.

1450. **Mrs Long:** This discussion highlights the specific problems of trying to achieve inclusivity and collectivity within a mandatory coalition system. The vote to endorse the Executive ought to reinforce its collectivity, but it is being viewed as a means of pillorying individual Ministers. That is not the context in which such a vote should take place. However, that says something about the attitude of parties around the table in that they will see that vote as an opportunity to attack Ministers from other parties.

1451. Bearing in mind that those Ministers and their colleagues will serve in the same Executive as members from other parties, it seems ludicrous for members of the same Government to attack its Ministers. When

Minister publicly turns on Minister, it is a sign of a failing Government.

1452. This discussion highlights that establishing a sense of collective responsibility in the Executive at the outset is critical to its functioning. The election of Ministers to the Executive should not be a mechanism of declaring no confidence in an individual, but a mechanism by which a party recognises that other parties have the same rights and responsibilities to nominate the appropriate Ministers from within their party teams. It is not about simply about picking and choosing other parties' nominations, but about reflecting the fact that a party accepts the right of other parties to make those choices and accepts that they are part of a collective.

1453. There was a strange situation in the last Assembly where Members were Ministers, but not members of the Executive. That is not a recipe for good governance, and it certainly does not enhance collectivity within the Executive or create stability. It would be better if Members endorsed the notion of the Executive. Peter Robinson used a form of words by which nominations would be accepted. That might be a lowest common denominator, but it would be better than no endorsement whatsoever, which would suggest that parties have not bought into the idea that, once in the Executive, they are part of the same Government.

1454. **The Chairman (Mr Wells):** No one else has indicated a wish to speak. I have a proposal from Naomi, although I am open to others. The proposal says that the entire Executive, including the First Minister and the Deputy First Minister, should be subject to a collective vote in the Assembly. That is obviously a combination of earlier proposals. Are there any other proposals?

1.15 pm

1455. **Mr P Robinson:** I want to ensure that everyone understands the process. My argument was that the nominating officers should nominate a First Minister and a Deputy First Minister in the way in which I outlined, and there would be no vote. Ministers would then be nominated by parties' nominating officers, as was the practice. Collectively, all the Ministers would make up a team, and, as proposed in the

comprehensive agreement, the proposal that Ministers A, B, C, and so forth, would form the Northern Ireland Executive would be put to the Assembly. Therefore, the requirement is clearly an acceptance — as opposed to a desire — that those Members will be in the Executive. It gives, at least, a higher degree of approval for their work than has been the case heretofore.

1456. **Mr McGimpsey:** In the first mandate, the First Minister and the Deputy First Minister were not elected on the same day on which the rest of the Executive were appointed, and they were subject to different mandates. The First Minister and the Deputy First Minister are elected under the principle of parallel consent and the rest of the Executive are appointed under d'Hondt. If both the First Minister and the Deputy First Minister and the Executive are to be elected at the same time, how will those mandates be changed? It seems much more sensible to keep the election of the First Minister and the Deputy First Minister separate, and, once they are in place and the Assembly has consented to and approved the individuals concerned, they will form a Government, albeit a mandatory coalition formed under d'Hondt.

1457. **Mr Murphy:** Following on from what Michael McGimpsey has said, and this is an issue that the DUP has raised on several occasions, it is up to the First Minister and the Deputy First Minister to decide on the number of Departments. If all were elected on the one slate, it strikes me that that would end that debate. Nonetheless, we are content with the system as it currently stands under the terms of the Good Friday Agreement.

1458. **The Chairman (Mr Wells):** I think that our lunch has slowed us down.

1459. Having listened to what the DUP delegation has said, I believe that we have another proposal. Mrs Long's proposal is that the entire Executive, including the First Minister and the Deputy First Minister, should be subject to a collective vote in the Assembly. Have we consensus on that?

1460. **Mr McFarland:** What are the implications of a "No" vote on that?

1461. **Mr P Robinson:** The same as they are for the election of a First Minister and a Deputy First Minister — deadlock.

1462. **Mrs Long:** Whatever the mechanism, parties can contrive a deadlock if they are intent on doing so.

1463. **Mr McGimpsey:** Is Mrs Long talking about parallel consent?

1464. **Mrs Long:** If the composition of an Executive is endorsed after a vote in the Assembly, that, as far as the public is concerned, at least shows a willingness to work together in the Executive. It also sets down a marker for parties in that they have recognised other Members' right to participate fully in the Executive.

1465. **Mr McFarland:** First, is Naomi saying that the First Minister and the Deputy First Minister and the Executive should all be voted for together, as Peter has suggested?

1466. Secondly, should the vote be subject to the principle of parallel consent or 60:40:40?

1467. **Mrs Long:** First, I will reinforce the Alliance Party's stated position. The party's preference would be for the First Minister and the Deputy First Minister to be jointly elected in a separate vote. However, it is clear that there is no consensus on that proposal. My new proposal accommodates those who do not wish to have a separate vote on the election of the First Minister and the Deputy First Minister. At the same time, the proposal enhances Executive collectivity in general. The party believes, on principle, that progress must be made on that issue.

1468. It is not that we are unwilling to see a First Minister and a Deputy First Minister elected; we have made our position clear on that. The DUP in particular is not content with that position. We are saying that there is a way of ensuring that the First Minister and the Deputy First Minister are elected and that collectivity in the Executive is simultaneously enhanced by putting the entire team to a vote.

1469. **Mr McFarland:** By parallel consent?

1470. **Mrs Long:** That would not be our choice. Weighted majority would be our preference, but

I imagine that it would be at least a cross-community vote.

1471. **Mr McFarland:** What does the law say on this? I understand that the law is specific on the roles and functions of the First Minister and the Deputy First Minister and the order in which all this takes place.

1472. **Mrs Long:** If we are here to discuss how the Assembly will function, discussing the laws that surround the framework of previous Assemblies is not necessarily useful.

1473. **Mr P Robinson:** We are talking about how to change the law.

1474. **Mrs Long:** The law is a moveable feast; it can be changed if necessary to accommodate any agreement that might be reached around the table. The issue is not whether the law permits it, but whether we agree it.

1475. **Mr McGimpsey:** Yes, but it is better to do it within the existing framework if we can. Otherwise we will need agreement around the table on every jot and tittle.

1476. **The Chairman (Mr Wells):** Members, there is a slight addition to Mrs Long's proposal that a vote in the Assembly should be cross-community. We have looked at this from every angle.

1477. **Mr McFarland:** Parallel consent, is that right?

1478. **The Chairman (Mr Wells):** No, cross-community vote.

1479. **Mrs Long:** My proposal is for a cross-community vote, the definition of which has already been discussed.

1480. **Mr McFarland:** Therefore we are dropping the requirement for the First Minister and the Deputy First Minister under 50:50.

1481. **Mrs Long:** Yes. That is what the proposal involves.

1482. **The Chairman (Mr Wells):** To reiterate, the entire Executive, including the First Minister and the Deputy First Minister, should be subject to a collective vote in the Assembly by a cross-community vote. Do we have consensus on that?

Members indicated dissent.

1483. **The Chairman (Mr Wells):** The proposal falls.

1484. I detect a proposal from the DUP, stating that the nominating officers should nominate the First Minister and the Deputy First Minister and the other Ministers, and that nominations to the Executive should be put to the Assembly for the vote. It does not say what type of vote. Perhaps we should beef that up a bit; I am summarising from the various contributions.

1485. **Mr P Robinson:** Having the nominating officers nominate the First Minister and the Deputy First Minister and the Ministers is the way forward. If we want to get more collectivity, we can make it subject to a cross-community vote in the Assembly.

1486. **Mr Murphy:** Is that the same proposal that we just discussed?

1487. **The Chairman (Mr Wells):** What is the difference between that proposal and Mrs Long's?

1488. **Ms Lewsley:** None. Except that Mr Robinson was saying that the First Minister and the Deputy First Minister would be nominated, then a team of Ministers would be nominated and voted on collectively; whereas Mrs Long proposed that the First Minister and the Deputy First Minister and all the Ministers would be voted in and on collectively.

1489. **Mr P Robinson:** I understood Naomi's proposal as almost two separate votes in the Assembly, one for the First Minister and the Deputy First Minister —

1490. **Mrs Long:** No. That would be our preferred option, but my proposal was specifically to accommodate those who did not want —

1491. **Mr P Robinson:** Chairman, you were wrong in assuming that there was another proposal.

1492. **The Chairman (Mr Wells):** There seems to be little or no difference between the two, so it is not worth putting it to a vote.

1493. We will move on to the other issues: proportionality, petitions of concern, the Assembly referring to the Executive, etc.

1494. Proportionality was listed as a concern by the DUP. However, we could not tease out what was behind that issue.

1495. **Mr P Robinson:** I do not think that it was put forward as a concern. At one stage we needed to go through all the facets of the structures and institutions, agreeing on some and not on others. It was not being raised as a concern; it was being put forward as one of the elements of the institutions.

1496. **Mr McFarland:** Can you refresh us about what it is?

1497. **Mr P Robinson:** We are talking about the proportionality representation on Committees, etc.

1498. **Mr McFarland:** Do you mean d'Hondt?

1499. **Mr P Robinson:** At present it is d'Hondt.

1500. **The Chairman (Mr Wells):** We do not need to dwell on that issue.

1501. **Mrs Long:** In previous discussions the SDLP has said that, rather than run d'Hondt separately for ministerial posts, for Committee Chairs and so forth, it should be run just once. That would be a good thing. Our problem is not with proportionality itself, but with the d'Hondt mechanism. The fewer the number of posts, the larger the number of groups and the larger the disparity between the groups, the less proportional d'Hondt becomes and the more anomalies that are possible. That will be an issue during the discussions about the number of ministerial positions and Departments, because fewer Departments means less reflection of proportionality. Is the SDLP still of a mind to look at that issue under the heading of "Proportionality"?

1502. **The Chairman (Mr Wells):** Are you suggesting that d'Hondt become a very long process, starting at the top with the Executive and going all the way down to the last Committee position?

1503. **Mrs Long:** Yes.

1504. **Mr McFarland:** All the big parties would get completely disenfranchised on the Committees.

1505. **Mrs Long:** That is not, of course, the case.

1506. **The Chairman (Mr Wells):** We have a heading "Formation of Committees".

1507. **Mrs Long:** It was not my proposal; I was simply asking the question of the SDLP.

1508. **Mr P Robinson:** Surely we are mixing jelly beans with liquorice allsorts.

1509. **Mrs Long:** Given that the SDLP raised the issue in earlier discussions about proportionality, I was simply asking for its views. Is that not the point of holding these meetings — to ask questions?

1510. **The Chairman (Mr Wells):** "Formation of Committees" is a separate heading under "Committee System", and we can address the issue of proportionality when we get to that.

1511. **Dr Farren:** I would not want Naomi to be held in suspension until then. *[Laughter.]*

1512. The SDLP suggested that the clock should not be restarted after d'Hondt is run to form an Executive; that would lead to a more proportionate and representative allocation of positions. In practical terms, we would want to examine in further detail how far the clock should continue to run. The principle that proportionality should be operated in that way should be considered.

1513. **Mrs Long:** To restate our position, we would prefer to see the formation of an Executive, and elections to other positions, being conducted through an STV ballot of Members, rather than simply by running the d'Hondt formula. I do not expect that to become a proposal, nor do I expect it to get consensus, but that is my party's position.

1514. **The Chairman (Mr Wells):** In the absence of any motions, we have consensus to move on to the next item, "Petitions of concern". A petition of concern must be signed by at least 30 Members, and it triggers a cross-community vote. This issue has featured in many submissions, although I do not detect much concern about the actual mechanism. Does any member wish to raise concerns? Petitions of concern have been used on seven or eight occasions that I can recall, including the famous "Easter lilies" debate.

1515. **Mr P Robinson:** If ever there was a safeguard in the system, this is it.

1516. **Mr Campbell:** The only concern was that the petition of concern would be dropped.

1517. **The Chairman (Mr Wells):** Are members content with the petition of concern as it stands?

Members indicated assent.

1518. **The Chairman (Mr Wells):** Everyone wants to retain the petition of concern. We have consensus, and we are on a roll.

1519. This is a slightly more controversial issue: a proposal for an Assembly referral to the Executive. Again, this is an issue that the DUP has raised.

1.30 pm

1520. **Mr P Robinson:** This matter is relevant in the context of a wider discussion about the accountability of the Executive and of Ministers. However, it is only one element of that wider issue. At our last meeting, David McNarry mentioned that powers were devolved by legislation to the Departments, as opposed to the Assembly. That meant that the Assembly does not have control over business — it does not have the final say. Individual Ministers have that final say. Therefore, the question is: who is accountable, and to whom?

1521. The mechanism of which this is a part is intended to introduce some accountability into the system. Our proposal allows the Assembly to refer matters with which it is not content to the Executive. Obviously, our preference is that power should be devolved to the Assembly, which ultimately could decide against or in favour of a Minister's proposal.

1522. If power rests with the Assembly, this proposal becomes irrelevant. However, if power rests with a collective Executive, this measure is a safeguard that allows the Assembly to keep batting a matter back to the Executive for whatever number of times we allow. If power is to rest with Ministers, we shall not have any accountability.

1523. **The Chairman (Mr Wells):** This and the next two issues for discussion — the statutory

recognition of the supremacy of the Assembly, and the power to reverse ministerial decisions in certain circumstances — strike me as having such a degree of overlap that it would be best to discuss all three matters at once. There is bound to be overlap, and a single debate would neatly finish off this section. The entire relationship between the Assembly and the Executive, and the control thereof, is the issue here.

1524. **Mr McFarland:** The question of where power resides concerns fundamental issues of law that are quite complicated. Without a detailed legal study it is hard to say whether that can be solved. The other two issues are potentially solvable among the parties. The idea of referring topics back to the Executive seems to be quite healthy. The question, I suppose, is whether one needs cross-community support before one can refer a matter back to the Executive. Under the comprehensive agreement proposals, the Assembly could have sent a matter back twice. The difficulty was that even if the Assembly disagreed with something it still did not have any power, other than referring it back twice, to actually do anything about it. Therefore, the question is whether the Assembly should have the ability to gainsay the Executive and the Ministers. It is also tied in with the reversal issue.

1525. Technically, the issue should never arise. Logically, Ministers should confirm their position with their own parties, and there would be no one in the Assembly to vote. However, members will vividly recall the GP fundholding vote, when the Assembly put back fundholding for a year under Minister de Brún. I am not sure whether there were any other instances where the Assembly rebelled against what the Executive had collectively agreed.

1526. There are times when that tension is extremely healthy, but how far do we go? Do we simply allow for the embarrassment of referring a matter back to the Executive twice to lead to an outcome? Alternatively, do we agree that if a matter is returned three times, the Assembly's writ runs?

1527. **The Chairman (Mr Wells):** It strikes me that this debate will go nowhere if one party

says that the Executive must be supreme in every instance. If parties believe that the Executive must have complete control, we shall not make much progress on the other issues. It is important to see where the various parties stand on this crucial issue. I shall ask Naomi Long and then the other two parties to let us know where they stand on this matter.

1528. **Mrs Long:** Our position is that, in certain circumstances, which should be very tightly defined, the Assembly needs to have the power to negate a ministerial decision on the basis of a cross-community vote. That is distinct from ministerial decisions that require cross-community support to pass. We have detailed proposals on this, and we would be happy to circulate them, if that would be helpful.

1529. Our proposal is that if someone were to put forward such a motion, it would have to be signed by at least 20 other Assembly Members in order to reach the stage where the Speaker would judge whether it was competent — given the rules that would have to be set up to strictly limit the degree to which that could happen — or whether it was vexatious. Once it had been agreed as competent, it would be debated. If there were a cross-community vote in favour of negating the Minister's decision, the motion would come back to the point at which no decision had been taken. That is our proposal for accountability between Ministers and the Assembly.

1530. Of more importance, however, is the issue of collectivity within the Executive. It is clear that at different points during the last Assembly, all members of the Executive were not supportive of individual ministerial decisions. We do not want to set up a series of vetoes, whereby Ministers would be hampered in the conduct of their duties. We want to see some form of enhanced collectivity within the Executive. Again, we envisage a mechanism for a Minister to be called to the Executive to debate a particular issue if it were judged to be contentious by a number of his or her Executive colleagues.

1531. We can submit more detailed proposals on that, but we believe that the Assembly should have the right to negate a decision in certain circumstances.

1532. **Dr Farren:** This is a complex issue, and I am not sure whether, in the course of what will be a fairly cursory discussion, we will be able to make all the necessary distinctions to arrive at a consensus. If we consider practice elsewhere, we can take the maxim of the Mother of all Parliaments that Parliament is supreme. However, the exercise of ministerial responsibility is not so circumscribed to the point where every decision that a Minister makes is subject to the approval or otherwise of that Parliament. We have to recognise some distinctions, among which would be ministerial decisions made in the context of the Executive responsibility that Ministers have, so that there is not the potential for gridlock to be created by the decisions that they take.

1533. In one sense you can say yes to the principle of the Assembly's being supreme in a democracy. However, we must consider carefully the distinctions that must be made between the kinds of ministerial decisions that are to be subject to the ongoing approval of the Assembly. Although we do not want to inhibit the smooth operation of government, we must recognise that MLAs have the right to challenge, question and, indeed, where appropriate, express their disapproval or, if necessary, approval of what has been said.

1534. At this point, I am not so aware of the fine distinctions that need to be made and I recognise that we may have to revisit the issue. Is it an issue, in the way that the question has been posed previously, that is regarded by any one party as a block to restoration?

1535. **Mr P Robinson:** Yes, it is, because it goes to the heart of accountability.

1536. It appears to me that what is being said does not move that far away from the proposals contained in the Governments' comprehensive agreement. First, they did not go for 20 — and I can see why Naomi might go for 20 — they went for the standard 30, which is the trigger mechanism for the petition of concern. That stops it from being used for some vexatious challenge made for some simple local reason and ensures that a significant body of people

will use it for what they believe to be a matter of importance.

1537. The Speaker would then have to subject the request to a test to ensure that it is important — the fact that a Minister wants to change to orange street lights may not be considered to be as important as some other issues. If the Speaker decides that it is an important matter, it would then be subject to a debate and a decision by the Assembly on whether it is referred back or not. There would be that criterion of importance, and it would be put into the impartial hands of the Speaker to decide on a non-party basis.

1538. **Mr Murphy:** Also, there was a stipulation in that set of proposals that a matter could only be sent back once. It could not be sent back again by the Assembly. I do not think it is simply a matter of whether the Executive or the Assembly is supreme. There can be sensible discussion on enhancing the accountability of Ministers to the Assembly, and that discussion, I suppose, does cut into the one about placing the ministerial code on a statutory basis. These are things that parties can reach agreement on. Sinn Féin does not consider those issues as a block to re-establishing the institutions. They are important matters. It is simply a matter of finding ways in which Ministers can rightly do their business and the Assembly can feel that it has proper accountability mechanisms in place.

1539. It is very rare that a significant decision does not require legislation, which means that a Minister has to bring legislative proposals to the Assembly. There is scope for discussing accountability mechanisms and trying to get the proper balance between getting the Assembly's business done and the Assembly's role vis-à-vis Ministers. It is not simply a matter of whether one or other is supreme; it is a matter of getting the balance right, and that is something that the parties could discuss in even more detail than we are able to here. It is something that I can foresee agreement on.

1540. **The Chairman (Mr Wells):** That was useful because no one has ruled out some form of control over the Executive by the Assembly, albeit that some wish for a stronger mechanism

than others. I am just going to read the three tentative proposals that are before us at the moment. From the DUP:

“There should be a mechanism for the Assembly to refer ministerial decisions to the Executive for consideration.”

1541. **Mr P Robinson:** Let us be clear: the DUP says:

“In the absence of the Assembly having overall authority...”

1542. which is our preference.

1543. **The Chairman (Mr Wells):** OK. From Naomi Long:

“The Assembly should have power on a cross-community vote to negate a ministerial decision.”

1544. **Mrs Long:** Under certain specific controls. It would obviously not be unfettered. Unlike Peter Robinson, I can foresee a situation in which 30 people wished to be vexatious.

1545. **Mr P Robinson:** There could be issues concerning schools or hospitals, and you could get the lower figure quite easily because many people would think that such issues were important. It is a matter of the degree of support that there would be.

1546. **The Chairman (Mr Wells):** And then from Seán:

“Further consideration should be given by the Committee to the mechanisms of accountability between the Assembly and the Executive.”

1547. That strikes me perhaps as being at the lower end of the scale. Those are the three proposals. Do members wish to start at the bottom and work their way up, as it were? How do you wish to deal with it? It is quite clear that there is some agreement that a mechanism is needed; it is just a matter of degree.

1548. **Mrs Long:** I raised an issue about accountability within the Executive, which is pretty important, because a lack of accountability in the Executive often results in issues reaching the Chamber. As regards the DUP's proposal to refer a matter back to the

Executive, what mechanism is there to deal with that at Executive level?

1.45 pm

1549. **The Chairman (Mr Wells):** Far be it from me to cut you short, but “Executive” is a separate heading. We will consider that as a separate issue.

1550. **Mrs Long:** My question is pertinent because I want an explanation. If, for example, the Assembly chose to refer something back to the Executive, what powers would the Executive have over an individual ministerial decision? In the previous Executive, that power was very limited.

1551. **Mr P Robinson:** That is the reason why I would prefer that power to be vested in the Assembly, rather than the Executive. As I indicated, that is only one element of accountability.

1552. Let us be clear: Executives will never be perfect; they will make mistakes and ignore issues because of time pressures or whatever. If the Assembly identifies an issue that should have been dealt with differently or with a greater degree of urgency, the Assembly can send it back to the Executive, which would have an opportunity to reflect on its previous decision. The Executive would also be able to take into account the weight of opinion and the nuances raised during an Assembly debate on the issue.

1553. My proposal gives the Executive a second chance, as it were. It is a poor alternative to the Assembly having the authority.

1554. **Mrs Long:** That proposal is not mutually exclusive with my proposal, whereby a decision could be sent back to the Executive for further consideration. The Assembly could even choose to negate a decision. The two proposals are not mutually exclusive in that sense.

1555. **Mr P Robinson:** I prefer the proposal to allow a decision to be negated, because that gets back to Assembly authority.

1556. **The Chairman (Mr Wells):** We must do what we did previously, in that where

agreement is reached on a set of proposals, they are combined.

1557. **Dr Farren:** We will not reach consensus on either the DUP or Alliance proposals, and perhaps we will not reach consensus on my proposal. However, the argument in favour of my proposal is that it subsumes the other two proposals, in a sense, and does not exclude them from the discussion that we would commit to undertake. To shortcut the discussion, we could vote on my proposal. Obviously, if there is no consensus, there will be no consensus on any of the proposals.

1558. **The Chairman (Mr Wells):** We will move up the ladder to see which proposal achieves the greatest degree of consensus.

1559. The SDLP proposal is that the Committee should give further consideration to a mechanism of accountability between the Assembly and the Executive. Do we have consensus?

1560. **Mr P Robinson:** That proposal is too limited for us to approve. This is a key issue of accountability that must be dealt with; further consideration is simply not sufficient. We require that that matter be resolved.

1561. **Dr Farren:** With respect, that is your position.

1562. **Mr P Robinson:** I can only give my position.

1563. **Dr Farren:** I know that. That will be made clear in our further discussions.

1564. **Mr McNarry:** I am not taking a position on the proposal. However, with all due respect, it seems that there is a move from the other side of the table to move these issues along. We are trying to produce a report. My concern is that, if we continue on this basis, our report will state that we want further discussion on almost every issue. I understand why that position is being adopted, but could we revisit some issues? Accountability is important.

1565. **Dr Farren:** That is what I am saying.

1566. **Mr McNarry:** We could come back to those issues in order to fulfil our obligations to produce a report in a more definitive way. What

Seán is saying, with all due respect, is that the report will say that the Committee was unable to agree so many items in the time allotted. It should be borne in mind that the report will be put before the Assembly to debate, and it is hoped that there will be an outcome from that. I do not want the Committee to produce a report with so many ifs.

1567. **Mr McFarland:** Can I just find out —

1568. **Dr Farren:** Given that the question was directed at me, can I reply?

1569. **The Chairman (Mr Wells):** Let Seán answer the question.

1570. **Dr Farren:** I have made it clear that I have never viewed the report that the Committee hopes to present on 11 September as a final report in which all the issues have been wrapped up. Last week, I think that it was agreed that the Committee might have made only a modest achievement by then, whereby parties —

1571. **Mr McNarry:** Consensus is a matter at which the Committee arrives. However, if the Committee's failure to reach consensus is simply because it cannot achieve it by a specified date but may be able to do so later after a certain amount of reconsidering, perhaps we should dispose of the issue now.

1572. **Dr Farren:** That would be the effect of my proposal.

1573. **Mr McFarland:** Does the SDLP need more time to consult or does it feel that this issue should be left to the negotiations? If either of those applies, should the Committee move on and come back to the issue when the report is being drafted?

1574. **The Chairman (Mr Wells):** The proposal was for further consideration by the Committee. I see this as simply parking the issue and coming back to it at a future meeting.

1575. **Mr McFarland:** Yes. I am just trying to tease out that that is what Seán means by his motion.

1576. **Dr Farren:** Yes.

1577. **Mr McFarland:** Therefore the Committee will revisit the issue before the report is completed.

1578. **Mrs Long:** Before moving to Seán's motion, it may be better to test the two proposals to determine whether they have consensus because it —

1579. **Mr McNarry:** He just said that there was no consensus.

1580. **Mr McFarland:** Seán said that because there was no consensus —

1581. **Mrs Long:** It would be logical to test the two more detailed proposals first, and if neither of them reaches consensus, we should move to Seán's proposal to suggest further reconsideration by the Committee.

1582. **Mr Murphy:** Part of the difficulty is that the proposals are not detailed enough. It is a complicated issue that is tied in with the ministerial code, which the Committee has not yet discussed. It is not enough to use a half-hour discussion and a verbal proposal to deal with accountability between the Executive and the Assembly. We need to consider other issues, such as how the proposals would affect the ministerial code. If members have proposals — and I am not averse to agreeing proposals to get some of these issues dealt with and out of the way — the Committee would need to see significant, detailed outworkings.

1583. The problem does not lie with the detailed proposals; it lies with the lack of detail in the proposals and, perhaps, with a lack of consideration of how they might impinge on other areas that the Committee has not yet discussed.

1584. **Mrs Long:** If Seán's proposal were expanded to say what the mechanism would be, it may be possible to reach consensus on it. Several matters have been deferred for future consideration already today. Will there be more detailed papers on those issues? What mechanism is there to allow those of us who have suggestions to make them to ensure that when the Committee comes to discuss this issue again it is not put on the long finger?

1585. **The Chairman (Mr Wells):** Consensus was not reached because the DUP objected —

1586. **Mrs Long:** Yes, I am aware —

1587. **The Chairman (Mr Wells):** We need to hear from the DUP whether there is any possibility of moving the issue forward on that basis.

1588. **Mr P Robinson:** I do not mind discussing the issue again; I am merely making it clear that it is in the deal-breaker category. Rather than being put on the long finger, this matter requires resolution.

1589. **The Chairman (Mr Wells):** On that basis, if I were to put Seán's proposal again, could members reach consensus?

1590. **Mr P Robinson:** I have a fear — I am sure that it is unrealistic — that by the time the Committee finishes this process, the Assembly's first sitting will be upon us. After the Assembly has debated the Committee's findings, the November deadline will have arrived, and there will be very little time to fix anything.

1591. **Mr McFarland:** I propose that the Committee recognises that this is a key issue and that it comes back —

1592. **Mrs Foster:** Is it a priority?

1593. **Mr P Robinson:** Either here or during the negotiations.

1594. **The Chairman (Mr Wells):** Is there a specific date on which the Committee will return to the issue?

1595. **Mr McFarland:** The business of where power lies was mentioned earlier. It would be useful if the parties could do a little bit of work on that. I suggest that those three issues be lumped together as a specific accountability issue to be taken after item 4, if not before, in strand one. That would allow us time to take legal advice on the accountability of the Assembly and the extent of its authority. At that stage, the Committee could revisit the issue, with parties having had more time to discuss it privately.

1596. **The Chairman (Mr Wells):** Would slotting in those three issues, in order that we do not miss them out, allay the DUP's concerns?

1597. **Mr P Robinson:** I am quite content with that.

1598. **The Chairman (Mr Wells):** We seem to have got around the problem. The proposal is that the Committee should give further consideration to the mechanisms of accountability between the Assembly and the Executive. Do members agree?

Members indicated assent.

1599. **Mr McFarland:** May we make that a fifth heading under "The Assembly"?

1600. **The Chairman (Mr Wells):** After "Stability"?

1601. **Mr McFarland:** Yes.

1602. **Mr Campbell:** Do you mean that points 9, 10 and 11 under "Accountability/Safeguards" become a fifth heading?

1603. **The Chairman (Mr Wells):** Yes.

1604. **Mr McFarland:** We need some legal advice on the implications of having power devolved from Parliament to the Assembly rather than to the Departments. That will impinge on what Peter asked earlier. We are now saying: "Well, if it is this way, it will be this; if it is that way, it will be that." That will give us some guidance on whether it is possible to look at devolving power to the Assembly, and that will obviously have a bearing on the issues of who has the authority to challenge the Executive, etc.

1605. **The Chairman (Mr Wells):** Let us take that as a formal proposal in order to get consensus on it. Are members agreed that we have a fifth heading, after "Stability"? That would guarantee that the Committee would return to the issue.

1606. **Mr Murphy:** I would be content with that. However, I am conscious that we would deal with the fifth heading before any discussion on the ministerial code, which has an impact on the issues to be discussed under the fifth heading. The ministerial code comes under the heading of "The Executive". There is a great deal of overlap. What we are discussing here has a significant bearing on the discussions around the ministerial code.

1607. **Mr McFarland:** We could make it a new item 2 under “The Executive”. That would put it back slightly further.

1608. **The Chairman (Mr Wells):** The Clerk reminds me that we have also agreed to look again at the voting system. We need to put that in as well, so that we do not forget to return to it. It will all be in Hansard and in the minutes, so I do not see how we can forget about it, but in case anyone fears that we will try to pull a fast one —

1609. **Mrs Long:** Mr Murphy’s point about the impact that collectivity in the Executive has on any proposals for accountability is important. It is a point that we have made before, and we want the fact that we are dealing with it to be recognised in some way. There will be considerable overlap, and it will not be possible to achieve a perfect formula, so we are not going to be difficult about it.

1610. **Mr McFarland:** The issue of where power is vested in Northern Ireland is already mentioned under “The Executive”, at the last bullet point under “Accountability/Safeguards”.

1611. **The Chairman (Mr Wells):** We still have this suggestion that we take some form of legal advice on the mechanism for transferring power.

1612. **Mr McFarland:** At the current rate, we could do that between now and when we get around to discussing the Executive.

1613. **The Chairman (Mr Wells):** As long as we agree to do that.

1614. **Mr P Robinson:** We would not have any great difficulty in putting it under “The Executive”. The important point is that it should be considered before we finish with strand one issues.

1615. **The Chairman (Mr Wells):** Is everyone happy enough with that? Our research staff can have a look at the whole issue of how to devolve power to the Assembly rather than to Departments.

Members indicated assent.

1616. **Dr Farren:** We are beginning to identify some substantial issues that parties indicate are possible deal-breakers, and also issues that,

although they may not fall into that category, are quite important. It may be useful to have brief papers from the parties at some point on some or all of those issues. As we get into them, it will be difficult to treat them on the basis of oral discussions without having given prior consideration to what other parties think about how those issues might be resolved.

1617. The parties probably have position papers available anyway, so it would be good if some of their proposals for resolving the issues were circulated in advance. Today’s discussion has been very helpful, but that seems to be the direction in which we will head as we get into more detailed discussion on the issues.

1618. **The Chairman (Mr Wells):** Are the parties content? We have lost a party. Naomi Long has gone to the ladies’.

1619. **Mr McNarry:** She said that I could vote for her by proxy.

1620. **The Chairman (Mr Wells):** I do not think that it is permanent.

1621. **Mr Campbell:** Losing an entire party could be down to carelessness.

1622. **The Chairman (Mr Wells):** The Clerks have confirmed that it is possible to do that sort of research. Our researcher, Dr Gilleece, has moved on to the economic challenges subgroup, but we can certainly get that done.

1623. Are we happy to draw “Accountability/Safeguards” for the Assembly to a conclusion?

Members indicated assent.

1624. **The Chairman (Mr Wells):** I am very encouraged because, reviewing the evidence that has been presented this morning, there has been little or no overlap with the long question-and-answer session that we had in June. Members have clearly taken advice to try to present new material and to mine a little deeper, and that is much appreciated. Let us hope that that continues.

2.00 pm

1625. We move on to “Committee Systems”. There are four items under that sub-heading, the first of which is “Committee Structures”. We

have had first-hand experience of the Committee system, which, incidentally, met for 30 months. I understand that the Assembly lasted for 97 months, and the Committees operated for 30 months of that — about one third. In that, I am including such Committees as the Committee of the Centre. Therefore we have had some experience of their operation. Do members have any concerns about Committees?

1626. **Mr P Robinson:** Can we deal with the Committee of the Centre first? Hopefully, we will reach agreement on that. As OFMDFM is a recognised Department, the Committee of the Centre should have the same statutory rights of scrutiny that other Departments' Committees have. Not only junior Ministers should be answerable to that Committee. OFMDFM should be answerable in the same way as Ministers of other Departments.

1627. **Mr Murphy:** When the Committee of the Centre was being set up under Standing Orders — I do not know whether we need to see a list of the functions to agree all of this — there was a discussion about the range of matters that it would scrutinise. The Office of the First Minister and the Deputy First Minister brought forward its own draft Standing Order that limited the scope of the Committee of the Centre's scrutiny functions to a number of areas within the Department, and excluded some others. Given the Department's discussions, I would have thought that it would be difficult to reach agreement on a valid argument for non-scrutiny of certain functions. However, if we were to look again at placing it on a statutory footing, we would also need to re-examine the range of issues in OFMDFM that the Committee of the Centre can look at under current Standing Orders.

1628. **The Chairman (Mr Wells):** Does anyone have any other views on the Committee of the Centre?

1629. **Mr McFarland:** There is an issue over its size. Previously, there was an attempt to have every party represented on the Committee of the Centre, but if it is going to be a Statutory Com-

mittee, it will make sense to have it constructed on the same basis as other Committees.

1630. **The Chairman (Mr Wells):** It presently has 17 members.

1631. **Mr McFarland:** It used to have 19 members, did it not?

1632. **The Chairman (Mr Wells):** I presume that that included the Chairman and the Deputy Chairman.

1633. **Ms Lewsley:** I was a member of the previous Committee of the Centre, and I agree with what Conor said about its wide remit. There were many issues that some of us would have liked to have been given priority, but they did not see the light of day in the Committee.

1634. Alan McFarland commented on the size of the Committee of the Centre. Many Committees found it difficult to get a quorum at times. For example, the Committee for Finance and Personnel, which often sat on a Tuesday afternoon when the House was sitting, often found itself inquorate. However, the Committee of the Centre got through a fair amount of business because it had so many members.

1635. Therefore, I would be cautious about reducing its membership dramatically, because we often found that it was difficult for other Committees to get a quorum and get business done.

1636. **The Chairman (Mr Wells):** All of those issues are covered by the DUP suggestion that the Committee of the Centre be established on the same basis as a Statutory Committee. That simplifies it.

1637. **Mr P Robinson:** The DUP's suggestion is that all of the business of OFMDFM be scrutinised; nothing should be hidden from scrutiny.

1638. **The Chairman (Mr Wells):** Unusually for a Committee, the specific issues that can be dealt with by the Committee of the Centre are listed in Standing Orders, but other Committees can deal with the entire remit of their Department. That is why the Committee was constrained in what it was permitted to examine.

1639. Are there any fundamental problems with that?

1640. **Ms Lewsley:** The Committee of the Centre had a large remit and, as far as I remember, it was the only Committee that had the opportunity to create a subcommittee on European issues; there was a lot of commitment asked of it. It was later decided that we needed to look at subcommittees in an attempt to deal with some of the business that was coming before the Committee.

1641. **The Chairman (Mr Wells):** There would be 11 Statutory Committees, assuming that there are 11 Departments.

1642. **Mr P Robinson:** The Office of the First Minister and the Deputy First Minister had fewer functions than most of the larger Departments. It dabbled in some issues on which it overlapped with other Departments, and that probably extended its role beyond what it should have been. That comes back to the question of the role of OFMDFM.

1643. **Mr McNarry:** It would also be normal to factor in issues, not of national security, but of high specification, about which the First Minister and the Deputy First Minister would have been reluctant to talk. Some understanding should have been given when probing the First Minister or the Deputy First Minister about meetings that they had separately, or jointly, with international figures. I do not think that Peter was saying that everything should be divulged.

1644. **Mr P Robinson:** The amount of information that is divulged will always be up to the Minister. Seán, Michael and I may have, from time to time, decided that certain things were not ready to be made public.

1645. **Mr McNarry:** Surely not. On water, for instance?

1646. **Mr P Robinson:** Ministers made it very clear that they were against water charging and privatisation. There was no reluctance on that one.

1647. **Dr Farren:** I will not start to divulge state secrets here.

1648. **Mr P Robinson:** Please do. When I stepped down as Minister at the Department for Regional Development, I made an effort to obtain all the papers that a former Minister is allowed. I went over them, page by page, during a debate in the House of Commons, and anyone can read that in Hansard. No one in the House challenged any issues, including the then First Minister.

1649. **The Chairman (Mr Wells):** I am glad that there is no political point scoring going on this afternoon.

1650. The Committee of the Centre would be reduced to 11 members were it to become a Statutory Committee. The Assembly decided to put the Chairman of the Committee of the Centre on the same footing as the 10 Chairmen of the other Committees. Therefore it recognised at an early stage the important work of that Committee.

1651. Do we have consensus that we put the Committee of the Centre on the same footing as the other 10?

1652. **Mr McNarry:** Does the Public Accounts Committee operate on the same basis?

1653. **The Chairman (Mr Wells):** The other Standing Committees do not.

1654. **Dr Farren:** Does that include all Statutory Committees?

1655. **The Chairman (Mr Wells):** The Committee of the Centre was not a Statutory Committee.

1656. **Dr Farren:** I know, but you are talking about the other Statutory or departmental Committees.

1657. **The Chairman (Mr Wells):** There are 10 Statutory Committees, and the Committee of the Centre would make 11. We are talking here only about the Committee of the Centre. Committees such as the Public Accounts Committee and the Committee on Standards and Privileges are different issues altogether. There are not the same burning issues there.

1658. Are members agreed?

Members indicated assent.

1659. **The Chairman (Mr Wells):** We will move on to “Committee Structures”, “Formation of Committees” and “Role and effectiveness of Committees”. Are members happy with how Committees were set up, and how each party was represented on them, and so forth?

1660. **Mr McFarland:** The UUP introduced the point about the “Role and effectiveness of Committees”, because one role of Committees was to introduce legislation. Several attempts were made to make that happen, but I am unsure whether it happened in the end. One issue that constrained Committees was the fact that they did not have a budget or the research staff to develop the legal framework for introducing legislation. Members who served on Committees were always busy with issues, and those issues often ran in parallel. Unless there was a burning issue, Committee members were unable to persuade their party colleagues on the Executive to introduce legislation. Therefore Committee members were asked by party colleagues on the Executive what sort of legislation they intended to introduce and whether it went against ministerial decisions. What happened if a Committee could not get the Executive to introduce a burning piece of legislation, so it decided to introduce the legislation itself and needed a substantial amount of money to pay drafting staff, etc?

1661. **The Chairman (Mr Wells):** Individual Members had the right to introduce private Member’s Bills, and work had started on a couple of those before the Assembly collapsed. The advice and assistance from researchers and clerical staff that Members received was also available to the Committees.

1662. **Mr McFarland:** I looked into introducing legislation, as did the Committee for Regional Development, and the difficulty was that it requires a substantial amount of money. The Assembly research staff did not have the time for legal drafting, and there is also a massive shortage of legal drafting staff in the Departments. The lack of draftsmen or draftswomen meant that much of the legislation that the Executive tried to introduce became bogged down.

1663. **The Chairman (Mr Wells):** The Assembly Commission, of which I was a member, had a separate budget set aside for drafting legislation, and it was barely used. The Commission never became involved in the introduction of a private Member’s Bill or a Committee Bill, because there simply was not enough time.

1664. **Mr McFarland:** My understanding was that there was no one to write the legislation.

1665. **Ms Lewsley:** There was.

1666. **The Chairman (Mr Wells):** Yes, there was.

1667. **Ms Lewsley:** As my private Member’s Bill was due to go to the House on the day of suspension, I have gone through the whole process. There are only four legal writers in the entire UK. However, the opportunity was there for individuals or Committees to go through that process and the money was available. In fact, before suspension the Speaker was quite keen on legislation being introduced. The support was there and it was a case of looking for a gap in Assembly business.

1668. However, there is a proper process involved in introducing a private Member’s Bill. The Bill must be subject to an equality impact assessment and must go out to consultation. My private Member’s Bill went out to consultation twice and had the backing of the relevant Department. A lot of background work is required, but it certainly is possible for a Committee or an individual to introduce legislation.

1669. **Mr McGimpsey:** Nevertheless, there is a shortage of resources in the system. Several Departments shared a Bill team, so it was necessary to prioritise.

1670. **The Chairman (Mr Wells):** There was a separate fund for the Assembly to pioneer and progress Bills. For instance, one Member wanted to give farmers the right to build bungalows, and that Bill was in the process of going through to the Assembly.

1671. **Mr McGimpsey:** Are you talking about money or about Bill teams? Bill teams have particular expertise; it is not only about money.

1672. **Ms Lewsley:** I can speak only from my own experience. I had the support of the Business Committee, whose team liaises with the legal writers. Departments differ in that they have teams to put together legislation.

1673. **Mr McGimpsey:** The problem is that some Departments do not have their own teams.

1674. **The Chairman (Mr Wells):** Alan, I can assure you that that is not the case. If a Member had had the time to go through the process, the resources were available.

1675. **Mr McFarland:** Conor sat with me on one of the early Committees that examined the introduction of legislation. When Assembly staff advised us that the resources were not available, we backed off. Things may have changed since, and perhaps additional staff have been brought in over the last two years, or there may have been money available that we were not told about. We were assured that the infrastructure was not in place to allow the Committee to introduce legislation.

1676. **Dr Farren:** Why are we discussing this?

1677. **The Chairman (Mr Wells):** Yes, I was going to say that we are going down a route that —

1678. **Mr McFarland:** We are discussing this because it is directly related to the role of the Committees. There is a question as to whether Committees should introduce legislation. Perhaps not, and in that case there would not be an issue. However if, as under the current legislation negotiated as part of the Belfast Agreement, Committees can introduce legislation, the problem is that in the first Assembly, Committees were told that the resources were not available to allow them to do so. That is why, since 2002, the UUP has included this issue in its list for discussion in a forum such as this.

1679. **The Chairman (Mr Wells):** This is not an institutional issue. The Commission can release as much or as little money as is necessary to ensure that the Committees are properly serviced when introducing Bills. That is entirely an Assembly Commission decision, but it does not relate to the structure of the Committees.

1680. **Mr McFarland:** My point is that when a Committee tried to introduce a Bill in the first Assembly, it was told that no money was available.

1681. **Mr P Robinson:** In that case, you had a right to tell the Assembly Commission to fulfil its obligations.

1682. **Mr McFarland:** We were told that there was no money.

1683. Therefore, my point is twofold. First, in the light of the experience of the first Assembly, do Committees need the ability and the funding to introduce private legislation when the parties on those Committees are in the Executive, which could do it for them? Secondly, we must ensure that if Committees retain the ability to introduce legislation, funding is available to pay for draftsmen and research facilities.

2.15 pm

1684. **Mr Murphy:** As well as being a member of that Committee, I chaired the Committee on Procedures, which carried out various investigations into how the business of the House was conducted. I am clear in my recollection that the Committee was advised that there were resource issues, not necessarily financial, and that drafting resources were tied up on Executive work and would not necessarily be made available to the Committees. I recall that, towards the end of the Assembly, limited resources were made available to allow individual Members to introduce Bills, but not necessarily to the Committees.

1685. It was discussed earlier that given the nature of the Administration, Committees are the first line of opposition to the Executive. I agree that that is the case. Committees should be able to introduce legislation if their members feel that an issue is important and the Department or the Minister does not share those feelings. It is part of the agreement. I wore a number of different hats in the last Assembly and it was always clear to me that resources were an issue. However, if that were not the case, and all necessary resources — not just financial — would definitely be made available to any Statutory

Committee that wanted to introduce legislation, could we have written evidence of that?

1686. **Alan McFarland** asked whether Committees should have the right to introduce legislation, and I agree that it is important that they do. Given that we have a mandatory coalition, it very often happens that opposition to the Executive comes from the Committee system, and that should not be diluted in any way.

1687. **The Chairman (Mr Wells)**: Are you proposing that the necessary resources and expertise should be made available to enable Committees to introduce independent Bills?

1688. **Mr Murphy**: If members can be assured that resources have always been available, the proposal is unnecessary. Could the Committee receive confirmation that resources were available?

1689. **The Chairman (Mr Wells)**: We will do that. We will delve in to this to find out where the perception came — *[Interruption.]*

1690. **Mr P Robinson**: Surely a Committee should not have to concern itself with resources. If it believes that it is right to introduce legislation, it is up to the officials to source the resources.

1691. **The Chairman (Mr Wells)**: I am trying to move things on. This is not the main issue on the effectiveness of the Committees.

1692. **Ms Lewsley**: It is not right to put members of Committees in the position where they have to put pressure on Ministers from their parties. A Minister may have totally different priorities to those of the Committee. Committees should make their own decisions to introduce legislation, which, hopefully, would have the sanction of the Ministers.

1693. **The Chairman (Mr Wells)**: We can get this issue sorted out. However, given the 30 months' experience gained from the previous Assembly, there must be more substantive matters of concern about the role of the Committees and their effectiveness.

1694. **Mr McFarland**: By and large, the Committees were the one element that worked well in the first Assembly. In most cases, the

Ministers were co-operative. Two of the Ministers that I served under are here, and although I am slightly reluctant to say it, both of them were very good to their Committee. However, some Committees did not have good relationships with their Ministers. I do not know whether anything can be done about that, because part of it depends on the temperaments of the Minister and the Chairperson of the Committee. In most cases, however, the Committees worked well when there was goodwill on both sides.

1695. Most Departments were open with their Committees, which I think was the key to their success. There was no major problem in the two Committees on which I served in the first Assembly.

1696. **The Chairman (Mr Wells)**: This question is for the older Members of the Assembly. Were there any other — *[Laughter.]* Can I say "more experienced"?

1697. **Ms Lewsley**: So you do not mean "older", as in "age", but "older" as in "more experienced". Thank you very much. I am glad that you qualified that.

1698. I served on five different Committees during the last Assembly and they worked very well. As a member of the Committee for Finance and Personnel, I know that some Members had an issue about scrutinising the Budget before it came to fruition. The Committee for the Environment found that, since the greater part of the Budget was being spent according to EU directives, there was no significant contribution to be made, and that any of the Committee's priorities were overridden by demands on the Budget. In the round, the Committees worked very well, and Members used their positions well in making Ministers accountable on many issues.

1699. **The Chairman (Mr Wells)**: We do not seem to have concerns about the present system.

1700. **Mr P Robinson**: There are some issues relating to Committees bringing forward legislation and some parameters must be accepted. A Committee's legislation on a subject should give way to the Department's

legislation if they are on the same issue. No one wants two different bodies going head-to-head with legislation on the same issue.

1701. There are also finance issues. Dr Farren will know more about that than I do, however, most legislation has a price tag attached. A Committee should not attempt to enlarge a departmental budget by legislation. There is a requirement for the cost to be approved by the Department of Finance and Personnel.

1702. **Dr Farren:** The protocols would spell that out. Most legislation has resource implications. If Committees did not take those implications into account, they would be ignoring significant aspects of their responsibilities. Committees would want to take account of resources — and enhancing departmental resources is something that Committees would want to see as a priority. At the end of the day it is a balancing exercise about what is possible across Government.

1703. **The Chairman (Mr Wells):** There are two safeguards in this respect. First, any legislation requiring reallocation of resources has to be approved by the Minister of Finance and Personnel. That is normal. Secondly, if the Business Committee saw legislation coming from a Committee and from a Department, presumably it would rule as to whether it was appropriate to have both on the Floor at once.

1704. **Mr McFarland:** I disagree with Mr Robinson's first point. If Members are to operate Committees as a safeguard, it is essential that those Committees can bring forward legislation that is not agreed or in keeping with the Department's policy. He is right on his second point. It is daft for a Committee to try to bring forward legislation that has no money attached to it, unless it is something that does not need finance. It is questionable whether a Committee may bring forward legislation that is not cleared by the Department of Finance and Personnel or indeed the relevant Department. There is a question here about the right of a Committee to bring forward legislation. That is sacrosanct. However, if there is a cost attached to it, that

Committee has to understand that it is not going to succeed without clearance from the system.

1705. **Mr P Robinson:** Let us be clear about the first point. I would have thought that there is no contention about it. If a Committee wishes to bring forward legislation on subject A, and the Department says that it has already taken steps, the Committee should give way to the Department. The Committee may well seek to amend the Minister's legislation, but I do not think that two sets of legislation should be prepared.

1706. **Mr McFarland:** If that is the scenario I accept it.

1707. **The Chairman (Mr Wells):** We can get around that concern. I am concerned that these have been flagged up as issues of concern and yet hearing various individuals, generally, as the structures stand, there seems to be general contentment.

1708. **Mr P Robinson:** You keep going back to this "flagged up as issues of concern"; in many cases these were flagged up as component parts of devolution, some of which may well be agreed.

1709. **The Chairman (Mr Wells):** That is true, although I have been alerted to the fact that issues such as proportionality in Committees and d'Hondt might be of concern to individuals. Are people content not so much with how Committees operate but about how they are formed? Naomi raised a point earlier that she would prefer that we start with the Executive and run right down through the Committees on a very elongated d'Hondt system — presumably because the smaller parties would be better represented.

1710. **Mrs Long:** No, because the overall reflective balance would be much fairer. D'Hondt operates best when there is a large pool of posts; when the pool is small, d'Hondt is not as representative. Huge anomalies are created. When the Committee discusses a reduction in the number of Departments, members will no doubt see huge anomalies in the division within the Executive. Those anomalies are thrown up when there is a small pool of posts. The SDLP raised the issue of running d'Hondt, and I sought clarification on

proportionality. The Alliance Party's preferred system would not be d'Hondt, but, given that the Committee gave my party's preferred system the thumbs down when it was raised at a previous meeting, I am exploring option B, which is to run d'Hondt with a larger pool of posts, thereby creating a more reflective balance.

1711. **The Chairman (Mr Wells):** Do you propose that d'Hondt be run the whole way down the line, including in the formation of Committees?

1712. **Dr Farren:** I would be happy to join Naomi in proposing that.

1713. **The Chairman (Mr Wells):** Are there any views on that? My council, Down District Council, adopted that approach, and the smaller parties did much better as a result.

1714. **Mrs Long:** That is news to me, but welcome news.

1715. **Mr Campbell:** That did not mean that you got the chairmanship post that you wanted.

1716. **The Chairman (Mr Wells):** No, it did not.

1717. **Mr Campbell:** That is another matter.

1718. **Mrs Long:** You will get it.

1719. **Dr Farren:** You will, if you stick around long enough — another 20 years.

1720. **Mr Campbell:** He has only been there for 30 years.

1721. **The Chairman (Mr Wells):** Do folk think that d'Hondt should be run once only for the appointment of Ministers, for Committee Chairpersons and Vice-Chairpersons, and for membership of Statutory and Standing Committees? In other words, do we run d'Hondt for more than 150 positions?

1722. **Dr Farren:** That is not problematic.

1723. **Mr Campbell:** That is just crazy.

1724. **Dr Farren:** We will have to run d'Hondt for 110 places on Statutory Committees, in any case.

1725. **The Chairman (Mr Wells):** If we are to have 11 Statutory Committees, there will be 121 positions on Statutory Committees.

1726. **Mrs Long:** Only 11 posts are being added, so that can hardly mean that the situation moves from being completely acceptable to completely ludicrous.

1727. **Mr P Robinson:** The Member who gets the first choice can say: "Do I want to be the Minister of Finance and Personnel, or do I want to be Deputy Chairman of some obscure departmental Committee?"

1728. **Mrs Long:** If the Member thought that the latter post was so obscure, I imagine that it would be a simple choice for him or her to make.

1729. **Mr P Robinson:** It is back to the jelly beans and liquorice allsorts. We are dealing with two entirely different matters, and d'Hondt must be run for matters that are similar. Chairman, if it is a lack of consensus that you want registered, I register it.

1730. **The Chairman (Mr Wells):** That is the end of that argument.

1731. **Dr Farren:** What if Naomi breaks her own maxim and says that this is a deal-breaker as far as the Alliance Party is concerned?

1732. **Mrs Long:** The Alliance Party is not here to be difficult, not even when I am taking the lead.

1733. **Mr P Robinson:** There was a time when the Alliance Party was not even here.

1734. **The Chairman (Mr Wells):** We have really highlighted only two issues: legislation and d'Hondt. Mr Robinson made the point that we should not necessarily see it as being a problem, so can we therefore get past Committee issues with very little difficulty?

1735. **Mr P Robinson:** Are you dealing with "Committee structures"?

1736. **The Chairman (Mr Wells):** "Committee structures" and "Formation of Committees".

1737. **Mr P Robinson:** I want to raise two issues under "Formation of Committees". The first we may come to later under "Efficiency/Effectiveness" and is the need to constantly examine the efficiency of devolution and the way in which the Assembly operates, and the need for a Committee for that purpose.

1738. The other matter, which has almost been accepted, is the mechanism/institutional review Committee. We referred a matter to that Committee earlier, so we can assume that it exists.

2.30 pm

1739. The proposals for a comprehensive agreement stated that Assembly Committees should have the power to call the chairpersons and chief executives of North/South implementation bodies before them annually. Because those bodies are of a North/South nature, that power does not currently exist. Committees could do so by grace and favour, but it is better to have the power — the Dáil has the power to do so.

1740. **The Chairman (Mr Wells):** Under the strand two headings are “Assembly scrutiny of implementation bodies” and “Operation (efficiency) of North/South bodies”. Would it be preferable to discuss that now rather than under the strand two heading?

1741. **Mr P Robinson:** It is more relevant to an Assembly Committee than it is to a North/South implementation body.

1742. **The Chairman (Mr Wells):** Let us get it out of the way. What are members’ views? Currently, chairpersons and chief executives of North/South bodies can be invited to appear before a Committee but they do not have to come. Should Committees have the right to compel them to give evidence and answer questions?

1743. **Mr McFarland:** In essence, it is a good idea. There is a question in relation to the legal basis of those bodies: were those bodies not established by an international treaty and are therefore separate from other legislation? I seem to remember that hiring staff, duties of staff, functioning of the bodies and so on were discrete issues between two nations, as it were.

1744. What are our powers, or the powers of an individual Government, to effect that option?

1745. **Mr P Robinson:** The international treaty is between two parties — the British and Irish Governments. Those are the parties who made the proposal and, whatever their mechanism, it is presumably they who will agree that it can be done.

1746. **Mr McFarland:** I see what you mean.

1747. **Dr Farren:** I see no reason why chairpersons of North/South bodies would not have more or less the same position vis-à-vis Committees as permanent secretaries and so on. They are discharging functions on behalf of the public, and are answerable to Ministers on a day-to-day basis, through the North/South Ministerial Council, but they do not appear before Committees, except, as Peter says, by invitation. I am not sure what the effect of moving from that position to a “power to compel” would be. However, they should attend; if that requires those posts to have the same status as permanent secretaries, that is fine. I do not know what the pitfalls of that might be, but the more information that is available to Assembly Members about how the implementation bodies operate, the better.

1748. **Mr Murphy:** I presume that, if Sinn Féin is content with the arrangements in the Oireachtas in relation to these matters, it will be content with similar arrangements here. If those people appear before Oireachtas Committees, I do not see why we would not have them here.

1749. **The Chairman (Mr Wells):** We seem to have consensus that Assembly Committees should have the power to summon chairpersons and deputy chairpersons of North/South implementation bodies at its meetings.

1750. **Mr McFarland:** Does that include chief executives?

1751. **Mr P Robinson:** It would have to.

1752. **The Chairman (Mr Wells):** Yes. Chairpersons and deputy chairpersons are different to chief executives. Do you want to expand that to include chief executives?

1753. **Mr P Robinson:** I said chairpersons and chief executives.

1754. **Mr Murphy:** It was mentioned that the provision to call such persons would be at least yearly.

1755. I presume that that would be scrutinised so that vexatious demands would not be put on people to appear every other week before a Committee. Safeguards would have to be built in

to ensure that it is proper scrutiny and that people are not being put through their paces too often.

1756. **Mr McFarland:** If a certain Committee were at war with its relevant permanent secretary and was behaving in a silly way, that would quickly become clear and would get back to the Minister and questions would be asked in the House. The Committees would have to be sensible, and separate guidance is not required. All parties are represented on Committees, and parties would have to agree in order to haul in permanent secretaries or whoever every week. Safeguards are already built into the Committee structure, so it would be somewhat strange if specific safeguards were created for this issue.

1757. **Dr Farren:** North/South implementation bodies are part of the agreement between the British and Irish Governments, and it would be appropriate to take their views on the matter. We want to achieve this, but we need to hear what the Governments might have to say. I do not imagine that they would be awkward about it.

1758. **The Chairman (Mr Wells):** Do we have consensus about chairmen and chief executives?

Members indicated assent.

1759. **The Chairman (Mr Wells):** Peter Robinson proposes the establishment of an institutional review Committee for the Northern Ireland Assembly to examine the operational aspects of strand one.

1760. **Mr McFarland:** Did Peter say that one proposal was on procedures, or was one on something else and one on the institutions? Can the existing Committee on Procedures, which examines how the Assembly does business, be expanded?

1761. **Mr Murphy:** The Committee on Procedures examines Standing Orders.

1762. **Mr McFarland:** Could that Committee examine the workings of the Assembly? Once Standing Orders are in place, and unless something specifically changes, by and large the Committee on Procedures has a monitoring role. We are bedded down fairly well after the first mandate of the Assembly, but Standing Orders may have to be tweaked if the Assembly

gets up and running again. Could the Committee on Procedures monitor the areas that Peter wants to be monitored?

1763. **Mr P Robinson:** No, it could not. The Committee on Procedures examines, within the existing legal framework, the Standing Orders on Assembly procedures. We are discussing a change to the legal framework, so it is a wider remit. The proposed Committee would not meet every week. It would be a Standing Committee, so it could meet when a party feels that an issue needs to be resolved.

1764. **The Chairman (Mr Wells):** Are we content, with those few additions, to leave the “Committee System” behind and move on?

Members indicated assent.

1765. **The Chairman (Mr Wells):** We will move on to “Efficiency/Effectiveness”. I did not expect to get this far today, so we are making good progress. We will then take Peter’s proposal formally. We have discussed at length why it is felt that this Committee is needed.

1766. **Mrs Long:** The Alliance Party supports the creation of an institutional review Committee. It was referenced earlier in the context of the four-year reviews that were set up under the agreement. We would not accept that the proposed Committee would be a substitute for those four-year reviews, although the Committee could examine institutional issues. The agreement was signed by other parties, including the two Governments, therefore, the all-encompassing review process would still need to stand because of the involvement of the two Governments. An institutional review Committee would be a useful mechanism to deal with any changes to the institutions.

1767. **Mr McFarland:** We are happy enough with the fact that such a Committee may be needed. Some issues will need to be left to that Committee because they are either not solvable at the moment or they are wider issues, and it would be useful for this Committee to have a view on those issues.

1768. As I mentioned earlier, if we can solve issues to improve the effectiveness and efficiency of the Assembly before it is fired up

again, it would be useful to do that, rather than to put everything off until some time during the next Assembly mandate. If some issues can be dealt with in advance, we can leave other issues that are so large or complicated that they may need to be left to an institutional review Committee.

1769. **Mr Murphy:** It is clear that there is a need for a mechanism, beyond the reinstatement of the institutions, for the conclusion of some of the issues outstanding from the formal review of the Good Friday Agreement. Perhaps that formal process has not been concluded and needs to be tidied up in some way; it is unclear. However, there is some need for an agreed mechanism to address some of the outstanding issues.

1770. The difficulties in setting up an institutional review Committee are that we would need to know its remit and make-up, its lifespan, and whether it is an Ad Hoc Committee to sort out issues that are outstanding from our work, or whether it will continue to examine issues as they arise. Where does that fit in with the formal review of the Good Friday Agreement that takes place every four years? To my knowledge, that review started but was not concluded.

1771. At the start of this meeting, an issue was raised about a paper that David Hanson has on some of these issues. That paper has not made its way to us, and there has been no communication from the Government about that. That paper may be on matters that the Government were working on, which may cut across the work of this Committee.

1772. We may be able to agree, in principle, a mechanism to deal with these issues, but a lot more flesh needs to be put on the bones. I do not have difficulty in agreeing in principle that a mechanism be established, but we would have to see what exactly that is and how it relates to the other work that is still out in the ether, which has not yet been concluded.

1773. **Mr P Robinson:** Mr Chairman, there is sense in what Alan McFarland said. If the Government bring forward legislation to make changes so that we can move forward with the institutions— as I believe they must — that will be the best opportunity to make any other

changes that might be considered by other people to improve the institutions. Any changes will require legislation at Westminster, because they will require alterations to the Northern Ireland Act 1998. Time will not be readily available at Westminster for that type of legislation, so if we wish to take the imminent opportunity for change, we should try to resolve some of the other issues now, rather than simply let them hang around.

1774. **The Chairman (Mr Wells):** We seem to have two very similar proposals. Mr Murphy has proposed that a mechanism be established in the Northern Ireland Assembly to examine the operational aspects of strand one. Peter has proposed that an institutional review Committee of the Assembly be established to examine the operational aspects of strand one. Is there enough between those two proposals that we need to deal with them separately, or are we happy to run with one of them? It strikes me that there is not an awful lot between those two positions.

1775. **Mr P Robinson:** The further element is whether, in conjunction with the Executive, consideration might be given to changes to strand two. We are not attempting to say that strand two is perfect, are we?

1776. **The Chairman (Mr Wells):** We could opt for a similar mechanism when we discuss strand two issues. I am trying to finish the strand one discussions today, if we can, although I have my doubts.

2.45 pm

1777. **Dr Farren:** Let us not complicate the issues. I am happy with either proposal, as long as we are clear that the general overall review of the agreement stands. As somebody said, there are far more participants than those represented around this table.

1778. I am a little concerned about the institutional review. However, as long as it is understood that the review is of the operation of the institutions rather than a fundamental review, I am happy to accept the proposal.

1779. **Mr Murphy:** The proposal should be more vague — it is fairly specific in relation to strand one. We can agree to consider the

creation of a mechanism to deal with all outstanding issues on the operation of the institutions, pending the review of the Good Friday Agreement, which has yet to be concluded.

1780. However, there are outstanding strands to be picked up, including what has been done in this Committee, that will probably be dealt with on the other side of devolution. If there are issues that can be resolved here, that is well and good, but there are outstanding issues that can be resolved after devolution. The parties can agree a mechanism to do that, which must take into account the outstanding work of both Governments and pick up those issues as well.

1781. **The Chairman (Mr Wells):** We will keep the ball rolling. I will put the DUP proposal and, depending —

1782. **Mr P Robinson:** I want to make it clear that it is a stand-alone proposal without reference to any wakes that might be held for the Belfast Agreement.

1783. **The Chairman (Mr Wells):** The proposal is that an institutional review Committee in the Assembly should be established to examine the operational aspects of strand one. Do we have consensus?

1784. **Mr Murphy:** The proposal is fairly narrow. I would prefer to have some detail about how the Committee will conduct its business. Alternatively, the proposal should be sufficiently vague to allow us to determine the detail of the Committee's remit, title and so on at a later stage.

1785. **The Chairman (Mr Wells):** Is there consensus?

Members indicated dissent.

1786. **The Chairman (Mr Wells):** The second proposal is that a mechanism should be established in the Northern Ireland Assembly to examine the operational aspects of strand one. Do we have consensus?

1787. **Mr P Robinson:** It is too vague.

1788. **The Chairman (Mr Wells):** Is there a halfway house between a mechanism and an institutional review? If both proposals fall, we have nothing.

1789. **Mr P Robinson:** We could perhaps agree that there should be a mechanism or institutional review.

1790. **The Chairman (Mr Wells):** Would that be a possible compromise?

1791. **Mr Murphy:** I do not mind. That allows for a number of variations, and it is not specific on the title or remit of any such Committee. However, there are issues that we are dealing with here, issues that have been dealt with in the review and outstanding issues in the ether, currently within David Hanson's remit, that need to be picked up. We therefore need to leave sufficient scope and flexibility in how we deal with those on the other side of restoration.

1792. **The Chairman (Mr Wells):** Peter, you said that we could agree "a mechanism for an institutional review"?

1793. **Mr P Robinson:** A mechanism or institutional review.

1794. **The Chairman (Mr Wells):** Is there consensus on that proposal?

1795. **Mr McFarland:** What is the precise wording of that?

1796. **The Chairman (Mr Wells):** The proposal is that a mechanism or institutional review be established in the Northern Ireland Assembly to examine the operational aspects of strand one. Do we have consensus?

Members indicated assent.

1797. **The Chairman (Mr Wells):** We come now to "Dual/triple mandate". Many members will have an interest to declare on this matter. There are members with dual and triple mandates; I do not think that anyone has a quadruple mandate, although there have been such cases in the past. This issue concerns the right of an MLA to be an MP, a district councillor, or whatever. Who raised that as a concern?

1798. **Mr McFarland:** We did, Chairman.

1799. The Review of Public Administration (RPA) legislation sorts out the business of being a councillor and an MLA, as we understand it. The Scottish Parliament did some soul-

searching on this matter, and there seemed to be no effort to stop anyone being an MP and a Member of the Scottish Parliament (MSP).

1800. The press took up the issue, asking how Members could be at Westminster and in Edinburgh at the same time. It ended up with a campaign, and they may have won the dual-hatted status, but all the rest decided that they were either Members of the Scottish Parliament or Members of Parliament at Westminster. If we had devolution, the only things that would be left at Westminster would be Defence, Foreign Affairs and the Treasury. Everything else would be here. How can someone be a full-time MLA, giving of his or her best as a member on, perhaps, two Committees, serving his or her constituents, or even being a Minister, and also attending Westminster for all the debates? There is a problem if the Assembly is settled. I can understand why people would not want to bale out of councils, the Assembly or from being a MP. One could argue that it is unhealthy for political parties, and for politics generally, to have double-, triple- or quadruple-hatted folk, because they are clearly not giving of their best in their various elected positions.

1801. **The Chairman (Mr Wells):** Dare I ask whether there is any reaction to that?

1802. **Dr Farren:** To borrow from an old slogan: one mandate, one person. It could also be possible that we might have Members of the Irish Senate, the Dáil—

1803. **Mr P Robinson:** Or the House of Lords.

1804. **Mrs Foster:** Do not tell Lord Morrow.

1805. **Mr P Robinson:** Or John Taylor.

1806. **Dr Farren:** The House of Lords, indeed; I knew that there was a third one. Timing is an obligation. Given the instability of the first mandate of the Assembly, it would have been unrealistic and unfair to have required those people who were councillors to choose between council membership and Assembly membership at the time of the first Assembly election or, indeed, soon thereafter. It is a question of when it could be brought into effect. The more stable the Assembly, the greater the case for bringing it in sooner with respect to Assembly Members.

1807. **Mrs Long:** I agree with Seán about a phasing-in period, given the changes that the RPA will bring to local government. Many experienced councillors may be removed from their posts because of their role in the Assembly, and that will have an impact on how those institutions deal with all future changes and challenges. We must be aware of the level of change that is taking place in local government. Our preference is against multiple mandates, and I say that as someone who has one. However, whether I am seen to do both jobs well is largely a matter for the electorate. If it feels that I am not serving my roles well, I can be unseated. We should not become too caught up on whether people can discharge their functions. Perhaps the management of any conflicts of interest is a more important issue.

1808. **Mr McFarland:** The issue of multiple mandates affected the running of Committees. For instance, on a day when a Committee was meeting, we reached 4.30 pm and you could see the agitation rising round the table. The councillors who had to make it back to council meetings were busy shuffling their papers, and then suddenly, at some key point in the evidence session, half the Committee was out the door like whippets. There are important long-term issues for the Assembly to function effectively and to do good for constituents.

1809. **Mr P Robinson:** Every political party wants to have this issue resolved. We discussed the issue internally, and all parties want to eliminate multiple mandates. However, the Assembly has not been sufficiently stable for Members to say that they would like to give up their Westminster seats in order to be a part of it. An institutional review Committee might deal with this issue more appropriately when the Assembly is stable.

1810. **Mr Murphy:** Or other mechanism, I suppose. *[Laughter.]*

1811. We broadly support the proposal, especially in relation to council mandates. It is a conflict of time as well as a conflict of interest. However, we are obviously not as preoccupied with attending Westminster as other parties. Sinn Féin has discussed the issue and is broadly

against the idea of multiple mandates, although it has a different stance on Westminster. We are quite happy to consider the matter and certainly see the logic of the proposal in relation to council, as opposed to Assembly, mandates.

1812. **The Chairman (Mr Wells):** Members will recall the debate on this issue in the Assembly four years ago. Councillor Close MLA made a very impassioned plea — one of the best contributions ever made in the House. There seem to be two suggestions. Mr McFarland has suggested that legislation should be introduced to prevent multiple mandates.

1813. **Mr McFarland:** The issue need not necessarily be resolved through legislation. In Scotland, the issue was dealt with through media pressure. It would be sensible for the parties to have a gentlemen's agreement, perhaps. The issue logically rests with the mechanism/institutional review Committee. There is no point in asking Members to relinquish a particular job if their Assembly job is unstable and may cease in November. However, multiple mandates are generally unhealthy.

1814. Whether it is through legislation, whether everyone agrees that it is better for politics here if we do not have multiple mandates, or whether it is as a result of media pressure, some way must be found of resolving this issue in the longer term.

1815. **The Chairman (Mr Wells):** There appears to be a consensus to refer the issue to the mechanism/institutional review Committee. When that is up and running, in whatever form, we will refer the issue to that Committee for consideration. Is there consensus?

1816. **Dr Farren:** I did not hear any dissent in relation to abandoning multiple mandates in principle.

1817. **The Chairman (Mr Wells):** I detected a slight dissent.

1818. **Dr Farren:** I did not hear it; not even from the DUP.

1819. **Mr P Robinson:** We do not disagree in principle. The general principle is that an elected representative should not have a

multiple mandate where a conflict of interest arises within that mandate. That could be the case with council and Assembly mandates in the future. However, stability is the important aspect in this issue.

1820. **The Chairman (Mr Wells):** The timing is the issue here, rather than the principle.

1821. **Mr P Robinson:** Parties will have to develop and broaden their bases. It will be in their interests to encourage other people to come forward within their systems. This issue cannot be resolved by fixing a date, in November or January, for example, by when multiple mandates should stop.

1822. **Mr Campbell:** There is broad consensus on the principle. It is not an identical anomaly, but there should be an overlap of council membership to allow the new councils created by the Review of Public Administration to bed in. Therefore I am not in favour of the abandonment of multiple mandates in the run-up to the shadow council elections. However, I would be in favour of it beyond that period, once the new councils have had time to bed in.

1823. Similarly, with the Assembly, I would not be in favour of the abandonment of multiple mandates within the next 12 or 18 months. In the long term, however, parties should be in favour of abandoning multiple mandates. I hope that a statutory obligation would not be required, but that parties would move towards the principle over the period of an Assembly term, for example.

1824. **The Chairman (Mr Wells):** Could the circle perhaps be squared by saying that further consideration should be given to whether Members should be allowed to have multiple mandates?

1825. **Mr P Robinson:** You could say that there is general agreement that multiple mandates should be phased out.

1826. **Dr Farren:** The suggestion to phase out multiple mandates could be referred to the mechanism/institutional review Committee. Not to suggest that multiple mandates should be phased out would certainly attract adverse comments. This is perhaps minor on the scale of

everything else, but it is nonetheless a popular issue, and the media will latch on to it. If we have that strong commitment, and we recognise that phasing out multiple mandates is an issue, we should aim for the strongest possible consensus.

1827. **The Chairman (Mr Wells):** Therefore in principle, members agree that multiple mandates should be phased out.

1828. **Dr Farren:** Yes.

1829. **The Chairman (Mr Wells):** The only remaining issue is the timing of that.

1830. **Mr Murphy:** I pointed out that compared to the other parties, Sinn Féin does not have the difficulty of Westminster attendance. Sinn Féin's general policy is that it is against multiple mandates. Therefore, in principle, I agree that parties should consider phasing out multiple mandates.

3.00 pm

1831. **The Chairman (Mr Wells):** Members seem to be happy enough. There was general agreement that multiple mandates should be phased out. Do members agree also that the timing of that should be referred to the mechanisms/institutional review Committee?

Members indicated assent.

1832. **The Chairman (Mr Wells):** It is 3.00 pm. I have to rush away to an important meeting of Down District Council at 4.00 pm. *[Laughter.]*

1833. **Mrs Foster:** He is declaring another interest.

1834. **Ms Lewsley:** That was a declaration of interest.

1835. **The Chairman (Mr Wells):** I must be totally honest: it is the planning committee. Therefore, it is very important.

1836. **Mr McNarry:** How many houses will you pass today, Jim?

1837. **The Chairman (Mr Wells):** We have an hour to go —

1838. **Mr P Robinson:** If you had told us that before, we might have taken a different view on this subject.

1839. **Ms Lewsley:** We might have taken a wee bit longer.

1840. **The Chairman (Mr Wells):** On a housekeeping issue, we will break in a couple of minutes when the tea and coffee arrives. We are going extremely well.

1841. **Mr Campbell:** We are?

1842. **Dr Farren:** Keep reminding us of that, please.

1843. **Mr P Robinson:** We have agreed so much.

1844. **Mr McFarland:** We are in danger of reaching point 5, which we referred for legal advice.

1845. **The Chairman (Mr Wells):** I would like to think that we will have got to the bottom of "Stability" by 4.00 pm.

1846. **Mr Campbell:** We will never get to the bottom of stability. *[Laughter.]*

1847. **The Chairman (Mr Wells):** If we could get to the bottom of "Stability", that would be a natural break in proceedings, and we could pick up again next Monday. Are members content that, after our tea and coffee, we try to run through to 4.00 pm on those issues?

Members indicated assent.

1848. **The Chairman (Mr Wells):** We will have a five-minute coffee break before finishing off today's business.

The Committee was suspended at 3.02 pm.

On resuming —

3.10 pm

1849. **The Chairman (Mr Wells):** We come to the sub-heading “Number of Assembly members” and the sub-entry “Elections to the Assembly (STV)”. Again, that was a DUP issue.

1850. **Mrs Foster:** We believe that 108 Members is too many, and we have maintained that position for some time, especially in the light of the RPA recommendations. The matter needs to be looked at again. It is not going to be sorted out before devolution comes back again, but it should be referred to a committee on efficiency. Such a committee was envisaged in the comprehensive agreement to deal with issues such as this. We propose that an efficiency committee be set up within the Assembly.

1851. Do you wish to take comments on STV at this time?

1852. **The Chairman (Mr Wells):** Yes.

1853. **Mrs Foster:** We are not seeking to change the voting system. We are happy enough with it.

1854. **The Chairman (Mr Wells):** What do other members think about the number of Assembly Members and the voting system?

1855. **Mrs Long:** There are a couple of points. We have proposed a reduction in the number of Assembly Members to approximately 80. We recognise that the ratio of Members to the size of the population makes our Government unwieldy in comparison to other parts of the UK and Europe. It is certainly a higher ratio than in Dáil Éireann, for example.

1856. We are in favour of the single-transferable-vote system of proportional representation because it is the fairest system. However, the use of STV in smaller multi-member constituencies tends to create a slight imbalance towards larger parties, and particularly towards the largest party in a region.

1857. **Mr P Robinson:** I do not think that you said that right.

1858. **Mrs Long:** Yes I did.

1859. **Mr P Robinson:** It is not the smaller constituency —

1860. **Mrs Long:** It is the smaller number of members per constituency.

1861. The initial decision to return six Assembly Members from each of the 18 constituencies was taken in order to allow for a greater diversity of membership. That has not worked; it has not really achieved great diversity. It would be possible to reduce the number of Members and increase diversity at the same time by having a more reflective proportionality. We would have larger multi-member constituencies returning more Members, but a lower total. For example, you could have 12 constituencies returning between six and eight Members, which would give around 80 Assembly Members.

1862. **The Chairman (Mr Wells):** Any views on that interesting proposal?

1863. **Dr Farren:** It is a view that is being expressed at the minute. As Mrs Foster said, it is not likely that we are going to reach a resolution on it today. It may well need to be referred to the institutional review committee, or some such committee, following restoration.

1864. In our submission to the Review of Public Administration, the SDLP recognised that the public is concerned about the high number of public representatives in Northern Ireland, between the councils, the Assembly, Westminster and the European Parliament, and that there should be some cutback. Our submission suggested that there should be 90 public representatives, giving five to the existing constituencies, and that we should persist with the STV system.

3.15 pm

1865. However, there will be a significant problem in getting public representatives of high quality, and there will be a challenge in achieving the numbers that have been proposed in the RPA along with the elimination of the dual mandate for Assembly Members.

Recognising that the ratio of Members to the electorate is quite low compared to many others, a smaller number of Assembly Members is recommended. There are many practical

considerations impelling us to look at reducing the number of Assembly Members.

1866. **Mr McFarland:** It is generally agreed that there are too many MLAs, and that the number needs to be reduced. The question of how far is a matter for further discussion and would have to be referred to the relevant Assembly Committee.

1867. **Mr Murphy:** We are happy to look at this with other parties and see what agreement can be reached when devolution is restored.

1868. **The Chairman (Mr Wells):** Mrs Foster proposed that an efficiency committee be set up within the Northern Ireland Assembly to consider issues such as the number of Assembly Members and that Members of the Assembly should continue to be elected by STV — but STV did not really arise as a problem.

1869. **Mr McFarland:** Can this be filtered off to the famous mechanism, or institutional review, Committee that will look at issues relating to structures, numbers, etc; it is the same topic. The danger of creating a committee for each area is that we end up having more chairmen, and then the question of payment for chairmen arises. If we are doing jobs for the MLAs, we are in danger of creating extra committees when they are not needed.

1870. **Mr P Robinson:** Do chairmen get paid?

1871. **Mrs Foster:** The chairmen of Ad Hoc Committees do not get paid.

1872. **Mr Murphy:** There is a danger of creating inefficiency committees by creating too many of them.

1873. **The Chairman (Mr Wells):** Mr McFarland, are you suggesting that we do not have an efficiency committee, but that this matter is referred to the other mechanism suggested?

1874. **Mr McFarland:** An efficiency committee makes lots of sense, and we support having some sort of organisation that will examine, for instance, effectiveness, efficiency, who is doing what, and how we develop and re-examine different areas. However, if we keep establishing committees for every topic that needs to be

examined, we will have trouble getting Members to sit on them. An institutional review Committee — or mechanism — could examine how to better the Assembly; whether the institution needs to be changed, and which bits of it are not working properly. Regardless of what the committee is called — effectiveness and efficiency Committee or institutional review Committee — it would have the same objective.

1875. **The Chairman (Mr Wells):** Mrs Foster, it was your proposal.

1876. **Mrs Foster:** Yes. We envisaged the institutional review Committee as being a Standing Committee, whereas the efficiency review Committee would be appointed to deal with issues such as the number of MLAs and the size of departmental structures, etc. I would have preferred if it had stayed where it was.

1877. Naomi made a point about larger constituencies. Members will be aware of the recommendations in the RPA concerning the size of the constituencies, but they detract from the connection that the public will have with their representatives. That is particularly important for the DUP in the west of the Province. I am not in favour of increasing the size of the constituencies. Fermanagh and South Tyrone is, I think, the second largest geographical constituency in the United Kingdom, and I cannot envisage making it any larger. Therefore we want to address that point.

1878. The points have all been made. There is public concern, and members know fine well that the 'Belfast Telegraph' runs articles every now and again about the 108 people who do nothing for their money. It is something on which we have consensus, and I hope that we can go ahead with it.

1879. **Mr P Robinson:** In the comprehensive agreement, the proposed efficiency Committee has been scaled down to a panel appointed by the First Minister and the Deputy First Minister to deal with efficiency matters. We will probably get general agreement somewhere between that and the more institutional issues being dealt with by the institutional review Committee.

1880. **The Chairman (Mr Wells):** There should be an efficiency panel in the Northern Ireland Assembly.

1881. **Mr P Robinson:** The First Minister and the Deputy First Minister would appoint a panel under proposals by the two Governments. They have a responsibility under the Northern Ireland Act 1998 to consider the number of Departments, and so forth. They hold that rolling function, so it is simply a matter of widening it to consider additional issues.

1882. **Mr McFarland:** That panel should reflect the Assembly, rather than two parties appointing colleagues to examine efficiency. The UUP would not have a problem with a body being set up that is similar to a Committee and which reflects the percentages of the Assembly. However, leaving it to colleagues to identify issues that may be helpful to parties would not necessarily be healthy.

1883. **Mr P Robinson:** We have already agreed a principle of proportionality, have we not?

1884. **Dr Farren:** We have agreed a commitment to reducing the number of MLAs. Can we agree to defer the question of a mechanism until we find the most appropriate one to be established? That is a second issue.

1885. **The Chairman (Mr Wells):** Are members agreed?

Members indicated assent.

1886. **The Chairman (Mr Wells):** We have agreed, in principle, to a reduction in the number of MLAs, and we will defer consideration on the mechanism. Do we need to raise “Elections to the Assembly (STV)”?

1887. **Mr P Robinson:** Yes, you said that you agreed to it.

1888. **The Chairman (Mr Wells):** It was put down as an issue, but everyone spoke favourably on it. Are members agreed?

Members indicated assent.

1889. **The Chairman (Mr Wells):** We move to “Standing of MLAs”, which Mr McFarland raised.

1890. **Mr McFarland:** I worked for some years at Westminster, where, if someone wanted to get access to a Minister, the gatekeeper was the MP: a constituent wrote to the MP, and the MP organised matters from there. Therefore the MP was of some standing — they were someone in the community.

1891. There was a strange situation in the previous Assembly in which — and perhaps it was in an effort to get us close to our constituents — we sometimes ended up with Ministers taking delegations from anyone who wrote to them. There were all sorts of people, including councillors and individuals, leading delegations on issues to see the Minister. As a result, MLAs became irrelevant, or at least not of the same standing as MPs. That was because MLAs were not the gatekeepers; they had nothing to deliver to someone who wanted to meet a Minister, because that person could write to the Minister, and the Minister would receive a delegation.

1892. We should use the same system as Westminster, where people who wish to contact a Minister write to their MP. MLAs should be important in getting access to a Minister. If councillors and the general public can access Ministers themselves, what is there for an MLA to do? The answer is: not a great deal.

1893. The standing of MLAs is important for the next time. An MLA should be a key figure in getting justice, access or changes made for constituents. At the moment, MLAs are largely irrelevant.

1894. **The Chairman (Mr Wells):** Does anyone have a view on that suggestion? The same applies to the Northern Ireland Commissioner for Complaints. Members of the public cannot approach the Commissioner except through an MLA.

1895. **Mr McFarland:** Absolutely, that is the one thing that a MLA can do. People cannot access the Ombudsman without going through their MLA.

1896. **Mr P Robinson:** Where do we draw the line? Are we saying, for example, that if representatives of Belfast City Council wish to

meet with the Minister with responsibility for the Department of the Environment, an MLA must sponsor them? Are there no groups of sufficient standing to merit a meeting with a Minister should they request one?

1897. As happened many times when I was the Minister for Regional Development, if trade union representatives requested a meeting, I met them, and the same applied to the Institute of Directors (IoD) or the Confederation of British Industry (CBI). I am not sure that that is appropriate in all cases, but it was for those groups.

1898. On account of the division in our society, some groups might find it difficult to be associated with a particular MLA. That would lead to a situation whereby all the MLAs for a particular area would need to be dragged along to each meeting. It would end up that Windsor Park would be needed to accommodate some of the meetings, especially if Naomi were to get her way.

1899. **Mr Campbell:** I want to expand that point. If, at some point in the not-too-distant future, there is a reduction in the number of MLAs, there could conceivably be a number of constituencies in which a section of the community does not feel that it is represented by any of the MLAs. That could effectively create a barrier between the Minister and a community group, or various people within a constituency, because they do not feel that they have an elected MLA, not only from a political party of their choice, but from the community of their choice.

1900. **Mr McFarland:** The current situation is no different: if a nationalist from east Londonderry wishes to gain access to the Home Secretary in London, he goes through Gregory, or if uncomfortable with that, through Martin McGuinness. If MLAs cannot deliver something that Joe Public could not achieve simply by writing a letter to the Minister, they are largely irrelevant.

1901. Councillors have greater access to councils than MLAs. If people want to raise issues with councils, they would normally approach their local councillors who would make the arrangements. They would be brought

to the council and, if councillors agree to speak with them, that would go ahead. In the first Assembly, our experience as MLAs was that when it came to accessing Ministers, we were largely irrelevant.

1902. If the title of MLA is to mean anything, or if MLAs are to have any power as gatekeepers, we must act. Otherwise, we may as well pack it in and become super-councillors, and if people want to come to us, that is OK. They will be able to drift in to see the Minister whose time will then occupied by loads of wee groups from all over the place who want to have a word with him or her.

1903. **Mrs Long:** I am not sure that I understand Alan's motivation. As an elected representative, I do not wish to see myself installed as a gatekeeper to prevent my constituents having full access to the people to whom they wish to speak. I would not be particularly eager to take on that role.

1904. It is true that councillors can sign in MLAs at their local councils and that they can request deputations. As MLAs, we have the right to sign in anyone who wants to sit in the Assembly's public gallery. However, I do not imagine that any council would turn away an MLA who has phoned about a particular constituency issue. Therefore, I am not sure that that holds true.

1905. It is up to MLAs to justify their existence to their constituents and the electorate. When we have legislative and scrutiny functions, we must demonstrate that we discharge those well and in the interests of our constituents. We must demonstrate that we listen to what they say and that we are making representations on their behalf.

1906. Much of what our constituents seek from us will relate to our individual powers of persuasion and argument and to our understanding of the political system. They will not expect us to take on a gate-keeping role to prevent them from making a direct appeal to a Minister, which they may feel would get them further.

3.30 pm

1907. **Dr Farren:** I hope that it is not too indelicate to suggest that this issue arose

because of difficulties the UUP had with the Ministers in office. That is a flippant remark.

1908. I did not afford individuals immediate access. However, if individuals nabbed me by the collar at a public event, or when I walked down the street, or if they got hold of my telephone number and phoned me at home, then I would engage with them insofar as I wanted to or could do. However, some delegations consisted of one person, and that person was there because of a corporate responsibility. MLAs, councillors, or both, accompanied many delegations, and I am not sure what would have been achieved by being restrictive in any formal way. In practice, time is rationed anyway. It is rationed between the delegations and people you want to meet according to their needs. People should have access. MLAs were accessible to the electorate and were available on many occasions within constituencies and elsewhere in a way that people had not experienced prior to devolution, and I hope that will be retained.

1909. **The Chairman (Mr Wells):** I do not think that we are going to get consensus.

1910. **Mr Murphy:** I agree with Seán Farren. One of the successes of the Assembly was having accessibility to those who were making decisions — and that is one aspect that people miss. MLAs have a role and it is up to them to make themselves relevant in whatever role their party has given them or whatever role they can carve out for themselves. The problem that Alan McFarland refers to has not arisen as far as Sinn Féin is concerned, and it is certainly not an issue. People have roles, and they work as effectively as they can within those roles.

1911. Naomi Long referred to MLA's being gatekeepers, and I share her concerns that there are too many gatekeepers in this society. They become apparent when you try to gain access to Ministers through the Civil Service and the NIO. I would not be comfortable with such a role in relation to my own constituency. If people have issues that they do not want me to bring forward on their behalf, then another representative can do that for them. Sinn Féin has not experienced that problem and does not

see any necessity to bring in specific mechanisms to deal with it.

1912. **Mr McFarland:** I am not against institutions having direct access to Ministers. However, the first Assembly was made up of Members who were also MPs and councillors and therefore had access to Ministers. When Members are acting as MLAs only — and are not also MPs, councillors or anything else — what specific attributes can they deliver within that role? My understanding is that a Home Office Minister can only be accessed through an MP — as an individual — and I suspect that a Dáil Minister can only be accessed through a TD.

1913. I think it will be important to find out what MLAs can deliver after they have shed their roles as MPs and councillors. There is no consensus, and I accept that. This will be an issue as people start to divest their roles and Ministers start — *[Interruption.]*

1914. **Mr Murphy:** I do not think that that is correct in relation to the Dáil. I know of constituents who write to Dáil Ministers.

1915. **Mr P Robinson:** Neither is it correct in the case of the Home Office: the Association of Chief Police Officers of England, Wales and Northern Ireland, the Prison Officers' Association, and all the other groups who have an interest in Home Office matters could go along there. I did not meet individuals when I was a Minister. I met representative groups, but I do not think I ever met individuals. No individual wrote to me and was invited to meet me as a result.

1916. **The Chairman (Mr Wells):** Mr McFarland, I take it that you do not want to formally move your proposal?

1917. **Mr McFarland:** No. This is not necessarily a problem now, but it may be a problem in the future. There are issues around it that need to be aired.

1918. **The Chairman (Mr Wells):** We will move on to a very significant issue, an Alliance Party issue that has come up several times; the power to raise or to vary our own tax.

1919. **Mr P Robinson:** Do you mean to vary Members' own tax or to vary somebody else's tax?

1920. **The Chairman (Mr Wells):** It will be interesting to see. The phrase used is "tax-varying powers". Mr McNarry, do you wish to comment on this issue?

1921. **Mr McNarry:** Yes. Could the Committee give an opinion on this matter to the subgroup?

1922. **The Chairman (Mr Wells):** Yes. You were quick to point out that we should not cut across their work. If we take decisions or do anything on this issue, it is important that the Committee let the subgroup know immediately. Naomi, what is the main thrust behind the suggestion?

1923. **Mrs Long:** The Alliance Party has a principled position that the Northern Ireland Assembly should have the ability — similar to the Scottish Parliament — to vary taxes within Northern Ireland to take account of its specific economic situation. If the matter is better dealt with through the subgroup, my party is happy with that. It is not concerned about where this is discussed.

1924. **Mr P Robinson:** There is a misunderstanding. The Scottish Parliament does not have power to vary taxes; it has power to raise its own tax. There is a great difference. If the Assembly had power to vary our own tax, we could reduce income tax, corporation tax, VAT and everything else.

1925. **The Chairman (Mr Wells):** That is a good idea.

1926. **Mr P Robinson:** I do not think the Chancellor would like that.

1927. **Mrs Long:** Within a Northern Ireland context it would be feasible to decide that rather than have separate charges for rates, water charges and the plethora of other local taxes, they could be rationalised in such a way that the outcome would be varied.

1928. **Mr P Robinson:** We have complete control over the regional rate and authority over the local rate and water charging.

1929. **Mr McFarland:** Dr Farren, I am sure, will keep us right, but my understanding from the first Assembly examination of this issue is that the Chancellor would be delighted if the Assembly would abandon the Barnett formula and adopt its own tax-raising powers because an enormous slice would be removed from the subvention that Northern Ireland receives. That idea was examined in the first Assembly and was found to be slightly dangerous.

1930. **The Chairman (Mr Wells):** The subgroup is looking at corporation tax and industrial derating at the moment. This matter would be best taken by the subgroup. You were not to know when this item was listed that the subgroup would be looking at those items.

1931. **Mrs Long:** We raised this issue in our initial submission and at that time the agenda for the subgroup had not been finalised. This was part of our overall submission on preparation for Government. If it is now best dealt with through the subgroup we are content.

1932. **The Chairman (Mr Wells):** I think that is a reasonable decision.

1933. **Mr McNarry:** I am sure Mrs Long will be impartial when this matter arises during her time as Chairperson of the subgroup. *[Laughter.]*

1934. **Mrs Long:** As always.

1935. **Dr Farren:** The subgroup will report to this Committee. Therefore, this Committee will have a say if it wants to.

1936. **Mr Murphy:** I am content to allow members of my party on the subgroup to air views on the matter. Sinn Féin is, in general, for the maximum transfer of powers, so that would include all of these matters, but my party will let members of the subgroup spell it out in more detail.

1937. **The Chairman (Mr Wells):** The next issue is "Stability". I do not know if this meeting will conclude by 4.00 pm, but a series of issues has been raised, mostly by the DUP. The first is a major issue: arrangements for a fail-safe mechanism in the event of recurring terror and criminal behaviour. Does anyone wish to speak on that?

1938. **Mr McNarry:** We have moved remarkably quickly through this part of the agenda, and I understand that there is to be a full session the next time we meet. The issue of “Stability” cannot be properly considered in 20 minutes. I suggest that we return to it later with fresh minds.

1939. **The Chairman (Mr Wells):** Seán, you are happy with that.

1940. **Mr P Robinson:** I am quite content; we do not want to begin to discuss the topic with only 20 minutes left. Could some work be prepared for the Committee on the issue? We need to know the existing arrangements with regard to the Independent Monitoring Commission (IMC) reports and recommendations and the legislation as it stands. What is the responsibility of the Secretary of State or the Governments if the IMC recommends the disqualification of a party, for instance, in the event of terrorism? If the Assembly were started up because the IMC had judged that there was no ongoing paramilitary or criminal activity, and six months later the Ulster Bank was robbed — or something as outlandish as that — what mechanism would be in place to deal with that? The IMC might report that the party should be disqualified from Government for a period of time, but my understanding is that that disqualification would be subject to a decision by somebody else. The IMC can only make recommendations. If we could be apprised of the legal and factual position in the present situation, it might be worth considering how it could be strengthened.

1941. **Mrs Long:** Mr Chairman, I would like some clarification on that. Mr Robinson, when you mention the situation as it currently stands, do you mean during suspension, when the decision to follow through on recommendations is at the Secretary of State’s discretion; or are you referring to the Assembly’s ability to follow through on recommendations, or both?

1942. **Mr P Robinson:** I am assuming that the Assembly is running.

1943. **The Chairman (Mr Wells):** Is everyone happy? I take David’s point; the Committee will not get through this issue in less than 20 minutes.

Considerable progress has been made in getting through the agenda. Would everyone be content if we stop now and return to the issue later?

Members indicated assent.

1944. **The Chairman (Mr Wells):** One or two small issues remain.

1945. First, are members happy with the revised work programme that is in their papers, which gives the dates and the names of those who will chair the meetings? Obviously, it is a moveable feast and will depend on whether we make more or less progress than expected. However, it gives members an idea of what will be happening over the next few weeks so that they can check their diaries. Is everybody happy with that?

Members indicated assent.

1946. **The Chairman (Mr Wells):** The next meeting will be held on Wednesday 9 August at 10.00 am in room 144. It will be on policing and justice issues, and it will be an all-day meeting.

1947. Does the Committee want another all-day meeting on Monday 14 August, from 10.00 am to 4.00 pm, to try to get through this? Is everyone happy with that, even the councillors and the MPs? I take it that no one has to rush off to any other meetings?

Members indicated assent.

1948. **Mr P Robinson:** I do not think that “happy” is the word that we would use.

Adjourned at 3.45 pm

Monday 14 August 2006

Members:

The Chairman, Mr Francie Molloy
Mr Gregory Campbell
Dr Seán Farren
Mr David Ford
Mr Danny Kennedy
Ms Patricia Lewsley
Mrs Naomi Long
Mr Alan McFarland
Mr Michael McGimpsey
Mr Conor Murphy
Mr John O'Dowd
Mr Peter Robinson

The Committee met at 10.03 am.

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

1949. **The Chairman (Mr Molloy):** Members, let us begin. I remind members to switch off their mobile phones completely. Hansard lost part of the recording from Friday's sitting because of mobile phone interference.

1950. Are any members deputising for other members from their party?

1951. **Mr O'Dowd:** I am here on behalf of Michelle Gildernew.

1952. **Mr P J Bradley:** I could toss a coin to decide whether I am Mark Durkan or Alasdair McDonnell. I am more like Mark, I think.

1953. **Mr Ford:** Naomi and I are representing ourselves.

1954. **Mr McFarland:** Mr McGimpsey is representing Mr McNarry. Mr Kennedy is due shortly.

1955. **Mr P Robinson:** Gregory and I are representing all three DUP members.

1956. **The Chairman (Mr Molloy):** Are members content with the minutes of the meeting of 7 August?

Members indicated assent.

1957. **The Chairman (Mr Molloy):** Last Monday, several members, particularly Alan McFarland, asked for a paper to be written that outlines the structure of Committee Bills and the drafting services that are available to Committees. A paper has been prepared. If members have any further queries about that issue, they should alert the Committee Clerk.

1958. We shall move to our discussion on institutional issues. Am I correct to assume that members do not need to state any declarations of interest?

Members indicated assent.

1959. **The Chairman (Mr Molloy):** The updated list of institutional issues is before members. We dealt with a number of the issues at the meeting on 7 August, when the Committee decided to resume its discussions at 'Stability'. Are members content to open with that issue?

Members indicated assent.

1960. **The Chairman (Mr Molloy):** The main issue on 'Stability' was raised in the DUP submission. Therefore, perhaps the DUP would like to open the discussion.

1961. **Mr P Robinson:** The aim is to avoid continual suspensions due to the behaviour — usually outside the Assembly — of parties or those linked to them. The Independent Monitoring Commission (IMC) has a role in that, but because a veto is available, it cannot exercise that role, as that requires the support of both sections of the community as represented in the Assembly. That means that the only option is to fall back on the Secretary of State, and I do not think that anyone would consider that to be a safe option.

1962. Therefore, the IMC requires further power, which is what the DUP asked for originally. The DUP requested that the IMC be given some real teeth, so that, rather than relying on the Secretary of State, and having

only the power to make recommendations, it would have the power to take decisions where vetoes could otherwise be used.

1963. **The Chairman (Mr Molloy):** Hansard shows that Sinn Féin also has issues with ‘Stability’.

1964. **Mr Murphy:** The ‘Stability’ issue that Sinn Féin raised is the 2000 Act, which brought in suspension provisions. It is no secret that Sinn Féin has stated, both at the time and since, that such legislation is outside the terms of the Good Friday Agreement. The British Government introduced it unilaterally. The suspension mechanism allows parties to jump out of the institutions at the first hint of trouble, and it has been shown, particularly with the last suspension, that issues that have caused people to jump out of the institutions have been found to be huge smokescreens.

1965. In Sinn Féin’s view, that legislation contributed significantly to instability. If walking out of the institutions had triggered elections and given the people their say on the issues that had caused the collapse of the Executive, Sinn Féin thinks that more thought would have been given on walking out.

1966. The 2000 Act added to the instability. That is not to say that there were no issues of concern or that the institutions did not face any difficulties from 1998 until now but, in our view, the existence of suspension legislation significantly added to the instability and allowed the much easier option of shutting down the institutions at every turn. If my memory serves me correctly, there were four suspensions. We made it clear to the British Government — and they have accepted — that the abolition of the 2000 Act and the ending of the British Secretary of State’s ability to suspend the institutions on a whim should accompany the reinstatement of the institutions.

1967. **Mr McFarland:** It is worth reminding ourselves that the reasons for the suspension of the institutions were the activities of the Provisional IRA and their Sinn Féin colleagues in Government. The whole issue of safeguards has dogged this process right from the beginning, whether Sinn Féin and the IRA were

going to decommission, or whether in fact they were seriously intending to play a proper part in the Assembly. The Northern Ireland Act 2000 was introduced as a safeguard. Rather than crash the entire process, it provides for a time out to suspend the Assembly, to examine what had happened and why, and, if that could be put right, to fire it up again.

1968. In theory, the Government will not get up and running again until the DUP is happy that Sinn Féin is ready for Government, and that all the outstanding issues are cleared. Technically though, we begin with everyone happy that everyone else should be in Government — otherwise, presumably, we shall not get past first base. The question then becomes: if things have settled down, but one party or another is engaged in some nefarious activity, how do we deal with that?

1969. Our view is that the Northern Ireland Act 2000 should remain for a specified period of time. We must ensure that if the institutions are fired up again, and if the south Derry battalion of the IRA — which has just seceded from the movement, with its weapons, in upset at what the leadership are doing — or the group in east Tyrone decides that it is not happy and is messing around, there must be some sanction to suspend the system, examine what has happened, and deal with the culprits.

1970. Although we can see that, in the longer term, the 2000 Act could be set aside once stability has been achieved, now is not the time to do that. We must buy ourselves some time with the 2000 Act in place, so that if people are messing around, we can suspend the institutions, examine what has happened and impose the necessary sanctions.

1971. **Mr O’Dowd:** It follows that if the mid-Ulster brigade of the UVF misbehaves again, we should also call into question the role of the Ulster Unionist Party Assembly Group (UUPAG). We must make politics dominant. We must ensure that politics wins the day. As politicians, we must strive to ensure that the institutions are robustly defended against any outside force that would attempt to bring them down. We do not

need legislation for that; we need confidence in ourselves and in our communities.

1972. **Dr Farren:** From the outset, the SDLP's position in this debate has been that if the Executive collapses, there is no reason for all the other elements of the agreement to be suspended. If the problem is the inability to form an Executive, then, after the statutory period to test that has passed, there should be a move to restore the Assembly and the other institutions with the two Governments seeking approval from the Assembly and appointing an Executive drawn from outside the pool of Assembly Members. The SDLP published those proposals a long time ago and we still advocate them in the case of the collapse of an Executive.

10.15 am

1973. **Mr Ford:** Clearly, no one can be satisfied with the Assembly remaining liable to suspension at any time, effectively at the whim of the Secretary of State. There are provisions for the removal — or temporary suspension — of Ministers from office, partly through the IMC legislation that gives that responsibility firmly to the Assembly. The potential for removing Ministers from office for a period of time will apply only if, for example, in the case of misbehaviour by the UVF, the DUP is prepared to stand up to the Ulster Unionist Party Assembly Group and similarly, in the case of misbehaviour by the IRA, if the SDLP is prepared to stand up to Sinn Féin. That was where we ran into problems in the past.

1974. However, the IMC legislation allows the Secretary of State limited powers to remove Ministers without suspending the entire Executive. The Alliance Party's view is that it is preferable to keep in office those Ministers who are democratically elected, accountable to the Assembly and not misbehaving, rather than end up with the potential for replacing the entire Executive with undemocratically appointed commissioners. The IMC legislation provides scope to carry things forward, but the first question is whether the Assembly is prepared to follow through on the IMC reports.

1975. **Mr P Robinson:** Let us be clear that the suspension legislation is mere window dressing.

It is a one-day measure in Parliament: the Government can repeal it today, and pass it again tomorrow. Some people may want that fig leaf of cover, which will not exercise anyone too much because people know that, if required, the Government can legislate speedily, as they have shown in the past. It would be more convenient for the legislation to remain, but that is a matter for those who have to find time for legislation at Westminster.

1976. People are avoiding the problem that would arise should the scenario that Alan McFarland mentioned come about, wherein a judgement is made that it is possible to set up an Executive. All the available intelligence, the IMC and the general community on the ground may well support that judgement. However, everyone knows that the IRA retains its capacity for criminality and, six months down the road, it could be the Ulster Bank's turn to be robbed. The outcome of that would be that no unionist would remain in an Executive with Sinn Féin. That would result either in suspension or in the entire Executive being brought down. Clearly, the people who should be punished in those circumstances are the individuals identified as having links with those who robbed the Ulster Bank — not the rest of the community.

1977. Why should the community lose its political structures because of the actions of one organisation? There must be provision for those individuals to be expelled or suspended. That cannot happen under the existing legislation, because Sinn Féin would hold a veto in those circumstances. Everyone knows that the British and Irish Governments would not have the guts to act and therefore the whole show would collapse. Is that what people want? Are people willing to face up to that?

1978. If Sinn Féin has turned over a new leaf, it will have nothing to worry about, and there should be no excitement in its ranks. If Sinn Féin is so convinced that it is squeaky clean, it will not want to resist any change in this area. Why would an innocent man have anything to worry about in those circumstances?

1979. **Mr McGimpsey:** At the time, the UUP regarded suspension legislation as important,

and we still do. We saw it as fail-safe legislation in case things went wrong. The initial institutional set-up was a gamble, and the odds were stacked against its success, so we wanted to be able to get out without much trouble. That issue also locked in Tony Blair. Peter Robinson is correct about the sovereignty of Parliament — Northern Ireland is part of the United Kingdom and Westminster is sovereign. If Westminster repeals that legislation, it can re-enact it tomorrow. However, if Blair and company get rid of the Act, they will never take that power back. They will do everything in their power to avoid suspension legislation, as they did before.

1980. Peter is also correct to say that unionists will not remain in Government with Sinn Féin if there is a repeat performance of February 2000, when what was supposed to happen did not happen. Sinn Féin was aware what would happen if it did not do what it was supposed to do, or what republicans were supposed to do. When that did not happen, we were set for a crash. The question is whether we want scorched earth or a crash that can be repaired.

1981. Seán Farren said that if the Executive went down, everything else should stay in place. However, that cannot happen, because there is interdependence in the institutions; strands one, two and three are dependent on one another. If strand one goes, strands two and three must also go. Under strand two, North/South bodies are supposed to deal with care and maintenance, because they are dependent on strand one.

1982. A great deal is being asked of unionism in entering into an arrangement with no suspension legislation in place. Unionists will not remain in Government if there is a repeat of February 2000, but guess who will get the blame for crashing the democratic institutions? The purpose of the legislation was to avoid that.

1983. The British Government also have a role to play. There was clear thinking about putting suspension legislation in place. If the institutions get up and running again — and that is a gamble — they will not be mature enough to continue into the foreseeable future without

suspension legislation. I do not see any measures in strand one that would allow the institutions to expel Sinn Féin. Therefore, we will return to the previous situation in which the whole system remains hostage to republican intentions.

1984. **Mr Murphy:** Sinn Féin contends that the system remains hostage to the whisperings of people in Special Branch and other agencies who have political axes to grind. We are confident that there will be no accusations against us, or against anyone associated with us. However, all it takes is a leak from someone in Special Branch, MI5 or some other agency, for Sinn Féin to be tried and found guilty within 24 hours. If that is the sort of mindset with which members are heading back into the institutions, it highlights the fact that we are in for an unstable time. We will not allow ourselves to be tried and found guilty by the IMC, or any other such agency that relies on reports from people who were sworn enemies for a long time, and who, over the years, have been interfering in a political fashion in the democratic process here. Our contention is that if we are in Government, it is on the basis of our electoral mandate — people voted for us to be in Government.

1985. Ultimately, the people will decide whether Sinn Féin or any other party is fit for Government. Other parties want a safety net of suspension that can be triggered in the aftermath of reports by agencies to the IMC. In fact, we have seen recently that it does not even take the IMC — all it takes is someone to leak a word in someone's ear and suddenly there is a crisis which must be responded to.

1986. That may be the type of institutions that other people think they want, but they will soon discover them to be unstable, because there are people in the security agencies who have been working to their own agenda, who have political agendas and who have axes to grind. I am confident that — as has been proved — the accusations do not stack up. However, the difficulty is that every time an accusation is made, unionism goes into crisis and into a tailspin and rushes for the door of the Executive. If that is the type of institution that

some members want, they will find that it will not survive very long, because someone will make an accusation in order to destabilise unionism.

1987. We must have the confidence in our own ability to sustain and work the institutions; we do not need safety mechanisms from the British Government or from any other agency. I am confident that we can do that. However, relying on the IMC or on other mechanisms for exclusion or soft landings — as some people are wishing for — is an unstable basis on which to start the reinstatement of the institutions.

1988. **Mr P Robinson:** Let us dispense with the notion that the Northern Bank robbery was merely the result of some Special Branch individual's whispering — it was not a whisper; it was a significant gulder. That robbery was not the figment of the Special Branch's imagination — the IRA's responsibility was recognised by the Prime Minister of the United Kingdom and the Prime Minister of the Republic of Ireland. The IRA's responsibility was also recognised by the police forces and the intelligence services on both sides of the border. However, the republican movement is still in denial, as it would be if it were the Ulster Bank that was robbed next time. That is why these issues must be dealt with.

1989. Michael McGimpsey shares my unease about relying on a British Government — present or future. A Government that are not prepared to bring forward a new Act are unlikely to use existing legislation. That is why I put less faith in the suspension-legislation option than in the more secure mechanism of removing a party that was involved in such behaviour. The suspension proposition is one by which everybody will be punished, and that is not fair.

1990. **The Chairman (Mr Molloy):** Do we have any proposals on this matter?

1991. **Mr McFarland:** The IMC contains a mechanism to identify what happens when any party is not playing by the rules. Is Peter Robinson suggesting that the Government should have separate new legislation to remove a party?

1992. **Mr P Robinson:** I am suggesting that the legislation be changed so that an IMC report would be sufficient to remove a party. Such a motion will not be successful in the Assembly because there are vetoes there, and we will not get any action from Governments who will be looking at the political rather than the security or criminal issues involved.

1993. **Mr McFarland:** The IMC was established through an agreement between the British and Irish Governments, with accompanying legislation. Therefore, for any modification, there would have to be an acceptance between Dublin and London to amend the legislation in their respective jurisdictions. Is that the outworking of what is being suggested?

1994. **Mr P Robinson:** The legislation that would affect the Assembly would be the United Kingdom legislation.

1995. **Mr McFarland:** Would the legislation in Dublin and London have to be changed to enable the IMC to have the power to remove a party from the institutions?

1996. **Mr P Robinson:** I am not sure, but it would require a change to the agreement. I am not sure whether that requires a change to the legislation in the Irish Republic.

1997. A change to the legislation in the United Kingdom would certainly be required, because it is a United Kingdom institution. That is a legal matter.

10.30am

1998. **Mr McFarland:** That mechanism comes from the IMC, which was created by a separate agreement, which was then put into legislation on both sides of the border. Are we now beefing up the IMC's ability? At the moment the IMC makes its report and the Secretary of State for Northern Ireland takes action. The Dublin Government are not involved; there was a long and specific row about that at the time. The logic of what is being proposed, as I understand it, is that, once the IMC says that party A is guilty, the law dictates that there is an automatic suspension, so that process will bypass the Secretary of State?

1999. **Mr P Robinson:** Some formal process might have to be introduced; we would need to speak to the lawyers. The Secretary of State might have to take action, but it would be mandatory for him to do so — in terms of authority to Parliament he may have to do it.

2000. **Mr Murphy:** To correct Alan on one point, the Secretary of State is not required to take action. That is clear because the IMC recommended financial sanctions against the PUP, which is now the UUP's sister party. However, the Secretary of State, while imposing financial sanctions on Sinn Féin, did not feel that it was necessary to impose financial sanctions on the PUP, despite a recommendation to do so. Therefore he is clearly not required to act under any recommendation from the IMC.

2001. I want to make it clear that we do not accept the IMC's right to judge our party or any other political party in this Assembly. The parties are here as a right of their mandate, and the people who judge their suitability for office are the people who vote. Therefore we would not accept the IMC sitting in judgement on any party, particularly our own.

2002. If we were to make proposals, they would be to get rid of the IMC and do away with the 2000 Act. However, I do not presume from the discussions today that there is any sense in making proposals because I cannot see consensus being reached. At the same time, there would not be consensus from Sinn Féin to beef up the IMC in any regard or to retain suspension legislation. We can discuss how the IMC can be beefed up, but I assure you that there will be no consensus from us.

2003. **Mr O'Dowd:** We are getting ourselves into a tailspin about how to exclude parties. The evidence used by the IMC would not be enough for a disciplinary hearing against a member of the Assembly staff, never mind the exclusion of a democratically elected Government party. The ability to deny the democratic rights of a large section of society is very precariously based.

2004. If a senior unionist MLA had his offices, including his council offices, searched as part of a fraud enquiry, would Sinn Féin walk away from Government? If, for instance, an Ulster

Resistance weapon were used to kill a Catholic or added to the growing list of Protestants who have been murdered since suspension, would Sinn Féin walk away from Government? No, we would not. We would stick in there and ensure that the sanctity of the institutions remains supreme and that we build politics. That is what this process is about. None of the parties who are sitting here can be sanctimonious about the past or the future. Let us debate how we include people instead of excluding them and how we build inclusive institutions and an inclusive Executive.

2005. **Mr Campbell:** I took from this heading of "Stability" that we were talking about circumstances. We have hit the buffers on three occasions in similar circumstances. In some respects, that is why we have been having these discussions in recent weeks.

2006. Enduring stability is not about the specific exclusion of any particular political party. However, the stability mechanism is designed to ensure that, when an independent assessor — in the form of the IMC — has identified one or more political parties that are part of the Executive as being party to one or a series of criminal or terrorist acts, that stability is such as to allow the Executive to continue to function, despite that activity. For us and, I know, for others, it would be intolerable that the Executive should continue as though the act had not occurred. The integrity of the institution would be at stake. As Mr Robinson pointed out, one simply could not participate in an institution if an Ulster Bank robbery took place that was a mark II of the Northern Bank robbery.

2007. Therefore there has to be a mechanism that protects the integrity of the devolved institution, ensures continuing stability and upholds the right of the people to continue to have that devolved institution. That mechanism must ensure that those who are guilty of being party to certain activities know that those activities have to stop and that their continued participation in a devolved institution is not just threatened but reaches an automatic cessation point because of those activities. Participation would be restored at the point either when those

activities cease or when sufficient time has passed to ensure that they do not recur.

2008. That is what stability means. It is not about specifically excluding people and walking away from government; it is about trying to ensure that government continues despite the activities that some people have engaged in. It is also about trying to ensure that such activities do not occur again and that if they do, people will have to pay a penalty.

2009. **Mrs Long:** There are a couple of things that I want to pick up on. First, the suitability to hold office is not simply based on a mandate. It is also based on people being willing to take a pledge of office, accept a ministerial code, and live up to both those things. To say that suitability is just about a mandate is simply not correct; it is about more than that.

2010. It is entirely conceivable that any politician, or indeed, any group of politicians, might pay lip service to a pledge of office and a ministerial code but not live up to them in practice. In any democratic society there are conditions in which such people would need to be removed from office. However, in other democratic societies that would not mean the collapse of government; it would simply mean the individual or party being removed from office while government continues.

2011. In that respect, the Alliance Party would be sympathetic to mechanisms that are likely to be able to address conceivable difficulties that might arise during the term of an Assembly without having to collapse the entire Executive and the Assembly. We certainly would not want that to happen.

2012. I am not sure that the British Government would accept giving powers directly to the IMC. The Government agreed to the IMC on the basis that they should retain the power to act at the final decision point. If, for example, the Assembly could not make up its mind about sanctions, or if it failed on a cross-community vote to adopt sanctions that were proposed, it would fall back to the British Government, albeit in consultation with the Irish Government and the Assembly, to make such decisions.

2013. Whatever the decision or the outcome of our discussions, the British Government are not likely to cede that power to any other body. I am not really sure that the British Government would adopt a position whereby the IMC would produce information and take the final decision.

2014. **Dr Farren:** We are essentially talking about the confidence that is necessary between parties, particularly those that would form the Executive. They should be totally committed, not only to working the institutions but to doing so within the context of the law — passively and actively — so that all the parties fully support the adherence to and upholding of the law and, indeed, support the agents — in other words the police and security services — who are there to ensure that the law is upheld and implemented.

2015. Therefore, parties that fail in that respect are not contributing in any way to the confidence that is necessary to sustain the institutions.

2016. Sinn Féin is the only party that does not currently lend its full support to the police and security services. It must cross that bridge and make that major commitment. If that commitment were made and seen to have been actively followed up, it would go a long way to developing the confidence that is essential to sustain the institutions.

2017. The current discussion must take full account of commitments to, and upholding of, the law, and support for the agencies of the law.

2018. **Mr Ford:** I shall follow up the DUP's suggestions about the IMC and add to Naomi's comments.

2019. There must be some mechanism to ensure continuity in the event of illegal activity by those who are linked to parties in the Assembly or, more specifically, the Executive. The DUP proposed that the IMC be given the power to impose sanctions. When the Alliance Party proposed to the two Governments the creation of the IMC, they were not entirely happy about the process, largely because the then leader of the Ulster Unionist Party made a similar proposal at the same time. That proposal included giving the IMC the power to impose sanctions. The British Government were

unwilling to give the IMC that power, favouring instead powers of investigation, reporting and recommendation.

2020. In those circumstances, we must be realistic and recognise that there is no likelihood that the Governments will have changed their minds. The 2003 Act that established the International Monitoring Commission makes it clear that the power to regulate the IMC's activities should initially rest with the Assembly, but with a backstop in the form of the British Government should the Assembly fail to take action.

2021. Our fundamental problem is that circumstances might arise in which certain Members believe that those who are linked closely to one party are not behaving themselves, and another party that is perhaps on the same side of the community designation divide takes the view that those Members are not that bad. In those circumstances, there is a major problem with any powers resting with the Assembly, if the Assembly is required to act on a designation-led, so-called cross-community vote. Some type of backstop must be found. Clearly, we hope that we do not need it, but experience unfortunately shows that something of that nature is required.

2022. **Mrs Long:** Seán Farren made a useful point about democratic credentials for Government. He also raised the issue of the rule of law and our understanding of it. That plays a role as regards confidence-building because there must be some form of shared acceptance of what the rule of law entails — and it must be much more than simply signing up to policing structures, which seems to be the current focus.

2023. A party can sign up to policing structures and at the same time disregard the rule of law. There is something contradictory in that requirement; it would not, of itself, eliminate the potential need for a Member, or a party, to be removed from office in the future. Even with the same understanding of the rule of law, people might break it. An issue remains about what would happen if a party were in default of the underlying principles of being fit for Government.

2024. I do not see this simply in a Sinn Féin dimension; it is more fundamental and wide-ranging because it requires all parties — not just one — to sign up to certain standards if they wish to be in Government. Unless the discussion is focused in a more wide-ranging way, it is likely that resistance will come from Sinn Féin, because the mechanism appears to aim for exclusion of Sinn Féin. I prefer to see it as a mechanism for ensuring that Government is in no way sullied or held to ransom by the activities of people who are outside Government but linked to parties within it.

2025. The discussion must be kept in broad terms, rather than focusing on particular parties, because any party could potentially find itself in that situation. There could well be circumstances in which parties that feel uncomfortable with the discussion may wish to see this legislation used against parties other than Sinn Féin.

10.45 am

2026. **Mr Murphy:** We are not arguing on the basis that it has an impact only on Sinn Féin. I made it quite clear that we would not accept the IMC sitting in judgement on any party. Attention has focused on us, and I remind people that that is in the context of it being one year on from the IRA disposing of all its weaponry and instructing its volunteers to engage in no activities whatever. We are still in this circular discussion, and the unionists are trying to get a clause included that will allow Sinn Féin to be thrown out at the first sign of trouble.

2027. I do not accept the IMC simply on the basis that it has had a negative impact on our party; I do not accept it on the basis that it applies no standards of proof that would be acceptable anywhere else. Its membership has its own political bias, and its recommendations and reports have been shown to be highly flawed. As I said, the Secretary of State can decide to act on one series of recommendations but not on another. For all those reasons I do not accept the IMC.

2028. Naomi made the point that it is not just a party's mandate that dictates whether it is entitled to sit in Government. The Committee on Standards and Privileges can decide whether

individuals have breached the Pledge of Office. However, it is not the case that one party can sit in judgement on an opposing political party and decide that it can throw it out of the Government. Parties have a choice about forming a Government in other circumstances; however, these are not normal democratic circumstances.

2029. Seán Farren's point started to creep into the realms of precondition. We have made clear our view about what needs to be done on outstanding policing matters, and our proposed course of action on that has been achieved. It is interesting to note that, particularly when you consider the intelligence-gathering powers that MI5 is being given, the SDLP gives full support not only to the police, but to the security agencies. Having said that, Sinn Féin's position on policing is quite clear. That discussion could take place here; however, another part of this Committee meets to discuss policing issues, and that discussion would probably be best carried out there.

2030. This discussion is in the context of the actions that the IRA took last year. It is amazing that we are having a circular discussion on how to draft a clause from the unionist perspective — forget about how the Alliance Party or the SDLP feel — that will enable Sinn Féin to be excluded from Government. That shows how far we have to go to get the institutions functioning on a satisfactory basis.

2031. **Mrs Long:** In other democratic societies, if parties are partners in a coalition Government, they can sit in judgement on other parties.

2032. **Mr Murphy:** In normal democratic circumstances a party can walk out of a coalition, but these are not normal democratic circumstances.

2033. **Mrs Long:** We are supposed to be trying to move towards normal democratic circumstances; that is the point of this process. If one party refuses to govern with another that it judges for valid reasons to be unfit, it does not necessarily mean that Government falls. That is the difference here. It is a ludicrous proposition that a democratic society, however abnormal it may be at the moment, can have a party in Government that none of the other parties in

that coalition have confidence in. That cannot be sustained in the long term. A short-term crisis of confidence is one thing; a long-term lack of confidence is something entirely different.

2034. **Mr Murphy:** We had a previous discussion about the make-up of the Executive. If the Alliance Party proposes to change the Good Friday Agreement and people's entitlement to be in Government on the basis of their mandate, perhaps that is where that proposition should have been made.

2035. **Mrs Long:** I think it was.

2036. **Mr Murphy:** We had this discussion last week. These are not normal democratic circumstances. People are entitled to be in the Government on the basis of their mandate. That is what the Good Friday Agreement allows for. In normal democratic circumstances — and that is what we are aiming for — people can choose to go into coalition, or they can choose not to go into a coalition. They can also choose who their partners will be in that coalition.

2037. **Mrs Long:** Conor, do you claim that —

2038. **Mr Murphy:** If I may just finish. In that circumstance, people can choose whom their partners in coalition Government may be. In the circumstances that exist here, people are entitled to be in Government on the basis of their mandate. I do not think that in normal democratic circumstances parties could claim to have no interest in sitting in judgement on whether another party is fit for Government.

2039. **Mrs Long:** Is that irrespective of an individual's or party's adherence to, for example, a ministerial code or Pledge of Office? You are saying that their entitlement to be in Government is irrespective of any acceptance of democratic norms, that it is an entitlement, fair and square, without anything else having an impact on it. Is that your position?

2040. **Mr Murphy:** No. What I am saying clearly is that individuals who hold executive office have to abide by the Pledge of Office.

2041. **Mrs Long:** If they do not, what are the sanctions?

2042. **The Chairman (Mr Molloy):** One at a time, please.

2043. **Mr Murphy:** The sanctions are there. If you are proposing to change the Good Friday Agreement, perhaps you should have said so last week. There are sanctions in the agreement. People who are nominated for ministerial office must affirm the Pledge of Office and abide by that. If they do not, there are sanctions available to have them removed from office for a specified period. That does not exclude their party; the nominating officer of that party can nominate someone else. If that person behaves in a similar fashion, the same sanctions will apply. I fully support that. It is part of the agreement that I signed up to and that you signed up to.

2044. We did not sign up to a set of sanctions whereby other parties in Government could decide that one party and its entire membership, not just those in Executive office, is not fit for government.

2045. **Mr P Robinson:** Let us be clear: the Belfast Agreement — and I am not one of its supporters — also had a mechanism for the exclusion of parties in those circumstances. I find it disturbing that Sinn Féin does not want to have a mechanism that can ensure stability if a party behaves in a way that clearly shows that it is not committed to exclusively peaceful and democratic means. I cannot see why any party would resist the inclusion of such a mechanism unless it intended to abuse the process in the future. Therefore the resistance of Sinn Féin probably makes unionists more suspicious.

2046. There are several points that flow directly from that. Of course this is not the normal democratic situation; there are no democratic norms for a mandatory coalition of this type. That is why it becomes all the more important that a mechanism to sanction exists if people abuse their entry into Government through a mandate in order to be in Government while at the same time carrying out such activities that are patently contrary to any principle of democratic government. That was recognised in the Belfast Agreement, although that agreement never had the mechanisms that would have

allowed sanctions to kick in. The Belfast Agreement permitted vetoes under the voting system that allowed for exclusion, so it was meaningless. The principle was enunciated, but the mechanisms to realise that principle were not put in place.

2047. The IMC scenario does exactly the same thing. It puts in place the principle but does not have the mechanisms that would realistically allow for exclusion. If the principle is right, it must be backed up by the proper mechanisms.

2048. **Mr McGimpsey:** I do not want to prolong this discussion, Chairman — there is not going to be a meeting of minds. If this place gets up and running again, it will be via a political deal. However, we do not exist in a bubble; the history goes back decades and tempers our views as we go forward. The deal in November 1999 that allowed us to go forward was a gamble, and we knew that it was a gamble that probably would not come off at that time. Part of the gamble was to make sure that we were not locked in and that we had an exit if we needed one. That exit was the suspension legislation, the Northern Ireland Act 2000. It seems to me, given three live failures plus a further one that was not quite live and saw the Northern Bank raid, that it is a bigger gamble now than it ever was.

2049. We must be aware of that and factor it in. Conor's view may be to dogmatically adhere to every dot and tittle of the agreement, but I do not believe that that will wash. When the Assembly was set up, internal measures were created to deal with such issues. However, they were not adequate and were never going to be adequate. To proceed without adequate measures could result in scorched earth, a complete collapse of everything: back to square one, year zero. Alternatively, a suspension would allow us to reconsider matters before going forward. That is what we have now. It is valuable and we must hold on to it.

2050. It does not help when Conor says, "We have made those arguments and the British Government have accepted them, so that is it — the comprehensive agreement it is." We do not buy into that. We do not accept it. It may be that

a deal is possible, but the London Government must consider that if they take a gamble and repeal the suspension legislation, they could lose unionism. That is a decision that they would have to make. I felt strongly in 1999 that the deal was a gamble; as things stand it is a bigger gamble now than it was then. We must all face up to that.

2051. **Mr Murphy:** If that was the intention of suspension legislation, it has not had the outcome that the Ulster Unionist Party intended. There was no “pause”. The Assembly has been suspended since 2002. That is a long pause during which to assess what can be done in the circumstances. Suspension legislation has raised a huge question mark over the sustainability of the institution. Since 2002, 108 MLAs have been elected and paid their salaries, but they cannot do their jobs. That has caused huge scepticism of the institutions among the general public. Suspension has not had the impact that the Ulster Unionist Party thought at the time that it would have. Instead, it has raised questions about the credibility of the institutions and their functions.

2052. Michael is correct about one thing: we do not exist in a bubble. There is experience and history behind the politics here. Sinn Féin’s experience is that when unionists have been able to exclude us from having a meaningful role in any of the institutions, they have done so. When people within the security agencies or the Police Service were able to have a malign influence on the political process, they did. That is why we would not leave ourselves in hock to those people’s judgement of our democratic credentials.

2053. It is not a matter of our wishing to have a facility whereby republicans can default on anything that is expected of them under the terms of the agreement, and get off with it. It is about our experience of unionists and their abuse of power, and of those within the security agencies who have supported and encouraged abuse of power, and of where that has largely been directed. That is what governs our attitude to the IMC, to suspension legislation, and to placing the democratic institutions under the

whim of people within the security agencies and the British Government.

2054. **Mr McFarland:** Does Conor accept that the suspensions were directly related to the activities of the republican movement, or lack of them, and therefore the loss of unionist confidence? That is what it was about.

2055. The IRA statement of July 2005 may prove to be a watershed. However, the matter is not about Sinn Féin’s exclusion. The republican movement prides itself on its discipline. Is Conor saying that he does not have confidence in that discipline, confidence that there will be no future incidents? Unionists are still worried about that. If the safeguards that relate to suspension are left, Sinn Féin should be fully confident that they would never be needed anyway, because the republican movement is coherent and its members will all adhere to their instructions. The safeguards are a confidence-building measure for unionists. If Sinn Féin is confident that the republican movement is not going to start wobbling, those measures will never be needed, so what is the problem?

2056. **Mr Murphy:** Perhaps Alan will explain what caused the last suspension in 2002. He says it was republican inactivity.

2057. However, who was behind pulling down the institutions? Who was behind the raid on our offices? Who was behind the spoof story that led to the institutions’ collapse? Perhaps Alan will explain that to us.

2058. I am confident that no accusation against us will stand up. The difficulty is that our experience of unionism shows that they are prepared to jump ship after any accusation has been made, regardless of how little or how much evidence is produced to support it. Unionism has had a problem with the type of political change that has been underscored by the Good Friday Agreement. It has sought ways and means to frustrate and slow down that political change, and it has used the issues that caused suspension to do so.

2059. The difficulty is not about having a mechanism. I am confident that there will be no situation in which any accusation against us will

stand up. However, what could happen — and our experience shows has already happened — is that people can make accusations without having to provide any evidence. On the basis of those accusations unionists have jumped ship, perhaps because they are genuinely concerned about the accusations or perhaps because they want to slow down the process of political change. One can make a choice as to which unionist party might act on those allegations, but I am not confident that unionism will stay in the institutions if it has an escape clause.

11.00 am

2060. **Mr McFarland:** It sounds as though Conor is saying that the Ulster Unionist Party was bobbing in and out of the institutions at the slightest whim.

2061. **Mr Murphy:** You were out of them four times.

2062. **Mr McFarland:** We have nearly destroyed ourselves —

2063. **Mr Murphy:** You cannot blame all that on Sinn Féin.

2064. **Mr McFarland:** We have nearly destroyed ourselves attempting to show good faith that unionists could not be accused of not wanting a Fenian about the place. We have also attempted to show that we were willing to test the bona fides of Sinn Féin as to whether it was serious about moving away from paramilitarism and on to the constitutional path.

2065. We did that three times. Many would argue that once would have been enough, but the fact is that we cannot be accused of bad faith in this matter. It is wrong to say that we were using excuses: there were good reasons why people needed visible decommissioning, and we covered those at length during the first two months of this Committee meeting. If the republican movement was saying that it was no longer offering violence to the unionist community, why was it hanging on to its weapons? All those things dogged the process from the beginning.

2066. The IMC has reported that there has been a clear change. Therefore if Conor Murphy is

saying that last July's statement was a watershed, that there will be no more republican threats or violence and that the movement is turning on to the constitutional path, I am saying that unionists are still not confident that that has all gone away and is done with. In the meantime, the unionist community needs those confidence-building measures and safeguards.

2067. I reiterate my point: if the republican movement is absolutely committed and there is to be no more messing around with this process, what is the problem with having a few safeguards? After a specific period they might lapse, but in the meantime unionists could be confident that there would not be a return to any of the nonsense that we had in the first six years of this process.

2068. **Mr P Robinson:** First, I must ditch the idea that 108 people went to the electorate and got a mandate to get the Assembly up and running. That was not my mandate at all; my mandate was that I should not go into Government until certain conditions had been met. I am in keeping with my mandate. Others may be breaking theirs, but that is up to them.

2069. Secondly, I dispel the other idea that removing the suspension Act would somehow create an element of fear because unionists would not want to face an election in those circumstances. To take the scenario that I outlined earlier, if an election was forced because republicans had robbed the Ulster Bank no unionist would fear going before the electorate. In those circumstances, if such unionists thought that that was not the kind of action that a partner in Government should carry out, their position would be reinforced rather than weakened. I do not see that fear of an election is a factor at all, no more than I think that if the Government wanted to avoid those circumstances they would not move sharply to introduce a new suspension Act.

2070. However, we have missed the purpose of the discussion, which was supposed to be under the heading of 'Stability'.

2071. I have suggested that strengthening the role of the IMC would be a mechanism to bring stability. However, I have not heard too many

other suggestions, other than that we allow the instability to continue or that we suck it and see. For the most part, those are the propositions that other parties have been making.

2072. Let me pose the question: if the IMC is not deemed to be a suitable body to pass a judgement on such matters as suspension — although clearly its evidence would be important no matter who does — what is? Should a judicial process make such determinations? Clearly, a political process would be unacceptable because it could be vetoed.

2073. What about the mechanisms that flow from the ministerial code and the Code of Conduct? They could include — if they do not already — the requirement for those in Government, individually and collectively, to maintain various standards. Is a breach of the Code of Conduct justiciable? Can we ensure that there is a mechanism to punish those who have been associated with the breach of the conditions of Government, rather than the offenders simply saying, “Tough, we have a mandate, and that is how it is going to be”?

2074. **Mr Murphy:** Sinn Féin has always said that it is open to examining how to strengthen and tighten up the provisions of the ministerial code and place it on a statutory footing.

2075. Peter Robinson’s point that going to the electorate holds no fear for the DUP begs the question as to why unionism — or the Alliance Party or any other party — requires a mechanism to exclude a party. If an accusation were of such magnitude and made on such a solid basis that it would stand up to any scrutiny, surely the guilty party would be punished by the electorate, who would reward those who were right to walk out of Government.

2076. Why, therefore, is a shortcut mechanism required, whereby people can be excluded from office on the basis of an accusation that has not been sustained? If parties are so confident that their own view on this matter would stack up should such an allegation be made, why is a mechanism is required at all?

2077. Certainly, we have always said that we are quite open to considering the ministerial

code and the Code of Conduct to see how their provisions could be strengthened and tightened.

2078. **Mr P Robinson:** Mr Murphy is being deliberately obtuse. He knows perfectly well that although the unionist electorate would endorse the position of its representatives, there is no guarantee that the nationalist electorate would punish Sinn Féin in such circumstances. Therefore the outcome would be that a new Assembly would face exactly the same problems: nothing would have been resolved and the instability would continue. If the point is to remove the instability, we must consider the mechanisms that are necessary to achieve that.

2079. To take this a stage further, if parties are prepared to examine the Pledge of Office and Code of Conduct, I assume that no one objects to those requiring the same kind of standards that we discussed earlier. Are people content that the courts should determine any breaches of either?

2080. **The Chairman (Mr Molloy):** We need to conclude this discussion soon, as it has been going on for an hour and we will probably not reach consensus. Perhaps there should be a proposal to move the discussion on to the ministerial code.

2081. **Mr Murphy:** May I say that Peter Robinson’s remarks on the electorate border on being racist. He said that unionism would consider any breach of standards as a true breach and support those who walked out of Government, but that nationalists would not and would continue to support Sinn Féin. I do not see the scenario that he outlined arising —

2082. **Mrs Long:** May I object to —

2083. **Mr Murphy:** Perhaps I could finish my point. I cannot see a scenario wherein the unionist electorate could make a correct judgement if such a circumstance arose, but the nationalist electorate would not be able to do so.

2084. We are prepared to examine the code of conduct, and, if there are proposals on how that could be carried forward, we would like to see them.

2085. **Mrs Long:** I object to the use of the term “racist”. If Mr Murphy feels that Peter

Robinson's comments were sectarian, he should say so, but abusing the term "racist" is a bit rich. Members around this table may have political and religious differences, but we are not of different races, so let us not overplay the differences between us. There is more that unites us than divides us, and let us not get carried away with the situation.

2086. **Mr P Robinson:** What has happened in the past few years is not racism: it is realism. The electorate has been prepared to vote for a terrorist party — that is a fact. That is not sectarian or racist: that is reality. That has been the judgement of the electorate, so it is not a case of my stating that this may happen in the future — this has been happening for decades.

2087. **The Chairman (Mr Molloy):** I am loath to draw this to a conclusion. It seems that unionism has complete faith and trust in the IMC and security forces reports, but Sinn Féin and nationalism in general have complete distrust. We must consider how to achieve the independence of a group that is required to produce a report acceptable to everyone. With regard to the ministerial code, we must consider where the report comes from and how one gains trust and agreement to accept those reports. It is also necessary to get an endorsement from unionism that there is confidence to make the institutions work. Those are the questions that divide us.

2088. **Mr Campbell:** It is clear from the past 70 minutes that it is unlikely — and that is probably putting it mildly — that we will reach consensus on the stability issue. We could get it down to a vague catch-all where everyone agrees that stability is a good thing, but there is no agreement on how to achieve it. I am unsure that further intense discussion would progress this one iota.

2089. **Mr P Robinson:** I wish to deflate the view that unionists have complete trust in the judgement of the IMC. That is not the DUP's position. We opposed the IMC legislation for two reasons: first, it was unrepresentative — there are no unionists on the IMC — there is a nationalist and plenty of others, but there are no unionists; secondly, it was toothless. Therefore

the DUP is not content with all its utterances. We recognise, as have others, that an independent body must be set up; the IMC probably leans more in its representation towards nationalists than unionists. However, we have been prepared to accept the outcome of IMC reports, because, so far, they have been reasonably soundly based.

2090. **Mr McFarland:** The agreement put in some safeguards, and others were added through the IMC. Changes will only be made to the IMC through whatever deal is done in the autumn — each side will get a little of what it wants, either by beefing it up or removing it.

2091. In the comprehensive agreement, Sinn Féin won the removal of the "Mandelson" 2000 Act. The question is whether in future dealings the DUP can get a beefing up of the IMC's role.

2092. However, it strikes me that the Committee has probably run as far as it can, as colleagues have said.

2093. **The Chairman (Mr Molloy):** Peter Robinson is not necessarily saying that the DUP wants a beefing up of the IMC; it may want it to have a different structure.

2094. **Mr McFarland:** I suspect that a modification of the IMC is only likely to come about as part of a deal.

2095. **Mr Ford:** I disagree with Peter Robinson's allegations. I am not sure that the presence of Joe Brosnan, an Irish official, alongside that of John Grieve, a British policeman, somehow makes the IMC a nationalist rather than unionist body. People are chosen for their experience of roles that are of a non-political nature, with the possible exception of one member who used to have a political role here.

2096. While there is a major distinction between Sinn Féin, which does not want the IMC to exist, and others who have a more or less greater acceptance of the role of the IMC, there may be something in the legislation that set it up that would provide the option for the Secretary of State, by direction, to exclude Ministers, in the absence of an Assembly decision to do so. There might be some way of reducing the power of the Secretary of State

and, perhaps, enhancing the power of the IMC by spelling out within its responsibilities that the Secretary of State must have regard for the IMC's recommendations. That would take it slightly away from the political role, but I suspect that it may not be enough of a change to satisfy Sinn Féin.

2097. One must recognise that it is not the legislation that causes the problem. Regardless of the legislation, there have been occasions in the past — and there might be more in the future — when one or more parties have wished to walk from the Executive, so one cannot blame the legislation if the problem lies with the attitude of the parties to one another. We must seek to find some legislation that caters for that. We could talk about making the ministerial code justiciable, for example, but the courts take time, and we would have to go into some sort of temporary suspension while those matters were resolved. Therefore we cannot depend on the courts to deal with what are political problems, and I do not know what we would do for the two or three months that it would take for the courts to get round to hearing the case.

2098. **The Chairman (Mr Molloy):** Are members content to look at the ministerial code as a means of dealing with this issue?

11.15 am

2099. **Mr P Robinson:** No. There are many mechanisms that can be used; that is one worth exploring, but it is not the only one.

2100. **Mr Murphy:** Sinn Féin is content to look at the ministerial code. This morning's discussion is about stability, and it is our contention that the suspension legislation and the IMC have contributed to instability. They have not served the purpose for which they were set up. The IMC — in its make-up and how it conducts its business — and the suspension legislation have added to instability rather than helped resolve it.

2101. **The Chairman (Mr Molloy):** As Gregory Campbell said, we need a wide-reaching statement. Everyone agrees that the Assembly must have stability in order to work and to be maintained. How do we go forward to

create that stability? Does anyone have any proposals that can take us to the next stage?

2102. **Mr McFarland:** If we get to the stage where the DUP and Sinn Féin agree to go into Government, that will bring with it a degree of stability. However, we must also talk about safeguards.

2103. **Mr P Robinson:** It did not bring stability when the Ulster Unionists went into Government.

2104. **Mr McFarland:** There were different problems at that time: the republican movement and Sinn Féin were unsettled; and, within unionism, the DUP was most unsettled about the situation. The logic of getting to a stage where the DUP and Sinn Féin do a deal is that both traditions — in their entirety — are settled except for any necessary tweaking. There will be a residual problem of confidence on both sides. Therefore safeguards are needed — whether in the voting systems or in other mechanisms — to hold to account any party that defaults. This discussion is not only about stability — and our best chance of stability will come with that deal — but about the implementation of safeguards, which will ensure that those who are not playing the game can be held to account.

2105. **Mr P Robinson:** I hope we are agreed that we need to explore further mechanisms to ensure that there is stability, at least at a low level.

2106. **The Chairman (Mr Molloy):** We need greater detail on what those mechanisms are.

2107. **Mr O'Dowd:** Stability is best achieved by making politics work.

2108. **Mr McFarland:** That would be the deal between the DUP and Sinn Féin: making politics work.

2109. **Mr P Robinson:** First, history has recorded that the DUP was right not to be settled, because conditions were required. The danger is that those conditions could be met today but all might change tomorrow. That is why you require some mechanism for stability.

2110. **The Chairman (Mr Molloy):** Can we park it there for the moment, with the general

heading that we need a mechanism to deal with it? Agreed?

Members indicated assent.

2111. Members asked for two new items to be put on the agenda. One is accountability mechanisms: broadly, the Assembly and the Executive. The other is the voting system. It was suggested that parties might want to put forward papers on those matters, or they may prefer to discuss them today. Seán, you had put forward the idea of a paper.

2112. **Dr Farren:** Are we addressing the issue of collective responsibility or general accountability?

2113. **The Chairman (Mr Molloy):** Accountability of the Executive and related issues.

2114. **Mr McFarland:** I think we agreed that accountability in the Executive would be left to our next major discussion on the Executive; however, the concern is the referral of matters between the Assembly and the Executive. Is that correct?

2115. **The Chairman (Mr Molloy):** Yes. Do you want to continue that discussion today, or do you want to prepare papers?

2116. **Mrs Long:** The Alliance Party hopes to circulate tomorrow a paper with its views on those matters. However, if others wish to discuss it today, we are happy to do so, but it may be better to have sight of other parties' papers beforehand.

2117. **Mr McFarland:** Chairman, I thought it was agreed at the beginning that, in general, we would not get into swapping papers. There is a time factor with regard to preparing them; people tend to wave them around if anyone wishes to modify their views as they go through; and the entire purpose of this Committee was, for the very first time, that five parties should sit around a table and discuss the ins and outs. Hearing other people's points of view and discussing them has the potential to achieve modification of thoughts. If we get into papers that is OK, parties can do that, but the essence of this Committee was that we sat and discussed the matters.

2118. **The Chairman (Mr Molloy):** One proposal concerned papers; not that each party would present them, but the option was there.

2119. **Mrs Long:** I was just going to make that point. The option of circulating papers never closed down. The parties retained that option, but papers were not a prerequisite for discussion. I say only that we are willing to circulate our paper tomorrow; if you do not wish to read it that is fine.

2120. **The Chairman (Mr Molloy):** Do Members wish to continue today, or set the matter for a particular day, once they have read the papers?

2121. **Mr P Robinson:** I am happy to read papers from anybody, and I promise not to wave them. *[Laughter.]*

2122. **Dr Farren:** Issues of accountability have been widely discussed and aired in all kinds of fora, so I see no reason for us not to discuss it. We are not unfamiliar with the subject.

2123. **The Chairman (Mr Molloy):** Who wants to open?

2124. **Mr McFarland:** This started off in the comprehensive agreement, so Peter and the DUP may want to cover those proposals and say why they were there.

2125. **The Chairman (Mr Molloy):** It was also part of the DUP written submission. Peter, do you want to open up?

2126. **Mr P Robinson:** No, not really; I could do with a bit of a rest.

2127. The accountability mechanisms in the comprehensive agreement were not the first choice of the DUP. I outlined at the previous meeting that the best option is for power to be devolved to the Assembly, rather than to the heads of Departments, which is the arrangement under the Northern Ireland Act.

2128. If power were devolved to the Assembly, it would have authority and primacy, and its support would be required when there is contention. That is the best proposition, and it is the one that I favour. It would mean that Ministers would have to have the support of the Assembly at all times, and it would stop off-the-

wall decisions being taken by Ministers and Departments. The Executive would need to have a high level of collective decision-making, and Ministers would be sure that their ministerial colleagues in other parties would have to carry their Members along with various proposals.

2129. In effect, it would be the normal democratic situation and would be the best option. If we are not to have that, and I prefer that we do, the only way forward is to give some level of accountability to the Executive and to have powers in the Assembly to refer or to negate decisions. Those are the options, and there may be permutations.

2130. The comprehensive agreement moved more towards giving the Executive authority but with a requirement that there be a level of support within the Executive before major decisions could be taken.

2131. **The Chairman (Mr Molloy):** I remind members that there is some commentary in their papers on this matter.

2132. **Mrs Long:** Part of this issue was discussed last week and is already on the record. The Alliance Party believes that additional accountability mechanisms are required because there is a deficit in collective responsibility within the Executive. Our preferred system is one in which there is collective responsibility, and that would not require the same degree of additional accountability mechanisms.

2133. In the current situation, we differ from the DUP inasmuch as we do not believe that ministerial decisions should require the support of the Assembly. However, there are some circumstances in which the Assembly should be able to negate a ministerial decision.

2134. **Mr P Robinson:** What do you mean by that? A Minister must have the support of Parliament for every decision he takes. Parliament would not call a Minister in unless it disliked a decision and therefore it became contentious. It would not be a case of Ministers coming to the Assembly with every decision.

2135. **Mrs Long:** The Alliance Party would make that distinction — there would not be a vote on every ministerial decision in the

Assembly. Where, for example, a petition of concern is raised by Members — and I went into that in more detail last week, when there was a debate around the numbers concerned — and is judged not to be vexatious, but where a substantive issue is involved, it would be possible in such circumstances for a cross-community vote to negate the decision of a Minister.

2136. We see that as the situation which provides additional accountability between the Executive and the Assembly — and that is our proposition. However, it is our proposition in default, because our preference is for collective responsibility within the Executive.

2137. **Mr McFarland:** We are into a number of topics, one of which I raised last week — where power lies. The UUP was thinking along the same lines as Peter about whether power and authority can be devolved to the Assembly rather than to the Departments. The paper prepared by the devolution and legislation division of the Northern Ireland Office suggests that this does not matter. The issue of where power lies, according to that paper, appears to have been settled, and whether it is with Ministers or the Assembly would seem to be neither here nor there.

2138. I will move on to the part of the comprehensive agreement that deals with referrals to the Executive, because it would be useful to tease this out a bit. The proposal is that if 30 Members have difficulty with an issue, they can raise what amounts to a petition of concern. Presumably, and I assume there would be an Assembly debate although paragraph 6 in the comprehensive agreement is not clear about that, the Speaker would have to decide whether the petition were vexatious; the Assembly would have a debate; and the matter would be referred back to the Executive.

2139. Difficulties would arise if a Minister made a decision on an issue in the middle of August. That issue could not be referred to the Assembly within seven days, as the Assembly would be in recess. Does that mean that, during a recess, any 30 Members can make a request for a referral from the Speaker, who then decides in the absence of the Assembly whether

the matter should be referred? I am unclear about the detail of the mechanism that is suggested in paragraph 6 of the Annex B proposals on strand one of the comprehensive agreement. Can anyone shed any light on that?

11.30 am

2140. **Dr Farren:** Some discussions on accountability seem to be based on the assumption that the accountability mechanisms laid down in the Good Friday Agreement for the Assembly were weak to the point of non-existence at times. That was not the case at all. After all, ministerial responsibility must be discharged with respect to the law in general, legislation applying to a Minister's departmental responsibilities in particular, and the Budget.

2141. The Assembly has complete authority with respect to the Budget, the Programme for Government and the pledge of office. The discharge of ministerial responsibility is subject to quite a range of requirements and parameters already. We can consider ways to refine those, of course, but we must be cautious about the suggestion that the Assembly should have authority over ministerial decisions to the point where all ministerial decisions are potentially subject to Assembly approval.

2142. That seems, at first sight, to be well founded. However, if decisions are made within the parameters that I indicated, they are made in a responsible manner and with the appropriate authority. Problems could arise if ministerial decisions that had been taken with regard to those parameters were challenged to the point of gridlock. Government decision-making would be slowed to an unacceptable pace, and the operation would no longer be smooth.

2143. In her capacity as Minister for Agriculture and Rural Development, Bríd Rodgers took significant ministerial decisions during the foot-and-mouth crisis. Taken in isolation, some of those decisions might have seemed inappropriate or incorrect to some Members. However, in those circumstances, to circumscribe that Minister's discretion by challenging some of those quite significant decisions, which she felt that she had to take,

would have had a serious impact on how we responded to that crisis.

2144. We want to be very careful about seeking to enhance authority over ministerial decisions in cases in which that would certainly not contribute to the smooth operation of Government.

2145. **Mr P Robinson:** Either Alan has misread the advice, or the advice has not been sufficiently clear. The advice begins by properly indicating that, whereas statutory functions are collectively devolved in Scotland and the UK as a whole, that is not the case in Northern Ireland. Indeed, such functions cannot be devolved collectively because the Belfast Agreement required that they should not.

2146. The last paragraph, to which Alan refers, answers the second part of the question. The paragraph is accurate where it says "subordinate", as opposed to the heading, which says "subordinates". The question was whether the fact that the power is in the Department does subordinate ministerial authority. There is no argument about that. That was not the question that was being asked. Someone has taken a new question to himself. The question asked was: "Are Ministers, therefore, unaccountable as a result of that?" and the answer to that is "yes".

2147. Nobody is suggesting that Ministers have fewer or different powers or that they exercise their powers differently — it is that they are doing it in a way that is not dependent on the collective view of colleagues. In Scotland and the UK that is under the authority of the First Minister or the Prime Minister. All of us know from practice that Ministers took decisions that did not require their colleagues' support in the Executive, and many decisions were taken that were not even brought to colleagues in the Executive. Some of the decisions that were brought were ones that the Ministers were capable of taking anyway, irrespective of the views of their colleagues.

2148. The Assembly could not overturn the decision of any Minister. On one occasion it tried to but clearly failed. Assembly Committees had no power or authority over ministerial

decisions, so we had the ludicrous situation in which a minority decision was taken that did not have cross-community support, and that clearly meant that we had an unaccountable Minister.

2149. That does not mean that we require every Minister to come to the House with every decision, for example, on whether a new streetlight is needed at the corner of Edgcombe Gardens. I am not unhappy with the mechanism for a call-in power, be it a petition of concern or whatever. However, there must be a requirement for Ministers to be accountable to someone. It is better for them to be accountable to the Assembly, but they should certainly be accountable to the Executive, which is accountable to the Assembly.

2150. **Mr Murphy:** The paper correctly shows that a key principle in the Good Friday Agreement was that Ministers were to have executive authority in their respective areas. It was one way of ensuring that there was proper power sharing and that one set of Ministers was not subject to majority rule in the Assembly while another was able to carry on as it pleased.

2151. There was a key recognition of the fact that if there were to be power sharing, it had to be genuine — people had to have some degree of authority within the areas of responsibility that they received as a result of their mandate. There are significant accountability mechanisms within that: if a Minister wants to take legislation through the Assembly, he requires the support of the Assembly. There are other mechanisms, and there is responsibility within the Executive itself. Also, 30 members of the Assembly can submit a petition of concern and have a debate on any issue. A balance is required between what is genuine power sharing and what could be seen as abuse of office.

2152. We have always been happy to explore accountability mechanisms but with that balance in mind. A majority in the Assembly cannot be used to effectively police one or two ministerial Departments and allow the rest to act as they would under the terms of the agreement. It is about getting that balance right.

2153. I do not see the same lack of accountability that Peter Robinson sees. I see potential

difficulties if a number of Ministers were to vote against a proposal from an Executive colleague. Things such as that undermine the Executive's collective responsibility. We have always been quite happy to look at propositions to enhance collective responsibility and to improve accountability. However, that is on the basis of a recognition that there must be genuine power sharing; one set of Ministers cannot be subject to control while another is allowed to carry on as it pleases.

2154. **Mr Ford:** Conor Murphy put his finger on it when he talked about “genuine power sharing”; what we have at the moment is power division. Any proposal that enhances collectivity within the Executive would be beneficial. I have had a quick skim through Hansard, and I see that last week Naomi talked about accountability within the Executive, which is where it should be. We believe that there is still the need for a potential backstop within the Assembly. Clearly, what we have suggested is very different from what I understand the DUP's position to be, which is effectively that no Minister could do anything unless he gets a cross-community vote.

2155. Our proposal attempts to take account of some of the concerns that Seán Farren raised: the Speaker's role in scrutinising any motions to negate to ensure that they are not vexatious; the requirement that there be sufficient signatures; and the requirement that a ministerial decision could be overturned only by cross-community vote. That would give the right level of ministerial responsibility and independence and at the same time ensure that Ministers do not go off on a complete solo run without any support at all. Ideally, it would all start with greater collectivity within the Executive to ensure that we have genuine power sharing in the first place.

2156. **Mr P Robinson:** Before anybody else builds up more straw men just to knock them down, I must point out that the DUP has never put forward any proposal that the Assembly, or indeed the Executive, should decide on every single decision that a Minister takes. That would be a recipe for disaster. You could not do it; you would not have the time. It clearly has to

be on a call-in basis. That has always been the argument so let us just dispel that nonsense.

2157. **Mr Ford:** My point concerned the difference in the requirement of the vote to overturn a decision as opposed to the circumstances in which call-in would be made, where, I understand, there is a difference between the DUP position and ours.

2158. **Mr P Robinson:** The call-in that we suggested is the same call-in power that is available with a petition of concern in the Assembly. With regard to the Executive, is a call-in power is recommended by the comprehensive agreement — I think that three Ministers are suggested.

2159. **Mr Campbell:** That is not the same as saying that no Minister could do anything without getting cross-community support for any decision he or she might take.

2160. **Mr Ford:** As I understand it, the DUP's requirements for call-in require that a Minister could in those circumstances only have his decision carried provided that it was endorsed by a cross-community vote. Our proposal is that it could be negated only by a cross-community vote.

2161. **Mr P Robinson:** Why?

2162. **Mr Ford:** I am trying to establish what the point of difference is between us.

2163. **Mr P Robinson:** There is a massive difference. You know well that there is a difference between us.

2164. **Mr Ford:** You seemed to be suggesting that there was not. At least now you agree that there is. Thank you.

2165. **Mr P Robinson:** The obvious reason is that for a proposition to go forward, it needs to have the support of the Assembly. Your argument is that a veto can be used in the Assembly and that a proposal can therefore go forward that does not have the support of the Assembly.

2166. **Mr Ford:** No, our proposal is precisely that there is not a veto. The collectivity within the Executive should have resolved matters in the first instance.

2167. **Mr P Robinson:** You are suggesting that there should be a call-in power of the Assembly — a backstop, as you referred to it. Therefore, irrespective of the views of the Executive, it would come to the Assembly. You could have a proposal going forward that is vetoed by Sinn Féin or the DUP, in present circumstances, but that may not have the support of the Assembly as a whole.

11.45 am

2168. **Mr McFarland:** I sense that there will not be consensus on changes to the Belfast Agreement as regards Ministers having authority within their own bailiwicks. The question is, therefore, how to have safeguards at Executive level to ensure that there is control.

2169. Perhaps I am being dozy, but I am somewhat confused. My understanding is that if a Minister proposes to put through legislation or secure money, it requires the Assembly's agreement because it is in the Programme for Government. If a Minister does something outwith that, a petition of concern can be put forward that has been signed by at least 30 Members, and the matter can be debated in the Assembly with all the ensuing media coverage. How are these proposals different from that?

2170. **Mr P Robinson:** Why were you not able to stop the closure of the Jubilee Maternity Hospital?

2171. **Mr McFarland:** The only reason that the Jubilee Maternity Hospital closed was because the decision was taken during the period between the setting up of the Assembly and the first Programme for Government the following April. Without a Programme for Government, nobody had signed up to anything and Ministers could do what they wanted. Had the closure of the Jubilee Maternity Hospital been proposed after April 2000, it would never have got through because it would have been stopped in the Executive. The Minister was able to do that because no one had signed up to a Programme for Government.

2172. In theory, all key decisions normally require legislation or money. If a Minister is doing something strange, a petition of concern

can raise a flag to say that the Assembly — or at least 30 of its Members — are not happy about it. If that power already exists, what will the proposal provide in addition? I understand that we need to beef up ministerial collectivity and accountability, which we will consider when we discuss the Executive. When there is a beefed-up ministerial code, pledges of office, a Programme for Government and when everyone operates properly, what scenario would not be covered by a petition of concern, a debate in the Assembly and the waving of flags? The proposals do not go much further than that.

2173. **Dr Farren:** Section 11 of strand one of the agreement — the special equality measure — seems to strengthen the basis on which decisions could be challenged. The special equality measure allows the Assembly to appoint a special Committee to examine and report on whether a measure or proposal contravenes the bill of rights or the European Convention on Human Rights. While the Good Friday Agreement says, “examine and report” on a measure, Standing Orders restricted that to Bills and legislation. The SDLP suggests that we revert to the original intention — that any measure that the Assembly feels is in breach of equality should fall under that provision. Along with the petition of concern, there is a set of safeguards that will allow challenges to be put to decisions in ways that do not push us towards what I cautioned against earlier.

2174. **Mr P Robinson:** I will respond to some of the points raised.

2175. The Jubilee Maternity Hospital proved that the system did not work. The Assembly voted in favour of the Jubilee site, as did the Assembly Committee. The Executive was not able to stop it, neither was the Assembly, so something was clearly wrong with the system.

2176. **Mr McFarland:** The system was that nobody was signed up to anything. In November 1999 this thing fired up and there was no Programme for Government. No Minister had signed up to anything at all, so every Minister could do his or her own thing. The only surprise at that stage was that we did

not have more Ministers crashing around with their favourite topics. *[Interruption.]*

2177. **The Chairman (Mr Molloy):** One at a time, please.

2178. **Mr Campbell:** The education decision on the final day was at a point when the Programme for Government was in place.

2179. **Mr McFarland:** The education decision on the final day was a total nonsense and remains so.

2180. **Mr Campbell:** But it was still taken; it was not stopped.

2181. **Mr McFarland:** There was no possibility that, had the Executive or the Assembly continued, that decision would have got through.

2182. **Mr Campbell:** It went.

2183. **Mr McFarland:** It had to; it required all sorts of money and legislation. It was able to go forward only because the civil servants, for reasons best known to themselves, bashed on with it even though the Assembly was suspended.

2184. **Mr Campbell:** But it went.

2185. **Mr McFarland:** It would not have done if —

2186. **The Chairman (Mr Molloy):** I have to allow PJ Bradley to speak.

2187. **Mr P J Bradley:** It is obviously difficult to get one set of rules to fit all. Of the two situations that have been referred to, the Jubilee Maternity Hospital and the foot-and-mouth crisis, the former could have been considered non-urgent. At the time of the foot-and-mouth crisis the Minister and the Department of Agriculture and Rural Development often met through the night in emergency session to deal with the situation. Some situations can wait for debate, but Ministers must have the power to make urgent decisions. The foot-and-mouth crisis was a prime example of that.

2188. **Mr P Robinson:** First, there is a view that the Programme for Government is such a detailed and far-seeing document that it incorporates every decision that a Minister may be required to take over the following 12 months. That is not the case. It is a very general

document under which Ministers can move with considerable flexibility, as has been seen.

2189. Secondly, it is assumed that the spending plans are so rigid that a Minister has no flexibility. That, of course, is not the case either. The spending plans are largely based on headings under which, I can assure you, a Minister can move from one point to another.

2190. Those two assumptions are not safeguards in themselves. They might put some restraints on how clever a Minister has to be, but they certainly do not constrain him from taking a decision of his own. Legally, there is nothing that stops a Minister from taking a decision. We took the advice of a very well-respected senior counsel — who was not of my political persuasion — on that issue. There is no question that we need to have a change.

2191. This is not about waving flags: that only draws attention to the issue; it does not stop it from happening. The referral system ensured that if, under the comprehensive agreement proposals, something got through the Executive net, it would have the ability to ensure that only genuine power-sharing decisions could be made. My views of power sharing and Sinn Féin's ideas of power sharing are completely different. Sinn Féin seems to believe that power sharing is power allocation. That is not my view. My view of power sharing is one in which Ministers collectively take shared responsibility for the decisions that have been made. That is very different from saying, "We have the cards and we will dole them out. You take the decisions on this and we will take the decisions on that, and it does not matter what decisions either of us take; that is the way it is going to be."

2192. That is not power sharing; that is simply an allocation of power. That is very different and is what can happen under the current circumstances. However, the comprehensive agreement ensured a collective decision-taking process and that any decisions that were contrary to the views of one section of the community or another had to be dealt with and agreed by the Executive. If a decision went unnoticed because Members' attention was elsewhere, the Assembly could throw it back to

the Executive to ensure that that decision was taken collectively.

2193. **Dr Farren:** I mentioned the safeguards that are provided by the special equality procedure. Peter Robinson highlighted decisions that he feels should, or could, have been challenged on equality grounds because they concerned the fair treatment of the two communities. In what respect would the special equality procedure not provide the type of safeguard that he mentioned?

2194. Many of those matters are essentially political decisions that Ministers must take. If two hospitals bid for a particular service, a decision must be made about which one will win that bid. If it were felt that a decision breached equality provisions and was not based on the Minister's best judgement — albeit that that judgement may be described as political — would the special equality procedure not provide a safeguard?

2195. **Mr P Robinson:** Special equality provisions would certainly be a factor, if equality were the sole concern. However, a range of political issues is involved, where political ideologies and other factors will come into play for an extended period long into the future. A division may be on an ideological, rather than an equality, issue. Is it right that, contrary to the wishes of the rest of its colleagues in the Executive and Assembly, a party in Government takes a decision that is based on, for example, its Stalinist approach to life? An issue may not be one of equality, but it certainly might affect the way forward for Northern Ireland.

2196. **Dr Farren:** We must focus on enhancing the nature of collective responsibility within the Executive to ensure that we can agree on the best form of such responsibility. Ministers, and the Assembly as a whole, could then be assured that the Executive have the support of all colleagues.

2197. **Mr P Robinson:** I had hoped that that is what we were doing.

2198. **The Chairman (Mr Molloy):** We will deal with that under the next topic, which deals with decision taking within the Executive.

2199. **Mr Murphy:** There is a balance between collective responsibility and exercising a veto. Interestingly, the two examples given by unionists related to decisions taken by Sinn Féin Ministers; one on education, the other on the Jubilee Maternity Hospital. That latter decision stood, despite being subject to several judicial reviews.

2200. The issue concerns whether parties want to use a majority to veto the actions of any Minister whom they consider unsatisfactory or whether we want power-sharing. I do not see power-sharing as a mere allocation of power, but as a genuine sharing of power. That is why issues such as agreeing the Programme for Government, prioritising the Executive and legislative proposals exist — they are all the collective responsibility of the Executive.

2201. However, in Sinn Féin's experience, and given the examples cited by unionists, the decisions that members targeted seemed to be those that were taken by Sinn Féin Ministers. Interestingly, when one senior unionist commentator was asked what turned unionists off the Good Friday Agreement, he said that it was the prospect of Martin McGuinness exercising ministerial power in the Department of Education.

2202. Therefore, in our experience, accountability measures would be used to exercise control over decisions taken by Sinn Féin Ministers and, perhaps, by SDLP Ministers. While we are in favour of collective responsibility — and there are accountability mechanisms in the agreement — there is a balance between accountability and exercising a veto over Ministers and ministerial decisions that Members may be unhappy with.

12.00 noon

2203. **Mr McFarland:** What is the difference between the proposals in paragraph 6 of Annex B to the comprehensive agreement and a petition of concern? They both require a minimum of 30 Assembly members, and both result in an Assembly debate. In paragraph 6, the matter would be referred back, but you would be a brave Minister if you lost a cross-community vote in the Assembly, which

presumably would have the same effect as referring it back, or would it?

2204. **Mr P Robinson:** You have just answered your own question — the matter would be referred back. As you said, it would be a brave Minister that would want to defy the Assembly.

2205. **Mr McFarland:** I said that it would be a brave Minister who would want to defy a cross-community vote in the Assembly as a result of a petition of concern. Therefore the matter is likely to end up back in the Executive anyway, because the effect of the system is the same — you have 30 Members, and you have won a petition of concern or a referral. Presumably, there is also a debate in the Assembly. The only difference is that a referral must be initiated within seven days. During suspension, in the middle of August, can 30 Members send something to the Speaker, which she can adjudicate on? Can there not be a vote in the Assembly without referring a matter back to the Executive? I have not yet had answers to those questions.

2206. What is the system tied in with the Assembly referral, which would allow that to happen in the middle of August, with no Assembly?. The Executive could not consider it within seven days. For instance, at Christmas, or on Boxing Day, could 30 members decide that they are upset about something?

2207. **Mr Murphy:** Under Standing Orders, 30 members can call for a meeting of the Assembly at any stage.

2208. **Mr McFarland:** What notice is required for that?

2209. **Mr Murphy:** I am not sure what notice is required under Standing Orders.

2210. **The Committee Clerk:** Three working days' notice is required.

2211. **Mr McFarland:** If the Assembly is suspended, that cannot apply.

2212. **The Committee Clerk:** Are you talking about recess?

2213. **Mr McFarland:** Yes. I am merely seeking clarification to ensure that everyone understands, because members can get confused about the matters under discussion.

2214. At any stage during the year, 30 members can exercise their right, under Standing Orders, to call an emergency meeting of the Assembly at which there would be a petition of concern, and there are rules for that. No vote can be held until at least 24 hours after the petition has been presented, is that correct?

2215. **Mr Murphy:** No vote may be held on a matter that has been discussed under a petition of concern until at least 24 hours after the petition has been presented.

2216. **Mr McFarland:** The Assembly, therefore, can be called back from recess and have a cross-community vote. That vote can be the quorum of the Assembly, and as long as there are 60% of those present and 40% of each tradition voting, a cross-community vote challenging a ministerial decision could be passed.

2217. **Dr Farren:** Is that not the consequential effect on the ministerial decision that is absent in the normal application of a petition of concern?

2218. **Mr McFarland:** No, because what happens then is that you flag up the fact that cross-community concern is challenging a ministerial decision. Presumably, the press would be there to record the fact that the Assembly objects to a ministerial decision.

2219. While there is no obligation to reconsider, there would be an obligation to re-examine a ministerial decision through the Assembly referral provision. The only difference is the obligation to re-examine. However, Ministers representing the parties that voted for the ministerial decision by cross-community vote would re-examine it in the Executive. Apart from the obligation to re-examine the decision, there is no difference between the two systems as regards public relations, press and the parties involved.

2220. **Mr P Robinson:** I could hear the cogs turning as we laboriously went through that.

2221. **Mr McFarland:** Sometimes, it is important.

2222. **Mr P Robinson:** The position is simple: the Executive would have the ability, under the comprehensive agreement proposals, to take collective decisions, and such decisions would be required to be collective. As I said earlier —

though it obviously was not picked up — there may be occasions when Ministers' eyes are elsewhere and something goes through that has not caught their notice. The proposal gives the Assembly a power to send a decision back to the Executive so that it is given proper attention and a collective decision is taken. It is a belt-and-braces approach.

2223. **Mr McFarland:** Would a cross-party petition of concern from the Assembly not have the same effect of alerting the Minister? As Peter said, the proposal would only come into operation when Members noticed that something had slipped through. Therefore, would a petition of concern and a cross-party vote not have the same effect of alerting the Executive?

2224. **Mr Murphy:** It would be better to ask these questions of someone from the British Government, which drafted these proposals. However, the only point that I would dispute with Peter Robinson is that an Assembly referral does not turn a decision that was not considered as taken collectively into a decision that was taken collectively. That is not mentioned in paragraph 6 of Annex B to the comprehensive agreement. However, whoever devised those proposals may be able to give a better explanation.

2225. My understanding is that the proposal allows an issue to be referred to the Executive for the Ministers' reconsideration; it does not re-designate the status of that decision in the first instance. If an issue has not been agreed under collective responsibility, a referral does not re-designate a decision into a collective one. However, the people who are best placed to answer questions on these proposals are those who authored them.

2226. **Mr P Robinson:** I was unaware that there were separate designations for decisions. The proposal is simply a mechanism to ensure that decisions are taken with the knowledge and approval of the Executive. That is all there is to it; I cannot see anything harmful in that proposal.

2227. **Dr Farren:** Is that type of referral mechanism necessary if, from what Peter has said, the essential concern is to ensure a greater degree of collective responsibility? Surely we

need to consider collective responsibility rather than providing another mechanism in the Assembly that seems to indirectly aim at collective responsibility.

2228. **Mr P Robinson:** The difference is that the proposal in paragraph 6 refers to a decision that is already past the post and knocks it back onto the track.

2229. **The Chairman (Mr Molloy):** Would a petition of concern not do the same thing?

2230. **Dr Farren:** Yes.

2231. **Mr P Robinson:** It would not, because the decision would already have been taken.

2232. **Dr Farren:** I agree with Alan McFarland's suggestion: it would be foolish for a Minister, or, indeed, the Executive as a whole, to proceed with a decision that did not have a significant degree of approval, or at least acquiescence, in the Assembly.

2233. **Mr P Robinson:** A Minister may feel strongly about an issue and, irrespective of what colleagues might think, he or she may want to pursue it. That is not unknown.

2234. **Dr Farren:** The Assembly can be wrong.

2235. **Mr P Robinson:** So can Ministers.

2236. **The Chairman (Mr Molloy):** Do members wish to make any proposals or would they rather deal with this issue under 'Collective responsibility' and 'Ministerial Code'?

2237. **Mrs Long:** Are there not, however, two distinct issues? One is the right of the Assembly to refer something back to the Executive; the other is collectivity in the Executive. Although, with proper party discipline, it is hard to envisage, it could happen that the Executive were happy with something and the Assembly was not. The two issues must be separated.

2238. **Mr P Robinson:** There are two issues there for the Assembly: should it have the power to send something back or should it have the power to negate? Another issue that was mentioned earlier is whether it is a requirement of the Assembly to get the cross-community support to do either of those two things, or whether it is the responsibility of the Minister to get the support of the Assembly for a proposal.

2239. **The Chairman (Mr Molloy):** Are there any proposals to move the matter on, or to see if we have consensus?

2240. **Mr P Robinson:** I think we know that we do not have consensus.

2241. **The Chairman (Mr Molloy):** Sometimes these things need to be clear.

2242. **Mrs Long:** We put our proposals last week, and they were not agreed. I do not detect any change of heart around the table from any party. I am not sure that putting them again this week will add any clarity to the situation.

2243. **Mr P Robinson:** I detect that people are coming closer to agreeing my proposals, but they have not quite reached that stage.

2244. **The Chairman (Mr Molloy):** Do we want to park that or can we conclude on it?

2245. **Mr Campbell:** The car park is filling up.

2246. **The Chairman (Mr Molloy):** We will need traffic wardens.

2247. We will move on to the next item, which is "Voting system". This is an issue mainly for the Alliance Party.

2248. **Mrs Long:** Our position was presented in a fair degree of detail last week, and I do not wish to take up time by repeating it.

2249. **The Chairman (Mr Molloy):** Are there any other issues? It was requested that "Voting system" be put back on the agenda, so it is there for discussion.

2250. **Mr McFarland:** There was a great deal of discussion, and I sensed at the time that we probably would not get agreement to move from the present system, unless particular parties have had a Damascene conversion somewhere along the line.

2251. **Mr Ford:** It was agreed last week that this was an issue to be considered at some point, but that there was no agreement as to how to consider it at this stage. If that is the case, it may simply be an item —

2252. **Mr P Robinson:** That is why we are considering it now.

2253. **Mr Ford:** Yes, but if there is nothing further to consider at this stage it may be something for the ever-expanding car park. Damascus may yet be reached by some of you.

2254. **Mr McFarland:** This became an issue in the first place because of the mistrust between the communities. It seems a reasonable aspiration that, somewhere down the line, we could move to weighted-majority voting. When all this eventually settles, we could reach a stage where we were not so traumatised about particular communities being disadvantaged, and a weighted majority would give the same result without the designation issue. My sense is that we are not there yet, and, as a result of the previous week's discussion, we will probably not get agreement on it.

2255. **Mrs Long:** I find it particularly traumatic when the community I represent is ignored in these votes. It is still an issue for the Alliance Party, but we accept that it is unlikely to be resolved. I understand that the DUP made a proposal last week to include a weighted-majority system in addition to the current system but that that was knocked back. If parties were to give some indication that they were willing to move in that direction, that would be something tangible, but that was not the case, so I doubt that people have moved to a position where they can embrace it entirely.

12.15 pm

2256. **Mr P Robinson:** I agree — there was an opportunity. If a proposal were made that it cannot happen immediately the Assembly gets up and running but that we are all committed to moving towards a weighted majority system in the future, then it would be different from the other proposal and would represent some progress.

2257. **The Chairman (Mr Molloy):** OK, have we taken it as far as we can?

2258. **Mr P Robinson:** We could look at it later.

2259. **The Chairman (Mr Molloy):** Back to the car park again.

2260. **Mr Ford:** There is a point in what Peter has just said. As I read and understood the com-

ments of the parties, two seem to say that there is merit in a weighted majority as effectively being a third option alongside parallel consent and 60:40:40 — if that is a correct interpretation of the DUP's position. Others seem to say that we should consider when it may be appropriate to move to that point. That is an emerging degree of consensus, if I have correctly interpreted the positions of the three other parties from reading last week's Hansard.

2261. **The Chairman (Mr Molloy):** Are there any comments?

2262. **Mr Murphy:** The voting mechanisms in the agreement were to deal with the situation in which we found ourselves then. Everyone has said that they would prefer at some stage to move to a different type of voting mechanism in which the safeguards provided by the current voting mechanisms are not needed. I do not think that it is necessary to get into prescribing that voting system at this point, but there is an agreement in principle that the voting mechanisms — whether people agree with them or not — are necessary to provide safeguards at the moment.

2263. The desire by all parties is to get to a situation whereby such safeguards are not seen to be so necessary and the voting system can be looked at again.

2264. **Mr Ford:** We might be potentially looking at the day when we wouldn't need any safeguards at all and 50% would be an adequate majority to carry a vote in the Assembly. Our proposal recognises that this is a very long way away and that is why we have looked at having a two-thirds straightforward weighted majority as a step in that direction.

2265. **Dr Farren:** Do not jump too fast.

2266. **The Chairman (Mr Molloy):** Last week, the Committee decided to refer this matter to a review Committee of the Assembly, if that were in place. That is probably as far as we can take it. The consensus is along the lines that people are prepared to look at the issue some way down the line, but that it is not an obstacle at this stage.

Adjourned at 12.18 pm

On resuming —

12.48 pm

[Proceedings between 12.48 pm and 1.19 pm were not recorded due to technical problems.]

2267. **Mr Campbell:** — I hope that there is nobody here — although there may be some — who is saying that that prospect would have to be spearheaded by this manifestation of the election of the First Minister and Deputy First Minister because that is the way we did it before.

2268. Our community drew many negative things from that — it was a farce; it was show; it did not work and no matter how many times it was set up it simply fell apart.

2269. I do not think there would be much support in the wider community — certainly there would be none in ours — for the prospect of a four-year term with a functioning Executive and the First Minister and Deputy First Minister at its head being jeopardised because the door to it had to be the joint election of the First Minister and Deputy First Minister.

2270. I find it difficult to understand how the wider community would give consent to the prospect of embarking on an election that allows the four-year term to transpire — hopefully, without any interruptions, bank robberies or antagonistic and illegal activities on the part of one or more parties, or those associated with them — but which might be jeopardised because of a particular method of electing the First Minister and Deputy First Minister which was not agreed eight and a half years ago.

2271. They do not have to carry out their offices as they did before. That does not mean that we have to have some underhand ‘Blue Peter’ type of mould under the table that we can say we prepared earlier. It does not have to be the way it failed before: there can be a better way, which is more likely to succeed next time.

2272. **Ms Lewsley:** For the record, I am deputising for Mark Durkan. Like everybody else, I am a bit confused now. On the one hand, Peter says that it really does not matter how the First Minister and Deputy First Minister are

elected; if there is a clash of personalities then they are not going to work together anyway. On the other hand Gregory said that the election of the First Minister and Deputy First Minister and the way they worked in some way caused suspensions, when, in fact, it did not. Other issues caused suspension.

2273. **Mr Campbell:** I did not say that.

2274. **Ms Lewsley:** You did — you said that we have reached this point because of the way they worked and because of the on/off nature of the Assembly.

2275. **Mr Campbell:** I was not saying that the on/off nature of the Assembly was a direct result of the way in which the First Minister and Deputy First Minister were elected.

2276. **Ms Lewsley:** You said it was because of the working of their office; you said it did not work.

2277. **Mr Campbell:** The election and the functioning of the First Minister and Deputy First Minister did not work. However, it was not that they did not work because the Executive was up and down, although that was a contributory factor; the two things were not part of the same thing. One was a portion of the other but one was not directly related to the other. The First Minister and the Deputy First Minister did not work from the very start, before the first time the Executive collapsed; they were not working together even though the perception was that they were.

2278. **Ms Lewsley:** Then Peter said that he would surmise from what was being said around the table that if there were not consensus on this matter, that we would have to take the responsibility for any deadlock, which means that we will have a pre-condition to restoration.

2279. Naomi talked about the community. I think the community is important. I have met people from both sides of the community who are telling us to get elected and go back and do the work. They say that if it worked last time, and the Assembly was up and running for the longest period of 18 months, then there is no reason why they should not have that back. People are crying out for proper government.

2280. I know that the election of the First Minister and Deputy First Minister has always been an issue for the DUP; but now it is talking about changing the roles of the First Minister and Deputy First Minister. That would be very serious.

2281. **Mr P Robinson:** I think that there has been a misunderstanding. I will be frank: if I must choose who I would be in Government with, I would not choose Sinn Féin. If such a proposal were a matter of choice, I would not propose a Sinn Féin First Minister or Deputy First Minister. That is why a mandatory system is preferable; it indicates that there is no choice in the matter, and sets down a mandatory mechanism whereby those posts are filled. It is as simple as that.

2282. The role of the office of the First Minister and the Deputy First Minister is defined by existing legislation, which allows the First Minister and the Deputy First Minister to designate particular functions to Ministers, including themselves.

2283. Mr Murphy indicated that one of the difficulties with the Government's December 2004 proposals was that the DUP was talking to the Government, Sinn Féin was talking to the Government, and the Government have an agenda of their own. Therefore, not every nuance of what the DUP said may have been passed on to others, and vice versa. I have no doubt that that was the case, because I have heard things said publicly since 2004, which Sinn Féin indicated that it made it very clear during the negotiations. Those points were never put to us; in fact, quite the opposite was clearly put to us during those negotiations.

2284. I can tell members that throughout those negotiations in the autumn of 2004, we made it very clear that there should be changes to the Office of the First Minister and the Deputy First Minister (OFMDFM). We made it clear that there was a lot of duplication in that Department, and that it was doing work that was being done by other Departments. We made it clear that OFMDFM was tying up staff and causing conflicts with officials and we sought changes to that.

2285. Those changes were catered for in paragraph 10 of the proposed comprehensive agreement, under which a reallocation of functions would be available to OFMDFM. Also, under section 17 of the Northern Ireland Act 1998, the First Minister and the Deputy First Minister could determine that one or other of them take responsibility for particular aspects of work. All of that is provided for in existing legislation. It could have been done anyway. That would not mean a change in the role of OFMDFM; it is using the powers that presently exist in legislation to ensure that the Department operates and functions more beneficially.

2286. The First Minister and the Deputy First Minister chanting the same words together does not represent the best use of their talents, quite frankly. It is far better to have agreement on the areas where agreement is necessary, and to carry out the administrative and other work in a separate way. That is the best way to deal with OFMDFM.

2287. **Dr Farren:** Given what Gregory said earlier about all of the conditions being established whereby we could restore the institutions, he and his community would find it difficult to understand why restoration did not take place due to a failure to agree on the manner in which the First Minister and the Deputy First Minister are put into office. If, in those circumstances, we are talking about the nomination of two people to office, I would find it very difficult to understand any serious objection within the nationalist and unionist communities to the nomination and endorsement of the First Minister and the Deputy First Minister by the Assembly in the manner laid down in the Good Friday Agreement. A new era, in the full sense of those words, would not have dawned, but that would be one means of showing that we were beginning a new journey together, with all of the difficulties that will lie in our way.

2288. **Mr P Robinson:** How do you then hold on to the view that you would somehow be disenfranchised if there were a mechanism that required the whole of the Executive to be voted for?

1.30 pm

2289. **Dr Farren:** That is because of the significance of the joint nature of the office. I stressed that point last week when we discussed the matter. The office of First Minister and Deputy First Minister is significant because it is — in a general sense — representative of the Assembly and Northern Ireland when we must be represented in some form, particularly outside Northern Ireland. Therefore, there is significance in that joint office that does not apply to any of the other ministerial offices. That significance calls for the office to be treated in a somewhat different way.

2290. Therefore, the greater concern is with respect to having a First Minister and a Deputy First Minister at all, in the sense that the Good Friday Agreement sets out the nature of their responsibilities. That is regardless of the way in which they would be nominated and elected, which is what lies at the heart of the DUP's concerns.

2291. I must reiterate the point that Michael McGimpsey made earlier. The office of First Minister and Deputy First Minister did not fail. It had some significant difficulties; there were blow-ups; and there were problems associated with the duties that they had to discharge jointly. However, despite those difficulties, business was done, agendas were agreed for business, and they did jointly represent the Assembly and Northern Ireland on many occasions. That could be said to have characterised the First Minister and Deputy First Minister when they were David Trimble and Seamus Mallon and, later, when they were David Trimble and Mark Durkan. That office was not a failure in the manner in which the DUP want to characterise it.

2292. Anyone who believes that we will suddenly enter a new dawn or a new era the day after a new Executive is in place is not living in the real world, regardless of whatever means we finally agree to put the Executive place, whether those are the existing means or whether we change them — and I am not endorsing change. We must work our way through the difficulties that exist, and we can do that jointly.

2293. **Mr P Robinson:** That is a good reason why we should not face that obstacle on the first day.

2294. We really have reached the absurd when the argument for having a joint election is because the First Minister and Deputy First Minister will be going overseas, and that gives the right message. Does anybody really —

2295. **Dr Farren:** Do not exaggerate what I said, Peter. I made that point among many others.

2296. **Mr P Robinson:** The Hansard report will show exactly what you said.

2297. **Dr Farren:** Yes; I made that point, but that is not the only point that I made.

2298. **Mr P Robinson:** I am addressing that point to show how absurd it is. Does anyone believe that in the United States or in Africa — or anywhere else in the world — when the First Minister and Deputy First Minister arrive off the plane, the first words that every citizen will utter are, “You know they were elected on a joint ticket in the Northern Ireland Assembly”. Frankly, I do not think that that will be uppermost in their minds. The factor that will make any difference is that they hold office, not how they were elected to that office.

2299. **Mr Murphy:** I wish to make a brief point in relation to the discussion about paragraph 10 of annex B of the December 2004 proposals. There is a clear distinction between the joint operation of the office of First Minister and Deputy First Minister and any decision on the functions of the Department. There was a broad concern in the last Assembly that OFMDFM had a tendency to hoover up any new issues that arose or any new areas of responsibility. There is a distinct difference between operating at a joint level, and deciding that some of the functions within OFMDFM would be better exercised by or farmed out to another Department. There is a marked difference between those two matters.

2300. **Mrs Long:** There are two separate questions to consider. First, how are the First Minister and the Deputy First Minister elected to their office? Secondly, do they share joint office? Those two matters can be separated. It is possible, for example, not to specifically

endorse the First Minister and the Deputy First Minister, separately from the rest of the Executive, yet at the same time to maintain the joint nature of the Office of the First Minister and the Deputy First Minister. That would be our plan B.

2301. Plan A would be that the First Minister and the Deputy First Minister be endorsed, followed by the rest of the Executive, by a vote of the Assembly. However, if that is not to be, at the very least the entire Executive, including the First Minister and the Deputy First Minister, should be endorsed by the Assembly, but their office should be joint. That is our position.

2302. There has been talk of the failure of OFMDFM. Let us put it this way: OFMDFM had failings — if that is a more acceptable way of describing it. One of the major failings from our perspective was OFMDFM's inability to drive forward the agenda of 'A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland' until direct rule was reintroduced and made it happen. That does not necessarily mean that the concept of joint working is a failure. It simply means that we need to look closely at how we get to the point where that joint working can happen.

2303. We definitely wish to see the office remain a joint one, but we believe that there is room for discussion. I note that, last week, Peter Robinson specifically mentioned the Assembly's acceptance, through a vote, of the entire Executive, including OFMDFM.

2304. **Mr P Robinson:** I said that today as well.

2305. **Mrs Long:** I was out of the room, so perhaps I missed it today, but that was specifically mentioned. My party would much prefer a situation in which the entire Executive is endorsed by the Assembly. To do so would suggest a greater degree of collectivity within the Executive than there was during the previous Assembly mandate. That can only be a good thing. Decoupling the two votes for the First Minister and the Deputy First Minister is less important than recognising that the entire Executive acts with a collective function. However, we do not believe that those roles should be decoupled. I want to put that on record.

2306. **Mr P Robinson:** I would make only one distinction. The vote that we would seek is such that A,B,C,D,E and F, etc, be the Executive. Anything other than that leads to people's picking and choosing, and then we will be into amendments to the effect that such-and-such a person do not be the Minister for the Department of the Environment, and someone else should be. We would be in a real mess if that happens, because it goes against the nominating-officer principle.

2307. **The Chairman (Mr Molloy):** OK. We have probably taken this topic as far as we can. Does anyone have a proposal in relation to the nomination of the First Minister and the Deputy First Minister?

2308. **Mr P Robinson:** You know that there are none that will get consensus, one way or the other.

2309. **The Chairman (Mr Molloy):** OK.

2310. **Mr P Robinson:** Shall we put that issue in the car park?

2311. **Mr Murphy:** It will have to be a multi-storey.

2312. **The Chairman (Mr Molloy):** Perhaps underground, even.

2313. The matters of the appointment of Ministers and the powers vested in them are linked.

2314. **Mr McFarland:** We discussed that matter at length last week. To follow Peter Robinson's point, there is an issue about interfering with the current system by which nominating officers from each party employ the d'Hondt formula internally. Is the Assembly capable of gainsaying the nominating officer of a particular party if Members do not like his or her choice of Minister? What are the outworkings of interfering with the determination that parties, by right, have x number of Ministers in a particular order that we simply run through?

2315. We could, technically, take a vote at the end. However, the logic of taking a vote is that we are able to change something — otherwise there is not much point. We would then be gainsaying the nominating officer of the party,

and the question becomes: “Will the party change its mind when a percentage of the Assembly objects to person A being nominated from a particular party?” That would put us in another ball game of amendments and interference, and comments such as, “I don’t like him or her”, etc. That will make a mess of everything.

2316. **Mrs Long:** When we discussed the issue last week, I said that the Alliance Party was not of the view that Members would try to undermine confidence in particular Members. However, that would certainly be possible, if it were the wish of the Assembly. Given that the four largest parties will be in the Executive, it shall be within their remits to control their members so that that does not happen on the Floor of the Assembly.

2317. The point of the vote is to enhance the degree of collective responsibility. At this stage, the vote may simply be a recognition that those Members with whom another Member enters Government have a right to be there on an equal basis. That was not the case with all Ministers in the last Assembly; some Ministers were not even members of the Executive.

2318. There must be some form of acceptance that, when Members become Ministers, they become members of the Executive and recognise the right of all other parties to be in the Executive on the same basis. The vote allows that to happen.

2319. Ministers can act off their own bats, do all manner of strange things and contrive any degree of disaster. However, if Members have a will to make this work — and we must base this on Members acting in good faith — it will simply be a matter of those parties collectively endorsing the Executive. That would send a clear, important message to the public, and to the other parties, that Members were serious. If Members are not serious, that will become apparent when these types of vexatious proposition begin.

2320. **The Chairman (Mr Molloy):** The normal procedure will apply, therefore, with nominating officers appointing Members. Mrs

Long’s suggestion is that the Assembly endorses the entire Executive at that stage.

2321. **Mr McFarland:** In the far-famed comprehensive agreement, there was a proposal to do that, except that any party that did not vote for the Executive would be excluded from it for the four-year term of the Assembly. My understanding was that it was not vital for that proposal to be included in any future discussions and that it disappeared off the scene slightly. Is that still the case or does whoever suggested the proposal still intend that any Member who did not vote for a Minister or for the First Minister and Deputy First Minister will automatically be excluded from the Executive?

2322. **Mr P Robinson:** If there is a vote, that must be a requirement. It would not be possible to have a Minister in an Executive who is not prepared to vote for the Executive. That would be simply ludicrous.

2323. **Mr McFarland:** No, but a Member could vote against another Member whom they thought should not be in the Executive.

2324. **Mrs Long:** That is still ludicrous.

2325. **Mr P Robinson:** With respect, Alan, you cannot attack the DUP for wanting to change the system because we might not want a certain Member in the Executive and because we believe that a vote should be mandatory and then say that you want to be able to pick and choose at a later stage.

2326. **Mr McFarland:** I am not saying that; I am merely enquiring. On the one hand, you want to change the vote on the First Minister and Deputy First Minister because you do not want to publicly stick up your hands to vote for Martin McGuinness as Deputy First Minister. On the other, you are happy to have a round-up vote to protect Members from being identified as having objected a particular Member. However, any Member who might wish to abstain, for example, or, indeed, vote against any Minister, will be turfed out of the Executive by law.

2327. **Mr Ford:** We collectively see this issue as, in effect, the equivalent of the European Parliament endorsing the European Commission. It is not an opportunity for amendment; it is a

slate put for endorsement by the legislature as a group. As someone who is unlikely to find himself in that position, I cannot see the circumstances in which a Member would wish to be part of an Executive if they were not prepared to vote for the other members of that Executive.

2328. The Executive is supposed to work together. We have all talked, to a greater or lesser degree, about increasing collectivity and enhancing the operation of the Executive together. To suggest that Members would wish to be part of an Executive when they were not prepared to vote collectively for that Executive suggests that certain Members are trying to maintain the position that one party managed to occupy in the previous mandate of being half in and half out.

2329. **Mr McFarland:** Why would Members not wish to vote for a Deputy First Minister in a joint office if their party were about to go into the joint office of First Minister and Deputy First Minister? The argument that applies to the thingummy applies to the vote for the First Minister and Deputy First Minister, does it not?

2330. **The Chairman (Mr Molloy):** To look at it another way, is it a bad thing if there is cover for the collective?

2331. **Mr Ford:** To an extent, that provides both cover for, and recognition by, all Members — at least all Members who aspire to be in an Executive — of all the other Members who have a right to be in an Executive, according to this system. There appear to be benefits both ways.

1.45 pm

2332. **Mr McGimpsey:** A key provision of this proposal is exclusion; it is not purely about voting and endorsing. If a Member does not vote in favour of the Executive, that Member is excluded. Sinn Féin agreed to the comprehensive agreement and has spent much of this morning talking about the need for inclusion, that a fundamental principle of the agreement is that no party should be excluded and so on. I was pointing out that there are certain instances in which that need not be the case.

2333. This issue is outlined in paragraph 9 of the Annex B proposals on strand one. Although

Conor said that the comprehensive agreement is now off the table, we know that, once something is on the table, it will stay there. This proposal was on the table not so long ago. In agreeing to the comprehensive agreement, Sinn Féin was, in fact, agreeing to exclusion.

2334. If a Minister duly nominated to the Executive through d'Hondt decided that he or she could not endorse all his or her colleagues and voted against the Executive, that Minister, and eventually his party, would be excluded. David Ford strongly argued for that; I find that somewhat surprising.

2335. Why can a nominated Minister not register a protest vote? If there is any point in having a vote, a protest vote should be permitted. However, according to the comprehensive agreement, if a Member exercises the democratic right to register a protest vote, he or she will be excluded from the Executive. This is another exclusion provision. How does Sinn Féin feel about that?

2336. **The Chairperson (Mr Molloy):** I will let Conor reply to that.

2337. **Mr Ford:** I too wish to reply, as I was specifically named.

2338. **Mr Murphy:** I have confidence in Sinn Féin's negotiating ability to decide what is on or off the table. Michael seems to think that, when proposals are discussed, they remain on the table for ever. There would be no point in negotiations if we adopted such a defeatist approach.

2339. I have outlined Sinn Féin's position on these proposals on a number of occasions. I will reiterate it: we did not sign up to any comprehensive agreement — there was no comprehensive agreement. Proposals were considered in 2004 in a certain context, which no longer exists. In relation to these specific proposals, I have also said — and the Hansard report can be checked — that Sinn Féin has no history of practising the politics of exclusion at local government level, or at any other level, unlike all the other parties around the table.

2340. Any proposals that Sinn Féin considered concerned locking Members into a working Executive — they were not about locking

Members out. During the last Assembly, the UUP and the SDLP agonised over the DUP's refusal to participate in the Executive, that party playing fast and loose with the Executive while holding ministerial power, and what could be done about it. That was discussed on many occasions, but no action was taken.

2341. **Mr Ford:** Michael McGimpsey said that I spoke strongly for exclusion. I have been speaking about the Alliance Party's proposals, including those that we suggested at Leeds Castle. I have not been speaking about the proposals in the so-called comprehensive agreement, in which we had no part. However, having read those proposals, I note that they mention excluding individual Members, not parties en masse. Michael is getting worked up about that point.

2342. I repeat my earlier point — and I ask Michael specifically: as someone with ministerial experience, why would he want to be part of an Executive if he did not have confidence in its other members? If we are supposed to be enhancing collective responsibility and improving the workings of the Executive, it seems pointless that a Member would wish to be part of a body if he or she did not have confidence in other members of that body. If that is so, such a Member should simply opt out and let those who are prepared to work together to do so.

2343. **Mr P Robinson:** Michael will also perhaps reply to this point. I am having difficulty in understanding the principle whereby Members want to vote against another Member being in the Executive because his or her presence is so repugnant that Members need to register their votes against that Member, yet not so repugnant that the same Members would not have that Member as a partner in the Executive. I want to understand that principle.

2344. **Mr McGimpsey:** I do not wish to reiterate what I have just said, but Members have a vote and they should have the right to exercise it. If Members want to state a point of principle or wish to protest about an individual or a party, they should have the right to do so. Let us suppose that Martin McGuinness or

Conor Murphy is proposed as Minister for policing after a deal is done between the DUP and Sinn Féin, and Peter Robinson supported that and was prepared to make a deal. David Ford and Peter are saying that I should be excluded if I wish to protest against that. That is neither fair nor just.

2345. **Mr Ford:** That is specifically not what I said.

2346. **Mr McGimpsey:** The Executive is an enforced coalition. Perhaps I should not name you, David, because I do not wish to misquote you, and I apologise if I have. However, in an enforced coalition, one can be in an Executive almost against one's will, because that is the way it is set up. The Executive is not a voluntary coalition. If that is the situation, one should have the right to register one's vote. Policing and justice are clearly part of this issue, and a timetable was laid out for that. If, for example, as part of a deal, we end up with Martin McGuinness as Minister for policing, and I am asked to vote for him, and I say that I am not prepared to do so, I would be excluded from office if I were duly nominated. That is neither fair nor just.

2347. **Ms Lewsley:** The issue is about setting the precedent of exclusion, and bringing that into any new Assembly. In setting that precedent, we will open the door to the use of that exclusion mechanism in subsequent votes. I can understand the problems about people who were half in and half out of the Executive but who were not excluded from the Assembly. Sinn Féin abstained from voting for a First Minister and a Deputy First Minister at one stage, and it was not excluded from the Assembly.

2348. I understand the ethos of having the endorsement of the whole Assembly, but there is a possibility that one or two people from any party could feel so strongly about the make-up of the Executive that they feel that they should have the right to vote against it, and they should not be excluded for that.

2349. **Mr McFarland:** The argument begs the question: why would one not wish to vote for colleagues in an Executive of which one was part? Why would one not wish to vote for a

Deputy First Minister with whom one was going to be joined at the hip in running a country for four years? The DUP argument is that it does not wish to vote for a Deputy First Minister, therefore we should have a split of the OFMDFM vote. There is no point in the DUP's asking why one would not want to vote for that if they are proposing a separate vote, because they do not want to have to vote for a Deputy First Minister.

2350. **Mr P Robinson:** I got lost in that argument. The position is as I have explained it. If there is a vote, then I vote according to what I want the outcome to be. I would not vote for a Sinn Féin First Minister or a Sinn Féin Deputy First Minister because that is not what I would choose if I had a free choice in the matter. If we are setting up a mandatory system, I do not have any choice in that matter, and a mechanism determines who will take office. I am quite happy that we remove voting from that process in its entirety. Therefore the exclusion mechanism would be removed, there would be no requirement to vote for the Ministers, and there would be no requirement to vote for a First Minister and a Deputy First Minister.

2351. **The Chairman (Mr Molloy):** The proposal is that we have no vote at all; that we simply nominate the Executive, the First Minister and the Deputy First Minister.

2352. **Mr McFarland:** There is no vote for the Ministers at the moment anyway, so the proposal is that we do not have a vote at all for OFMDFM. Is that right? Each party would nominate —

2353. **Mr Campbell:** The nominating officer would nominate.

2354. **Mr McFarland:** The nominating officer would nominate. Was it the original DUP proposal that we elect the First Minister and the Deputy First Minister separately?

2355. **Mr P Robinson:** The original DUP proposal was that the nominating officer of the largest party and the largest designation nominates the First Minister. The nominating officer of the second-largest party and the

second-largest designation then nominates the Deputy First Minister.

2356. **Mr McFarland:** My understanding of the original system was that the nominating officer of the largest party nominates the First Minister, the largest party in the other tradition nominates the Deputy First Minister, and they go forward as a joint nomination. It is a new proposal that those two go forward as a joint nomination without any vote.

2357. **Mrs Long:** There are a couple of issues to address. First, if the DUP is saying that it does not particularly wish to have any vote, the inconsistency that Alan was trying to highlight has now been made clear.

2358. We have been consistent on that point: we wish to have a vote on the First Minister and the Deputy First Minister and on the entire Executive.

2359. Michael referred to Ministers being in the Executive against their will. Let us be clear: the system is mandatory only inasmuch as the way in which the Executive is formed is mandated. People are not obliged to take their posts. If they feel strongly that others are not suitable partners in the Executive, they have the choice not to nominate Ministers. People cannot be in the Executive against their will. This nonsense about people being forced into the Executive with no choice in the matter pervaded the last Assembly. The nominating officers make the choices on behalf of the parties and put people's names forward. I assume that in democratic parties people have to agree to be nominated for those posts. It is mandatory only in the sense that I referred to earlier. People are not made to take up posts against their will. Perhaps the vote would belie the nonsense that they are made to do so.

2360. **Mr P Robinson:** That is not quite accurate. Sinn Féin and the DUP have to be represented in the Executive. If they were in opposition they could stop everything.

2361. **Mrs Long:** The votes certainly suggest that for the First Minister and the Deputy First Minister, but not for the nominations of the Executive Ministers.

2362. **Mr P Robinson:** But if they are not in the Executive, they have a veto. If any opposition had that, it would grind the thing to a halt.

2363. **Mrs Long:** Which they are exercising at the moment.

2364. **Mr Ford:** Surely, on a mathematical point, unless both of those parties were in opposition and attempting to exercise a veto, they would not be able to since the 60:40:40 voting rule would carry everything except when electing the First Minister and the Deputy First Minister.

2365. **Mr P Robinson:** Which would bring everything to a halt — you would never get moving.

2366. **Mr Ford:** You refer to a veto over everything. It does not —

2367. **Mr P Robinson:** It does. Nothing would move.

2368. **Mr McFarland:** If you cannot get past first base —

2369. **The Chairman (Mr Molloy):** Can we draw this to a conclusion? The Committee Clerk will read the suggested proposal.

2370. **The Committee Clerk:** It is proposed that the positions of First Minister and Deputy First Minister be filled by asking the nominating officer of the largest party of the largest designation and the nominating officer of the largest party of the second largest designation to identify their nominees for First Minister and Deputy First Minister respectively.

2371. **Mr McFarland:** As in the comprehensive agreement?

2372. **Mr P Robinson:** No. The comprehensive agreement goes on to have a vote.

2373. **The Chairman (Mr Molloy):** There is no vote and no exclusion. It is a nomination.

2374. Do we have consensus on that proposal?

2375. **Mr Ford:** The proposal does not appear to do anything to enhance collectivity in the Executive, and therefore we oppose it.

2376. **Mr P Robinson:** Nor does it do anything to harm it.

2377. **Mr Ford:** We seek to enhance it.

2378. **Mr P Robinson:** It does not enhance it by any other mechanism either.

2379. **The Chairman (Mr Molloy):** We are looking at how to appoint people. Regardless of the enhancement issue, the question is how we get an Executive up and running.

2380. **Mrs Long:** Are we saying that that is the mechanism by which people's names are put forward? That is the way it is currently done. The issue is what happens after that. At the moment, there is a vote.

2381. **Mr P Robinson:** Names are put forward by somebody proposing both people.

2382. **Mrs Long:** We are talking about people putting forward one and then the other. Are we then going to look at how those two are confirmed in post?

2.00 pm

2383. **The Chairman (Mr Molloy):** Their endorsement is another issue. This refers to the appointment of the First Minister and the Deputy First Minister and to the appointment of Ministers. Do we have consensus?

Members indicated dissent.

2384. **The Chairman (Mr Molloy):** If there are no other proposals, let us move on.

2385. I suggest that we leave discussing appointment to outside bodies until last and deal next with collective responsibility and decision-taking within the Executive.

2386. **Mr Murphy:** What are we on to next?

2387. **The Chairman (Mr Molloy):** The two items are collective responsibility and decision-taking within the Executive. If members are happy, we will leave appointments to outside bodies to a later date.

2388. **Mr McFarland:** What was appointment to outside bodies about? Refresh my memory. Was it about the North/South Ministerial Council (NSMC)?

2389. **The Chairman (Mr Molloy):** I am not au fait with that topic.

2390. **Mr P Robinson:** Was it the Civic Forum?

2391. **Dr Farren:** No, it had to do with appointments to outside bodies above a certain level. If my memory serves me correctly, those appointments were not brought to the Executive. They might have been reported to the Executive but they were not brought to the Executive for any level of collective agreement or endorsement.

2392. **Mr P Robinson:** If you accepted the comprehensive agreement proposals, Ministers would be able to ensure that they were brought to the Executive.

2393. **Mr McFarland:** Who are we talking about, as a matter of interest?

2394. **The Chairman (Mr Molloy):** Perhaps we should discuss this now instead of skipping it.

2395. **Mr McFarland:** It may not be an issue, in which case we can agree to park it.

2396. **The Chairman (Mr Molloy):** The DUP raised it originally so perhaps Peter can clarify matters.

2397. **Mr P Robinson:** I cannot remember what it was.

2398. **Mr McFarland:** It is not clear about whom we are talking.

2399. **The Chairman (Mr Molloy):** Hansard will have a record of it.

2400. **Mr McFarland:** It could be appointments to cross-border bodies, or whatever, in which case —

2401. **Dr Farren:** It is generally understood that nominations to public bodies at a certain level might need to be brought to the Executive's attention.

2402. **Mr McFarland:** OFMDFM decided quite a lot on its own the first time around, so what you are saying is that now, instead of residing with OFMDFM, those matters should go to the Executive for confirmation. Is that correct?

2403. **Mr Murphy:** There is a general question mark over how that matter was handled by OFMDFM and about the degree of transparency and accountability that existed.

2404. **Dr Farren:** It could apply to all Departments; every Minister makes appointments. It is a question of whether some, but not all, of those appointments at whatever level should be notified to the Executive and discussed and endorsed by them. It is a matter of principle. We cannot possibly go through this in any degree of specificity, but we could say that, in principle, to demonstrate the transparency of such public appointments, it might be necessary to bring appointments to the notice of the Executive for endorsement.

2405. **Mr McFarland:** For the sake of transparency and accountability it would make sense to do that.

2406. **The Chairman (Mr Molloy):** Do we have a proposal?

2407. **Dr Farren:** We could agree in principle that public appointments should be endorsed by the Executive but note that we have yet to establish at what level that would be required.

2408. **The Chairman (Mr Molloy):** Do we have consensus on that?

Members indicated assent.

2409. **The Chairman (Mr Molloy):** We now move to collective responsibility and decision-taking within the Executive. We have dealt with some of this already. We are probably repeating ourselves to some extent, but we need to make some decisions.

2410. **Dr Farren:** I hope I can assume that there has been a general acknowledgement of the need to enhance collective decision-making within the Executive. From time to time, many, if not all, of my fellow Ministers and I would bring proposals to the Executive, only to find that colleagues had not informed their party Members about the proposals in sufficient detail to create the general understanding that would have assisted their endorsement in the Assembly. At times the Executive, if not working against themselves, were certainly not working for themselves 100%.

2411. Some of the necessary measures are straightforward and obvious, such as subcommittees being established within the

Executive. At the lower level of suggestions to consider are: putting the ministerial code into legislation, a stronger endorsement of the Programme for Government by all Ministers, and perhaps changes to the protocols whereby Ministers address Executive business with Committees.

2412. Another suggestion is to introduce a code of ethics to the Civil Service that would give it, specifically permanent secretaries, the right to notify the Executive, and the First Minister and the Deputy First Minister in particular, whether Ministers were in breach of Executive decisions or the Pledge of Office.

2413. We need to consider a range of issues, some of which are of greater and some of lesser significance. The SDLP has a brief paper that it can circulate — if members so wish — that contains a number of suggestions. However, some general discussion on matters related to collective responsibility would be useful.

2414. **Mr Ford:** The fundamental question is whether we are talking about power division between Ministers who operate in Departments as though they were individual fiefdoms, or power sharing at the highest level. It seems logical to the Alliance Party that parties would have an interest in more than just the Departments that they control. If there were greater collectivity in the Executive when discussing the full range of subjects, any power that parties might lose in their own Departments would be gained from having a greater say overall.

2415. Seán spoke from ministerial experience. I noted of his point on Executive subcommittees, and I would like to tease that out a bit further. How the Executive achieves wider collectivity on several key issues is crucial. The Alliance Party has highlighted that in relation to justice. A justice Department simply could not function without collectivity within the Executive. That must be covered by the ministerial code and by agreement on the advanced circulation of papers. Perhaps Executive subcommittees may enable wider discussion of issues before they are announced.

2416. The Alliance Party also referred to the Executive having some method for challenging

ministerial decisions. Perhaps three members of the Executive should be able to request from the First Minister and the Deputy First Minister the right to call in a decision of a Minister for full Executive discussion. There is a range of issues but, fundamentally, business must be done notwithstanding the formal constitutional proprieties that mean that Departments have certain responsibilities.

2417. If collectivity is to be enhanced and if the community is to be brought together on issues, there must be a wide-ranging discussion throughout the Executive. Discussion should not be confined to a single Department when key decisions are being taken.

2418. **Mr P Robinson:** Some of David's remarks are consistent with the Government's proposals for a comprehensive agreement.

2419. If the basis of collective decision-making is to emerge from a ministerial code — which requires Ministers to inform colleagues about decisions and seek approval in certain circumstances — then such a code must have a statutory footing.

2420. Any sensible Minister who requires funding or legislation will wish to bring his Executive and Committee colleagues along with him. It makes sense for a Minister who wants to get his proposal through to seek collectivity in the decision-making process.

2421. As for accountability, there is a need for mechanisms to ensure that a Minister does not attempt a home run and simply leave everybody else behind, uninformed. Such mechanisms should require a Minister to inform his colleagues about major decisions and seek Executive approval for proposals. The mechanism for three Ministers to require a cross-community vote under the present size of the Executive seems sensible. However, if the Executive were reduced to seven Ministers, that figure might well be reviewed.

2422. **Mr Murphy:** Sinn Féin is quite happy to look at proposals for enhancing accountability and collective responsibility. I referred previously to an incident when one Minister's Executive proposals were voted down in the

Assembly by at least two other Ministers, along with their party. That undermined the work of the Executive. We see the way forward through having a ministerial code and putting it on a legislative basis — and I think that there would be scope for agreement among most of the parties. Enhanced accountability could not be viewed as a bad thing. However, there must be a balance between Executive authority and a veto. We would be quite happy to consider enhancing collective responsibility through the use of a ministerial code.

2423. **Mr McFarland:** This proposal was fairly well developed before the last Assembly broke up. It is not new, and we would support any ministerial code that would increase accountability.

2424. **The Committee Clerk:** It has been mentioned that the ministerial code be put on a statutory footing; that colleagues should inform each other about major decisions; and that there should be a call-in for controversial decisions. Is that one proposal or three separate proposals?

2425. **Mr P Robinson:** I might get support for one and not another, so it is probably better to frame them as several proposals.

2426. **The Chairperson (Mr Molloy):** Are there any other proposals?

2427. **Mr Murphy:** It might collectivise matters to agree to the deployment of the use of a ministerial code to enhance accountability within the Executive.

2428. **The Chairperson (Mr Molloy):** Does that tie a couple of the proposals together?

2429. **Mr P Robinson:** One could have a ministerial code without it being on a statutory basis. No sanctions can be applied if the code is not on a statutory basis — it would just be bad politics if it were broken. However, it would be illegal to break the code if it were on a statutory basis.

2430. **The Chairperson (Mr Molloy):** Would the Clerk please read out the proposals?

2431. **The Committee Clerk:** The proposal is that the ministerial code be put on a statutory footing.

2432. **The Chairperson (Mr Molloy):** Do we have consensus?

2433. **Mr Murphy:** The word “agreed” should be included because some work needs to be done on the code.

2434. **The Chairperson (Mr Molloy):** Do we have consensus on the proposal that an agreed ministerial code be put on a statutory footing?

2435. **Dr Farren:** Is a draft already in existence?

2436. **Mr P Robinson:** Nobody saw it, other than those on the Executive.

2437. **Dr Farren:** Sorry?

2438. **Mr P Robinson:** Nobody saw the draft; it did not go to the Assembly; it was not issued.

2439. **Dr Farren:** That may have been because of suspension.

2440. **The Chairman (Mr Molloy):** Therefore that draft would be available as one of the options.

2441. **Dr Farren:** Whatever happened, the draft exists, and it might be a useful starting point.

2442. **The Chairman (Mr Molloy):** Do we have consensus along the lines —

2443. **Mr P Robinson:** Not all Ministers were given a copy.

2444. **Dr Farren:** If you had attended meetings, you might have been given it.

2445. **Mr P Robinson:** Do Ministers have to attend meetings to be given copies of ministerial codes?

2446. **The Chairman (Mr Molloy):** You were going well there for a minute or two, boys.
[Laughter.]

2.15 pm

2447. **Mr Campbell:** We must be clear about collectivity. In the past, there were a couple of references to it when the parties and Ministers voted in one way or another. This discussion, I presume, is in the context of the main parties, and possibly even all the parties, endorsing a process that the Assembly would subsequently endorse.

2448. I know that Seán's reference was an aside, but it would not be a re-run of 1998, when a significant section of one community did not endorse the process. It would not result in a sizeable section of a community refusing to endorse a process. Therefore there would be no objections, and Ministers would not vote in a certain way because their communities had not endorsed the process. On this occasion, both communities would endorse it.

2449. **Dr Farren:** It is always dangerous to make a statement of fact.

2450. I was just drawing attention to the fact that a draft ministerial code existed. The intention was that it would become law and would, therefore, have been available to all parties in the Assembly.

2451. **The Chairman (Mr Molloy):** Perhaps Mrs Dunwoody should read the proposal again.

2452. **The Committee Clerk:** That an agreed ministerial code be put on a statutory footing.

2453. **The Chairman (Mr Molloy):** Do we have consensus on that?

Members indicated assent.

2454. **The Chairman (Mr Molloy):** Sign it off quickly, Mrs Dunwoody.

2455. The next proposal is that a mechanism be established to ensure that colleagues inform each other of major decisions.

2456. **Mr P Robinson:** Are we not agreed on the general principle that we should use the proposed ministerial code to increase collectivity?

2457. **The Chairman (Mr Molloy):** Yes, and that proposal covers the need for a mechanism to ensure that colleagues inform each other of major decisions.

2458. **Mr McFarland:** Have we dealt with the Pledge of Office?

2459. **Mr P Robinson:** We have not reached it yet.

2460. **The Chairman (Mr Molloy):** Are members agreed on that proposal? Is there consensus on the need for collective responsibility?

Members indicated assent.

2461. **Dr Farren:** I take it that that assumes that all the other operational issues that it would be associated with have —

2462. **Mr P Robinson:** That assumes that you agreed to the comprehensive agreement proposals. *[Laughter.]*

2463. **Dr Farren:** Do not put words in my mouth. *[Laughter.]*

2464. **The Chairman (Mr Molloy):** The next issues are the Office of the First Minister and the Deputy First Minister's referral to the Executive, the ministerial code, the ministerial code of conduct, and the Pledge of Office.

2465. **Mr Ford:** Mr Chairman, you did not take any further discussion on my point about Ministers having the power to call in decisions from other Ministers. The DUP referred to it, but other parties have not commented.

2466. **The Chairman (Mr Molloy):** Do members have any comments to make?

2467. **Dr Farren:** Would that be dealt with during discussions on the ministerial code?

2468. **Mr Ford:** If members treat the issue as part of the ministerial-code discussion, that is fair enough.

2469. **The Chairman (Mr Molloy):** The next item deals with the Office of the First Minister and the Deputy First Minister's referral to the Executive, the ministerial code, the ministerial code of conduct and the Pledge of Office. The requirements for Ministers to attend Executive meetings come under that issue also.

2470. Does the DUP want to open the discussion?

2471. **Mr Campbell:** We are far too open, that is the problem.

2472. **Mr P Robinson:** Alan is champing at the bit to get going.

2473. **Mr McFarland:** I want to discuss the Pledge of Office. It is quite confusing. Paragraph 7 of the Annex B proposals on strand one of the 'Proposals by the British and Irish Governments for a Comprehensive Agreement' says that:

“Reflecting the Pledge of Office, the 1998 Act would be amended to require a Minister to act in accordance with any relevant decisions of the Executive”.

2474. That is fairly logical; it refers to the Programme for Government. However, it goes on to say:

“and/or Assembly.”

2475. I am worried about the reference to the Assembly because, on occasion MLAs have tabled motions that have been supported in an Assembly vote, and that, under other circumstances, would have required a Minister to act on them.

2476. As members know, some of those votes took place at 4.30 pm, with the bare quorum in the Assembly. I just wonder if the intention was to say that a Minister would be required to act on any relevant decisions of the Assembly. Of course, the first Assembly took a whole swathe of decisions that did not meet ministerial or Executive requirements. If that were included as a requirement, it would open a whole area away from Government, the Programme for Government, and the Executive.

2477. **Mr P Robinson:** Democracy is an awkward thing, is it not, that the Assembly would have the audacity to take a decision and expect a Minister to act in accordance? It does not stretch the principles of democracy too much for Ministers to abide by a democratic decision of the Assembly. A Minister who knows that a motion relevant to his or her Department is to be debated in the Assembly will have a responsibility to ensure that the whipping arrangements are such that the Assembly does not take a decision that the Minister — if not the Assembly — might later regret.

2478. **Mr Campbell:** If the Assembly voted to cut a motion that a relevant Minister was seeking to table, the Assembly’s decision would be a considerable restraining influence on that Minister’s resubmission of that motion. The Minister would know that the Assembly’s decision would have to be considered in resubmitting any motion or amendment.

2479. **Mr McFarland:** We had a lengthy discussion on referrals to the Assembly, cross-community votes and the fact that a motion would simply be sent back to the Executive. This proposal does not suggest that; rather, it suggests that a motion be sent back to the Executive, which is required by law to carry out the instructions of the Assembly. The proposal seems to subsume the process of firing a motion back for reconsideration, on which we spent over an hour’s discussion this morning.

2480. **Mr P Robinson:** A section in the Northern Ireland Act 1998 exercises that precise power on a North/South basis. Can you remind me of it, Seán? The proposal replicates in Northern Ireland what Ministers are required to do on a North/South basis.

2481. **Dr Farren:** In the Act?

2482. **Mr Campbell:** In the 1998 Act.

2483. **Mr P Robinson:** Mark Durkan used to quote the section to me regularly. I cannot remember the exact section, although I remember his regularity in quoting it. *[Laughter.]*

2484. **Mr Murphy:** The authors of the comprehensive agreement would need to be spoken to, but the key word in paragraph 7 of annex B on strand one matters is “relevant”. A range of decisions is specified. Further work on the ministerial code might make it clearer what specific types of decision require Assembly approval. It must be made part of the pledge of office that Ministers abide by decisions of the Assembly. In relation to which decisions require Assembly approval and which do not, the key word is “relevant”.

2485. **Mr Ford:** Further to Conor’s point, surely to “act in accordance with” does not mean to follow slavishly? It means to take note of issues things such as financial resources as well.

2486. **Mr P Robinson:** In relation to participation on the North/South Ministerial Council, British-Irish Council, British-Irish Intergovernmental Conference and so on, section 52(3) of the Northern Ireland Act 1998 states that a:

“Minister... shall act in accordance with any decisions of the Assembly or the Executive Committee”.

2487. If Ministers are expected to act in accordance with decisions of the Assembly in a North/South format, it does not seem unreasonable that Ministers should do so in our own Assembly.

2488. **Dr Farren:** What happens if an Assembly decision cannot be complied with for budgetary reasons?

2489. **Mr Ford:** That is where the term “act in accordance with” would take account of realities such as budgetary limitations, equality legislation or any number of other factors.

2490. **Dr Farren:** Had they attempted to do so, Ministers would have been unable to implement many motions that were passed by the Assembly, as there would not have been the resources to do so.

2491. **Mr P Robinson:** That is why motions should not be passed in such terms. It is for a proper functioning Executive to ensure that decisions of the Assembly take account of financial restraints.

2492. **Dr Farren:** Of course, but you and I know that the Assembly is not often minded to do that.

2493. **Mr Campbell:** A variation on that occurred when we dealt with free personal care in the previous Assembly. There was pretty strong cross-party support on what should be done, but most of us knew that there were financial constraints. While Members voted along the lines of what they wanted to see, they also were reminded very strongly by the relevant Ministers about the practicalities of passing that legislation.

2494. **Mr McFarland:** It is important that we are clear on the meaning of any proposal; that it is in accordance with the decisions of the Assembly and the Executive; and that it is flexible. It would not do to state in law that Ministers had no option, as you would end up with all sorts of hassle.

2495. **The Chairman (Mr Molloy):** OK. Do members wish to further tie down the ministerial code?

2496. **Mr Murphy:** We have already discussed that matter, which comes under the previous heading. Unless there are other issues, there was a view that we needed to agree a ministerial code and put it on a statutory footing.

2497. **The Chairman (Mr Molloy):** So it is about taking the matter forward and agreeing on it.

2498. **Mr P Robinson:** Must the ministerial code be approved by the Assembly?

2499. **Mr McFarland:** It must be legislated for, so yes, it must be approved.

2500. **Mr P Robinson:** Whose legislation? Will the code be set up before or after the Assembly is running?

2501. **Dr Farren:** It was intended to be the Northern Ireland Assembly.

2502. **Mr Murphy:** I am trying to remember the discussions of the autumn of 1998. According to annex B of the 2004 proposals, the 1998 Act must be amended to put the ministerial code on a statutory footing, so it would not be a matter for Assembly legislation. However, I assume that if all of the parties that intend to be in the Executive agree to the code, it would pass any vote in the Assembly — if one were required.

2503. **Mr P Robinson:** I asked the second question because, going back to 2004, the issues in the ministerial code were so central to what was required by the DUP, that we would not have assented to the setting up of an Executive until those issues had been resolved. If that had been left to the Assembly, we could not have had the legislation until the Assembly and the Executive were up and running.

2504. **Mr McFarland:** We talked about an agreed position so, if a proposal could be developed and circulated for agreement among the parties, we would be backing what Peter wants. The Government may well wish to amend the 1998 Act so that a code is in place before an Executive is set up. That would make a degree of sense.

2505. **Mr P Robinson:** There would have to be an agreed ministerial code anyway. There would not be an agreement otherwise.

2506. **The Chairman (Mr Molloy):** How are members proposing to tie down that matter? Who are we asking to put that together?

2507. **Mr P Robinson:** That would have to go before all of the parties.

2508. **Dr Farren:** That is why I referred to a draft. We could look at that draft, provided that it is not beyond amending.

2509. **Mr P Robinson:** The Government may wish to consult parties on the terms of a ministerial code.

2510. **The Chairman (Mr Molloy):** Shall we ask the Secretary of State for a copy of whatever is available at present?

2511. **Mr P Robinson:** Yes, with a view to reaching an agreed position among the parties that can be put in legislation.

2512. **The Chairman (Mr Molloy):** Is that agreed?

Members indicated assent.

2513. **The Chairman (Mr Molloy):** We now turn to the code of conduct.

2514. **Mr McFarland:** Is that the same as the ministerial code? Has someone got confused, or are we talking about the behaviour of individuals?

2515. **Mr P Robinson:** That is a separate matter.

2516. **Mr McFarland:** Is it the individual's code of conduct?

2517. **Mr P Robinson:** No.

2518. **The Chairman (Mr Molloy):** Are we happy with what we have at present?

2519. **Mr P Robinson:** I assume that that code of conduct for Ministers included all of those aspects. Did it?

2520. **Dr Farren:** All of the —

2521. **Mr P Robinson:** The code of conduct that was in annex A to strand one of the Belfast Agreement?

2522. **Dr Farren:** Yes.

2.30 pm

2523. **Mr P Robinson:** That is duplication, to some extent. That code of conduct is replicated in schedule 4 of the Northern Ireland Act 1998, so, unlike the ministerial code, this has a statutory basis. Therefore we are asking the Secretary of State to give the ministerial code a statutory basis as well.

2524. **The Chairman (Mr Molloy):** Are we agreed on that?

Members indicated assent.

2525. **Mr P Robinson:** We are changing the heading “Code of Conduct” to “Ministerial Code of Conduct” and making the latter more detailed.

2526. **The Chairman (Mr Molloy):** Mr McFarland, do you wish to comment on the Pledge of Office?

2527. **Mr McFarland:** No, my query has been answered.

2528. **Mr P Robinson:** The ministerial code of conduct could be a lengthy document that would add to legislation, and you may want to legislate for key elements of it. The leaked copy of your draft proposals for a ministerial code that came my way — *[Laughter.]*

2529. **Mr Murphy:** That must have been that spy ring at Stormont.

2530. **Mr P Robinson:** It was a thick document — you would need a major drafting process to put that into legislation. There may be key elements on authority, just as in the Local Government Act (Northern Ireland) 1972, which sets out key standing orders, but allows each council to add its own.

2531. **Dr Farren:** The draft proposals contain the main issues, and then there would be Standing Orders and the normal operational matters.

2532. **The Chairman (Mr Molloy):** I am sure that the Secretary of State also has a copy of that.

2533. Does the SDLP have any other issues about the Pledge of Office?

2534. **Dr Farren:** You have caught me unawares.

2535. **The Chairman (Mr Molloy):** I apologise.

2536. The other issue that we need to deal with is the requirement on Ministers to attend Executive meetings. Again, that could come under the heading “Ministerial Code of Conduct”.

2537. **Mr Ford:** With regard to the Pledge of Office, there must be a requirement in that to support the rule of law.

2538. **Mr McFarland:** Absolutely.

2539. **Mr Murphy:** I would not consent to change the Pledge of Office yet. Support for rule of law is a broad topic. I presume that, when we get to the stage of forming an Executive, outstanding issues in relation to policing matters will have been resolved — perhaps, we could reconsider it then. However, where outstanding policing and justice matters have not been resolved, I reserve the right to refuse consent to that.

2540. **Mrs Long:** The rule of law is much broader than simply accepting the structures for policing. That may be part of it, and signing up to those structures may be part of it, but the rule of law is about something more fundamental than simply accepting policing arrangements. It is important, not only for the stability of future institutions, but for the stability of the society in which we live, that there is common understanding of the rule of law and that that is signed up to by everyone in Government.

2541. **Mr P Robinson:** Does the responsibility of Ministers not go beyond their signing up to support for the rule of law? They must also encourage others to do so.

2542. **Mrs Long:** Absolutely.

2543. **Mr P Robinson:** There is overlap here with some of the work of the PFG Committee dealing with law and order issues. We may want to reflect this discussion to it to see if it will make some recommendation to us or vice versa.

2544. **Mr McFarland:** The Wednesday team has an entire section on this that we have not reached yet. It is a key issue for discussion.

2545. **Dr Farren:** We could not expect Ministers to do anything other than pledge to uphold the rule of law. The suggestion that they

would have to encourage others to do the same is essentially a party matter. The Pledge of Office should simply include that Ministers would uphold the rule of law.

2546. **The Chairman (Mr Molloy):** Can we take it that this all will become part and parcel of any code of conduct and ministerial code and that it will have to be agreed at a further stage within this discussion?

2547. **Mr P Robinson:** The issue is whether it is in the Pledge of Office or the ministerial code.

2548. **Mr Ford:** The Alliance Party sees it as being part of the Pledge of Office although I suspect that the detailed discussion on the code will impinge on the pledge. As long as we are not regarding the issue as closed at this stage then that is fair enough.

2549. **The Chairman (Mr Molloy):** Do you have a particular proposal? I do not think we will get consensus.

2550. **Mr Ford:** There appears to be an acceptance that the issue is for discussion as we go into detail on the code.

2551. **Mr Murphy:** And among the PFG Committee dealing with law and order matters.

2552. **The Chairman (Mr Molloy):** Is there consensus?

Members indicated assent.

2553. **The Chairman (Mr Molloy):** As regards the requirement for Ministers to attend Executive meetings, should that matter be slotted in under the heading “Ministerial Code of Conduct”?

2554. **Mr P Robinson:** Subject to some conditions, I assume. Ministers may not always be able to be at meetings.

2555. **Dr Farren:** The principle should be that they do attend.

2556. **Mr McFarland:** Did we cover decision-making within the Executive — presumably that means the system for taking decisions — and the First Minister and Deputy First Minister’s referral of items to the Executive? If not, are we coming back to them?

2557. **The Chairman (Mr Molloy):** We actually opened with the latter item.

2558. **Mr McFarland:** What was the Committee's decision?

2559. **Mr P Robinson:** We did not decide whether there should be a cross-community vote on the Executive, for instance.

2560. **Mr McFarland:** I am thinking that we will have the First Minister and Deputy First Minister busy glad-handing the world, running their little Department etc, and chairing the Executive. Presumably, like other Ministers, they will bring departmental issues to the Executive; or are we talking about a special system for them to refer non-departmental issues?

2561. **The Chairperson (Mr Molloy):** Basically, the collective responsibility proposals covered that as regards sharing information between Executive members. It would also be part of any ministerial code.

2562. **Mr P Robinson:** I have no difficulty with how things will get to the Executive. However, how will decisions be taken within the Executive? I assume that Ministers will pass issues up to the First Minister and Deputy First Minister that they need discussed, and presumably the First Minister and Deputy First Minister will put down issues they need discussed. They will set the agenda and therefore they will bring the issues to the Executive meeting.

2563. **Mr McFarland:** As we have several ex-Ministers here, it might be worth it — for the rest of us who were not privy to the inner council meetings —

2564. **Mr P Robinson:** You make it sound like UDA meetings.

2565. **Mr Murphy:** Just slip in there for a minute.

2566. **Mr McFarland:** It would be useful if we could just have a canter round how the Executive meetings worked for our benefit, what the implications are for a new Executive and whether it would work in the same way.

2567. **The Chairman (Mr Molloy):** Peter wasn't at the Executive table, so I will move to Seán.

2568. **Mr P Robinson:** I was not on the inner council either.

2569. **Dr Farren:** What is the question precisely?

2570. **Mr McFarland:** Would you remind us how the Executive operated, and whether there are implications for the new Executive? Those of us who were not in the first Executive will be curious about how it operated.

2571. **Dr Farren:** There are no mysteries about how it operated, if you are talking about how business found its way onto the Executive agenda.

2572. **Mr McFarland:** Yes, and how decisions were taken, because as I understand it, if there were three members of the Executive there was a veto —

2573. **Mr P Robinson:** That is what is being suggested by David and myself.

2574. **Mr McFarland:** Therefore the question is that if there are four other members on the Executive, do they outweigh the veto even though they are from different parties, or is it the three from the single party who hold the veto?

2575. I am curious how all that will work in the new DUP/Sinn Féin Executive. *[Laughter.]*

2576. **Dr Farren:** It must be remembered that we were not working to any formal set of rules, and as much consensus as possible was sought on particular issues. On two or three occasions, the Executive voted almost in a straw poll to try to achieve the maximum consensus. There might have been acquiescence from those Ministers who were not strongly in favour of an issue or proposal. For instance, a ratio of 6:2 was enough to suggest that it was better to accept something than to continue opposing it to the point where it became clear that the Executive would have divided on an issue.

2577. **Mr P Robinson:** In the future, the Executive will probably attempt to achieve consensus in that way 99% of the time, when some Ministers will not feel strongly enough about an issue to divide on it. However, if an issue arises on which the Executive are divided, is a cross-community vote required? Would

three members have to trigger a cross-community vote by indicating that they considered an issue so important as to warrant such a vote?

2578. **Dr Farren:** Those issues were discussed under the “Ministerial Code of Conduct” heading and were not fully resolved.

2579. **Mr McGimpsey:** The Executive’s practice was to operate by seeking consensus. If it came to the crunch and no consensus was achieved, any three Ministers could veto. There were 10 Ministers at the table: the First Minister, the Deputy First Minister and eight Ministers; and any three Ministers could veto a decision by the Executive. That was not laid down in a code; it was the Executive’s custom and practice.

2580. A Minister was expected to bring any business to the Executive’s agenda, which was agreed by the First Minister and the Deputy First Minister. They decided what was on the agenda and what was not. There was nothing complicated about the process. The First Minister and the Deputy First Minister had the important role of co-ordinating the agenda and Executive Committees.

2581. **Mr P Robinson:** Sometimes, however, the First Minister and the Deputy First Minister included subjects, rather than proposals, on the agenda. Therefore, they could agree that a certain issue should be on the agenda, but they might not have considered the resolution of that issue. That did not stop a potentially divisive issue being included on the agenda.

2582. **Mr McFarland:** This type of detail is probably fundamental to the eventual success of the Executive. Is there any merit in establishing a small working party to work with the Secretary of State to identify what should, and should not, be included in any documents relating to the workings of the Executive, and the level of detail required?

2583. It is important that such detail is right at the beginning. If we expect the Government to amend the Act in advance of any deal, it would make sense to do some homework. Whether that is done by the NIO or by the parties, we must get more detail on it. Potentially, the parties could be doing a deal, only to discover

fundamental disagreements about how Executive decisions are taken, weightings and so on. It would be better to do the homework earlier rather than later.

2584. It will obviously be worthwhile to take the Secretary of State’s view on this. It may also be worthwhile establishing a working group with the NIO, comprising a member from each party to attempt to agree on the detail of this issue.

2.45 pm

2585. **Mr P Robinson:** I suspect that there is more knowledge in this room than in the NIO about what happened in the Executive. There is no major issue about how a matter gets on the agenda — it will simply happen. However, when the matter comes to the Executive and does not get agreement there, the options are: to have a veto system where a certain number can veto an issue; to require cross-community support; to have a regular majority vote, or to have a majority vote on all issues, unless a certain number are required for a cross-community vote.

2586. **Dr Farren:** There are many informal avenues to be pursued before a decision is made. Matters should be foreseen early enough and issues tested out, and advisers played a role in that. There was a weekly meeting of advisers, which helped to filter some matters in preparation for an Executive meeting, so that things could be agreed in advance, and the meeting did not get clogged up with unnecessary detail.

2587. Major issues will not come up at the last minute — they will come up with a degree of foresight, and, if there are cross-departmental implications, informal discussions must take place between the Ministers involved. Most issues have budgetary implications anyway, so there is a great deal of toing and froing with the Minister of Finance and DFP officials before matters are brought to the Executive.

2588. Some matters will come to Executive meetings even though no agreement has been reached on them. In that case, the mechanisms that we are discussing will be introduced, using

a simple majority, a weighted majority, objections by three Ministers, or whatever is the appropriate number. We need to have a mechanism, but matters do not necessarily have to come to that point. A lot of the groundwork can be cleared by good preparatory discussions.

2589. **The Chairman (Mr Molloy):** Perhaps officials and parties could draw up some ideas on that.

2590. **Mr P Robinson:** It would be useful if we could find out the extent to which the operation was simply on the basis of custom and practice, the extent to which requirements are set down in legislation and, under “Ministerial Code of Conduct” — albeit a ministerial code that had not been approved by the Assembly — the extent to which those procedures were set out. If we had that, we could pick the best procedures and decide how to entrench them.

2591. **The Chairman (Mr Molloy):** We will come back to the Committee on that point. We will deal now with the functions of OFMDFM under the heading “Efficiency/Effectiveness”.

2592. **Mr McFarland:** Where do we park the subheading “Where power is vested in NI”, because we cantered around that earlier? Peter Robinson wanted to have power devolved to the Assembly. Did we have a discussion on that?

2593. **The Committee Clerk:** It was discussed this morning, but the Committee did not reach a conclusion on it.

2594. **Mr McFarland:** I know that it was discussed, but has it been parked? Are we coming back to it, or is it a dead issue?

2595. **The Chairman (Mr Molloy):** There were no conclusions — there was merely a discussion. It is still in the car park. It is something that the Committee will have to come back to and finalise. The papers are there for members to read. We will put it on a future agenda.

2596. **Mr McFarland:** Peter Robinson was keen to have power devolved to the Assembly. Is that parked, or are we coming back to it? At what stage are we likely to come back to it?

2597. **The Chairman (Mr Molloy):** It is up to the Committee to decide what it wants to do with it.

2598. **Mr P Robinson:** I got the impression that there was no consensus on it.

2599. **The Chairman (Mr Molloy):** There was no consensus on it.

2600. **Mr McFarland:** If that is where it is, there is no problem — I was merely inquiring.

2601. **Mr Campbell:** If there is consensus on it, that will move us on quickly.

2602. **Mr McFarland:** I was not trying to raise anything; I was simply inquiring about what stage it was at.

2603. **Mr P Robinson:** We would have preferred there to be power devolved to the Assembly or Executive collectively. If it was not to be so, and it was to remain with Ministers, we would need to have some mechanism in place to ensure that Ministers become accountable to their Executive colleagues and, ultimately, to the Assembly.

2604. **The Chairman (Mr Molloy):** That takes us back to the code of conduct. All of those issues come under that.

2605. **Mr McFarland:** That is fine.

2606. **The Chairman (Mr Molloy):** OK. We will move to the functions of OFMDFM, the number of Departments, the implications of the Review of Public Administration (RPA) and the devolution of policing and justice.

2607. **Mr Murphy:** The first matter is straightforward. There was a concern, although perhaps not among all of the parties, about the number of functions that had been absorbed into OFMDFM during the previous Assembly mandate and about the lack of functions in other Departments. Essentially, it is up to the First Minister and the Deputy First Minister — when they are elected — to agree those functions, as well as the number of Departments. If others wish to have a discussion aimed at reaching agreement among all the parties, we are happy to discuss functions. We shall not argue for a reduction in the number of Departments, but we are willing to look at the list of OFMDFM

functions to see whether some of them would be better transferred to other Departments.

2608. **Mr McFarland:** This is a complex issue, and we have had several discussions on it. The difficulty is the number of imponderables, such as the issue of policing and justice. The PFG Committee dealing with law and order, which meets on Wednesdays, has taken a general view that those functions should not be split into two Departments, which obviously makes matters easier in that we would have only one Department to find. We currently have 10 Departments, and if we are going to create a policing and justice Department, logically, something else has to give.

2609. Many of the parties went into the most recent election promising a re-examination of the number of Departments. There was a general view that there were too many, and that they were too costly. The RPA will have implications for areas that will leave Departments to become the responsibility of local councils. That also raises the question of OFMDFM.

2610. We shall probably not reach a complete resolution on this matter, not least because the policing issue is likely to be outstanding for a while before an election or before a Government is set up again. The question is whether this topic is best left to the far-famed efficiency system that we had decided would examine such issues after the Assembly was up and running.

2611. **Mr Ford:** We can at least agree that there are too many functions within OFMDFM, but I wonder whether a Committee is the right place to start going into detail. We remember some of the discussions in 1999 that led to the setting up of the Departments.

2612. We also all seem to agree in principle on the devolution of justice. As Alan said, it would be preferable to have only one Department. I am not sure, however, that we simply need to free up one of the current Departments. It certainly seems to my party that there are too many Departments, regardless of whether justice is to be devolved. We should be looking at a wholesale review of the number of

Departments at the same time as examining the functions of OFMDFM. In many senses, that would be better done before an Executive were composed.

2613. We may then need to take account of the issue of junior Ministers, which the agreement did not cover. If we found ourselves with only six or seven Departments, it might be that some would be bigger than others and would require a junior as well as a full Executive Minister. That has not been covered insofar as we had only two junior Ministers in OFMDFM. Ideally, that Department would not have hundreds of functions and would be the one least likely to need junior Ministers.

2614. **Mr P Robinson:** But most likely to get them.

2615. **Mr Ford:** I could not possibly comment.

2616. **Dr Farren:** I am sorry; I lost my train of thought for a second. There is consensus on the need to examine the range of functions within OFMDFM, with a view to reducing their number.

2617. Obviously, the devolution of policing and justice will necessitate a reconfiguration of departmental portfolios. I am never completely convinced by the argument that too many Departments — 10, in our case — make for inefficient Government. It is the range of functions and services that absorbs resources, not the top tier of ministerial offices. Having six or 10 Departments does not make a great difference in the amount of required ministerial resources. If we take on board David Ford's argument that we need junior Ministers to take charge of subsections of large Departments, we will end up in a similar situation as already exists with 10 Departments.

2618. One benefit of having 10 Departments was that the spotlight was turned on services that never received the same degree of attention when they were part of much larger Departments. Ministers would answer questions in the Assembly about services that, in the normal course of events, might have got very little attention during Question Time. Also, delegations came along to meet the Minister to

address particular issues. If a large range of functions and services were under the control of a Minister, he or she would not have time to meet all of the delegations that might wish to raise particular issues.

2619. There are benefits in having 10 Departments, as opposed to the six or seven that seem to be preferred by those who believe that there is merit in reducing that number. Obviously, the number of departmental portfolios must be put under the spotlight because of the arrival of policing and justice, the need to reconfigure, and the question of OFMDFM's functions. I am not sure that we will be able to do much of that specific work within the context of this Committee. However, that work must be done.

2620. **Mr P Robinson:** I will cover the two points with which we have been dealing. First, I do not feel that OFMDFM has too much work to do — I do not object to the Department having plenty to do. My problem is when it gets involved in areas that are better placed elsewhere, and that, in some cases, have already been placed with other Departments. I am more concerned about duplication than whether the Department has too much work. Frankly, there is not an awful lot of day-to-day executive decision-making in OFMDFM; it plays much more of a co-ordinating role. That is not to minimise its role, which is very significant. It is all the more significant when one is trying to co-ordinate the efforts of Ministers from a wide range of parties.

2621. Realistically, the number of Departments cannot be changed during the course of an Assembly term. After an election — of which nobody knows the outcome — everyone will start looking at the numbers based on what suits their party at that moment. That must be decided in advance. For example, we could say that, from the next election, there will be X number of Departments.

2622. I do not wish to make too many proposals today that would be consequent on the devolution of policing and justice. That may not be imminent, so I do not think that we should ditch

Departments simply to make way for that. We might be waiting a long time for that to happen.

3.00 pm

2623. **The Chairman (Mr Molloy):** Where do we go from here?

2624. **Mr P Robinson:** Section 17 of the Northern Ireland Act 1998 provides the First Minister and the Deputy First Minister with a legal responsibility to determine the number of Departments and their functions. I am unsure to what extent that power can be taken from the First Minister and the Deputy First Minister. Although that power will rest with those Ministers, any decision is subject to the will of the Assembly.

2625. We are simply highlighting that the obligation in section 17 will have to be addressed at a very early stage by the First Minister and the Deputy First Minister, to determine the number, and function, of Departments, and bring a report thereon to the Assembly. Furthermore, if the number of Departments is to be changed, we are emphasising that it would be better to do so in advance of an election for what should occur thereafter.

2626. **Mr McFarland:** That makes sense. In relation to the RPA, there are all manner of implications about what powers rest with what bodies, for what areas councils will assume responsibility and so on. Everything will presumably be clearer if Sinn Féin and the DUP reach the stage of forming an Executive, because several issues that are currently clouded will be clarified in the process of the two parties forming an Executive.

2627. If Departments are to be merged, it will obviously interfere in people's lives and jobs, with trades unions becoming involved. The Committee will not have that fairly substantial planning process completed by the autumn. However, it would be sensible to try to add some detail to that process between the formation of an Executive and the next election.

2628. **Mr Campbell:** The RPA will have immediate and obvious implications for two Departments that are already quite closely related. Some people would argue that the

functions of those Departments should have remained within a single Department, but I shall set that aside.

2629. There are several quite obvious and significant immediate consequences for a small number of Departments, aside from any political implications or any consideration of a reduction in the number of Departments.

2630. Until the implications of the RPA become absolutely clear, it is difficult, though not impossible, to envisage how many Departments there should be. However, the ramifications of the RPA, and what will inevitably follow from its implementation, should not be avoided, whether they are felt shortly, or some time, thereafter.

2631. **Mr P Robinson:** That depends, of course, whether an election will be held before or after the implementation of the RPA.

2632. Let us be very clear: significant savings are to be made with a reduced number of Departments. A Department is not simply the Minister — he or she is very small beer. Removing a junior ministerial post, for example, would save around £10,000 — I cannot remember the exact figure. However, removing an entire Department would involve getting rid of the ministerial private office, the senior staff that are involved in running that office and all the logistics that are required to run an office. The potential savings for a private office run into millions of pounds.

2633. **Dr Farren:** Not at all, Peter.

2634. **Mr P Robinson:** Of course they would.

2635. **Dr Farren:** The savings might be in the region of millions, but, in the context of the Budget, that is a very small figure. Savings depend on how the balance between political gain and operational efficiencies is struck. A Department that is headed by one Minister, for example, would have only one private office.

2636. The issue should be considered in the wider context. I hope that Michael McGimpsey will not mind me referring again to the Department of which he was Minister. A spotlight was put on the services for which

Michael's Department was responsible, which would not have existed had there not been a Minister with that particular portfolio. Indeed, the same could be said of a number of Ministers in the previous Executive.

2637. **Mr P Robinson:** It could be argued that some of the responsibilities of that Department would be ideal for transfer to the Office of the First Minister and the Deputy First Minister. It would allow a number of those issues to be highlighted, and would give the First Minister and the Deputy First Minister something to get out and about with, which is currently lacking in that office.

2638. **Dr Farren:** Let us put all that into the mix.

2639. **Mr Murphy:** I am content with the proposition for the First Minister and the Deputy First Minister to resolve this and proposals go to the Assembly for debate. My only concern is the reference to altering the number of Departments after an election. I know that Peter is pessimistic about the prospect of the devolution of policing and justice, but I would not want to postpone that until after an election. If the transfer of powers for policing and justice requires a shake-up, Sinn Féin would want that to happen as soon as possible rather than put it off until after an election.

2640. **The Chairman (Mr Molloy):** Are we agreed that the remit of OFMDFM should be reviewed?

Members indicated assent.

2641. **The Chairman (Mr Molloy):** By whom, asks the Committee Clerk.

2642. **Mr McFarland:** The proposal was that the First Minister and the Deputy First Minister review the functions between the setting up of an executive and the next election, so that it all goes live at the next election. Is that correct, Peter?

2643. **Mr P Robinson:** Yes.

2644. **Mr Murphy:** That is fine as long as we are quite clear that that does not interfere with the process of transfer of powers for policing and justice, and that it is not accepted that such a thing could not happen beyond another election.

2645. **Mr P Robinson:** I do not think that that issue will delay the devolution of police and justice.

2646. **The Committee Clerk:** Is the proposal that, at an early stage, the First Minister and the Deputy First Minister review the number of ministerial offices to be held by Northern Ireland Ministers and the functions to be exercised by the holder of each such office, and bring recommendations to the Assembly?

2647. **Some Members:** Including their own office.

2648. **The Committee Clerk:** Including their own office.

2649. **Dr Farren:** I have some reservations about that being left exclusively to the First Minister and the Deputy First Minister. I know that Peter has quoted the legislation —

2650. **Mr P Robinson:** Do you want to change the Belfast Agreement, Seán?

2651. **Dr Farren:** Consultation is required. Given that quite a wide-ranging consultation took place before the existing set of portfolios was established, it should be understood that there should be consultation on the issues that we are discussing. Also, we are not conceding anything on the number of Departments.

2652. **The Chairman (Mr Molloy):** We will add a line to reflect that.

2653. **Dr Farren:** The proposal should say “in consultation with the parties”.

2654. **Mr McFarland:** That is a safeguard, just in case.

2655. **The Chairman (Mr Molloy):** The last point was about stability. Does anyone have anything further to add to that?

2656. **Mr P Robinson:** On the previous proposal, it occurs to me that, if we had a Committee of the Centre with the same powers as any of the other departmental Committees, presumably it would have the ability to question the First Minister and the Deputy First Minister on those issues and be consulted about their functions. The First Minister and the Deputy First Minister would want to consult their Committee and

perhaps the Executive. That is somewhat different from consulting just the parties.

2657. **Dr Farren:** Perhaps the proposal should read “consult with all relevant interests in the Assembly”.

2658. **Mr P Robinson:** Or “after consultation”. *[Laughter.]*

2659. **The Chairman (Mr Molloy):** The final issue is the Civic Forum, which the Alliance Party has put on the agenda.

2660. **Mr P Robinson:** Abolish it.

2661. **Mr Kennedy:** Agreed. *[Laughter.]*

2662. **Mr Ford:** We mentioned it in our presentation. I do not remember making a great meal of it — says he, looking for his papers.

2663. **The Chairman (Mr Molloy):** It says here that it is a make-or-break issue. *[Laughter.]*

2664. **Mrs Long:** We should make clear at the outset that we are not making the Civic Forum a precondition to the restoration of devolution.

2665. **Mr Campbell:** We have consensus on that.

2666. **Mr Ford:** I thought that Gregory was about to add something.

2667. **Dr Farren:** Is the proposition that the Civic Forum cease to exist or is the absence of debate an assumption that it will continue?

2668. **The Chairman (Mr Molloy):** That is in your hands.

2669. **Mr McFarland:** From our point of view, the Civic Forum was an issue with which the Women’s Coalition was obsessed at the fifty-ninth minute of the very last hour of debate on the agreement. In order to finish, everyone said, “Oh, all right, then.”

2670. During the first four years of its existence, the Civic Forum proved beyond doubt that it was of no value. Even the forum’s members privately admit that they quickly understood that it was not going to do anything. Given the checks and balances in the Assembly, particularly with regard to Committees, and the fact that anyone could appear before a Committee, the views of civic society were well represented.

2671. We should encourage anyone from civic society who has any proposals for Government, amendments to legislation or anything else to offer to do so. The first approach should be through the relevant Assembly Committee. That is the route through which general society can make its voice heard.

2672. The Civic Forum was expensive, its attendance fairly sporadic, and its members got fed up and did not bother much with it. It did not do anything that could not have been achieved through Assembly Committees.

2673. **Dr Farren:** Earlier, I defended the concept of the Civic Forum. The fact that the Civic Forum is provided for in the Good Friday Agreement does not mean that it was agreed at the fifty-ninth minute. I remember discussing such a forum with the Women's Coalition and others much earlier than that. There is a value in having some form of continuous engagement with what we understand to be civic society, and we feel wedded to the particular forum that emerged from OFMDFM.

2674. Notwithstanding Alan's suggestions about how to tap into the opinions of civic society in general, there is value in maintaining a forum of some description. Positive consideration should be given to maintaining the forum and how it can most effectively be shaped.

2675. I envisage the future contribution of the Civic Forum as considering medium- to longer-term policy issues, rather than addressing the business of Assembly Committees, which deal with ongoing business. A medium- to longer-term perspective on key issues would be helpful. Although the Executive or Assembly would not be bound to adopt any recommendations, the forum could provide different areas of civic society with an avenue to inform the Assembly in a concerted way that would not otherwise be available.

2676. The forum is valuable, and we should seek to sustain it. However, consideration could be given to its operation, structure and future remit.

3.15 pm

2677. **Mr Murphy:** As I agree with much of what Seán said, I will be brief. The purpose of

this Committee, besides discussing the operation of the institutions, is to build a way out of conflict. The responsibility for that extends beyond the people who are elected to the Assembly. Others in society have a role to play in commenting more widely than would be possible through the method that Alan McFarland advocates, which is through giving evidence to Committees. Such people can make a broader contribution than by simply giving their views on whichever narrow issues a Committee may want to hear evidence.

2678. There is a role for ongoing engagement with representatives of civic society, as we try to chart our way from conflict to a better future for all. We should encourage a broader ownership than that that simply rests with the political parties. Whether that comes through the Civic Forum or a similar body, the rationale remains sound, and perhaps only the operation and make-up of the body require further consideration.

2679. **Mr Ford:** There were difficulties with the composition of the Civic Forum. I am not sure that having six nominees from the First Minister and the Deputy First Minister was the best way to represent civic society outside party politics. Undoubtedly, there were problems with the internal workings of the Civic Forum, partly because of the unclear and limited remit that it was given in its first mandate.

2680. Without wishing to repeat much of what Seán and Conor have said, the Alliance Party feels that the Civic Forum has its virtues. Undoubtedly, Alan's point about civic society being able to engage with Committees when they were conducting detailed inquiries or doing detailed work on legislation is correct. However, that did not mean that people got the macro-picture; they got only a series of micropictures. Perhaps if the Civic Forum had had a formal right to comment on the Programme for Government and proposals for legislation, rather than getting sucked into the minutiae of a few small details, it could have taken a wider look at the overall direction of this society as it seeks to move out of conflict. Such a remit should expressly be given to the

Civic Forum to enable it to continue. Perhaps the Civic Forum requires more resources to fulfil that remit, but at least it would then be doing something worthwhile with them. It was given neither the resources nor the remit in its first instance.

2681. **Mr P Robinson:** There seems to be some perverse view, certainly unproven, that civic society has one view. Civic society does not have one view; it has dozens, if not hundreds, of views on various issues. The way to ensure that having or expressing a view becomes useless is to have members of the Civic Forum appointed in the way that they were previously. Effectively, those appointed had gone through the sieves of two of the political leaders. That resulted in the two sets of views from civic society that were the least offensive to the First Minister and the Deputy First Minister being heard, rather than a broad range of opinions.

2682. I am generally in agreement with Seán. Civic society has a contribution to make, but why must it be formalised in the way that has been suggested? Under the Civic Forum proposal, its duty was to bring views to the First Minister and the Deputy First Minister. Why can we not simply place a responsibility on the First Minister and Deputy First Minister to arrange to communicate regularly with civic society and to facilitate it expressing its view on various issues to the First Minister and the Deputy First Minister? We can do that without going through the expensive charade of having a Civic Forum that is made up of those who are acceptable to two people.

2683. **The Chairman (Mr Molloy):** Is there a proposal?

2684. Have we consensus on that? I suspect not.

2685. **Mr Murphy:** I know that Alan has fixed views on the uselessness of the Civic Forum, but perhaps we should look at ways of engaging civic society. That leaves open the possibility of retaining the Civic Forum or finding a better way for civic society to interact, formally or informally, with this institution. There may be consensus that it would be a good idea to broaden the interaction between politicians and civic society beyond bringing in people to give

evidence to Committees. However, further discussion and agreement are required on how that should operate.

2686. **Ms Lewsley:** I attended at least three Civic Forum meetings at which the public was permitted to contribute. Regardless of the work carried out by the Civic Forum or the documents worked on, those meetings were well attended, and the public showed a lot of interest in what was going on. They felt that the Civic Forum was somewhere where they had ownership of the process and where their voices could, hopefully, be heard. I accept what people say; the make-up of the Civic Forum and some of its actions may not have been ideal, and it should be reviewed. However, it offers civil society a voice and gives it a sense of ownership of the process.

2687. Alan McFarland said that people had the opportunity to come before Committees, but when I was on Committees, I noticed that the same faces always came forward with evidence. Therefore the ordinary person on the street was not taking that opportunity, except when they got the chance to meet the Ministers through us.

2688. **Mr P Robinson:** The Civic Forum was not made up of the ordinary people on the street; it was the chosen ones.

2689. **Ms Lewsley:** The membership was representative, and they cascaded the information to those they represented.

2690. **Mr P Robinson:** They were representative of the First and the Deputy First Minister's choices.

2691. **Mr McFarland:** A small section of the Civic Forum's membership was appointed by the OFMDFM, and the remainder was selected by the churches and unions. Therefore the entire membership was not chosen by the First and the Deputy First Minister, although it was appointed eventually by their Department. The membership of the forum came from various areas of society that were specified by the Office of the First Minister and the Deputy First Minister.

2692. It is healthy to have a link with civic society and for civic society to be able to make its views known, but that was not implemented

properly through the Civic Forum. If one wants to find the views of the churches or the medical profession, there should be a way for that to happen. The Health Committee was never stuck for views from the unions, specialists, psychiatrists or paediatricians. There may have been others who were not able to access those Committees or Ministers, and we have to find a way to correct that. It is healthy to be able to give views to those who make laws.

2693. People were not encouraged by the Civic Forum. It was not effective in making its views known, and its members will say openly that they got fed up because it did not do anything constructive. In the end, many of them voted with their feet and did not attend the meetings.

2694. **Mr Campbell:** I venture to propose that the DUP supports further consideration of discussion on a Civic Forum-type body and any usefulness that it may serve. However, I suggest that its implementation and establishment is not a barrier to the further establishment of an Executive.

2695. **Mr P Robinson:** Or perhaps at a lower level, are we agreed that we should review the mechanisms for civic society to promote its views?

2696. **Mr Murphy:** That is similar to my proposal, and I am happy to be subsumed into that. There is a broad acceptance that there is a need for engagement with civic society. In agreeing that, it does not preclude people arguing for the reinstatement of the Civic Forum, but it allows us to examine it and other options that others feel might improve the interaction between this institution and civic society.

2697. **The Chairman (Mr Molloy):** Shall I ask the Committee Clerk to read the proposal again?

2698. **The Committee Clerk:** Mr Campbell, do you want me to repeat your proposal, which is to review the ways in which civic society may engage with this institution?

2699. **The Chairman (Mr Molloy):** Do we have consensus on that matter?

Members indicated assent.

2700. **Dr Farren:** That is fine, as long as it does not assume that we are consenting to abolish the civic forum.

2701. **Mr Murphy:** I made that clear.

2702. **Mr Campbell:** Equally, we are not agreeing to its continuation. *[Laughter.]*

2703. **The Chairman (Mr Molloy):** OK. We have reached agreement on that matter.

2704. That brings us to the end of the strand one issues that we wished to deal with. Next week, we will deal with strand two.

2705. Members have received a letter from the Northern Ireland Youth Forum about the work of the Subgroup on the Economic Challenges facing Northern Ireland. The forum will not be available to provide evidence to the subgroup until after the 25 August deadline. The letter requests permission to provide evidence later, without holding up the report. Are members content with that?

Members indicated assent.

2706. **The Chairman (Mr Molloy):** Is there any other business?

Members indicated dissent.

Adjourned at 3.26 pm.

Monday 21 August 2006

Members:

The Chairmen, Mr Francie Molloy
and Mr Jim Wells
Mr P J Bradley
Mr Gregory Campbell
Dr Seán Farren
Mr David Ford
Mrs Naomi Long
Mr Michael McGimpsey
Mr David McNarry
Mr John O'Dowd
Mrs Patrica O'Rawe
Mr Ian Paisley Jnr
Mr Peter Robinson

The Committee met at 10.03 am.

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

2707. **The Chairman (Mr Wells):** The meeting is scheduled to last until 4.00 pm, and lunch will be provided at 12.20 pm, when we will have a short break. I have read the Hansard reports of the last few meetings, and I was quite disturbed to note that Hansard had had to include the line “Inaudible due to mobile phone interference” on several occasions. There were at least three interruptions in the last report. Clearly the message has not got through to everyone that such interference will result in some of what you say simply being obliterated from the record. It is important that we do not allow that to happen. I ask everyone in the room, including research staff, to please try to make Mr Burrowes's life as easy as possible.

2708. Have we any apologies and deputies?

2709. **Mr O'Dowd:** Mrs O'Rawe and I are deputising for Mr Murphy and Ms Gildernew.

2710. **The Chairman (Mr Wells):** Will there be a third member?

2711. **Mr O'Dowd:** No, it will be just the two of us today.

2712. **Dr Farren:** Mr Bradley is here for Dr McDonnell or Mr Durkan.

2713. **The Chairman (Mr Wells):** Will you have a third member?

2714. **Dr Farren:** No, I do not anticipate that there will be.

2715. **Mr Ford:** I am here, and Mrs Long will be here shortly.

2716. **Mr McGimpsey:** I am substituting for Mr McFarland, who is unavailable. Mr McNarry will be here shortly.

2717. **Mr P Robinson:** Mr Campbell and I are substituting for anybody but Mr Paisley Jnr, who is expected to arrive later.

2718. **The Chairman (Mr Wells):** I remind members that the quorum is seven. We need to watch that carefully, as we do not have much leeway today. Members should do a head count before leaving the room. I think that you all have been here before. Mr Bradley, have you sat on this Committee before?

2719. **Mr P J Bradley:** Yes.

2720. **The Chairman (Mr Wells):** There are no further declarations of interest, so we can pass over that.

2721. Members should have received the minutes from the meeting of 14 August. Does anyone have any additions or corrections? Do members agree that they are a true and accurate record?

Members indicated assent.

2722. **The Chairman (Mr Wells):** The next item on the agenda is the draft ministerial code. It sets out in detail the ground rules and procedures for the exercise of the duties and responsibilities of Ministers of the Assembly as set out in the Belfast Agreement and the Northern Ireland Act 1998. It applies to Ministers of the Executive Committee and junior Ministers.

2723. At the last meeting, Mr Peter Robinson asked two important questions: first, whether any legislation applies to decision-making by the Executive; and secondly, to what extent Executive decision-making is governed by custom and practice. It is a complex matter, and the Committee staff have investigated it. I will read their advice for the record:

“The code makes reference to parts of the 1998 Act but it appears that there is no other relevant legislative provision in this respect.”

2724. That relates to Mr Robinson’s first question about legislation. I will read the rest, as it is quite complicated:

“Section 3.19 of the draft code covers decision-making by the Executive Committee. The Code was drafted prior to the first meeting of the Executive in 1999 and was adopted by the Executive Committee in February 2000 (specifically the Executive “adopted” Para 4.4 (notifications to the Assembly) of the draft Code at its meeting on 14 December 1999; “agreed” at the meeting on 18 January 2000 that Section 3 (Executive Committee) should come into immediate effect; and “endorsed” the remainder of the draft Ministerial Code, subject to review within 6 months ... The review never happened. I am advised by officials that custom and practice did not apply because the Ministerial Code was used and that it was treated as binding by participants.

The Ministerial Code’s requirements are not set down in legislation. While Ministers are expected to observe its provisions, they have no statutory backing.

At last week’s meeting the Committee agreed to request a copy of the draft Ministerial Code with a view to reaching an agreed position that can be put in legislation.”

2725. That is the situation so far regarding the draft ministerial code and its present status. We will return to this issue, though members may wish to comment now on that specific information. We do not know why the review did not occur, unless Mr McGimpsey or Dr Farren can remember something from February 2000.

2726. **Mr McGimpsey:** In relation to this? It was to be reviewed in six months; then, obviously, the Executive fell.

2727. **The Chairman (Mr Wells):** This was not carried forward, then?

2728. **Mr McGimpsey:** We had several discussions about the ministerial code. I assume that what we are looking at now is the ministerial code that we drew up at that stage, but we never got as far as adopting it.

2729. **The Chairman (Mr Wells):** And when the Executive was re-formed in — was it February 2000?

2730. **Mr McGimpsey:** The Executive was re-formed in June 2000.

2731. **The Chairman (Mr Wells):** This was not brought forward as an issue for review?

2732. **Mr McGimpsey:** My memory is that by and large we followed the provisions of this ministerial code. I have had a quick run through it and it is all familiar. That is what we followed and it is what we built up into the ministerial code. I could be wrong; I have not read this page by page, but it looks very familiar.

2733. **Mr P Robinson:** At the previous meeting of the Committee we discussed whether the ministerial code had any statutory effect. It does not; there was a general view in the Committee that it should. However, on looking at the weight of the document, it is probably unreasonable to expect the whole of that ministerial code to become a schedule to legislation. Important elements of it — a core code, if you like — could become part of a legislative statutory code.

2734. **The Chairman (Mr Wells):** I detect from the minutes of the previous meeting that there seemed to be agreement on that. The question is, do we want to get into that issue now or do we want to come back to it?

2735. **Mr P Robinson:** Please not.

2736. **Dr Farren:** No, no.

2737. **Mr McGimpsey:** As you are aware, part of the Pledge of Office is to comply with the ministerial code. Once the ministerial code is

adopted, the Pledge of Office requires you to comply with it. The question of whether legislation is drafted around that, and what the consequences of breaking the Pledge of Office might be, takes us back to discussions we had at previous meetings about other issues.

2738. **Dr Farren:** While there is probably a great deal in it that remains uncontroversial, it needs a more considered examination than we are able to give it at this time. Parties may want to submit more considered views on those aspects that definitely have to go into legislation and be underwritten in some kind of statutory way, and also whether, in the light of our discussions, any changes and additions need to be made. There is a responsibility on the parties to make their submissions on matters that they consider important over the next few weeks.

2739. **Mr O'Dowd:** Without wishing to annoy Mr Ford first thing on a Monday morning, I think that we agreed during the earlier discussions of this Committee that the ministerial code would be a matter for discussion for the parties in the Executive. It should be one of the first tasks of any new Executive to discuss the ministerial code and put it onto a statutory footing.

2740. **The Chairman (Mr Wells):** Members will remember the letter we got from the Secretary of State outlining the work programme from now to 24 November. We have to deal with this in October, because it is in that schedule.

2741. **Mr Ford:** I want to briefly respond to Mr O'Dowd, who I am sure was not trying to be disagreeable quite so early on a Monday morning. It may well be that it should be Ministers who address the ministerial code in the first instance, but it is surely something that would require the approval of the full Assembly if it were to be adopted into legislation. So, all Members of the Assembly, including those who might or might not be in an Executive formed on whatever basis an Executive might be formed on, would have a say at that point.

2742. **Mr O'Dowd:** Most certainly.

2743. **Mr P Robinson:** We may be getting slightly confused about the ministerial code and

its statutory effect. There is a code of conduct provision in schedule 4 of the Northern Ireland Act 1998; it has the core principles of a ministerial code in it. I would take it that insofar as the Pledge of Office requires Ministers to comply with the ministerial code of conduct, it is referring to the statutory code of conduct in schedule 4, which is framed in very broad, general terms. I assume that the issue then is whether the code of conduct is what we are describing as a ministerial code, or whether it is this code of conduct that we want to either elaborate on or add to.

2744. **The Chairman (Mr Wells):** There are other issues. The Freedom of Information Act 2000 was unheard of at that stage, and it might now have to be included in the code of conduct. No matter what happens, some updating will be necessary.

10.15 am

2745. **Mr P Robinson:** I am not sure about that. Compliance with the 2000 Act is a legislative requirement. It is not up to Ministers to choose whether to obey it or not; they are legally required to do so — although there is probably wriggle room.

2746. **The Chairman (Mr Wells):** There are 23 exemptions in the 2000 Act.

2747. **Mr P Robinson:** Yes, but they are statutory exemptions. By law, Ministers do not have a choice; they must operate in accordance with the 2000 Act.

2748. The purpose of the ministerial code is not to duplicate what exists in law, but to set standards for ministerial behaviour. The code of conduct has some very broad-brush requirements. Having looked at the detailed ministerial code, I assume that it is simply a more precise version of that general code of conduct. The bulk of the ministerial code is common sense.

2749. **The Chairman (Mr Wells):** It was unanimously agreed at the last meeting that the ministerial code should be put on a statutory footing. Perhaps we can leave that issue at this stage and move on to strand two of the agreement. Parties can discuss their positions at a

later stage, although the content of the code does not seem to have generated much controversy. Are members happy enough to do that?

Members indicated assent.

2750. **The Chairman (Mr Wells):** That being the case, I will adopt our usual policy of asking each party to give a short presentation on strand two and the North/South implementation bodies. There was a wee bit of debate on Friday because Mr Nesbitt objected to the DUP being asked to speak first. To avoid any further complaints, I will go back to calling each party in alphabetical order. I will stick religiously to that format from now until the end of the hearings. Unfortunately, that means that the Alliance Party will always be called first.

2751. **Mr Ford:** The party could always use its formal name, “The Alliance Party of Northern Ireland”, if that would be of any help.

2752. **Mr P Robinson:** The DUP could be the Ulster Democratic Party. *[Laughter.]*

2753. **Mr McGimpsey:** I could agree not to object.

2754. **Mr Ford:** My contribution on strand two will be fairly brief. The practical outworking of many of the North/South issues has been much less controversial than it was expected to be in the early days. Therefore, we have relatively few suggestions about the structures.

2755. I will not go through everything in detail. We highlighted the issue of the accountability of the North/South Ministerial Council (NSMC). We saw virtue not only in individual Ministers reporting on individual meetings, but in an annual report, perhaps prepared by the First Minister and the Deputy First Minister jointly with the Taoiseach and Tánaiste. Some questioning in the Assembly and the Oireachtas might also be involved, to enable everyone to get an overview of the NSMC’s work. In the past, individual meetings of individual strands have been examined in great detail, but little has been reported back on the overall structures.

2756. The Alliance Party tabled a motion in the Assembly proposing the establishment of a North/South parliamentary tier, which would

bring together members of the Assembly and the Oireachtas. Provision for such a parliamentary forum is mentioned in paragraph 18 of strand two of the agreement. Mr Chairman, you will recall that motion because you were one of the members who voted against it. Creating an opportunity for Back-Bench members of the two Parliaments to meet regularly to exchange information would undoubtedly bring benefits. It would allow us to move forward, and it would be of benefit to the many MLAs and TDs to encounter each other at that level.

2757. The number of implementation bodies is fairly arbitrary. The agreement refers to 12 areas of co-operation and six implementation bodies. We are not fans of creating bodies for the sake of it. The task should be to identify areas where practical North/South co-operation would be of mutual benefit and to assess the best way of achieving that, which might or might not be through a further implementation body.

2758. I am reminded of my experience as a member of the Agriculture and Rural Development Committee, when I kept a close eye on the operations of Ms Rodgers as Minister of Agriculture during the foot-and-mouth outbreak. I have no doubt that the greatest degree of North/South co-operation was shown at that time, when there were no institutional linkages at all, merely a telephone line between Bríd Rodgers and Joe Walsh. The Alliance Party seeks to encourage that spirit of co-operation, rather than creating structures purely for the sake of it.

2759. That is all I wish to say at this point, although I may respond to members’ detailed comments.

2760. **Mr P Robinson:** I will not immediately engage in considering the headings and the order in which they appear as a backcloth to our discussions.

2761. The DUP’s view is that the two sections of this community look in different directions. The nationalist community clearly has a common culture — one might even say identity — with the Irish Republic. The unionist community has shared issues with the rest of the United Kingdom.

2762. There is a clear advantage in recognising the value to Northern Ireland society of people's ability to feel at ease within Northern Ireland and to feel that they have some relationship with the larger allegiances that they hold. In that context, a British Isles template that embraces both cultures and identities should be used. Within that, there can be compartments, whether east-west or North/South, but the overarching body should be a British Isles body within which both our traditions are fully embraced. That is how we can reach out beyond the boundaries of Northern Ireland. The DUP, therefore, argues for a central structure — a British Isles council with east-west and North/South compartments — rather than for separate corridors.

2763. Several issues immediately come to mind concerning the North/South relationship. They are similar to those that we have already dealt with concerning the accountability of the decision-making process within that relationship. The existing arrangements leave much to be desired. There may have been a satisfactory working operation in practice, but the DUP requires more than custom and practice: we need a legal requirement for people to act in a certain way in relation to the decisions. Preferably — almost essentially — there must be a requirement for decisions to be agreed before Ministers take part in North/South structures.

2764. Mr Ford's first point was on the implementation bodies. The DUP strongly believes that many were set up solely for a political purpose as part of a process towards a united Ireland. The DUP does not share that goal. Pragmatism should be the governing feature of the North/South relationship. Quite frankly, some of those implementation bodies are not doing a full day's work. They are very much for dress and show. Some of the personnel of those implementation bodies have approached the DUP and indicated how hard it is for them to find sufficient work to do.

2765. There is a drive to increase the number of North/South bodies. The burden of our argument is that the number should be reduced, and that they should exist for real and practical

purposes rather than to bolster the political ideology of one section of the community.

2766. However, the DUP wants to have the kind of working relationships that ensure that common interests are pursued through co-operation and on a mutually satisfactory basis, so that people can feel comfortable that they are not being sucked towards a political end and that there are benefits for the community of which they are a part.

2767. **Mr O'Dowd:** Clearly, the North/South bodies are an important facet of the agreement for the nationalist and republican community; they acknowledge, as Mr Robinson says, the Irish identity of a large section of our society and its wish to work on an all-Ireland basis with its neighbours.

2768. Unionists have often said that they are comfortable with North/South bodies so long as they are practical. We have yet to find any facet of life on this island on which it is not practical to co-operate on an all-Ireland basis. All aspects of life can be covered within the remit of "North/Southism" or "all-Irelandism" — whatever you want to call it.

2769. Clearly, Sinn Féin wants to increase, rather than restrict, the role of the bodies. If people within any of the implementation bodies find their role difficult, or do not have work to do, they are clearly not being motivated properly. They are not being given direction. That is partly due to this establishment being closed; there is no ministerial governance of the process. We must ensure that when the Executive is up and running, all facets of life are governed as efficiently as possible.

2770. Sinn Féin calls for greater co-operation in areas such as community development, arts and heritage, economic co-operation and public investment, for example. With regard to the Review of Public Administration, council structures and community development are clearly areas that could be covered by North/South bodies.

2771. Sinn Féin also wants expansion of the implementation bodies to cover issues such as justice, policing, social economy and energy, to

name but a few. The ruling factor for Sinn Féin is practicality. No one has yet identified an area in which it is not practical for the people of the island to work in co-operation with each other.

2772. **Dr Farren:** I listen with a degree of scepticism to assertions that we should address the whole North/South issue purely on the basis of pragmatism. We are in the business of politics. Whether we like it or not, there will be an ideological underpinning to our actions, attitudes and proposals on all issues. That is our approach, whether we admit it or not.

2773. Therefore, while some people may say that they will only address certain issues because of their pragmatic value, for others the same issues will have much stronger ideological values associated with them. Indeed, a particular ideological outlook motivates those who claim that pragmatism should govern.

10.30 am

2774. I have no trouble acknowledging that the SDLP's views on North/South bodies have always had a particular ideological underpinning, but not in a narrow sense. We want to strengthen relationships on the island because we believe that that will begin to create conditions in which people can be brought ever closer together and, ultimately, will lead to unification. I make no bones about that; I do not believe that I have to apologise for it in any way.

2775. I know that others will be wary that the SDLP has proposed strengthening North/South relations, perhaps because they want things to go in a different direction. Notwithstanding those two opposing, almost exclusive views — though today we cannot see these things in quite the same exclusive way that people several generations ago might have seen them — there is plenty of scope for co-operation and improvement of relations; all of which will contribute to the political stability that we need.

2776. I want to examine a more precise issue: our experience — short though it was — of the North/South aspects of the Good Friday Agreement. There are matters that are worth highlighting as a result of that experience, under several headings. One of the headings I would

choose would be “Operational Matters”, and that would comprise the process of nominating Ministers to attend; the responsibilities on Ministers for attendance; the consequences of refusal to attend; and accountability issues, such as accountability before and after meetings.

2777. The claim was often made that there was not enough accountability. I feel that there was quite an amount of accountability. The extent to which matters were dealt with might not always have been to everyone's satisfaction, but nonetheless every meeting was reported upon to the Assembly, and the Ministers who attended were there to be questioned on what they reported to the Assembly. The Assembly had plenty of scope to discuss North/South matters, and to make its views known on particular issues.

2778. The manner in which the North/South Ministerial Council meetings were conducted would also come under the heading of “Operational Matters”. Having been involved in quite a number of the meetings, I can say that there was an element of pre-cooking of agendas to the point where free-flowing discussion that might have benefited the development of the subject being discussed was absent. Perhaps that was the inevitable consequence of trying to make sure that things moved ahead and that something concrete came out of the meetings, and I certainly endorse that.

2779. Then there are the “Structural Matters” themselves, particularly the provision in the agreement for the establishment of a parliamentary forum — that has already been referred to — and a consultative forum. We need to look at how we could move ahead with the structures of both of those institutions, if I can call them that, so that they enhance the whole set of relationships and help to achieve the objectives set for the North/South dimension of the agreement.

2780. The third heading would be “Areas for Co-operation”, and there are 12 of those. In all agreements similar to the Good Friday Agreement, there is an element of compromise, which is a product of the political discussions that take place. We all recognise that we cannot always get all that we would want. There are

areas that the SDLP would have liked to have had included that are not there. We would like to be able to review the list and make sure that it is as comprehensive as possible.

2781. I frequently hear the claim — and I think we discussed it in earlier sessions of the PFG Committee — that the structural bodies are a product of political requirements. That may be true in one sense, but if the test of a body's usefulness is not always met, practical measures should be applied. If some bodies have shortcomings or have outlived their purpose — and we can convince each other that that is the case — then they should be replaced. If other bodies are required to meet other purposes, then create them. I am prepared to examine the existing bodies using that criterion. However, most of the bodies have been doing a worthwhile job.

2782. There is, of course, the question of the Foyle, Carlingford and Irish Lights Commission. Because of the legislative basis upon which Irish Lights are established, that was not the most appropriate set of functions to have been included among the North/South implementation bodies. Certainly, that gap needs to be filled. There are other areas for which we might well consider the creation of additional bodies.

2783. I caution against Mr Ford's view that phone calls are enough: they may well be enough to get some things moving, but the benefit of creating formal structures in some areas is that Ministers become more accountable. For instance, Ministers must have clear agendas when they go to the meetings of the North/South Ministerial Council, and they have to account for how they have conducted themselves with respect to those agendas. Suggesting that we promote North/South relations based on the informality of phone calls or other types of contacts does not meet the criteria that I often hear described as being necessary — sometimes from the same people.

2784. The SDLP does not promote North/South co-operation from an exclusive, inward-looking, Irish-only perspective. We have always been foremost in promoting a much wider perspective on relationships within these

islands, Europe, in particular, and elsewhere. Therefore, I reject the claim that “North/Southerly” is a product of an inward-looking perspective, and I welcome the discussions that will take place later on how we might develop the British-Irish Council, because I recognise from experience that it has had a weaker and, probably, less effective structure.

2785. In examining those areas, we should ensure that we are aware of what has happened and what is happening. We should get copies of North/South Ministerial Council and British-Irish Council reports to find out what has been happening. In that way, any claims that we make regarding the effectiveness of such bodies will be based on evidence.

2786. **Mr McGimpsey:** This is an area of ideological division. It is a particularly sensitive issue for unionism because of the 1937 Irish Constitution that contained de Valera's articles 2 and 3 and their legal claim and constitutional imperative in relation to Northern Ireland. Many unionists viewed the IRA as fulfilling the drive of that constitution to bring about a united Ireland. The IRA sought to do that through violent means because it could not persuade a majority of people in Northern Ireland to support its political objective.

2787. For decades, articles 2 and 3 dogged discussions with the Irish Government. At one stage, the Irish Government claimed that articles 2 and 3 did not constitute a legal claim or a constitutional imperative, and were merely aspirational. During the Brooke/Mayhew talks in the early 1990s, unionists brought this important issue to the table, but at that time it was left unresolved.

2788. That issue has now been resolved, in so far as articles 2 and 3 have been converted from a legal claim to an aspiration. The Irish Republic is entitled to that aspiration, whereby it wants a united Ireland by consent, and so forth. By definition, Northern Ireland is no longer part of the Irish Republic. The inhabitants of the island of Ireland are no longer a nation, in the political sense. Dublin and the SDLP have accepted that position, and, most pointedly of all, Sinn Féin has accepted that position. The

only way to achieve a united Ireland is for the people of Northern Ireland to vote for it in a referendum.

2789. Once changes had been made to articles 2 and 3, unionists felt that they could proceed with a North/South agenda. Dr Farren and Mr O'Dowd would probably argue that that was a modest step, but it was a major step for unionism. Unionists regarded certain principles and safeguards as being crucial, based on the Belfast Agreement. In strand one, it is stated that:

"The Assembly will exercise full legislative and executive authority ... [it] will be the prime source of authority in respect of all devolved responsibilities ... Executive authority to be discharged on behalf of the Assembly."

2790. There were several checks and balances. Dr Farren has already referred to some of them. For example, a Minister could not attend a North/South Ministerial Council meeting without prior approval from the First Minister, the Deputy First Minister and the Executive Committee. At least one unionist had to be present at all meetings, and he or she could veto any decision. Those were essential checks and balances. Attendees at those meetings had to report back to the Executive Committee.

2791. My party is more than happy to examine ways in which to make the implementation bodies more accountable. That could be done through the Northern Ireland Audit Office, and the UUP has proposed that the financial constraints and safeguards of those bodies should be examined. The chairmen and chief executives of the implementation bodies could also report to the relevant Assembly Committees.

2792. Mr O'Dowd's agenda concerns a greater level of North/South co-operation and an increase in the number of implementation bodies. There is a whole raft of stuff in the comprehensive agreement about efficiency and value for money. At present, my party does not agree with the case for the creation of additional bodies. In addition, my party would have some difficulty with the idea of a North/South parliamentary forum or a North/South consultative forum. However, we worked in the existing North/South bodies as best we could,

and we worked as equals. They were there for our mutual benefit.

2793. Mr Robinson said that some of those bodies were not doing a full day's work.

10.45 am

2794. **Mr P Robinson:** Neither are we at the moment.

2795. **Mr McGimpsey:** Indeed.

2796. We can certainly consider how to make those bodies more robust. That was our approach then, and it remains our approach now. We have no problem with Assembly scrutiny.

2797. Dr Farren mentioned the Foyle, Carlingford and Irish Lights Commission and operational efficiency. Six implementation bodies were set up and six areas of co-operation were identified; we should first try to get those right before discussing the establishment of additional bodies and the practicalities of identifying further areas of co-operation.

2798. The key, of course, is the interdependency of the institutions. It is also essential that the British-Irish Council operate as energetically as did the North/South Ministerial Council. The big problem with the British-Irish Council was primarily inefficiency in London, not in any of the regional Assemblies or in Belfast. That needs to be examined.

2799. **Mr Campbell:** Mr McGimpsey has mentioned the problems with the strand two issues. How they manifest themselves — and how the outworking of any proposals are viewed by the various communities — are central and acute concerns. The demographics of the past 30 years show that the terror campaign has been the principal — though not exclusive — reason for unionists drifting away from the border areas.

2800. That is not to say that unionists who live in border areas are any better disposed towards "North/Southerly" than those who live far from the border. As the unionist MP who lives closest to the border, I am not exactly in favour of creating North/South links just for the sake of it.

2801. As unionist communities have moved further away from the border in the past 35

years, in many respects they do not consider that North/South issues will directly affect or benefit them. That is an unfortunate reality, but a reality nonetheless, which has been brought about principally because of the IRA terror campaign. I have not heard anyone say that that is likely to be reversed in the next decade or so, so we must deal with the issue.

2802. Some four years ago in my neck of the woods, a tourist campaign was launched to promote the new ferry crossing between Magilligan in County Londonderry, which is in my constituency, and Greencastle in County Donegal. It has been a fantastic success, with four or five times the number of vehicles using the service than was originally envisaged. However, the irony is that the reason for its popularity is the change in fuel duties — people are using it mainly because of the cheaper fuel available in the Republic.

2803. That is the irony. There is greater North/South co-operation precisely because there are two countries on this island. If there were not, there would be nothing like that degree of support for a ferry service. I just picked that one out, and I am sure that there are other examples.

2804. Dr Farren said that he looks forward to moving on to strand three — we do too. On almost every occasion there will be, unfortunately, an issue about “North/Southery”, which unionist eyes will view as having a political slant. It was a fault in the previous system. With Northern Ireland’s de facto position in the UK and its relationships with the Republic and with the rest of the UK, unionism will be looking for a similar degree of co-operation, business links, intensity and practicality of co-operation in all areas, whether it be transport, tourism, marine, heritage, or sporting issues.

2805. Part of the problem was that, even though neither Mr Robinson nor I, nor any of our Ministers, was involved in North/South meetings, we were able to put down questions shortly afterwards to discover the degree of imbalance that existed — the weight of business on North/South issues was many times more than in relation to east-west issues. That clearly is

untenable. It is not the case that for every North/South meeting there must be an east-west meeting, but there has to be a balance with regard to the intensity of interest and the degree of business that is undertaken in strands two and three.

2806. That is our approach. I think Mr Robinson mentioned efficiency. We will not put forward areas of efficiency in relation to strand one without applying the same criteria, principles, logic, and reasoning to strand two. If bureaucracy can be cut back in relation to the internal workings of Northern Ireland, it can certainly be cut back in relation to the workings between Northern Ireland and the Republic, and between Northern Ireland and the rest of the UK. It cuts every way. If we are going to try to curtail Government, we will not do it only in the Assembly or through the Review of Public Administration. It has to be much more widespread than that.

2807. **Mr O’Dowd:** First, I want to refer to Mr McGimpsey’s comment — and I think I am quoting him directly — that Sinn Féin has accepted that the Irish nation, in a political sense, no longer exists. Apart from the obvious difficulty of partition, I do not agree with that statement, and I am surprised that Mr McGimpsey thinks that that would be a Sinn Féin belief. Sinn Féin campaigned vigorously against the removal of articles 2 and 3. We saw those as important, even though no Irish Government had ever implemented them to protect the rights of an individual nationalist or the nationalist community in the North. However, their removal was voted on, and they are no longer part of the Irish Constitution.

2808. Secondly, in relation to unionist misgivings around North/South co-operation or “all-Irelandism”, reading the Hansard report of the economic subgroup, which meets on Tuesdays and Thursdays, shows that the unionist business community, for instance, has embraced cross-border activity and has moved it forward. Indeed, its members are leading lights in it, have seen the opportunities for increasing business on an all-Ireland basis, and have used those opportunities very well. The unionist business community has not seen it as

a problem. I accept, however, that it is a difficult matter for political unionism.

2809. I return to the issue of practicality. No one has yet identified an area of existing, or future, co-operation that would be impractical on a cross-border basis. As Mr Campbell said, if we ask for one thing, then inevitably unionism will ask for something in terms of east-west co-operation with Britain. If it is of a practical nature, Sinn Féin will not stand in the way. We will examine its practical value and say: “Yes, if that makes sense then let us do that.”

2810. Clearly, political ideology is a factor for republicans, as it is for unionists. We see North/South co-operation as one part of going down the road to a reunified state, but again, as Dr Farren said, there is no need to apologise for that or to hide our light under a bushel. That is part of our agenda; we have never denied that.

2811. Does it make sense to run two health services back-to-back on an island of five million people? No, it does not. Does it make sense to run two education services back-to-back on an island of five million people? No, it does not. Does it make sense that the work of civil servants in Dublin or Belfast on transport or spatial planning stops at the border? It makes no sense whatsoever.

2812. In respect of efficiency, if Departments worked more closely together it would save the island as a whole millions of pounds a year, which could be reinvested in services. The practical benefits of co-operation and all-Ireland activity are there to be seen. They have been grasped, as I said at the beginning, by the unionist business community.

2813. **Mr P Robinson:** If sharing a piece of turf makes so much more sense when everyone belongs to one country, I would suggest that it does not look too good for the future of Portugal, Luxembourg and a number of other countries. Indeed, thousands of peoples around the world would find themselves absorbed in those circumstances.

2814. I find refreshing, at least, the honesty from both of the nationalist parties that their views on North/South issues are underpinned

by the ideology that they share. To some extent, therefore, it is clear that for them — whatever the reasons of practical benefit, co-operation, mutual understanding and common interest they may put forward — the real underlying issue is political: they want to advance their political goal of a united Ireland.

2815. The same honesty comes from unionists: that is the reason that there is resistance to this. If the reasons were practical, they could be justified and people would not be concerned. Mr O’Dowd says that the business community does not have these difficulties. The business community does not have difficulties in doing business with Russia, Iraq or Iran, but that does not mean that, politically, we should join up with any of them; nor should there be institutions of a political nature to assist in that.

2816. The references in the comprehensive agreement, which Mr McGimpsey mentioned, are actually contradictory. One talks about the efficiency of the implementation bodies, and the other talks about their expansion. Very clearly, unionists are saying that there should be fewer and nationalists are saying that there should be more. Dr Farren seems to have a block on this matter — he said that there might not be a day’s work for some people, and that if the implementation bodies were not doing the job they should be replaced. If they are not doing the job, the answer is to remove them. Why would you need another body? That does not give you an argument for having another body — if they are not doing the job, then they are not needed. The political view is that they are there for a purpose and their number cannot be reduced. Even if there is no practical reason for them to be there, they have to be replaced with something else just for the sake of being replaced. On efficiency grounds, that could not be justified. It could be justified only on political grounds, and no unionist is going to attempt to justify it on that basis.

2817. Like Mr Campbell I think that, from a unionist perspective, there should be a very significant dynamic on the east-west front, and it will have to be beefed up and have more

emphasis put on it. I suggest that we take up Dr Farren's proposal.

2818. I want to see the reports and minutes of all the formal meetings, both North/South and east-west. That would give us some idea of the scope and nature of the work. I am sure that similar reports exist on the implementation bodies' work, and it might be worth seeing just how much work they did.

11.00 am

2819. **The Chairman (Mr Wells):** We will take that as a formal proposal and return to it later to see whether we can reach consensus — unless you are willing to second that proposal, Dr Farren?

2820. **Dr Farren:** I might do that.

2821. **Mr P Robinson:** I was seconding his proposal. *[Laughter.]*

2822. **Mr McNarry:** Rather than interfere with cross-community enterprise, I will not second it; I will leave that to Seán.

2823. **Dr Farren:** I proposed it first, actually.

2824. **Mr McNarry:** I suggest that we try to reach consensus on that proposal as it would be useful to have an analysis and summary of those reports.

2825. I am rather taken with John O'Dowd's reference to the unionist business community. Republicans have a way of filtering unionism into phrases — they now talk about “unionist paramilitaries” as well. Surely it must be accepted that the Northern Ireland business community has long embraced doing business across the border. The major change has been the reception in the Republic; people there are now willing to do business with people in Northern Ireland.

2826. However, unionist businessmen feel discriminated against by republican businesses; I will put that another way — by businesses domiciled in the Republic of Ireland. Businessmen here will say that that situation continues. Perhaps we all can deal with that issue; after all, it is business, and, as has probably been mentioned, where opportunities exist to do business, they will be taken. It is two-way traffic. The figures also show that

Northern Ireland is doing remarkably well; the traffic is flowing better in our direction than it is in the other direction.

2827. We should not become terribly set on the idea of a unionist business community. Is there a nationalist business community? Is there a republican business community? Such terms are divisive. There is only a Northern Ireland business community. Although people are entitled to their own individual political views, representatives of the business community do not present themselves as anything other than representatives of a business alliance or whatever. Therefore, I would not put much stock in John O'Dowd's comment; there is not really a unionist business community in Northern Ireland. That term can misrepresent unionists who are to the fore in business and who would work with anybody.

2828. Finally, mention has been made of the RPA. I apologise for being late this morning, and this point may have been mentioned already. Unionists are concerned that the outworkings of the RPA will open the door to North/South bodies being formed by “super councils” along the border areas. The Northern Ireland Assembly would have to keep a check on that situation, should it develop. Indeed, the entire remit of the North/South bodies should perhaps be a matter for the Assembly at some stage.

2829. Unionists see dangers in the greening of border areas.

2830. **Mr Campbell:** On a point of information, that was dealt with at Friday's meeting of this Committee. I raised that very issue with Patricia Lewsley, who represented the SDLP. There did not appear to be any resistance to my proposition that the concern of nationalists about the RPA in relation to power sharing within the councils was matched by the equal concern of unionists concerning “North/Southerly”. She accepted, I presume on behalf of the SDLP, that one concern was no bigger an obstacle than the other.

2831. **Mr McNarry:** I appreciate that information, Gregory. I have not had time to read Hansard and was not here on Friday, so your point is well made.

2832. **Mr P Robinson:** I have a further point of information. At another level in local government, the Department of the Environment has set up a Local Government Reform Taskforce, which comprises a political panel, a working group and nine subgroups. The governance subgroup, which has been considering how decisions would be taken, also has proposals to deal with the kind of issue that David raised. That is not to say that the Government will accept those proposals, but all parties generally agreed them.

2833. **Mr McNarry:** I find that comforting as well, so I appreciate that point of information.

2834. I am glad that the concerns surrounding “North/Southerly” have been aired. It is a sensitive subject for unionists, and therefore I am sure that members will appreciate my raising it again on behalf of the Ulster Unionists. However, I also raised the issue in response to what John O’Dowd said. He talked, rather flippantly in my opinion, about whether there is a need for an education authority in Northern Ireland and one in Southern Ireland, and whether Northern Ireland needed a health board and this, that and the other. He said that surely those could be combined.

2835. Given the uncertain future, unionists fear what will happen if the Assembly is not restored. If Northern Ireland is left to the devices of that type of opinion that holds sway and is the majority opinion in the border areas, what effect would that have on our education and health services here?

2836. **The Chairman (Mr Wells):** Before I go to Dr Farren, Mr Ford and O’Dowd, there seems to be consensus on the request for information. I do not know whether Mr Robinson or Dr Farren made that request.

2837. **Mr Ford:** I think that it was a joint request: give them both credit.

2838. **The Chairman (Mr Wells):** The request was that we seek further information on the work of the implementation bodies. I do not know how much is involved in that. Either Mr McGimpsey or Mr McNarry had the idea that we request a summary that may be useful while

the researchers carry out further work. Is there consensus that we request information on the work of the implementation bodies?

Members indicated assent.

2839. **The Chairman (Mr Wells):** OK. Having achieved our first consensus of the morning, let us move on to Dr Farren.

2840. **Mr Campbell:** Perhaps we will get carried away now.

2841. **Dr Farren:** First, I feel that I am in a state of déjà vu. Perhaps it is inevitable, but some of the remarks being made around the table have the flavour of the discussions that preceded the agreement in 1998. Some of the fears and apprehensions about North/South relationships are again being reflected, although perhaps in a milder tone than they were then.

2842. Perhaps due to the DUP’s absence from the Executive and from the final stages of those negotiations, some of the subtleties and flavour of the general thrust of North/South matters is absent from its experience and therefore from its thinking on those issues. However much we engage in revisiting earlier discussions, if it helps to allay fears and apprehensions, that would be a helpful outcome.

2843. We must address the more practical lessons that can be learned from the experience. I have attempted to outline what I believe those to be. I am not going to repeat them.

2844. The agreement settled the constitutional issues and created a fixed framework in which we were to operate for the foreseeable future. I only attended North/South Ministerial Council meetings as a kind of supporting Minister. Mr McGimpsey was in the lead on inland waterways and the languages body; Reg Empey was the lead Minister on cross-border trade and enterprise. InterTradeIreland now has responsibility for those issues. With regard to the fears and apprehensions that have been mentioned, my experience — I am not sure whether Mr McGimpsey would back me up — was that my unionist colleagues were at ease in those meetings. Indeed, there was an appetite for more rather than less.

2845. At one meeting we dealt with InterTradeIreland's setting up of programmes for information exchange and the development of co-operation in marketing, which would involve graduates from both sides of the border working with businesses in the North and in the South. Those programmes continue to provide expertise to small and medium-sized businesses, in particular, that could not otherwise afford it. I cannot remember the precise figure that was initially proposed. For illustration purposes, let us say that the suggestion was that there should be 20 participants in each of the programmes. Ministers had no difficulty in saying: "That figure is far too modest to achieve anything in the short term. Why not double it?" That was achieved. There was no threat. The programmes were recognised to be of mutual benefit to businesses on both sides of the border. The new scale was considered to be far more appropriate than that originally suggested by the civil servants. Significant progress was achieved. The programmes continue to flourish.

2846. Since I had more involvement with that implementation body than any of the others, I was able to witness its growth during the short period in which the North/South Ministerial Council was in operation. The business world in both parts of the country responded enthusiastically. Trade shows were mounted North and South. Work was done to help companies on both sides of the border to tender for contracts. People say that some of that could happen spontaneously; it was not happening. Companies were not becoming involved in the procurement process on the opposite side of the border, which they are now. They are trading with each other much more. Networks are being created that are bringing companies, north and south, together for joint enterprises overseas.

2847. Surprisingly, some of today's remarks have suggested that those who are most critical of the bodies have not read the evidence that they have produced over the years. That is implied in some of the comments that have accompanied the requests that those reports be made available to us. I am happy to see whatever information can be made available — whatever has already been published, and more

about the way that the bodies operate, the scope of their work, and indeed other areas of co-operation — brought to the Committee, so that we will be better informed to make appropriate plans for the future.

2848. Finally, I want to comment on Mr Campbell's proposal that every North/South plan must be accompanied by an equal and parallel east-west plan. I would have thought that if it was to the benefit of his constituents for co-operation between Altnagelvin and Letterkenny General Hospital, for example, to be enhanced, it should not have to await some form of co-operation between a hospital here and a hospital in Scotland in order to demonstrate that the North/South development was being accompanied by an equal and parallel east-west approach. That would be nonsensical.

11.15 am

2849. I agree that there is, of course, an ideological thrust — in the sense that I have attempted to illustrate — to North/South aspirations, as there is to east-west aspirations. Is the DUP prepared to accept that the yardstick of practicality and "mutual benefit" to communities North and South — those are the words that are used in the Good Friday Agreement — can be applied equally to east-west matters? The party that prides itself on its pragmatism must learn to adhere to its own principles.

2850. **Mr Ford:** I want to respond to the criticism that I received from Dr Farren earlier. The Alliance Party has always recognised the political significance for nationalists of North/South co-operation. However, that does not contradict the notion that the specific structures under which co-operation takes place should be based on the need of particular areas. In many cases, informality may be a better approach.

2851. I said that there might be a case for further implementation bodies. The arbitrary number of six should be regarded as just that: it was arrived at during the last few hours of the negotiations that led to the Good Friday Agreement. We should not be bound by it in future. While the SDLP might wish to stick to every dot and comma of the Good Friday Agreement

and have precisely six implementation bodies, that is not the view of my party.

2852. Take the issue of tourism. In the colour supplements of London's Saturday broadsheets — or what used to be broadsheets — you can see the advertising that is being done to promote this island. One week, it might be Cork and Kerry. The next week, in a similar style, it will tell us the benefits of coming to Belfast for a stag weekend. Clearly, the practical reality for most people outside the island, except those who have close family relationships here, is that we are one tourist market. That sort of work must be encouraged. The structures that exist are doing a reasonable job. However, we would need to examine detailed figures over a number of years in order to fully assess its value.

2853. My illustration of the response to foot-and-mouth disease was to show that most cross-border co-operation is informal and does not work through specific implementation bodies. We should not restrict that co-operation by the imposition of new bodies; we should seek to encourage it in whatever form it takes. The focus should be on practical outcomes and outworking. If nationalists see the practical outworkings of cross-border co-operation to be much better than each end of the island merely doing its own thing, then that should be the bonus to nationalists, not the setting up of institutions without there being any certainty that they will be beneficial.

2854. The unionist references to the British-Irish Council have been interesting. It parallels a discussion that we have had in the economic subgroup on the relative size of the public and private sectors in Northern Ireland. The issue is not whether there is too much North/South co-operation, but whether there is too little British-Irish co-operation and a need to build up the structures to maximise the benefits of that. Undoubtedly, the island is too small to deal with many of the matters that have been discussed.

2855. We must work to achieve a balance between those areas. Mention has been made of the RPA and the greening across the border. If co-operation is to be developed between Altnagelvin Hospital and Letterkenny General

Hospital — that is east-west rather than North/South co-operation — we should also examine the benefits of, for instance, cross-border A&E services, where there are real needs. In the past, the Alliance Party has asked for an examination of issues such as specialist training at the higher levels of psychiatry where, at either end of the island, the market is inadequate for that discipline to stand on its own. We need to build up those institutions together. East-west co-operation must also be considered in that regard.

2856. The needs of people living in particular areas must be examined, and if that shows that people in Sligo, Monaghan and Fermanagh should avail of the same A&E services, North/South co-operation in that regard will benefit people from all those areas. However, that does not require an all-Ireland health body; it requires co-operation between the existing institutions.

2857. **Mr O'Dowd:** I am not sure about David's last point. There is a political, rather than a practical, argument against setting up an all-Ireland health body. David used the example of co-operation between Health Departments that I intended to use. When we talk about all-Ireland healthcare, we really mean planning health on an all-Ireland basis. It has taken many years for the two Departments to co-operate to set up a cross-border GP service. Many obstacles have been thrown in the way, and only now are we seeing some practical movement. If there had been ministerial co-operation on that matter, the cross-border service might have been in place many years ago, benefiting the people living in those areas.

2858. The island of Ireland has a population of 5.5 million, and a population of that size can be serviced by one children's cardiology consultant: the recognised ratio is one consultant to 5 million people. Therefore, there could be effective co-operation in that area.

2859. EU legislation instructs councils on different sides of a border — for instance, in Luxembourg, Germany or Holland — to work closely together. The biggest difficulty facing councils on this island is waste management. Councils in the Six Counties should work together — as they do with the Southern Waste

Management Partnership and arc21 — and on a cross-border basis to deal with waste management. I seriously doubt that any unionist ratepayer would object to their bin being lifted by a particular council worker because the rubbish may end up in a plant in Monaghan. Likewise, ratepayers in Monaghan would not object to their rubbish being treated in a unionist council plant. No one — regardless of his or her political opinion — would object to practical measures that would save the ratepayer and the council money and which would allow money to be invested elsewhere.

2860. **Mr McGimpsey:** As Seán Farren says, there is an element of déjà vu about this; it is something of a Pandora's box. I was not involved in any of the discussions on the agreement, but it was clear that nationalism required some recognition of its Irishness in the form of North/South co-operation and that unionism required Stormont and the British-Irish Council, which reflects the common polity that is the British Isles. That is where the deal fell: if unionists tried to boycott the North/South bodies, that would have an effect on Stormont; and if nationalists did the same with Stormont, that would affect the North/South Ministerial Council. In other words, the institutions were interdependent.

2861. There is a fine balance, and we have ended up with six implementation bodies and six co-operation areas. They worked well, and we progressed on the basis of doing practical business for the mutual benefit of everyone on both sides of the border. That was what the North/South Ministerial Council was about, and members worked by unanimous agreement.

2862. There was an element of pre-cooking the agendas, because things were sorted out before we got down to the formal business of having the North/South Ministerial Council meeting. The North/South bodies are currently being kept on a care-and-maintenance basis because Stormont is in cold storage. If Stormont is not restored, the deal is that those North/South bodies fall and the staff go back to their parent Departments.

2863. The British-Irish Council, in purely practical terms, suffered from the lack of a secretariat. It was not due to a lack of will; the regional Assemblies were very keen on the British-Irish Council, but the slowness of the secretariat support hurt us badly. That needs to be brought up to a much more robust standard.

2864. There is a deal there; we could start tinkering with it and pulling it apart but, for the sake of practical politics, making it work as it stands is more important, as David Ford and John O'Dowd said, than thinking about extra elements, because there will not be agreement. We have to try to make the deal work and if we cannot do that, we are not going anywhere at all.

2865. I am intrigued by John's constant referral to unionist businessmen. If somebody comes in to sell you a car or a van how do you know he is a unionist?

2866. **Mr McNarry:** They know every unionist in the country.

2867. **Mr O'Dowd:** I will come back to you on that point if you so wish.

2868. **Mr McGimpsey:** Business is business. I was in business all my life; it is all about turning a profit. I presume that John meant that there are Protestants who will sell to anybody. Businessmen will cross borders; of course they will. John talks about an island of five million people; we think in terms of a Kingdom of 60 million people, and business does the same. Why stop there when you have got a European community of over 400 million people? That is the way business approaches it.

2869. There has always been business activity between North and South, and good luck to everybody engaged in it. However, there is bigger business to be done with the mainland and, ultimately, much more business to be done in Europe and further afield. It intrigues me when John talks about business because every year, for example, the Chancellor sends us a cheque to the tune of about £11 billion and Sinn Féin are dedicated to stopping the cheque. That has always been one of the queries I have had about North/South co-operation, "Ourselves Alone", and the idea that the Chancellor can keep

his cheque. What would we do without the £11 billion? That gets us into a whole different area.

2870. We have six implementation bodies and six co-operation bodies. They were working well for practical benefits and they threatened no one. That is where the deal stands; trying to expand them is not going to take us anywhere.

2871. **The Chairman (Mr Wells):** I want to bring PJ in here. We have given this —

2872. **Mr P Robinson:** You do not have my name down. I put my hand up about 10 minutes ago.

2873. **Mr O'Dowd:** I would also like to respond to a few points made by Michael.

2874. **The Chairman (Mr Wells):** I am going to call it a day at that. We have given it a good airing and I do not detect much in the way of a proposal.

2875. **Mr Campbell:** I thought you were going to say that you did not detect a consensus there.

2876. **The Chairman (Mr Wells):** Well, it was not too acrimonious, but there does not seem to be any suggestion as to how to take this forward, and far be it for me to try to suggest one. Therefore, after Mr P J Bradley, Mr P Robinson and Mr O'Dowd have spoken, I will say that we have had a discussion on this. If a proposal was forthcoming I would be very pleased to see it in order to bring this discussion to a conclusion.

2877. **Mr P J Bradley:** Perhaps I will get some consensus on behalf of the farming community. We have talked about health, education and business right around the table but agriculture on an all-island basis was not really touched on. An all-island agricultural programme can easily be defended by all sections of the North/South arrangements, especially in animal health and the important issue of marketing. Unionist fears would be set aside if the farming community were given an opportunity to recover and to see their farms leading the way again as the largest industry in the North, which it had been for generations.

11.30 am

2878. In agricultural terms, we pay a high price for our attachment to the UK. For example,

since the ban on live exports was lifted, Dutch, French and Italian buyers are now in every sales yard in the Republic of Ireland where cattle can be purchased, but they are not coming North. One wonders why they do not come North, where prices are lower. The UK baggage that is attached to stock in the North means that farmers here do not attract European buyers. That is why no farmer would resent a policy that joined up the marketing of all-island products but kept the politics of North and South separate.

2879. I am conscious that when making a political speech there is a suspicion of some hidden agenda. I have no such agenda: I speak for the benefit of farmers North and South, and particularly in the North where I live and work. They would welcome the extra £100-per-animal profit from an all-island marketing programme.

2880. **Mr Campbell:** I follow the logic of your argument. However, do you accept that if positions were reversed in the future, and farmers in the Republic found that UK prices were better, they would want to rejoin the UK?

2881. **Mr P J Bradley:** Not necessarily. Unlike here, farmers in the Republic can turn to their Government. Even now, they are saying to the Government that the price that they are receiving is too low. The North does not have a Minister of Agriculture.

2882. **Mr Campbell:** I thought that your point was that there would not be much resistance to joint marketing because farmers in the North would see the benefit of a higher pricing structure in the Republic, whose connection with the EU is better for sales and export. If your proposals were totally reversed, would that not result in a political reverse? Would farmers in the Republic see the sense in, and possibilities offered by, rejoining the UK for precisely the same reason?

2883. **Mr P J Bradley:** Try to think like a farmer, who would probably look to wherever the profits are highest. The name of the game is that farmers need profits. Again, I point to the ability of farmers in the Republic to turn to their Government for assistance: farmers here cannot do that. Mr Campbell will be aware that the UK does not

even have a Minister of Agriculture — it has a Minister for Environment, Food and Rural Affairs.

2884. **Dr Farren:** Mr Campbell has extrapolated way beyond Mr Bradley's argument. Why is Irish linen that is manufactured in Northern Ireland marketed abroad as Irish linen? Does that cause a problem to members of the DUP?

2885. **Mr Campbell:** That has been the case for over 100 years.

2886. **Dr Farren:** I know, but there is some benefit in marketing.

2887. **Mr Campbell:** It has been happening since before 1920.

2888. **Dr Farren:** The events of 1922 did not change the way in which linen manufactured in Northern Ireland was marketed abroad.

2889. **Mr P Robinson:** The Republic does not have ownership of Irish linen. It was around before the Republic removed itself from the United Kingdom. Why should the Irish Republic have ownership?

2890. **Dr Farren:** Linen is generic; it is not a specific brand.

2891. **Mr P J Bradley:** Members of the Agriculture and Rural Development Committee always agreed on animal health issues. Animal health was never seen as a political issue and was a prime example of the co-operation that was demanded across the frontier. Importantly, neither animals nor diseases knew about the border. I consider marketing in the same way.

2892. **Mr P Robinson:** I want to deal first with Dr Farren's patronising claim to be experiencing a feeling of *déjà vu*. He said that he had heard all the arguments before; that perhaps because the DUP was not part of previous negotiations, it needed to be brought up to speed; and that if doing so helped to allay fears it might be worth it.

2893. Let me tell him, I have heard no argument in this room today that I have not heard many times before — there is nothing new under the sun. Sinn Féin has advanced no new argument today that it has not already advanced publicly. Indeed, the party would not be doing its duty if it had not publicly put forward the arguments

that it is privately putting forward today. Therefore, there is nothing new, no new nuance. The DUP has heard it all before.

2894. As for allaying unionist fears, he has given an honest interpretation of his party's views. His remark that his party's attitude to "North/Southery" is effectively underpinned by ideology leading to unification will be in Hansard. Those are his words. How will that allay the fears of unionists? It alerts unionists to the real purpose and intent of "North/Southery". Mr McGimpsey is right; there is no scope for extending the nationalist community's ideology, even if it is under the pretence that there is a pragmatic reason for doing so.

2895. Dr Farren attempted to build straw men with his attack on Mr Campbell. Mr Campbell did not advance the proposal of point-for-point balance on North/South and east-west issues — indeed, he specifically said that it was not realistic to expect that. It is fairly clear that the DUP is warning that the effort and enthusiasm of unionism towards practical North/South co-operation will be commensurate with the effort and enthusiasm of nationalists towards east-west co-operation. Identity issues should be considered on that basis. Just as Dr Farren indicates his political intent that "North/Southery" might be a move towards the goal of unification, I hope that at some stage the people in the Republic will have the good sense to return to the fold as part of the United Kingdom. It would make a lot of sense. After all, based on Sinn Féin's argument, it must make sense for a small group of islands to be part of one political unit.

2896. **Mr O'Dowd:** By the same logic, one could argue that the Republic should take over the whole group of islands and become one massive united Ireland. It does not really make sense in practical terms. However, I take the comment in the humour in which it was made.

2897. Mr McGimpsey and Mr McNarry have come back at me about the term "unionist business community". One would think that I was the first person to come up with the term. I do not consider it to be an insulting term, and I hope that my use of it has not been taken in that

way. Mr McGimpsey and Mr McNarry cannot seriously be telling me that they have never heard it before.

2898. The Ulster Unionist Party was built by unionist businessmen — and I deliberately use the word “men” — so it is not the first time that the phrase has been used. There is a unionist business sector, just as there is a nationalist business sector, but they do not compete against each other. Wherever there is a political philosophy, whether it is that of the British Labour Party, the Conservative Party, Fine Gael, Fianna Fáil or whatever, there is always a business sector floating about behind it. That is nothing new, and it is certainly not something to get flabbergasted about.

2899. It is not true to say, as Mr McGimpsey did earlier, that if the DUP decides to take the Assembly down before or after 24 November, the North/South bodies will go into cold storage. They will not. The Good Friday Agreement recognises that it is best for the bodies to be interdependent. However, Sinn Féin will argue strongly with the two Governments that even if one political party chooses to veto the Assembly, the rest of the agreement should still move on — and that will include all aspects of “North/Southerly”. No civil servants will be traveling back to their former Departments. In fact, more civil servants will be moving into that field of work. If the DUP chooses to bring down the Assembly, the rest of the agreement will not go with it.

2900. As for Mr Ford’s comments about the number of North/South implementation bodies, there are mandates for at least six bodies, as the Good Friday Agreement allows for the setting up of at least six bodies to work on areas of co-operation. Therefore, there is room for expansion.

2901. **The Chairman (Mr Wells):** We have had a full and frank discussion on the issue. Mr Robinson said there was nothing new under the sun, and I suspect that we could agree on that. Is there any way of moving this forward, or will we just simply leave it? I am thinking of the dilemma that the report-writers will face. This is a very important issue.

2902. **Mr McGimpsey:** Did we not previously agree that the chairpersons and chief executive officers of the North/South bodies would be subject to Assembly scrutiny Committees?

2903. **The Chairman (Mr Wells):** We did. However, today we are discussing the number of bodies and their roles, and we are clearly not going to reach agreement on that.

2904. Are members content that, notwithstanding the lack of agreement, we should request the extra material? We have no idea of the quantity involved; it may be colossal.

2905. **Mr P Robinson:** If it turns out to be a colossal amount, a summary would be sufficient.

2906. **The Committee Clerk:** We are looking at the websites to see what is available. There are joint communiqués from every meeting, which are just like the minutes of this Committee. However, we can find nothing that tells us how they worked or how matters were discussed. We are trying to work out the best way to present the information to members.

2907. **The Chairman (Mr Wells):** There must have been minutes of every meeting.

2908. **Dr Farren:** Yes, there were.

2909. **The Committee Clerk:** There were annual reports as well.

2910. **Mr Campbell:** Some minutes may have been shorter than others.

2911. **Dr Farren:** The implementation bodies and the North/South Ministerial Council published annual reports, and they are still available. We would not need each year’s report; the most recent one would give us a flavour of what is happening now, if that is what members feel is necessary.

2912. In addition to the areas of co-operation, I spoke about institutional matters under three headings; operational matters, structural matters and the areas of co-operation. I said that there were issues arising out of our experience that would need to be addressed. Are they not part of our agenda?

2913. **The Chairman (Mr Wells):** We can discuss those issues. That is not a problem. The

commitment has been given that if anybody raises related issues they will be dealt with.

2914. **Mr P Robinson:** Presumably Dr Farren will want to talk about the efficiency of reducing the number of implementation bodies as well?

2915. **The Chairman (Mr Wells):** I am absolutely certain that the DUP group does.

2916. **Dr Farren:** Whatever the outcome is, I presume that the DUP will prejudge it.

2917. **The Chairman (Mr Wells):** Has the issue been aired adequately, or do members want to speak on it? I got the impression during the various contributions that that point was well made.

2918. **Mr P Robinson:** The whole issue has been sufficiently aired.

2919. **Mr Campbell:** It would be difficult to say that this issue has not had sufficient airing this morning.

2920. **The Chairman (Mr Wells):** That would be my view, but I have to take the view of the members. I propose that we move on to discuss the North/South Ministerial Council, unless anyone has any objections.

2921. **Mr P Robinson:** My view is the same as Mr McGimpsey's. If Sinn Féin brings down the Assembly by not ending its paramilitary and criminal activity, then clearly the implementation bodies and "North/Southerly" will come to a standstill. It would be absurd to suggest that one part of the agreement can move ahead without the other. An agreement is an agreement among all of the signatory parties, and if the Ulster Unionist Party, a signatory party, has not signed up to the element that Sinn Féin is suggesting, then it is not an agreement.

2922. **The Chairman (Mr Wells):** Are there any proposals?

2923. **Dr Farren:** I want to make a final comment on the matter. The responsibility for taking matters forward would fall to the two Governments. They have made it clear that they are prepared to accept that responsibility, and that they will deal with North/South arrangements as well as other matters. It is not for us to

dictate to them. We may want to air our views on what they should or should not do, but they have made it clear that North/South matters will move ahead. There will be a momentum maintained, and developments are not going to be artificially constrained by our views on these matters.

2924. **Mr Campbell:** Of course, should things happen as Dr Farren suggests, opposition from the unionist community is guaranteed.

2925. **Dr Farren:** Well, it is up to the Government. It depends on what happens, of course, and on whether or not you make the judgment that those things are not in your best interest. I am just saying that the responsibility will fall to the two Governments; it is not for us to dictate. No doubt we will have our views on what they should and should not do.

11.45 am

2926. **Mr P Robinson:** But you are wrong, Seán — you cannot argue that. Responsibility falls to the Government of the United Kingdom as to what they do in Northern Ireland. They can operate themselves by the decisions that they take, but they cannot decide to take an agreement that does not exist, somehow skew it, and then have a meeting that they did not originally intend to have. They can take a new decision that there should be some arrangement, but they cannot unilaterally take a decision that was multilaterally agreed and then tell us what is going to happen.

2927. **Dr Farren:** I will not speculate as to how the two Governments will operate. However, they have a responsibility, and they have made it clear that they will exercise that responsibility and maintain a momentum in North/South relationships, because they believe that that is necessary for the greater good.

2928. **Mr P Robinson:** Except that that is absurd.

2929. **Dr Farren:** Pardon me?

2930. **Mr P Robinson:** East and west Governments cannot produce momentum on a North/South basis.

2931. **Dr Farren:** That is not part of today's argument.

2932. **Mr O'Dowd:** None of this should come as a surprise to the DUP. The comments of the two Governments were made public months ago. With regard to the opposition from unionism, any political body has the right to oppose, so long as it is done in a peaceful and democratic manner and not that of the UVF.
[Laughter.]

2933. **Mr McGimpsey:** Chairman, the deal is clear. Strands one, two and three are inter-dependent and interlocking, and without one the other two fall. That is made clear in strand two, paragraph 13 of the Belfast Agreement.

2934. There is no point in asking "what if?" The British Government have said a number of things over recent years — some of them have been kosher and some have not. It may be that they are giving certain guarantees in some directions that they are not giving in others; I do not know what is going on. I hear Mr Hain talking, but he is merely making statements.

2935. **Mr O'Dowd:** Can I assure you that —

2936. **Mr McGimpsey:** The agreement is clear. It cannot be argued that if Sinn Féin busts the Assembly it will still get its North/South bodies, because that "ain't gonna happen". It is not the deal. I believe that neither the British nor Irish Governments are looking to push that through.

2937. **Mr O'Dowd:** Sinn Féin has no attention of busting the Assembly. Our plan A is the implementation of the Good Friday Agreement, including the Assembly. With regard to assurances from the British Government, we do not accept those unless they are written down and implemented.

2938. **Mr P Robinson:** May I reassure everyone that I do not envisage that the unionist community's opposition and reaction will be anything other than the peaceful kind that Sinn Féin has advised us we should take. The unionist community would find it difficult to take a lecture from Sinn Féin about acting peacefully and within the law.

2939. **The Chairman (Mr Wells):** Mr McNarry will speak next and, in the absence of any proposals, I will then move to the next item on the agenda.

2940. **Mr McNarry:** Comments about the interlocking aspects of the strands have been well made, and they should be considered. Sinn Féin has said that its intentions are clear, but it would be great to hear its representatives say that they intend to help the rest of us to put a devolved democracy back in place. That is absent from their argument.

2941. **Mr O'Dowd:** You have not been listening.

2942. **Mr McNarry:** I have listened to what you have said in this past five minutes.

2943. **Mr O'Dowd:** Sinn Féin's plan A is to fully implement the Good Friday Agreement, including the Assembly. What is not clear about that?

2944. **Mr McNarry:** You did not participate when the rest of us were attempting to work through plan A.

2945. **Mr O'Dowd:** That is your opinion.

2946. **Mr McNarry:** Everybody's opinion is worth something here.

2947. **Mr O'Dowd:** Correct.

2948. **Mr McNarry:** Unfortunately, you dismiss everyone else's opinion except your own: that is how you operate.

2949. I cannot go along with the idea that if we cannot reach agreement, the responsibility for the North/South bodies will be handed over. It has been made clear that that will not happen. I hope that progress will be made by this Committee working through the remit of making preparations for Government.

2950. On hearing some of Sinn Féin's rhetoric in discussions such as this, it is clear that we must also prepare ourselves for not being in Government. That possibility must be aired at this table, because leadership will be required and may need to be shown in the future.

2951. **The Chairman (Mr Wells):** That is the end of the discussion on the North/South

implementation bodies. Some of the discussion will be relevant to our next subject, which is the North/South Ministerial Council (NSMC), and some of the principles that have been articulated will also apply.

2952. The usual format will apply: each party will make a short contribution. I am extremely grateful to those who have been so succinct throughout the last two months, and I hope that that trend will continue.

2953. **Mr Ford:** Does that include me?

2954. **The Chairman (Mr Wells):** The Alliance Party has always been very brief. Contributions will be made in alphabetical order, so Mr Ford will lead off.

2955. **Mr Ford:** In my opening remarks this morning, I made some reference to the Alliance Party's view on the NSMC. Therefore, I will confine myself now to making a suggestion for consideration, and perhaps a formal proposal.

2956. I am interested in hearing responses to the suggestion that the Alliance Party made in the Chamber on establishing the North/South parliamentary tier, although there may not be unanimity on that today.

2957. On a more serious point, the Alliance Party's formal proposal is that the annual report of the NSMC should not be in the form of a document. A formal report should be presented in the Assembly and in the Oireachtas by the First Minister and the Deputy First Minister, the Taoiseach and the Tánaiste. There is considerable merit in opening up the general operation of the NSMC, rather than individual aspects of it. I want to put that forward as a proposal and hear responses from other parties.

2958. **Mr Campbell:** As you rightly indicated, Mr Chairman, there is quite an overlap between our previous discussion and this one.

2959. **Mr P Robinson:** That will not stop us from saying it again.

2960. **Mr Campbell:** I will try to phrase my comments in a slightly different way.

2961. In all seriousness, the major issue for the DUP is the difficulty relating to the practicalities of the 1998 system, of which I will

give an example. Mr McGimpsey went to some length to outline how the NSMC operated in a practical sense. However, those of us who were on the outside can testify that, whatever the workings of the NSMC itself, when proposals came to the Assembly for discussion, it appeared that it was simply a case of a Minister coming back with NSMC-agreed proposals. MLAs may have been able to discuss them, but that was all. It was almost like an Order in Council: a proposal could be discussed but could not be changed, vetoed, added to or diminished. The DUP strongly believes that that should change.

2962. The business of nominations was fraught with difficulty in the past. Mr Robinson, Nigel Dodds, Maurice Morrow — now Lord Morrow — and I were all caught in the same position. On account of our views on the Executive and the workings of the NSMC, whose meetings we did not want to attend, we were prevented from attending the British-Irish Council (BIC). However, we got round that by engaging in informal discussions. I hope that that answers Dr Farren's point — he said that the SDLP did not deem a phone call between a Northern Ireland Minister and a Republic of Ireland Minister to be sufficient. I found that a phone call and an informal meeting were sufficient, particularly given that I had been blocked from attending BIC meetings.

2963. It is more a case of the practicalities of working these issues out. It almost reinforces our concern that the entire issue of North/South co-operation — whether it be the implementation bodies or the NSMC — causes the unionist community in particular to view it with some suspicion because of its political undertones. However, if it is built on a practical relationship from which benefits flow, then both communities can see it in a relaxed and positive way, and will not view it as a threat or as political leverage to take things off in one direction only. That is our concern.

2964. I am not sure that we can arrive at a more acceptable implementation of NSMC accountability, how it carries out its work and how it reports back to the Assembly. However,

if we could, it would be a positive thing, not just for unionism but for nationalists as well.

2965. **Mr Ford:** Mr Campbell referred to informal meetings with Southern Ministers. My definition of an informal meeting is standing around with a coffee cup in your hand. Do I take it that what he actually means is a formal meeting, but outside the scope of the NSMC?

2966. **Mr Campbell:** Yes.

2967. **Mr Ford:** So, not actually an informal chat but a formally structured meeting?

2968. **Mr Campbell:** It can mean that. For example, in the context that Dr Farren mentioned — two hospitals in Dundalk and Newry, or Altnagelvin and Letterkenny, or Larne and Stranraer on an east-west basis — if a health matter required immediate attention and had to be resolved within 24 hours, and so could not await the formal requisition of a NSMC meeting, I would regard that as an informal meeting.

2969. **Mr Ford:** Did Mr Campbell have informal meetings as a Minister on that basis?

2970. **Mr Campbell:** Yes, on the basis that I have just described.

2971. **The Chairman (Mr Wells):** Before we get to Sinn Féin's presentation, Mr Ford, you made a suggestion about a North/South parliamentary tier. Was that a proposal, or did you just want to raise it as an idea?

2972. **Mr Ford:** I threw it out as idea rather than as a formal proposal at this point. I thought that the idea of greater openness and accountability might be more likely to achieve consensus.

2973. **Mr O'Dowd:** It is difficult to review the past workings of the NSMC, because it operated for only a limited time. It may be opportunistic of some people to say that there was not enough accountability to the Assembly. The fact of the matter is that none of those arrangements were bedded in long enough to see how they worked.

2974. Our general view is that during its limited lifespan, the NSMC was accountable to the two bodies that it reported back to. Obviously, one of the difficulties that arose, and Mr Campbell

has given his perspective on it, was the right of Ministers to attend. For a time, David Trimble used a veto against Sinn Féin Ministers' attendance. That example has shown us that Ministers should have an automatic right to attend NSMC meetings. That would clearly require new legislation.

2975. It is also important that Ministers fulfil their duties within the NSMC and the BIC. Sinn Féin will be looking at several factors with a view to making changes to that. With regard to the mechanisms of reporting back and forth, we have not had the practice for long enough to see where the weaknesses or opportunities are.

2976. **Dr Farren:** The Good Friday Agreement, in paragraph 6 of the section dealing with strand two, states:

"Each side to remain accountable to the Assembly and Oireachtas respectively, whose approval, through the arrangements in place on either side, would be required for decisions beyond the defined authority of those attending."

12.00 noon

2977. The SDLP has no difficulty with trying to maximize, and make as comprehensive as is reasonably possible, the various forms of accountability. If we can be precise about those, and agree on how to improve accountability, I do not have any problem. Some 60 meetings of the North/South Ministerial Council were held in various formats, mainly in the formats related to the workings of the implementation bodies. That is a sizeable number of meetings to have taken place during the short time that the Council operated. There was a report on every meeting, apart from those that took place immediately preceding the suspension of the Assembly. No plenaries were held after suspension, so it was impossible to report on those final meetings.

2978. The Assembly was not so overburdened with business that there was no chance to propose motions for Ministers to be made more accountable on North/South matters. The same applies to east-west issues. The Assembly was experienced enough to do that. I hope — although I am not sure that the record will show

this — that the informal meetings that Gregory claims he took part in were as fully reported to the Assembly as all the formal meetings that Ministers attended.

2979. Most decisions are not instantaneous. During a crisis such as the foot-and-mouth-disease outbreak, decisions had to be taken when the Assembly was unable to meet to consider them due to time constraints and priority pressures. Matters to do with hospitals, schools, universities and the infrastructure have been given much airing lately. Decisions must be made on policies to deal with those medium-to long-term issues. Forms of co-operation must be developed, considered and accepted. On such matters, the North/South Ministerial Council can take a longer-term perspective than some suggestions would indicate. The SDLP is open to improving accountability as much as possible.

2980. **Mr McGimpsey:** The North/South Ministerial Council is conditional on there being an Assembly. The agreement states:

“It is understood that the North/South Ministerial Council and the Northern Ireland Assembly are mutually inter-dependent, and that one cannot successfully function without the other.”

2981. As Paul Murphy told the House of Commons on 8 March 1999:

“The North/South Ministerial Council, to which the bodies are accountable, would disappear if there were no Assembly. Similarly, the bodies envisaged in the agreement would disappear.”

2982. That is the current situation. The Assembly must function. From May 2000 to October 2002, my experience of the North/South Ministerial Council is that it undertook its work well and threatened no one.

2983. Unanimity was required; if one Minister disagreed, a proposal fell. That veto gave unionists comfort, because major ideological divisions in the NSMC made it a sensitive area for them. It also got mixed up with other political issues; for example, the one that John O’Dowd referred to as the automatic right to attend.

2984. The Ulster Unionists exercised a veto over Sinn Féin because, when the Executive first started up, and although it was against the odds, Sinn Féin failed to provide what was expected and the Executive collapsed. That was in February 2000. Therefore, next time round, there was an effort to ensure that those responsible for the collapse would be punished, not everybody else. That was the thinking behind David Trimble’s refusal, as First Minister, to approve the attendance of Sinn Féin Ministers at North/South Ministerial Council meetings, and that gave unionists a degree of comfort. It worked, but it took some time.

2985. We assume that that no longer applies, but the Ulster Unionist Party would still regard the attendance of Ministers as being determined by a joint signature of First Minister and Deputy First Minister. However, the automatic right to attend will give us some problems.

2986. With regard to the practical steps for the accountability of North/South bodies, Gregory Campbell talked about informal meetings. Before the agreement was set up, something in the region of 105 meetings of North/South bodies or committees — call them what you want — were held between the Northern Ireland Government under direct rule and the Dublin Government. We ended up with a formalised structure under the NSMC with six implementation bodies and six consultative areas. Concerns were expressed that they were not fully accountable to the Assembly. Therefore, there is scope for better reporting and accountability in finance; that is a key issue. The Northern Ireland Assembly and Executive remain fully in charge of the powers on this side of the border, and the Ulster Unionist Party is content to look at any practical measures or steps that will increase scrutiny or accountability.

2987. **The Chairman (Mr Wells):** David, was your point properly covered by the intervention?

2988. **Mr Ford:** Yes.

2989. **Mr P Robinson:** The SDLP and the DUP differ on the definition of accountability, and that became obvious at several private meetings.

The SDLP's definition of accountability was the entitlement of Assembly Members to ask Ministers questions, and to ask them for an account of what they had done. The DUP considered that accountability was calling a Minister to account, with the right to decide whether what they had done was proper. That distinction caused difficulty for a long time in our understanding each other's position.

2990. Accountability to the Assembly means that Ministers must act within the scope of the Assembly's view of the issue. Section 52(3) of the 1998 Act states that there is a legal requirement for Ministers attending North/South meetings to act in accordance with any decision taken — past tense — but there is no legal requirement on them to come into line with decisions that the Assembly might take after the event.

2991. So many of the North/South arrangements came down to custom and practice. I will put this as delicately as I can: there is no guarantee that the custom and practices that existed during the previous Executive would be adopted by a future Executive with a different composition. That is why it is essential to have clear statutory rules and why the comprehensive agreement proposes the introduction of a statutory ministerial code, which would increase accountability requirements. That safeguards everybody; previous custom and practice would effectively be replaced by a statutory ministerial code and the statutory requirements contained therein. That is the way forward; it would give everybody the comfort of knowing that their position is safeguarded.

2992. **Dr Farren:** Peter, is this discussion not similar to last week's discussion on ministerial accountability with respect to departmental portfolios? We discussed whether Ministers are working within the defined authority given to them and the decisions that they take within that defined authority. Such accountability pertains as much to their behaviour in the NSMC as it does to their behaviour in the Executive. I have no difficulty with that. Paragraph 6 of strand two of the agreement makes that very clear:

"Each side to remain accountable to the Assembly...whose approval, through the arrangements in place on either side, would be required for decisions beyond the defined authority of those attending."

2993. Therefore, I assume that the defined authority has already been defined and that if a Minister acts outside that defined authority the Assembly would have some authority to sanction them. However, when I think about accountability, I think about Ministers who are acting within their defined authority, not outside it.

2994. **Mr P Robinson:** Seán is quoting the agreement, but it has no legal or statutory authority. He may be able to score political points if a Minister breaches it, but that ministerial decision cannot be stopped or nullified. Under existing law, there is no sanction for breaching it. Therefore, it is the law that we seek to change.

2995. **Dr Farren:** I apologise if I am jumping in in front of another member, but I will be brief.

2996. I certainly agree with Peter's remarks, and I have no difficulty with considering the necessary legislative provisions to remedy that here. However, I wish to attach a rider, which I have mentioned several times before. Since another Government are involved in North/South matters, we cannot exclusively define the legislative requirements here. Peter, you may well respond that this is Northern Irish legislation, but we must consider the wider setting before we can make any definitive decisions.

2997. **The Chairman (Mr Wells):** Unusually, no one has indicated that they wish to speak on this issue.

2998. **Mr Campbell:** I would bank that, if I were you, Chairman.

2999. **The Chairman (Mr Wells):** Mr Ford made a proposal that the NSMC annual report should be presented in person by the First Minister and Deputy First Minister in the Assembly and by the Taoiseach and the Tánaiste in the Oireachtas.

3000. **Mr Ford:** Chair, that is not strictly correct. I suggested a joint presentation in both

Parliaments. Therefore, the Taoiseach and Tánaiste, alongside the First Minister and Deputy First Minister, would answer questions in the Assembly.

3001. **Mr McNarry:** No one picked that up.

3002. **The Chairman (Mr Wells):** Is that a serious proposal, David?

3003. **Mr Ford:** It absolutely is a serious proposal. It has been in the Alliance party's documentation for two years.

3004. **Mr Campbell:** He was going well up until that point. *[Laughter.]*

3005. **The Chairman (Mr Wells):** I did not pick that up when you first raised that.

3006. **Mr Ford:** I apologise. I had no doubt that you had been reading up on the Alliance Party's paperwork from 7 January 2004 and would have realised what the proposal meant.

3007. **The Chairman (Mr Wells):** David, I suspect that there may have been a greater reaction to the initial proposal had anybody picked up on the import of what you are saying. Take us through the mechanics of your proposal: the Taoiseach would come to this Assembly to —

3008. **Mr Ford:** As the report is from the North/South Ministerial Council, the leaders of the Governments of both parts of the island would attend both Parliaments to present, and be questioned on, the report.

3009. **Mr P Robinson:** Why would the leaders of the Irish Government come to the Assembly? They are not accountable to the Assembly, and the Assembly cannot sanction them. Is David proposing an information session?

3010. **Mr Ford:** I thought that you wanted to increase accountability.

12.15 pm

3011. **Mr P Robinson:** There is no accountability: they are not accountable to the Assembly.

3012. **Mr McNarry:** Chairman, I do not think that there is consensus.

3013. **Mr P Robinson:** How does presenting a report make them accountable —unless you share the SDLP's view that accountability means being asked to give an account as opposed to being called to account?

3014. **Mr Ford:** The accountability measures differ between those Ministers who are accountable, in your terms, to the Assembly and those who are, by virtue of the joint operation of the North/South Ministerial Council, accountable in SDLP terms. I thought that even the DUP would perceive the SDLP's version of the accountability of the Southern wing of the North/South Ministerial Council to be of benefit.

3015. **Mr McNarry:** If it is the same report, that does not matter.

3016. **Mr P Robinson:** The proposal may breach so many other principles that its benefit would be somewhat diluted.

3017. **Mr McNarry:** The Alliance Party will be inviting P O'Neill next to report to the Assembly.

3018. **Mr Campbell:** Much of what we are considering is an attempt to build on international best practice. I know of no other two adjoining countries where a Minister, Tánaiste, or whatever the equivalent would be in Luxembourg or Portugal or wherever else, reports to the adjacent country's Parliament.

3019. **Dr Farren:** Let us be pioneers.

3020. **Mr Campbell:** The proposal is that the leaders of both Governments attend the Parliament in each jurisdiction to present the report. That has no international precedent.

3021. **Mr Ford:** I am quite sure that there is little in the way of international precedents for much that is contained in the Good Friday Agreement.

3022. **Mr Campbell:** Are we reaching consensus now?

3023. **The Chairman (Mr Wells):** We were on a roll, but —

3024. **Mr Ford:** I am interested in any amendments that other parties may have to my proposal.

3025. **Mr P Robinson:** The position that the DUP previously outlined was that those who are responsible to the Assembly should be accountable to the Assembly. I do not mind whether that is done through a full Assembly meeting or through the Committee of the Centre, where the First Minister and Deputy First Minister are collectively called to account, but they must be accountable for their actions.

3026. **Mr McGimpsey:** May I also suggest, in relation to the previous section, that the Northern Ireland Audit Office (NIAO) examines the workings of the North/South bodies in order to reassure us. They are, after all, spending money that comes straight out of the Northern Ireland block grant.

3027. **The Chairman (Mr Wells):** David, do you want me to put your proposal to the Committee and then move to a discussion of those suggestions?

3028. **Mr Ford:** I sensed that there was not full consensus on my original proposal. That was why I sought any amendments that might attract more support.

3029. **Mr McNarry:** What you have said is that you have put another bummer in front of us. You have then said that you think that you will get more support for this proposal. I assure you that I did not hear the original proposal that way.

3030. **The Chairman (Mr Wells):** I must be honest, David, neither I, nor any staff, heard it that way the first time round. However, you have clarified the proposal. I assume that there is no consensus.

3031. **Mr Campbell:** I think that you can take the silence to mean that there is no consensus.

3032. **The Chairman (Mr Wells):** We move on to the DUP proposal, which is that the relevant Minister brings the report to the Committee of the Centre or to the Assembly. Is that acceptable?

3033. **Dr Farren:** Can you read that again?

3034. **Mr P Robinson:** The DUP's proposal is that in the same way that chief executives and chairs of implementation bodies would report to Committees, the First Minister and Deputy First Minister should report either to the Assembly or

to the Committee of the Centre. We can consider which is the better mechanism annually. It would be a poor Committee of the Centre that did not call for —

3035. **Dr Farren:** I am in favour of as much discussion of North/South issues in the Assembly as possible.

3036. **Mr P Robinson:** I am in favour of as much exposure of what goes on as possible too.

3037. **Mr Ford:** That is consensus.

3038. **Mr O'Dowd:** There was not sufficient opportunity for the procedures to bed in to see what worked. Therefore, to make changes at this stage is, in Sinn Féin's view, unnecessary.

3039. **The Chairman (Mr Wells):** My understanding is simply that the report would be brought to —

3040. **Mr O'Dowd:** I understand perfectly. I do not need to have it explained again.

3041. **Mr Campbell:** Seán, you said that there were over 60 meetings. Is that right?

3042. **Dr Farren:** There were 60 meetings of the North/South Ministerial Council.

3043. **Mr P Robinson:** There have not been 60 formal meetings of the British-Irish Council, which is what you indicated earlier.

3044. **Dr Farren:** No, I was talking about the North/South Ministerial Council. I did not refer to the British-Irish Council.

3045. **Mr P Robinson:** How many British-Irish Council meetings have there been?

3046. **Mr Campbell:** Considerably fewer.

3047. **Dr Farren:** I cannot recall. I am prepared to acknowledge that there were far fewer. I never attended a British-Irish Council meeting. Like Gregory, I was not nominated to attend those meetings.

3048. **Mr McGimpsey:** There is a difference between meetings of the North/South Ministerial Council involving all Ministers and meetings of the North/South implementation bodies. The latter falls under the auspices of the North/South Ministerial Council. That accounts for the total figure of 60 meetings.

3049. **Mr McNarry:** How many meetings, Chairman, would the —

3050. **Mr McGimpsey:** Two Ministers went to meetings of the implementation bodies that were set up.

3051. **Mr McNarry:** How many practical meetings would it take to bed in, in Sinn Féin's view?

3052. **Mr O'Dowd:** How long is a piece of string?

3053. **Mr McNarry:** But you cannot operate —

3054. **Mr O'Dowd:** You are asking me an impossible question.

3055. **Mr McNarry:** Your opinion is that they have not had enough meetings to bed in. So you must have an idea of many meetings they may require before they can bed in.

3056. **Mr O'Dowd:** But they have not. Does anybody believe that any of the institutions set up under the Good Friday Agreement have had a chance to bed in? They have not. If parties can present practical alternatives or proposals, Sinn Féin will examine them; however, that is difficult in the current uncertain climate. Seán has suggested that there were 60 meetings. I do not believe that. I do not know whether he is saying that there were 60 meetings of actual Ministers across the table from each other. Is he saying that?

3057. **Dr Farren:** Yes, there were. I have that information from the General Secretary of the North/South Ministerial Council.

3058. **Mr P Robinson:** Given the time it took for the implementation bodies to bed in, there could not possibly be an argument to extend the number of implementation bodies.

3059. **Mr McNarry:** That goes right down the line. Mr O'Dowd is saying that he would not agree to an annual report of the meetings that have taken place.

3060. **Mr O'Dowd:** I am not saying that I disagree with it. I am not saying that it is a bad proposal. The institutions have not had the chance to bed in. If a proposal comes forward in a working environment, it would be worth

looking at. But to do that in the absence of a working environment is impractical.

3061. **Dr Farren:** The North/South Ministerial Council publishes an annual report. For the life of me I cannot see why we should object to an annual report being tabled by the First Minister and the Deputy First Minister and discussed in the Assembly. It is a sensible proposal, even if we were only starting from scratch.

3062. **Mr McNarry:** Indeed.

3063. **Mr O'Dowd:** We are making a mountain out of a molehill. I have already said that if it was presented in a working environment it would be worth looking at.

3064. **Mr McNarry:** But you are saying the answer is slumberland as well.

3065. **Mr O'Dowd:** Saying what?

3066. **Mr Campbell:** Let us be clear about this mountain out of a molehill. Four out of the five parties have agreed its size, whether or not it is a mountain or a molehill. We need the fifth party to agree.

3067. **Mr O'Dowd:** I have given my answer.

3068. **Mr Campbell:** If that is the case then there is consensus and if not, there is not.

3069. **The Chairman (Mr Wells):** It is clear that we do not have consensus. Mr O'Dowd has said that he is not happy with that proposal.

3070. That moves us on to Mr McNarry's proposal about the Northern Ireland Audit Office.

3071. **Mr McGimpsey:** It is that the Northern Ireland Audit Office examine the workings of the North/South bodies.

3072. **Mr P Robinson:** Are they prohibited at the present time from doing so?

3073. **Mr McGimpsey:** I only know by my own experience. I believe that they are just not doing it and should be, because public money is being spent. I know from my own experience that when we had concerns or wanted to do a check we had to call the Audit Office.

3074. **Mr P Robinson:** I am quite content with that. It is a sensible thing. Could we ask

officials to find out whether the Audit Office believes that it has any role at present?

3075. **The Chairman (Mr Wells):** Do members want to defer a decision on that matter?

3076. **Mr McNarry:** Subject to an answer from the Audit Office.

3077. **The Chairman (Mr Wells):** Can I put that proposal regarding the Northern Ireland Audit Office. Have we consensus?

3078. **Mr O'Dowd:** No.

3079. **Dr Farren:** Let us find out what the current practice is. I cannot imagine that public money is being spent without some form of accountability.

3080. **Mr P Robinson:** It would be absurd not to have it.

3081. **Dr Farren:** That is why I believe that there must be form of accountability. Let us find out what exists and then perhaps come back to the proposal.

3082. **Mr P Robinson:** To suggest that that was not a sensible proposal would be saying that it is right to watch how money is spent in Northern Ireland, but we can do whatever we want and throw millions away without any scrutiny.

3083. **The Chairman (Mr Wells):** Are we happy to accept Séan's suggestion to defer a decision until we find out where we stand?

3084. **Dr Farren:** It may be that there is accountability that meets our needs. I do not wish to be doctrinaire about this.

3085. **The Chairman (Mr Wells):** It is lunchtime. I suggest that we adjourn. Mr Molloy will take the Chair at 2.00 pm.

3086. **Mr P Robinson:** Do you want us to adjourn until 2.00 pm?

3087. **The Chairman (Mr Wells):** No. We will be back in 15 minutes to resume business. Mr Molloy will take over at 2.00 pm.

The Committee was suspended at 12.25 pm.

On resuming —

12.52 pm

3088. **The Chairman (Mr Wells):** We now have a quorum, and all parties are represented. Before lunch, we failed to reach consensus on one proposal. The second proposal concerned the role of the Northern Ireland Audit Office. Secretariat staff are liaising on that issue, and we may have a decision before the end of the day. Therefore, we will park the issue until we hear something further.

3089. Are members content that North/South Ministerial Council issues have been adequately discussed? Are there any burning issues that we have failed to cover?

3090. **Dr Farren:** I have misunderstood the procedures that we are following. When we were discussing what lessons could be learned from experiences of the North/South Ministerial Council, I mentioned only accountability and the need for Ministers to report back in detail.

3091. The SDLP urges that an obligation for Ministers to attend meetings of the North/South Ministerial Council, the British-Irish Council and the Executive be included in the Pledge of Office. Other parties hold similar views, but I want to ensure that the SDLP view is on the record.

3092. The operation of the North/South Ministerial Council was mentioned earlier, and I said that there was room for more free-flowing exchanges in the meetings. That did happen from time to time, but many of the meetings were formal because of the nature of the business that was being conducted. There has to be a certain level of formality, as proposals and propositions are brought to the meetings by those who are charged with advising the Ministers through the secretariat. The formality or informality of the meetings is a minor matter in the scale of issues that are being discussed. However, we need to examine how the business is allowed to be structured and to flow.

3093. **The Chairman (Mr Wells):** The proposal is that Ministers would be required to attend North/South Ministerial Council meetings.

3094. **Dr Farren:** Yes.

3095. **The Chairman (Mr Wells):** We will take that to a vote. Do any members wish to comment further on the North/South Ministerial Council?

3096. **Mr Campbell:** Is Dr Farren's proposal based on the premise that all the Ministers who are appointed to the Executive and who are carrying out their functions — including participation in the North/South Ministerial Council — agree to do so at the outset?

3097. **Dr Farren:** Is Mr Campbell talking now about how we choose Ministers? That is agreed first. I am saying that it would not just be in respect of the North/South Ministerial Council. The Ministers' duties should be made explicit in the Pledge of Office, not covered by "Ministers must attend all meetings". It should state that Ministers are expected to attend meetings of the Executive, the North/South Ministerial Council and the British-Irish Council. Is that sufficient?

3098. **Mr Campbell:** Therefore, what Dr Farren is proposing now is not what happened in the 1998 era.

3099. **Dr Farren:** That is correct.

3100. **Mr Campbell:** I presume that it takes account of what happened in the 1998 era.

3101. **Dr Farren:** Yes. It is based on the experience of some Ministers. Let me put it another way; it is necessary —

3102. **Mr Campbell:** Dr Farren is not normally so shy and retiring.

3103. **Dr Farren:** It is necessary that there be an explicit duty on Ministers to attend all meetings of the Executive, the North/South Ministerial Council and the British-Irish Council. There were two Ministers at any one time from Mr Campbell's party, and they did not attend any Executive meetings; Mr Campbell was complaining earlier that he did not get the opportunity to attend the British-Irish Council. If you are in for one, you are in for them all, and that must be made explicit. The SDLP is urging that the Pledge of Office contain a commitment for Ministers to attend all the meetings that they are required to attend.

3104. **Mr Campbell:** I was not complaining about not getting the opportunity to attend the

British-Irish Council; I was stating a fact and explaining how I got round it. I was not complaining that I was excluded; I was saying that an informal meeting took place after I had been excluded. I was not making a complaint that I had been excluded; it was simply a statement of fact.

3105. Is it the underlying premise of Dr Farren's proposal that there is all-party agreement on how the Executive is appointed and its functions — including ministerial involvement in the North/South Ministerial Council — and that the proposal flows from that, or is it irrespective of whether there is agreement?

3106. **Dr Farren:** That would not apply if there were no agreement. Perhaps I am being thick, but I cannot follow that logic. If we have agreed on how the Ministers are appointed, and so on, it is when they are appointed that their Pledge of Office contains a commitment to attend those meetings. I am not referring to the manner of their appointment.

1.00 pm

3107. **Mr Campbell:** Under the former system there was no agreement. If Dr Farren's proposal were transposed back in time to 1998, it might have been the case that Ministers who chose not to attend the Executive would have had no choice but to attend the North/South Ministerial Council. Is that correct?

3108. **Dr Farren:** I can see what Mr Campbell is getting at now. My proposal would require Ministers to attend all meetings; there would be no opt-out clause. Is that correct?

3109. **Mr Campbell:** Yes.

3110. **Dr Farren:** Is there any objection to that?

3111. **Mr Campbell:** If Ministers disagreed with the underlying rationale for the Executive being established and the appointment of Ministers to carry out certain functions, they would not have a choice.

3112. **Dr Farren:** Rather than talk about what has happened since 1998, we should learn from experience. I assume that the next Executive will be established according to what we have agreed to be the basis of its formation and

whether we have agreed to change the basis of its formation.

3113. **Mr P Robinson:** That is why Dr Farren's proposal is not necessary. The only justification for it is what has happened in the past. Those circumstances would not happen in the future — at least, not in the foreseeable future. Twenty years down the road, perhaps, a party might not accept it.

3114. **Dr Farren:** What is wrong with Ministers being required to commit themselves to attend —

3115. **Mr P Robinson:** That is like saying: "What would be wrong with a Member of Parliament who has been elected being required to attend Westminster?" Is that what Dr Farren means?

3116. **Dr Farren:** Not quite. I refer to Ministers.

3117. **Mr P Robinson:** What about the responsibility of elected representatives?

3118. **Mr Ford:** There may not be a valid comparison between people who stand for election to Westminster on an abstentionist platform, and Ministers. I have a sense of déjà vu from the discussion that we had on strand one matters. Why would a Minister want to be part of an Executive if he or she did not have confidence in it, or if he or she were not prepared to play a full role in it? It seems that positions have been reversed on opposite sides of the table.

3119. **Mr P Robinson:** The answer is: to stop somebody else from having it.

3120. **Mr Ford:** That is not necessarily a good argument for the construction of an Executive. Although one might make that case to prevent somebody else from occupying a parliamentary seat, an Executive has other responsibilities.

3121. **Dr Farren:** The proposal simply provides added reassurance that Ministers will discharge their duties.

3122. **Mr Campbell:** I certainly do not have a problem with the proposal, provided that it is based on that premise.

3123. **Dr Farren:** How the premise relates to the formation of the Executive is not the topic of discussion: it is what will happen when several Ministers have been nominated and, in accepting their nominations, have committed themselves, through the Pledge of Office, to attend meetings of the Executive, the North/South Ministerial Council and the British-Irish Council.

3124. If it were assured that we would all be good boys and girls, perhaps rules and regulations would not be needed. Unfortunately, however, they are needed because we are not always good boys and girls.

3125. **Mr Campbell:** The proposal would not have to stop there.

3126. **Dr Farren:** I know that.

3127. **Mr Campbell:** Other conditions could be included, such as Ministers having to do x, y and z, and we must find out, in advance, whether each and every one of them fulfils those obligations.

3128. **Mr P Robinson:** Perhaps that is the issue. It is more a matter for the ministerial code.

3129. **Dr Farren:** The DUP pushes for that kind of approach from time to time.

3130. **Mr P Robinson:** It is absurd. If there were an agreement to form an Executive, it is unconscionable that those who form that Executive and who want it to be formed would not attend whatever meetings were required.

3131. **Dr Farren:** I would like to think that that would be the case.

3132. **Mr McNarry:** To cut to the chase, are we saying that the assurance is that the precedent created and operated by the DUP in the previous Executive would not be followed by others in any newly formed Executive? Is that a restraining order? Are we looking for that assurance? That precedent worked, and the fact is — I will choose my words carefully — that the DUP got away with it. DUP Ministers saw everything to do with the Executive and the cross-border bodies. They were familiar with all those issues; the Ministers rotated, but they stayed outside the room and did not participate

in Executive decisions. Is that what we want to curtail, so that no one else can do it?

3133. **Dr Farren:** The DUP seeks reassurance from others on various matters, which, in a restoration situation, could be assumed in any case. In our view the DUP sinned on previous occasions — it may not be willing to accept that fact. The SDLP wants a reassurance that all key duties will be fully respected and acted upon. That is the point that I am making.

3134. **Mr P Robinson:** Let us make it clear. During the course of the previous Assembly and Executive, the DUP was not simply in opposition to those who were in the Executive; it was in opposition to the whole process. It sought to oppose and expose that process, which is why it took the position that it did. Because of the strength of the party, we have to assume that if a new Executive were formed, it would be with the consent of the DUP, so the issue would not arise. However, that matter should be included in the ministerial code.

3135. Other matters flow directly from that issue, such as the right of Ministers who have a prime responsibility for a subject to be the chosen Minister. Those issues must be addressed. If the First Minister and the Deputy First Minister decide that someone other than the Minister of Education should speak about an education issue, Members may feel aggrieved. There are issues surrounding who should be the Minister.

3136. In normal circumstances, the appropriate Minister would be selected, but there might be circumstances in which that might not happen. If the Minister of Education held a peculiar view on a particular education issue that was inconsistent with the Executive's position, it might be deemed appropriate to select somebody else. Those issues could be discussed in the context of the ministerial code.

3137. **Mr Campbell:** In which case Dr Farren would be the sinner.

3138. **Dr Farren:** I am often the sinner.

3139. **Mr Campbell:** That is the first step.

3140. **Dr Farren:** Without prejudice to the reference to the Pledge of Office, I accept what

Mr Robinson says about the ministerial code being an appropriate place in which to include a commitment to the responsibilities that I outlined. If that is a first step on the issue, let us ensure —

3141. **Mr P Robinson:** I have no difficulty with that, because I am not in any way embarrassed by past practice. I always thought that the people who devised the system that allowed “Ministers of Opposition” needed their heads felt in the first place. It was their system, not mine.

3142. **Mr Ford:** I am delighted that Mr Robinson feels that he is in a position to give guarantees of good behaviour in the future.

3143. **Mr P Robinson:** The DUP is always well behaved, but I cannot guarantee that for anybody else.

3144. **Mr Ford:** Mr Robinson seemed to be guaranteeing that there was no need to include responsibilities for attending meetings in the Pledge of Office or in the ministerial code because the DUP intended to behave itself in the future. The implicit assumption was that everybody else was guaranteed to behave themselves anyway.

3145. There is a valid point —

3146. **Mr P Robinson:** I am glad that Mr Ford recognises that that was not a valid point.

3147. **Mr Ford:** There is a further valid point: if an issue has arisen about the duty of Ministers to attend meetings, an issue will almost certainly arise about the right of Ministers who have a particular interest to attend. The Alliance Party has concerns about the sectarianism of nominating Ministers to North/South Ministerial Council meetings, whereby no unionist Minister can attend without a nationalist Minister also having to attend to keep an eye on him or her, and vice versa. That would be rendered completely unnecessary if the Executive operated on the basis of collective responsibility, in the expectation that Ministers could agree not only on attendance of meetings but on what the Executive policy should be in the first instance.

3148. **Mr P Robinson:** It would certainly be less of an issue, but it would not prevent an item

being included on the agenda that had not perhaps been considered by the Executive — or, for that matter, an issue that arose during a discussion on an agenda item. Those circumstances would have to be considered.

3149. **Mr McNarry:** It is an interesting discussion, but I do not know where it is going.

3150. **The Chairman (Mr Wells):** That had occurred to me.

3151. **Mr McNarry:** As far as I can tell, Mr Robinson has given us an assurance that the DUP will participate. As to behaviour, there can be no assurances on that. Dr Farren's proposal seems to be looking for assurances along the lines that he has teased out. That is either sufficient or it is not; I hope that it is and that we can move on.

3152. **The Chairman (Mr Wells):** The proposal is that the nominations to attend North/South Ministerial Council meetings, and the requirement to attend, be incorporated into the ministerial code. Is that acceptable?

3153. **Mr P Robinson:** Some other issues probably need to be incorporated as well, such as who should attend.

3154. **Dr Farren:** Can I take it that whatever else Mr Robinson is hinting at would be —

3155. **Mr P Robinson:** I am talking about ensuring that the appropriate Minister attends — for example, if his or her departmental issues are to be addressed.

3156. **Dr Farren:** In so far as was possible, that was attempted during the previous Assembly, but it is a separate issue.

3157. **The Chairman (Mr Wells):** Would the inclusion of the word “nominations” in the proposal cover that concern as to who attends? Is it wide enough? We will return to the ministerial code at a later stage, and we will not preclude any debate on these issues.

3158. **Mr O'Dowd:** Can I suggest that the matter be left until then? I have no difficulty with the proposal as it currently stands, but I am concerned by Peter Robinson's remark about the “appropriate Minister”. For instance, if a Minister holds a peculiar view on, for example,

education, I see a line for exclusion in that. It would be more useful to return to this matter during the debate on the ministerial code.

3159. **The Chairman (Mr Wells):** Do members have any problems with the general proposal?

3160. **Mr O'Dowd:** Can you read it out again, please?

3161. **The Chairman (Mr Wells):** The proposal is that nominations to the North/South Ministerial Council meetings, and a requirement to attend, be incorporated into the ministerial code.

3162. **Dr Farren:** My final point is that that duty in the ministerial code would probably include the British-Irish Council and the Executive.

3163. **The Chairman (Mr Wells):** By putting that comment in Hansard, you have achieved that. There will be a wide-ranging discussion on the ministerial code, so you can be guaranteed that those issues will be raised again.

3164. Can we take it that there are no other burning issues on the North/South Ministerial Council? Are members content?

Members indicated assent.

3165. **The Chairman (Mr Wells):** Are members happy enough to move on? That being the case, we can move on to the other issues that arose from the various submissions and the Hansard report.

3166. We will follow the usual format, and members should speak for a maximum of five minutes on one or all of the issues — not that anyone has taken the full time so far this morning. Members can then indicate to me if they wish to ask questions or raise a subject matter.

3167. **Mr Ford:** I must confess that I am not sure what the first point means:

“Assembly decision for issues outside departmental responsibilities”.

3168. **The Chairman (Mr Wells):** That came from the DUP.

3169. **Mr Ford:** I am not sure what that means in this context. I shall await with interest what the DUP has to say on that. We have already tossed around the matter of the interdependency of the institutions.

1.15 pm

3170. The establishment of a North/South consultative forum is part of the agreement and must be considered, although I suspect that I will probably apply the O'Dowd argument to that, if John does not mind my misquoting him. I agree that as there was so much difficulty in establishing a role for the Civic Forum, it would be better to have the institutions up and running before we attempt to make further progress.

3171. I have already made clear my position on the North/South parliamentary forum and on developing other cross-border bodies as appropriate.

3172. **The Chairman (Mr Wells):** The point:

"Assembly decision for issues outside departmental responsibilities"

3173. was taken from the DUP's written submission. No doubt Mr Robinson will take the opportunity to explain that in his contribution.

3174. **Mr P Robinson:** You may not doubt it, but I need someone to indicate what that is shorthand for in our proposals.

3175. **The Chairman (Mr Wells):** I have a copy here:

"NSMC/BIC agendas. The relevant legislation would be amended as necessary to make clear that where a matter on the agenda for a meeting of the NSMC or BIC was one outside the responsibilities of a Minister due to attend, because it was outside his or her departmental responsibilities and not covered by a transfer of authority from another Minister it would be subject to a decision of the Assembly."

3176. **Mr Ford:** That is clear now.

3177. **Mr P Robinson:** You have clarified that, so I do not now need to speak about it.

3178. I will start by addressing the point on the status of the North/South bodies and whether they should stand alone or be part of the British-Irish Council. The DUP believes that the British Isles as a whole should be the axis on which we should compartmentalise. Therefore, North/South bodies should not stand alone. Rather

than having a separate relationship, they should form part of the overall relationships within these islands, and there should be a British-Irish axis.

3179. The DUP has said publicly on several occasions that it will consider the establishment of a North/South parliamentary forum in the context of an overall agreement. We have misgivings about the type of forum that is being suggested. The DUP believes in a parliamentary "association" as opposed to what is being defined as a parliamentary "forum". Any Member of Parliament can join and take part in the proceedings of the parliamentary associations at Westminster. The North/South parliamentary forum would be restricted. Only a percentage of people — in accordance with party strengths, and so forth — would be entitled to attend. It would not be an inclusive body. Therefore, it might be set up for purposes other than parliamentarians getting to know each other and share views on issues.

3180. The North/South consultative forum would probably have as much value as the Civic Forum — and everyone knows my view on that from previous discussions. There are enough areas in the labyrinth of structures that we have been considering to allow for consultation with civic society. We do not need to construct or, more importantly, pay for another one. I am not a great supporter of that proposal.

3181. The DUP believes that the British-Irish Council should have a secretariat. The secretariat of the North/South Ministerial Council has provided much of the drive that led to the multiplicity of North/South meetings. The lack of a similar secretariat on the British-Irish Council, or east-west front, is probably one reason that it has a much lower profile. If the intention is to have equivalence between the two bodies, that will happen only if a secretariat drives forward the British-Irish Council.

3182. **The Chairman (Mr Wells):** Is that a formal proposal?

3183. **Mr P Robinson:** Yes.

3184. **Mr O'Dowd:** We need to discuss further what the DUP means by:

“Assembly decision for issues outside departmental responsibilities”.

3185. Sinn Féin has already commented on the interdependency of the institutions. We are in favour of establishing a North/South consultative forum, a North/South parliamentary forum and other cross-border bodies.

3186. The status of North/South bodies is legislated for under the 1998 Act and the Good Friday Agreement, and we see no need to change that.

3187. **The Chairman (Mr Wells):** Does the SDLP wish to comment?

3188. **Dr Farren:** Since the DUP raised the first point:

“Assembly decision for issues outside departmental responsibilities”

3189. I am wondering whether it is related to paragraph 3(iii) of strand two of the Good Friday Agreement:

“The Council to meet in different formats: in an appropriate format to consider institution or cross-sectoral matters (including in relation to the EU) and to resolve disagreement.”

3190. There was discussion during some of the general plenary meetings of the North/South Ministerial Council of how we might meet in cross-sectoral format. I wonder whether that was in the minds of the DUP with respect to matters outside departmental responsibilities.

3191. I am in favour of what the NSMC was proposing to do, although we never got round to meeting in cross-sectoral format. Alongside the meetings that were held in the specific sectoral formats, Ministers with appropriate responsibilities could have met to address issues that crossed their departmental boundaries. Given that there is no immediate congruence between all the portfolios, North and South, it might be necessary for more than one Minister from either side to attend as the lead Minister on occasions where such matters were being addressed. That requires consideration.

3192. We have already heard quite a bit about the interdependence of the institutions. I accept the principle.

3193. I would not reject the notion of a North/South consultative forum as easily as Mr Robinson seems to. The agreement makes provision for consideration to be given to the establishment of an independent consultative forum and the bringing together of representatives from leading sections of civic society North and South, perhaps twice a year. That would be a helpful source of advice from the perspective of those particular sectors. We should consider the establishment of such an independent consultative forum. I believe that initial ideas on this were being put together by the North/South secretariat before suspension.

3194. As for the parliamentary forum, it would be useful to have that in the more structured way that is suggested in the agreement. It would be a forum in which matters of mutual interest and concern would be discussed, and it would provide an opportunity for people to get to know one other, and for the type of informal contacts that are often wanting in North/South relationships at political and, in particular, parliamentary level, to be positively developed.

3195. I have not spoken specifically about the need for other cross-border implementation bodies. However, the SDLP has a number of proposals that would enhance the range and work of the existing bodies and which would allow us to consider other areas that could be included in their remits. The Assembly would have to agree to any further development of the North/South areas of co-operation and the North/South implementation bodies. We should not shy from such a discussion. However, we must always bear in mind that whatever our ideological approaches, the key test is whether those bodies are of practical benefit to people, North and South.

3196. Finally, we do not accept the arguments for the DUP's inclusive approach on this matter. The intensity and need of North/South relationships are such that they could not be addressed effectively in a council, as the DUP has proposed. North/South relationships are different, so that proposal does not commend itself to us in any way.

3197. **Mr McGimpsey:** I will deal with the issues in no particular order, as we have already drifted across several of them this morning.

3198. The Belfast Agreement clearly states that the institutions are mutually interdependent and that one cannot successfully function without the other. As I said this morning, on 8 March 1999 Paul Murphy said in the House of Commons:

“The North/South Ministerial Council, to which the bodies are accountable, would disappear if there were no Assembly. Similarly, the bodies envisaged in the agreement would disappear.”

3199. That is the deal.

3200. The North/South consultative forum is a little offering straight out of the comprehensive agreement, which arose from discussions that the two Governments had with the DUP and Sinn Féin. We are just lifting bits out of it. The Belfast Agreement states:

“Consideration to be given to the establishment of an independent consultative forum.”

3201. The UUP has not been persuaded of the need for a North/South consultative forum. It does not even believe that the Civic Forum for Northern Ireland has fully vindicated itself. As the party considers the Civic Forum to be redundant, it would therefore not want to see the creation of an even bigger, full-blown forum.

3202. I now turn to the North/South parliamentary forum. The comprehensive agreement states:

“The Northern Ireland Executive would encourage the parties in the Assembly to establish a North-South parliamentary forum bringing together equal numbers from the Oireachtas and the Assembly, and operating on an inclusive basis.”

3203. As matters stand, that would be premature. I do not see how the establishment of such a forum would make a difference, as far as reaching agreement is concerned. Mechanisms already exist to facilitate North/South discussions, if they are to be entered into.

The establishment of a parliamentary forum would thus be unnecessary, given the number of other North/South bodies that are already floating about.

3204. To discuss the creation of more cross-border bodies is pretty much to open a Pandora’s box. The agreement was “six-six” — that six implementation bodies would be set up and six further areas of co-operation would be identified — and one was a quid pro quo for strands one, two and three, which are each mutually interdependent. When one element of a quid pro quo agreement is altered, it is very difficult to maintain that agreement. It seems that there will be no agreement on the proposal to increase the number of cross-border bodies. However, the comprehensive agreement proposes the establishment of a review group to examine objectively the case for additional bodies and areas of co-operation. Again, as matters currently stand, that is a long shot. It would be a step too far.

3205. Are there any issues that I have missed? As regards:

“Status of North South Bodies (stand-alone or part of the British Irish Council)”,

3206. our problem with the British-Irish Council was that it did not have a satisfactory secretariat and, therefore, functioned poorly. I would be concerned if that were reinforced. The British-Irish Council must work and operate properly. That requires a three-strand approach, with each strand dependent on the others. If one does not work, the others do not work: that was the deal. I am not clear how that would operate under a British-Irish Council. My party sees the British-Irish Council as being important because it recognises the common polity of the British Isles, North/South bodies and strand one as part of the quid pro quo.

1.30 pm

3207. As regards:

“Assembly decision for issues outside departmental responsibilities”,

3208. that has been washed around today. However, nobody has defined what the issues

are. It seems to me that the Office of the First Minister and the Deputy First Minister, with its cross-cutting and co-ordinating role, would have a responsibility to bring matters that are outside departmental remits to the Assembly for decision.

3209. **Mr P Robinson:** The establishment of an independent North/South consultative forum was not part of the comprehensive agreement. Annex B, paragraph 8 of the proposals for changes in strand two and strand three institutions contains carefully formulated terminology suggesting that the establishment of a North/South consultative forum would be a matter for the Northern Ireland Executive to determine.

3210. There is a conflict with regard to the review of the implementation bodies that is proposed in the comprehensive agreement. The unionist view is that the number of implementation bodies should be reduced; the nationalist view is that there should be additional ones. All that shows is that there was no agreement on the issue. The Governments took that into account.

“Assembly decision for issues outside departmental responsibilities”,

3211. it appears, refers to paragraph 4 of the proposals on strands two and three in the comprehensive agreement, which states that when a topic arises that does not fit neatly into a departmental portfolio, then rather than have a random Minister take responsibility for it, the Assembly would take a view. I am not sure that that is likely to occur often. I suppose that it will depend on how many Departments there are. There is already conflict within some of them. For instance, the Department for Regional Development (DRD) is responsible for energy policy. In my view, energy is better dealt with by the Department of Enterprise, Trade and Investment (DETI), though one could argue that it is the responsibility of DRD. If an energy policy issue arises, therefore, it could be decided upon by the Assembly.

3212. **The Chairman (Mr Wells):** Do you intend to make a proposal on matters that fall outside the remit of a specific Minister? Does the party feel particularly strongly about that?

3213. **Mr P Robinson:** There are two ways to deal with that. One is for the Executive to agree on which Minister should deal with the subject. If there were conflict with regard to joint ownership of it, it would, presumably, be the role of the First Minister and the Deputy First Minister to determine which Minister would speak on behalf of the Executive. As we discussed earlier with regard to the ministerial code, it is difficult to determine which Minister is responsible for an area where there is conflict or an overlap.

3214. **The Chairman (Mr Wells):** So you are just putting it on the record, as it were.

3215. There was one suggestion that seemed non-controversial, which was that the British-Irish Council should have its own secretariat — in the same way that the North/South Ministerial Council has its own secretariat. There did not seem to be any great opposition to that. May I put that to the meeting to get it out of the way?

3216. **Mr McGimpsey:** A standing secretariat.

3217. **The Chairman (Mr Wells):** Are there any problems with that?

3218. **Mr O'Dowd:** I will be the fly in the ointment again. We will have no consensus on that matter.

3219. **Mr P Robinson:** I assume that Sinn Féin is moving back from its 2004 position on that issue.

3220. **Mr O'Dowd:** As Mr Robinson is aware, the comprehensive agreement was not implemented. His party walked away from it.

3221. **Mr P Robinson:** There are two issues that flow from that. First, it is clear that Sinn Féin walked away. They took cold feet and held a press conference before the discussions had even concluded. Secondly, whether the agreement was proceeded with or not, I do not recall that Sinn Féin had any difficulty with this issue back in 2004, and I wonder, irrespective of what happened to the overall agreement, why it is a problem now.

3222. Are we saying that there should not be a secretariat — that there is some point in

principle why we should not have a secretariat for east-west matters? What is the point of principle?

3223. **Mr O'Dowd**: I am not saying that it is a point of principle. I said that we are not going to get consensus on it today. Mr Robinson said earlier that there might be matters that would be raised at future engagements; this may be a matter for a future engagement.

3224. **The Chairman (Mr Wells)**: We do not have consensus on that.

3225. Dr Farren, did you want to make a proposal for a North/South consultative forum? You seemed quite keen on that idea.

3226. **Dr Farren**: There is provision for consideration of the establishment of an independent consultative forum, although the comprehensive agreement does not explain by whom the consideration should be given. Is it solely the responsibility of the two Administrations — the Executive, and the Cabinet in the South? Leaving that aside, we would certainly propose in the course of any consideration that there be an independent consultative forum.

3227. **Mr McGimpsey**: May I offer some clarification on this issue? Mr Robinson appeared to say that it was not agreed in the comprehensive agreement. In annex B it is quite clear that:

“The Northern Ireland Executive would support the establishment of an independent North/South consultative forum appointed by the two Administrations”.

3228. Not “could” but “would”. There is clearly an imperative there.

“The Northern Ireland Executive would encourage the parties in the Assembly to establish a North-South parliamentary forum”.

3229. The point of the latter is that the parties in this deal, as part of the Northern Ireland Executive, “would encourage” the parties in the Assembly. We can take it as read that the two parties involved with the two Governments would be in there as part of that.

3230. We had a little exchange there in which Mr O'Dowd said that the comprehensive agreement was not implemented and that the DUP walked away; and Mr Robinson said that Sinn Féin walked away. Clearly, there was some form of pre-agreement agreement between the two Governments, Sinn Féin and the DUP that they:

“would support the establishment of an independent North/South consultative forum”

3231. and

“would encourage the parties in the Assembly to establish a North-South parliamentary forum”.

3232. I am concerned about those side deals and where the real discussion is going on. Dr Farren can make his proposal. I am already on record as saying that the Northern Ireland Civic Forum is redundant. I do not see why we need another one. There are enough bodies floating around for co-operation without yet another — this North/South parliamentary forum.

3233. I am concerned that we will go through this dance, and then at the end of it all, when Sinn Féin, the DUP and the two Governments get together for discussion as they inevitably will during the autumn, this is all going to cough out.

3234. John says that the comprehensive agreement was not implemented and that the DUP walked away; Peter says that it was Sinn Féin that walked away from it. Therefore, I wonder about the point of much of this discussion.

3235. **Mr P Robinson**: What happened is public knowledge. We were in the final days of negotiations when Mr Adams called a press conference and took his ball home with him. That was the end of that process. That annoyed the Government so much that they came over here and announced proposals that they had been considering anyway.

3236. It is very clear that the DUP did not, at any stage, agree to the establishment of an independent consultative forum. The two Governments put forward the proposal, but the proposal required that its establishment be an

action of the Northern Ireland Executive. Therefore, it did not have our support. It would not have happened under present circumstances.

3237. **Mrs Long:** Whatever else might be said about the comprehensive agreement, we can at least agree that it was not agreed.

3238. I want clarification of Seán's proposal. Does he propose that consideration be given to a consultative forum being set up or that the forum be set up? Those two proposals differ slightly. We would be happy with one, but probably not with the other.

3239. **Dr Farren:** I am following the proposal in the Good Friday Agreement, which states:

"Consideration to be given to the establishment of an independent consultative forum appointed by the two Administrations."

3240. The SDLP certainly believes that a consultative forum should be established, not because it wants a plethora of bodies, but because such a forum would make a useful contribution and would enable leading representatives from key sectors of civic society — and not always the same key sectors — to engage in consultation. We must consider how that kind of advice can be best provided. A consultative forum would enable the future development of North/South relations in general and, in particular, of those areas for which the North/South Ministerial Council has responsibility. My proposal is that consideration should be given to a consultative forum. Have we moved on to considering its formal establishment?

3241. **Mrs Long:** That was what I want to be clarified. I want to know whether your proposal was that we should consider the establishment of a forum or agree to its establishment.

3242. **Dr Farren:** I am saying that we should consider it. I do not believe that today's discussion amounts to a comprehensive consideration of the matter. The discussion has been on the general concept of a forum.

3243. **Mr P Robinson:** Neither do I. No one has yet put a case for a consultative forum, other than to say that the agreement provides for it. Nobody has told me why it would be a good

thing, why it is necessary or why the money to be spent on it would not be better spent elsewhere. What is the value of it?

3244. **Dr Farren:** I tried to explain that a few moments ago.

3245. **Mr P Robinson:** The only thing that you said was that it was part of the Belfast Agreement.

3246. **Dr Farren:** I said that it would be useful for representatives from key sectors of civic society to meet. I support the case for a consultative forum in the same way that I support the case for the Civic Forum. If the Committee wants serious consideration of the proposition, I am prepared to bring more detailed proposals.

3247. **Mr P Robinson:** The general view of the Civic Forum was that, as a limited number of people were involved, a limited part of civic society was represented. There are many other ways in which representatives of civic society can give their views to Government.

3248. Exactly the same applies to a North/South consultative forum to which there are alternatives that do not involve further expenditure. There is no constitutional issue: it is just a waste of money.

1.45 pm

3249. **Dr Farren:** We will need evidence of what you referred to as the "general view". I do not include myself in the "general view" that the Civic Forum was a waste of time and money and was unrepresentative. I do not accept those judgements. We must not be so dismissive. Quite a number of highly respected people participated in the Civic Forum. There were frustrations but those were a result of the frustrations that affected the general political situation. We should give serious consideration to the retention of the Civic Forum and the creation of a North/South consultative forum, as proposed in the Good Friday Agreement.

3250. **Mr McGimpsey:** A North/South consultative forum is mentioned in the agreement. However the agreement states only that parties should give it their "consideration".

The UUP has considered it and was not convinced. That remains our position on an interparliamentary forum and the Civic Forum.

3251. **The Chairman (Mr Wells):** Unless I hear otherwise, it is clear that the UUP and DUP do not agree to either the consideration or establishment of a North/South consultative forum. As there is no consensus, Seán's proposal falls.

3252. We have examined the catch-all "Other Issues" category. Should any other points have been raised during that discussion?

3253. **Mr Ford:** Yes. When we were discussing an interparliamentary forum, Peter talked about an interparliamentary association.

3254. **Mr P Robinson:** Instead of a forum.

3255. **Mr Ford:** Is that a formal proposal?

3256. **Mr P Robinson:** I do not think that it would achieve consensus.

3257. **Mr Ford:** You are not normally so reticent.

3258. **Mr Campbell:** It is catching.

3259. **Mr P Robinson:** I do not see the benefit of putting forward a proposal that I know will not run.

3260. **The Chairman (Mr Wells):** Are there any other points?

3261. **Mr D Bradley:** The only time that we reached consensus all day was at the break for lunch, since when there has been none. Sinn Féin objected to the annual presentations being made in the Assembly on behalf of the North/South Ministerial Council and also to the east-west body having a secretariat. Those minor proposals are not high on the Richter scale. Nevertheless, they should have been agreed today and they were not.

3262. **The Chairman (Mr Wells):** We have not made as much progress on reaching agreement as we did on Friday. However, the Committee operates under the rule of consensus.

3263. **Mr P Robinson:** Is a change in personnel needed to reach consensus?

3264. **Mr Campbell:** Might the two things be linked?

3265. **The Chairman (Mr Wells):** I do not know, but it is disappointing that we have not made much progress today. However, as we are bound by the rule of consensus, we must proceed on that basis.

3266. The Committee Clerk has just made an important point. Normally, when the Committee has not reached consensus, those who objected have been asked to indicate whether they merely disagree with certain proposals or consider them to be major impediments to devolution. When the reports are being written, it is important to distinguish between the issues that are major obstacles over which parties will die in a ditch and those on which there is merely disagreement.

3267. Does Sinn Féin consider anything to which it has objected to be an impediment to devolution?

3268. **Mr O'Dowd:** No. I was about to make that point when I noticed that the Committee Clerk was speaking to you. None of the issues to which Sinn Féin has objected today are deal breakers. We may reach agreement on some after further discussion and debate, but we will simply not reach consensus on others today. That is normally how politics works.

3269. **The Chairman (Mr Wells):** There is still no decision on the Northern Ireland Audit Office issue, but I will let members know when I receive it.

3270. Is that as far as we can take the other issues?

3271. **Mr O'Dowd:** Did the DUP and the Ulster Unionist Party not withdraw consensus from a few matters as well?

3272. **Mr P Robinson:** I want to make it clear that some issues are deal breakers. The accountability of the North/South Ministerial Council to the Assembly in strand two is a vital issue for the DUP.

3273. **The Chairman (Mr Wells):** What about the Ulster Unionists?

3274. **Mr McGimpsey:** Nothing that we have discussed today is of strategic importance. Everything can be talked through.

3275. **The Chairman (Mr Wells):** The Alliance did not break any consensus today.

3276. **Dr Farren:** We will come back to the issues on which we have not reached agreement. We will then weigh up what has and has not been agreed.

3277. **The Chairman (Mr Wells):** Are there any other issues that members feel have not been adequately dealt with? If I do not hear from anybody, we will move on to strand three.

3278. There are some housekeeping and procedural issues to deal with. Members will recall that the Secretary of State referred a work programme to the Committee on 3 July 2006. Under “October” it states:

“Parties conclude discussions and finalise draft Programme for Government and draft Ministerial Code.”

3279. We need to decide how to proceed. Members have spoken at length this morning about the ministerial code, and it has come up several times in deliberations during the past few weeks. What do members feel is the best way of taking the issue forward so that we have something for October?

3280. **Mr P Robinson:** On the basis of our discussion earlier, we first need to clarify whether we are talking about the code of conduct in schedule 4 of the Northern Ireland Act 1998; the ministerial code drafted by the previous Executive; an amendment to the code of conduct; or a new ministerial code to be put in legislation with key elements of the existing draft ministerial code. The draft code ran to about 50 pages. Perhaps it would be too chunky to go into a schedule to the legislation.

3281. **The Chairman (Mr Wells):** It is important that we clarify the issue. I assume that no member has the answer to those questions this afternoon.

3282. **Mr P Robinson:** We generally agree that the ministerial code should be put on a statutory basis. Could we provide a paper, for the next meeting or the one after that, on what we see as the key elements that should be in a ministerial code or in the statutory element of a ministerial

code? Presumably the Executive could produce, and the Assembly could agree, the full ministerial code when an Executive is up and running.

3283. As regards legislation, and the elements to be legislated for, we have talked about support for the institutions of law. It could well be that we would have some unanimity on that point, and that that should be included in statute.

3284. **Dr Farren:** It is sensible to ask parties for their views on what they regard as essential elements to be included in statute and what else is needed. I think that that proposal was made earlier this morning.

3285. **The Chairman (Mr Wells):** Would the Committee prefer the parties to do that, rather than asking the Clerks to go through the various documents and trawl out the views? Is it simply that a fresh paper from each party is required?

3286. **Dr Farren:** Obviously, parties are going to have their own views anyway. Could the secretariat do what you are suggesting?

3287. **Mr P Robinson:** We could amend it, so it does not matter which way we choose to go.

3288. **Dr Farren:** It would not preclude parties from preparing their own papers. If the secretariat would like to be helpful in trying to identify the common areas then that would be a useful contribution.

3289. **Mr P Robinson:** Are we asking them to produce a paper with common issues, or the issues that have been raised by one or more parties?

3290. **Dr Farren:** Could they do both?

3291. **The Committee Clerk:** We can study Hansard to see what views have been expressed, and those that have not, and we will be able to see where there has been diversity among parties. We can highlight those issues and circulate them to members if they so wish. That could be a useful starting point.

3292. **Mr P Robinson:** One difficulty will be that we agreed in general terms that the ministerial code should be used to provide greater accountability. However, specific proposals will be needed when producing the code itself.

3293. **Mr McGimpsey:** There is also the matter of the draft document's status — I am still not certain about that. Part of it is marked "agreed version". However, the rest is not marked.

3294. **The Committee Clerk:** The Office of the First Minister and the Deputy First Minister said that that device is used to differentiate that part from earlier drafts.

3295. **Mr McGimpsey:** Is this draft code just one of many that have been sent back and forth?

3296. **The Committee Clerk:** The one that you are using is the final draft.

3297. **The Chairman (Mr Wells):** Perhaps it would be better that the parties draw up their views on this important issue. Do we have a time span for the next meeting? Presumably, it will be next Monday.

3298. **Dr Farren:** Would it be helpful if the parties submitted their papers to the secretariat before the next meeting, so that Committee staff could identify the common areas?

3299. **Mr P Robinson:** Is it necessary to have this before the next meeting?

3300. **Dr Farren:** No; perhaps the one in a fortnight's time.

3301. **The Chairman (Mr Wells):** That date will be 4 September 2006. Is it possible to submit papers to the Clerks in time for the next meeting? That will give them a week to go through the papers. A brief list of options is all that is required.

3302. Having considered the code of conduct, what shall we do about the Programme for Government?

3303. **Mr P Robinson:** We have a long road to travel before we reach that stage.

3304. **The Chairman (Mr Wells):** The Secretary of State is expecting us to conclude discussions and finalise the draft Programme of Government by the end of October.

3305. **Mr O'Dowd:** Has the Committee formally agreed the work plan?

3306. **The Chairman (Mr Wells):** It has been laid down as a Holy Writ from the Secretary of State. The Committee did not agree to any of it.

3307. **Mr O'Dowd:** In the past, certain members always noted reference to it. I have no problem with it.

3308. **The Chairman (Mr Wells):** We want to make members aware of those two issues.

3309. **Dr Farren:** If there is a reasonable level of agreement on the report from the Subgroup on the Economic Challenges facing Northern Ireland, that would form a significant part of a provisional — if I can use the word "provisional" — Programme for Government. Any Programme for Government would have to be endorsed by the Government — those who are going to participate in it — and that would go beyond this Committee.

3310. **Mr P Robinson:** With respect, not all of the parties here would be involved in drafting a Programme for Government.

3311. **Dr Farren:** That is why I used the word "provisional".

3312. **Mrs Long:** That issue was raised when the timetable was put in front of us. Although the Alliance Party would be content to contribute ideas, it would most likely be in opposition —

3313. **Dr Farren:** Do not count yourselves out.

3314. **Mr Ford:** Everybody else seems to.

3315. **Dr Farren:** We do not.

3316. **Mrs Long:** My party would, perhaps, not be welcome in those discussions.

3317. **Mr P Robinson:** Unless there is a voluntary coalition.

3318. **Mrs Long:** Of course.

3319. **Mr Ford:** The tenor of discussions in recent weeks would suggest that a voluntary coalition is unlikely to attract consensus.

3320. **Mrs Long:** There is certainly no consensus on that matter.

3321. **Mr Ford:** I want to give a serious response to Dr Farren's point, which others may or may not choose to take any notice of. I have no doubt that the work of the Subgroup on the Economic Challenges facing Northern Ireland will be of some use to those who are working

on a Programme for Government, but it does not cover that much ground. Its focus is more on private-sector growth than the responsibilities across the full range of Government Departments.

3322. **Dr Farren:** I appreciate that.

3323. **Mr Ford:** It would be interesting if somebody could produce the previous Programmes for Government, the most recent of which was being debated in the Assembly just before suspension. It would be useful to ascertain how much of those programmes has been carried out thus far. That might expose a few gaps and enable members to discuss possibilities for the next Programme for Government.

2.00 pm

3324. **Mr P Robinson:** Mr Chairman, you seem to be labouring under the misapprehension that the Secretary of State's edict contains the work plan for this Committee, but, of course, it does not. It is his timetable, which takes us through to November. It includes items that have nothing whatsoever to do with this Committee, one of which is probably the Programme for Government.

3325. **The Chairman (Mr Wells):** The Committee could decide that it would —

3326. **Mr P Robinson:** It could not.

3327. **The Chairman (Mr Wells):** Well, it could, but perhaps it will not.

3328. **Mr P Robinson:** It could not. It is for the Executive to determine the Programme for Government. This Committee will not be the Executive, so what possible benefit can be gained from its discussing the draft Programme for Government?

3329. **Mrs Long:** The Programme for Government is included in the Committee's terms of reference. During the Committee's first few weeks, there was much discussion on the terms of reference and the chairmanship — there were also many other belaboured and fruitless debates. There was a long debate on whether it was appropriate for the Committee to discuss the Programme for Government, and I commented that I was not sure that it was, given

that the Alliance Party was at the table and expected to be in opposition. As far as I can recall, the Preparation for Government Committee was not only to consider barriers to restoration, but also to prepare a programme of work. Thus, it was part of the Committee's original terms of reference, in accordance with the Secretary of State's direct correspondence to the Committee.

3330. **Mr P Robinson:** The Secretary of State is fairly clear on this: it is the parties' responsibility, not a Committee's.

3331. **The Chairman (Mr Wells):** If the consensus is that we do not deal with this matter, that is fine, but we must make a decision one way or the other. What are members' views? Dr Farren, have you any comments?

3332. **Dr Farren:** No.

3333. **The Chairman (Mr Wells):** There seems to be consensus that we should not take the issue any further.

3334. **Mr Campbell:** The Northern Ireland political process work plan specifically states that, in October, parties — rather than the Committee — are to conclude discussions and finalise a draft Programme for Government.

3335. **Mr McGimpsey:** We must be realistic; any Programme of Government is a matter for an Executive, not a Committee.

3336. **The Chairman (Mr Wells):** Right, that is fair enough. We will move on.

3337. The issue of explosives was raised at the meeting of 16 August 2006. I must emphasise that we were discussing explosives that are used for legitimate purposes such as quarrying, road laying and so forth. There was a question as to whether that should be the responsibility of the Department of Health, Social Services and Public Safety or a new policing and justice Minister. We asked for some material on the issue, and I have received a letter dated 15 August 2006. Have members had a chance to read it?

3338. **Mr P Robinson:** What kind of material?

3339. **Mr Campbell:** Material for explosives.

3340. **Mr Paisley Jnr:** Have we got the material?

3341. **The Chairman (Mr Wells):** Any thoughts on the issue? Dare I ask if there are any experts on explosives in the room?

3342. **Mr P Robinson:** Why is everybody looking in one direction? *[Laughter.]*

3343. **Mr O'Dowd:** Sorry, Chairman, I am just checking my diary. I take it that the matter was raised at the PFG Committee dealing with law and order?

3344. **The Chairman (Mr Wells):** Yes, the question was asked as to whether the legitimate use of explosives should fall under the remit of the Department of Health, Social Services and Public Safety or of a new policing and justice Minister, whenever he or she is appointed. We asked for a note on the matter.

3345. **Mr O'Dowd:** Did the PFG Committee dealing with law and order ask this Committee, which deals with institutional issues, to deal with it?

3346. **The Chairman (Mr Wells):** Yes, it did.

3347. **Mr O'Dowd:** Passing the buck, I think.

3348. **Mr Paisley Jnr:** We will advise our members on the PFG Committee dealing with law and order where that issue would be most effectively placed.

3349. **The Chairman (Mr Wells):** Are we to pass the issue back to the PFG Committee dealing with law and order, which meets on Wednesday?

3350. **Mr Paisley Jnr:** Some members here will be at that meeting.

3351. **Mr P Robinson:** Further consideration should be given to it, and it could be raised on Wednesday.

3352. **The Chairman (Mr Wells):** We have made a lot of progress today, have we not? I have to go, folks.

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

3353. **The Chairman (Mr Molloy):** Members are advised that we have finished our discussions on strand two issues. Do members wish to begin to discuss strand three issues, or to leave that until the next meeting? Monday is a bank holiday, so it has been suggested that we

have our next meeting on Tuesday 29 August, unless members want to come in on the bank holiday.

3354. **Mr McGimpsey:** That suggestion would have little support.

3355. **The Chairman (Mr Molloy):** Is there no consensus on that?

3356. **The Committee Clerk:** We would have to arrange doorkeepers and open the Building. It would be very difficult.

3357. **The Chairman (Mr Molloy):** Do members want to continue with other issues in relation to strand three?

3358. **Mr P Robinson:** Is there anything in that that we have not discussed?

3359. **Dr Farren:** The British-Irish Council?

3360. **Mr P Robinson:** I was referring to strand three issues.

3361. **Mrs Long:** In our discussion on the third part of strand two, we strayed into some strand three items such as the British-Irish Council and a possible secretariat. Much of this has already been discussed.

3362. **Mr Campbell:** It is equally true that many strand one issues spilt over onto strand two.

3363. **Mr McGimpsey:** Strand three issues are important. I suggest that we return to that discussion on Tuesday 29 August.

3364. **The Chairman (Mr Molloy):** It may take only one meeting, but there are several different issues for consideration.

3365. **Dr Farren:** We spoke earlier about familiarising ourselves with the work of the British-Irish Council. We should take that issue seriously between now and then.

3366. **Mr P Robinson:** That material could be sent out to us before our next meeting.

3367. **Dr Farren:** There is a great deal of information about the work of the British-Irish Council on its website. I am sure that you have visited it frequently.

3368. **Mr P Robinson:** It is on my "Favourites" list.

3369. **Dr Farren:** Good. *[Laughter.]*

3370. **Mr Campbell:** He will not tell you what else is on his “Favourites” list.

3371. **Mr Ford:** Is this private banter, or can anybody join in?

3372. **Dr Farren:** You might be surprised about what goes on there.

3373. **The Chairman (Mr Molloy):** Can information be circulated before the next meeting, so that members are up to date and have something to read on the bank holiday?

3374. **Mr P Robinson:** We said earlier that we should be provided with reports of meetings of the North/South Ministerial Council and the British-Irish Council.

3375. **The Chairman (Mr Molloy):** The report of the Subgroup on the Economic Challenges facing Northern Ireland is to be presented for consideration at next week’s meeting, so that will have to be factored into our work programme. We will also have to discuss motions for the plenary debates on 11 and 12 September, which could concern the work of the subgroup or other issues. The report will be available for members of the subgroup before those dates.

3376. **Mr P Robinson:** May I ask whether officials are drafting reports in parallel to these meetings?

3377. **The Committee Clerk:** There are separate Committee Clerks for each of the three meetings. We are starting to pull together the reports on the institutional issues, the law-and-order issues, and rights, safeguards, equality issues and victims.

3378. **Mr P Robinson:** You will be working overtime. *[Laughter.]*

3379. **The Chairman (Mr Molloy):** It is difficult for the staff to facilitate these meetings and also to draw up reports. After today’s meeting, the report will start to gel. Much work will be needed to gel everything together.

3380. **Mr O’Dowd:** At this stage, the only group to confirm that it will present a report to this Committee is the Subgroup on the Economic Challenges facing Northern Ireland.

3381. **The Committee Clerk:** The subgroup meets tomorrow and on Thursday to agree a report, which it will table before this Committee. If the Committee accepts the report, it will be ordered to be published. At next Tuesday’s meeting, members will consider whether they have a motion on the report to submit to the Business Committee, which hopes to meet on 5 September.

3382. We will discuss the code of conduct on 4 September and try to finalise a report on the institutions after that. The report on law-and-order issues will be discussed at the following meeting. The final report on rights, safeguards, equality issues and victims will be discussed at the meeting after that. A timetable is available.

3383. **The Chairman (Mr Molloy):** We have parked many issues; the car park has been filling up, and it must now be emptied. We will have to revisit all those issues.

3384. **The Committee Clerk:** The two Chairmen have discussed the format of the report. All Hansard reports and any papers that the parties have submitted will be included, and the Committee staff will produce a summary. The report will begin with the proposals and issues on which the Committee has agreed, as well as the issues that parties have identified as deal-breakers — we could find another form of words for that, if members prefer — and those that have been parked for further discussion.

3385. **The Chairman (Mr Molloy):** The Committee may also wish to consider having a closed meeting, with no Hansard report, to discuss particular issues in detail at some stage.

3386. **Mrs Long:** Chairman, is that not the normal procedure when a draft report is being discussed, and may that be the appropriate time for a closed meeting?

3387. **The Chairman (Mr Molloy):** Yes. If members feel that there would be benefits in having a meeting, or part of a meeting, without Hansard, that can be done at any stage. It only requires parties to agree, and it may give the Committee an opportunity to go into more detail on some of the issues that have been set aside.

Adjourned at 2.13 pm.

Tuesday 29 August 2006

Members:

The Chairman, Mr Francie Molloy
Mr P J Bradley
Dr Seán Farren
Mr David Ford
Ms Michelle Gildernew
Mr Danny Kennedy
Rev Dr William McCrea
Mr Alan McFarland
Mr Michael McGimpsey
Mr David McNarry
Mr Alex Maskey
Mr Conor Murphy
Mr Ian Paisley Jnr
Mr Peter Robinson

The Committee met in private from 10.07 am to 11.56 am.

The Committee met in open session from 11.57 am.

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

3388. **The Chairman (Mr Molloy):** Are members content with the draft minutes of the meeting of 21 August?

Members indicated assent.

3389. **The Chairman (Mr Molloy):** We agreed at the meeting of 21 August to refer the issue of whether firearms and explosives licensing is a justice matter or a public-safety matter to the Committee on the Preparation for Government (PFG) dealing with law and order issues. It has decided that it is a matter of public safety. Are members content with that?

Members indicated assent.

3390. **The Chairman (Mr Molloy):** Mr McGimpsey requested information about the role of the Northern Ireland Audit Office (NIAO) in relation to the North/South implementation bodies. Are members content with the information that has been provided?

Members indicated assent.

3391. **The Chairman (Mr Molloy):** We now move on to strand three issues. We will go around the parties in the usual way. The Alliance Party will go first.

3392. **Mr Ford:** Sorry, you are moving slightly too fast for me. May I have permission to draw breath first?

3393. When we were discussing the wider issues of strand two last week, I mentioned that there is a need to recognise the role of the British-Irish Council (BIC) at a higher level than at present. We have already covered the issue of a permanent secretariat for the BIC, but that was not noted.

3394. The current workings of the British-Irish Inter-Parliamentary Body (BIIPB) have some value, specifically the fact that members of this Assembly are represented on the body, although, unfortunately, not all parties choose to attend. My party does not see anything particular that needs to be added to strand three, other than that work that could be done has not yet been done. However, that will be a matter for the institutions to get on with when devolution is restored.

3395. **Mr P Robinson:** As might be expected, there is not one bullet point under strand three that we have not touched on when dealing with all the other issues. In general, the DUP's view is that there should be an overarching British-Irish isles council. All the relationships, whether they be North/South or east-west — either between the Northern Ireland Assembly and Westminster or between the Government of the Irish Republic and Her Majesty's Government — are set within a British-Irish context. Therefore, the overarching body should be a British Isles council, and all the separate relationships can easily take place therein.

12.00 noon

3396. That being the case, the British-Irish Intergovernmental Conference (BIIC), which is,

I think, really the successor to the one that came out of the Anglo-Irish Agreement, could comfortably sit within a British Isles council.

3397. My party has said in policy documents that the BIIPB is something that we will look at in the context of an overall settlement, although we would prefer that, instead of its present format, it were more akin to parliamentary bodies for which there is an open invitation to attend, rather than an invitation for the select and appointed few.

3398. The DUP has been unhappy about the disproportionate number of meetings that have taken place on a North/South axis as opposed to an east-west axis. There must be greater emphasis on the east-west institutions. As unionists, not unnaturally we want to have a close relationship with the rest of the UK, and we believe that that can be done through empowering the east-west relationship. We feel that one way in which to do that is to have a secretariat that will drive the east-west relationship in the same way in which a secretariat is driving the North/South relationship. We need to have that balance.

3399. I repeat — not as a threat but as a matter of fact — that the DUP's enthusiasm for the North/South structures will be commensurate with other parties' enthusiasm for east-west structures. People cannot say to us that they want to have structures in place that recognise their identity, only to ignore the identity of others. The structures must be in tandem, so the east-west relationship must go up the pecking order from where it has previously been.

3400. I do not think that I need to say anything more at this stage, but if anything comes up in the discussions, I will.

3401. **The Chairman (Mr Molloy):** I remind members to switch off their mobile phones in case they interfere with the Hansard recording.

3402. **Mr Murphy:** Sinn Féin views the strand three issues in a similar way to the others, in that they are a catch-all. We are quite content to discuss any of the issues with parties, and there are none that we consider to be an obstacle to the return of the institutions. If there are issues

around the effective functioning of the BIC, for instance, an incoming Executive can deal with them in conjunction with the other members of the BIC.

3403. The proposal for a council of the Isles is one that we are quite happy to discuss. I must say, however, that there is no meat on the bones of that proposal, and no real reference has been made to the BIC's role in a council of the Isles. The BIC already involves Scotland, Wales, the Channel Islands, the Isle of Man and the Dáil, as well as the Assembly.

3404. We operated the east-west agenda in good faith while the Executive were functioning; we have no difficulty with doing so. There are proposals to enhance the BIC's secretariat. There seems to be a suggestion that it should match the North/South Ministerial Council's (NSMC) secretariat. It should match the NSMC's secretariat if the level of activity merits it. We will have to see what propositions there are for east-west activities.

3405. We have always operated the east-west agenda in good faith, and we do not have an issue with continuing to do so in an Executive. We are happy to consider suggestions on any of those issues, but we have not seen substantive proposals on them.

3406. **Dr Farren:** We have covered so much of this already that I feel that I am repeating myself in order to stress several points. It is obvious that a broad approach must be taken to strand three, and it is essential that issues therein be developed. The range of institutions that exist to develop them is appropriate. The requirement to have the BIIC arises out of the need for the two sovereign Governments to consider their particular and exclusive responsibilities in the manner that their sovereignty demands. Therefore I cannot imagine why the BIIC should not persist.

3407. The BIIPB has functioned effectively. That performance would, however, be enhanced if all parties that are entitled to seats on it would take their places and play a constructive role. The body has done a great deal to strengthen parliamentary relationships. It has involved people in intense discussions on a range of

pertinent issues. Members value the opportunity to strengthen personal relationships and understandings, and they can achieve that through the BIIPB's agenda.

3408. The DUP has made a case for an all-encompassing council of the Isles. However, I do not believe that that case stands up. Relationships within Ireland are of a particular quality and, indeed, immediacy that require the administration of the free-standing North/South Ministerial Council. Certainly, at present, I do not see a strong argument for the all-encompassing approach that Peter has just articulated.

3409. Colleagues will be aware that the BIC has continued its activities despite the suspension of the Assembly. Suspension has not prevented the council from meeting to address a wide range of issues. In the event of devolution, the case can be made to strengthen, through a secretariat, the support systems that the BIC requires. I have no difficulty with that. The kinds of issues that the council deals with need much consideration. Most people would agree that those issues have been wide-ranging and pertinent.

3410. A key concern is to ensure that the council's recommendations are taken into account by those in the Executive who have direct responsibility for their implementation. The council has considerable potential to address issues that are common across these islands and to do a great deal to strengthen relationships between representatives of the various institutions.

3411. **Mr McFarland:** The BIIC is a mechanism that operates between the two Governments. Were the Assembly up and running, Ministers would attend the conference whenever it was pertinent to do so. However, its latest report is slightly worrying. As my party has said outside this Committee, the conference has agreed an additional raft of "North/Southery". There is a danger that, if left unadvised, the two Governments could crash ahead on issues on which the Northern Ireland parties should be consulted. However, in the end, if the conference is working properly, that is a matter between the two Governments.

3412. The BIIPB has never really got up and running. The current body has set numbers of

representatives from Westminster and Dublin. The logic behind it is fairly sensible in that people from each Parliament discuss mutual interests. We have refused to participate in it — in fact, the Committee for Regional Development was unable to meet with it during the first Assembly. As the body had its genesis in the Anglo-Irish Agreement, we felt unable to join it.

3413. It would take very little to modify the existing BIIPB's practices and membership to transform it into a body in which parliamentarians from Scotland, Wales, the Assembly, the Dáil and Westminster could have a proper, sensible relationship. That seems to be quite a sensible idea. That is set out in the comprehensive agreement, so presumably the DUP and Sinn Féin have agreed that framework.

3414. A council of the Isles is an interesting idea. We would probably need a bit more detail as to how it would work, because it would demand a level of activity that is additional to that that was set out in the Belfast Agreement.

3415. The BIC was the poor relation. The "North/Southery" cracked on, but the east-west mechanism did not get anywhere because it did not have a secretariat. We have maintained for some years — again it is interesting to see that Sinn Féin and the DUP agreed with this in the comprehensive agreement — that a proper secretariat should be set up for the BIC.

3416. **Mr P Robinson:** A council of the British Isles — or a council of the Isles, I suppose, depending on which side of the room one is sitting — would not be an additional structure. It would be the overarching body within which all the structures would operate, and it would provide some context to the overall relationships. It would not be a substitute for the North/South relationship. Seán was concerned that he did not see what the British-Irish Council's role would be. He said that the North/South relationship has a particular importance and immediacy. As a nationalist, he would say that; as a unionist, I would say that the relationship with the rest of the UK has a greater importance and immediacy. I recognise all those relationships, but they are all contained within that overall axis of the

British Isles. That includes the Channel Islands and the Isle of Man.

3417. Each of the component parts can meet as necessary within that overall context and have its own operations, but the overall context unites all the identifies to which we have referred. None is excluded from that overall British Isles context.

3418. Accountability is required in the east-west structures. That common thread, which has run through our discussions on devolution issues and the North/South structures, is also important for the east-west relationship. I hope that, if we consider it in a Northern Ireland Assembly context, it will remain addressed for all the other structures, but I am pointing out that that context does not currently exist.

3419. **The Chairman (Mr Molloy):** Do members have any other comments or proposals to make?

12.15 pm

3420. **Mr P Robinson:** I propose that further consideration be given to an overarching British Isles council.

3421. **Mr P J Bradley:** Or Celtic Isles.

3422. **The Chairman (Mr Molloy):** Could we have consensus on a name?

3423. **Dr Farren:** If I proposed calling it comhairle na n-Oileán, would that be acceptable?

3424. **Mr P Robinson:** Is that the Ulster Scots for it?

3425. **Mr Murphy:** We are happy to consider any proposal. A vague notion of one has been floated. That the DUP is engaged in, or has fixed on, the creation of another body to oversee activities is somewhat at odds with the drive for efficiency. There is no clear proposal on how the proposed new body would operate, or on how the other bodies would relate to its membership or make-up. Sinn Féin is happy to look at proposals for an overarching council, whatever its name. That might be another day's debate. The operation, make-up and relationship between the proposed new body and the existing institutional arrangements under the Good Friday Agreement might be a more

substantial argument than the name that would be given to it.

3426. **Mr Ford:** There are issues in strand three that have never been addressed in detail. However, as his party is floating the idea most strongly, if Peter Robinson is proposing that an overarching council be given further consideration, he should follow up that proposal with some more ideas. I sense that a document may be thrust upon us. The proposal should be given further consideration, but if the DUP has further proposals, could those proposals not be more specific? If the DUP is not willing to put forward further proposals now, it should do so soon in order that they can be considered.

3427. **Mr P Robinson:** That is work for our researchers.

3428. **The Chairman (Mr Molloy):** Do we have consensus on the proposal?

3429. **Mr Murphy:** What was it again?

3430. **Mr P Robinson:** That further consideration be given to the overarching British Isles council.

3431. **Mr Ford:** The bullet point on the agenda says, "Council of the Isles", which would avoid some of the difficulties that might arise.

3432. **Dr Farren:** It is all in the phraseology.

3433. **Mr Ford:** You put it in Irish.

3434. **Mr P Robinson:** The bullet point says, "New Council of the Isles".

3435. **The Chairman (Mr Molloy):** Do members agree?

3436. **Dr Farren:** The proposal, if accepted, would involve many other institutions. Should the Committee not advise them of the proposal and ask for their views? They would also need to know what our ideas are. The Committee should flesh out what it has been discussing.

3437. **Mr P Robinson:** I suppose that we could argue that the Isle of Man and the Channel Islands should be consulted.

3438. **Dr Farren:** All the institutions should be asked.

3439. **The Chairman (Mr Molloy):** I attended a meeting at which some of the other islands did not see the relevance of their being involved, so there is debate about the participation of the different islands.

3440. **Mr Maskey:** I am not clear what we are being asked to support. As Conor Murphy said, we are always happy to discuss any serious proposal, but there is no proposal in front of us.

3441. **The Chairman (Mr Molloy):** Peter Robinson made a proposal.

3442. **Mr Maskey:** Which is?

3443. **Mr P Robinson:** That further consideration be given to a new council of the Isles.

3444. **Mr Maskey:** That is very vague.

3445. **The Chairman (Mr Molloy):** Is there consensus?

3446. **Dr Farren:** Who will make the proposal?

3447. **Mr P Robinson:** We had consensus, but we have talked ourselves out of it.

3448. **Dr Farren:** Yes, we will talk ourselves out of it if we are not careful.

3449. **The Chairman (Mr Molloy):** The proposal is that further consideration be given to a new council of the Isles.

3450. **Mr Murphy:** I suppose that the proposal could be that further consideration be given to any proposition that a new council of the Islands be established. As it stands, the proposal gives the impression that there is some agreement that a new council of the Islands would be a good thing. Although we are happy to consider any proposal, we are not necessarily sold on that idea. Seán Farren expressed a similar view, so there is much to be discussed. However, we are happy to consider any proposals concerning a new council of the Islands.

3451. **The Chairman (Mr Molloy):** Are we happy enough to add that wording to the proposal?

3452. **Mr P Robinson:** I am not going to get tied up in that. I do not think that that wording does any violence to anybody else's position. It just provides an overall context. We simply put a proposal forward, and others can do so as well.

3453. **The Chairman (Mr Molloy):** Is there consensus on the proposal as amended?

Members indicated assent.

3454. **The Chairman (Mr Molloy):** Do members have any other business on strand three matters?

3455. The PFG Committee dealing with institutional issues will meet again on Monday 4 September. Each party will present a paper on a draft ministerial code. Will any party that has not already submitted a paper please do so by Friday.

3456. **The Committee Clerk:** The parties were to produce a paper on what they consider to be the essential elements for the ministerial code, so that the Committee staff could try to draw together any consensus among the parties.

3457. **Mr Murphy:** Correct me if I am wrong, but were we not to try to access the existing draft that had been put to the Executive?

3458. **The Committee Clerk:** Yes, we issued that last week.

3459. **Mr Murphy:** Sorry; I have been away.

3460. **Mr McFarland:** Are we being asked to comment on the draft that we had last week? That draft seemed to be quite sensible? There is enormous encouragement for people to produce endless party papers.

3461. **The Chairman (Mr Molloy):** It is not absolutely necessary to produce a paper.

3462. **Mr McFarland:** How about we comment on and discuss the matter rather than prepare a report?

3463. **Mr P Robinson:** This is not a new proposal. It was agreed at last Monday's meeting.

3464. **Mr McFarland:** That parties would produce papers on it?

3465. **Mr P Robinson:** Yes.

3466. **Dr Farren:** If parties wished to do so.

3467. **Mr McFarland:** That is fine.

3468. **The Chairman (Mr Molloy):** A draft is already in circulation.

3469. The Subgroup on the Economic Challenges facing Northern Ireland's report will also be

discussed next Monday. Will members submit any amendments to the Committee Clerk as soon as possible so that they can be circulated before Friday?

3470. **Mr McFarland:** Did you say amendments to the subgroup's report?

3471. **The Chairman (Mr Molloy):** Members can submit proposed recommendations or observations on the subgroup's report, which we discussed this morning.

3472. **Mr McFarland:** Chairman, the subgroup unanimously agreed its report. The amendments that we looked at were confusions in that whoever drafted it did not use normal drafting English. Some of the sentences are not full sentences, and others that purport to be recommendations are not. The Committee staff can run through those and chat to each other, provided that they bring back the report for the Committee to examine. To encourage people to propose amendments is dangerous because the subgroup produced the report; it is a different matter to say that the PFG Committee can amend it.

3473. **The Chairman (Mr Molloy):** As was pointed out this morning, the report has now become this Committee's report. The subgroup produced the report for this Committee, so this Committee can amend it. However, I am not encouraging members to make amendments.

3474. **Mr McFarland:** Yes, but that would be to gainsay the wisdom of our colleagues who sat on that subgroup for weeks. It is for those colleagues to amend it. It would be dangerous for the Committee to open up the debate on the body of the report. If we are messing with English and changing around recommendations, that is absolutely fine. However, to do otherwise would require amendments to be made. In that case, the report would surely have to back to the subgroup, would it not?

3475. **The Chairman (Mr Molloy):** No, because it is now this Committee's report.

3476. **Mr McFarland:** OK.

3477. **Mr P Robinson:** I agree with Alan; I would like the subgroup's unanimously agreed report to go forward.

3478. **Mr McFarland:** With the English amended.

3479. **The Chairman (Mr Molloy):** Let us not reopen that debate. We can deal with it on Monday.

Adjourned at 12.25 pm.

Monday 4 September 2006

Members:

The Chairman, Mr Jim Wells
Mr PJ Bradley
Dr Seán Farren
Mr David Ford
Ms Michelle Gildernew
Ms Patricia Lewsley
Mrs Naomi Long
Dr William McCrea
Mr Alan McFarland
Mr Michael McGimpsey
Mr Martin McGuinness
Mr David McNarry
Mr Conor Murphy
Mr Ian Paisley Jnr
Mr Peter Robinson
Observing: Mr Francie Molloy

The Committee met in private session from 10.03 am to 10.24 am.

The Committee met in open session at 10.24 am.

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

3480. **The Chairman (Mr Wells):** The suggested wording for debate on 11 and possibly 12 September is:

“That the Assembly approves the first report from the Committee on the Preparation for Government on the Economic Challenges facing Northern Ireland; agrees that it should be submitted to the Secretary of State for Northern Ireland; and calls on the Secretary of State to take action to implement the recommendations in the Report.”

3481. Do members have any thoughts on that?

3482. **Mr M McGuinness:** Sinn Féin has some thoughts on these matters. I am conscious that this is September; the two Governments made it clear that the principal purpose of establishing a PFG Committee and, indeed, recalling the Assembly, was to put an Executive in place. So we are somewhat disappointed that we have not had a plan of action from the two Governments

for putting the Executive in place by their deadline of 24 November.

3483. We are seeking meetings with the Secretary of State and the Minister for Foreign Affairs, Dermot Ahern, to try to ascertain whether they have indeed a plan of action or a schedule to ensure that the institutions are restored by that date. The public needs to have confidence that the two Governments are working to achieve a successful outcome to the work of the recent past.

3484. We are conscious that time is now short. I recall a conversation with a unionist insider in the spring — I will not say which party he was from — who said that none of this gets serious until September. I am working on the basis that members regard today’s meeting as the beginning of a serious effort to bring about the restoration of the institutions that people throughout the island of Ireland voted for in 1998.

3485. Until we see from both the Secretary of State and the Minister for Foreign Affairs a plan of action that is designed to bring about a successful outcome vis-à-vis the restoration of the institutions — given that their stated priority from the beginning was that the recall of the Assembly was to achieve that — it is premature for us to agree to further Assembly meetings. If we get a schedule that represents a serious approach to the restoration of the institutions that the people voted for, we will have an open mind about our approach to plenary meetings in the weeks ahead.

3486. We hope that that can be resolved this week so that we can face up to —

3487. **The Chairman (Mr Wells):** May I interrupt you with a procedural point? We have agreed the report. We could move back into public session, with Hansard reporting our proceedings. As your contribution went on it suddenly dawned on me that that is the issue you

are raising. What do members feel about that? Do we want to go back on the record, as it were?

3488. **Mr P Robinson:** We should go back onto the record from when Mr McGuinness started to speak.

3489. **The Chairman (Mr Wells):** I think that is right.

3490. **Mr M McGuinness:** Absolutely.

3491. **The Chairman (Mr Wells):** I have no problem with that.

3492. **Mr M McGuinness:** I was contributing to this on the basis that it was on the record.

3493. **The Chairman (Mr Wells):** From now on every word will be published.

3494. **Mr M McGuinness:** This is serious business. We are in a serious period; we are effectively in the final phase of the effort to see the institutions restored by 24 November. We believe that all parties are entitled to be given some plan of action, some schedule, which will clearly show that the two Governments are serious about bringing about the restoration of these institutions by 24 November. In that context we will approach the business of whether or not there should be Assembly plenary meetings on the basis of the reports that arise from the work of the Committees that we have been involved in. We would do that in a very serious way.

3495. **The Chairman (Mr Wells):** I take it then that you are opposing, not just the wording of the motion, but the principles of it.

10.30 am

3496. **Mr M McGuinness:** It is a question of timing. Principally, Sinn Féin seeks a plan of action and schedule from both the British and Irish Governments that will reassure not only Sinn Féin and other parties at this Committee but also — and more importantly — the general public, who are hammered almost every week with threats and proposals for huge hikes in rates.

3497. Every party is conscious that people on the street are, rightly, in uproar at many of the decisions being taken by direct rule Ministers — decisions over which we have no control and

which impose massive financial burdens on the people that members represent in every single constituency.

3498. **The Chairman (Mr Wells):** That contribution has provoked several members to indicate that they wish to speak. I will go round the table by party, starting with Mr Robinson, on to Mr McNarry and Mrs Long, etc.

3499. **Mr P Robinson:** First, I resist any implication contained in the last remarks that the work that has been done thus far, both here in the PFG Committee and in the economic subgroup, was not serious. Members have engaged in serious and important work, as they should.

3500. The Assembly's job is to prepare for devolution. This Committee is an essential part of that preparation, not only in relation to the particular proposal that we are considering now, but also in relation to issues concerning the institutions, policing and human rights that are discussed here. Frankly, no schedule is needed in order to recognise that all of that important and necessary work needs to be dealt with and, as far as possible, agreed.

3501. The DUP has a schedule, which is not based on the calendar but on what is required for a system of government that can benefit the community in Northern Ireland. Included in our schedule are institutional changes to the structures of the Assembly and to North/South and east-west structures. We have also clearly indicated the need for a financial package.

3502. Events of the last week emphasised what I said at a previous meeting of the PFG Committee: if members want devolution to bed down in Northern Ireland, we must have the ability to make a difference to some of the key decisions that have been taken, whether on water charging, rates or other issues. Tinkering with those decisions, as has been suggested over the last day or two, will not make much difference to a community that wants to see a real difference. If devolution cannot deliver change, difference and improvement, people will become less than enamoured with the Assembly and the Executive.

3503. The permanent ending of republican paramilitary and criminal activity is included in the DUP's schedule. We do not merely want a tactical cessation for a convenient period of time; we want to ensure that it is permanent. If there is to be a stable and lasting Assembly, it is essential that all those issues are resolved. The last thing that we should do is to plaster over the cracks and hope that everything will hold together in a restored Executive.

3504. We have to make sure that we do not have constant suspensions and collapses, and that we have an Executive and an Assembly capable of lasting when the political storms blow.

3505. All of this work of preparing to have a stable Assembly and Executive is essential; however, it is not dictated by the clock or the calendar but by changes that have to take place out on the ground, and over which Sinn Féin perhaps have more control than some of the rest of us.

3506. **The Chairman (Mr Wells):** I shall go round by party. Dr McCrea wishes to say a few words, and if any Ulster Unionist wants to come in after that, that is fine.

3507. **Dr McCrea:** I am looking at the draft minutes of the the Business Committee meeting of 4 July 2005, and I notice that in Paragraph 3:3 it states:

“Members noted the Secretary of State had referred the matter of discussion of economic issues to the Preparation for Government Committee (PFGC) under Section 1:1 of the 2006 Act and had directed it under Paragraph 4:1 of the Schedule 1 to the Act to set up a subgroup and report back to The Assembly in September.”

3508. I stress the word “directed”. That statement is in those draft minutes. The Secretary of State has directed this Committee to report back to the Assembly in September. The Committee will report on the economic package and therefore it is relevant.

3509. The remarks of Sinn Féin members show that they still have not woken up to reality and that they close their minds and hearts to the issues that are cardinal and right at the very

heart of whether we will see restoration of an Administration and the setting up of an Executive in Northern Ireland. Issues such as criminality; the money from the bank robbery; weapons; policing, and support for the security forces, who actively engage those who still bring terrorism on this community, might as well not exist. Those issues must be dealt with.

3510. Apart from those who engage with us in a voluntary capacity, Sinn Féin and the IRA together have a cardinal responsibility. Unless they wake up to that, they are simply making noises that they know fine well contribute to instability and ensure that we cannot, clearly and unequivocally, have a devolved Government on democratic lines.

3511. Those issues have still to be dealt with, and they will not be run away from.

3512. **The Chairman (Mr Wells):** Let me clarify a procedural issue before we move on to Mr McNarry. The printed report is now with the Business Office. The Secretary of State has the power to intervene and order that it be made the subject of debate at the Plenary, if he so decides. It is important that Members realise that; however, he cannot compel Members to attend that debate.

3513. **Mr P Robinson:** May I put on the record that, from our point of view, the proposal is satisfactory. We can always tinker around with it and seek to amend it later, but it covers all of the necessary aspects.

3514. **Mr McNarry:** I draw Members' attention to one technical aspect of the report. It calls on the Secretary of State to take action to implement the recommendations of the report. We have already taken action on recommendations 17 and 18. Technically, I want to tidy that up because that is something that the subgroup asked us to do by way of extending their mandate. That is only a minor issue.

3515. With regard to intervention by the Secretary of State, he has intervened a lot in this Committee, particularly on aspects where it has failed to reach consensus. You have only to read through the correspondence and you will see a

litany, where, as I pointed out, the Secretary of State actually directs.

3516. One thing the Secretary of State perhaps cannot do, but certainly has not looked at, is directing people to come in to the Assembly for a debate. Regrettably, there is one party that has no desire or wish to come in to the Assembly — apart from one appearance, and a brief appearance at that.

3517. I endorse the view of the essential need to prepare — if the Committee is serious — for a sustainable and lasting Assembly and Executive. If that does not happen, then we will be in for the “magic roundabout” stuff that my party endured for a number of years.

3518. A question arises from Mr McGuinness’s statement — if it was a statement. Does Sinn Féin’s opinion on debating the report of the Subgroup on the Economic Challenges facing Northern Ireland also apply to the other issues under consideration by the Committee, such as the institutions, policing and justice, etc? Should it come to pass that reports were formulated on those issues and they were to be debated in the Assembly, would Mr McGuinness’s statement apply then? I noticed that there was a caveat, however, about having to wait a week for something or other.

3519. I am disappointed by Mr McGuinness’s statement. When the Committee asked about Sinn Féin’s attitude to debates in the Chamber, Mr McGuinness gave as near to an equivocal answer as one could extract, saying that it would be a matter of honour for Sinn Féin to debate the report of the subgroup. I do not have Hansard in front of me, although I am sure that it could be produced. Those sentiments — again under questioning — were endorsed by his colleague Conor Murphy, who read from Hansard at the time in response to a question from me about how serious Sinn Féin was in giving its word that it would debate in the Assembly Chamber, and if his party would be there.

3520. It is regrettable if what Mr McGuinness has said this morning — after having given consent to the report — proves that he had no intention of going into the Assembly, and may never have had any intention of going into the

Assembly to debate with his colleagues on the economic future of our country. I will let others make a judgement on his reasons for that decision, but it is a fine abdication of responsibility.

3521. Sinn Féin talked about the Government being serious, and Mr McGuinness gave the timing as part of his reason for not agreeing to the proposal. He has known the timing of the report all along. His party contributed to giving the subgroup an extra week. One does not need to be a clairvoyant to work out where it would go from there. The timing issue would appear to be a non-issue. However, if timing is an issue, surely the rest of the Committee have a right to ask Sinn Féin how serious it is about its work.

3522. **Mr McFarland:** I waxed lyrical at one of the Committee’s previous meetings about this. Sinn Féin is not playing the game. One could understand a bit of messing around in the early days. However, once the Committee got into substantial work, Sinn Féin said time and time again that if useful work were done, then it would take part in plenaries discussing that useful work.

3523. The logic of what Sinn Féin is saying is that it does not believe that either the subgroup or this Committee has carried out useful work. If, as a matter of principle, it refuses to take part in a debate on the subgroup report, presumably it will refuse to debate any of the work that the Committee has carried out to date. Sinn Féin is definitely not playing the game. There was a clear understanding that if everybody operated in good faith, we would get somewhere.

10.45 am

3524. I am worried that it will be another case of Sinn Féin overplaying its hand. We suffered in the past when Sinn Féin made a wrong judgement and overplayed its hand, as its members know themselves. It would be most unfortunate if the party judged this situation wrongly and overplayed its hand again.

3525. There was a clear understanding that we would all play the game in good faith, talk in this Committee all summer — regardless of the cost to us all as individuals — and have a debate at the end of summer, with, as Mr

Robinson said, the report perhaps being the basis for talks in the autumn. That seemed a very sensible way to proceed.

3526. However, Sinn Féin is now playing sillies and refusing to take part in plenaries, having said before that if useful work was done, Sinn Féin would not be found wanting. There is now a danger of the party's good faith being found wanting.

3527. **Mrs Long:** I want to raise several issues.

3528. The Alliance Party wishes to make it very clear that, from the outset, it has never taken any of this process other than seriously. Our members were certainly not playing with this process over the summer, or taking it lightly. We were not waiting for an elusive September deadline. That may have been important to other people, but it was certainly was not the case with us.

3529. The clear understanding was that the work carried out in this Committee and in the economic subgroup would lead to a plenary session. That was outlined in the Government's original timetable and in the Secretary of State's direction. There is no question about that.

3530. Moreover, this Committee endorsed that when it sought to have the plenaries delayed for a week. Martin McGuinness used the word "premature"; no one suggested that it would be premature to have a plenary on 11 September when we asked the Secretary of State to consider that as a date for the first plenary. It seems strange that that would now be considered premature when it was not considered so a number of weeks ago.

3531. Other members have mentioned that the Secretary of State can simply direct us to have a debate in the Chamber, but that would not be the most edifying outcome. It does not set a particularly good tone for discussions in the Committee or, indeed, for any future negotiations, if members appear to agree to do something and then row back from it just as it is about to happen. We must consider that.

3532. I am particularly surprised that Sinn Féin is now going to exercise some kind of veto over the plenary sessions, having had substantive

discussions over the summer. I find it incredible that it will provoke a direct rule Minister from Westminster to interfere needlessly in our business, especially given that that party professes such distaste for such meddling.

3533. I appeal to those members who may have reservations about the plenary to consider that their actions may cause members of other parties — who have participated in this process in good faith — to have reservations too.

3534. We have some concerns about the wording of the proposal, as it calls on only the Secretary of State to take action to implement the recommendations in the report. At the very least, our aspiration should be that a devolved Administration should take forward the recommendations. However, even if that does not happen, the report recommends some level of participation. Recommendation 10 states:

"That there should be a discussion with Ministers on alternative uses for the £30m set aside for an energy subsidy."

3535. That implies that there would be discussion between Assembly Members and Ministers. Assembly Members who wish to take this forward in a constructive way should be able to do so. However, I do not want to elaborate on the detail of the wording when we have not yet managed to agree on the principle. That perhaps should be explored in a bit more depth before we move on.

3536. **The Chairman (Mr Wells):** David, do you wish to add anything?

3537. **Mr Ford:** I never need to add anything after Naomi has spoken. *[Laughter.]*

3538. **Dr Farren:** Naomi has taken the words out of my mouth with respect to my opinion on the motion. I made a similar note about what our aspirations should be if we are working towards the earliest possible restoration of the institutions. I also noted that any responsibility or input that the Executive, Assembly and the other institutions have for enhancing our economic opportunities should be reflected in the motion. There are difficulties in a Committee of this size trying to phrase a motion, but we should consider that aspiration.

3539. Martin McGuinness has been absent over the past few weeks, so he has not taken part in recent discussions. I trust that his colleagues have not been engaging in anything other than serious business. I have taken reasonable satisfaction and, indeed, optimism — so far as that is possible in our circumstances — from the work that has been done in the Committee's various formats, particularly the Subgroup on the Economic Challenges facing Northern Ireland. That shows that we can create a positive atmosphere — albeit not always cordial — in which to discuss the issues before us. That atmosphere, regardless of the issues, demonstrates the potential to establish a greater sense of confidence that the PFG Committee might deliver. There may be an increase in momentum over the next few weeks, but that does not suggest that we have been anything but serious over the past few weeks.

3540. Martin McGuinness made a point about the calendar. One will see from previous communiqués from the two Governments that a reasonably detailed calendar was published noting all of the major milestones up until 24 November. That calendar accompanied those communiqués. I am not sure what more is expected. Degrees of commitment and determination are required, but they cannot be specified in a calendar. Martin McGuinness should, therefore, look at the calendar with his colleagues and see that it meets the requirements as set out by the Governments.

3541. I am being as positive as I can about what Sinn Féin is saying. There may be a chink of light, and its members do not appear to be making the absolute refusals that they made last week. Sinn Féin seems to be pushing in the direction of more delay, but its members say that they are anxious to see matters expedited. Therefore, there is a contradiction that must be resolved.

3542. I do not want us to find ourselves back in the ignominious situation in which a Secretary of State determines when a group of Irish men and women should debate any matter, not least the matters of significance that are contained in the economy report. Following the Committee's

work and the atmosphere in which it was conducted, I would like to think that we could come to an agreement. The Executive summary of the report states:

"It is hoped that the report will form a basis for a constructive and informed Assembly debate in September 2006 and that its recommendations will throw some light on the many challenges that face the economy."

3543. I think that doing so will produce greater confidence, not only among the Committee, but among our colleagues in the Assembly. The ingredient that is sorely lacking is confidence in one another; it was severely damaged by the events that led to suspension, and by subsequent events. We must restore some of that confidence and arrive at a working relationship that would make restoration not only possible, but stable.

3544. **Mr PJ Bradley:** Aside from the work done by political parties in the past few months, many respected and important representatives from organisations such as the Ulster Farmers' Union, InterTradeIreland, the Northern Ireland Tourist Board and the Business Alliance gave us their valuable time and provided evidence to the subgroup. They are bound to feel disappointed that we cannot reach agreement on how to proceed with the report, and they may be reluctant to give evidence to Committees in the future. For their sakes, and out of respect for their valuable contributions, we should try to seek unanimity on how to take the report forward.

3545. **Mr M McGuinness:** Peter Robinson's first contribution to this discussion knocked out of the water everything that Seán Farren said regarding the Government calendar. Peter Robinson said that the DUP schedule was not based on any calendar. That highlights Sinn Féin's problem vis-à-vis the DUP's intentions. For him to say that the public were wondering whether the IRA's actions last year amounted to a tactical cessation is almost laughable. The overwhelming majority of people on this island do not regard the IRA's actions last year as a tactical approach. What the IRA did last year was massive: it ended its campaign and dealt with the issue of arms to the satisfaction of Gen de Chastelain, the British and Irish Governments

and the wide range of international opinion. That has had a massive impact on the entire community.

3546. Willie McCrea referred to the Secretary of State's direction that the economic subgroup should report to the Assembly by September. Nothing that I have said will prevent that from happening. There are four weeks left in September. It is a bit rich coming from Willie McCrea, given that the Secretary of State also directed the Committee to set up subgroups to deal with matters such as policing and justice. The DUP refused to set up those subgroups.

3547. David McNarry said that Sinn Féin did not want to participate in the Assembly, but nothing could be further from the truth. Sinn Féin is serious about being involved in a programme and a process that sees the restoration of the institutions, which the people of Ireland, and a majority in the North, voted for overwhelmingly. We wish to be involved in meaningful work, which will restore the institutions by the date set by the two Governments — 24 November 2006.

3548. Alan McFarland said that Sinn Féin is not playing the game. You are right, Alan, we are not playing a game here. This is serious, and we will not be involved in stringing out this process or going along with the DUP's stated intention of breaking through the 24 November deadline to some time in never-never land either next year or the year after, or possibly never.

11.00 am

3549. It is time for us all to get serious. The Committee must consider carefully what I have said. It is quite reasonable to expect a schedule from the two Governments for restoration of the institutions by 24 November. I cannot envisage how they could refuse to develop such a plan this week. If a plan is developed, Sinn Féin will give serious consideration to attending Assembly plenaries.

3550. Therefore, it is a matter of time and of whether we can establish during the next few days that both Governments have a decisive plan. People have said that we might find ourselves in Scotland on 9 September — we

might find ourselves in Timbuktu on 9 September. No one appears to know where we are going or what will happen when we get there. We have been in hothouse situations before, only to find out in the aftermath that the unionist parties are not prepared to restore the institutions.

3551. Sinn Féin is serious. It will play a positive and constructive part and will work with all the other parties around the table. However, Peter Robinson's initial remarks are revealing. They flatly contradict what Seán Farren said. It is clear from Peter Robinson's remarks that the DUP is not working to the same calendar as the rest of us. Sinn Féin's perspective is, therefore, that it is important that a marker is put down for everyone. We will not play the DUP's game. We will stand up to the DUP's attempts to destroy the Good Friday Agreement; to break through the 24 November deadline; and, after that deadline has passed, to bring us to a situation in which we are scratching our heads and wondering where we go from here.

3552. **Mr P Robinson:** I am even more confused by Mr McGuinness's second contribution. His first contribution was based on the principle that the Governments must set out a schedule. Any remarks that I might make are, therefore, irrelevant, since it is not the DUP's commitment to any schedule that is being sought but that of the two Governments. That is strange when the British Government have openly indicated what their schedule and intentions are. They indicated not only the deadline that they wanted met but the process that would lead to that, and that included sittings of the Assembly and useful business being done in the Preparation for Government Committee. As William said, that is indicated in the Secretary of State's directive on the economic subgroup. The Government's schedule is clear: the business of the Committee is to proceed to negotiations with the Secretary of State and, presumably, others during September, and with the Prime Minister and others during October.

3553. Everybody knows what the schedule is; it is not a surprise. I am sure that Sinn Féin members have read newspapers other than 'Daily Ireland', so they will have caught sight

of the Government's intentions and schedule and therefore know what they are. The party is grasping around for an excuse that explains its bizarre behaviour and its unwillingness to discuss matters in the Chamber that it is quite prepared to consider in Committee. How are we to understand the logic that, although it is right for Sinn Féin members to be involved in the preparation of a report, it is wrong for them to approve a motion in the Assembly that asks the Secretary of State to deal with matters in the report for which he has responsibility. That seems to be bizarre behaviour.

3554. There has been no change in the DUP's position, which I outlined this morning. It has been consistent. We are not bound by anyone's diary. We want there to be a change of events out in the country.

3555. Republicans should not be surprised that the rest of the world does not see everything through their green-tinted glasses. There are people who do not trust them, because they have been caught before. The republican movement does not always do what it says it will. There have been tactical cessations in republican violence in the past. Reducing the violence by several levels was conducive to its political aspirations during elections. When the President of the United States visited Northern Ireland, it was helpful for the republican movement to turn it down a level or two. Tactical cessation of violence is part of the policy of the republican movement, as is tactical use of the armed struggle. People who have read internal IRA documents about that will, unsurprisingly, recognise that that tactical use may be turned on again at some stage. Therefore it is important that we are sure that there is some permanence. Ultimately, only the behaviour of the republican movement over time will be the proper judge of that.

3556. There have been many signals that there has been a reduction in paramilitary and criminal activity, but there are also signals that that process is not complete. Excuses have been made that any such activity has not been sanctioned; nevertheless, as those things are still happening in the community, there is a great deal of

confusion. I understand that the Independent Monitoring Commission (IMC) may say this week that it recognises that the IRA has ended its paramilitary and criminal activity. That would be progress, but people will still seek explanations for certain things that have been happening. We could list those things if that were helpful, but I do not think that it would be.

3557. Dr McCrea outlined the Secretary of State's direction, not because he believes that the Secretary of State should be obeyed — each of us recognises that we have our own policies and we will do what we deem to be in the best interests of those whom we represent — but because, ultimately, the Secretary of State will determine whether the Assembly will sit and what it will debate. The importance of William's remarks is, therefore, to identify the fact that the Secretary of State would have great difficulty in not proceeding with a debate on this issue.

3558. Therefore the only thing that we are discussing is whether Sinn Féin will be present when this matter comes before the Assembly. If it wants to turn its back on those people who worked hard during the preparation of this report, and if it wants to stick its finger in the eye of all those who gave evidence, that is a matter of tactics for Sinn Féin, and I am sure that it will be judged upon it.

3559. Finally, I find it hard to listen to Sinn Féin talking about the need to comply with some date that Government has set down. No party more than Sinn Féin has been busting through deadlines and stringing out events over the decades in Northern Ireland. I will not take a homily from Sinn Féin on the importance of keeping to Government deadlines and keeping a programme or process to a tight timescale. Sinn Féin is happy to string things out and to break deadlines when that is helpful to its political ideals. The Democratic Unionist Party has a responsibility to the unionist community to ensure that the outcome of this process will benefit the whole community and will be capable of lasting and providing stable, effective, efficient Government for the people of Northern Ireland. Those are the criteria under which we will operate. If the outcome is not

ready on 24 November, we will hold out until it is. That is simply good political common sense.

3560. **Dr Farren:** Martin McGuinness's central point earlier was that Sinn Féin needed clarification on a schedule for restoration, and that until such clarification was forthcoming, Sinn Féin would not commit to taking part in any Assembly debates. However, a schedule already clearly exists. It outlines the major milestones until 24 November and what is to happen on 25 November. Therefore, the real issue cannot be the absence of a schedule: perhaps it is the absence of further detail in the schedule.

3561. From the start, this Committee has, broadly speaking, worked within the context of that schedule, and Sinn Féin has not objected to that until now. As this matter affects us all, perhaps Sinn Féin will tell us what further information and detail it requires the existing schedule to contain. That may enable us to gain a little more understanding of the party's difficulties with it.

3562. **Mr McFarland:** I wish to ask Martin a few questions. Let us suppose that the Secretary of State reads this report tomorrow morning and produces a schedule for Sinn Féin — even though, as Seán says, a schedule already exists. In that case, is Martin saying that Sinn Féin would be encouraged to take part in a debate? Would the party be almost definite about taking part or simply be more likely to do so; or, as Martin said originally, would the party still have to meet with the Secretary of State and the Irish Foreign Minister?

3563. Would Sinn Féin have to take time out to meet them at the end of this week, next week or the week after, or would all be well if the Secretary of State put a schedule into Martin's hands tomorrow morning, which I am sure the team could organise?

11.15 am

3564. **Dr McCrea:** In one sense, I am surprised by Sinn Féin's new confidence in the Secretary of State. He would be very pleased that he has engendered such confidence within the party that all that is needed is a little word or sheet from him and all is well.

3565. However, the reality is different. Sinn Féin has realised that it wrong-footed itself at last Monday's meeting. The party spokesman on that day, Conor Murphy — who seems to be taking a back seat at the moment — put the boot into all the Sinn Féin members who sat on the economic subgroup and who signed off the report. Those members had agreed that it was acceptable and worthy of debate. However, Conor Murphy dismissed that report, and those present at the meeting realised the extent to which he dismissed it. He claimed that sufficient work had not been carried out and so forth.

3566. The truth is that Sinn Féin did not want to enter into debate because that is one area in which Sinn Féin finds itself at a loss. However, the party recognised that it wrong-footed itself and that its position was not defensible in the community. Therefore, the party has tried to soften its approach somewhat — which is a strange mode for Martin McGuinness — by claiming that if it got this schedule it would consider a debate. That is the very opposite to what was said at the last meeting, at which there was no mention of a schedule or anything else. The party's position was that it would not play the game in the Assembly unless all the preparation for government issues were settled.

3567. Sinn Féin members have since realised that their position is not defensible — and neither it is. Martin McGuinness tries to tell us that what the IRA did had a massive impact and closes his eyes to the criminality and to the most recent IMC report, which found that IRA criminality was still continuing and that leading members of Sinn Féin were involved in that criminality. Even though the IMC will state, could state that there has been a change in that criminality, it cannot wipe out what has already taken place. Nor can anyone wipe out the fact that Sinn Féin turns it on and off tactically whenever it wants to. There is nothing surprising in that; because the party is under the scrutiny of London, Dublin, and, internationally, America and Europe, it has to put the screws on the folks on the ground.

3568. The truth is that the IRA is a terrorist organisation that is still intact. Had it turned its

back on its terrorist and criminal past, as some people have proclaimed, there is no reason whatsoever that it should still be intact.

3569. Mr Robinson has made it abundantly clear that while a schedule from Tony Blair or Bertie Ahern might give succour to Martin McGuinness and the troops of Sinn Féin, it will not tie everybody else's hands: nobody will bow in submission to the dictates of those people.

3570. The DUP has made election promises to the public that define its democratic credentials. It will not renege on those for either Bertie Ahern or Tony Blair. Martin McGuinness may get some crumb of comfort from them, and hide behind them for whatever reason, such as putting off a debate that his party might refuse to participate in anyway. The subgroup, and this Committee, approved the report unanimously. As far as the DUP is concerned, the report must be debated.

3571. I referred to the Secretary of State because I have read the minute in which he states that he had referred the matter to the Assembly and that he "had directed" the Committee. Hence, we are not waiting for him to direct us; he has already stipulated that the Committee will address the Assembly on the subgroup's report in September.

3572. It is up to members to decide what they want to do with the report. The DUP's decisions have always honoured the promises that it has made to the public.

3573. **Mr M McGuinness:** I want to make it clear that I have made no negative judgements about the work that has been done by the subgroup. People must understand that the work that is done by the Committee and the subgroup cannot be separated from the overall objective that was stated by the two Governments at the start of the process, which is that the principal purpose of the Preparation for Government Committee is the restoration of the Assembly, the establishment of a power-sharing Executive, and the reinstatement of the North/South Ministerial Council — an important all-Ireland dimension of the Good Friday Agreement.

3574. The danger is that we will end up in a situation where people believe that the only work that needs to be done is that of the Preparation for Government Committee and the subgroup — valuable though that is, particularly if further consensus can be reached on the important matters that we must deal with.

3575. We must not separate what the Committee and the subgroup have achieved from the overall intention that was stated by the two Governments at the outset of the process, which is that the principal purpose of bringing back the Assembly is to reinstate the institutions that were agreed on Good Friday, 1998.

3576. In terms of Willie McCrea's comments, it is quite significant that he even attributes remarks to the IMC that the IMC never made.

3577. Alan queried how this matter could be processed during the course of this week. We can work it out vis à vis meetings with the Secretary of State or the Minister for Foreign Affairs, Dermot Ahern. All of the other parties can discuss with the Governments at any time how we take things forward. Sinn Féin will do the same; we will see whether we can get what we are seeking during the course of this week. That is why I think it is important that we should reconsider the motion next Monday. We have time to do that, and it is the sensible way to proceed.

3578. Seán Farren asked what detail Sinn Féin might derive, beyond what the Governments have flagged up publicly, from further discussion with the Governments. Let us wait and see. Sinn Féin certainly has its own view of how this should be taken forward. We think it is important to discuss with the Governments the need to ensure that there is a realistic and meaningful plan of action or schedule to ensure that the institutions are up and running by 24 November.

3579. That is all the more pertinent given the remarks made by the DUP delegation this morning to the effect that they are not bound by the calendar date flagged up publicly by the two Governments. Willie McCrea —

3580. **Mr McFarland:** Will Martin take a question?

3581. **Mr M McGuinness:** I will finish this point and then I will take a question. Willie McCrea has consistently said, from the day and hour the PFG Committee was set up, that the DUP would not be bound by any deadline. That clearly represents a massive challenge, not just to the Irish and British Governments, but to every other party in the Committee that stated that it wants to see the institutions restored by 24 November.

3582. **Mr McFarland:** My understanding was that the Secretary of State had put the plenary meeting back a week, so that it should take place next Monday. I am confused as to how, if this issue is to be debated next Monday, we can decide next Monday what the motion should be. The motion must be submitted to the Business Committee tomorrow.

3583. **Mr M McGuinness:** I am saying that we should reconsider the motion next Monday, vis-à-vis when it is put forward for the Business Committee's consideration as regards a debate in the Assembly. I am not arguing against Assembly debates on this issue; I am arguing for a recognition by the Committee that the work of the Committee cannot be taken in isolation from the overall stated purpose of the two Governments from the beginning, that work was to prioritise bringing back the Assembly, electing an Executive and restoring the power sharing and all-Ireland institutions.

3584. It is crucial that the work of the Committee and those overall aims should progress simultaneously.

3585. **Mr McFarland:** So what you said earlier about just needing a list of dates was not exactly correct? Even if the Secretary of State got a list to you tomorrow morning, you are saying that Sinn Féin believes that the debate should not take place next Monday but should be delayed for a week or more, because at next Monday's meeting, the Committee should examine the motion, and send it to the Business Committee the next day for debate on 18 September.

3586. That is difficult for us, because my understanding was that the debate on the economy was to be followed rapidly by three more debates, on the other three reports that are

being produced. Some of those reports are fairly massive and debate could take two days for each. Perhaps you are saying that you are not going to agree to any of these debates, in which case we can keep putting this back for as long as we wish to. However, what you said originally was that you needed a timetable, and I asked you whether if you got one tomorrow morning that would do the trick. I sense that it would not do the trick, because it is not about a timetable — it is about trying to put off the plenary meeting and not have plenary meetings.

3587. **Mr M McGuinness:** You should not presume my intention.

3588. **Mr McFarland:** That is the logic of what you said.

3589. **Mr M McGuinness:** It seems to be a recurring feature for some parties to attempt to analyse Sinn Féin's position, just as Willie McCrea wrongly attributed remarks to the IMC. Based on what I said earlier, you have decided that Sinn Féin's purpose is to delay for as long as possible, or even prevent, further debates and discussions in plenary session. I have not said that.

3590. Sinn Féin is prepared to consider debates taking place and participation in those debates. However, none of us have spoken to Peter Hain recently, and I have been told that he will not be back here until next weekend, so we are at a disadvantage. Dermot Ahern is probably on holiday.

3591. It is legitimate for us, particularly given the assertion by some unionist insiders that things will get serious from September, to seek clarification. We want a serious plan from the two Governments to achieve their stated objective, which is to bring back the Assembly to elect an Executive. Sinn Féin wants that to happen before 24 November, and it is legitimate for us to ask both Governments to explain what will happen between now and then.

3592. Do you know if you are going to Scotland on 9 September? Do you know if you are going to Timbuktu on 9 September? Is it 9 September? How long will we be there? What is going to happen? Will the DUP engage with Sinn Féin in

a serious way? There are many questions that remain unanswered.

3593. **Dr Farren:** Martin, you run the risk of exasperating the lot of us. You seem to think that the existing schedule is not detailed enough, but you have not shared any of your concerns or proposals for how it could be made more comprehensive. I do not have a copy of the schedule in front of me, but it may be helpful if the secretariat could share it with us, because it is reasonably detailed. I do not care whether we are going to Scotland or Timbuktu next month — the business must be done wherever we are.

3594. **Mr M McGuinness:** Exactly.

3595. **Dr Farren:** The location does not matter.

3596. **Mr M McGuinness:** Exactly.

3597. **Dr Farren:** Therefore, when you ask whether we need an answer to the question about whether anyone knows where the talks will be held, the answer is “no”. All we need to know is that we still have the opportunity to discuss the issues.

3598. It would be helpful if Sinn Féin could tell us what details it believes are missing from the schedule, because we would all be affected by any amendment to it.

3599. I accept the general milestones that are in the schedule up until 24 November, and the two Governments have made it clear what they will do if the deadline is not met. For the life of me, I cannot see what is needed over and beyond what is there. However, if Sinn Féin has any difficulties or questions that it wants answers to, perhaps it could share them with us. Sinn Féin may have noticed a serious gap in the schedule, and the rest of us may have been fools not to see it. Therefore we would also want answers to Sinn Féin’s concerns.

3600. However, all you have said is that you want a meeting with Peter Hain and Dermot Ahern. Why on earth do we want meetings with Peter Hain and Dermot Ahern to tell us what to do?

3601. For God’s sake, I thought that you and I were Irishmen and that we wanted to do business with other Irishmen and Irishwomen,

instead of always being put in the ignominious position of being told what to do by a British Secretary of State.

3602. **Mr M McGuinness:** Will you take an interjection?

3603. **Dr Farren:** No. You can have one when I finish.

3604. I thought that you were for breaking the connection with those people, instead of tying it tighter.

3605. **Mr M McGuinness:** Seán, it may have escaped your notice that a British Secretary of State suspended the institutions against our will.

3606. **Dr Farren:** We want to put an end to that nonsense.

3607. **Mr M McGuinness:** A British Secretary of State has established what is called the Hain Assembly for which, effectively, he decides everything that goes on. The very fact that you are sitting there is proof of that. Do not lecture me about Irishmen and British Ministers. The British Government suspended the people’s institutions against the will of the people a number of years ago. I think that it is quite —

3608. **The Chairman (Mr Wells):** Are you asking a question?

3609. **Mr M McGuinness:** He has finished.

3610. **Dr Farren:** Yes, I asked a question.

3611. **The Chairman (Mr Wells):** The tone was beginning to get quite harsh.

3612. **Dr Farren:** It was an expression of exasperation, as I said.

11.30 am

3613. **The Chairman (Mr Wells):** Have you finished, Mr McGuinness?

3614. **Mr M McGuinness:** No, I have not finished.

3615. **Mr P Robinson:** Was Mr McGuinness the next on the list to speak?

3616. **The Chairman (Mr Wells):** No. Mr McNarry was the next member on the list to speak.

3617. **Mr P Robinson:** Mr McGuinness should not have started.

3618. **Mr M McGuinness:** After Willie McCrea, since you came in here this morning you have interjected a few times yourself, Peter.

3619. **The Chairman (Mr Wells):** Any interjections tend to be short questions or observations. If Mr McGuinness wishes to speak, I can certainly put his name on the list.

3620. **Mr M McGuinness:** I do wish to speak.

3621. **The Chairman (Mr Wells):** I will ask Mr Ford to speak, because the Alliance Party has not had a fair crack of the whip this morning. I will then ask the Ulster Unionist grouping to speak, because there are several points to come, followed by the DUP grouping, then Mr McGuinness.

3622. **Mr Ford:** I welcome Sinn Féin's actions of earlier today. When it agreed the report of the Subgroup on the Economic Challenges Facing Northern Ireland and agreed that it would be published as the report of this Committee, it clearly acknowledged the work that the subgroup has done over the summer.

3623. The talk about things getting serious in September has been entirely disproved by the amount of serious work that many of us in this room have been doing for many weeks in the full Committee and in the subgroup when others were not necessarily here.

3624. When Sinn Féin accepted the report and agreed that it should be published, it actually acknowledged that what it said last week about the report not being serious enough was wrong. It is a very serious report: it deals with critical issues, and it merits an Assembly debate.

3625. However, the proposal today that we cannot have an Assembly debate because we do not have a schedule from the Governments is absolute nonsense. We may be unhappy with the schedule from the Governments, and we may think that not everything is in it, but when the Prime Minister and the Taoiseach came to this Building they set out the timetable of operations. Not until today have we heard any complaint from Sinn Féin that there is something fundamentally wrong with the timetable.

3626. A few weeks ago Sinn Féin was prepared to accept that we should delay the plenary meeting for a week to ensure that a proper and full report was available for debate. The party went along with everybody else on that. Now it is saying that because of another issue entirely it is not prepared to deal with an Assembly debate.

3627. I notice that the serious questions that Seán Farren and Naomi Long posed have not been answered and that all that we have heard have been diatribes against the DUP. Those may be justifiable at times, but on this occasion it is easy for Sinn Féin to attack the DUP because that is one way of avoiding serious questions from others.

3628. What are the problems with the timetable? How is the Committee expected to resolve those problems when Sinn Féin has not mentioned them before today? What possible benefit will it be to have a timetable for operations while insisting on putting things back a further week for no good reason whatever?

3629. **The Chairman (Mr Wells):** Several Ulster Unionists wish to speak, and this is their opportunity to do so. I will then call the DUP. Mr McGuinness can answer, and we need to move to the proposals after that.

3630. **Mr McNarry:** I agree with David Ford. This is a great deviation from the remit of the PFG Committee. It has been long established that its remit was to scope and discuss. Martin McGuinness wants to now introduce a form of negotiations with a Government that are not represented at this table. It is fair that he raises serious concerns, and it is interesting to hear those. However, to use them to stop a debate on the economy is quite a facile Sinn Féin tactic.

3631. We are preparing, not negotiating; the Government are not sitting around this table. The proposal is not controversial. I have heard no one object to it in any great detail. The only objection comes from one party that does not want to debate it in the Assembly Chamber.

3632. This seems to be a run on from last week when Sinn Féin personnel on this Committee dumped on their own people in the Subgroup on

the Economic Challenges facing Northern Ireland, and dumped on them hard. They backed off them and left them hanging high and dry. Those people are not here, but we will deal with what we have.

3633. Sinn Féin now seems keen on a wrecking exercise designed to ruin any confidence building — for another week, at least. What guarantees do we have that anything will change in another week? What guarantees are there that anything will change if Sinn Féin gets the timescales and schedules that it is worried about? This is all a filibuster. We will not get consensus on a plenary sitting; it is now 11.35 am, for goodness' sake.

3634. The Committee should bear in mind its earlier decision to approve the subgroup's request that it be allowed to reconvene to prepare a report on an economic package and a further report on the forthcoming research from the Economic Research Institute of Northern Ireland (ERINI), which is due to be completed in October; and to employ at least one economist.

3635. Chairman, the members on the economic challenges subgroup put in an honest day's work and worked very well as a team. I cannot speak for all those who sat on the subgroup, but most of its members — even, I think, Sinn Féin representatives — would see the decision to block the report as a right kick in the teeth. That is Sinn Féin's intention.

3636. How can we encourage the subgroup to hang in there and prepare further reports if we cannot be sure that those reports will not be subjected to the same sort of nonsense? What is the point in preparing reports if they are only going to gather dust?

3637. **The Chairman (Mr Wells):** Mr McGimpsey will speak next, and that will be the last opportunity for the Ulster Unionist Party Assembly Group (UUPAG) to contribute to this debate.

3638. **Mr McGimpsey:** As everybody knows, this Committee started off in angry form, but then settled down throughout the summer. The work that it and the subgroup have carried out

throughout the summer has not been without value; it has been a useful exercise.

3639. We all knew what the plan and timetable were. Martin says that he needs a serious plan, but a serious plan was published, and we knew roughly what the time frame was. As I understood it, we were heading towards plenary sittings in September to discuss these plans. The next key date will be the IMC report on 4 October to confirm whether, as William mentioned, the IRA is still an intact terrorist organisation or whether it has turned its back on terrorism and criminality. That will be another key trigger date, after which Blair will get involved, as he has done in the past.

3640. The countdown then begins to 24 November. I am quite clear about what is to happen on that date. We have been told that either the Executive and devolution restarts or MLAs' salaries and allowances and financial assistance to parties will stop. The British-Irish Intergovernmental Conference is due to meet in December. That schedule was published, and we all received a copy. I do not understand why that has escaped Martin's memory. He says that he wants a serious plan; we all have the serious plan, and we know what we are about.

3641. The deadline is 24 November. Members may or may not believe that that is a serious deadline. Deadlines have come and gone before, but it seems that this Secretary of State probably means what he says when he talks about that deadline — as do Blair and Ahern. However, there is an element of a gamble in that.

3642. However, that is the date towards which we have been working. I do not understand how Sinn Féin could sit in this Committee and in the subgroup and put their hands up and agree these reports — in fact, Sinn Féin members put their hands up to approve the report this morning — and then do a complete U-turn. The party now says that it is not prepared to go into the Assembly and tell everybody about the report — in effect, share our work with the public and let them know the issues on which consensus was reached. I wonder how serious Sinn Féin is, now that Martin has come back from holiday. Martin, I

do not know whether you had a bad holiday or whether the salmon were not running —

3643. **Mr M McGuinness:** I had a very good holiday, Michael.

3644. **Mr McGimpsey:** You are certainly in fine form now. Questions must now be asked about how serious Sinn Féin is. Martin, you talk about history and the past, but we all could do that. We have had several goes at this — the last time was three years ago. You are quite right that you do not need all this to get the deal that you got with the comprehensive agreement, which was drawn up as a result of discussions that the two Governments had with the DUP and Sinn Féin. However, while that was being negotiated and discussed, the IRA was planning the Northern Bank raid. Therefore, this discussion is not taking place in a bubble; there is a history. You tax Alan for trying to interpret your remarks, but we are all likely to draw conclusions from them.

3645. It is odd, to say the least, that Sinn Féin has effectively done a U-turn this morning and is kicking this matter into next week or the following week, or whenever. You say that you have no schedule, when, in fact, you received it when this Committee started weeks ago. Now you claim that you need to have this schedule before you can get going. That casts serious doubts over how serious Sinn Féin is about reaching agreement on 24 November.

3646. You keep talking about getting on with the people's agreement. The agreement is not your exclusive property, and it is definitely not the exclusive property of the two Governments. The agreement was drawn up between the UUP, the SDLP and the two Governments —

3647. **Mr M McGuinness:** So it is your exclusive property?

3648. **Mr McGimpsey:** No, it is not our exclusive property. Everybody has to be involved, and there were certain provisions in that agreement —

3649. **Mr M McGuinness:** Catch yourself on, Michael.

3650. **Mr McGimpsey:** A key issue was the interdependency of the institutions — the deal was that if there were no Assembly, there would be no North/South bodies. The North/South Ministerial Council and the Northern Ireland Assembly are mutually interdependent and one cannot successfully function without the other. I remind you, just as I reminded Conor Murphy and others, of what Paul Murphy said in the House of Commons on 8 March 1999:

“The North-South Ministerial Council, to which the bodies are accountable, would disappear if there were no Assembly. Similarly, the bodies envisaged in the agreement would disappear.”

3651. There will be no Utopia post-24 November if you do not make the Assembly work. I have voiced this concern before, but I believe that you want to bust the Assembly to get what you think you can get out of it after 24 November. I have had occasional doubts in the past when listening to Sinn Féin members on other Committees, but I now have serious concerns about whether Sinn Féin is serious about this matter, and whether its plan A really is its plan A. Is this a step towards that?

3652. **Mr P Robinson:** I do not want to rain on your party, but let us be clear that the electorate have made their views known on the Belfast Agreement. The principle of the mandate is such that we must be guided by the most recent mandates, and the overwhelming majority of the unionist community has shown that it is not satisfied with the Belfast Agreement. Their views must be taken into account, given that the agreement requires cross-community support. It cannot work without the support of both communities, so it is essential that changes are made.

3653. Chairman, your earlier suggestion that we move on is probably sensible because Sinn Féin is at sixes and sevens; it does not quite know what it is doing.

3654. Members of that party attended the meeting last week. They gave their reasons why they had not approved the report. They said that the report was incomplete and that further work was required. They put forward all sorts of excuses,

none of which were strong or satisfactory. However, we listened to them.

11.45 am

3655. This week, a new set of excuses has been put forward that run contrary to the actions taken by Mr McGuinness earlier today. At the start of the meeting, he approved the report, which states specifically, in the third paragraph of the executive summary, that the Assembly should debate it in September. Despite the fact that Sinn Féin has expressly approved the report being debated in September, it will not commit to that unless everybody jumps through its hoops. The schedule — which I understood was already in place — is meaningless, because it does not bind any party and does not deal with the key ingredient for restoration, which is that the republican movement has ended its paramilitary and criminal activity for good.

3656. We could go round in circles. I suspect that if we have another discussion on the matter next Monday, Sinn Féin will, yet again, throw the rattle out of the pram and will have another excuse for not entering the Assembly. It appears that its priority is not to be in the Assembly and not to discuss those matters, regardless of how important they are to the preparation for Government, whether they are agreed in Committee, whether everybody else wants to debate them or whether the Secretary of State directs it. We cannot change Sinn Féin's attitude. It must sort out the internal differences between its members on the subgroup who, in their report, indicated that it must be debated in September, and Mr McGuinness and his colleagues who voted that it should be debated in September and who now say that they do not want it to be debated then.

3657. **Dr McCrea:** Sinn Féin, and Martin McGuinness in particular, is squirming this morning. He has tried to get cover from whatever source possible. Last week, we were told that the report is incomplete and that it is not necessarily a serious report. Peculiarly, however, the report, which was incomplete last week and to which only small, technical editorial changes have been made, is considered complete today

and has, indeed, been passed. Sinn Féin is clearly playing a game.

3658. The Committee was set up to scope issues. Sinn Féin wanted negotiations, which are not in the Committee's remit. It has kept to its remit. Sinn Féin, however, has tried to move the goal posts. It wants the Committee to delay the debate on the report, which it says is complete, for another week. Why? The reason is simple: Sinn Féin wants us to play its game.

3659. Earlier, Martin McGuinness told the Committee that Sinn Féin is not playing a game. Indeed, it is, and it wants the Committee to play along with it. The Committee would be foolish to do so. Questions are being asked about how serious Sinn Féin is. Anyone who reads the minutes of what happened this morning will see that no consistent argument, which could stand up to scrutiny, has been presented by Sinn Féin as to why the debate should be delayed.

3660. The report has been passed unanimously. It should, therefore, be presented to the Assembly as it is. Peter Robinson mentioned the important statement in the executive summary of the report that indicates that it should be debated in September. That has been accepted. A week has already been lost. Are we to delay the debate for another week? There are serious issues that must be dealt with by the Assembly. I appeal to the Committee to make the right decision on how to proceed.

3661. **The Chairman (Mr Wells):** I will allow Mr McGuinness to respond to the points that have been raised. Afterwards, we must proceed to the various proposals.

3662. **Mr M McGuinness:** As usual, those who are on the other side of the table have totally and absolutely misrepresented Sinn Féin's intentions vis-à-vis the work of the Committee —

3663. **Mr McNarry:** That is how you have presented them, Martin.

3664. **Mr M McGuinness:** It is not a matter of how we have presented them. Time and time again, ad infinitum, you, Michael, Alan, Peter, and Willie McCrea have all given your views on Sinn Féin's intentions.

3665. **Mr McNarry:** They are pretty consistent.

3666. **Mr M McGuinness:** That is all it is — your view. The SDLP, the Alliance Party and the Ulster Unionists are content to play the DUP's game, but rest assured that Sinn Féin will not play that game. We stated from the beginning that we will hold both Governments to their stated objective and that the principal purpose of bringing back the Assembly was to see a Government established — a power-sharing Government — and the Good Friday institutions restored. That is what Sinn Féin seeks to achieve.

3667. Nothing that I have said, or that any Sinn Féin member has said in Committee or on the subgroup, conflicts with statements that I made earlier in the year that Sinn Féin is prepared to engage seriously in plenary debates and in discussions if it is satisfied that they form part of an overall project designed to fulfil the both Governments' initial stated objective of restoring the institutions.

3668. Time and time again in deliberations today, both Peter Robinson and Willie McCrea have made it absolutely clear that the DUP is not bound by any deadline, and that the DUP is working to its own calendar. Will the DUP share that calendar with the rest of us? The Committee is discussing calendars and plans on how it will deal with everything, and it has just been handed the work plan for July, August, September, October and November. It states that during the autumn — I presume that that means September — efforts to elect the First Minister and the Deputy First Minister will continue. I have not heard anybody talking about when that will be on the agenda for a plenary.

3669. Ken Reid told the general public that there will be intensive debates and discussions at a venue in Scotland — or Timbuktu, for all we know — some time in October. I have not heard anyone discuss that.

3670. The Committee should not blow out of all proportion what Sinn Féin seeks, which is that the Committee agree that it should deal with the motion on the economic challenges subgroup's report in a plenary next Monday. That is all Sinn Féin is asking. The Committee should not

make a melodrama out of it, and blow it out of proportion. It is not unreasonable, and if other people think that it is, that is tough on Sinn Féin.

3671. **Mr McNarry:** What will change between this Monday and next Monday?

3672. **Mr M McGuinness:** I do not know what will change. However, Sinn Féin will speak to both Governments about how they intend to take this process forward between now and 24 November. Sinn Féin has issues, but it will not place those issues before the Committee.

3673. **Mr McNarry:** The Governments are running this Committee, not Sinn Féin.

3674. **Mr M McGuinness:** Seán Farren is anxious that I inform the unionist parties about the conversations that we may have with both Governments, but, with respect, that is not how Sinn Féin negotiates.

3675. **Mr Paisley Jnr:** Call the psychiatrist.

3676. **Dr Farren:** On two occasions, the SDLP was referred to —

3677. **The Chairman (Mr Wells):** I am permitting Dr Farren to make a point of information on Mr McGuinness's speech.

3678. **Dr Farren:** The accusation was made that the SDLP and others are working to the DUP's agenda: that is not the case. I am working to the agenda before us, and I hope that Martin and his colleagues are as well.

3679. I made the point that issues that affected the schedule, and any changes or additions to it, would affect us all. It would be helpful if Martin McGuinness were to share those proposed changes with the Committee in order that it might appreciate their significance and understand why their absence is posing difficulties for Sinn Féin.

3680. I am certainly not anxious to hear of matters that Sinn Féin regards as privy to itself and the two Governments. However, the Committee is entitled to know what is missing from the schedule that causes Sinn Féin such difficulties that it cannot agree that the motion be approved.

3681. If Sinn Féin answers that question, my concerns will be slightly allayed. However,

Martin has made no attempt to give an answer, hence my exasperation on the previous two occasions that I have spoken.

3682. **Mr M McGuinness:** I have already answered that question, and I have made clear —

3683. **Dr Farren:** I think not.

3684. **Mr M McGuinness:** I have made clear Sinn Féin's reservations, and I have given a number of examples. For instance, the work plan of the two Governments was circulated this morning, but does anyone here know on what date in September the vote for the First Minister and Deputy First Minister will take place?

3685. **Dr Farren:** Table a motion with the Business Office in that case.

3686. **Mr M McGuinness:** It is not a matter of Sinn Féin tabling a motion. This is something that the British Secretary of State has empowered himself to do. It is not something over which the PFG Committee has any control. Unfortunately, that is the reality that we are dealing with, but Seán does not appear to be aware of that.

3687. It is also pertinent that the public learnt from Ken Reid on Ulster Television that intensive negotiations are to take place somewhere in Scotland in October.

3688. **Dr Farren:** There will only be intensive negotiations if people turn up for them.

3689. **Mr M McGuinness:** Nobody has yet refused to turn up for negotiations.

3690. **Mrs Long:** May I ask a question?

3691. **The Chairman (Mr Wells):** A point of information, Mrs Long.

3692. **Mrs Long:** Is this delay —

3693. **Mr M McGuinness:** They are only examples, Seán.

3694. **Dr Farren:** Give me a few more.

3695. **Mr M McGuinness:** No, I will not give you a few more.

3696. **Mrs Long:** Is this delay simply a fit of pique because the media has launched something that was not raised with the Committee? If that is the case, this is a poor show of trying to deal with the situation. I agree that finding these

things out through the media is not the ideal way of dealing with the future of these talks.

3697. **Mr M McGuinness:** It is incredible that you should say that, Naomi —

3698. **Mrs Long:** It is not the most incredible thing that has been said this morning.

3699. **Mr M McGuinness:** It is incredible that you should say that you were made aware by UTV and Ken Reid that there will be negotiations early in October.

3700. **Mrs Long:** I did not say that.

3701. **Mr M McGuinness:** What did you say?

3702. **Mrs Long:** I said that Ken Reid announced that we would be going to Scotland.

3703. **Mr M McGuinness:** What are you going there for? A football match?

3704. **Mrs Long:** I asked if your reaction this morning was a fit of pique in the light of that announcement.

3705. **Mr M McGuinness:** It is not a fit of pique.

3706. **Mrs Long:** That is good; I wanted to clarify that.

3707. **The Chairman (Mr Wells):** We have aired this adequately. I suspect that we might have difficulty in reaching consensus on this matter.

3708. One of the proposals is that the matter be deferred to Monday 11 September. That means deferring the debate to 18 September. It would be impossible to debate that and the other issues that are arising from the reports from the three strands of the PFG Committee in time —

3709. **Mr M McGuinness:** I do not know how you can presume that at this stage.

3710. **The Chairman (Mr Wells):** I am simply reporting the mechanics. Mr McFarland is correct; most of those reports will require a minimum of two days' debate. There would not be time to agree those reports, get them to the Business Committee and then to the Assembly in time for a possible start of negotiations on 9 October.

3711. **Mr M McGuinness:** We should not work forward on that basis.

3712. **Mrs Long:** Does the PFG Committee have the power to delay plenary sittings? On the

previous occasion that we wanted an extension, the Committee had to request it in writing from the Secretary of State.

3713. **The Chairman (Mr Wells):** If the Committee did not put anything forward, Mrs Long, there would not be anything to debate.

3714. **Mrs Long:** That is not what I am asking; I want to know if the Committee has the power to delay the plenary sitting.

3715. **Mr McFarland:** It is not at all clear. The first debate was supposed to be on 4 September; that was the plan, and we all agreed that.

3716. **Mr M McGuinness:** Sinn Féin did not agree to that.

3717. **Mr McFarland:** The discussions that I had around —

3718. **Mr M McGuinness:** There you go again, misrepresenting Sinn Féin's position.

3719. **Mr McFarland:** I understood that Sinn Féin was comfortable with this and with the delay that the subgroup was granted.

3720. **Mr M McGuinness:** Your understanding was clearly wrong.

3721. **Mr McFarland:** Perhaps you were not here for it, but your colleagues —

3722. **Mr M McGuinness:** I am aware of everything that happens here, Alan.

3723. **Mr McFarland:** The PFG Committee agreed to a week's extension for the subgroup and asked the Secretary of State to delay the plenary for a week to —

3724. **The Chairman (Mr Wells):** There was agreement by consensus.

3725. **Mrs Long:** If there had not been consensus, it would not have happened.

3726. **Mr McFarland:** There was consensus, and Sinn Féin agreed, at this table, to delay the plenary from 4 September to 11 September. That was logical because there was more work to do in the subgroup. However, Martin McGuinness's arguments this morning do not make sense and are not logical.

3727. **Mr M McGuinness:** Let us not go on the merry-go-round again. I have stated Sinn Féin's position.

3728. **Mr McFarland:** I understand that.

3729. **Mr M McGuinness:** I have put a proposal to the Committee; I am the only person to have done so.

3730. **The Chairman (Mr Wells):** I assure you that we have several proposals to deal with.

12.00 noon

3731. We have aired the matter extremely well. I will put the proposal, which was on the original motion. I accept that some members may wish to amend that proposal, if it is accepted that we have a proposal at all.

3732. **Mr Ford:** Surely the logic of Naomi's amendment to Martin McGuinness's apparent proposal is that he should request that the Secretary of State order the delay and that it would be only proper that the Committee make that request in the right way. I am sure that he would wish the Secretary of State to request the wordings.

3733. **Mr McNarry:** Martin McGuinness would have to give good reasons for suggesting his proposal. What guarantees has he given that next Monday he will not have a different opinion and protest that we must delay even further? It is a filibuster. He does not have a clue what his reason is, because he does not have a reason.

3734. **The Chairman (Mr Wells):** That is not a point of order, Mr McNarry.

3735. **Mr McNarry:** I am sorry.

3736. **Mr P Robinson:** It is a good point, however.

3737. **Mr M McGuinness:** Mr McNarry should contain himself.

3738. **The Chairman (Mr Wells):** The Committee Clerks have pointed out that it would be logical to take first the proposal that stands in Mr McGuinness's name, because if we agree to defer the issue for a week, we do not have to worry about the contents of the actual motion.

3739. I will put this —

3740. **Mr P Robinson:** Can we be clear? Is Mr McGuinness's proposal to the effect that the debate should take place a week later; or that the PFG should consider the motion in a week's time?

3741. **The Chairman (Mr Wells):** Mr McGuinness proposed that the discussion on the motion that will go to the Business Committee be deferred until Monday 11 September.

3742. **Mr P Robinson:** Again, there is no commitment to discuss the motion at all in the Assembly.

3743. **The Chairman (Mr Wells):** Is there consensus on Mr McGuinness's proposal?

Members indicated dissent.

3744. **The Chairman (Mr Wells):** We shall now return to the original motion. It would be helpful to get consensus on the principle behind the motion. Naomi had slight difficulties with it, and it has been tweaked somewhat, which I accept is legitimate. Seán had a few comments —

3745. **Mr P Robinson:** On a point of order, Mr Chairman. Was it proper for you to accept Mr McGuinness's proposal, given that there is a direction from the Secretary of State that the issue must be discussed at the September plenary?

3746. **Mr M McGuinness:** How does accepting my proposal conflict with that direction? There is no conflict at all.

3747. **The Chairman (Mr Wells):** The Secretary of State could intervene at any stage and instruct us on this issue. We could have still technically debated the motion in September even with that proposal, so I am happy that it was in order. However, the proposal has fallen; it has been defeated.

3748. **Mr P Robinson:** The problem is that, because we must operate on the basis of having consensus, nothing will be agreed.

3749. **The Chairman (Mr Wells):** We do not yet know what will happen, because we have to put a series of proposals.

3750. **Mr P Robinson:** We do know.

3751. **The Chairman (Mr Wells):** It is unlikely perhaps, but I think —

3752. **Mr McFarland:** Chairman, it is fair to say that, from the beginning of these Committee meetings, the DUP's key point was that the need for consensus on every issue would present problems.

3753. **The Chairman (Mr Wells):** We shall put the proposals. If the motion falls, there will be no arguments over the semantics, because there will be no motion.

3754. **Mr McFarland:** Chairman, did this motion come from the subgroup or from the PFG Committee?

3755. **The Chairman (Mr Wells):** No. The clerking team suggested it in order that the Committee would have something with which to work.

3756. **Mr McFarland:** Is it not up to the Secretary of State to produce the motion?

3757. **The Chairman (Mr Wells):** Yes. He can intervene and instruct the Business Committee on how to proceed, and he can instruct the Assembly to debate the issue.

3758. **Mr McNarry:** If it is likely that there is no consensus, are we bound to write to the Secretary of State to say that we have been unable to reach consensus, so we are unable to avail ourselves of the date that he has offered us?

3759. **The Chairman (Mr Wells):** No, that is a matter for the Business Committee.

3760. **Mr P Robinson:** If that is the case, all we are discussing is the content of the motion, not the date when it will be debated: it is up to the Business Committee to determine that. Therefore, let us consider the motion, regardless of when it will be debated.

3761. **The Chairman (Mr Wells):** If the motion falls, I will suggest, as Chairman, a possible procedural motion that could be used.

3762. **Mr McNarry:** Why should the motion fall if it is just its content, and not the date for debating it, on which we must agree?

3763. **The Chairman (Mr Wells):** I cannot pre-empt what members will say, so I shall put the motion simply to remind members that —

3764. **Mr P Robinson:** The draft motion in front of us has a heading, which specifies a date. The heading has to be removed.

3765. **The Chairman (Mr Wells):** The heading is there for guidance. It is not part of the draft motion and can be deleted. There is no difficulty with that. It has been two hours since we first read the draft motion into the record, so I would remind members of the wording:

“That the Assembly approves the first report from the Committee on the Preparation for Government on the Economic Challenges facing Northern Ireland; agrees that it should be submitted to the Secretary of State for Northern Ireland; and calls on the Secretary of State to take action to implement the recommendations in the Report.”

3766. I know that there are technical difficulties with that. If they are sustained, we will come back to them as amendments. Does the Committee accept in principle that it will have a motion of that nature at some stage, with amendments? Are we agreed?

Members indicated assent.

3767. **Mr M McGuinness:** We are not agreed on that taking place on the —

3768. **The Chairman (Mr Wells):** The draft motion is simply as I read it. There will be no date attached. We have reached consensus on that.

3769. There were technical difficulties with the numbering of the recommendations because we had made some of them ourselves, such as the appointment of an economic advisor. Mr Ford, you suggested that we should specifically refer to recommendations 1-16 and 19-21, because recommendations 17 and 18 are within our own bailiwick. The last line of the draft motion would then read, “and calls on the Secretary of State to implement recommendations 1-16 and 19-21.” Is that agreed?

3770. **Mr Ford:** There is the further point, which Naomi raised.

3771. **The Chairman (Mr Wells):** I will be coming to the issue of “pending restoration”.

3772. **Mr Ford:** I presume the Clerks have got the numbers right. Those are the short-term

issues for the Secretary of State. However, the draft motion still implies that responsibility for all of those recommendations rests and is likely to remain with the Secretary of State.

3773. **The Chairman (Mr Wells):** I would then move to Mrs Long’s amendment that we add the words, “pending the restoration of the institutions”.

3774. We are trying to bring together a composite motion to reflect those comments.

3775. **Mr P Robinson:** Why not just add the words, “calls on the Secretary of State and others to take action to implement the recommendations in the report”?

3776. **The Chairman (Mr Wells):** Mrs Long is unhappy with that.

3777. **Mrs Long:** I prefer the words, “pending the restoration of the institutions”. If we are to debate the recommendations in the context of preparation for Government, then that has to be the context in which the motion goes forward.

3778. **Mr P Robinson:** That is not accurate either, because there are recommendations that are not for the Secretary of State, but which are for others, whether or not there is restoration.

3779. **Mrs Long:** I do not object to the word “others” being included, but I prefer to include the reference to restoration.

3780. **The Chairman (Mr Wells):** We shall include both. That should combine the three concerns expressed about the motion as drafted. The motion now reads:

“That the Assembly approves the first report from the Committee on the Preparation for Government on the Economic Challenges facing Northern Ireland; agrees that it should be submitted to the Secretary of State for Northern Ireland; and, pending the restoration of the institutions, calls upon the Secretary of State and others to take action to implement recommendations 1-16 and 19-21 in the report.”

3781. Does that satisfy the three considerations?

3782. **Mr P Robinson:** Why are we specifying those recommendations?

3783. **The Chairman (Mr Wells):** Because recommendations 17 and 18 are our responsibility.

3784. **Mr P Robinson:** This is an Assembly motion, and these are PFG responsibilities. We are saying that the Assembly is telling the Secretary of State and others —

3785. **The Chairman (Mr Wells):** The word “others” referring to us?

3786. **Mr P Robinson:** We are some of the “others”.

3787. **Mr McFarland:** It should not matter. The Committee’s action fits in under “others”.

3788. **Mr McNarry:** We have already accepted that in the motion.

3789. **The Chairman (Mr Wells):** We can drop the wording as a result of the additional material. Are members happy with that?

3790. **Dr Farren:** Read the motion to us now, please.

3791. **The Chairman (Mr Wells):** Here we go again:

“That the Assembly approves the first report from the Committee on the Preparation for Government on the Economic Challenges facing Northern Ireland; agrees that it should be submitted to the Secretary of State for Northern Ireland; and, pending the restoration of the institutions, calls upon the Secretary of State and others to take action to implement the recommendations in the report.”

3792. **Mr P Robinson:** It might be appropriate to give more standing to the PFG Committee and make the recommendation read, “The Secretary of State, the Committee on the Preparation for Government and others”.

3793. **The Chairman (Mr Wells):** I can see the logic to that. Are members content with that suggestion?

3794. **Mr Ford:** That seems logical, given that two of the recommendations have been made specifically by the PFG Committee.

Members indicated assent.

3795. **The Chairman (Mr Wells):** There is no date attached to the proposal: it stands as worded.

3796. **Mr M McGuinness:** The proposal would be enhanced if we included the phrase “before 24 November”.

3797. **Mr Ford:** Looking at the long-term nature of some of the recommendations on the economy, it is unrealistic to suggest that we could implement them by 24 November. Although that date might have resonance in certain other areas, I am not sure that we can put the Northern Ireland economy right in three months.

3798. **The Chairman (Mr Wells):** After the composite proposal, the motion reads as follows:

“That the Assembly approves the first report from the Committee on the Preparation for Government on the Economic Challenges facing Northern Ireland; agrees that it should be submitted to the Secretary of State for Northern Ireland; and, pending the restoration of the institutions, calls upon the Secretary of State, the Preparation for Government Committee and others to take action to implement the recommendations in the report.”

3799. Are members content with the composite proposal?

Members indicated assent.

3800. **The Chairman (Mr Wells):** We have got through a lot of business this morning, and it is not appropriate to move to the ministerial code and the various strands of the report at this point. I suggest that we break now.

The Committee was suspended at 12.11 pm.

On resuming —

12.49 pm

3801. **The Chairman (Mr Wells):** Comments have been received from some members about delays in receiving the Official Report (Hansard). This matter was drawn to the attention of Madam Speaker, and her response, I hope, explains the difficulties that the Office of the Official Report faces. Do members have any comments on Madam Speaker's response?

3802. **Mr McFarland:** I raised this matter originally. I was concerned that it seemed to be taking an awfully long time. What worried me is that for four years we were unable to do our work; when the opportunity arose in May to start doing some fairly substantial work again, someone should have checked whether the system at Stormont could cope. Presumably the Secretary of State decided we were going to do this work.

3803. I know that it has been a pain for the Clerks and others who have had to reorganise their lives over the summer. However, as we are doing some work for the first time in four years, I could not quite understand why the Office of the Official Report was not able — albeit it was a nuisance, and a pain, or whatever — to provide its usual high standard.

3804. Hansard was excellent during the first Assembly: staff carried out their work and the report was accurate. Having got all of this up and running again you would have expected the Clerking system and Hansard to be of the same standard as before and to work through whatever difficulties they have had. We have all had difficulties over the summer in terms of reorganising our lives to cope with this. I do not want to dispute what Madam Speaker has been told, but on the day I raised this matter I had got a Hansard report out for comment, which I think had been for a meeting which was over a week, or 10 days, beforehand. I was just confused as to why that should be the case. Anyway, I will let it lie there. Madam Speaker has replied to us.

3805. **The Chairman (Mr Wells):** Are you happy with Madam Speaker's response to your concerns?

3806. **Mr McFarland:** I acknowledge Madam Speaker's letter.

3807. **The Chairman (Mr Wells):** Are members content to leave it that Mrs Bell has explained the situation and the problems there have been? You cannot just go into the street and pick up a member of Hansard staff — they are highly trained, professional people who spend many years learning the trade. It is not just about getting extra bodies — you have to train people to do the job.

3808. **Mr McFarland:** Could I ask a question?

3809. **The Chairman (Mr Wells):** Yes.

3810. **Mr McFarland:** If we ever get to the halcyon days when the DUP and Sinn Féin do a deal — perhaps before 24 November —

3811. **Mr P Robinson:** Why do you keep writing yourselves off?

3812. **Mr McFarland:** Supposing they manage to do a deal on 10 October and this place fires up, where are we going to get those fully trained Hansard operatives at that stage? I am confused as to why it seems to be OK that we have let all those staff go and are not concerned whether they are back or not. Does the Secretary of State not have confidence that the parties can do the deal?

3813. **The Chairperson (Mr Wells):** I can say from my experience on the Assembly Commission and on the Speaker's Advisory Group that we will have enormous difficulties if the Assembly fires up suddenly. At the last count we had lost 114 permanent staff, who have gone elsewhere.

3814. **Mr P Robinson:** We have taken note of that: no rush back.

3815. **The Chairman (Mr Wells):** I know from previous experience in September 1998 that the staff rose to the occasion magnificently, and it was seamless. So it can be done. However, we need to appreciate the very unusual circumstances in which we find ourselves as an

Assembly. Does any other member wish to comment on this issue?

3816. **Ms Gildernew:** I am sorry that I missed the substantive part of the discussion. I would like to reiterate that Hansard has had to cope admirably with a great deal of work that nobody was able to foresee a number of months ago. I apologise if those remarks have already been made. The staff have done a sterling job in providing the relevant documentation for us at each stage.

3817. We should congratulate them on the work that they have done to date.

3818. **The Chairman (Mr Wells):** I am certain that the Editor of Debates will ensure that those comments are accurately minuted and recorded.

3819. The next item is the draft minutes of the meeting of 29 August. Have members had an opportunity to read them? Are there any corrections or additions? The minutes tend to be non-contentious. They are always a clear and accurate record of the meetings.

3820. **Mr P Robinson:** There is very little in them.

3821. **The Chairman (Mr Wells):** They are stark, because Hansard records everything anyway.

3822. Are members agreed on the draft minutes of 29 August?

Members indicated assent.

3823. **The Chairman (Mr Wells):** The next item is the draft ministerial code.

3824. Mr McFarland has drawn it to our attention that OFMDFM officials have been considering changes and additions to the ministerial code, and they will make the new material available to us by Friday. Do members wish to proceed on the issue today, or do they feel that it is more appropriate to wait until we have the material on Friday, which means that it would be debated next Wednesday?

3825. **Mr McFarland:** Even though a ministerial code was produced and agreed at the beginning of the previous Assembly, work was ongoing to document the evolving custom and

practice in the Executive. Had the Assembly not been suspended, the modified version would have gone before the Executive and been agreed. According to the Secretary of State's plan, the Committee is obliged to agree, or suggest, a ministerial code in October. Therefore it seems daft to work on a draft ministerial code when work had been ongoing, and modifications were available. Those suggested modifications have no official status, but, if we are to produce a code in October, it makes sense to consider that which had evolved and was being documented as a result of experience and best practice during the first Assembly.

3826. **The Chairman (Mr Wells):** We could have a general debate on the ministerial code. The DUP has submitted a paper on it. Have members had a chance to read it?

3827. **Mr M McGuinness:** Is this the first time that this paper has been submitted?

3828. **Mr P Robinson:** All parties were invited to submit papers for this meeting.

3829. **The Chairman (Mr Wells):** Only the DUP took up that option.

3830. **Mr M McGuinness:** Sinn Féin does not propose any changes to the ministerial code, but we are happy to consider proposed changes by any party, provided that they are based on rationale and that they are within the terms of the Good Friday Agreement.

3831. **Mr McNarry:** Are you sure that you do not want to talk to Peter Hain about them first?

3832. **Mr M McGuinness:** Normally, we talk among ourselves before we talk to the British overlords in whom you place a great deal of confidence.

3833. **Mr McNarry:** You accused me of making assumptions, but now you are making them.

3834. **Mr M McGuinness:** This is the first time that we have seen the DUP paper. I am unsure if other parties have submitted papers.

3835. **The Chairman (Mr Wells):** No, the DUP is the only party to have submitted a paper.

3836. **Mr McFarland:** If we are to receive the latest version of the ministerial code from OFMDFM on Friday, it makes sense to sit down and work through the DUP's document. Then we could move forward and have a sensible debate on the issue.

1.00 pm

3837. **Mr P Robinson:** Mr Chairman, the context to this discussion is that all the parties here have agreed that there should be a ministerial code, elements of which should be given statutory authority in a new piece of legislation. The Committee also agreed that there were some issues best dealt with in a ministerial code, such as accountability. Indeed, there was general agreement that the issue of support for the rule of law could be dealt with in that context as well.

3838. There has been consensus on those issues thus far. The DUP submission relates only to the matters which we feel it would be necessary — beyond what is already in the legislation — to include as part of a statutory ministerial code, or the elements of the ministerial code that would have a statutory effect. Clearly, there are other matters. There are two exercises; first, what has to go into statute, and second, what the content of a wider, all-embracing ministerial code might be. Have we any indication from OFMDFM what areas they have considered for change in the ministerial code? Are they areas that are likely to impact on the statutory elements?

3839. This Committee had a particular obligation to look at obstacles to devolution. I suspect that most of the ministerial code will not be considered by anybody to be an obstacle to devolution. However, some of the obstacles to a return to devolution that have been identified could be dealt with in a statutory ministerial code. We need to distinguish between those two elements.

3840. **The Chairman (Mr Wells):** That is a helpful comment. The NIO will be giving us a paper on the additional work that it has been doing on the code.

3841. **Mr P Robinson:** The NIO?

3842. **The Chairman (Mr Wells):** Sorry, OFMDFM.

3843. It is not going to be a revised draft code. The issues that we think are going to be new are issues such as bringing written papers to the Executive and the implications of the Freedom of Information Act 2000 for the workings of the Executive. Those are obviously matters that they would not have been aware of in 2000.

3844. **Mr McFarland:** Do you know why it is taking so long?

3845. **Mr P Robinson:** Perhaps they have not seen the schedule.

3846. **The Chairman (Mr Wells):** Taking so long to bring it to us?

3847. **Mr McFarland:** Yes. There is likely to be a document that they have annotations on. My understanding was that they actually had something. Presumably it is a matter of photocopying that and giving it to us. Why is it taking until Friday?

3848. **The Chairman (Mr Wells):** As you know, Alan, this matter was only raised on Friday.

3849. **Mr McFarland:** Yes, but 15 photocopies does not take a week.

3850. **The Chairman (Mr Wells):** There is no document as such. The various changes have to be brought together under one cover for our benefit. That is what I have been told. It is not available today, but it will be.

3851. **Mr McFarland:** Can we hurry them up?

3852. **Mr P Robinson:** Freedom of information is not going to be relevant to the core issues, which could be resolving obstacles. If we get that done, so be it. There is no rush to get that done in the next month or two, is there? The written papers and the rules that would relate to them being brought to the Executive or elsewhere might have a bearing on it.

3853. **Mr McFarland:** The programme requires that:

“Parties conclude discussions and finalise draft Programme for Government and draft Ministerial Code”.

3854. That is for October, so logically in September we would be examining all this and coming to some conclusion on it. Is the actual Programme for Government to be debated, or just key parts of it? Are the statutory parts to be debated?

3855. **Mr P Robinson:** What is put forward is up to us. The PFG Committee was given the role of putting forward recommendations for debate so, if it is thought to be an important element, then maybe it will be put forward.

3856. Realistically, given the timescale that has been mapped out to November, we will do well to deal with the reports of the Subgroup on the Economic Challenges facing Northern Ireland, and of the PFG Committee dealing with institutions, policing and human rights. That will account for four weeks, and if we are all going to go to Timbuktu or Scotland in between, it might take another week or two.

3857. **The Chairman (Mr Wells):** I am in the hands of the members.

3858. **Dr Farren:** I understand that, at the minute, you are seeking a way forward as to how we handle this debate. We have had a paper from the DUP and we have the original draft ministerial code. In addition, there are notes from OFMDFM. It would be helpful if we had all of that together at one time, so that we could go through it, setting the various recommendations for change, if there are any, against the original document. I am not in favour of delaying things, but it would help if we met with all the relevant documents before us.

3859. Another suggestion, and I hope it is helpful though I am not a legal expert, is that the original document could be marked to tell us which elements are likely to be part of statute, so that we could see what in the ministerial code would be statutory and what would not.

3860. **Mr P Robinson:** That is for us to decide. All we have at the moment is a pledge of office and a code of conduct. I was never clear as to whether the code of conduct was not really a statutory element of a ministerial code. If it is, perhaps that bit needs to be expanded. It is up to

us to determine how much of it should be statutory. The DUP has stated what it believes should be included.

3861. **Dr Farren:** There may be certain elements that obviously lend themselves to statutory underpinning, and therefore they might be marked because they could be made statutory. There might be other elements that we could add to it or take away. It is helpful to have guidelines, although we do not have to be dictated to by them, as to what should be part of statute and what should not. It is just to help debate.

3862. **Mr P Robinson:** If officials are going to do that, they might want to look at elements that, though they are in a ministerial code, are giving Ministers what is already in other legislation outside of the Northern Ireland Act 1998 or any successor Act. Much of it — for instance, the freedom of information stuff that we are talking about — is to meet legal requirements. That is the case in the existing ministerial code. All it does is tell the Minister what he should do because he is legally required to do it.

3863. **The Chairman (Mr Wells):** When do we do this? The DUP is the only party that took up the invitation to provide a paper. Others could still do that, if we return to this issue.

3864. **Dr Farren:** The SDLP will not.

3865. **The Chairman (Mr Wells):** We have this note from OFMDFM. The Assembly is to sit on Monday, so we will not meet. Dr Farren suggests that we move this discussion to our next meeting, which is on Wednesday. That would give members a chance to consider the DUP's paper and perhaps give other parties an opportunity, if they wish, to provide more material. Alternatively we can dive into this now, and hope that when the note comes through on Friday from OFMDFM, it does not radically alter what we have decided.

3866. **Mr M McGuinness:** That makes no sense.

3867. **The Chairman (Mr Wells):** Those are the two proposals. I am entirely in the hands of the Committee as to how we deal with it.

3868. **Dr Farren:** This is not a major exercise, even though the document is substantial. There is much that we will probably agree needs to be in a ministerial code, whether statutory or otherwise. There may be disagreement over what needs to be underpinned by statute. I would prefer to have all the documentation in front of me so that we can go right through it and finish the job in one day.

3869. **The Chairman (Mr Wells):** We would not have any difficulty in filling the rest of today, given the items that are on the agenda, so we will not lose time on this issue. There seems to be support for Dr Farren's proposal. Do members agree that we should defer discussion on the ministerial code until our Wednesday meeting?

Members indicated assent.

3870. **The Chairman (Mr Wells):** A related issue is a proposal by Ian Paisley Jnr, which was referred by the meeting of Wednesday 30 August. It states:

"The Committee believes that a breach of the Ministerial Pledge of Office should be actionable in the courts and followed by disqualification from office."

3871. Do members wish to debate that proposal today or defer it until we discuss the other issues?

3872. **Mr Paisley Jnr:** It would be helpful if we kept it on the agenda but moved it to next Wednesday to give everyone a chance to consider the papers.

3873. **The Chairman (Mr Wells):** Are there any contrary views?

3874. **Mr M McGuinness:** The proposals are about the same issue.

3875. **The Chairman (Mr Wells):** Is there consensus on that proposal?

Members indicated assent.

3876. **The Chairman (Mr Wells):** We now move to "Discussions on institutional issues". It has been a long haul for everyone, and several issues have been parked. One member said that the car park now had several storeys. We need

to make decisions on those issues. We have a problem about what to do.

3877. I suspect that we will not reach consensus on some issues, but we will have to include them in the report, stating that the issues were debated but that we have not reached agreement on them. However, we may reach consensus on other issues.

3878. **Mr P Robinson:** Are these outstanding issues, or have they been discussed and we could not reach agreement on them?

3879. **The Chairman (Mr Wells):** There is a mixture. Some of the issues were debated in great detail.

3880. **Mr P Robinson:** I will put the question another way. Are there any issues that we discussed and could not reach agreement on that have not been included?

3881. **The Chairman (Mr Wells):** Yes, but those are issues where we could not reach agreement. We decided that the report would state that we did not reach agreement on them.

3882. **Mr P Robinson:** Can we do the same with some of these issues?

3883. **The Chairman (Mr Wells):** Yes. The parties flagged up some issues as being major impediments to devolution, and others were merely disagreements. However, we are left with these issues hanging in the air.

3884. **Mr Paisley Jnr:** Can the Clerks provide us with a list of issues that have not been agreed?

3885. **Mrs Long:** There are distinctions. Consensus was not reached on certain issues, and the discussions were completed; there are issues that we will consider today where consensus was not reached but discussions were to continue; and there are a few issues where consensus was reached.

3886. **The Chairman (Mr Wells):** These are the issues that are in the car park, as it were.

3887. **Mr Paisley Jnr:** Set the car park aside for a moment and deal with the issues that are in their appropriate place — unagreed, but in their appropriate place.

3888. **Mr P Robinson:** I assume that we will receive a report that will give us a list of everything that has been agreed or has not been agreed. We want to know which category we put those into.

3889. **Mr Paisley Jnr:** There must be a draft list somewhere.

3890. **The Chairman (Mr Wells):** They are in three separate reports.

3891. **Mr Paisley Jnr:** You could give us a copy.

3892. **The Chairman (Mr Wells):** It is a long list. A great deal of work was required to extract that information.

3893. **The Committee Clerk:** The work on that list is under way.

3894. **Mr Paisley Jnr:** A list will have to be produced, anyway.

3895. **The Committee Clerk:** The complete list is not ready. We intended to produce the list for the next meeting.

3896. **The Chairman (Mr Wells):** The draft of that report will be issued by the end of this week.

3897. **Mr Paisley Jnr:** In this vacuum, an aide-memoire might be useful, so it would be good to have sight of where we stand on many of those issues.

3898. **The Chairman (Mr Wells):** That is the difficulty, because some of the issues date back to the start of August.

3899. **Mr McFarland:** It is absolutely clear from our discussions that we shall not reach agreement on some of those issues, which I thought had been accepted would go to the negotiations in October. For example, the matters concerning the election of the First Minister and the Deputy First Minister directly relate to the comprehensive agreement. We held several days' worth of discussion on that matter and I understood that we could not reach agreement on how that was going to operate.

1.15 pm

3900. We are putting off discussions on the ministerial code and the Pledge of Office until next week. We will never reach agreement

between nationalism and unionism, in their broadest senses, over the North/South implementation bodies, because unionism is happy enough with what has already been negotiated.

3901. **Mrs Long:** You are, essentially, prejudging the outcome of the discussion. You may judge that matters will not be agreed. I happen to agree with you, but we must formally not agree them today for them to fall into that category. We have to go through the formal process seeking consensus.

3902. **Mr McFarland:** Having spent at least two days on many of these issues, it would not make much sense for us again to open up broad discussions on them. If we are taking decisions, that is absolutely fine, but my sense is that we are not going to reach agreement. Of course, that must come officially from the Committee. The reason that most of those items were parked was because there was no agreement and, rather than say that the issue is closed, we have said that we will park it.

3903. **The Chairman (Mr Wells):** Alan, the other option is that we slot each of those matters into the relevant report — the draft report that members will be considering — and there will be another opportunity at that stage to try to reach agreement.

3904. **Mr McFarland:** My point is that, for example, there may or may not be negotiation on the number of North/South implementation bodies in the autumn, just as there was with the comprehensive agreement. It will be the same, I suspect, with the OFMDFM matters. We may manage to do something about the matters relating directly to our discussions on the ministerial code, etc, on which there is quite a lot of room for sensible agreement. It is probably fairly easy to agree that the rest be parked in the report and will be the subject of negotiations in the autumn.

3905. **The Chairman (Mr Wells):** For example, Alan, there was a general agreement that a mechanism is needed to ensure stability. That issue was to be parked with a view to exploring possible mechanisms. There was not a great clash among the parties; it was agreed to come back and explore those mechanisms.

3906. **Mr P Robinson:** Four of the matters relate to the ministerial code.

3907. **The Chairman (Mr Wells):** We could move those into the debate next Wednesday.

3908. **Mr P Robinson:** Could we agree then that the other elements should be matters considered during negotiations, as there is no consensus at the present time?

3909. **Mr McFarland:** Certainly, the issues concerning the First Minister and the Deputy First Minister lend themselves to that.

3910. **The Chairman (Mr Wells):** We accept that no matter how long we debate those issues and the matters concerning North/South implementation bodies and the North/South Ministerial Council, we are not going to reach agreement on them, so we move them into those matters that will be the subject of negotiations. The other matters will be discussed on Wednesday, along with Mr Paisley's motion.

3911. **Mr P Robinson:** Which Wednesday are we talking about?

3912. **The Chairman (Mr Wells):** Wednesday 13 September. There is one other issue — reducing the numbers of MLAs and deferring consideration on the mechanism for further consideration.

3913. **Dr Farren:** Did we not defer that matter to a Committee of the Assembly because, essentially, that is where it would have to be?

3914. **Mr McFarland:** It is not going to happen before the next election.

3915. **The Chairman (Mr Wells):** Yes, there was no rush on that matter.

3916. **Dr Farren:** Turkeys do not queue up for Christmas.

3917. **The Chairman (Mr Wells):** As one of the turkeys — *[Laughter.]*

3918. **Dr Farren:** It was said, appropriately, that that matter should be with a Committee of the Assembly, rather than with us.

3919. **The Chairman (Mr Wells):** The major issue is that plenaries are to be held on 11 and 12 September.

3920. Members might like to look at the work plan; there is quite a bit to it. We will soon have to consider the draft reports on the three areas being dealt with by the Committee. The Committee dealing with institutional issues and the Committee dealing with law-and-order issues will each hold two more meetings. However, I believe that the Committee dealing with rights, equality and safeguards will issue a draft report on Wednesday, which will hopefully be agreed on 8 September.

3921. When all those meetings have taken place, we hope to agree the reports and refer them to the Business Committee so that the reports can be debated in the Assembly the following week. Difficulties will arise if we cannot reach agreement at the end of those meetings. However, in theory, that is the programme. We will work through the next month, making referrals to the Business Committee, followed by debates in the Chamber.

3922. **Mr McFarland:** Chairman, now that we are getting down to the sharp end of this matter, we should consider how long it will take us to complete the necessary work. When time gets tight, members may consider working on a Wednesday, but not on a Thursday. However, we need to work Monday, Tuesday, Wednesday and Thursday. My colleagues will obviously want to have Fridays in their constituencies, but, of course, the Committee meets on Fridays. At this stage, we should be able to work Monday through to Friday in order to get through the business at hand, should we not? There may be some delays, and it will be difficult, but we cannot simply decide to work some days and not others and hope that everything will be OK.

3923. It would be a mistake to leave this work until 3 October, even though it seems a long way down the line. If we are going to be away somewhere or other the following week, we should have all our work tidied up, debated and out of the way by then. We do not want to be dealing with this work after 3 or 4 October, if, as Peter said, these reports are to be the basis of discussions, or are to help with discussions.

3924. **The Chairman (Mr Wells):** We have the power to meet whenever we feel it is appropriate. However, members must bear in mind that as the economic challenges subgroup will soon be back in action, members may have to attend its meetings, as well as those of the Business Committee, and, possibly, party meetings.

3925. **Mr McFarland:** The main concern for the subgroup was the preparation of a report for a plenary. That is a key issue, but it is a longer-term issue, as other colleagues have mentioned. The work on economic issues will take quite some time, so it does not have to be completed by 4 October — although, as was mentioned this morning, discussions on a potential economic package must be held before the talks.

3926. We must clear the debris out of the way so that when we reach the talks, it is absolutely crystal clear what the issues are, what the parties' positions are, and what negotiations need to take place. It would be quite ambitious to leave that work until after the debates on 3 and 4 October — as we appear to be doing.

3927. We should try to complete some of that work before then, because, as our experience of the Assembly has shown, everything takes much longer than we think it will. Therefore, the more work we undertake now, the more time we will have later to deal with matters that go astray. It seems daft to devise a programme, but leave no time to sort out any difficulties that may arise or to arrange an Assembly debate. It would be useful to have a sensible debate in the Assembly about those issues before going into talks.

3928. **Mr P Robinson:** I am not throwing out a fly to bait Mr McGuinness on the economic issue, but a motion on the economic challenges facing Northern Ireland is to be debated in the Assembly on Monday 11 and Tuesday 12 September. We have three further reports to debate on three further Mondays and Tuesdays before we get to Timbuktu. Do we not need to make sure that we have a report for each of those Mondays and Tuesdays? Does the work programme provide for that? Can we meet the work programme for each of the reports?

3929. **The Committee Clerk:** The equality report will be discussed this Friday, and the

Committee will get one go at it before we table it for debate. The law and order report will be discussed on Wednesday, but we will give the Committee two goes at it. The report on the institutions is supposed to be discussed next Wednesday and the following Wednesday, but we have programmed events to allow one report to go to plenary every week.

3930. **Mr P Robinson:** Therefore you think that the timetable can be met.

3931. **The Chairman (Mr Wells):** A problem arises if the Committee cannot reach agreement on the equality report by the end of the first day or by the end of the second day on the other two reports.

3932. **Mr McFarland:** It does not buy us any time. It is ambitious to leave the final plenary sittings to the day before the Independent Monitoring Commission report is published. If there were to be a delay, the reports will start to stack up. I do not mind whether we have a spare Thursday in each week on which we can roll over. However, we need to get into a mindset of dealing with the issues sooner rather than later.

3933. **Mr P Robinson:** I agree with you. If those who are discussing rights issues do not get agreement, they will simply have to come in the next day, will they not?

3934. **The Chairman (Mr Wells):** If the Committee accepts that solution, there are no procedural difficulties with having a meeting on a Thursday.

3935. **Mr McFarland:** We need to lodge in the common psyche the fact that it takes as long as it takes and that people will have to be prepared to come in when necessary to reach agreement. My worry is that if we are programmed to have our final decisions on 3 and 4 October, that does not leave us much time for other matters. Bringing everything back a week, or having plenaries on Monday and Tuesday of one week and on Wednesday and Thursday of another, could buy us time. I am worried that our business will stack up and get stuck and that we will head off into the ether without having had a proper debate.

3936. **The Chairman (Mr Wells):** We simply set aside Thursday as the reserve day. If we run into problems and are not making headway or if members have to rush off to Westminster, we can still get a team together.

3937. **Mr P Robinson:** Westminster does not come back until the third week in October.

3938. **The Chairman (Mr Wells):** Lucky for them.

3939. Are members content that we put in a reserve day and timetable it accordingly? That will give us a fall-back position should things start to unravel. That will keep us within the timetable of trying to get a report through each week to plenary. I see no opposition to that suggestion, which surprises me.

Members indicated assent.

3940. **The Chairman (Mr Wells):** We discussed a proposal by Monica McWilliams, the chief commissioner of the Northern Ireland Human Rights Commission, to hold a meeting — a one-night residential — with the members of the Preparation for Government Committee. At the meeting that I chaired last Friday, four parties agreed to the meeting in principle. The DUP wanted time to consider the matter and said that it would report to us today on whether it could attend such a meeting.

3941. **Mr P Robinson:** It is not a priority for us.

3942. **The Chairman (Mr Wells):** Does that mean that you will be unable to attend?

3943. **Mr P Robinson:** It is unlikely. I understand that the proposal is that we spend two days in discussion. However, one of those days conflicts with an Assembly sitting.

3944. **Mrs Long:** The conflict with the potential plenary sitting was raised on Friday, and I asked that contact be made with the commissioner to explain that it would not be possible for any party to be part of that discussion if it conflicted with a plenary sitting. My understanding is that we made a commitment to try to adhere to those dates.

3945. **The Committee Clerk:** I contacted Prof McWilliams and she informed me that she had spoken to the Secretary of State's office and that it had informed her that if the Committee

thought that it was a priority to go to this event, the plenary sitting could be timetabled around it. I then spoke to the Secretary of State's office, and it confirmed that that conversation had taken place.

1.30 pm

3946. **Ms Lewsley:** That is absolutely amazing.

3947. **The Chairman (Mr Wells):** What do members feel?

3948. **Mr P Robinson:** That has reinforced my view that it is not our priority.

3949. **Mr McFarland:** What does that mean, Mr Chairman? Are the programme that we have just been discussing and the plenary days going to change?

3950. **The Chairman (Mr Wells):** No. The Secretary of State is saying that we can change it ourselves if we want to.

3951. **Mr P Robinson:** If the Committee is going to go on a two-day jolly with Monica, we would have to change the plenary days.

3952. **Mr McNarry:** We would need time to go to the gym for a couple of days before that.

3953. **Ms Lewsley:** Given what Mrs Long said, may I have some clarification? My understanding was that we were to ask the Human Rights Commission if other dates were available.

3954. **Mr McFarland:** Yes. We were to ask the commissioner for other dates. It was not for the commissioner to ask the Secretary of State whether we could change our plenary meetings to suit her.

3955. **Mrs Long:** With all due respect to the commissioner, we have business to do here. We have been invited to take part in a meeting with the Commission. We were asking for an alternative date. The position of the PFG Committee was clear on Friday — an alternative date was the way forward. It was not for the commissioner to ask permission for us to change our mind.

3956. **The Chairman (Mr Wells):** The other dates for the meeting with the Human Rights Commission were late into October when we will all be away negotiating somewhere in the eastern Sahara. The difficulty is that things will

have moved on a fair bit by then. It is entirely up to members.

3957. **Mr Paisley Jnr:** Leave it until after 24 November; it will give us something to do.

3958. **Mr P Robinson:** We are too committed to getting the preparations for Government right to go off on these junkets.

3959. **The Chairman (Mr Wells):** I will report back to Prof McWilliams and let her know the situation.

3960. **Mr M McGuinness:** What exactly are we letting her know?

3961. **The Chairman (Mr Wells):** I will be letting her know that the date does not seem to be appropriate and asking her for an alternative one.

3962. **Dr Farren:** Does it have to last two days?

3963. **The Chairman (Mr Wells):** She wants it to run overnight. I think it will last a day and a half.

3964. **Dr Farren:** So it is a bonding exercise.

3965. **Mr M McGuinness:** Are we being truthful with her? From what I am hearing from Peter Robinson, there appears to be a fundamental objection from the DUP to a meeting with the Human Rights Commission.

3966. **Mr P Robinson:** The DUP has no objection to discussing issues, even with Monica. Looking at the timetable for the next number of months, we have to make a determination about how much we take on. I have been turning down all sorts of things over the next number of months because of the work programme. I just do not think that this is a priority for us.

3967. **Mr Ford:** I want to explore Mr Robinson's priorities a little. What is suggested is having a meeting during a plenary sitting day for the Assembly and on the second day, which is a serious work day — that clearly creates problems. It might be possible to get a day earlier, or even a period which could involve an overnight stay. The issue of human rights is fundamental to restoring the Government, and we should not

say that it is not a priority. My problem is with where it conflicts with the schedule.

3968. **Mr P Robinson:** What are we going to gain from this meeting? How will it help us to fulfil our obligations?

3969. **Mr Ford:** We spent a fair bit of time on Fridays discussing human rights.

3970. **Mr P Robinson:** So why do we need to go there? I am told that they are one meeting off reaching agreement on a report. What are we going off to see Monica about?

3971. **Mr Ford:** Maybe it would be useful if we helped to influence them before that meeting takes place.

3972. **Ms Lewsley:** I am getting confused. I assumed that we had consensus on the need for a bill of rights, and we had a debate on what should be contained in it. That is what we are talking about here. Because we agree that there should be one, maybe now we can talk about some of the detail. This was a matter of trying to get the parties to agree a structure for the bill. Maybe a day and a half, or two days, for a meeting is too long. Perhaps we should be asking the Human Rights Commission for a shorter meeting that does not conflict with plenary sittings.

3973. **Mr Ford:** That is what we proposed last week.

3974. **Mr P Robinson:** That is not relevant to the matter at hand. The job that the PFG Committee has been given is to prepare for Government. In other words, we are to look at all of the issues that need to be resolved in order for devolution to be triggered. The issue of a bill of rights for Northern Ireland does not need to be resolved before that happens. Therefore, a bill of rights can wait. What is important is that we focus on those issues that we must resolve.

3975. **The Chairman (Mr Wells):** I understand that Ms McWilliams is happy to accept a delegation of the parties' spokespersons on human rights, even if they are not members of the PFG Committee. Therefore, parties do not have to commit members of this Committee — who are very busy — to that delegation. I

appreciate that that is causing problems for many members. The Committee staff will contact Ms McWilliams to see what she proposes as an alternative. Is everyone reasonably happy with that?

Members indicated assent.

3976. **The Chairman (Mr Wells):** The next meeting of the PFG Committee will be held on 6 September, at which residual law-and-order issues will be discussed. The Committee will also consider the first draft of its report on law-and-order issues. That will be its first bite of the cherry on that matter. As normal, lunch will be provided.

3977. The next meeting of the PFG Committee dealing with institutional issues will be held on Wednesday 13 September at 2.00 pm, when the first draft of its report will be considered. Lunch will not be provided.

Adjourned at 1.36 pm.

Wednesday 13 September 2006 (Afternoon Session)

Members:

The Chairman, Mr Jim Wells
Mr Thomas Buchanan
Mr Wilson Clyde
Dr Seán Farren
Mr David Ford
Mr Danny Kennedy
Ms Patricia Lewsley
Mrs Naomi Long
Mr Alan McFarland
Mr David McNarry
Mr Conor Murphy
Mr John O'Dowd
Mr Peter Robinson

The Committee met at 2.07 pm.

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

3978. **The Chairman (Mr Wells):** We will start with Sinn Féin. Mr O'Dowd, who is representing whom today?

3979. **Mr O'Dowd:** I represent Michelle Gildernew. Conor Murphy will join us shortly.

3980. **Ms Lewsley:** I am here on behalf of Mark Durkan.

3981. **Mr McNarry:** There are quite a few cross-dressers.

3982. **Ms Lewsley:** We are looking for gender balance.

3983. **The Chairman (Mr Wells):** Will Ian Paisley Jnr be here?

3984. **Mr P Robinson:** No; Tom Buchanan will be coming.

3985. **The Chairman (Mr Wells):** Members will have received copies of the minutes of our 4 September meeting. Until recently, the minutes went through on the nod; however, last week we had quite a discussion on one set of minutes. Have members any additions or corrections? Is everyone happy?

3986. **Mr O'Dowd:** I was not present at the last meeting, so I will just note the minutes on this occasion.

3987. **The Chairman (Mr Wells):** Is everyone else content?

Members indicated assent.

3988. **The Chairman (Mr Wells):** Much of today's discussion will be on the draft ministerial code. Before that, however, I wish to alert members to a matter that Mr Robinson raised during this morning's meeting of the PFG Committee dealing with policing and justice. We will meet the Secretary of State for a public, televised session in the Senate Chamber at 10.00 am on Monday 18 September. The point was made that although we have agreed the five headings and the sets of questions that will be asked on policing and justice, issues may be raised on the institutional strand. There are two ways of doing that: we could ask the Secretary of State to address them in his opening remarks; or we could ask separate questions at the end of the questions on policing and justice.

3989. If members feel that there are burning issues arising from our consideration of the report, we need to flag them up now and agree that they be put to the Secretary of State.

3990. That will make sense to those who were at this morning's meeting. Perhaps it will come as something of a surprise to those who are fresh to the Committee.

3991. **Mr P Robinson:** Most, but not all of the institutional issues need to be resolved among the parties. Therefore, there is probably less of a requirement to raise those matters with the Secretary of State. The most worthwhile matter to raise — and to get the Secretary of State's response on — is the Government's intentions on a draft Bill on the institutional issues, and the extent to which matters considered by the Committee would inform that drafting. We

could ask when the draft Bill might be available to the parties and what the process might be for taking it forward. The answers to those questions would more or less inform the Committee's further debate and the negotiations that will follow in October.

3992. **The Chairman (Mr Wells):** Do members feel that that issue is of such importance that it should be tabled for consideration on Monday?

3993. **Mr McFarland:** At this morning's meeting of the PFG Committee, Mr Robinson pointed out that the Secretary of State might wish to make some opening remarks, and that he might be encouraged to include such enlightenments. That would seem to be the sensible way forward.

3994. **The Chairman (Mr Wells):** That could be the substance of his opening remarks, and we could draw out the other issues. However, the meeting will last for only 90 minutes.

3995. First, are members happy to accept that as an important issue to be raised with Mr Hain on Monday, and, secondly — and I am probably tempting fate — are there any other burning issues that members feel must be raised as a matter of priority?

3996. **Mr Murphy:** I apologise for being late, Chairman. The Committee with responsibility for policing and justice invited Peter Hain on the basis of his Glenties speech and to tease out some of those issues. I have no wish to restrict anyone's opportunity to ask questions, but there is a time limit. We should try to build in a small degree of flexibility as to what issues can be raised, without the meeting being left open. The purpose of the discussion — as originally intended — might be lost, along with a whole range of other issues. All parties have the opportunity to talk to Peter Hain and his officials or to the Irish Government on those matters. I would not want the meeting to be too rigid, but one in which people could introduce an important topic, within reason.

3997. **Mrs Long:** The Committee had a long debate about that issue this morning. Five topics relating to policing and justice issues were firmed up, and there is quite a lot of meat in

those issues. Unless members have specific issues that they can identify now, which the Secretary of State could address in his opening remarks, we should not deviate from the five topics. If the meeting were opened up, it would be difficult not to allow anything that was discussed in the PFG Committee to be part of the agenda. An hour and a half with the Secretary of State would not allow us to do justice to any of the issues. If justice is to be done to the issues already on the agenda, we must be specific about raising issues outside the policing and justice arena, and any such discussion should be very brief.

3998. **The Chairman (Mr Wells):** We could put a time limit on the Secretary of State's opening comments, if that were helpful. I could give him some advice as to our time frame.

3999. I detect that there are no other issues, so we are down to one that seems relevant, if not matching particularly well with the other issues. However, the best way to deal with that would be to ask the Secretary of State if he could give us five minutes on that issue before we lead into questions.

4000. **Dr Farren:** We cannot write the opening script for the Secretary of State. However, out of deference to the range of issues that have been discussed — institutional issues; policing and justice; human rights; and economic issues — it would be helpful if, without going into detail, he could provide some sense of how he has acknowledged or taken account of the work of the PFG Committee in its various forms. The Committee should know whether that work is of significance, and whether there is a determination to take account of it, insofar as it is necessary, whether by legislative or other means.

4001. If the Secretary of State can be prompted to encapsulate that in some way in his opening remarks, I am sure that the wordsmiths will be well able to accommodate him. That would be helpful and — dare I say it — encouraging.

2.15 pm

4002. **The Chairman (Mr Wells):** The PFG Committee dealing with law and order issues decided that there should be no opening

statement from the Secretary of State, therefore the Committee should be able to go straight into the issues for discussion. If we were to ask him to make an opening statement, that would be a way of getting that issue onto the agenda without disrupting the questioning on the other issues.

4003. **Dr Farren:** How long will the session be?

4004. **Mr P Robinson:** It is impossible for the Secretary of State not to make an opening speech. He will do it regardless of whether he is given a slot in which to do so, or when he is asked his first question. The NIO will prepare his remarks for him — or at least the bits that are to be publicly spun.

4005. **The Chairman (Mr Wells):** The Secretary of State will not be invited to make an official opening statement, but I am sure, as Mr Robinson says, he will take the opportunity to do so. There must be consensus on this. Are members content that the Secretary of State is given five minutes to speak on that issue at the beginning of the session, and for that to be followed by discussion on law and order?

4006. **Mr P Robinson:** I do not think that he needs five minutes. The Committee Clerk should inform the Secretary of State's staff that it would be useful for us to have some indication of what he is planning to do. For instance, will any draft Bill that is being worked on be ready for the negotiations that are to be held in Scotland, or wherever they might be?

4007. **The Chairman (Mr Wells):** I presume that the Committee Clerk should give the Secretary of State some indication of what is expected of him and remind him to keep his comments to a minimum. Are members content for the Secretary of State to get three minutes to speak at the beginning of the session?

Members indicated assent.

4008. **The Chairman (Mr Wells):** Following the Secretary of State's opening remarks, we will go into questions and answers. I raise that now, but some other burning issues might arise as we go through the report. I hope that is not the case, but at least members have been alerted to that.

4009. **Mr P Robinson:** Is that next Monday?

4010. **The Chairman (Mr Wells):** Yes. It will be next Monday at 10.00 am. I presume that some representatives here today will be at the question and answer session with Mr Hain.

4011. The big issue before the Committee today — before we come to the report — is the draft ministerial code. At the last meeting, members agreed to defer consideration of the code until today to enable the Office of the First Minister and the Deputy First Minister (OFMDFM) to provide information on proposed amendments and additions. That information is at tabs 3 and 4 of members' packs. As members can see, there is a lot to it. It is a fair bit of work. The DUP has also submitted a position paper on the code, and Peter Robinson, as spokesman on the issue, will speak to that.

4012. A decision must be made before we begin this discussion, otherwise we could be here for a long time. Do members want to plough through the ministerial code line by line and try to reach agreement on what should be put on a statutory basis and what should not? Or, should we agree the issues that are required to be put on the statutory basis and those that can be decided upon later? Those are the available options. I am happy to go down either route. At some stage today, we must decide what to do with all this material.

4013. I suggest that Mr Robinson lead off with the DUP submission on the draft ministerial code — an issue considered by the DUP to be of great importance, and one that it has flagged up in various discussions. Members will then be given an opportunity to comment and ask questions on his presentation. They will speak in alphabetical order of party, starting with the Alliance Party. Are members content?

4014. **Mr Murphy:** Will the Committee decide first what to do with the ministerial draft code, or will we take the DUP presentation and then resolve the code?

4015. **The Chairman (Mr Wells):** I will take the presentation first, and when we are clear on the DUP paper we will discuss how we are going to deal with the draft ministerial code

before we get into the meat of it. We could have a half-hour session on it, or we could have a two- or three-hour session.

4016. **Mr P Robinson:** A lot of us might be voting for the half-hour session. I feel as if I have gone through this on at least two or three occasions already. I do not feel particularly compelled to do so again.

4017. I am keener that we make a more realistic assessment of the extent to which we need to resolve these issues at this stage and the extent to which it is a matter for the negotiations. Whatever we decide will determine what is included in the report. Judging by the amount of material that we have already received from OFMDFM, I think that the ministerial code will be a significant and voluminous document. The Committee agreed that some elements of the code should be put on a statutory basis in any amendment to the legislation. All we need to do is examine the extent of our agreement on the matters that should be included in the statutory section. The remainder will be a matter for an Executive and will be one of the first items of business after devolution. With regard to impediments to the restoration of devolution, we need to examine only the statutory elements. The rest can be done when devolution is up and running.

4018. Perhaps we do not need to agree all the details of the items that need to be put on a statutory basis. As far as the report is concerned, if we can agree the broad subject matters, we will have gone a fair bit of the way. The statutory elements of the code will be written in legal language, and I am not particularly equipped to deal with such language.

4019. Our paper contains some of the key issues that we think should be included in a statutory ministerial code. We will hold fire on the dozens — if not hundreds — of issues that should be included in the full ministerial code.

4020. **The Chairman (Mr Wells):** I can confirm that the Committee did agree that the ministerial code should be put on a statutory basis. Some members may have agreed to that before they realised how complex the document would be. It would be more feasible to put some elements of it on a statutory basis.

4021. **Mr McFarland:** Perhaps it was not clear. Technically, the document being put on a statutory basis means that it is an Assembly document. No ministerial code has ever gone before the Assembly. I am not sure that when we discussed whether it should be on a statutory basis that we spoke about it being a document that went before the Assembly and, therefore, brought forward on a statutory basis, rather than as an involuntary code and custom and practice, in the Executive. The legal aspect is not clear. This concerns the sovereignty of the Assembly and the Executive. These are Assembly issues. Putting elements on a statutory basis could mean that we come to the stage of running to the courts every time that we had a row. It would be absolutely daft if, say, Danny and I ended up being Ministers and rowed with Seán Farren, and our first port of call was the High Court.

4022. **Mr P Robinson:** Why, then, did you do that in 1998?

4023. **Mr McFarland:** I did not do anything in 1998.

4024. **Mr P Robinson:** The Northern Ireland Act 1998 has a schedule that includes the Pledge of Office and a code of conduct.

4025. **Mr McFarland:** They are there as part of the system for the Assembly.

4026. **Mr P Robinson:** What would be the difference?

4027. **Mr McFarland:** A code of conduct for Ministers will proceed, presumably, as part of the Assembly's rules of the game.

4028. **Mr P Robinson:** There is no distinction to be drawn. The schedule to the 1998 Act included the Pledge of Office, which put that on a statutory basis, and a code of conduct. Certain matters have a key importance and, therefore, should be included in that. In the same way, the Local Government Act (Northern Ireland) 1972 contains standing orders that state that every council — or almost every council; perhaps Antrim Borough Council does not have standing orders —

4029. **Dr Farren:** Moyle District Council does not have standing orders.

4030. **Mr Ford:** Neither does Antrim Borough Council.

4031. **Dr Farren:** Therefore, two councils do not have standing orders.

4032. **Mr P Robinson:** Most councils create their own standing orders, but they must be consistent with the standing orders that are laid down in section 10 of the Local Government Act (Northern Ireland) 1972. There is nothing unusual about having key features in the legislation and a body building upon those, as long as they are consistent with the 1972 Act.

4033. **The Chairman (Mr Wells):** I will regard this as a questioning of Peter Robinson's opening remarks in the DUP submission. That is a wide remit.

4034. **Dr Farren:** To some extent, I have fallen into the trap of commenting on the statutory requirement. There is no problem with a statutory requirement for a ministerial code, but we must be careful about how much of that code is enshrined in statute. We need to make clear distinctions, because I share Alan's concerns that we are an Assembly and a political body that makes political decisions, and we do not want to find ourselves working under the threat of judicial action, save that which is always present by virtue of judicial review on decisions that are taken.

4035. When the Committee previously discussed the draft ministerial code, I tried to be careful about identifying sections of it that would be placed on a statutory footing. Those sections that would not be placed on a statutory footing would act as a powerful guide to how to proceed in the Executive and to its relationship with outside bodies, notably the Assembly, the North/South Ministerial Council (NSMC), the British-Irish Council, and so on. We need to go through a major exercise to ensure that we do not fall into the traps that Alan pointed to, but that we have a statutory basis to some requirements in the ministerial code, where it is appropriate and where there is agreement.

4036. **Mr Murphy:** We also agreed that we would consider the idea of putting the ministerial code on a statutory basis. The only issue on

which we expressed a desire for legislation in relation to ministerial behaviour, was around the automatic entitlement of Ministers to represent their Departments or their sectoral interests —

4037. **The Chairman (Mr Wells):** I have to stop you, Mr Murphy. A mobile phone is still switched on. I am not targeting anyone in particular, but could they please turn it off? It interferes with the recording equipment and we do not want to miss any members' comments.

4038. **Mr Murphy:** Unfortunately, the area of automatic entitlement was abused by the previous First Minister: the automatic entitlement of Ministers to represent their sectoral interests, whether on the North/South Ministerial Council, the British-Irish Council or any other meeting at which the Executive are represented. We are happy to consider some of the issues, but it is a matter for the Committee to decide whether we wish to identify what would be placed on a statutory footing.

4039. Sinn Féin takes issue with the suggestion in the DUP's paper that the Independent Monitoring Commission (IMC) should identify a breach of the Pledge of Office. We would not put ourselves in hock to a body that we feel is fairly discredited. However, we are happy to discuss any of the issues. It would be helpful to ascertain whether we intend to negotiate the details of the ministerial code now or postpone the discussion until our negotiations.

4040. I know that they have yet to come up, but it is difficult to consider the DUP's proposals in isolation from an all-encompassing discussion on the ministerial code and on other measures that people seek to have inserted, such as accountability and other institutional issues.

2.30 pm

4041. **The Chairman (Mr Wells):** That brings us to the crucial point: will we decide this afternoon which elements of the ministerial code are put on a statutory basis, or do we merely agree the principle that some elements have to be put on such a basis and leave the decision to negotiations? That is entirely the Committee's call. Are members feeling up to that task?

4042. **Mr P Robinson:** To the extent that those questions were all directed to me, you might want me to respond.

4043. **The Chairman (Mr Wells):** Certainly, but perhaps you will indicate what you feel is the best way to deal with that.

4044. **Mr P Robinson:** First, the Assembly is not a sovereign body: it is a creature of statute. Its Members and Executive are creatures of statute. Therefore they and everything that they do are subject to legislation. On that basis, there is nothing unusual in the conditions set out in the legislation. We can increase accountability in one of two ways, and either is equally satisfactory. We can make massive changes to the Northern Ireland Act 1998 and insert new sections to deal with all the accountability and other matters. Alternatively, we can deal with it through the ministerial code, which was a comprehensive agreement proposal.

4045. I recall that that was not our preferred course in 2004; we would have preferred to add new sections to the legislation. Those would have made dramatic and significant changes to the legislation, if it had to be done on a line-to-line basis. However, there is nothing unusual in increasing accountability through a ministerial code; that procedure is consistent with the purpose of the 1998 Act, which is to set out the *modus operandi* of the Assembly and all its elements.

4046. As far as what is achievable is concerned, I am inclined to agree that a great deal of it will be a matter for October when negotiations begin. I do not believe that we will get a high level of instant agreement on those issues. Therefore we are perhaps only wasting our time covering them now when they will be dealt with more comprehensively later. However, I hope that there is general agreement that we can deal with them. One way or the other, we have to deal with them; therefore, it is a case of whether that is done through a statutory ministerial code or whether the legislation is changed.

4047. **The Chairman (Mr Wells):** Obviously, we discussed the ministerial code at previous meetings, but we had parked a series of issues. I thought that it might be useful to remind

members of those before we reach the important decision of how to proceed with them.

4048. First, the code should be used to increase collectivity and ensure that ministerial colleagues inform one another of major decisions.

Accountability between the Executive and the Assembly was covered at previous meetings, at which there were discussions on issues such as Assembly referral to the Executive where power is vested, and options for the Assembly to reverse ministerial decisions in certain circumstances. Accountability of Ministers to the Assembly on the North/South Ministerial Council (NSMC) was also discussed, as were requirements or entitlements of Ministers to attend meetings of that body. An obligation for Ministers to attend Executive meetings, the North/South Ministerial Council and the British-Irish Council (BIC) should be included in the Pledge of Office, which should also include a commitment to uphold the rule of law. Agenda item 4 is relevant to that point.

4049. Those issues have been parked, and as I do not detect that Mr Robinson has any further questions to ask, we will now discuss exactly how we should handle this matter. Mr Robinson has indicated that he does not wish to plough through the entire ministerial code this afternoon. That is one party's view; what do others think?

4050. **Mr P Robinson:** Is it possible for us to reach consensus on a proposal that the parties and others should consider further the adoption of a statutory ministerial code and that consideration should be given to all those matters in that context?

4051. That does not tie any of us down, does it? We can leave the matter until October.

4052. **The Chairman (Mr Wells):** Did members grasp that?

4053. **Dr Farren:** I want to be clear about what Peter said. Our position is that there should be a statutory requirement to have a ministerial code. We are now being asked to identify whether parts of, or all of, or, indeed, none of, the ministerial code should be in statute.

4054. **Mr P Robinson:** I wish to draw to your attention why simply having a statutory requirement to have a ministerial code would do nothing.

4055. Let us take the issue of accountability, which is a deal-breaker — as Alan refers to it — as far as the DUP is concerned. Were the accountability issue to be dealt with in the ministerial code, a statutory requirement to have a ministerial code would not give us comfort that the issue would be satisfactorily dealt with when the code is ultimately produced. Therefore, if there were a statutory ministerial code, or elements of the ministerial code were put on a statutory basis, we would know, as part of an overall agreement in October or whenever, the basis on which accountability would be managed.

4056. **Dr Farren:** I am not anticipating that we would wait until the code exists in statute before agreeing which parts of the code should, or should not, be put on a statutory basis. It would be totally unsatisfactory to simply agree that we should have a code and put off having the code. I understand that that would be fatuous. Therefore, we must address the issues that have already been identified, and any other elements of the ministerial code that parties feel should be placed on a statutory basis. We are not terribly far apart in our thinking.

4057. **Mr P Robinson:** Let us be clear: the DUP will be seeking a higher degree of certainty on the measures that will ensure accountability than parties that simply believe that these matters should be addressed in a ministerial code after devolution has been restored.

4058. **Dr Farren:** I am not saying that.

4059. **Mr P Robinson:** Those elements would not be in place when devolution is restored.

4060. **Dr Farren:** I wish to make it clear that I am addressing my remarks through the Chair, so that people do not think that we are having a chat across the table.

4061. Those matters will form part of the negotiations in October, and we are committing ourselves to discussing them in the negotiations. When it comes to the bit, some parties may say that they believe that certain issues should be

included in the ministerial code but not placed on a statutory footing. Other parties may say precisely the opposite, and we must tease that out. Is the member saying that we must commit ourselves today to making a clear decision about what might be laid down in statute about accountability? I do not think that he is saying that.

4062. **Mr P Robinson:** My proposal was that further consideration should be given to the matter in October.

4063. **Mr McFarland:** According to the Secretary of State's timetable, we are due to examine this matter in October. Is that correct? The Committee is timetabled to examine and produce a ministerial code in October. Thus, based on the Secretary of State's timetable, we are quite far ahead of ourselves. Can we check that?

4064. **Mr P Robinson:** That is right, but I think that the Secretary of State has little idea of what that entails. It will take weeks of work to agree a full ministerial code.

4065. **Mr McFarland:** I have looked through the ministerial code; most if it is sensible and based on experience from the previous Assembly. One or two parts of it may be contentious. However, most of it is fairly sensible good practice. We have been busy and have tried to have the report ready for debate on 3 or 4 October. We must head to Scotland. We will, therefore, have until 16 October to meet the time frame that the Secretary of State has laid out for examination of the ministerial code.

4066. **The Chairman (Mr Wells):** It would be wonderful if there were a ministerial code subcommittee. However, there is not. Therefore, we are stuck with it.

4067. **Mr McFarland:** Perhaps we should concentrate on the report. The code would fall into place in October. The contentious issues would clearly require negotiation then.

4068. **The Chairman (Mr Wells):** There are several options. The Committee could approve Mr Robinson's proposal; we could go through the draft ministerial code, line by line, and decide which parts must be statutory or non-statutory. The alternative is to accept Mr McFarland's proposal. I am content to continue

with this as long as time permits. There is time available because of the way that other reports have developed.

4069. **Mr McFarland:** Is this the last of the reports?

4070. **The Chairman (Mr Wells):** Yes. The report on law-and-order issues is ready for the Assembly and the report on rights, safeguards, equality issues and victims is well ahead of schedule. Therefore, we can spend some time on the code, although I suspect that we could spend days going through it.

4071. **Mr McFarland:** Most of the code is obvious and sensible, because it is the result of sensible actions taken since the first Assembly. However, there are particular issues on accountability that will require a fair amount of debate. It will not necessarily be new debate; it is the same debate that we have had from the start of this process — about how heavy a hand should be put on Ministers with regard to their relationships with the Assembly and the NSMC. Perhaps those issues will end up being negotiated. The question is whether parties want to set aside a day next week to identify and discuss their contentious issues. I believe that most of the code is not contentious.

4072. Thank goodness that we have obtained a copy of the rewritten draft ministerial code; much of the original has been improved.

4073. **The Chairman (Mr Wells):** I will ask each party what it believes is the way forward. I will start with Mr Murphy and continue round the table.

4074. **Mr Murphy:** A substantial part of the code probably is not contentious. The difficulty is that propositions have been made on accountability, efficiency, and so on that are not contained in the code, but will change aspects of how the Assembly does business. Those will have a bearing on discussion on the draft code.

4075. It is difficult to deal with the code in isolation from other issues that parties might raise during negotiations. Discussion on the ministerial code might address certain issues, but not all of them. For example, it is difficult to consider the proposals set out in items 3 and 4

of today's agenda in isolation from a broader discussion of the code and how it will fit in with Members' notions of how some of the Assembly's operations must be altered.

4076. That does not offer much of a suggestion on how to proceed. It is difficult to deal with the ministerial code in isolation from discussion on other matters.

4077. **Dr Farren:** Unless Conor is referring to every paragraph in the draft code, we could, either today or at our next meeting, go through as much of it as possible and identify the parts that are non-contentious or that do not appear to be contentious. The paragraphs and sections that may need further consideration could be identified also, and such a ground-clearing exercise would be helpful to us later. I am content that we proceed today.

2.45 pm

4078. **Mr Ford:** I am particularly conscious of the Alliance Party's position when discussing a ministerial code. There is no point in starting a six or eight-week discussion on the minutiae of the code at this point, not least because, as Conor said, there are so many other areas that interlink with the code and where issues inevitably seem to be discussed together.

4079. I am not sure how to pick out those elements of a ministerial code that should be included in statute, other than those relating to the broad principles of the obligations of Ministers, whether individually or collectively. Presumably, at this stage, a potential Westminster Bill or Order would be required prior to restoration. The Assembly would pass the rest of the code as secondary legislation based on that primary legislation.

4080. However, surely the Assembly must be in a position to amend the code, on an ongoing basis, through an appropriate voting mechanism. Therefore, it is difficult to enshrine much of it in Westminster statute. On that basis, we can make little progress now, beyond the broad generalities. We can talk about pledges to uphold the law, etc, but we will not get into the detail that occupies so many pages within the code.

4081. **Mr McFarland:** It strikes me that fairly substantial swathes of the ministerial code concern sensible custom and practice. For example, it states that a paper on a certain subject should go to a particular place, and so forth. I cannot see any of that being contentious.

4082. However, there are contentious areas, such as the obligations of Ministers and their ability to do their own thing, etc. Perhaps we should take time out and bring the issues that parties identify as contentious to the meeting next week or the week after that.

4083. Conor has a point: we may end up discussing many issues that impinge on a ministerial code before we have even got past first base in the negotiations on identifying those issues and whether they can be resolved. Once identified, those issues may have to be included in the ministerial code.

4084. I am trying to dig out the areas that parties will have to deal with in negotiations and produce a list, as the PFG Committee discussing law and order did earlier today. Parties can then sit down in October with a list of areas to examine. That list will dovetail with the list of issues that we have already identified for negotiation in October, which would simplify matters.

4085. The problem is that the draft ministerial code is quite a chunky document and takes a long time to wade through. However, if we can extract from it the key issues for negotiation that tie in with the other issues that need to be negotiated, it may be more simple to make progress.

4086. **Mr P Robinson:** Members thought that they had agreed something at earlier meetings. However, what was agreed clearly meant different things to different people. When it was agreed that the ministerial code, or elements of it, be put on a statutory basis, some people thought that the term “statutory basis” referred to primary legislation, which is the basis on which the Assembly has its standing. Others presumed that to mean that the code would be included in legislation enacted by the Assembly. That was the first difficulty, and I can see how that misunderstanding arose.

4087. If the code is not dealt with in primary legislation, we are back to “buts” in relation to the list of issues that need to be resolved. The issues that we had assumed could be dealt with within the ministerial code must still be dealt with through amendments to primary legislation.

4088. I wonder whether it is possible to reach agreement on a proposition that we agree that further consideration be given, prior to the restoration of devolution, to the ministerial code, or elements of it, being given a statutory basis and the extent to which it should comprise issues, which we will decide later. That proposal would simply allow for further consideration to be given to the issue, allowing us to deal with it in October. It does not bind us either to putting a ministerial code on a statutory footing or to including in it the specific matters that have been outlined.

4089. **The Chairman (Mr Wells):** That is a slightly beefed-up version of your previous proposal, based on the views that have been expressed.

4090. **Mr Ford:** Could Peter read his proposal again, please?

4091. **The Chairman:** Yes; I think that it is important that he does so.

4092. **Mr P Robinson:** The Committee agrees that, prior to the restoration of devolution, we should give further consideration to putting the ministerial code, or elements of it, on a statutory footing and give further consideration to the extent to which the ministerial code should comprise issues such as those that the Chairman has listed.

4093. **The Chairman (Mr Wells):** That refers to the six issues that we have parked.

4094. I shall put Mr Robinson’s proposal to the Committee. I will then be open to further proposals. If Mr Robinson’s proposal has fallen, there could be a further proposal that we plough through the ministerial code. If his proposal succeeds, however, we shall not plough through it.

4095. Do we have consensus on Mr Robinson’s proposal?

4096. **Mr Murphy:** May I seek some clarification? I have no issue with the ministerial code being given further consideration. There is no doubt that we shall give it further consideration. However, because of the way in which the proposal is phrased, it could be construed that further consideration of the issues listed is a prerequisite for restoration. I would not accept that. I accept that this Committee, in the course of its work, should give further consideration to all the issues. I do not have difficulty with the proposal, other than to make the point that were it to be interpreted as a prerequisite for restoration, I do not accept it. However, if that is not the understanding, Sinn Féin can support the proposal.

4097. **The Chairman (Mr Wells):** Mr Robinson has stated that this is a big issue for the DUP.

4098. **Mr P Robinson:** All that the proposal states is that further consideration be given prior to restoration.

4099. **Mrs Long:** Peter's response partly clarifies the proposal. How the proposal is reported is an issue, and we encountered that this morning in the PFG Committee dealing with law-and-order issues. We noted in one instance that Sinn Féin did not accept something to be a precondition, yet the position of at least one party was that it was. Parties are therefore not consenting to something being a precondition but are recognising that for some people it may be. I think that that was how we got around that this morning.

4100. The fact that the proposal only asks that further consideration be given and not that agreement be reached means that it is not an issue.

4101. **The Chairman (Mr Wells):** With that one reservation in mind, do we have consensus on this proposal?

Members indicated assent.

4102. **Mr P Robinson:** Can we go now?

4103. **The Chairman (Mr Wells):** We have much more business to do, but that certainly cuts out about three hours of discussion.

4104. **Mr McFarland:** Most of the code is not contentious, but it might be a useful exercise if we were to meet for an hour or two to identify those issues in the full ministerial code that are likely to be contentious. It would be useful for the Committee to have those at hand rather than wade through the entire code.

4105. We could extract the issues that will require negotiation, but we would not necessarily need to discuss them, because they will form part of October's negotiations. However, by holding a meeting, we could acknowledge that one party or another has a difficulty with a particular part of the code.

4106. **The Chairman (Mr Wells):** Parties can do that by submitting papers to the Committee. If each party were to take away the ministerial code and return with a list of its difficulties, we could circulate that. Each of the five parties would then know where the others stood. It might be that only a dozen issues would emerge.

4107. **Mr McFarland:** Do we see a need for that list — however large — to be included in our report, or as an annex to it? As we discussed at length in the PFG Committee dealing with law-and-order issues this morning, logic dictates that it would be handy for people entering the negotiations to have a ready reckoner of the key issues. To help the parties and the Committee, would we want that clarity included? The report could state that we are happy with the ministerial code, except for the issues listed, which will be subject to negotiation.

4108. **The Chairman (Mr Wells):** We could do that, but that would require consensus in order for it to be included in the report.

4109. **Mr McFarland:** I understand that, but it might help to take an initial look at the ministerial code in Committee some day.

4110. If parties have 200 issues with which they are uncomfortable, there is no point in putting those in the report other than as one-liners. It would be better to discuss the whole report. However, if there are a small number of such issues, discussing those might help to clarify the position.

4111. **The Chairman (Mr Wells):** That would have to be agreed at the next Committee meeting so as not to hold up the report. However, the Committee has not yet agreed the principle of whether parties submit the report to the Clerks for circulation.

4112. **Mr McFarland:** We could do that, or we could have a meeting about it to which we come armed with our knowledge. We have managed to stay away — thank goodness — from endless party papers and thick files that have to be read and made sense of. However, if we meet face-to-face, we can come to an agreement quite quickly because we are able to ask one another: “Why are you doing that?” and to respond immediately: “That is nonsense” and so on. If we had an hour or two, either next week or the following week, before the report is submitted, we could dig out the issues. We do not need to debate them; we just need to identify them. We can do that by either circulating papers or by sorting it out at a meeting.

4113. **The Chairman (Mr Wells):** Given the nature of the problem, it would be best to have at least a piece of paper with a list of what members agree and disagree. The Clerks could distil that list into areas of concern. However, members must agree that they are happy to do that.

4114. **Mr McFarland:** It would be useful to ensure that each party produces such a paper so that none will state later that it would have liked to have included something but had not got around to it, or that some issue has not been fully covered. We will then all know with what each party is happy or unhappy. Furthermore, it will be recorded.

4115. **Mr P Robinson:** Given our experiences to date, anyone who thinks that the Committee can go through that volume of paper in a few hours is mistaken. We are capable of taking a very long time over each paragraph.

4116. My problem is that we are dealing with a ministerial code. The normal, and the best, procedure is that the Executive agree the ministerial code and propose it to the Assembly on behalf of the First Minister and the Deputy First Minister. However, there are elements of the code that we want put on a statutory footing;

the rest of it can be left to the Executive to propose to the Assembly.

4117. **The Chairman (Mr Wells):** Are you not in favour of obtaining a tabulated statement from each party?

4118. **Mr P Robinson:** We will weary ourselves unnecessarily. None of those issues, except for those that we have identified as priorities, is an obstacle to devolution.

4119. **Mr McFarland:** It is clearly the intention that parts of the code be negotiated. Bits of it will end up on the negotiating table in Scotland in October —

4120. **Mr P Robinson:** We have extracted those items.

4121. **Mr McFarland:** Yes. However, you need to identify them.

4122. **Mr P Robinson:** We already have.

4123. **The Chairman (Mr Wells):** They are the six items that I read out about half an hour ago.

4124. **Mr McFarland:** Where did that list come from?

4125. **The Chairman (Mr Wells):** They came from the various discussions among parties. They are the parked issues.

4126. **Mr McFarland:** My point is that there is a proposal, which members may not have read, to substantially modify the ministerial code. We heard that for the first time today. However, once the implications of that proposal have been examined, the list may include 12 items.

4127. If we compile a list from the first code and produce the proposed new code, with modified sections, we need to identify the areas with which parties have trouble so that, when we start negotiating in October, we at least have some idea of where difficulties lie.

4128. **Dr Farren:** The phrase “such as” in the proposal allows for additions.

4129. **Mr P Robinson:** Yes; if they are issues that need to be resolved prior to restoration.

4130. **Dr Farren:** If we can circulate those in the next few days, that is fine. I do not think

that the proposal excludes anything but the six items. That is why I am happy to endorse it.

4131. **The Chairman (Mr Wells):** I will let Mr Murphy speak, but I think that we can see a way through this. We need to move on, because we have a number of other items to deal with.

4132. **Mr Murphy:** I have reservations about each party producing another paper. We can all talk through this now and examine the six items that have been identified. I am not sure from which document that list was taken; if it were circulated, it might be helpful. I sense that, in trying to find common ground on all the issues, we are giving the Clerks more work for no real reason.

4133. During future discussions we might find that there are issues on which we agree and that there are issues that provoke further disagreement. Therefore, I do not know how serving papers early would aid the discussion. If each party comes back with its problems with, and attitudes to, the various sections of the code, members could discuss them as the issues arise.

3.00 pm

4134. **The Chairman (Mr Wells):** The Assistant Committee Clerk will distribute a copy of the six points to members for reference. We have consensus on Mr Robinson's proposal. The phrase "such as" will enable others to add issues that they feel are important and that have not been highlighted at this stage.

4135. Ian Paisley Jnr's proposal is on the Pledge of Office. He is not here, but I assume that others will be able to speak to his proposal, which is that:

"This Committee believes that a breach of the Ministerial Pledge of Office should be actionable in the courts and followed by disqualification from office".

4136. I presume that that disqualification would happen upon conviction. This proposal has been hanging around since 30 August. It has been referred to the PFG Committee, and, therefore, members need to try to reach a decision on it.

4137. **Mr P Robinson:** Where is it?

4138. **The Chairman (Mr Wells):** It is item 3 on the agenda.

4139. **Mr Murphy:** This might help to short-circuit the discussion. None of these proposals can be considered in isolation from a full discussion of the draft ministerial code and any other aspects of accountability mechanisms that members want to debate. I will not agree the proposals at this stage, although whether Sinn Féin consents to them at all is another matter. Therefore, rather than have an hour-long discussion on the merits of the proposals, it might be best to deal with them with all the other issues that the Committee is required to consider.

4140. **The Chairman (Mr Wells):** I will let the DUP answer that point.

4141. **Mr P Robinson:** It is not my proposal, but I am inclined to think that, as it is in schedule 4 to the Northern Ireland Act 1998, the ministerial Pledge of Office is already actionable in the courts.

4142. **The Chairman (Mr Wells):** Yes, the ministerial Pledge of Office is contained in the 1998 Act. Therefore, as it is on a statutory basis, it can presumably be subject to judicial review.

4143. **Mr Ford:** There is also the minor point that the sentence:

"and followed by disqualification from office"

4144. could, perhaps, be concluded with "if appropriate".

4145. **The Chairman (Mr Wells):** Yes, a Minister would have to have been convicted before that could apply.

4146. **Mr Ford:** Indeed, but that does not appear to have occurred to Mr Paisley Jnr when he drafted the proposal.

4147. **Mr Murphy:** Under the agreement, is it not the case that the Assembly, by cross-community vote, decides on disqualification from office? Perhaps the purpose of the proposal — and I am not privy to the reasoning behind it — was for a judge to decide whether a Minister should be disqualified from office. However, the broad point remains that it is impossible to consider either proposal in isolation

from a full discussion of the draft ministerial code and other aspects of accountability.

4148. **Mr P Robinson:** Parties have experience of going to the courts when they believe that there has been a breach of ministerial responsibility. This is not a new issue; it has a history. There is also a history of the courts requiring Ministers either to do certain things or suffer the consequences. If the ministerial code were part of the statute, there would be a mechanism that people could use.

4149. However, I agree that the matter is tied up with other issues that the Committee has yet to discuss. If responsibilities were put on a statutory basis, people would have the right to seek judicial reviews.

4150. **Mr Ford:** I almost thought that Peter was, on behalf of the DUP, withdrawing item 3 on the agenda.

4151. **Mr P Robinson:** The purpose of the proposal at item 3 is dealt with by my proposal, which has already been passed.

4152. **Mr Ford:** Nevertheless, Peter's proposal encompasses the issues around the draft ministerial code. Conor pointed out, quite rightly, that the Pledge of Office cannot be discussed without a discussion of the draft ministerial code. Whether I agree with Conor's take on proposal 4 is not the point; it is not relevant to discuss that proposal now.

4153. **The Chairman (Mr Wells):** Do members wish to make any further comments? It seems that members are content not to deal with proposal 4 at this stage.

4154. **Mr P Robinson:** There is also the issue of whether it is a ministerial Pledge of Office or a ministerial code.

4155. **The Chairman (Mr Wells):** Yes, I noticed that. I am not quite certain. The difficulty is that Ian is not here.

4156. **Mr P Robinson:** Members appear to be content that those issues can be considered alongside, and are consistent with, the proposal that has been agreed.

4157. **The Chairman (Mr Wells):** The proposal is, in effect, withdrawn. It has not been dealt with.

4158. Does the same view apply to agenda item 4?

4159. **Mr P Robinson:** Is that one of the "such as" matters?

4160. **The Chairman (Mr Wells):** It could be.

4161. **Mr P Robinson:** It is probably in paragraph 70 or 71 of the —

4162. **Ms Lewsley:** Law-and-order report.

4163. **The Chairman (Mr Wells):** That report has been agreed. As the issue has been dealt with, I do not think that there is a need for debate.

4164. Having got the preliminaries out of the way, we move on to the main part of the meeting: the initial consideration of the draft report on institutional issues, which will be discussed in private session.

The Committee met in private session from 3.06 pm to 4.05 pm.

Adjourned at 4.05 pm.

Monday 18 September 2006

Members:

The Chairman, Mr Jim Wells
Mr P J Bradley
Dr Seán Farren
Mr Danny Kennedy
Mrs Naomi Long
Mr Kieran McCarthy
Dr William McCrea
Mr Alan McFarland
Mr Conor Murphy
Mr John O'Dowd
Mr Ian Paisley Jnr
Mr Peter Robinson
Observing: Mr Francie Molloy

The Committee met at 2.33 pm.

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

4165. **The Chairman (Mr Wells):** I remind Members to switch off their mobile phones. Can we make a note of the members who are attending?

4166. **Dr McCrea:** I am standing in for Ian Paisley Jnr.

4167. **Mr P Robinson:** I am standing in for Lord Morrow.

4168. **Mr McFarland:** I am expecting Mr McGimpsey to stand in for Mr McNarry, but I am not sure when he will arrive.

4169. **Mrs Long:** Kieran McCarthy is replacing David Ford.

4170. **Mr P J Bradley:** I am standing in for Mark Durkan.

4171. **The Chairman (Mr Wells):** Will a third SDLP member be present?

4172. **Mr P J Bradley:** I do not think so. There might not even be two of us present.

4173. **Mr Murphy:** I am standing in for Martin McGuinness. There will be no other Sinn Féin representatives.

4174. **The Chairman (Mr Wells):** The minutes of the meeting that was held on 13 September are among members' papers.

4175. **Mr Kennedy:** Reference is made to the term "UUPAG", but the Speaker has ruled out the use of that term.

4176. **Mr P Robinson:** Just because the Speaker does not recognise it does not stop Mr Kennedy from doing so.

4177. **The Chairman (Mr Wells):** Do you wish to participate as the UUUP from now on?

4178. **Mr McFarland:** No, we do not.

4179. **The Chairman (Mr Wells):** I am sorry; the UUP?

4180. **Mr McFarland:** We have no option. The Speaker has ruled that for the purposes of the Assembly, the UUPAG does not exist. We have had to revert to what we were previously.

4181. **The Chairman (Mr Wells):** The Committee will accept that protocol from now on.

4182. The next item on the agenda is consideration of the draft report on institutional issues. The Committee shall continue in private session but will go into public session when it agrees the report.

The Committee met in private session from 2.36 pm to 5.52 pm.

On resuming —

5.52 pm

4183. **The Chairman (Mr Wells):** I chaired the last meeting of the economic subgroup, when it discussed its report, and we ran into a problem with the quorum. One member left the subgroup during the evidence session, and that meant that the subgroup had to stop taking evidence.

4184. The subgroup has asked permission from the PFG Committee to reduce the quorum to five members, with a requirement for one member from each party to be present. That would be a much more manageable way to deal with the situation. The demands on members' time attending plenary and other meetings makes it harder to keep to the quorum. However, if the subgroup was to have five members present, but those members did not represent every party, it would not have a quorum. Are members content with the suggested change?

4185. **Mr Murphy:** The five members would consist of one member from each party.

4186. **The Chairman (Mr Wells):** Are members content?

Members indicated assent.

4187. **The Chairman (Mr Wells):** The Committee has received a letter from the Speaker and I would like to put it on the agenda for the meeting on Monday week. The letter states:

“At a meeting of the Business Committee on 14 September, there was agreement, by four of the five parties represented, to a proposal that the PFG should be asked to address the issue of the forthcoming budget for Northern Ireland (an announcement on which is expected in December) and to bring forward plans to allow the Assembly to debate budgetary issues at an early date.”

4188. I admire the Speaker's optimism.

4189. The Committee has been asked to look at budgetary issues and to make recommendations. There are two ways to deal with that: the PFG Committee could deal it with, or it could be referred to the Subgroup on the Economic Challenges facing Northern Ireland. Another option would be to agree to not get involved at all.

4190. **Mr McFarland:** The Budget is an entirely different issue. The Committee was set up to scope the issues of devolution, and it is coming to a logical conclusion with its reports going forward to the talks in October. The economic subgroup was set up to look at the specific issues of the economic challenges facing Northern Ireland. The Committee should have a debate on the issue. It has been asked to operate as a Committee of the Assembly to examine the Budget, as the Executive might have done, presumably with a view to either agreeing or not agreeing the Budget so that the Government could implement it in March or April 2007.

4191. That is a different issue, and members may need to consult with their parties outside this forum, and have some discussion as to where the PFG Committee goes after it has finished its work.

4192. **The Chairman (Mr Wells):** Mr McFarland, are you saying that the issue should not be discussed in this Committee or in the economic subgroup?

4193. **Mr McFarland:** No. There is some neuralgia about what this Committee is or is not doing. It was set up for a specific purpose. If the Secretary of State changed the Committee's remit to examine the Budget, would all parties sit round the table in good faith and examine the Budget with a view to debating it in the Assembly, and its going forward into the Programme for Government? If the parties are not prepared to do that, sitting closeted in here two or three times a week for another three months with no end result, because members are still playing with it, would be quite ambitious for the Committee.

4194. **Mrs Long:** It does not fit with the remit of the economic subgroup. That would mean discussing the Budget, rather than impediments to the economy, and that is slightly different. This issue was raised at several Committee meetings and there was concern that if there were to be devolution in November, any Administration would be lumbered with a Budget that was already fairly far developed and would, therefore, constrain any future Executive.

4195. This is a matter that individual parties should take forward, rather than one on which this Committee should necessarily reach consensus.

4196. **The Chairman (Mr Wells):** I was not present at that meeting of the Business Committee. I would love to know what was behind that suggestion.

4197. **Mr Murphy:** I am loath to say that the proposal was not that well thought out, but it was simply thrown into the melting pot, without notice. I am not sure what detailed consideration of budgetary issues would involve. Most people feel that what has happened is that rather than being ruled out by the Business Committee, which is not really the vehicle for considering that type of matter, it was decided to let the PFG Committee have its view on the Budget. We will not rush into that, because it involves a significant departure from the sort of work in which the PFG Committee has been engaged. I do not wish to be critical of the Member who introduced the proposal, but I am not sure that its implications were carefully thought through.

4198. **Dr Farren:** The Budget would certainly require urgent discussion if the imminence of restoration was such that we would find ourselves having to finalise it. During the period of devolution, the final budgetary discussions took place in December, and I assume that the timetable remains the same, although it is currently up to the Minister to sign off on the Budget without any public discussion. I do not consider restoration to be likely at the moment, unless there is a rush of excitement to the head.

4199. **The Chairman (Mr Wells):** It is difficult to see how a PFG Committee could exist in December. By then, either there will either be full-blooded devolution, which means no PFG Committee, or we will be standing, as do many others, in the queue at our local social security offices. I cannot see how this proposal was thought through.

4200. **Dr Farren:** PFG would then stand for Programme for Government.

4201. **Mr McFarland:** Absolutely, yes.

4202. **The Chairman (Mr Wells):** What do members feel? Will we simply report back to

the Business Committee that budgetary issues should be taken forward by the parties, rather than by this Committee?

4203. **Mr McFarland:** At the start of the summer, we discussed whether there was any merit in considering different aspects of a Programme for Government, and the word around the room was that that was a matter for the Executive. Parties need to discuss budgetary issues.

4204. **Mrs Long:** It is not a matter for this Committee.

4205. **The Chairman (Mr Wells):** Do we agree that it is not a matter for this Committee?

4206. **Mr Murphy:** Simply note that.

4207. **The Chairman (Mr Wells):** Is there consensus that we simply note that and take it no further?

Members indicated assent.

4208. **The Chairman (Mr Wells):** There is one further technical issue. The equality strand of this Committee met on Friday and has no plans to meet again. There is a set of minutes from that meeting of 15 September that must be ratified because there are no further meetings. Are members content that, as no date has been set for further meetings, we must simply accept that there is no mechanism to agree those minutes?

4209. **Mr P Robinson:** I am sure that there is a mechanism.

4210. **The Chairman (Mr Wells):** Yes, I was going to ask whether there is a situation by which the two Chairmen can sign off the minutes or bring them back here.

4211. **Mr P Robinson:** That group does not meet as a separate entity; it meets as a strand of the PFG Committee, so we must agree its minutes.

4212. **Mr McFarland:** That is why I said to you earlier, Chairman, that if it is the will of that strand of the PFG Committee to produce a final draft of its report, in the same way that we will produce a final draft of our report, at least that would result in something for members to consider, even though the report will be issued only to the members of the Committee.

4213. **The Chairman (Mr Wells):** The minutes can be handed out here or tabled for consideration.

4214. **Mr Murphy:** The difficulty in agreeing the minutes now is that I was not at the meeting.

4215. **Mr Paisley Jnr:** I have to leave, which affects the quorum.

Adjourned at 6.01 pm.

Monday 25 September 2006

Members:

The Chairman, Mr Francie Molloy
Dr Seán Farren
Mr David Ford
Mr Danny Kennedy
Ms Patricia Lewsley
Mr Kieran McCarthy
Dr William McCrea
Mr Alan McFarland
Mr Michael McGimpsey
Mr Conor Murphy
Mr John O'Dowd
Mr Ian Paisley Jnr
Mr Peter Robinson

The Committee met at 2.01 pm.

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

4216. **The Chairman (Mr Molloy):** Before I begin the meeting, I draw members' attention to the sudden death of our fellow Assembly Member Michael Ferguson. Michael had attended the Preparation for Government (PFG) Committee dealing with rights, safeguards, equality and victims. Michael had been recovering from cancer, and it is thought that he had a heart attack in the early hours of this morning. Are members agreeable to the PFG Committee sending a letter of condolences to his family?

4217. **Dr Farren:** I think that we should.

Members indicated assent.

4218. **The Chairman (Mr Molloy):** I remind members to switch off their mobile phones for the benefit of Hansard. Are any new members present today?

4219. **Ms Lewsley:** I am here on behalf of Mark Durkan.

4220. **Mr O'Dowd:** I am here on behalf of Michelle Gildernew.

4221. **Mr McCarthy:** I am here on behalf of Naomi Long.

4222. **Mr McFarland:** Michael McGimpsey is here on behalf of David McNarry.

4223. **Mr P Robinson:** I am not sure for whom I am deputising. I will see who the other two members are, and then I will have a better idea for whom I am substituting.

4224. **The Chairman (Mr Molloy):** You are here for somebody, anyway.

4225. **Mr Ford:** Can it be put on the record that Peter is not sure?

4226. **Mr P Robinson:** I am it.

4227. **Ms Lewsley:** He does not know who he is.

4228. **The Chairman (Mr Molloy):** The first three items of business on the agenda are to agree three sets of minutes. Are members content with the draft minutes of 18 September?

4229. **Mr Ford:** My apology has not been recorded under "Apologies". I was not at the meeting, but I presume that an apology was made on my behalf, and that it was noted that Kieran McCarthy attended in my place.

4230. **The Chairman (Mr Molloy):** Are members content?

Members indicated assent.

4231. **The Chairman (Mr Molloy):** The next set of minutes to be agreed is that of the meeting of the PFG Committee dealing with rights, safeguards, equality and victims on 15 September.

4232. **Mr Kennedy:** The minutes still refer to the Ulster Unionist Party Assembly Group (UUPAG), which is an error of description, according to the Speaker's ruling.

4233. **The Chairman (Mr Molloy):** Are members content with the draft minutes of 15 September?

Members indicated assent.

4234. **The Chairman (Mr Molloy):** The final set of minutes to be agreed is the draft minutes of the meeting of the PFG Committee dealing

with law and order on 18 September, which was attended by the Secretary of State. Are members agreed?

Members indicated assent.

4235. **The Chairman (Mr Molloy):** The next part of the meeting, which is the further consideration of the draft report on institutional issues, will be held in private.

The Committee met in private session from 2.05 pm until 2.43 pm.

On resuming —

2.43 pm

4236. **The Chairman (Mr Molloy):** I thank all members who took part in this format of the PFG Committee for their co-operation with Jim Wells and me as the Chairmen.

4237. The next item on the agenda is “Any other business”. Representatives of the PFG Committee have agreed to attend a symposium hosted by the Northern Ireland Human Rights Commission on 5 October, from 9.30 am to 12.30 am, which will be the Committee’s next task at this stage.

4238. **Mr McFarland:** I understood that the Secretary of State had tasked the Committee with producing a ministerial code in October. What progress was made on that? It is on the Secretary of State’s list of the Committee’s duties.

4239. **The Chairman (Mr Molloy):** The work plan says that one of the Committee’s roles in October is to:

“conclude discussions and finalise a draft Programme for Government and draft Ministerial Code.”

4240. However, there was an earlier decision that the Committee could not draw up a draft Programme for Government.

4241. **Mr McFarland:** I was not talking about the Programme for Government, but the ministerial code, and whether the Committee is expected to continue working to produce that or whether it will ignore the fact that it has been asked to do that.

4242. **The Chairman (Mr Molloy):** If the Committee feels that it must fulfil that role —

4243. **Mr McFarland:** The Committee could broach the ministerial code after the talks, because it may be discussed during those. It might be sensible to examine whether we need to do that afterwards.

4244. **The Chairman (Mr Molloy):** That has come up in earlier discussions. We concluded that there was no point in considering that in advance of the talks.

4245. **Mr McFarland:** I am simply acknowledging the fact that that was —

4246. **The Chairman (Mr Molloy):** The Committee will return to that issue later, if appropriate. However, the Secretary of State will give some direction on that point.

4247. As there is no other business, the meeting is adjourned. Thank you.

Adjourned at 2.45 pm.

Appendix 3

List of Institutional Issues for Consideration

Strand One

The Assembly

Accountability/Safeguards

- Approval of FM/DFM and Executive
- Community Designation
- Election of First Minister and Deputy First Minister
- Election of Speaker and Deputy Speakers
- Petitions of concern
- Proportionality
- Voluntary Coalition
- Voting system

Committee Systems

- Committee Structures
- Formation of Committees
- Role and effectiveness of Committees - (resources to initiate primary legislation; new protocol between Committees and the Executive)
- Status and Role of the Committee of the Centre (statutory footing with other Committees)

Efficiency/Effectiveness

- Creation of Institutional Review Committee
- Dual/triple mandate
- Number of Assembly members
- Elections to the Assembly (STV)
- Standing of MLAs
- Tax varying powers

Stability

- Arrangements for a fail-safe mechanism in the event of recurring terror and criminal behaviour by organisations linked to those in government
- Democratic credentials for Government
- Disqualification (members, parties)
- Removal of suspension legislation

New Item as discussed at PFG Committee meeting on 7 August 06 Accountability Mechanisms

- Assembly referral to the Executive
- Power to reverse Ministerial decisions in certain circumstances
- Statutory recognition of supremacy of Assembly/Executive over Ministers

Further consideration of Assembly Voting System as discussed at PFG Committee meeting on 7 August 06

The Executive

Accountability/Safeguards

- Appointment of First Minister and Deputy First Minister
- Appointment of Ministers
- Appointments to outside bodies
- Collective responsibility
- Decision taking within the Executive
- FM/DFM referral to Executive
- Ministerial Code
- Ministerial Code of Conduct
- Pledge of Office
- Requirement on Ministers to attend Executive meetings (may be dealt with under Ministerial Code/Ministerial Code of Conduct)
- Where power is vested in NI

Efficiency / Effectiveness Functions of OFM/DFM

- Number of Departments (RPA implications; devolution of policing and justice implications)

Stability

- Disqualification (Ministers)

Other

- Civic Forum

Strand Two

North/South Implementation Bodies

- Assembly scrutiny of implementation bodies
- Number and Role of North/South bodies (Foyle, Carlingford and Irish Lights Commission)
- Operation (efficiency) of North South Bodies

North/South Ministerial Council

- Accountability of NSMC to the Assembly
- Increased reporting from Ministers
- Nomination of Ministers to attend NSMC
- Operation of NSMC
- Requirement/entitlement of Ministers to attend NSMC meetings (may be dealt with under Ministerial Code/Ministerial Code of Conduct)

Other Issues

- Assembly decision for issues outside departmental responsibilities
- Interdependency of the institutions
- North/South Consultative Forum
- North/South Parliamentary Forum
- Other cross border bodies
- Status of North South Bodies (stand-alone or part of British-Irish Council)

Strand Three

- British-Irish Intergovernmental Conference
- BIIPB
- East/West issues - accountability to the Assembly
- New Council of the Isles
- Operation of British-Irish Council and a secretariat (more effective structure and operation; relationship to be strengthened)

Appendix 4

Proposals not agreed by the Committee

Proposals not agreed by the Committee

Paragraph	Proposal
41	To move to a weighted-majority voting system in the Assembly and the removal of the present community designation system.
42	To retain the present community designation system and use a weighted-majority and the current cross-community voting system.
45	That the Executive should be formed by a voluntary coalition.
50	That the positions of the First Minister and Deputy First Minister should be filled by separate nominations. The largest party of the largest designation would nominate to the post of First Minister and the largest party from the second largest designation would nominate to the post of Deputy First Minister.
51	That the positions of First Minister and Deputy First Minister should be filled by asking the nominating officer of the largest party of the largest designation and the nominating officer of the largest party of the second largest designation to identify their nominees for the posts of First Minister and Deputy First Minister respectively.
54	That the entire Executive, including the First Minister and Deputy First Minister, should be subject to collective endorsement in the Assembly by a cross-community vote.
62	That d'Hondt should be run once only for the appointment of Ministers, committee chairpersons and deputy chairpersons and for membership of statutory and standing committees.
66	That an Institutional Review Committee should be established to examine the operational aspects of Strand 1.
67	That a mechanism should be established in the Assembly to examine operational aspects of Strand 1.
91	That the annual report of the North/South Ministerial Council should be presented in person to both the Assembly and the Oireachtas by the First Minister, the Deputy First Minister, An Taoiseach and An Tánaiste.
92	That in relation to the North/South Ministerial Council, the First Minister and Deputy First Minister should report either to the full Assembly or to the Committee of the Centre.
98	That consideration should be given to the setting up of a North/South Consultative Forum.
101	That the British-Irish Council should have its own secretariat.

Appendix 5

Submissions from the Parties

Committee on Preparation for Government
Submission on Institutional Issues by Alliance Party
31 July 2006

This paper summarises Alliance's principal areas of concern on institutional issues, as set out in our initial submission to the committee and 'Agenda for Democracy'.

Assembly

Removal of Designations and introduction of a fair and effective voting system within the Assembly, based on a weighted majority.

Tax varying powers.

Composition of Committees, and appointment of Chairs.

Scrutiny of all Executive functions, including OFMDFM.

Scrutiny of NSMC through annual report by Taoiseach and FM in Assembly.

Power to reverse Ministerial decisions in certain circumstances.

Executive

Ministerial Code and enhancement of Pledge of Office.

Formation of Executive and endorsement by Assembly.

Enhancement of collectivity.

Numbers of Departments, including Department of Justice.

Functions of OFMDFM.

Civic Forum

Enhancing the role of the Civic Forum.

North-South Issues

Increasing the scope of North-South co-operation on the basis of practical benefits.

Formation of Parliamentary Tier between Assembly and Oireachtas.

East-West Issues

Increasing the effectiveness of BIC, including annual report.

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DEMOCRATIC UNIONIST PARTY

Main institutional issues for Committee

1. Belfast Agreement/Comprehensive Agreement - Accountability

The institutions created by the Belfast Agreement did not provide for sufficient accountability for decision making within Northern Ireland. In particular, as has been identified, the lack of Ministerial accountability was a significant flaw in the previous arrangements. Unless such issues are dealt with in advance of the restoration of devolution no Executive can successfully be put in place. The Government's proposals for a Comprehensive Agreement published in December 2004 set out a mechanism for dealing with this issue and it is essential that such proposals are implemented.

2. Stability

With four suspensions in three years and no devolution since October 2002 it is clear that the arrangements created under the Belfast Agreement did not provide for stable government. It is critical that any new arrangements are designed to ensure that when they do get started they are not liable to interruption but contain within them provisions to allow the non-defaulting parties to continue.

3. Efficiency issues

In circumstances in which there is ever increasing pressure on public finances it is important that the devolved institutions are seen to be delivering value for money for the people of Northern Ireland. The previous arrangements were rightly seen as being overly bureaucratic and costly. In order to win credibility with the general public it is important that politics can be seen to run efficiently and that as much money as possible can be directed to front-line services.

4. Ministerial Code

- Major decisions command cross community support
- Cross Cutting Matters

5. Assembly referral to Executive

6. FM/DFM referral to Executive

7. Statutory recognition of supremacy of Assembly/Executive over Ministers

8. Assembly approval of Ministers in the Executive.

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- 9. Community Designation.
- 10. Functions/Slim Down of OFM/DFM
- 11. Creation of Institutional Review Cmte.

Strands Two and Three

- 11. Accountability
 - As in Strand One through Ministerial Code
 - Assembly Scrutiny of implementation bodies
 - Assembly decision for issues outside departmental responsibilities
 - Review of existing arrangements
- 12. Enhanced East-West relations

Other Issues

- 13. Democratic credentials for Government
- 14. Arrangements for a fail-safe mechanism in the event of recurring terror and criminal behaviour by organisations linked to those in government.



July 2006

**SDLP SUBMISSION TO THE
PREPARATION FOR GOVERNMENT
COMMITTEE**

INSTITUTIONAL ISSUES

**PREPARATION FOR
31 JUL 2005
GOVERNMENT CTTEE**

A Better Way to a Better Ireland

INTRODUCTION

This document is the submission of the SDLP to the Preparation for Government Committee on Institutional issues, submitted in accordance with the agenda drawn up by that committee on 27 July 2006.

1. GOOD FRIDAY AGREEMENT

The SDLP stands by the Good Friday Agreement, as approved by the people of Ireland, North and South, nationalist and unionist, in May 1998.

We believe that current disillusion has been caused not by the Agreement but by the foot-dragging of parties in honouring its key concepts: an inclusive democracy and a lawful society.

Equally, we do not believe that there is a case for alteration of the Agreement's institutional arrangements. By and large, the public were satisfied with how they were working. And in no way was any of the crises caused by their design. Rather, all crises were caused by the lack of political will to accept fully both an inclusive democracy and a lawful society.

That said, there are a number of changes, consistent with the Agreement, that can be introduced to increase collectivity and efficiency and some areas where the Agreement's structures could be better implemented. We set these out later in this paper.

There are also areas where the North/South agenda needs to be developed and strengthened, including increasing areas for cooperation and implementation. Again, we set these out later in this paper.

2. CIVIC FORUM

The Agreement provides for a "consultative Civic Forum." The SDLP believes that the Civic Forum has a crucial role to play in ensuring that the voice of civic society is heard and a proper model of social partnership is developed in the North. Social partnership lies at the heart of the South's success and the SDLP wants to emulate that success here.

The SDLP believes that the Civic Forum should be reconvened, not only to review its own role, but also to input its views into these discussions, particularly on priorities for government.

3. COMPREHENSIVE AGREEMENT

The Comprehensive Agreement was published on 8 December 2004. Its first page made clear that it was *"the proposed agreement which the British and Irish Governments sent to Sinn Féin and the DUP."*

The DUP in response said that it was *"a truly remarkable achievement by the DUP ... We have made massive progress and delivered what we believe to be a fair deal for the people of Northern Ireland."* (Peter Robinson, 10 December 2004).

Likewise Gerry Adams in a letter to the Taoiseach dated 7 December 2004 wrote: *"I can confirm to you that I believe Sinn Féin can say yes to the political package contained in the proposals of the two governments."* Even after the SDLP had gone public on the defects of the Comprehensive Agreement, he stated on 20 December that it was *"a remarkable achievement"*.

However, the SDLP cannot give its support to the provisions of the so-called Comprehensive Agreement on institutional matters because they, for example:

- give the DUP new vetoes over the appointment of nationalist ministers and their decisions;
- risk creating deadlock in government;
- undermine the executive authority of ministers;
- threaten the SDLP with automatic exclusion;
- deny the SDLP the equal place in the Executive promised by the Good Friday Agreement;
- fail to provide for a single extra area of North South cooperation or implementation;
- leave the DUP's commitment to cooperate on North South in profound doubt; and
- undermine the workability of the North South agenda.

Attached we provide a paper with a full analysis of the serious defects of the Comprehensive Agreement and how it undermines the Good Friday Agreement's fundamentals and the democratically expressed will of the Irish people.

Worse, these changes are to be provided for in new British legislation at Westminster – at which point the DUP, who negotiated over 100 side deals and secret understandings with the British Government, may get yet further changes.

We call on the Governments and all parties – especially those who negotiated the Comprehensive Agreement, the DUP and Sinn Féin, to accept the Good Friday Agreement instead.

Any issues that need to be addressed regarding the workings of the institutions can be dealt with once we have restoration. Since none of these

issues caused suspension, they should not be allowed to delay restoration. Nor should dealing with them be elevated into preconditions for restoration.

4. MULTIPLE MANDATES

The SDLP believes that the public have two distinct concerns with regard to multiple mandates:

- first, concern that two salaries can be drawn down at the one time and
- second, concern that two jobs can be done at the one time.

The SDLP shares the first concern and sees no reason why this cannot be dealt with immediately.

Regarding the second, the SDLP sees good reasons for curbing multiple mandates by councillors/MLAs/MPs/MEPs. But we would not limit it to that. These rules should also extend to membership of other elected bodies, such as the House of Lords, Dail and Seanad.

However, it would be unfair to ask people to resign other elected offices now because of their Assembly mandate when the Assembly may not exist after 24 November. Just as the dual mandate was phased out in the South over time, the SDLP believes that rules dealing with multiple mandates involving the Assembly should be introduced when there is no instability or uncertainty surrounding it. We also believe that priority should be given to how to limit the multiple mandates of those who hold ministerial office.

5. EAST/WEST ISSUES

The Good Friday Agreement created not only a framework for political co-operation and partnership in Northern Ireland, it also widened and extended the basis for co-operation and partnership to the whole island of Ireland, and included a new framework for policy development with partners in a new British-Irish relationship as well, which we fully support.

However, the SDLP is conscious that East West cooperation has yet to achieve its full potential.

The SDLP would, in the context of restoration and an expansion of the North South agenda, be willing to see:

- *a dedicated secretariat for the British Irish Council; and*
- *bilateral and multilateral arrangements between different BIC members. The role of the secretariat would include encouraging and monitoring these arrangements.*

6. FIRST MINISTER AND DEPUTY FIRST MINISTER ISSUES

The SDLP stands strongly for the joint election and joint office of the First Minister and Deputy First Minister.

Jointery is essential to reflect equality between nationalists and unionists. It is also essential to ensure fairness in the handling of contentious issues.

Further, the SDLP believes that it is important that the First Minister and Deputy First Minister be elected on a joint ticket. That way, both Ministers must seek the approval of both a majority of nationalists and a majority of unionists voting in the Assembly, as well as a majority overall. This is essential to provide a shared leadership for the shared future that we need to build.

We are also opposed to the proposals in the Comprehensive Agreement, negotiated by the DUP and Sinn Féin, that fundamentally alter the election of the First Minister and Deputy First Minister and instead:

- threaten democratic parties with a new form of ***automatic exclusion*** to come in new British legislation;
- ***replace inclusive government*** with what is really a DUP/SF voluntary coalition; and
- give the ***DUP a veto over who nationalist ministers*** can be.

See further sections 8, 9 and 10 of our analysis of the Comprehensive Agreement attached.

The SDLP does not believe that OFM/DFM needs to retain all its existing functions. Contrary to the position of some other parties, we are clear, however, that equality needs to be kept in OFMDFM as it is essential that equality be at the heart of government with the Executive Secretariat if it is to be properly mainstreamed. That way, proposals that do not spell out their equality implications or that do not promote equality can be effectively challenged.

7. INSTITUTIONS

(A) STRAND ONE

(i) Proposals for collectivity, accountability and efficiency

The SDLP does not see the need to alter the Agreement's essential architecture. But we are eager to see greater collectivity and accountability. For that reason we have made a number of detailed proposals. Some involve changes to the Northern Ireland Act. All are consistent with the Agreement. Some ensure its better implementation.

We put these proposals to the DUP at Leeds Castle – but they never responded. That proves that it is not efficiency that they are interested in but control.

On collectivity, we proposed:

- putting into legislation an obligation on the Executive to adopt a ***Ministerial Code*** (but we did not propose making it legally binding since it already had to be followed under the Pledge of Office which, because of the unilateral action of the British Government, was made enforceable by the Secretary of State and the IMC);
- Ensuring ***early discussion of issues at the Executive*** through the code.
- Empowering the committee on standards and privileges to ***examine breaches of the Code***.
- Creating ***Executive sub-committees*** to ensure joined up working.
- Giving the Executive the ***power to call persons and papers*** to ensure that Ministers cannot withhold information.
- Obliging Ministers in statute to work in good faith to ***comply with the Programme for Government***.
- Introducing a civil service code of ethics to ***oblige each permanent secretary to notify the Executive secretariat*** of any breach of an executive decision.
- Bringing ***certain public appointments to the Executive*** for approval, and notify other proposed appointments – which could then be challenged.
- Where any measure or proposal for legislation runs aground under the ***special equality procedure***, the relevant Minister to bring it back to the Executive.

We also proposed strengthening accountability and efficiency by -

- ensuring that Ministers present their own ***departmental spending plans*** (post-budget) to the Assembly;
- proposing a new Committee on ***Departmental running costs***;
- proposing a new public accounts committee style cross-cutting ***committee on performance, efficiency and implementation***;
- better adherence to protocol that key policy ***announcements are presented to the Assembly first***.

- **a new protocol to be agreed between Assembly committees and the Executive** to ensure more consistent notification and sounding of committees on new policies and measures.

(ii) Fairer democracy

The Good Friday Agreement states that –

"The Chairs and Deputy Chairs of the Assembly Committees will be allocated proportionately, using the d'Hondt system."

The SDLP believes that the d'Hondt system is a fair and appropriate method of allocating ministerial offices and committee chairs and we are opposed to any move from it.

However, we recognise that an injustice is caused to smaller parties by the way that d'Hondt is deployed under the Northern Ireland Act, 1998. Under that Act, the allocation of chairs and deputy chairs takes no account of the previous allocation of ministerial offices. Thus the parties that assume the current ten ministerial offices also assume by right the first ten committee chairs. Nothing in the Agreement requires this.

Consistent with the Agreement, we believe that the system should be altered so that the first committee chair be allocated to the party entitled to a notional 11th ministerial office, the second committee chair to the party entitled to a notional 12th ministerial office, and so on. In other words, d'Hondt would not commence again for the allocation of committee chairs and vice chairs – nor for the chairs and vice-chairs of non-statutory committees.

(iii) Number of departments

The SDLP believes that the current moves to change the number of departments are misdirected. The key issue is the size of the civil service, not the number of departments.

We believe that savings can be made, for example by departments pooling resources with each other. We are also opposed to blindly preferring outsourcing to the private sector rather than ensuring efficient and effective public service provision.

(B) STRANDS TWO AND THREE

(i) Nominations to NSMC/BIC

During devolution the work of the NSMC/BIC was impaired by the failure of DUP Ministers to attend. This impacted, in particular, on badly needed North/South work on transport.

It is already a duty of Ministers to attend NSMC meetings, having been nominated to do so. ***The SDLP believes that the pledge of office should also be amended to make explicit that Ministers must attend NSMC/BIC, and indeed Executive, meetings.***

During devolution, there were also serious abuses of the NSMC nomination procedure:

- On 28 October 2000 David Trimble made clear that he would not nominate all Ministers on an inclusive basis because of the failure to make progress on IRA decommissioning.
- Again on 21 September 2002 David Trimble announced a further disruption of the NSMC by refusing to send accompanying unionist ministers to education and health meetings.

While the refusal to nominate Sinn Féin ministers in October 2000 was found to be illegal, the courts did not clearly find that there was a duty under the Northern Ireland Act to nominate the relevant Minister. The SDLP regrets this interpretation of the Act, which though less than clear, we nonetheless believe does impose such an obligation.

However, under the Agreement the minister to be nominated must be the "relevant minister", that is to say the minister with executive responsibility for the issue being handled at NSMC/BIC. The Agreement only envisages one exception to this – where the minister will not participate normally.

The SDLP calls for amendments to the Northern Ireland Act to implement the Agreement better by:

- ***clarifying that the First Minister and Deputy First Minister are under a duty to nominate the relevant minister to NSMC/BIC meetings, that is to say the minister with executive responsibility; and***
- ***clarifying that the only exception to that duty is where that minister will not participate normally, be it because of illness, political stance or for other reasons.***

Should the relevant minister refuse to attend an NSMC/BIC meeting for which he is nominated, this would be in breach of his ministerial responsibility under the Act. The Act also provides that a minister *may* authorize another minister to enter into agreements or arrangements on his behalf.

The SDLP believes that where the minister refuses to attend, because he is in breach of his ministerial responsibility, it should be clarified that he must authorize another minister to enter into agreements or arrangements on his behalf.

In the event that no minister of a particular designation is willing to attend or believes it necessary to do so, the requirement of cross-community participation should also be dispensed with.

Finally, the SDLP notes that others have called for the abandonment of the designation system in the Assembly. ***Any move from the designation system would also mean the scrapping of the requirement of cross-community participation in the NSMC/BIC.***

(ii) Ensuring accountability and momentum on North/South

(a) North/South Consultative Forum

The SDLP believes that North/South action works to the benefit of all on the island. It is vital, however, to realise its full potential that the NSMC sets itself the right priorities.

That is why it is so important that the voices of stakeholders are heard. They can highlight where new North/South action is required, or where existing actions are not delivering as well as they should.

At the July 2002 plenary of the North/South Ministerial Council, an outline structure was agreed for a North/South Consultative Forum, as envisaged by the Good Friday Agreement. Specifically, it was agreed that:

"A twice yearly conference will take place, alternating between north and south, comprising representatives of civil society, north and south. The planning and organization of the first conference would be undertaken by a steering committee drawn from the Northern Ireland Civic Forum and the social partners in the South participating in the Central Review Mechanism of the Programme for Prosperity and Fairness, in liaison with the two administrations. The steering committee will also invite representatives from a range of relevant organizations, north and south to participate in the conferences."

The SDLP calls for the reconvening of the Civic Forum and the convening of the North/South Consultative Forum envisaged by the Good Friday Agreement and the July 2002 NSMC plenary without further delay. This should not depend on the lifting of suspension.

(b) North/South Parliamentary Forum

The Good Friday Agreement also envisaged a North/South Parliamentary Forum. Again, this is vital to ensure both accountability and set proper directions for the NSMC.

It would also provide, for the first time since partition, a forum for all the parties on the island to discuss and debate issues of common concern.

At the July 2002 plenary of the NSMC, it was agreed that officials from the two administrations North and South should make contact with officials from the Dail and Assembly with a view to establishing the forum. Suspension interrupted this work.

The SDLP calls for the convening of the North/South Parliamentary Forum, with clear membership and equal representation, upon the lifting of suspension. Preparatory administrative steps to this end should be taken now.

(c) Accountability to the Assembly

The SDLP rejects the notion that ministers were not accountable to the Assembly for their work at the NSMC. They were every bit as accountable to the Assembly for this work as they were for their work in the Executive and in their departments. Indeed, in some respects they were more accountable. In particular, they were obliged to make an oral statement to the Assembly after every NSMC meeting. This is not a requirement of the Good Friday Agreement and used up time in the Assembly that could be better spent on greater priorities. ***The SDLP believes that a written statement would be sufficient on most occasions, and calls for standing orders to be amended to allow this.***

(iii) Injecting creativity into North/South work

The SDLP believes that too often NSMC meetings took place when agreement had already been reached between officials on what actions were required. ***We believe that NSMC meetings should not always be set-piece affairs with pre-determined outcomes, and accordingly call for NSMC meetings to be less formal and more creative.***

Further, we were disappointed that no meetings in cross-sectoral format ever took place. These are essential for proper joined up policy making. ***The SDLP calls for meetings of the NSMC in cross-sectoral format.***

8. NORTH SOUTH ISSUES

The SDLP is determined to ensure that the potential of the North-South agenda. We want to see the North South agenda revitalised under restored institutions. But even if we cannot achieve restoration, the SDLP is determined to see the North South agenda continue.

We can do more together to get more together in terms of both more strategic outcomes and procurement and delivery gains. Our economies, North and South, face common challenges, so it makes sense to find common solutions. That is what the North South agenda is all about.

Our detailed proposals for the North South agenda are *attached*. They include plans for a new Transport and Infrastructure body, an all-Ireland Research Alliance, Marketing and Investment Co-operation, a Public Safety body and a joined-up anti-poverty strategy. In addition there are many other recommendations covering issues in health, education, the environment, agriculture, energy, etc. where enhanced forms of co-operation would yield enormous benefits.

In particular, the SDLP stresses the potential of *North South funds* on issues as varied as infrastructure and community support. We are also open to considering East/West funds – rather like the current INTERREG programme.

9. PARTNERSHIP IN GOVERNMENT

The SDLP wants to see the Northern Ireland administration being given fiscal discretion, especially as regards tax measures that have a particular impact on economic performance.

We also believe that the Northern Ireland administration should have power to be more pro-active on development cooperation, working consistently on a North South basis with Development Cooperation Ireland. We are also open to working on an East West basis with DFID.

10. REFORM OF RPA

The SDLP is deeply concerned that after 24 November the main political structures for the governance of the North will be the seven "super-councils" proposed by the British Government.

These lack the popular mandate of the Good Friday Agreement's institutions and threaten the North with Balkanisation.

We reject Sinn Féin's suggestion that seven supercouncils are acceptable because no council will have less than a 25% minority since:

- In fact a number of councils will have less than a 25% voting minority. Those who argued to the contrary failed to count the votes cast for independent unionists.
- In any event, the British Government has never committed publicly to power sharing at 25% or any other figure.

The SDLP calls on the Government to:

- **abandon the seven supercouncil model; and**
- **leave this matter to devolved ministers to resolve. The terms of reference for the RPA were produced by devolved ministers following considerable consultation and discussion. If this was required for the terms of reference, it is even more clearly required for the outcome of the review.**

11. UNDERSTANDINGS AND UNDERTAKINGS

The SDLP is concerned at the endless side deals and secret understandings done by the British Government that have damaged confidence in the political process.

In particular, on 10 December, two days after the so-called Comprehensive Agreement was published, Peter Robinson stated in a widely covered press release that:

"The Comprehensive Agreement is merely the core of the proposals which we have accepted but is also augmented by over a hundred clarificatory answers, notes and letters."

Alarmed by this, the SDLP demanded publication of these side letters, notes and answers at a meeting with the two Governments on 15 December. We made this demand public in a press release issued on the same day. But the British Government has kept them secret to this day.

Not alarmed it seems by any of this, Gerry Adams still maintained in an article in the Irish News on 20 December that the Comprehensive Agreement was "a remarkable achievement."

The SDLP calls on the British Government to publish these side deals and secret understandings.

We also call on Sinn Féin to clarify whether they are in receipt of these and in agreement with them.

* * *

PREPARATION FOR
01 AUG 2006
GOVERNMENT CTTEE



March 2006

STANDING BY THE WILL OF THE PEOPLE

WHY THE SDLP REJECTS THE "COMPREHENSIVE AGREEMENT"

A Better Way to a Better Ireland

INTRODUCTION

On 8 December 2004 the two Governments published a document *"Proposals by the British and Irish Governments for a Comprehensive Agreement."*

Its first page states –

"The documents presented here constitute the proposed agreement which the British and Irish Governments sent to Sinn Féin and the DUP."

The SDLP was only given sight of the so-called Comprehensive Agreement at 10 am on 8 December – by which stage it had already been given to the press.

The DUP in response stated that *"this has been a truly remarkable achievement by the DUP ... We have made massive progress and delivered what we believe to be a fair deal for the people of Northern Ireland."* (Peter Robinson, 10 December 2004).

Sinn Féin also signed up to the so-called Comprehensive Agreement's provisions on institutional matters. In a letter to the Taoiseach dated 7 December 2004 Gerry Adams wrote: *"I can confirm to you that I believe Sinn Féin can say yes to the political package contained in the proposals of the two governments."* On 20 December he added that it was *"a remarkable achievement"*.

However, the SDLP cannot give its support to a number of the provisions of the so-called Comprehensive Agreement on institutional matters because they, for example:

- give the DUP new vetoes over the appointment of nationalist ministers and their decisions;
- risk creating deadlock in government;
- undermine the executive authority of ministers;
- threaten the SDLP with automatic exclusion;
- deny the SDLP the equal place in the Executive promised by the Good Friday Agreement;
- fail to provide for a single extra area of North South cooperation or implementation;
- leave the DUP's commitment to cooperate on North South in profound doubt; and
- undermine the workability of the North South agenda.

Worse, these changes were to be provided for in new British legislation at Westminster – at which point the DUP, who have negotiated over 100 side deals with the British Government, would have got further changes.

Meanwhile, during the review the SDLP put forward positive proposals for collectivity, accountability and efficiency, as well as for North South. The DUP were allowed to ignore them.

The Good Friday Agreement was approved by the people of Ireland, North and South, nationalist and unionist, in 1998. For the reasons outlined in this document, we believe that the so-called Comprehensive Agreement undermines the Good Friday Agreement's fundamentals and the will of the Irish people.

We call on the Governments and all parties – especially those who negotiated the Comprehensive Agreement, the DUP and Sinn Féin - to return to the Good Friday Agreement and safeguard its provisions. We believe that any issues

that need to be addressed can be done once we have restoration. They should not be allowed to become preconditions for restoration.

1. *The Comprehensive Agreement was accompanied by over 100 secret understandings, side deals and side letters given to the DUP*

On 10 December, two days after the so-called Comprehensive Agreement was published, Peter Robinson stated in a widely covered press release that:

"The Comprehensive Agreement is merely the core of the proposals which we have accepted but is also augmented by over a hundred clarificatory answers, notes and letters."

Alarmed by this, the SDLP demanded publication of these side letters, notes and answers at a meeting with the two Governments on 15 December. We made this demand public in a press release issued on the same day. But the British Government has kept them secret to this day.

Not alarmed it seems by any of this, Gerry Adams still maintained in an article in the Irish News on 20 December that the Comprehensive Agreement was "a remarkable achievement."

The SDLP calls on the British Government to publish these side deals, notes and answers.

We also call on Sinn Féin to clarify whether they are in receipt of these and in agreement with them.

2. *The review leading to the Comprehensive Agreement was aborted*

Changes to the Good Friday Agreement (GFA) can only be made by a review. On 8 December the Taoiseach stated that the review had concluded. In fact, as the first page of the so-called Comprehensive Agreement (CA) made clear, there had never been consultation with all parties on the Government's proposals.

The review was aborted. It never concluded and therefore the Comprehensive Agreement should not have any status.

3. *The Comprehensive Agreement provides for a Shadow Assembly*

The SDLP is concerned that the Comprehensive Agreement, agreed by the DUP and Sinn Féin, provides for a Shadow Assembly.

The Comprehensive Agreement states that:

"To allow the parties to prepare adequately for the re-establishment of the political institutions, the British Government will also introduce legislation in December to allow the formation of a shadow Assembly."¹

¹ Paragraph 6 of the statement of the two Governments in the Comprehensive Agreement.

The Comprehensive Agreement sets out deadlines as follows:

- | | |
|------------------|--|
| *December (2004) | Emergency legislation to enable a Shadow Assembly. |
| *January (2005) | Shadow Assembly established. |
| *February (2005) | Suspension lifted. |
| *March (2005) | FMDFM and Executive confirmed. ⁴² |

But the DUP statement in the Comprehensive Agreement – which was approved by the two Governments – only committed that party to sit in the Executive with all other parties –

following confirmation in reports from the IMC and the IICD that IRA paramilitary activity of all kinds has ended.

Therefore, until the DUP were satisfied on this, the Shadow Assembly would have continued. Had the Comprehensive Agreement been implemented following IRA decommissioning last September, we would it seems still have a Shadow Assembly now, because the DUP would not be satisfied with January's IMC report or with the last IICD report.

The fact is that the Comprehensive Agreement would have left us with a Shadow Assembly for as long as the DUP liked.³

4. The Comprehensive Agreement provides for government by mandarins

The Comprehensive Agreement also provides for government by mandarins, that is to say permanent secretaries.

As already stated, the timetable in the Comprehensive Agreement states as follows:

- | | |
|------------------|--|
| *December (2004) | Emergency legislation to enable a Shadow Assembly. |
| January (2005) | Shadow Assembly established. |
| *February (2005) | Suspension lifted. |
| *March (2005) | FMDFM and Executive confirmed. ⁴⁴ |

The DUP confirmed to the SDLP that they had an understanding with the British Government – perhaps one of the over a hundred that they had – that the law establishing the Shadow Assembly would also provide that in the period between the lifting of suspension and the confirmation of FM/DFM and the Executive, government would be by civil service mandarins.

² Annex A, CA.

³ See, however, point 4 below on government by mandarins.

⁴ Annex A, CA.

Again, the DUP in their statement – approved by the Governments – in the Comprehensive Agreement only committed to sit in the Executive with all other parties –

“following confirmation in reports from the IMC and the IICD that IRA paramilitary activity of all kinds has ended.”

Therefore, if the British Government went ahead and lifted suspension as they planned, we would have been left with indefinite government by civil service mandarins until the DUP agreed to form the Executive – because the DUP are not satisfied with either the IMC or IICD reports.

Therefore, the Comprehensive Agreement threatens indefinite government by civil service mandarins.

5. *The Comprehensive Agreement allows the DUP vetoes on nationalist decisions and threatens gridlock*

Annex B, Strand 1, paragraphs 3 and 7 provide for –

- a legal duty to follow the ministerial code, and
- a power to be put in that code that ministers’ decisions could be vetoed if they do not have cross-community support.

Therefore under the Comprehensive Agreement, a minister cannot proceed with a decision if a majority of unionist or nationalist ministers objects to it.

This is contrary to the GFA. That is clear from:

- Paragraph 24 of the Good Friday Agreement which states that:

“Ministers will have full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive Committee and endorsed by the Assembly as a whole.”

- The wording of paragraph 3 of the Comprehensive Agreement itself which expressly provides that the new legal duty on ministers, including on cross community voting, is –

“notwithstanding their executive authority in their areas of responsibility as defined in the Agreement.”

Why does this matter?

Under the GFA, the following could be vetoed in the Assembly if it did not have cross-community support:

- legislation;
- budgets; and
- the Programme for Government.

That is appropriate since these are all vital matters.

But going further and allowing ordinary decisions of ministers at the executive to be vetoed –

- **risks gridlock.** For example, it could mean that no decision is taken because each side vetoes the other. Just think what would have happened over maternity services in Belfast if these veto powers existed when that controversy arose. The DUP could have vetoed SF plans for maternity services to be at the Royal - and SF could have vetoed DUP plans for maternity services at City Hospital. The result? Gridlock and bad government.
- opens up the possibility of **endless tit for tat vetoes;**
- **disproportionately advantages the DUP** – since they are likely to have most ministers. Also, the DUP have shown their like of veto powers and will not hesitate to use them to undermine the decisions of nationalist minister and uphold the status quo.

But was there not a requirement of cross-community voting in the ministerial code?

Yes. But that code was not legally binding. If a minister breached the old ministerial code, the Assembly could vote to exclude him. Or under changes introduced by the Governments, which the SDLP disagreed with, the matter could be brought to the IMC.

These were things which could only be used sparingly. By contrast these new veto powers could be used day in day out.

6. *The Comprehensive Agreement allows SF and DUP to erode the authority of other parties in government*

The Comprehensive Agreement provides that the Executive will be a forum for:

"agreement on any issue... which the First Minister and Deputy First Minister agree should be brought to the Executive."³

The Good Friday Agreement lists areas where the Executive has competence – for example where a matter is cross cutting – that is to say it affects more than one Department. But paragraph 4 of the Comprehensive Agreement goes way beyond this and allows the First Minister and Deputy First Minister to require any matter to have Executive approval.

In this way, a DUP First Minister and SF Deputy First Minister together could undermine the authority of any other minister – thereby undermining power-sharing. Gerry Adams has made clear that this proposal – which could be used to oppress smaller parties in government and undermine true power sharing - was made by Sinn Féin.⁴

³ Paragraph 4 of Annex B, Strand 1

⁴ "This change, proposed by Sinn Féin, allows the First and Deputy First Minister, by agreement between them, to review a ministerial decision in the Executive." Gerry Adams, Irish News, 20 December 2004.

The SDLP demands the equal place in government promised by the Good Friday Agreement – not the second class status threatened by the Comprehensive Agreement.

7. The Assembly referral system could lead to gridlock and disproportionately favours the DUP

The Comprehensive Agreement means that if any 30 Assembly members sign a petition, a matter has to be referred back to the Executive for decision, provided that the Presiding Officer (i.e. the Speaker), certifies that it is a matter of public importance.⁷

The SDLP has a number of concerns regarding this procedure:

- it appears that the minister cannot proceed with the decision in the interim. But **some decisions need to be taken urgently** – (eg on Foot and Mouth). This is all the more important since it may be some time before an Executive meeting to consider the decision can be arranged;
- the Presiding Officer is obliged to determine whether the Assembly petition is on an issue of public importance. **As the previous Presiding Officer has made clear, this leaves him in an invidious position;**
- **it disproportionately advantages the DUP** who will be the only party to get 30 signatures alone;
- it is unclear whether the minister's decision would be vetoed automatically if it were outside the Executive's remit.

8. Abolition of joint election of First Minister and Deputy First Minister

Under the Good Friday Agreement, the First Minister and Deputy First Minister were elected together jointly by a majority of nationalists and a majority of unionists, as well as a majority overall in the Assembly.

The Comprehensive Agreement makes clear that the joint election will be abolished. This is because the DUP do not want to have to vote a Sinn Féin Deputy First Minister into office.⁸

The SDLP has a number of objections:

- first, if the First Minister and Deputy First Minister cannot be elected together, it **does not augur well for how they will work together** thereafter;
- second, the joint leadership was important symbolically to signify sharing. **The abolition of the joint election undermines sharing – at a time when sharing was never more important;**
- third, **the rot will not stop there.** Peter Robinson has admitted that it is not just the joint election that the DUP has problems with – it is also joint questions and joint appearances. In other words, the DUP plans

⁷ Paragraph 6 of Annex B, Strand 1, CA.

⁸ Paragraph 9, Annex B, Strand 1, CA.

to undermine the joint leadership envisaged by the GFA. Such an approach should be challenged, not indulged.

9. *The Comprehensive Agreement undermines inclusion and provides for a SF/DUP voluntary coalition*

At the heart of the inclusion provisions of the Good Friday Agreement are respect for mandate and respect for difference.

That's why under the GFA, all parties were entitled to take their seats in government in accordance with their electoral mandate alone once they had taken the pledge of office.

So, for example, the DUP and Sinn Féin were both able to take their seats despite not having voted in favour of Seamus Mallon and David Trimble when elected First Minister and Deputy First Minister.⁹

The Comprehensive Agreement undermines this.¹⁰ It requires the new Executive to be voted in by the Assembly by a majority of nationalists, a majority of unionists and a majority overall. The only reason for this vote is to act as a substitute for the joint election of the First Minister and Deputy First Minister.

When we questioned this, we were told that it was reasonable to require parties in government to vote in favour of the heads of the government. But that is not the hallmark of inclusive government. It is in fact the hallmark of voluntary coalition. And that is what the Comprehensive Agreement in fact provides for.

This is because the Comprehensive Agreement also provides that any party that does not vote in favour will see its ministers automatically excluded from office.¹¹ This is totally contrary to the Agreement. It means that even if a party abstains, for example:

- as a protest to the abolition of the joint election of the First Minister or Deputy First Minister;
- because it does not want to be complicit in wider changes to the Agreement; or
- because it does not have confidence in SF and the DUP as First Minister and Deputy First Minister

then that party will automatically be excluded. For that reason, the SDLP will be automatically excluded – and other parties that may adopt a similar stance will also be excluded.

Therefore, what is really being provided for is a voluntary coalition.

⁹ They did not even have to support the Agreement or the policing arrangements.

¹⁰ Paragraph 9, Annex B, Strand 1, CA.

¹¹ Paragraph 9, Annex B, Strand 1, CA.

10. The Comprehensive Agreement provides a veto on who nationalist ministers can be

The introduction of the Executive Declaration in the Comprehensive Agreement also allows for the DUP to veto who nationalist ministers can be.¹²

If the DUP do not like the fact that a nationalist minister got a sensitive portfolio like education or justice, it could refuse to vote in favour of the Executive as a whole. There would then have to be fresh Assembly elections – which might suit the DUP very well.

11. Undermining North/South

The SDLP is concerned that the DUP will use their new vetoes to target North South in particular.

But the damage to North South does not stop there. The DUP have also been able to undermine North South in the following ways:

- **First, the CA does not provide for a single extra area for North South cooperation and implementation.** Given that the DUP refused to participate in the North South Ministerial Council, the SDLP believes that they should have to agree to new areas upfront. We were the only party in the negotiations to adopt this stance. **We urge both Governments to push for the implementation of our policy document "North South Makes Sense."**
- **Second, the CA provides for a review of North South.**¹³ If it recommends a contraction of North South, the DUP will bank that. If it recommends an expansion, there is no guarantee that the DUP will honour that.
- **Third, the CA does not effectively tackle the ability of unionist ministers to obstruct the work of the North South Ministerial Council.** The GFA provides for cross-community involvement in the NSMC. That means that a nationalist minister and a unionist minister must always attend NSMC meetings. However, where a unionist minister refuses to accompany a nationalist minister with departmental responsibility for the matter being discussed at the NSMC, we do not believe that the nationalist minister should be prevented from doing business in the NSMC. This is because under the Good Friday Agreement the unionist accompanying minister has the right to be involved NSMC meetings – not the right to obstruct them.¹⁴
- **Fourth, reserved and excepted matters (such as Sellafield and roaming charges) cannot be discussed at the NSMC without the consent of the Assembly.**¹⁵ So for example, if the NSMC wants to discuss roaming charges over the Summer recess, it has to recall the Assembly first. This is totally unnecessary and will make it harder for the NSMC to do its work properly.¹⁶

¹² Paragraph 9, Annex B, Strand 1, CA.

¹³ Para 8, Strand 2, Annex B, CA.

¹⁴ Para 30, Strand 1, GFA. See also para 2 GFA.

¹⁵ Para 4, Strand 2, Annex B, CA.

¹⁶ This proposal was made by the Irish Government to deal with a concern raised in error by Jeffrey Donaldson with the Irish Attorney General and Minister for Justice that paragraph 6 of Strand Two GFA was not implemented by the Northern Ireland Act, 1998. The SDLP pointed out to the Minister for Justice at Leeds Castle that, in fact, paragraph 6 was explicitly

The SDLP would also appreciate greater clarity on East West issues. For example we would be happy to see new areas of East West cooperation. We would also be happy to see groups of countries within the British Irish Council taking on work together.

THE SDLP'S BETTER WAY...

The SDLP has a better way forward. During the review we made positive proposals on North South and for greater collectivity and accountability. Some involve changes to the Northern Ireland Act – but all are consistent with the Good Friday Agreement.

We put these to the DUP – but they never responded. That proves that it is not efficiency that they are interested in but control.

On collectivity, we proposed:

- putting into legislation an obligation on the Executive to adopt a **Ministerial Code** (but we did not propose making it legally binding since it already had to be followed under the Pledge of Office and, by unilateral action of the Governments, by the IMC);
- Ensuring **early discussion of issues at the Executive** through the code.
- Empowering the committee on standards and privileges to **examine breaches of the Code**.
- Creating **Executive sub-committees** to ensure joined up working.
- Giving the Executive the **power to call persons and papers** to ensure that Ministers cannot withhold information.
- Obliging Ministers in statute to work in good faith to **comply with the Programme for Government**.
- Introducing a civil service code of ethics to **oblige each permanent secretary to notify the Executive secretariat** of any breach of an executive decision.
- Bringing **certain public appointments to the Executive** for approval, and notify other proposed appointments – which could then be challenged.
- Where any measure or proposal for legislation runs aground under the **special equality procedure**, the relevant Minister to bring it back to the Executive.

We also proposed strengthening accountability and efficiency by -

- ensuring that Ministers present their own **departmental spending plans** (post-budget) to the Assembly;
- proposing a new Committee on Departmental running costs;

implemented by s.52(3) of the Northern Ireland Act, 1998. The Irish Government did not contest this. But they proceeded with this defective proposal.

- proposing a new public accounts committee style cross-cutting **committee on performance, efficiency and implementation**;
- better adherence to protocol that key policy **announcements are presented to the Assembly first**;
- a new protocol to be agreed between **Assembly committees and the Executive** to ensure more consistent notification and sounding of committees on new policies and measures.

On North South we proposed new areas for North South cooperation and implementation. We have worked on these proposals further in our recently launched **North South Makes Sense** document.

• • •

“NORTH SOUTH

COMHOIBRIÚ THUAIDH THEAS - TÁ CIALL LEIS



PREPARATION FOR
01 AUG 2006
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A Better Way to
a Better Ireland

"North-South Makes Sense"

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"North-South Makeover Report"

Introduction

The pace of North-South co-operation has intensified since the Good Friday Agreement. Evidence is to be seen in the investment by the Irish government in the City of Derry airport, the success of Tourism Ireland in boosting tourist numbers, the development of the Belfast-Dublin road, the increasing number of cross-border hospital service contracts, movement towards a single energy market for the whole island and plans to create an integrated North-South gas supply. These initiatives – and many others – highlight the 'normalisation' of practical co-operation with mutually beneficial outcomes.

Indeed, the success of North-South co-operation in recent years is such that there is no longer a question over its capacity to deliver economic and social benefits on both sides of the border, nor of the need for political direction to ensure its success.

But the current scale of North-South co-operation is only a fraction of its potential. Moreover, this part of the Agreement has been unfairly hindered by suspension. Executive business is conducted by Direct Rule Ministers. British-Irish Council business continues. The SDLP is determined to ensure that the potential of the North-South agenda is fully realised and that co-operation does not become a hostage to political stalemate.

That is why we are publishing the detailed proposals contained in this document. We want to see North-South co-operation raised to a new level of development – and we want it achieved under the auspices of restored political institutions.

Beyond the political and practical case for broad-based North-South co-operation, there is growing acknowledgement of its importance in building trust and good relations between our communities within the North and across the island. As Co-operation Ireland has stated - "The promotion of effective North-South co-operation is an integral part of building peace on the island of Ireland."¹

¹ "Proposals for Effective North-South Co-operation", Co-operation Ireland 2004, p.21

"North-South Makes Sense"

The Good Friday Agreement created not only a framework for political co-operation and partnership in Northern Ireland, it also widened and extended the basis for co-operation and partnership to the whole island of Ireland, and included a new framework for policy development with partners in a new British-Irish relationship as well, which we fully support.

Initial steps were taken to realise the potential offered within these new frameworks with the establishment of the North-South Ministerial Council, the creation of North-South Implementation Bodies as well as the establishment of the British-Irish Council.

Suspension of the Assembly and its Executive as well as the political impasse that has persisted since October 2002, have impeded progress of the North-South agenda in particular. But now with a fresh determination to restore the institutions of the Good Friday Agreement, the SDLP is focusing renewed attention on that agenda. In this policy document we outline the direction in which we are working to realise the huge benefits which the North-South agenda offers people throughout Ireland.

We can do more together to get more together in terms of both more strategic outcomes and procurement and delivery gains. Our economies, North and South, face common challenges, so it makes sense to find common solutions. That is what the North South agenda is all about.

To maximise the benefits North-South co-operation must mean a step-change towards much more integrated planning and delivery of projects. No where is this more needed than in infrastructural development where between 90 and 100 billion euros are to be spent on the island's infrastructure. We believe that unprecedented opportunities exist for not only the joint planning of projects with a North-South dimension but for their joint delivery as well.

"North-South Makes Sense"

Obstacles of many kinds continue to impede North-South co-operation and partnerships, some minor, others of a substantial kind. These range from double charging and unnecessary delays in effecting financial transactions, to roaming charges and taxation anomalies arising from residence in one jurisdiction and work in the other. These need to be tackled with a real commitment to resolving the problems caused and removing barriers to mobility in people, goods and services throughout Ireland.

Our detailed proposals include plans for a new Transport and Infrastructure body, an all-Ireland Research Alliance, Marketing and Investment Co-operation, a Public Safety body and a joined-up anti-poverty strategy. In addition there are many other recommendations covering issues in health, education, the environment, agriculture, energy, etc. where enhanced forms of co-operation would yield enormous benefits.

When it comes to such proposals, the real question has to be 'why not?' more than 'why?' But North South can answer both questions and should no longer have to work so hard to justify itself or get a political start.

Because North South makes sense - and the arguments against it lack substance. It can deliver benefits to all of us: as consumers, as public service users, as workers, as entrepreneurs and investors, as service providers and as taxpayers. Not just along the eastern corridor between Dublin and Belfast, but for people living West of the Bann and West of the Shannon as well - where real investment is most needed.

We can - and should - have a shared economy, shared spatial planning, shared approaches to community and social services, shared cultural experiences, shared health and educational services, etc. – all shared in a spirit of mutual respect and a common commitment to upholding human and civil rights in the manner set out in the Good Friday Agreement.

The following sections set out key SDLP proposals for the main areas of North-South co-operation and partnership.

Community Relations and Victims

The conflict of the last decades involved individuals and communities North and South of the border. Work towards a sustainable peace and true reconciliation must equally embrace all on the island. The SDLP has detailed proposals to address community relations and victims' issues but we also believe that the broader North-South agenda for co-operation on social and economic issues will help build trust and good relations on the island.

As noted in the introduction, there is widespread acknowledgement that North-South co-operation is critical in this task. Co-operation Ireland states: "The promotion of effective North-South co-operation is an integral part of building peace on the island of Ireland."²⁹ In their North-South discussion paper, academics Coakley, O'Caoimhdeabháin & Wilson³⁰ argue that reconciliation should be adopted as an over-arching aim of North-South development, which could embrace and go beyond economic and social objectives. In this sense, we believe all of the proposals listed throughout this document will have a positive impact on trust and community relations. Nevertheless there is a need for a specific programme of action to address the needs of victims and dedicated work on community relations.

Priorities:

- Development of an all-Ireland **victim-centred mechanism for truth and remembrance.**
- Development of common, **effective incitement to hatred laws**, North and South.
- Joint action to **promote community relations and reconciliation**, North and South.

Consumer Issues

From roaming charges to banking charges, consumers face a number of obstacles adding to the cost of cross-border living and working and damaging economic prospects as a consequence.

Priorities:

- **Work with governments, regulators and operators to secure standard and affordable national rates for mobile phone calls whether they cross the border or not.** Current all-Ireland tariffs are prohibitively expensive so accurate signal detection by masts would still leave border communities with high charges due to social connections and cross-border living and working.

²⁹"Proposals for Effective North-South Co-operation", Co-operation Ireland 2004, p.21

³⁰"The Operation of North-South Bodies", Coakley, O'Caoimhdeabháin & Wilson 2005

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- Work with banks and regulators to **address cross-border banking charges** – e.g. **require banks to publicise the availability of IBAN numbers** which can, for example, allow fee-free payment of southern mobile phone contracts from northern-based bank accounts.
- **Create an integrated postal service** to remove the burdensome "European" stamp tariff and eliminate inefficiencies involved in the sorting and delivery of mail.

Culture, Sport & Tourism

The rich diversity of cultural, linguistic and sporting traditions and activities across Ireland offers considerable scope for co-operation, not only in promoting our indigenous traditions but also those of recent immigrants to Ireland. In doing so we can encourage a greater appreciation of those traditions, support their development and strengthen friendship between our communities.

There is, in addition, significant economic potential in the development of arts, cultural activities and sport island-wide. Such an approach could further support the work of Tourism Ireland in its efforts to market the island as a tourist destination.

- **Arts & Culture** – Co-operation between governments on funding is required so that both Arts Councils are operating on an equal basis. The Councils should co-operate in the funding of cross-border projects and all-Ireland projects. A separate funding programme should be introduced by both councils as a clear commitment to promoting and advocating cross border working. We would welcome greater joint working between the Councils with a view to developing large-scale indigenous arts events that can be toured and promoted internationally. Building on existing international success there is scope for the development of all-Ireland Centres of Artistic Excellence in different art-forms such as literature, drama etc. Through co-operation, both Councils should take a more active role in the research and development of creativity within the formal education sector.
- **Sports** – The new sports strategy being developed in the North must seize opportunities to expand North-South co-operation, for example in coaching and in the development of modern, shared facilities in border areas. There is considerable scope for the development of all-Ireland Centres for Sporting Excellence. Cross-border funding should be allocated to suitable projects such as sports leagues and youth competitions.
- **Television** – Many households in the North can now access RTE & TG4 channels through stronger signals or via satellite television. However there are still areas where access is still not available. Securing all-Ireland coverage of these channels is important.

Both Governments should optimise opportunities presented by emerging technologies such as digitalisation and explore opportunities for digitalisation on an island-wide basis. A joint strategy should be developed by RTE and the BBC to work more closely together in the development, production and transmission of indigenous product. A new joint commissioning scheme should be developed to encourage the creation of new work.

- **Tourism** – Tourism Ireland has successfully marketed the island of Ireland abroad, resulting in a 7% increase in visitor numbers despite an adverse global environment. We want to develop this all-Ireland approach by facilitating greater co-operation between Tourist Boards North and South developing practical approaches such as the integration of websites. By merging the *Discover Northern Ireland* and the *Ireland.ie* websites, all-island tourist information would be accessible online. An all-island accommodation booking system should be part of this project. An all-island strategy for the growth area of cultural tourism should be developed so as to maximise the benefits to be derived from the island's heritage both North and South
- **NI Events Company** – Greater cross-border co-operation is required to attract world-class events such as the World Rally Championships being pursued jointly at present. The success of the Special Olympics World Games 2003 is evidence of the benefits that can be realised. With London hosting the Olympics in 2012, there are opportunities to market Ireland as a whole to the Olympic movement in terms of offering coaching and training facilities and preparatory events.

Comholbriú Thuaidh-Theas agus an Ghaeilge

Na Forais Trasteorann agus An Ghaeilge

Is den riachtanas go mbeadh polasai ceart teangan ag na forais trasteorann a chomhlíonann na dualgais a leagtar ar fhorais phoiblí sa Deisceart de réir Act na dTeangacha.

Iontaobhas Uile-Éireann le Forbairt na Gaelscoláíochta

Tacaíonn muid le bunú iontaobhais uile-Éireann chun Forbairt na Gaelscoláíochta ar fud an oileáin a mhaoiniú mar a dhéanann iontaobhas na Gaelscoláíochta ó thuaidh faoi láthair. Táimid i dtús an Tionscnaimh faoi láthair i gcomhar le hiontaobhas na Gaelscoláíochta. Ar an ábhar go bhfuil an chuma ar an sólaí go bhfuil deireadh le mapiniú rialtas Thuaisceart na hÉireann d'fhorbairt na gaelscoláíochta ó thuaidh, gléas a bheith san iontaobhas úr le foinse úr airgid a bheith ann d'fhorbairt soláthar úr.

Ba mhaith linn coimhlint a fheiceáil ó na forais trasteorann don Ghaeilge sna tuairiscí a chuireann siad amach agus sa litríocht a chuireann siad os comhair an phobail. Lena chois sin ceapann muid gur choir dóibh a bheith oile agus eolach ar an bhealach ina dtéann a gcuid oibre i bhfeidhm ar an teanga. Mar shampla d'fhéadfadh an foras idirghrédála litríocht a chur ar fáil d'iríthe ar chomhlachtaí beaga a bhfuil an Ghaeilge lárnach iontu agus dul i dteagmháil leo trí mheán na Gaeilge ar an sulómh idirlín nó sna meáin.

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Foram Thuaidh-Theas don Ghaelscolaíocht

Ba chabhair mhór do lucht gaelscolaíochta thuaidh theas foram a chur ar bun

- le heolas, dea-chleachtadh, agus comhoibriú a roinnt thuaidh theas
- le áiseanna teagaisc agus foghlama a mheas agus a mhaíartú
- le cuairteanna a eagrú taobh istigh den tír agus thar lear dóibh siúd a mhaoiníonn, a chothaíonn, agus atá freagrach as an ghaelscolaíocht ag leibhéil éagsúla d'fhonn a gcuid eolais a chruinniú agus a dtáithí a shaibhriú agus le teagmhálacha fadtéarmacha a chothú
- leis an eolas a chruinnítear ar an bhealach seo a scaipeadh tríd an earnáil.

Teagasc agus Foghlaim na Gaeilge

Tá géargá le áiseanna foghlama agus teagaisc sna bunscoileanna agus sna meánscoileanna ó thuaidh.

Léiríonn cás na dtéacsleabhar Gaeilge i dTuaisceart Éireann na fadhbanna a ghabhann le foghlaim agus teagasc na teanga. Creideann múinteoirí Gaeilge i dTuaisceart na hÉireann go bhfuil an teanga go mór ar chúl na dteangacha eile ó thaobh áiseanna foghlama de agus cé go bhfuil Áiseonad curtha ar bun i gColáiste Mhuire i mBéal Feirste le áiseanna foghlama agus teagaisc a chur ar fáil do na Gaelscoileanna níl freastal cuí a dhéanamh ar fhoghlaimeoirí sna meánscoileanna Béarla áit a bhfuil líon mór acu. San am i láthair níl ach beagán leabhar ar fáil d'fhoghlaimeoirí agus do mhúinteoirí Gaeilge le freastal ar an réimse leathan cumais atá sna daltaí.

Cé go bhfuil idir fhoghlaimeoirí agus mhúinteoirí buíoch do na daoine agus do na foilsitheoirí a chuir na téacsleabhair seo ar fáil is mór idir iad agus na háiseanna foghlama atá ar fáil do na teangacha eile, má dhéantar comparáid is léir go bhfuil an Ghaeilge in áit na leathphingine. Go dtí le fiordéanaí ní raibh oiread agus pictiúr dalta amháin i gceann ar bith de na téacsleabhair atá ar fáil sna scoileanna iarbhuíochachais sa Tuaisceart.

Creidimid go bhfuil géargha le infheistíú suntasach airgid in áiseanna teagaisc don Ghaeilge i scoileanna Béarla sa Tuaisceart, go háirithe i dtéacsleabhar, i mbogearraí ríomhaireachta, agus in áiseanna ar líne. Tuigtear nach bhfuil an margadh mór go leor do na chomhlachtaí móra infheistíú a dhéanamh sna leabhair is nua-aimseartha agus mar gheall air sin is ábhar cuí é seo le haghaidh Foras na Gaeilge a aird a dhíriú air. Molaimid comhoibriú i dteicneolaíocht an eolais, ag tógáil ar na féidireachtaí a chuireann leithéidí C2k, Learning Northern Ireland, Skool.ie, srl ar fáil.

Ba cheart dul i gcomhar le NICILT i Scoil an Oideachais, Ollscoil na Banríona, Béal Feirste chun tuiscint a fháil agus taighde a dhéanamh ar na moltaí, na modhanna agus na háiseanna is nua-éolais i dteagasc agus foghlaim teangacha go ginearálta. Polasaithe teangacha a iniúchadh i gcomhthéacs na hEorpa, agus na noileán seo.

Education

Education is a critical area in which to promote co-operation especially in terms of encouraging greater understanding between the people of Ireland, their history and traditions.

Co-operation at all levels of education presents opportunities to promote reconciliation and greater understanding North and South, as well as creating conditions for greater cross-border mobility. In the field of educational employment itself, addressing barriers to the movement of teachers can help schools tackle supply problems and deliver better education to students.

Following decades of conflict, our society cannot afford – either socially or economically – to allow our young people to grow up in total ignorance of those living short distances away. Advancing exchange programmes has the potential help to tackle distrust between communities and promote better relations.

With high-level skills now central to the success of the modern economy, there is also a clear economic case for co-operation in Further and Higher Education and improved collaboration with business, island-wide. The North has lessons to learn from the success of the Irish government in identifying critical sectors of the economy and investing in education accordingly. Our education policy must be shaped and informed to a significant degree by ongoing analysis of the economic climate.

Priorities:

- **Expand School, Youth & Teacher Exchanges**
The SDLP proposes developing the role of the North/South Exchange Consortium to deliver a more integrated and coherent approach to exchanges, including the clarification of policy objectives, targets and common criteria for the assessment of exchanges. This should further include expansion into sectors which have not previously participated. There is a need for mechanisms to facilitate co-operation in the area of youth exchanges including linkages between the Youth Council for Northern Ireland and the Irish National Youth Council. We welcome the launch in January of the North South Education and Training Standards Committee, which will have responsibility for the professional endorsement of courses and programmes of education and training in youth work.
- **Remove barriers to the movement of teachers**
Difficulties remain regarding the Irish Language requirement (see below), superannuation entitlements and approval of qualifications. The development of General Teaching Councils in both jurisdictions and co-operation between them, could help rationalise approaches to teacher qualifications.

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The SDLP proposes close co-operation between Marino College and one of the third-level institutions in the North to offer the Irish language qualification (Scrúdu Calíochta na Gaeilge) examination as part of initial and in-service training.

- **Establish a North-South Further and Higher Education body**
Building on the work of Universities Ireland (which brings together the nine universities on the island), and the memorandum of understanding agreed by ANIC (Association of NI Colleges) and the Council of Directors of the Institutes of Technology in the South, the new body should encourage collaboration in policy, teaching, research, evaluation, recognition of qualifications and models of excellence.
- **Develop strong island-wide links between FE colleges across Ireland**
A specific emphasis is required on linking the skills training offered, to the current and projected needs of the business sector.
- **Invest jointly in Research and Development**
The SDLP calls on the two governments to establish a fund which would facilitate co-operative research projects between third level institutions on a N/S basis aimed at the promotion of economic and industrial development. See also Enterprise section.
- **Advance Co-operation on Special Needs Education**
Completion of the work on the Middletown Centre of Excellence for Autism is long overdue. There are further opportunities for co-operation within special needs education in general and the possibility of joint research on specific areas should be examined.
- **Establish an Irish-Medium Education Forum**
The forum should provide for the examination of specific issues relating to Irish-Medium Education with facilities for research into areas common to experience North and South.

Enterprise, Trade & Employment

As global competition for jobs intensifies, Ireland, North and South, must compete to be part of the world-wide knowledge economy, creating high-wage, high-skill, stable jobs.

Economic success for the whole of Ireland requires that both parts of the country come together to create an all-island economy built on their respective strengths so that genuine synergies can be realised. The aim must be to create those synergies that would result in the emergence of clusters of firms and industries working together to increase local sourcing and establish networks that enable the island as a whole to significantly raise its performance in the global marketplace and gain competitive advantage.

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The degree of North-South economic co-operation promoted by the Good Friday Agreement has marked a new beginning. But this must now be further developed and a step change achieved that will pave the way to an island wide economy. Separate economic policy making must, therefore, be replaced by an integrated approach that aims at achieving what is best for both parts of Ireland.

Potential investors visiting the island have to contend with two fiscal regimes, and two regulatory regimes on an island smaller than many American states. North-South supply chains are still poorly developed and much cross-border trade is in traditional, low-technology products. Meanwhile, as a community, we face similar problems North and South such as under-investment in the rural west, and expense and lack of choice in our energy supplies.

Indigenous businesses in such areas tend to be small in size and lack capacity to invest adequately in research and development. Collaboration between businesses and research institutions island-wide can remedy this difficulty, stimulating growth and creating jobs.

Labour supply is a key issue for economic development. On a small island and in the context of EU membership, there is no excuse for barriers impeding the flow of workers up and down the country as our economies require. Greater co-operation between North and South can ensure that we have maximum labour mobility and tackle any emerging skills shortages.

Given that businesses North and South have agreed proposals for "Economic Co-operation and International Competitiveness", it behoves the two administrations to work together urgently to advance this agenda.

Priorities:

Enterprise & Trade

- **Establish an all-Ireland economic policy unit** under the auspices of the North-South Ministerial Council.
- **Develop a North-South strategy to maximise overseas investment.**
We welcome the Taoiseach's initiative in inviting northern businesses to join the recent trade mission to India – we need to build on this to attract overseas investors. Co-operation should be examined from the perspective of maximising the attraction of Ireland for investors e.g. by ensuring that in particular sectors the supply of a skilled workforce is maintained through co-operation with universities, colleges, institutes of technology and training agencies both North and South. We should also ensure that the range of relevant R&D support takes account of provision throughout Ireland.
- **Extend the brief of InterTrade Ireland** to include development of overseas investment opportunities. InterTrade Ireland has successfully demonstrated the benefits of strong North-South links. They have pioneered innovative programmes which have created trade and business development networks across the island.

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Programmes such as Fusion, Expertise Ireland and partnerships such as All-Ireland Software Network, have greatly contributed to the promotion of an island economy and enhanced competitiveness North and South. InterTrade Ireland, together with the INI and the IDA, should develop a common strategy to attract investment from overseas, promoting the island as a whole and working with individual companies to tailor specific packages to help them take advantage of the separate and shared strengths of the different regimes North and South.

- **Establish a Cross-Border Economic Development Zone:** promote development in the border, midland and western region, south of the border and western counties to the north of the border collectively designated as a cross border development zone.
- **Implement the IBEC-CBI Joint Business Council's 20 Key Actions** for economic co-operation and international competitiveness.

Research

- Establish an **all-Ireland research fund** to develop capacity in target sectors and help maximise the commercial potential of research as quickly as possible. The Georgia Research Alliance model in the US should be adapted for this purpose, linking HE institutions with business to provide a 'mix-and-match' service.
- Commission **economic research bodies** North & South to work together to produce proposals for further all-Ireland co-operation and **development in social and economic policy**.

Energy

- Accelerate opening of an **all-Ireland energy market on a strong and viable basis**.
- Encourage Northern Ireland Authority for Energy Regulation & the Commission for Energy Regulation to work together to develop a new **all-Ireland energy planning network to anticipate future demand and sources of supply**.
- Advocate recognition of Ireland North and South as a **European Energy Zone**, to assist us in reducing costs, meeting targets and improving planning.

Training, Skills & Employment

- **Advance mutual recognition of training qualifications** and ensure that trainees can undergo training North or South with assurance that they will receive relevant support.

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- **Address skills shortages:** Share information and experience between government departments and develop mechanism for identifying and addressing skills shortages on all-Ireland basis e.g. current shortages affecting the construction, information technology, mechanical engineering and hospitality industries.
- **Establish a cross-border employment forum,** bringing together stakeholders from the business and education sectors to help pre-empt labour shortages and match skills to the needs of the market.
- **Advance mutual recognition of professional qualifications.** While progress has been made in some areas, potentially mobile workers such as the health professions cite lack of recognition as a key difficulty, reducing our capacity to tackle labour shortages around the island.
- **Co-operate on migrant labour issues and workplace diversity.** We have much to learn from the Southern experience of the benefits of migrant labour. While there are important opportunities for employers and the economy, there are also implications for training as well as public services and housing provision. Around 20,000 migrant labourers in Northern Ireland, 30% of whom live in Belfast with the other 70% being spread fairly evenly throughout the rest of NI.

Environment

Our environment and clean, green image cannot be protected other than on a cross-border basis. Pollution and other threats recognise no borders - on an island the size of Ireland the imperative to co-operate is absolute.

In recent years there have been many fine examples of cross-border co-operation on waste issues including the joint approach by health boards North and South to the disposal of clinical waste as well as the treatment of waste water in border areas. The SDLP believes that both governments must build on existing co-operation and work together on waste management issues and we are disappointed to note that the Direct Rule Administration failed to further explore this in their recent waste management consultation Towards Resource Management.

One of the clearest examples of the need for joint working is in relation to illegal dumping, where the border is being exploited for financial gain. Key to ensuring the necessary levels of monitoring, protection and management is the establishment of an all-Ireland Environmental Protection Agency to advise and direct on policies in this area.

Priorities:

- **Waste Management** – Develop a waste management strategy on the basis of North-South co-operation, to move away from landfill and maximise opportunities to 'reduce, reuse and recycle'.

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- **Recycling** – Secure an all Ireland approach to market development for recyclable material and, as part of this project, a feasibility study on a paper mill for the island.
- **Illegal dumping** – Build on recent progress in terms of the new North-South Waste Enforcement Network by:
 - securing effective enforcement powers North & South;
 - addressing the differential in the cost of landfill;
 - improving PSNI/Garda co-operation; and
 - developing a waste disposal smart card system throughout Ireland.
- **Establish an independent all-Ireland Environmental Protection Agency** to improve public and private sector accountability on the environment.

Farming and Marine

Agriculture and fishing are key industries on the island and face similar challenges, North and South. The highest possible level of co-operation on farming, fisheries and food would be in the best economic interests of those living on both sides of the border.

The geography of the island makes it essential to achieve maximum co-operation on animal health for example. The border does not stop disease and the benefits of existing co-operation were clearly seen tackling Foot and Mouth some years ago.

Ireland as a whole benefits from a 'clean, green' image, which should be exploited more fully to commercial benefit of food producers.

Northern farmers and fishermen have suffered for decades under British policy, which simply does not reflect their interests. These industries, North and South, have much more in common with each other than with colleagues in Britain or indeed in Europe. They have much to gain from joining forces to tackle common problems, address long-term viability issues and negotiate effectively in Europe.

Priorities:

- Establish a new **all-Ireland Food Marketing Body** to improve branding of local produce and conduct a vigorous international marketing campaign capitalising on the green, clean image of Ireland.
- Develop an all-Ireland **food-labelling scheme** for the island.
- Complete an **all-Ireland Animal Health Strategy** – centred on the development of an effective contingency plan, with greater control of restricted herds and improved monitoring. This should include co-operation in the area of animal by-products.

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- Develop and promote a **border regions agricultural liaison group** to deal specifically with animal health issues.
- Develop and promote an **all-Ireland agenda** for farming and fishing.
- Develop an **all-Ireland position on reform of the Common Fisheries Policy** to secure the future of Irish fishing.
- Agree an all-Ireland approach to **EU fish quotas**.
- Formalise co-operation on registration of **horses**.
- Ensure that **research on farming and marine** issues is conducted on an all-island basis.

Finance & Public Services

Exclusive dependence on Britain results in continued peripherality for Northern Ireland, a relatively low standard of living among UK regions and the likely perpetuation of 'external' aid in the form of transfers to maintain public finances and public services and the consequential lack of dynamism in Northern Ireland's economy.

The creation of an all-island economy demands a level playing field and this will only be achieved with a greater degree of tax harmonisation, particularly as regards the business sector. It is essential therefore that the case for a degree of fiscal autonomy be addressed to allow, among other objectives, for tax harmonisation with the South where low corporation tax has been the single most important driver of inward investment over the past several decades.

Tax harmonisation would present great opportunities – and challenges – for potential investors. According to the Industrial Task Force "If we (Northern Ireland) are to compete effectively for investment in the global market place and get a chance to capitalise on our undoubted attractions as a host location able to deliver world-class performance we must have a corporate tax rate no less favourable than that in the Republic."

But there are also other steps that could be taken to address anomalies and difficulties with a view to promoting trade and growth. If we are serious about delivering greater efficiency for tax-payers in terms of public spending, we must investigate opportunities to save money through all-Ireland funding to secure economies of scale on infrastructure and services.

"North-South Market Sines"

Lack of co-operation on personal taxation and pensions make cross-border living and working unnecessarily difficult, which in turn has a negative effect on labour mobility and the broader economy. In this regard the SDLP is pressing for the implementation of the recommendations of the North-South "Obstacles to Mobility" Study commissioned in 2001 by the NSMC.

Priorities:

- **Create a number of all-Ireland funds:**
 - **Strategic Capital Funds:** to support the type of infrastructure and capital spending referred to by Minister Brian Cowen (see transport and infrastructure section). Each jurisdiction would contribute to dedicated North-South funds for part of such spending, taking account of regional imbalance. The funds would be deployed through joint planning & spending to achieve shared benefits. Similar to the 'Executive Programme Funds' on an all-Ireland basis, they would be subject to cross-departmental bids and bids from outside government to promote partnership, innovation and efficiency. The investment decisions and their delivery would bring together the strategic capacities of the Strategic Investment Board (SIB) and its counterpart the National Development Finance Agency (NDFA).
 - **Services, Community & Enterprise Funds:** to fund programmes and services rather than capital investment and to help counter the fall-off in EU funding. Like EU programs, they could support short and medium-term projects in cycles of 1-3-5 years with smaller amounts discretely committed. They would be available to the community & voluntary sector and for rural & community development and services. They could also support pilots and other cross-border public sector initiatives encouraging bids from departments and other bodies. They could further provide enterprise support through appropriate measures on both a sub-regional and national basis.
 - **Common Fiscal Platform:** created through fiscal latitude, e.g. corporation tax (see below), tax concessions. These could be applied to particular geographic areas or economic sectors (e.g. for companies straddling the border, a facility to nominate one administration to deal with). InterTrade Ireland has worked and vindicated the SDLP argument on the benefits of co-operation on trade etc but we also wanted co-operation on investment and there is an urgent case for it. We need to ensure that, where there are labour shortages in respect of proposed jobs in the South, the North can benefit (see section on Enterprise & Trade).
- **Create a single all-Ireland corporation tax regime at 12.5%.** We acknowledge the challenge that this poses but submit in the first instance, that such an investment in our economy would pay for itself in returns to the Treasury within 10 years. There have already been breaches of the principle of a single tax regime for the UK in the concessions on climate change and the aggregates levy which rightly recognise the North's unique position (in the UK) in having a land-border with another state.

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We would further contend that the alternative proposals to promote business (such as tax concessions related to investment in marketing and R&D) would not add up to the same straightforward headline attraction for investment. The SDLP would want to see increased returns to the public purse enable investment in strong public services and North-South development as part of the dedicated funds proposed above.

- Promote greater **co-operation** and information exchange between the **Comptrollers and Auditors General** on the island, with a view to improving value for money in public services in each jurisdiction given the similarity of challenges faced in delivering efficiency in services North and South.
- Promote **dual currency** use.
- **Remove tax barriers imposed on cross-border workers** - those living on one side of the border and working on another-including the recommendations of the Study on Obstacles to Mobility. Workers could be allowed to nominate one administration to deal with in terms of paying income tax and national insurance/PRSI etc.
- Build on work of Centre for Cross-Border Studies, Co-operation Ireland and the Chartered Institute of Public Finance and Accountancy in running **joint training for civil and public servants**. **Increased exchanges and secondments** of public sector workers and civil servants can promote innovation and efficiency, enable sharing of best practice and support North-South development.

Health & Social Services

The Health Services North and South face very similar challenges, such as long waiting lists and the need to upgrade and/or replace existing infrastructure. Co-operation can assist in addressing these challenges and pressures while joint strategic planning can ensure that the best possible use is made of resources and that overall a first class service is provided to people throughout the island in urban and rural communities. The Co-operation and Working Together (CAWT) partnership illustrates the benefits that can be achieved for people living in the border region by collaborative working between health and social care organisations on a cross-border basis. There are important opportunities to maximise investment in specialist services and equipment, for example, which would otherwise be unaffordable in either jurisdiction.

Priorities:

- Extend and develop opportunities for **shared use of specialist facilities**, building on recent announcements on radiotherapy as well as ongoing ad hoc arrangements such as those between Altnagelvin and southern border county hospitals.

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- **Advance island-wide co-operation in the provision of Mental Health services** providing better services for child and adult psychiatry. An all-Ireland Conference on Mental Health would assist in the development of such an approach.
- **Develop an all-Ireland approach to suicide prevention.** Launched in September, Reach Out, the Irish Suicide Prevention Strategy is achievable and draws from international examples of best practice. By developing an all-Ireland strategy we can co-ordinate approaches and resources to reduce the alarming number of suicides on the island.
- **Agree shared provision of specialised units and services** for young people with **drug/alcohol addiction** and eating disorders. Given today's trends of increased underage drinking and the "binge drinking" culture, we should be planning to deal with the inevitable consequences of alcohol abuse and associated medical conditions on an all Ireland basis.
- **Advance mutual recognition of health workers' qualifications** and registration.

See also Public Safety section below.

Housing, Community & Rural Development

From availability to affordability issues, the challenge of meeting housing demand has presented similar difficulties North and South. There is much to learn from sharing experience as we strive to ensure a cohesive community and a vibrant economy.

All-Ireland co-operation can produce new perspectives and result in mutual learning. It needs to be extensive, visible and ongoing, and involve the public, private and voluntary sectors. Likewise, the particular needs of border areas can best be addressed through co-operative approaches, sharing best practice and lessons learned.

North-South co-operation between social partners will produce knock-on benefits across other areas thereby helping to build relationships and advance North-South development generally.

The SDLP welcomes the recent initiative by the Centre for Cross-Border Studies and the Northern Ireland Housing Executive in establishing the North-South Forum for Sustainable Communities and believes the project has great potential.

Priorities

- Co-operation in tackling problems of affordability issues for first-time buyers, sharing experience of programmes and approaches such as the Affordable Housing Scheme.
- Address the shortage of construction workers on an all-Ireland basis to deal with housing supply issues. North/South linkages should aim to facilitate free and easy movement of such skilled workers from south to north and vice versa.
- Advance co-operation on initiatives to promote sustainable rural development, particularly in border areas.

Human Rights & Equality

The SDLP worked hard to ensure that human rights and equality underpinned the Good Friday Agreement, which seeks to establish a culture of rights across the whole of Ireland. As a party firmly rooted in the campaign for civil and human rights, the SDLP is seeking to ensure that every appropriate measure is taken to make those commitments a reality across the island. Much of this work can best be done on a North South basis.

We also believe that children's services merit a co-ordinated approach, particularly in border areas to ensure continuity and promote an all-Ireland approach on Children's issues.

In particular, it is vital that there is an all Ireland approach to Child Protection to permit cross border co-operation on vetting services and complementary management of Sex Offenders & Young Witness Programmes.

Equality, we believe that there is much that would be better done on a North South basis to deliver services for older people and for disabled people.

Priorities:

Human Rights

- Work to agree an **all-Ireland Charter of Rights**, to guarantee the highest standards of human rights throughout the North.

Race

- **Develop North/South aspects of Action Plans against Racism.** Action against racism is a common challenge facing North and South. In both jurisdictions the growth of minority ethnic communities is a relatively new phenomenon – making coordination of approaches on this all the more important.

"North-South Makes Sense"

- **Address Travellers' issues** including the right to appropriate accommodation including transit sites. Traveller accommodation is an all-Ireland issue which requires coordination in terms of planning – especially since there is cross-border mobility.

Children

- Establish a **North-South Multi-Agency Forum on Child Protection**.
- Create a **North-South Sex Offenders Register**, strengthen vetting and enhance co-operation in the management of sex offenders generally.
- Agree **joint policy on children's services**, especially in border areas.
- Develop **cross-border Delivery of Children's services** eg use of Young Witness Service in South.

See also section on Social Inclusion below

Older People

- **Address duplication of services and support groups** in the border areas e.g. carers' support groups.
- Create an **all-Ireland free travel scheme** and other travel incentives, such as the extension of free passports for pensioners in the North.
- Deliver a **co-ordinated safe home scheme**. Joint working would allow more funds to be spent directly on ensuring that older people feel secure in their homes.
- **Develop and deliver a services-framework for older people**. This may be a medium-longer term project but will prove beneficial given our ageing populations.

Disability

- Establish all-island **co-operation on identification of disability health issues** which would bring economies of scale.
- **Co-ordinate Employment Support Services** and address mobility issues and rural transport for disabled people, which would bring particular benefits for those living in border areas and would ensure continuity of service.

Justice and Policing

Criminals should not be allowed to exploit the border. There are clear opportunities to offer better public protection in respect of organised crime, drugs trafficking and sex offenders, through North-South co-operation.

While justice and policing matters are not yet devolved, that should not inhibit the Northern Ireland Office from working co-operatively with the South on them. Further, once justice powers are devolved, we believe that there will be enormous scope for increasing co-operation on a North-South basis.

Irrespective of all the political and bureaucratic difficulties, the SDLP wants to achieve the harmonisation of civil and criminal law, North and South.

Priorities:

- **Full implementation of North/South Criminal Justice Treaty.** The importance of the work programme set out under the Treaty speaks for itself.
- Particular priority should be given to the **exchange of personnel** both on the criminal justice and policing sides (eg. court clerks, administrators, prison officers, police officers and even members of the Judiciary.) This would encourage sharing of good practice. It could also be used to combat the under-representation of Catholics at higher levels of the criminal justice system in the North.
- An **all-Ireland Criminal Assets Bureau** – based on the stronger powers of the Criminal Assets Bureau in the South. This would mean an end to the bureaucratic difficulties caused by the limitations on the powers of the ARA at present (eg. they can only handle cases passed to them by the PSNI). It would also allow better targeting of cross border crime. The Criminal Assets Bureau believes that approximately 35% of its work has a cross border dimension.
- An **all-Ireland Law Commission** to research and promote harmonisation of laws between North and South.
- **Further joint co-operation between the Human Rights Commissions North/South.** Work in relation to the All Ireland Rights Charter should be completed – as envisaged by the Good Friday Agreement.
- An **all-Ireland Intelligence Agency** serviced by a joint PSNI and Gardai unit to combat crime and terrorism North/South. This could be a very important development in terms of All Ireland policing.
- **All-Ireland police training.**
- **All-Ireland Sex Offenders register** to prevent criminals exploiting the border.

"North-South Makes Sense"

Public Safety and Emergency Planning

There is enormous potential for emergency services to work together to benefit all on the island. Current debate on the possibility of an avian flu pandemic, underlines the need for further co-operation and development on this score. We welcome the establishment of the North-South working group on public health – the benefits of joint working were clear in respect of Foot and Mouth disease and future emergencies must not be left to chance.

Priorities:

- Create an **all-Ireland Public Safety Body** to build on the successful collaboration on road safety advertising and education initiatives. This would promote a strong safety culture and work systematically to bring down the incidence of injury and fatalities arising from accidents in the home, at work and on the roads.
- **Harmonise road safety measures** on the island, including the creation of an enforceable penalty point system to operate regardless of jurisdiction as well as greater co-operation on enforcement generally. Co-operation on advertising has been effective and further collaboration between the National Safety Council, the Road Safety Council and their respective government departments, could help to address the high road traffic accident rates on border roads.
- **Formalise and develop existing co-operation between emergency services** to ensure a rapid and co-ordinated response to save lives and alleviate staff pressures in the case of major incidents.

Social Inclusion and Social Security

Despite the relative wealth of both jurisdictions, we share high levels of poverty and inequality. Child poverty levels North and South, for example, are some of the highest in Europe. We face many common problems in addressing such an appalling situation and have much to gain from working together, particularly in border areas. Co-operation in research is essential to broadening ideas and suggesting policy lessons.

Progress is being made in respect of sharing information on social security entitlements North and South through advice networks and agencies but there remain significant problems in respect of pensions transfer.

Priorities:

- **Comprehensive all-Ireland research on anti-poverty measures.** The Economic and Social Research Institute in Dublin and the Economic Research Institute of Northern Ireland should be supported in joint working.

"North-South Makes Sense"

- **Sharing of experience in respect of the anti-poverty measures** North and South and their relative successes and failures in tackling inequality, poverty and social exclusion. Southern policies specifically targeted at the most vulnerable in society, particularly older people, must be highlighted and visibly endorsed, e.g. free passports for older people.
- **Co-operation on EU funding** - securing and implementing the PEACE II extension and in negotiating new funding for the island for the 2007-13 period.
- Negotiate arrangements to **make pension schemes transferable** to ensure that workers and pensioners are not disadvantaged by moving jurisdictions.

Transport and Infrastructure

As recent projects have proven, there are tremendous benefits to be gained from closer working and joint planning on major infrastructure projects. Indeed, as the Minister for Foreign Affairs, Brian Cowen, pointed out in his speech in Derry in April 2005:

"the combined spend on infrastructure on the island, North and South, over the next ten years could be of the order of €90 to €100 billion. That is a possibility of potentially profound significance. Surely, it makes the most basic sense that we should pool our thinking, planning and resources to ensure that the potential of this unprecedented opportunity for the future is maximised to the full?"

SDLP Proposals:

- **Create an all-Ireland transport and infrastructure body** to produce a strategic development framework for the island, networking air and sea ports and economic corridors and co-ordinating key projects such as the construction of TENS (Trans-European Networks). The body should assist in the planning and development of infrastructure on a North/South basis, co-ordinating the Investment Strategy Northern Ireland with the National Development Plan for 2007-13.
- **Co-ordinate and upgrade the North-South rail network** particularly the Dublin/Belfast and Belfast/Derry rail routes with extensions to the Donegal and North West corridor. The Enterprise timetable requires further work, as the current schedule does not meet the needs of commuters. Greater North/South co-operation is needed on rail safety to meet the standards required for the implementation of EU Rail Packages.

"North-South Makes Sense"

- **Harmonise road safety measures and enforcement** on the island, including the creation of an enforceable penalty point system to operate regardless of jurisdiction. Co-operation on advertising has been effective and further collaboration between the National Safety Council, the Road Safety Council and their respective government departments, could help to address the high road traffic accident rates on border roads.
- Agree an **all-Ireland free travel scheme** for people of pensionable age and for those who are registered disabled.
- Integrate the **National Spatial Strategy** and the **Regional Development Strategy**, building on the work of the newly established International Centre for Local and Regional Development, the result of a North-South-US partnership⁴. It is vitally important that both governments invest the required resources to implement the recommendations of the ICLRD Report in order to co-ordinate and support the creation of sustainable and balanced economic, commercial and employment opportunities.

February 2006

⁴The Centre is the result of a partnership programme involving Harvard University, NUI Maynooth and the University of Ulster. The programme is headed by John Trivett from the Centre for Urban Development Studies at Harvard University.

DUP PAPER - MINISTERIAL CODE

There are a number of key issues in relation to the Ministerial Code.

1. Status of the Ministerial Code
2. Content of the Ministerial Code
3. Adoption of the Ministerial Code
4. Pledge of Office

The DUP has campaigned for and sought changes to the operation of the Assembly. Some of our key concerns have been in relation to the accountability of Executive Ministerial decisions. We believe that a Ministerial Code can play a significant role in addressing some of the changes required. This will however depend on the detail of the arrangements put in place.

Other options include, but are not limited to, changing the nature of the way in which power is devolved to for example either the Assembly or, like in Scotland, to Ministers generally. Alternatively the Assembly could be given a direct role in challenging decisions rather than by the Executive.

We believe that it vital that a number of key issues are addressed.

STATUS OF MINISTERIAL CODE

The Ministerial Code adopted by the last Executive was not statutory in nature or binding in its effect. As a result there was no legal sanction available if the code was breached. In a multi-party enforced coalition this is not a satisfactory situation. It is therefore vital that there should be a statutory requirement for a Ministerial Code and that key elements of the code should have the force of statute and be legally enforceable.

CONTENT OF THE MINISTERIAL CODE

There are many issues which can be dealt with by the Ministerial Code but the key issue which must be addressed is Ministerial accountability. During the last Assembly we highlighted the lack of accountability for Ministerial decisions and the capacity of Ministers to take certain decisions in defiance of the wishes of the Assembly or the Executive.

In this context, accountability means important decisions not being taken in defiance of the wishes of a substantial section of the community. Given the nature of the process to form the Executive, any decision which can command cross community support of the Executive will also be likely to do so in the Assembly.

The central question therefore becomes which decisions are required to come before the Executive for decision. We believe it is appropriate that the legislation and Ministerial Code set out which issues are required to come before the Executive for determination and the procedures for this.

This would include a statutory obligation that Ministers bring such issues before the Executive for decision and as a fall back, a power of referral by the Assembly by way of a Petition of Concern.

Whilst there is an important balance to be struck between administrative workability and accountability we believe that significant decisions should be capable of commanding cross-community support in the Executive.

Defining what constitutes a ‘significant’ decision is somewhat problematic but a number of formulae could be devised to establish this. While there are already a number of important checks or safeguards in relation to Executive decisions such as the requirement for legislation, provision in the Budget, the Programme for Government, or the special equality committee, there are still a number of decisions which can escape scrutiny.

Given the scope of responsibilities of OFMDFM and DFP the requirement that cross-cutting matters are required to come before the Executive will mean that virtually all important matters are covered. Procedures could be established to ensure that only the contentious matters need to be dealt with at a meeting of the Executive rather than by written procedure.

The Comprehensive Agreement sets out provisions for the Ministerial Code, which when combined with the statutory nature of the code essentially cover the required areas. This is not the only way in which accountability could be achieved but nonetheless serves the required purpose.

Ministers must uphold the principle of collective responsibility, and act in accordance with decisions of the Executive and / or Assembly.

The legislation should require that if consensus cannot be achieved on the Executive, three members should be able to request that an Executive decision is taken on a cross-community basis. FM / DFM should have the ability to refer any matter they consider appropriate to the Executive.

The Executive must agree a common position on matters concerning external relationships of the Northern Ireland administration. There should be a statutory obligation for Ministers to appear before the Assembly to provide a report after attending NSMC or BIC meetings.

ADOPTION OF THE MINISTERIAL CODE

The DUP has made it clear that resolution of the issue of accountability is an absolute precondition to the restoration of devolution. We therefore require to be satisfied that the new code would be in place before, or immediately after restoration. Therefore we believe that the easiest way for this to be accommodated is for key elements of the code to be placed in legislation which deals with other changes to the Belfast Agreement. The key aspects of the code would then be operational on day one of a new Assembly and amendable later only by a cross-community vote of the Assembly which would require majority support in each community.

PLEDGE OF OFFICE

The statutory Pledge of Office which prospective Ministers are required to sign before taking office should also be amended. It is self-evidently obvious that support for the rule of law is a sine qua non for holding Ministerial office. We therefore believe that the Pledge of Office should be amended to reflect the fact that the individual nominated for office supports the rule of law (and by extension those who enforce it) and urges other to do so as well. Any notion to the contrary is even more absurd in the event that responsibility for policing and justice were to be devolved.

Ministers must support the work and structures of policing and the judiciary. Furthermore they must be willing to encourage the public to provide the police with any information they may have that could be of assistance in investigating crime. Ministers must support the rule of law and oppose physical force and the use or threat of violence for political ends.

The Ministerial Code should impose a specific requirement on a Minister that neither he/she nor the party from which he/she is appointed is involved in or associated with paramilitary or criminal activity. To make this effective, arrangements should be devised to provide that a significant breach of the Pledge of Office by the Minister or his/her party, as identified by the IMC, would be directly actionable in the courts and punishable by potential disqualification from office.

The reality is that any system will only work if the will exists to do so. In the absence of such a will, any system can be undermined or frustrated. However, we believe that the issue is so fundamental to successful devolution that it must be addressed in a legal rather than merely political context.

4 September 2006

Appendix 6

Draft Ministerial Code



FROM: 8 September 2006

TO: Nuala Dunwoody
John Torney

REVIEW OF THE JANUARY 2000 MINISTERIAL CODE

1. The Executive agreed the Ministerial Code in January 2000. It was also agreed that the Code would be reviewed after six months. That review was initiated in late 2000 but had not been completed by the date of suspension in October 2002.
2. The review of the Code included consultation with Ministers and departmental officials about the provisions and operation of the Code. Officials had done some work on drafting new provisions to cover the issues raised, particularly in relation to factual, practical, procedural and presentational aspects. Other more political issues such as Ministerial autonomy and collective responsibility in the Executive as well as issues related to the operation of the North/South Ministerial Council also needed to be considered but no text had been agreed.
3. In the review of the Code, sections 1, 5 and 10-13 were, as of October 2002, unchanged.
4. Annotated copies of the other sections are attached for consideration by the Preparation for Government Committee.

Section 2 – Ministers and Departments

5. This is a substantial redraft of the original section 2. The purpose of some of the proposed changes is presentational so that, for example, provisions related to the exercise of functions by Northern Ireland Ministers are covered



before those on how the functions can be transferred. The draft also provides more detail on the conferral of functions and how they might be exercised. Editorial notes have been included within the text to explain particular changes and additions.

Section 3 – Ministers and the Executive

6. The attached annotated version of the 2000 section 3 sets out the aspects of the provisions in relation to the Executive which were under consideration in the review. It also includes draft text to reflect decisions which had been taken by the Executive and which it was intended to include in a revised Ministerial Code, for example, in relation to a written procedure for Executive decisions.

Section 4 – Ministers and the Assembly

7. This section in the 2000 Code was written in the very early days of the Assembly's operation and consequently covered a very limited range of advice and guidance with regard to the core principles of providing accurate information to the Assembly and the making of statements and other announcements.
8. This revised draft, produced by officials for consideration by Ministers, includes additional guidance on a range of matters which were highlighted both from the consultation process on the Code and in the light of practical experience of the Ministerial interface with the Assembly and its structures. The section has been considerably expanded and now includes guidance on:

availability of Ministers for Assembly business;
support for Executive business in the Assembly;
Ministers and Assembly Committees;
procedures for statements and announcements;
Assembly Questions;
handling cross-cutting issues; and



Chamber etiquette

9. Editorial notes have been provided in relation to the various changes.

Section 6 – British-Irish Inter-governmental Conference

10. Some presentational changes have been made to this section.

Section 7 – Civic Forum

11. This section had been updated to reflect the establishment of the Forum.
(When the Code was agreed in January 2000 the Forum had not yet been established)

Section 8 – The Presentation of Policy

12. Again, this section had been re-drafted by officials for consideration by Ministers in light of experience and issues raised in the consultation exercise.

Section 9 – Ministers' Visits

13. This section had also been revised in light of experience.
14. I would be happy to provide additional clarification if necessary.



Ministerial code

NOTE: This code will be reviewed after 6 months

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SECTION 1: Introduction

The Belfast Agreement and the Northern Ireland Act 1998

- 1.1 The Belfast Agreement and the Northern Ireland Act 1998 (the Act) specify the duties and responsibilities of Ministers of the Northern Ireland Assembly. These notes set out in greater detail the ground rules and procedures for the exercise of those duties and responsibilities. They apply to all members of the Executive Committee and to junior Ministers. The notes should be read in conjunction with the duty of Ministers to comply with the law, to uphold the administration of justice and to protect the integrity of public life.

Pledge of Office

- 1.2 Under the Belfast Agreement and under sections 16, 18 and 19 of the Act, it is a condition of appointment that Ministers of the Northern Ireland Assembly, including the First Minister and the deputy First Minister and junior Ministers, affirm the terms of the following Pledge of Office.
- (a) to discharge in good faith all the duties of office;
 - (b) commitment to non-violence and exclusively peaceful and democratic means;
 - (c) to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;
 - (d) to participate with colleagues in the preparation of a programme for government;
 - (e) to operate within the framework of that programme when agreed within the Executive Committee and endorsed by the Assembly;
 - (f) to support, and to act in accordance with, all decisions of the Executive Committee and Assembly;
 - (g) to comply with the Ministerial Code of Conduct.

Ministerial Code of Conduct

1.3 The Ministerial Code of Conduct referred to at (g) above is as follows.

Ministers must at all times:

- (i) observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;
- (ii) be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
- (iii) ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments and their staff conduct their dealings with the public in an open and responsible way;
- (iv) follow the seven principles of public life set out by the Committee on Standards in Public Life;
- (v) comply with this code and with rules relating to the use of public funds;
- (vi) operate in a way conducive to promoting good community relations and equality of treatment;
- (vii) not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;
- (viii) ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered; and
- (ix) declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests.

The Seven Principles of Public Life

1.4 The seven principles of public life referred to at (iv) above are as follows:-

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Redrafted by Officials

SECTION 2 : Ministers and Departments

Determination of the number and functions of Ministers by the First Minister and the Deputy First Minister

- 2.1 Under the Belfast Agreement and under section 17 of the Northern Ireland Act 1998 (the Act), it is for the First Minister and the Deputy First Minister acting jointly and subject to a resolution of the Assembly passed with cross-community support to determine the number of Ministerial offices to be held by Northern Ireland Ministers (maximum number 10, or such greater number as provided for by the Secretary of State) and the functions exercisable by the holder of each such office. This may be done at any time; it must be done when a new department is established or an existing department is dissolved by an Act of the Assembly under section 21 of the Act.

Allocation of Ministerial offices

- 2.2 Ministerial offices shall be allocated as provided for in section 18 of the Act.

Exercise of Functions by the Northern Ireland Ministers

- 2.3 The Northern Ireland statutes generally confer functions on the Northern Ireland departments, which are bodies corporate under the Departments (NI) Order 1999, rather than on Ministers themselves. Some functions are expressly conferred on Ministers, such as the power to make some public appointments. The Departments Order provides that the functions of a department shall at all times be exercised subject to the Minister's direction and control. This means that the Minister is accountable for all departmental acts and omissions.

Note: This is a new provision, its purpose being to refer to the provisions of the Departments Order.

- 2.4 Most departmental functions are comprised in legislation, and must be exercised in accordance with its provisions. Some functions derive their authority from prerogative or executive powers, and are not governed by statute. Under section 23(2) of the Act, the prerogative and other executive powers in relation to transferred matter shall be exercisable by any Minister or Northern Ireland department.
- 2.5 Ministers must act in accordance with the Pledge of Office; that Pledge requires Ministers to support and act in accordance with all decisions of the Executive. The functions of Ministers are those assigned to the Ministerial office which they hold. In exercise of those functions, Ministers have full executive authority in that area of responsibility, within any broad programme agreed by the Executive, endorsed by the Assembly as a whole.

Ministers have a duty to the Northern Ireland Assembly to account, and are accountable, for the policies, decisions, expenditure and actions of their departments including their Next Steps Agencies and NDPBs.

Note: This paragraph has been amended to refer to that part of the Pledge of Office requiring Ministers to support and act in accordance with all decisions of the Executive.

- 2.6 Section 24 of the Act precludes Ministers and departments from making subordinate legislation, or doing any act, which is incompatible with European Convention rights or Community law, or which discriminates against any person or class of person on the ground of religious belief or political opinion, or, in the case of legislation, modifies any of the entrenched enactments comprised in section 7 of the Act.

Note: This is a new provision.

Appointments by Ministers

- 2.7 Guidance on Public Appointments is available in “The Commissioner for Public Appointments for Northern Ireland’s Code of Practice for Ministerial Appointments to Public Bodies”.

Other duties and responsibilities of Ministers

- 2.8 Ministers may be required by section 26 of the Act by order of the Secretary of State not to take a proposed action if the Secretary of State considers that it would be incompatible with the UK’s international obligations or with the interests of defence or national security or with the protection of public safety or public order. Also, if the Secretary of State considers that any action needs to be taken for giving effect to any international obligations, or safeguarding the interests of defence or national security or protecting public safety or public order he may by order direct the Minister to take the action. International obligations do not include obligations under the European Convention on Human Rights or Community law.

Note: This is a new paragraph.

- 2.9 A Minister must comply with any order made by a UK Minister under section 27 of the Act which provides for the achievement by the Minister in exercise of his or her functions of an element of a wider UK result required under international obligation or Community law.
- 2.10 Ministers must comply with any requirement of the Treasury for the provision of information, in accordance with section 67 of the Act.

Transfer of functions between NI Ministers

- 2.11 The First Minister and Deputy First Minister may make Transfers of Functions Orders in accordance with Article 8 of the Departments (Northern Ireland) Order 1999.
- 2.12 If a Minister
- (i) wishes to propose that functions should be transferred between Ministers; or
 - (ii) wishes to propose that new functions should be allocated to that Minister where the function does not fall wholly within the field of responsibilities of one Minister, a submission seeking approval to the proposal transfer(s) shall be made to the First Minister and the Deputy First Minister.
- 2.13 The submitting Minister shall be:
- the ceding Minister in the case of transfers of existing functions and
 - the Minister proposing in the case of allocation of new functions.
- 2.14 Before a submission is sent to the First Minister and Deputy First Minister, the submitting Minister must notify the Head of the NICS and all Ministers who may be affected by or have an interest in the proposed transfer of functions or allocation of new functions of the proposed transfer or allocation.

Note: Transfers of functions between Junior Ministers, or the allocation of new functions to Junior Ministers are likely to require a new determination by the First Minister and Deputy First Minister under section 19 of the Act; the reference to transfers between Junior Ministers has therefore been deleted. The reference to a transfer of functions to an NDPB has also been deleted, being a matter required by the Code to be brought to the Executive anyway if politically sensitive or raising wider issues.

Junior Ministers

- 2.15 Under section 19 of the Act, it is for the First Minister and the Deputy First Minister acting jointly and subject to a resolution of the Assembly to determine the number of Junior Ministers to be appointed, the procedures for those appointments and the functions exercisable by the holder of each such office.
- 2.16 Ministers are directly answerable to the Northern Ireland Assembly for the exercise of the powers on which the administration of their functions depend. If a Minister wishes to propose that functions should be assigned to a Junior Minister, the proposal defining the range of departmental work for which the Junior Minister would be responsible, together with any proposed “courtesy titles” descriptive of the duties, should be submitted in writing to the First Minister and the Deputy First Minister, copied to the Head of the Northern Ireland Civil Service.

Arrangements during absences

- 2.17 Ministers must ensure that the Secretary to the Executive is able to contact them at all times so that, if the need arises, he or she can inform the First Minister and Deputy First Minister which Ministers are immediately available.
- 2.18 If a Minister will be unavailable for a considerable period because of absence or illness the required procedure is for the Minister to resign or for the nominating officer of the party of which the Minister is a member to dismiss that Minister. The nominating officer will then nominate a person to hold the office in accordance with the provisions of section 18(9) and (10) of the Act.

Note: This paragraph has been amended to make it clear that resignation or dismissal is required before a “substitute” can be appointed.

Exclusion of Ministers from office

- 2.19 Under section 30 of the Act, if the Assembly resolves that a Minister or Junior Minister no longer enjoys the confidence of the Assembly:-
- (a) because he or she is not committed to non-violence and exclusively peaceful and democratic means; or
 - (b) because of any failure of his or hers to observe any other terms of the pledge of office, he or she shall be excluded from holding office as a Minister or Junior Minister for a period of twelve months beginning with the date of the Assembly’s resolution.
- 2.20 Similarly, if the Assembly resolves that a political party does not enjoy the confidence of the Assembly, members of that party shall be excluded from holding office as Ministers or Junior Ministers for a period of twelve months from the date of the resolution.

Special Advisers

- 2.21 Special Advisers may be appointed under the Civil Service Commissioners (Northern Ireland) Order 1999. The First Minister and the Deputy First Minister may each have up to 3 Special Advisers at any one time and other members of the Executive may have one Special Adviser each at any one time.
- 2.22 Ministers are expected to observe the Code of Practice on the Appointment of Special Advisers. While Special Advisers are temporary civil servants they have a very different role from that of other civil servants and need to have a particularly close working relationship with their Ministers. The appointments of Special Advisers are made personally by Ministers, and are not subject to the requirements of the normal civil service recruitment process. Consideration of the suitability for appointment of any individual special adviser is entirely the responsibility of the appointing Minister. Each Minister should therefore be personally satisfied that any proposed appointee is in all respects suitable for appointment and has the ability, aptitudes and character needed for the duties of the post. Once satisfied the Minister should advise the Secretary to the Executive in writing. It is for each Minister’s own discretion as to what steps to take in order to make this assessment. Departments will

however be able to offer guidance as to the criteria that would be applied to a normal civil service appointment and Ministers may wish to have regard to those criteria in making special adviser appointments.

Ministers and Statutory Committees of the Assembly

- 2.23 The Assembly statutory committees have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and have a role in the initiation of legislation. A Minister or a Junior Minister may not be the chairman or deputy chairman of a statutory committee of the Assembly.

Note: Further detail on committees is in Section 4.

Civil Servants

- 2.24 Ministers should give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Northern Ireland Civil Service Code of Ethics; they should ensure that influence over appointments is not abused for partisan purposes; and they should not impede their departments in observing the obligations of a good employer with regard to the terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.
- 2.25 Ministers should require civil servants who give evidence before committees of the Assembly on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Northern Ireland Civil Service Code of Ethics.

Civil servants and party conferences

- 2.26 Ministers should not ask civil servants to attend, still less take part in, Party Conferences or meetings of policy or subject groups of any of the Assembly parties. Civil servants in their official capacity should not accept invitations to conferences convened by, or under the aegis of, party political organisations. Ministers may require officials to be in attendance at party political events in order to enable the Minister to carry out urgent departmental business.
- 2.27 If a Minister wishes to have a brief for a party political occasion to explain departmental policies or actions, this may be provided. However, civil servants should not be asked to draft party political material for speeches, press releases, etc.

The role of the Accounting Officer

- 2.28 Permanent Secretaries and the chief executives of executive agencies are appointed as Accounting Officers. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Public Accounts Committee on these matters, within the framework of Ministerial accountability to the Assembly for the policies, actions and conduct of their departments.
- 2.29 Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer should set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer should seek a written instruction to take the action in question and send the relevant papers to the Comptroller and Auditor General. The papers should also be copied to the First Minister and the Deputy First Minister through the Head of the NICS. A similar procedure applies where the Accounting Officer has concerns as regards the value for money of a proposed course of action. The procedure enables the Public Accounts Committee to see that the Accounting Officer does not bear personal responsibility for the actions concerned.
- 2.30 The role of Accounting Officers is described in detail in the Department of Finance and Personnel memorandum, *The Responsibilities of an Accounting Officer*. Further guidance is contained in the Treasury handbook, *Regularity and Propriety*.

Handling Correspondence which is the Departmental Responsibility of Another Minister

- 2.31 Correspondence received by a Minister which is outside his or her departmental responsibility should be sent directly to the Minister who is responsible for the particular issue. An acknowledgement should be sent to the author of the correspondence advising the name of the Minister to whom the correspondence has been transferred. This acknowledgement should also be copied to the Minister with responsibility for the issue.
- 2.32 If correspondence is received by the First Minister and Deputy First Minister on a matter which is the responsibility of another Minister, the First Minister and Deputy First Minister may seek briefing from that Minister to enable them to respond in their roles as joint chairs of the Executive.

Note: This is a new provision.

Access to papers of a previous Administration

- 2.33 Departments will provide Ministers with all the information which they require to carry out their functions. However, Ministers should not seek access to documents which were created before devolution; nor should they seek access to documents created by, or for, Northern Ireland Ministers of different political parties to themselves. This is intended to provide a mutual assurance that official documents will not be exploited for political gain.
- 2.34 Accordingly, a Minister should not seek access to any minutes, notes or documents created under a predecessor of a different Party other than those which were made public by that predecessor; nor should a Minister seek to ascertain - whether directly from officials or by access to departmental paper which would provide the information - the views of previous Ministers of a different political party or the advice given by officials to such Ministers. However, a Minister may seek access, for example, to a report on which action has not yet been taken or documents which were made available outside Government during the term of office of a previous Minister.
- 2.35 If a Minister wishes to see a document which the Permanent Secretary believes should be withheld under this general principle, the Minister should be so advised in writing. If the Minister is not satisfied with the advice, the Permanent Secretary should be asked to copy the advice to the Secretary to the Executive with a request that the matter be brought immediately to the attention of the Executive for its decision. Ministers and officials must act in accordance with any decision of the Executive.
- 2.36 Special Advisers are required to comply with this general principle in the same way as Ministers. Special Advisers may not seek access to documents created prior to the appointment of the Minister who appointed them.

Former Ministers

- 2.37 Former Ministers may see, but not retain, official documents which they saw in their capacity as Ministers. Such access will be dealt with on a case by case basis and access may be made conditional. Requests should be made to the Secretary to the Executive.

Annotated Version of 2000 Code Section 3

SECTION 3: The Executive Committee

The Executive Committee

- 3.1 The Executive Committee consists of the First Minister, the deputy First Minister and the Northern Ireland Ministers.

Role of the First Minister and the deputy First Minister

- 3.2.1 Section 20 of the Northern Ireland Act 1998 (the Act) provides that the First Minister and the Deputy First Minister shall be chairmen of the Executive Committee. Under the Belfast Agreement their duties include dealing with and co-ordinating the work of the Executive Committee and the response of the Northern Ireland administration to external relationships. For all meetings of the Executive Committee the First Minister and deputy First Minister will be co-chairmen.

Possible new provision - Collective Responsibility

***Comment** The issues of the authority of Ministers and the collective responsibility of Ministers in the Executive in the exercise of statutory functions and cross-cutting matters, in the context of the provisions of the Agreement, the NI Act 1999, the Pledge of Office and the Departments (NI) Order 1999 were under consideration as part of the review of the January 2000 Ministerial Code.*

No decisions had been taken about how these issues might be reflected in a revised Ministerial Code.

Functions of the Executive Committee

- 3.3 The Act provides that the Executive Committee shall have the functions set out in paragraphs 19 and 20 of Strand One of the Belfast Agreement.

The Executive Committee will provide a forum for

- i) the discussion of, and agreement on, issues which cut across the responsibilities of two or more Ministers;
- (ii) prioritising executive proposals;
- (iii) prioritising legislative proposals;
- (iv) recommending a common position where necessary; and
- (v) agreement each year on (and review as necessary of) a programme incorporating an agreed budget linked to policies and programmes (Programme for Government).

Duty to inform Executive Committee

3.4 Any matter which

- (i) cuts across the responsibilities of two or more Ministers,
- (ii) requires agreement on prioritisation,
- (iii) requires the adoption of a common position, or
- (iv) has implications for the Programme for Government shall be brought to the attention of the Executive Committee by the responsible Minister.

Regarding (i), Ministers should, in particular, note that:

- the responsibilities of the First Minister and deputy First Minister include standards in public life, machinery of government (including the ministerial code), public appointments policy, EU issues, economic policy, human rights, and equality. Matters under consideration by Northern Ireland Ministers may often cut across these responsibilities.
- under Government Accounting Northern Ireland, no expenditure can be properly incurred without the approval of the Department of Finance and Personnel;

Duty to inform First Minister and Deputy First Minister and Secretary to the Executive Committee

3.5 All significant proposed policy initiatives (including significantly revised policies) or significant statements of policy should be copied to the First Minister and deputy First Minister and to the Secretary of the Executive Committee.

This duty applies, in particular to:

- published Consultation Papers;
- matters not explicitly within the terms of the Programme for Government requiring significant financial resources;
- matters which have implications for the Programme of Government, whether requiring significant financial resources or not;
- all primary and secondary legislation proposed to be presented to the Assembly.

The Secretary to the Executive Committee, acting on behalf of the First Minister and deputy First Minister, may require matters subject to this duty to be brought to the Executive Committee. However, the failure of the Secretary so to do does not discharge the responsible Minister of his or her duty under section 3.4.

***Comment on paragraphs 3.4 and 3.5** The questions of which issues Ministers were required to bring to the Executive for consideration was considered by the Executive during the course of its deliberations and in practice it was agreed that all proposals for public consultation papers, primary and secondary legislation, significant policy initiatives and any proposed announcements or decisions that were novel, likely to be controversial, or of particular interest or importance to the public should be brought to the Executive for consideration.*

This provision would have been incorporated in the revised Ministerial Code.

Attendance at Executive Committee Meetings

- 3.6 Attendance at meetings of the Executive Committee shall normally comprise the First Minister, the deputy First Minister, the Northern Ireland Ministers, the Secretary and the Deputy Secretary [comment: this was normal practice.] to the Executive Committee. Officials may attend, with the approval of the First Minister and the deputy First Minister.

***Comment** Consideration was also being given to whether the Code should provide a power for the FM/DFM/Executive to require attendance of officials before the Executive or the production of documents to the Executive.*

Northern Ireland Ministers and the Executive Committee

- 3.7 In accordance with the terms of the Pledge of Office, the Northern Ireland Ministers must participate with colleagues in the Executive Committee in the preparation of the programme for Government, operate within the framework of the programme for Government when it is agreed within the Executive Committee and endorsed by the Assembly, and support, and act in accordance with, all decisions of the Executive Committee and the Assembly.
- 3.8 Ministers must be as open as possible with the Executive Committee and give accurate and truthful information to the Executive Committee at all times. They must correct any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Executive Committee will be expected to tender their resignation.

***Comment** Consideration was being given to the inclusion in the Code of a requirement for Ministers to draw to the attention of the Executive any likely opposition from their parties in the Assembly to legislation or policy issues being considered by the Executive.*

Meetings of the Executive Committee

- 3.9 Meetings of the Executive Committee will be convened and presided over by the First Minister and deputy First Minister.

***Comment** In practice, the First Minister and Deputy First Minister jointly co-chaired Executive meetings when both were present but, by agreement between them, one Minister chaired in the absence of the other. This arrangement might be provided for in the Ministerial Code.*

The meetings will normally be held weekly.

***Comment** In practice, it became more the norm that meetings were held fortnightly.*

The relevant provisions of the following paragraphs also apply to any subcommittees.

- 3.10 Executive Committee meetings take precedence over all other business. Members of the Executive should attend all meetings except in the most exceptional circumstances. A Minister should as early as possible inform the Secretary to the Executive Committee if he or she is unable to attend a meeting of the Committee and of the exceptional circumstances which cause the inability to attend the meeting.

***Comment** Consideration was being given to a requirement for the prior approval of the First Minister and Deputy First Minister for non-attendance at an Executive meeting.*

Executive Committee Agenda

3.11 Prior to each Executive Committee meeting, the Secretary to the Executive Committee shall convene a meeting of two representatives of the First and deputy First Ministers and one representative of the other Ministers on the Executive Committee (the meeting of Ministerial representatives). Each Ministerial representative shall indicate those matters intended to be raised by his or her Minister at the following Executive Committee meeting. The meeting of Ministerial representatives shall

- prepare the agenda for Executive Committee meetings for agreement by the First Minister and deputy First Minister;
- agree papers to be circulated by the Secretariat to members of the Executive Committee;
- identify potential problems likely to arise at Executive Committee meetings.

The agenda for Executive Committee meetings will be planned on a rolling basis for agreement by the First Minister and the deputy First Minister. The agenda will include

- (i) items for discussion;
- (ii) items for agreement, without discussion; and
- (iii) items for information, without discussion.

3.12 The Secretary to the Executive Committee should be given reasonable notice of any business which is proposed for consideration by the Committee, including business to be raised orally. Generally, at least seven days notice should be given. Items may only be included on the agenda at shorter notice in exceptional and unavoidable circumstances, and subject to the agreement of the First Minister and the deputy First Minister. Not all matters which cut across the responsibilities of two or more Ministers need to be discussed in detail at the Executive Committee. Instead, relevant Ministers may discuss such matters among themselves and agree a proposed decision. The proposed decision should be notified to the meeting of Ministerial representatives and listed for agreement without discussion. The First Minister and deputy First Minister, acting jointly, may modify the agenda to allow full discussion.

Comment on paragraphs 3.11 and 3.12 The Ministerial Representatives were normally the Ministers' Special Advisers although officials could attend if requested by the Minister. The Ministerial Representatives' Committee considered agenda items for Executive meetings and identified issues likely to be raised by Ministers at Executive meetings. The agenda for Executive meetings was planned on a rolling basis and agreed by the First Minister and Deputy First Minister. These paragraphs might be amended to reflect this process.

Submission of proposals to the Executive Committee

3.13 Proposals by a Minister which are to be raised for discussion or agreement at the Executive Committee must be the subject of a written memorandum.

3.14 Any such memorandum should indicate clearly the impact of the proposal, if any, on:

- (i) employment and costs to business;
- (ii) equality of opportunity as between those groups listed in section 75 of the Act;
- (iii) targeting social need;
- (iv) exchequer costs and staffing implications;
- (v) relations, co-operation or common action on a North/South or East/West basis
- (vi) any relevant EU issues;
- (vii) human rights.

3.15 A draft of any such memorandum must be circulated to:

- the First Minister and Deputy First Minister;
- any Minister with a functional interest in the proposal;
- the Minister of Finance and Personnel, in the case of proposals involving expenditure or affecting general financial policy,

who each may make comments on the memorandum. Any such comments must be incorporated in the memorandum, even if not accepted by the originating Minister. The originating Minister may also comment on the comments received.

***Comment** In light of experience, consideration was being given to the provision in this paragraph of a requirement for memoranda to be circulated, say, 10 days in advance of the meeting at which they are to be considered.*

3.16 The opinion of legal advisers should be sought in advance in respect of any issue being raised at the Executive Committee which has legal implications. See paragraphs 3.26-3.31.

3.17 Save in exceptional and unavoidable circumstances and subject to the agreement of the First Minister and the deputy First Minister, memoranda for consideration at Executive Committee meetings should be circulated at least two full working days plus a weekend in advance of the meeting at which they are to be discussed to allow sufficient time to enable Ministers to read and digest them, and to be properly briefed. If decisions are urgently required, and an interval including a weekend is not possible, memoranda should be circulated as long before a meeting as possible, but always at least two full working days before they are to be discussed. Where a Minister wishes to advise the Executive Committee of an issue on which no substantive discussion is expected, the Private Office should alert the Secretary of the Executive Committee in the morning of the day before the Executive Committee meets. In exceptional and unavoidable circumstances memoranda for the Executive Committee may be circulated as late as 24 hours in advance of a meeting, or the responsible Minister may brief colleagues orally at a meeting on a matter requiring substantive decision. In either case, the prior approval of both the First Minister and deputy First Minister would be required to such a course of action.

- 3.18 It is the duty of Ministers to ensure that memoranda for the Executive Committee are as clear and as brief as possible. The Secretary to the Executive Committee will offer guidance about the length of memoranda for circulation. The memorandum should explain at the outset what the issues are, indicate briefly the relevant considerations, and conclude with a precise statement of the decisions sought. Paragraphs should be numbered for ease of reference. Detailed analysis and argument, together with supplementary detail, should be dealt with, where necessary, in annexes.

Possible new provision - Written Procedure

***Comment** The Executive had agreed a written procedure for decision making on Executive papers. Paragraphs along the following lines might be inserted in the Ministerial Code to reflect this procedure:-*

“With the approval of the First Minister and Deputy First Minister, a decision of the Executive may be sought by written procedure. This procedure will normally be confined to routine matters or circumstances where a decision is required before the next scheduled meeting of the Executive.

A Minister wishing to obtain a decision through the written procedure should seek the approval of the First Minister and Deputy First Minister by submitting the relevant memorandum to the Secretary to the Executive, copied to all Ministers, and explaining the urgency of the issue.

The Secretariat will circulate the memorandum (designated as an E (WP) paper) indicating the deadline for a written response including nil returns. If no objections are raised, the Secretariat will advise the Executive in writing and the decision will be recorded in the minutes of the next meeting.”

Where objections are raised the Secretariat will circulate the comments received. The originating Minister may submit a revised memorandum for circulation by Written Procedure or for consideration at an Executive meeting.

Possible new provision - Circulation of NSMC and BIC papers

***Comment** Papers for sectoral meetings of the North South Ministerial Council and the British Irish Council were normally voluminous. Rather than tabling such papers at Executive meetings for clearance, the Executive had a procedure whereby the papers were circulated in advance of the relevant meeting for comment on an “exception” basis. If any Minister raised an issue on any of the papers, it was either dealt with bilaterally or raised at the next Executive meeting. The papers proceeded to the NSMC or BIC meeting once the Executive was content.*

Paragraphs along the following lines might be inserted to reflect this procedure:-

“Ministers should copy papers to be tabled at NSMC and BIC meetings to the Executive at least 10 working days in advance of the relevant meeting. The Secretariat will circulate these

(designated as E(NSMC) and E(BIC) papers). If no comments have been made, this will be recorded in the minutes of the next Executive meeting.

If a Minister wishes to raise an issue in relation to an NSMC or BIC paper, and the matter cannot be resolved bi-laterally with the relevant Minister, the Secretariat should be notified in writing and the matter should be raised at the next meeting of the Executive as a substantive issue.”

Decision-making by the Executive Committee

- 3.19 In all business before the Committee, the Chairmen will seek to ensure consensus. If that does not prove possible, a vote may be taken. Decisions will mirror arrangements for the Assembly, where a majority of those present and voting will suffice save for specified areas (budget or programme of government,) or for issues in which 3 members of the Committee ask for the vote to be on the basis of cross-community support. In these cases, cross-community support within the Executive Committee will be needed for a proposal to be passed. “Cross-community support” shall have the same meaning as set out in Section 4(5)] of the Act. A quorum of 7 members will be required for any vote. The requirement for cross-community support must be requested prior to a vote actually commencing.

Media Briefings

- 3.20 At the end of each meeting of the Executive Committee, a public statement or Press Release will be agreed. The Secretary to the Executive Committee will brief the Head of the Executive Information Service.

Executive Committee minutes and conclusions

- 3.21 The minutes of Executive Committee meetings will be limited to the conclusions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. As far as practicable, the opinions expressed by particular Ministers will not be recorded. Matters of special secrecy or political sensitivity may be recorded in a limited circulation annex. The minutes will be approved by the First Minister and the Deputy First Minister prior to circulation to other Executive Committee Members.
- 3.22 Any suggestions for amendment of Executive Committee minutes must reach the Secretary not later than 24 hours before the following meeting of the Executive Committee.
- 3.23 Ministers must act in accordance with decisions of the Executive Committee. Ministers are responsible for instructing their departments to give effect to the conclusions of the Executive Committee. When immediate action is required by a Minister not represented at the meeting, the Secretary will ensure that he or she is notified forthwith. Where urgent action has to be taken by a department, the department may ask the Secretary for an advance copy of the relevant conclusions.

Confidentiality of Executive Committee proceedings

- 3.24 Ministers should not make public statements or comment on policy proposals which are to be brought to the Executive Committee or are under consideration by it. The privacy of opinions expressed in the Executive Committee must be respected. The Head of the Executive Information Service should be the sole source of briefing to the media about discussions held in the Executive Committee. Once taken, Ministers must publicly support decisions of the Executive Committee.
- 3.25 Executive Committee documents will often contain information which needs to be protected in the public interest. It is therefore essential that, subject to the guidelines on the disclosure of information set out in the Code of Practice on Access to Government Information, Ministers take the necessary steps to ensure that they and their staff preserve the privacy of Executive Committee business and protect the security of Government documents.

Legal advice

Comment on paragraphs 3.26 – 3.31 Reflecting experience in relation to legal advice during devolution, revised provisions to replace paragraphs 3.26 – 3.31 the following lines had been drafted by officials for consideration:-

“If more than one Minister has an interest in a matter which has legal implications and the matter raises significant policy, constitutional or political issues or there is conflicting or inconsistent legal advice, the Ministers concerned should seek advice from the Departmental Solicitor’s Office, through the Secretary to the Executive. If uncertainty cannot be resolved, the Departmental Solicitor’s Office may recommend that the opinion of Senior Counsel be sought. In cases of exceptional importance and for the resolution of doubt, the Departmental Solicitor’s Office may recommend that the opinion of the Law Officers be sought. Any advice obtained under these provisions will be circulated to all of the Ministers concerned by the Executive Secretariat. If any Minister requires further advice the Secretary to the Executive may in appropriate circumstances recommend that private legal advice be obtained, with Departmental financial support.

A Minister should disclose the conclusions of any legal advice received to the Executive and furnish a copy of that legal advice to any other Minister upon request.

The fact and content of opinions or advice given by the Law Officers must not be disclosed outside the Executive without their authority. Written opinions of the Law Officers can be made available to succeeding Executives.”

- 3.26 The opinion of legal advisers should be sought in advance in respect of any issue being raised at the Executive Committee which has legal implications. In general, legal advice should be taken in the first instance from an appropriate member of the Departmental Solicitor’s Office. If more than one Minister has an interest in an issue and conflicting or inconsistent legal advice has been provided from within the Departmental Solicitor’s Office, the Ministers concerned should seek a resolution from the Head of the Departmental Solicitor’s Office. If uncertainty cannot be resolved, the Departmental Solicitor’s Office may recommend that the opinion of Senior Crown Counsel be sought. In

cases of exceptional importance and for the resolution of doubt, the Departmental Solicitor's Office may recommend that the opinion of the Attorney General be sought.

- 3.27 In circumstances where a conflict of interest could arise for the Attorney General or Senior Crown Counsel, or in any other circumstances where a Minister deems it necessary, another Counsel should be engaged to provide legal advice.
- 3.28 A Minister must disclose the conclusions of any legal advice he has received to the Executive Committee. He must furnish a copy of that legal advice to any other Minister upon request.
- 3.29 The fact and content of opinions or advice given by the Attorney General must not be disclosed outside the Executive Committee without his or her authority. Written opinions of the Attorney General can be made available to succeeding Executive Committees.
- 3.30 Ministers occasionally become engaged in legal proceedings primarily in their personal capacities but in circumstances which may have implications for them in their official positions. For example, defamation (other than in relation to purely private matters) may raise issues for the Minister's official position. In all such cases they should consult the legal advisers before consulting their own solicitors, in order to allow the legal advisers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset.
- 3.31 In criminal proceedings Law Officers act wholly independently of the Executive Committee. In civil proceedings a distinction is to be drawn between proceedings in which Law Officers are involved in a representative capacity on behalf of the Executive Committee, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

Possible new provision - Interpretation

***Comment** The possibility of providing that the Secretary to the Executive, on behalf of the First Minister and Deputy First Minister, would be responsible for interpreting the provisions of section 3 of the Ministerial Code was being considered.*

Redrafted by Officials

SECTION 4: Ministers and The Assembly

Information given to the Assembly

- 4.1 It is of paramount importance that Ministers give accurate and truthful information to the Assembly, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Assembly will be expected to resign.
- 4.2 Ministers should be as open as possible with the Assembly and should only withhold documents and information having taken into account the separate guidance on the “Disclosure of documents and information to Assembly Committees”.

Note: Some textual changes to the second paragraph have been made to expand this in line with draft Statutory Committee guidance which was under consideration.

Availability of Ministers for Assembly Business

- 4.3 The handling of Executive business in the Assembly is a matter for the Executive. The scheduling of business is planned following Business Committee meetings. OFMDFM will advise Departments of Private Members’ business being taken in the coming week as soon as possible following the Business Committee meeting. This will include guidance on the need for a Ministerial response.
- 4.4 Ministers should normally be available to be present in the Assembly to take or support Executive business during plenary sessions. Ministers should ensure that, on those days when the Assembly is due to sit, their programmes only contain engagements which may be cancelled or rescheduled to enable them to attend the Assembly at short notice if required.
- 4.5 Where a Minister is unable to participate in relevant Executive business in the Assembly, the Minister must ensure that, where appropriate, alternative arrangements are in place for a colleague to be present and take that business.
- 4.6 Where a Minister is absent and the relevant Executive business falls, the Minister should consider offering an apology to the Speaker and to the Assembly at the first available opportunity.

Note: These are new provisions designed to highlight the need for Ministerial presence in the Assembly, particularly in relation to Executive business but also where Private Members business is taken.

Support for Executive Business in the Assembly

- 4.7 The Ministerial Pledge of Office requires each Minister to support, and act in accordance with, all decisions of the Executive and Assembly. It, therefore, follows that where Executive business, including legislation and motions, is introduced in the Assembly, Ministers should support the agreed position of the Executive on the issue.
- 4.8 In circumstances where agreed Executive amendments to legislation or motions are to be debated, Ministerial support should be clearly demonstrated, particularly when divisions are called. The same principle should equally apply where a counter amendment is tabled, thereby negating or reducing the effectiveness of legislation or the terms of an Executive motion.

Note: These are new provisions to clarify the principle of collective responsibility as outlined in the Ministerial Pledge of Office.

Ministers and Assembly Committees

- 4.9 The roles, functions and powers of Assembly statutory committees are set out in Strand One of the Belfast Agreement and in sections 29 and 44 of the Northern Ireland Act 1998 and the relevant Assembly Standing Orders. The Assembly statutory committees have a scrutiny, policy development and consultation role with respect to the Department with which each is associated, and have a role in the initiation of legislation. A Minister or junior Minister may not be the chairman or deputy chairman of a statutory committee of the Assembly.
- 4.10 As required by the Northern Ireland Act 1998, Standing Orders confer on statutory committees the powers described in paragraph 9 of Strand One of the Belfast Agreement. These are to:
- (i) consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
 - (ii) approve relevant secondary legislation and take the Committee stage of the relevant primary legislation;
 - (iii) call for persons and papers relating to transferred matters within Northern Ireland and other matters in relation to which statutory functions are exercisable by Ministers or Departments, although a person is not obliged to answer any question or produce any document which he or she would be entitled to refuse to answer or produce in proceedings in a court in Northern Ireland.;
 - (iv) initiate enquiries and make reports;
 - (v) consider and advise on matters brought to the Committee by its Minister.
- 4.11 There are ten statutory committees, one for each Department other than OFMDFM. The Committee of the Centre, whose functions are specified in Standing Orders, has a role of examination and reporting on specified functions of OFMDFM, and has the same powers as a Statutory Committee to call for persons and papers.

- 4.12 Statutory Committees may seek evidence from whomever they wish, and can request papers and records from private bodies or individuals where these are relevant to the committee's remit. Ministers may also be requested to give evidence.
- 4.13 In formulating policy, Ministers should develop an open, transparent and inclusive approach to their Departmental committee, and take account of the committee's views.
- 4.14 Ministers and Departments should include their statutory committee in any public consultation exercise which they undertake, including on proposals for primary and subordinate legislation. Statutory committees should also be advised regularly of major issues under consideration in Departments, to assist them in prioritising their work. Ministers may also wish to consult their statutory committees with regard to the production of corporate and business plans for their Departments or their executive agencies, prior to final Ministerial approval on publication.
- 4.15 Further guidance on Assembly committees is available from OFMDFM.

Note: These are new provisions designed to clarify the role and competence of statutory committees and their interaction with Ministers and Departments. This issue was raised during the consultation phase on the Ministerial Code. The reference to further guidance is to work which was in progress prior to suspension.

Procedures for Assembly statements

- 4.16 Ministers should ensure that all significant announcements are presented to the Assembly before general publication or wider release. Ministers should also ensure that statements to be made in the Assembly are notified to the relevant statutory committee in advance. Similar arrangements should apply when OFMDFM Ministers make statements on matters which relate to the functions assigned to the Committee of the Centre.
- 4.17 Ministers must act in accordance with Assembly Standing Order 18 in respect of proceedings of the Assembly when statements to the Assembly are to be made.
- 4.18 The agreement of the First Minister and Deputy First Minister to the timing and broad content of statements must be obtained in advance. The Executive Information Service should also be notified. These notifications, where possible, should be made at least 3 working days in advance of the proposed statement, and should indicate whether the policy with which the statement is concerned has been discussed by the Executive.
- 4.19 If agreement in principle is given by the First Minister and Deputy First Minister, a copy of the statement should be circulated as soon as possible to the Executive accompanied as appropriate by background notes, including defensive briefing.
- 4.20 In the case of announcements made by written or arranged answer, such announcements should be handled in the same way as Assembly statements. Particular care must be taken to avoid making a press announcement before the answer has been delivered to the Assembly member who tabled the Question.

- 4.21 Ministers should not give undertakings that a statement will be made in the Assembly on any subject at a specific time or within a particular period until agreement has been given by the First Minister and Deputy First Minister to the proposed timing. Every effort should be made to avoid leaving significant announcements to the last day before a Recess.
- 4.22 A Minister in charge of an item of business in the Assembly must ensure that reasonable numbers of copies of any documents published during the preceding two years which may be needed for the debate are placed in the Business Office. The Minister is also responsible for supplying the Assembly Library in advance with a list of all those older papers which the he/she considers relevant to the item. When any document is out of print the Minister should decide whether or not a reprint is required. Where doubt exists about the need for any document to be available for a debate, the Private Secretary should consult the Business Office.

Note: These provisions remain broadly similar to those set out in paragraphs 4.3–4.9 of the January 2000 Ministerial Code.

Making Assembly statements on behalf of other Ministers

- 4.23 An Assembly statement may be made by a Minister on behalf of and with the approval of another Minister who has responsibility for the subject matter in question. Any such arrangement should be notified to the Business Office no later than 9.30 am on the day scheduled for the statement and to OFMDFM.

Note: This is a self explanatory new provision to cover previous inquiries as to the handling of Ministerial statements.

Question Time

- 4.24 Question Time provides an opportunity for the Assembly to hold Ministers to account for decisions and actions within their own area of responsibility. A balance needs to be struck between providing an appropriate response to the initial question and allowing sufficient time for supplementaries. Ministers should, therefore, normally provide a first reply not exceeding 100 words.
- 4.25 Where a response to a question requires considerable technical detail to be presented, it is appropriate for a Minister to state that he will write to the MLA with the details and place a copy of the letter in the Assembly library.
- 4.26 Where a further question or supplementary question relates to an earlier answer, the Minister should simply refer the questioner to the earlier answer. Where a Minister is unable to give the answer to a question, an undertaking to write to the Member concerned should be given. Where a question is put which comprises several distinct parts, a Minister may decide to deal with only one part.
- 4.27 Ministers may decide among themselves the order in which they answer questions during Question Time. However, any change from the list published in the rota for questions, will have to be agreed between the Ministers and notified to the Business Office and OFMDFM before noon on the Thursday before the relevant Question Time. This is to allow the agreed

order to be published on the Order Paper. Such an arrangement also allows Members who have questions listed on the Order Paper to know the approximate time when they need to be in the Chamber.

- 4.28 Unless the Business Committee has already signified its agreement no change to the day on which Ministers are scheduled to take questions can be permitted since this would involve changes to the dates for tabling questions. It would also have implications for the order and frequency with which Ministers were available to answer questions.

Note: These are new provisions designed to clarify the general principles surrounding Question Time as well as addressing certain specific issues.

Handling cross cutting issues in the Assembly

- 4.29 The handling of adjournment debates and no day named motions may give rise on occasions to issues which cut across the responsibilities of more than one Minister. If relevant Ministers wish to make a contribution, it will be for the Speaker to determine the procedures and timings for each Minister's participation. Ministers must make the Speaker aware of their intentions to speak.

Chamber Etiquette

- 4.30 Ministers should be aware of Assembly procedures relating to their participation as Ministers in Assembly business and of the different procedures in place when they participate in business as MLAs. When indicating to the Speaker their wish to address the Assembly, Ministers should make clear in which capacity they wish to speak.

SECTION 5: The North-south Ministerial Council and the British-Irish Council

Nominations to the North-South Ministerial Council and the British-Irish Council

- 5.1 In accordance with section 52(1) of the Northern Ireland Act 1998 (the Act), the First Minister and the deputy First Minister acting jointly must make such nominations of Ministers and junior Ministers (including alternative nominations where appropriate) as they consider necessary to ensure such cross-community participation in the North-South Ministerial Council and the British-Irish Council as is required by the Belfast Agreement. For each meeting, the First Minister and the deputy First Minister will normally nominate each Minister or junior Minister with executive responsibility in the areas to be considered at the meeting. If such a Minister is not nominated, an alternative nomination will be made. The First Minister and the deputy First Minister will also nominate such other Ministers or junior Ministers as they consider necessary to ensure such cross-community participation as is required by the Belfast Agreement. Nominations will be made in the format shown at Appendix A.

Advance notice of meetings of the North-South Ministerial Council and the British-Irish Council

- 5.2 In accordance with section 52(5) of the Act, the First Minister and the deputy First Minister acting jointly must, as far in advance of each meeting of either Council as is reasonably practicable, give to the Executive Committee and to the Assembly the following information in relation to a meeting of either Council:-
- (a) the date;
 - (b) the agenda;
 - (c) the names of Ministers nominated for the meeting.

Participation in the North-South Ministerial Council and the British-Irish Council

- 5.3 In accordance with section 52(2) of the Act, it is a Ministerial responsibility of Northern Ireland Ministers and junior Ministers to participate in meetings and activities of the North-South Ministerial Council and the British-Irish Council in accordance with nominations made jointly by the First and deputy First Ministers.
- 5.4 In accordance with section 52(3) of the Act, any Minister or junior Minister who has been nominated to participate in either Council must act in accordance with any decisions of the Assembly or the Executive Committee which are relevant to that participation.

- 5.5 In accordance with section 52(4) of the Act, a Minister may in writing authorise another Minister or a junior Minister who has been nominated to participate in either Council to enter into agreements or arrangements in respect of matters for which he or she is responsible.
- 5.6 Ministers must participate normally at the North-South Ministerial Council and the British-Irish Council. The First Minister and deputy First Minister, acting jointly, may nominate another Minister or junior Minister to either Council in the place of a Minister who has not participated normally.
- In the event that the First Minister and deputy First Minister do not nominate the Minister with functional responsibility on these grounds and, instead, nominate another Minister or junior Minister, the Minister with functional responsibility must normally authorise that other Minister or junior Minister to enter into agreements or arrangements in respect of matters for which he or she is responsible, in accordance with section 52(4) of the Act.
- 5.7 A Minister participating in either Council may take decisions within the scope of his or her defined authority (or any authorisation by the Minister responsible for the matter in question) and in accordance with any relevant decisions of the Assembly or the Executive Committee. Participation in the North/South Ministerial Council should be in accordance with the agreed Memorandum of Understanding on Procedures for that Council, attached at Appendix B. Participation in the British-Irish Council should be in accordance with the Memorandum on Procedural Guidance for that Council, attached at Appendix C.
- 5.8 In accordance with section 52(6) of the Act, a Minister or junior Minister who participates in a meeting of either Council must make a report to the Executive Committee and to the Assembly as soon as reasonably practicable after the meeting. The Report to the Assembly must be made orally unless standing orders authorise it to be made in writing.

Work of the North-South Ministerial Council

- 5.9 Ministers participating in the North-South Ministerial Council must engage in the work of the Council as specified in paragraph 5 of Strand Two of the Belfast Agreement:-
- (i) exchange information, discuss and consult with a view to co-operating on matters of mutual interest within the competence of the Assembly and the Oireachtas;
 - (ii) use best endeavours to reach agreement on the adoption of common policies, in areas where there is a mutual cross-border and all-island benefit, and which are within the competence of the Assembly and the Oireachtas, making determined efforts to overcome any disagreements;
 - (iii) take decisions by agreement on policies for implementation separately in each jurisdiction, in relevant meaningful areas within the competence of the Assembly and the Oireachtas;
 - (iv) take decisions by agreement on policies and action at an all-island and cross-border level to be implemented by the North-South implementation bodies.

- 5.10 As specified in paragraph 6 of Strand Two of the Belfast Agreement, a Minister participating in the NSMC should be in a position to take decisions at the NSMC within his or her defined authority.

Work of the British-Irish Council

- 5.11 Ministers participating in the British-Irish Council must engage in the work of the Council as specified in paragraph 5 of Strand Three of the Belfast Agreement
- (i) exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant Administrations;
 - (ii) make suitable arrangements for practical co-operation on agreed policies.

Redrafted by Officials

SECTION 6: The British-Irish Intergovernmental Conference

British-Irish Intergovernmental Conference

- 6.1 By agreement between the British and Irish Governments, a Standing British-Irish Intergovernmental Conference has been established that subsumed both the Anglo-Irish Intergovernmental Council and the Intergovernmental Conference established under the 1985 Agreement.
- 6.2 As provided for in Section 54 of the 1998 Act, where excepted or reserved matters relating to Northern Ireland are to be discussed at a meeting of the British-Irish Intergovernmental Conference, the First Minister and the Deputy First Minister acting jointly must ensure that there is such cross-community attendance by Ministers and junior Ministers at the meeting as is required by the Belfast Agreement.
- 6.3 Participation in the British Irish Intergovernmental Conference should be in accordance with the agreed Memorandum of Understanding on Supplementary Procedural Arrangements, attached at Appendix D.

Redrafted by Officials

SECTION 7: The Civic Forum

Civic Forum

- 7.1 In accordance with paragraph 34 of Strand One of the Belfast Agreement, the First Minister and the Deputy First Minister have established a Civic Forum to act as a consultative mechanism on social, economic and cultural issues. They have also agreed the various sectors represented on the consultative Civic Forum. In addition, the First Minister and Deputy First Minister nominated the Chair and six other members. The First Minister and Deputy First Minister by agreement provide administrative support for the Civic Forum. They have also established guidelines for the selection of representatives to it. Acting jointly, and with the approval of the Assembly, they have made arrangements for obtaining from the Forum its views on social, economic and cultural matters.
- 7.2 Northern Ireland Ministers and junior Ministers should respond positively, where possible and appropriate, to invitations from the Civic Forum to attend meetings, provide information or otherwise facilitate its work.
- 7.3 Ministers should also ensure that Departments automatically include the Civic Forum in all public consultation exercises.

Redrafted by Officials

SECTION 8: The Presentation of Policy

- 8.1 The conventions governing the work of the Executive Information Service are set out in a guidance note on the work of the Executive Information Service.

Publication of Consultation Papers

- 8.2 As a matter of courtesy, Ministers should inform Assembly members at the time of the launch of any significant consultation document.

Speeches, Press Releases and Broadcasting

- 8.3 The First Minister and Deputy First Minister have a right to speak on all issues which fall under the responsibility of the Executive. Other Ministers should normally comment only about affairs concerning their Departmental responsibility. If they wish to speak on the areas of responsibility of another Minister they should consult that Minister in advance.
- 8.4 Ministers should not make any public commitment to spend additional resources other than those agreed by the Executive.
- 8.5 Official facilities financed out of public funds can be used for Departmental publicity and advertising, but may not be used for the dissemination of material which is essentially party political. Ministers should use official machinery for distributing texts of Ministerial speeches and press releases only when they are related to Departmental business as distinct from Party policy. Speeches made in a party political context should be distributed through the Party. If there is any doubt Departmental press officers should seek advice from the Head of the Executive Information Service and their Permanent Secretary.
- 8.6 Ministers should not accept payment for speeches of an official nature or which directly draw on their responsibilities or experience as Ministers, either on their own or their department's account, or with a view to donating the fee to charity.

Press articles

- 8.7 Any Minister wishing to practice regular journalism must have the prior approval of the First Minister and Deputy First Minister. Any Minister wishing to write an article going beyond the strict confines of his or her departmental responsibility should have the prior approval of the First Minister and Deputy First Minister. In all cases where an article contains material which falls within the departmental responsibility of another Minister, that Minister must be consulted. The restrictions on the practice of journalism by Ministers above does not extend to writings of a literary, sporting, artistic, musical, historical, scientific, philosophical or fictional character which do not draw on their Ministerial experience.

- 8.8 Ministers are advised not to engage in controversy in the correspondence columns of the press. If serious errors or misstatements of fact which lead to false conclusions appear in the press, Ministers should seek advice from their Departmental press office on how, or if, they should respond.
- 8.9 Ministers may not, while in office, write and publish a book on their Ministerial experience. Former Ministers are required to submit their manuscript to the Secretary of the Executive and to conform to the principles set out in the Radcliffe Report of 1976 on Ministerial memoirs (Cmnd 6386).

Party and other publications

- 8.10 Ministers are sometimes asked to give interviews to historians or to other persons engaged in academic research or in market opinion surveys, or to fill in questionnaires at the request of such people or organisations. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as members of the Executive. Careful consideration should therefore be given to such invitations before they are accepted; in cases of doubt, the First Minister and Deputy First Minister should be consulted.
- 8.11 Civil servants carrying out their official functions should not appear in party publications or party political broadcasts.

Complaints

- 8.12 Ministers who wish to make a complaint against a journalist or a particular section of the media either to the Press Complaints Commission or to the Broadcasting Complaints Commission must have the authority of the First Minister and Deputy First Minister. The nature of the complaint and the case for referring it to the appropriate body should be set out in a letter to the Secretary of the Executive.

Redrafted by Officials

SECTION 9: Ministers' Visits

Introduction

- 9.1 It is appropriate that Ministers should consider accepting invitations to events at home and abroad, but it is important that all Ministerial visits are planned and co-ordinated with other relevant interests, including other Ministers, NIO and FCO.
- 9.2 This Section sets out the arrangements for Ministerial visits overseas and within the UK, for attending events that fall within the responsibility of another NI Minister and gives general guidance on travel and other expenses. Separate arrangements apply for Ministers travelling on official business for NSMC, BIC or European Union purposes.
- 9.3 In planning visits, whether at home or abroad, Ministers should take account of the need to be accountable to the Assembly in the normal way and of the requirement that meetings of the Executive take precedence over all other business.
- 9.4 Each Minister should ensure that a comprehensive and central record is maintained of all the information related to the authorisation, consultation and costs of all visits. This record should contain details of the numbers and costs of all delegations in support of the Minister whose travel has been at public expense, including visits to EU countries for the purpose of attending meetings of EU Councils. The record should be maintained in such a way that an up-to-date list of visits and costs of such visits can be made available by departments at short notice in the event of departmental Ministers being asked to account for travel undertaken.

Invitations to Events which fall within the Departmental responsibility of another Minister

- 9.5 Where a Minister receives an invitation to an event in the transferred field which is outside the specific responsibilities of his or her Department, the invitation should normally be declined and the organisers advised which Minister, by virtue of their departmental responsibility, would be more appropriate to attend the event. At that point the Private Office that received the original invitation should consider the issue closed. It is for the organisers to decide whether or not the invitation should be reissued.
- 9.6 In exceptional circumstances where a Minister wishes to accept such an invitation for personal reasons, he or she should write to the Minister with departmental responsibility providing details of the invitation and reasons for wanting to accept it. The agreement of the responsible Minister should be secured before a Minister accepts an invitation that falls outside his or her area of responsibility.

- 9.7 Where Ministers receive invitations to events in their capacity as Assembly Members and another Minister is in the lead and due to attend, the Minister with the constituency interest should inform the lead Minister in advance of the basis for his/her attendance. The First Minister and Deputy First Minister exercise functions which are not confined to the department of which they are jointly in charge. As joint chairs of the Executive they have a functional interest in the entirety of the administration, and its external relationships. It is appropriate therefore for the First Minister and Deputy First Minister to accept invitations which fall within the functional responsibilities of Northern Ireland and NIO Ministers. However, it is the responsibility of the First Minister and Deputy First Minister to inform relevant Ministers of any such visits.

Visits in UK

- 9.8 If a NI Minister contemplates accepting an invitation to an event in England, Scotland or Wales, as a representative of the devolved administration, the relevant Private Office should inform the appropriate UK Secretary of State, the First Minister in Scotland or the First Minister in Wales respectively, and the Members of Parliament for the constituencies to be included in the itinerary. It may also be courteous for such information to be passed to officials in DLD, NIO. They should also inform the Home Secretary of prospective visits to the Channel Islands and the Isle of Man. It is for the NI Minister to decide who should accompany him/her on a visit to another UK region. In addition, Ministers wishing to visit a Government establishment not sponsored by the department of which they are the Minister should advise the sponsor department in advance.
- 9.9 A Minister preparing to make a visit within the United Kingdom may wish to inform the MPs and, where relevant, the MLAs for the constituencies to be included within his or her itinerary. Ministers cannot, of course, invite MPs or MLAs to accompany them to functions organised by a third party, but adequate notice to the relevant MP and MLAs would enable them to ensure that they have an opportunity to request invitations from local organisers to functions of an official nature, should they wish to attend. The notification of the likely acceptance of such an invitation would also enable the constituency MP or MLA to make proposals to the NI Minister about the final itinerary of the visit.
- 9.10 The arrangements set out above are designed to be applied in circumstances which fall outside regular meetings in the UK such as formally established Whitehall Groups or JMCs or other taskforce meetings held in the UK in which the Minister has a formal departmental presence.

Procedural Handling of Overseas Visits by NI Ministers

General Guiding Principles

- 9.11 Where a NI Minister wishes to make a public visit to a country beyond the United Kingdom or the Republic of Ireland, the relevant Minister will wish to ensure that the visit does not clash with other NI or UK Ministerial visits and that there are no wider implications associated with the visit. To provide for this, the Private Office should notify the Secretary to the Executive of the proposed timing and details as far in advance as possible. The same procedures should be applied to ministerial visits undertaken in a private capacity.
- 9.12 The Secretary to the Executive will arrange, through Machinery of Government Division in OFMDFM, for the Foreign and Commonwealth Office to be consulted with regard to any implications such a visit may have in relation to wider UK international relations. This provision reflects the agreement entered into by the Executive with regard to the Memorandum of Understanding and specifically the supplementary concordat on international relations. At the same time as FCO is consulted about the proposed visit, Executive colleagues will be informed of the relevant details.
- 9.13 The Secretary to the Executive or Machinery of Government Division in OFMDFM, will, where required, seek any additional details regarding the proposed visit from the relevant Ministerial Private Office or senior Departmental officials before consulting the FCO, if necessary. Subsequent advice from the FCO recommending attendance will be communicated directly to the appropriate Ministerial Private Office, copied to the First Minister, Deputy First Minister and the Secretary to the Executive.
- 9.14 If there is a need to resolve points of divergence between Ministers and the advice provided by FCO, the Secretary to the Executive should be consulted. Depending on the specific circumstances, he may decide to refer the issue to the Executive for resolution.
- 9.15 Advice from the FCO will, at all times, be co-ordinated through its Parliamentary Relations and Devolution Division, Whitehall.

Visits to the United States

- 9.16 NI Ministerial visits to the United States should, where possible, be handled through the Northern Ireland Bureau in Washington. The Bureau, as an integral part of the devolved administration, has a key role to play in the development of relationships between NI and the US administration and can offer advice and guidance with regard to setting up arrangements on the ground. The Bureau also maintains links with the network of FCO Consular offices in the US and is therefore able to advise on any wider implications of a NI Ministerial visit.
- 9.17 The involvement of the Bureau does not, however, remove the need for the procedures in paragraph 9.11 to be followed.

Visits to EU Countries

- 9.18 The European Policy and Co-ordination Unit in OFMDFM has policy responsibility for handling advice to OFMDFM Ministers on visits to the EU and EU applicant countries. They also maintain a database on such visits by all other members of the Executive [as part of its commitment under MINECOR.]
- 9.19 In addition to FCO advice on EU visits, the devolved administration is committed to certain UK priorities in respect of contact with member states and applicant countries and is currently engaged in developing a strategy for the Executive's approach to Europe. In view of this, NI Ministers contemplating a visit to an EU or EU applicant country should initially contact Machinery of Government Division, OFMDFM, copied to the Secretary to the Executive. Machinery of Government Division will consult FCO and pass any relevant advice to the European Unit, OFMDFM who will provide any overall advice to the relevant Ministerial Private Office.

Visits to Brussels

- 9.20 There are specific arrangements with regard to NI Ministerial visits to Brussels, given the establishment of an office there to assist in the development of relationships between the devolved administration and the EU. To reflect this and in particular the existing close contact between the administration and UKREP on visits, details of all proposed NI Ministerial visits to Brussels should be logged by the appropriate Private Office with the European Unit, OFMDFM.
- 9.21 Visits to EU Institutions (such as the European Parliament, offices associated with the devolved administrations) are not regarded as those which need to be "notified" under the general principles outlined in paragraphs 9.11 and 9.12 respectively.

Travelling Expenses

- 9.22 Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which they are responsible. Ministers must ensure that the size of parties is kept as small as possible.
- 9.23 Where it is considered to be desirable in the public interest that a Minister be accompanied by his or her spouse at public expense this decision should be notified to the Secretary to the Executive.

Expenses on travel and hospitality

- 9.24 In using official cars and travelling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. When Ministers travel on official business, their travel and hospitality expenses should normally be borne by the departmental Vote. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved - see also Section 12 below.

Travelling expenses of spouses or partners

- 9.25 The expense of a Minister's spouse or partner when accompanying a Minister on official duties may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the Secretary to the Executive should be notified on each occasion.
- 9.26 For official visits within the United Kingdom, payment of these expenses is at the discretion of the Minister who should consult his or her Permanent Secretary. Each Minister must keep a record of all such expenses.

Travelling expenses of special advisers

- 9.27 If the Minister considers it necessary, a Special Adviser, may accompany a Minister on a visit at public expense.

Offers of Free Travel

- 9.28 Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organisations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organisation concerned should be reimbursed from the public purse to the value of a scheduled business class ticket. In any cases of doubt, the First Minister and Deputy First Minister should be consulted.

Ministers recalled from outside Northern Ireland

- 9.29 If a Minister is outside Northern Ireland on a visit which, if it is overseas, has been notified according to paragraph 9.11 and is called home for Ministerial or Assembly reasons - including to vote - the cost of the extra journey back and forth may be met by public funds.

Air Miles

- 9.30 Air Miles and other benefits earned through travel paid for from public funds, other than where they are de minimis (for example, access to special departure lounges or booking arrangements that are part of membership of regular flier clubs), should be used only for official purposes or else foregone. However, if it is impracticable to use the benefits for Government travel, there is no objection to Ministers donating them to charity if this is permissible under the terms of the airline's scheme and the charity is one chosen by the airline.

Invitations of a party political nature

- 9.31 Occasionally invitations are received in Private Offices that may seek the presence of the NI Minister in addressing a function or providing a contribution to debate that may not be linked to departmental responsibilities. Clearly these will require careful handling, particularly in determining the underlying nature and purpose of the invitation, as this may not always be clear. Should the Private Office find, following further contact with the event organisers, that it is their intention that the Minister is to be invited to speak in an official capacity, the invitation should be processed as outlined above.
- 9.32 However, there may be occasions when the invitation is addressed to the Minister at his official address but the organiser is seeking attendance primarily on the basis of the Minister being a representative of a political party. Where this is clear or can be clearly established following receipt, the invitation should be passed to the Minister's Special Adviser to process through the appropriate party office. Private Office involvement should be limited to providing an indication of any diary commitments the Minister may have of an official nature. If the invitation directly indicates or in some way suggests that other NI Ministers have also been invited to the event, either in an official or party capacity, Machinery of Government Division should be notified. This will permit advance notification to Ministers that other members of the Executive may also be attending the event and, where necessary, appropriate advice may issue from OFMDFM in relation to any co-ordinated handling aspects.

Decorations from other countries

- 9.33 Although the issue rarely arises, Ministers should not, while holding office, accept decorations from other countries.

SECTION 10: Ministers' Constituency and Party Interests

- 10.1 It is wrong in principle for Ministers to use for party or constituency work facilities provided through public funds to enable them to carry out their official duties. This point of principle is reflected in the entitlement of Ministers to an Assembly salary in recognition of the time spent in attending to the interests of their constituents, and to the reimbursement of their secretarial expenses when attending to constituency business. Ministers should thus have their constituency work done at their own expense, as they would if they were private Assembly Members. Government property should not generally be used for constituency work or party activities. Where Ministers host Party events in Government property, it should be at their own or Party expense with no cost falling to the public purse.
- 10.2 Where Ministers have to take decisions within their departments which might have an impact on their own constituencies, they should, of course, take particular care to avoid any possible conflict of interest.

The Assembly Ombudsman for Northern Ireland

- 10.3 Ministers who are asked by members of the public to submit complaints to the Ombudsman should, where possible, act no differently from other Assembly Members. Ministers should accordingly consider requests on their merits in deciding whether to refer complaints to the Ombudsman, to take them up with the Minister of the department concerned, to refer the complaint to another Assembly Member (where the complainant is not a constituent of the Minister) or to decline to take action. Before reference of a complaint to the Ombudsman the Minister should inform the Minister of the department concerned.
- 10.4 Where a complaint from a constituent is against the Minister's own department the Minister will generally wish to investigate it personally unless he or she has already been directly involved in the case. Where a Minister has been so involved, the Ombudsman should be asked to investigate if the complaint is within his jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a complaint to the Ombudsman straight away.

Deputations

- 10.5 Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview provided they make clear that they are acting as their constituents' representative and not as a Minister. Particular problems arise over views expressed on planning applications and certain other cases involving exercise of discretion by Ministers (eg on school or hospital closures, roads or landfill site inquiries) in which representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity. Ministers are advised to take particular care in such cases to represent the views of their constituents rather than express a view themselves; but when they find it unavoidable to express a view they should ensure that their comments are made available to the other parties, avoid criticism of decisions taken by the Executive Committee, confine

themselves to comments which could reasonably be made by those who are not Ministers, and make clear that the views they are putting forward are ones expressed in their capacity as constituency representatives. Ministers should take account of any potential implications which their comments could have on their own departmental responsibilities.

SECTION 11: Ministers' Business or Private Interests

- 11.1. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests (financial or otherwise). They should normally make their own decisions on how best to proceed. Where there is a doubt it will almost always be better to relinquish or dispose of the interest but Ministers should submit any such case to the First Minister and deputy First Minister, through the Secretary to the Executive Committee, for their advice.
- 11.2. Where a Minister wishes to retain a private interest, it is the rule that he or she should signal that interest by registering it in the Assembly's Register of Interests. If business related to a Minister's private interests is to be discussed with colleagues, that Minister must declare the interest, and remain entirely detached from the consideration of that business. Similar steps may be necessary should a matter under consideration in the department relate in some way to a Minister's previous private interests such that there is or may be thought to be a conflict of interest.

Public Appointments

- 11.3. When he or she takes up office, a Minister should normally give up any other public appointment, including membership of District Councils. Where it is proposed that such an appointment should be retained, the First Minister and deputy First Minister must be consulted through the Secretary to the Executive Committee.

Non-public bodies

- 11.4. Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with the Northern Ireland Assembly's Programme of Government and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of, or otherwise offer support to, pressure groups, or organisations dependent on the Assembly for funding either in whole or in part. There is normally no objection to a Minister associating himself or herself with a charity (subject to the points above) but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the First Minister and deputy First Minister should be consulted, through the Secretary to the Executive Committee, before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters etc.

Trade unions

- 11.5. There is no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any

undue influence; they should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (a nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable).

Financial interests

- 11.6 Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. Such a conflict, or the perception of it, can arise:
- a. from exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
 - b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.
- 11.7 Apart from the risk to the Minister's reputation, two legal obligations must be borne in mind:
- a. any exercise or non-exercise by a Minister of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;
 - b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.
- 11.8 These risks attach not only to the Minister's personal interests, but to those of a spouse or partner, to those of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. They relate to all kinds of financial interests, including not only all kinds of financial instrument but also such interests as partnerships, un-incorporated businesses, real estate etc.
- 11.9 It is not intended to inhibit the holding of Ministerial office by individuals with wide experience, whether of industry, a profession or some other walk of life. In order to avoid the danger of an actual or perceived conflict of interest, Ministers should be guided in relation to their financial interests by the general principle that they should either dispose of any financial interest giving rise to the actual or perceived conflict or take alternative steps to prevent it.
- 11.10 If for any reason the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary of the department and, where necessary, of external advisers, what alternative measures would sufficiently remove the risk of conflict. These fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

- 11.11 As regards steps other than disposal which might be taken in relation to interests, the Minister might consider placing all investments (including derivatives) into a bare trust, ie one in which the Minister is not informed of changes in investments or of the state of the portfolio, but is still fully entitled to both the capital and income generated. This course would normally be useful only in the case of a widely-spread portfolio of interests. Alternatively a power of attorney may be suitable. However, this is a complex area and the Minister should seek professional advice because, among other things, there may be tax consequences in establishing this kind of arrangement. Ministers should remember that Part VII of the Companies (NI) Order 1986 allows companies to require information as to the true owners of its shares, which could result in the fact of a Minister's interest becoming public knowledge despite the existence of a trust. It should also be remembered that even with a trust the Minister could be assumed to know the contents of the portfolio for at least a period after its creation, so the protection a trust offers against conflict of interest is not complete. Another step which (perhaps in conjunction with other steps) might provide a degree of protection would be for the Minister to accept an obligation to refrain from dealing in the relevant shareholdings etc for a period.
- 11.12 Unless adequate steps can be taken in relation to the financial interests themselves, the Minister must seek to avoid involvement in relevant decisions. The extent to which this can be done depends on the specific powers under which the Minister would be required to take decisions.
- 11.13 In some cases, it may not be possible to avoid an actual or perceived conflict of interest, for example because of the nature or size of the investment or the nature of the department's work. In such a case, or in any case where, after taking legal advice and the advice of the Permanent Secretary, the Minister is in doubt whether adequate steps have been or can be taken, he or she should consult the First Minister and Deputy First Minister, through the Secretary to the Executive Committee. In such a case it may be necessary for the Minister to cease to hold the office in question.
- 11.14 In addition to this general guidance:
- a. Partnerships.

Ministers who are partners, whether in professional firms, for example solicitors, accountants etc, or in other businesses, should, on taking up office, cease to practise or to play any part in the day-to-day management of the firm's affairs. They are not required, however, to dissolve their partnership or to allow, for example, their annual practising certificate to lapse. Beyond this it is not possible to lay down precise rules applicable to every case; but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions. Ministers in doubt about their personal position should consult the First Minister or the deputy First Minister, through the Secretary to the Executive Committee.
 - b. Directorships.

Ministers must resign any directorships they hold when they take up office. This applies whether the directorship is in a public or private company and whether it carries remuneration or is honorary. The only exception to this rule is that directorships in private companies

established in connection with private family estates or in a company formed for the management of flats of which the Minister is a tenant may be retained subject to the condition that if at any time the Minister feels that conflict is likely to arise between this private interest and public duty, he or she should resign the position. Directorships or offices held in connection with charitable undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Government.

- 11.15 In all cases concerning financial interests and conflict of interest Ministers may wish to consult financial advisers as to the implication for their (or their family's) affairs of any action which they are considering to avoid any actual or potential conflict of interest. They should also consult the Permanent Secretary in charge of their department, who as Accounting Officer, has a personal responsibility for financial propriety and regularity. It is, in the end, for Ministers to judge (subject to the decision of the First and deputy First Ministers in cases of doubt) what action they need to take; but they should record, in a minute to the Permanent Secretary, whether or not they consider any action necessary, and the nature of any such action taken then or subsequently to avoid actual or perceived conflict of interest.

Membership of Lloyd's

- 11.16 Any Minister who is a member of Lloyd's should abide by the guidance set out in Appendix E to this document.

Nominations for International Awards

- 11.17 From time to time, the personal support of Ministers may be requested for nominations being made for international prizes and awards, eg, the annual Nobel prizes. Ministers should not normally sponsor individual nominations for any awards, to avoid the perception that the NI Administration was itself thereby giving sponsorship.

SECTION 12: Acceptance of Gifts Hospitality and Services

- 12.1 Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation. The same principle applies if gifts etc. are offered to a member of their family.
- 12.2 This is primarily a matter for decision by Ministers. But any Minister in doubt or difficulty over this should seek the guidance of the Secretary to the Executive Committee. The rules applying to the acceptance of gifts from donors with whom a Minister has official dealings are as follows:
- a. Each Minister's Private Office should keep a Register of Gifts and Hospitality recording both offers made and acceptances/ refusals. Receipt of gifts should, in all cases, be reported to the Permanent Secretary;
 - b. Gifts of small value (currently this should be put at up to £140) may be retained by the recipient;
 - c. Gifts of a higher value should be handed over to the department for disposal, except that:
 - (i) The recipient may purchase the gift at its cash value (abated by £140);
 - (ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained;
 - (iii) If the department judges that it would be of interest, the gift may be displayed or used in the department;
 - (iv) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the department for this purpose for a period of up to five years;
 - d. While rules a - c make it clear that no Minister or member of their family should accept a gift from anyone which would, or might appear to, place him or her under an obligation there may be difficulty in refusing a gift from another government (or governmental organisation) without the risk of apparent discourtesy. On the other hand the acceptance of a gift or the knowledge that one will be offered may in some countries and in some circumstances entail the offer of a gift in exchange. As a general rule Ministers should not offer gifts or initiate an exchange. In deciding whether to accept gifts from or offer gifts to members of governments (or governmental organisations) Ministers should wherever possible consult their Permanent Secretaries who will be able to advise them. Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise on any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be liable for any tax or duty it may attract;
 - e. In the event of a Minister accepting hospitality on a scale or from a source which might reasonably be thought likely to influence Ministerial action, it should be declared to the Northern Ireland Assembly Register of Members' Interests.

SECTION 13: Outgoing Ministers: Acceptance of Outside Appointments

- 13.1 On leaving office Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations or appointments in the gift of the members of the Executive Committee. Although it is in the public interest that former Ministers should be able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety about a particular appointment. If therefore the Advisory Committee considers that an appointment could lead to public concern that the statements and decisions of the Minister, when a member of the Executive Committee, have been influenced by the hope or expectation of future employment with the firm or organisation concerned, or that an employer could make improper use of official information to which a former Minister has had access, it may recommend a delay of up to two years before the appointment is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer.

APPENDIX A

NOMINATION OF MINISTERS TO ATTEND THE NORTH SOUTH MINISTERIAL COUNCIL

In accordance with section 52(1) of the Northern Ireland Act 1998, the following Ministers are hereby nominated to attend the meeting of the North South Ministerial Council on [insert date]:-

[insert names of Ministers]

The agenda for the meeting is attached.

In fulfilment of the duty placed on us by section 52(5) of the Northern Ireland Act 1998, this nomination is being copied to the Assembly Presiding Officer and to the Secretary and members of the Executive Committee.

Signed: _____ First Minister

_____ Deputy First Minister

Date: _____

APPENDIX A

NOMINATION OF MINISTERS TO ATTEND THE BRITISH-IRISH COUNCIL

In accordance with section 52(1) of the Northern Ireland Act 1998, the following Ministers are hereby nominated to attend the meeting of the British-Irish Council on [insert date]:-

[insert names of Ministers]

The agenda for the meeting is attached.

In fulfilment of the duty placed on us by section 52(5) of the Northern Ireland Act 1998, this nomination is being copied to the Assembly Presiding Officer and to the Secretary and members of the Executive Committee.

Signed: _____ First Minister

_____ Deputy First Minister

Date: _____

APPENDIX B

North/South Ministerial Council Memorandum of Understanding on Procedure

1. Introduction

- 1.1 This Memorandum is made between both sides of the Council and sets out supplementary procedural arrangements relating to the proceedings and operation of the Council.
- 1.2 The Memorandum is an informal understanding and is not legally binding. Nothing in it overrides the Multi Party Agreement reached in Belfast on 10 April 1998. Subject to that understanding, both sides will act in accordance with the procedures set out in the Memorandum.
- 1.3 For clarity and ease of reference, the Memorandum reproduces (in bold type) relevant paragraphs of the Strand Two section of the Agreement relating to the Council, where appropriate.

2. Purpose of the Council and Membership

Paragraph 1 (extract): [A] North/South Ministerial Council to be established to bring together those with executive responsibilities in Northern Ireland and the Irish Government, to develop consultation, co-operation and action within the island of Ireland.

Purpose

- 2.1 The purpose of the Council will be to develop consultation, co-operation and action within the island of Ireland, including through implementation on an all-island and cross-border basis, on matters of mutual interest within the competence of both sides.

Membership

- 2.2 Membership of the Council will comprise representatives of the Northern Ireland Executive and the Irish Government. The Northern Ireland Executive shall be represented in the Council by the First Minister and Deputy First Minister, members of the Executive Committee and Junior Ministers in the Northern Ireland Assembly, and the Irish Government by the Taoiseach, Ministers of the Irish Government and Ministers of State.

3. Frequency and Format of Meetings

Paragraph 3: The Council to meet in different formats:

- (i) in plenary format twice a year, with Northern Ireland representation led by the First Minister and Deputy First Minister and the Irish Government led by the Taoiseach;**
- (ii) in specific sectoral formats on a regular and frequent basis with each side represented by the appropriate Minister;**
- (iii) in an appropriate format to consider institutional or cross-sectoral matters (including in relation to the EU) and to resolve disagreement.**

Plenary

- 3.1 In the Council's meetings in plenary format, those leading on each side will be accompanied by relevant Ministers concerned with North/South co-operation on matters within the competence of both administrations.
- 3.2 At each plenary meeting, the Council will review and as necessary agree a provisional schedule of plenary meetings, including venues, on the basis of one meeting being held in each six-month period. Additional plenary meetings may be held by agreement.
- 3.3 At each plenary meeting the Council will, in conjunction with the determination of an overall work programme for the Council (see paragraph 6.1 below) and with reference to the demarcation of functions within the two administrations, review and as necessary agree upon a list of specific sectoral formats in which meetings of the Council are to be held.

Sectoral

- 3.4 Council meetings in each of these specific sectoral formats will be held on a regular and frequent basis. It is envisaged that this will be at least once each quarter, but it will be subject to review after 12 months.
- 3.5 At each meeting in each sectoral format the council will agree a provisional schedule of meetings in that format, to be reviewed and updated at successive sectoral meetings. Additional meetings may be held by agreement.

Cross-Sectoral

- 3.6 The Council may from time to time decide as appropriate, in the light of its overall work programme, to arrange meetings on cross-sectoral issues involving a number of Ministers on at least one side. Meetings in these formats will occur as frequently as may be deemed necessary.

Institutional/Procedural Matters

- 3.7 The Council will meet by agreement as necessary to consider institutional or procedural matters and to resolve disagreement on these matters between the two sides, in particular

where they affect more than one sector or may have implications for the workings of the Council as a whole.

- 3.8 The Irish Government will be represented at such meetings by the Minister for Foreign Affairs and the Northern Ireland Executive by the First Minister and Deputy First Minister or their nominees.

Venue/Chair

- 3.9 Meetings of the Council in all formats will alternate between North and South, except where it may otherwise exceptionally be agreed, with the venue to be confirmed through the Secretariat as early as possible in advance.
- 3.10 Meetings of the Council will in each case be chaired by a representative or representatives of the host administration.

Support/Servicing

- 3.11 Ministers may be accompanied at Council meetings by their officials and professional/special advisers.
- 3.12 In respect of each format of the Council, there will be close and structured liaison between the Secretariat and the officials of relevant Departments, North and South, with a view to the efficient preparation of meetings of the Council and the discharging of such other tasks as may be assigned.

4. Decision-making

Paragraph 2 (extract): All Council decisions to be by agreement between the two sides.

- 4.1 Any decision by the Council will require the express agreement of the two sides.
- 4.2 Representatives of the two sides will take decisions within the defined authority of those attending, through arrangements in place for co-ordination of executive functions within each jurisdiction.
- 4.3 All decisions will be minuted in an agreed record. A communiqué, reflecting any decisions reached, may be issued after each meeting
- 4.4 Unless otherwise agreed between them in the Council, each side shall be separately responsible for taking whatever action may be necessary to ensure the implementation in its own jurisdiction of a decision of the Council.

5. Agendas

Paragraph 4: Agendas for all meetings to be settled by prior agreement between the two sides, but it will be open to either to propose any matter for consideration or action.

- 5.1 Agendas for each meeting will be agreed in advance through the Secretariat.

5.2 It will be open to either side to propose any matter for consideration or action at any time, and each shall, as a minimum, permit the other side to state its view or outline its proposals in regard to any matter of concern to it.

5.3 Notwithstanding paragraph 5.2 above, agendas will primarily be prepared in the light of an agreed Council work programme (see immediately below).

6. Work Programme

Paragraph 5: The Council:

- (i) to exchange information, discuss and consult with a view to co-operating on matters of mutual interest within the competence of both Administrations, North and South;**
- (ii) to use best endeavours to reach agreement on the adoption of common policies, in areas where there is a mutual cross-border and all-island benefit, and which are within the competence of both Administrations, North and South, making determined efforts to overcome any disagreements;**
- (iii) to take decisions by agreement on policies for implementation separately in each jurisdiction, in relevant meaningful areas within the competence of both Administrations, North and South.**

6.1 The Council in its plenary format will take an overview of co-operation and set its overall parameters. Within that context, the Council at its meetings in each sectoral format will review and agree a work programme for that format, covering matters of mutual interest within the competence of both administrations.

6.2 Each side in the Council will, as far as possible, keep the other side informed of significant developments in its jurisdiction in regard to matters relevant to the work of the Council.

7. Funding

Paragraph 15 (extract): Funding to be provided by the two Administrations on the basis that the Council constitute[s] a necessary public function.

7.1 The costs of meetings of the Council will be borne by the host administration, with travel and subsistence costs for Ministers and officials being borne by their administrations.

7.2 Staff costs arising from the allocation of officials to the Secretariat will be met by their parent administrations.

7.3 All other costs associated with the Secretariat or the Council will be divided equally between the two administrations.

7.4 The Council will, meeting in its dedicated institutional format, consider and agree, in advance of each financial year, an overall financial allocation for such other costs.

8. **Secretariat**

Paragraph 16: The Council to be supported by a standing joint Secretariat, staffed by members of the Northern Ireland Civil Service and the Irish Civil Service.

- 8.1 The Standing Joint Secretariat will be headed by Joint Secretaries, one appointed by each administration.
- 8.2 Each side will also nominate a deputy Joint Secretary and such other senior administrative and clerical support staff as necessary to carry out the Secretariat's functions, as may be agreed by both sides.
- 8.3 Officials from the two sides of the Secretariat will work alongside one another in shared office accommodation. The Joint Secretariat will be located in Armagh.
- 8.4 The functions of the Secretariat will include:
- arranging the schedule of Council meeting in different formats;
 - securing prior political/Ministerial agreement to agendas for meetings of the Council;
 - preparing or commissioning papers for meetings of the Council, including in relation to its work programme;
 - drafting communiqués and records of decisions of the Council;
 - communicating decisions of the Council and monitoring their implementation;
 - drafting an annual report on the proceedings of the Council;
 - acting as a channel of communication with Implementation Bodies;
 - liaising, where appropriate through the designated Department or Office in either jurisdiction, with the Secretariat of the British-Irish Intergovernmental Conference, with the Secretariat of the British-Irish Council, and with the North/South joint parliamentary forum and independent consultative forum when established;
 - carrying out such other tasks as the Council may direct.
- 8.5 Each side will provide all necessary information to the Secretariat and to implementation bodies. All information supplied to the Secretariat will be treated as confidential unless otherwise stated or covered by any Code of Practice on access to information approved by the Council.

9. **EU Matters**

Paragraph 17: The Council to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework. Arrangements to be made to ensure that the views of the Council are taken into account and represented appropriately at relevant EU meetings.

- 9.1 The Council's work programme and the agendas of its meetings will take due account of the European Union dimension of relevant matters.

- 9.2 The views of the Council on any such matter will be conveyed by the Secretariat to the British Government, with a request that it take full account of these views in formulating its own policy and reflect them, as far as possible, in the stance it takes at EU meetings. The Irish Government will reflect the views of the Council in its stance at all meetings.

10. **Dispute Resolution**

Paragraph 3 (iii) (extract): The Council to meet in an appropriate format to resolve disagreement.

Paragraph 14: Disagreements within the Council to be addressed in the format described at paragraph 3(iii) above or in the plenary format. By agreement between the two sides, experts could be appointed to consider a particular matter and report.

- 10.1 The Council will meet by agreement as necessary to resolve disagreements between the two sides, in particular where issues affect more than one sector or may have implications for the workings of the Council as a whole.
- 10.2 The Irish Government will be represented at such meetings by the Minister for Foreign Affairs, and the Northern Ireland Executive by the First Minister and Deputy First Minister or their nominees.

11. **Amendment**

- 11.1 Amendments to this Memorandum may be proposed at any time by either side and will take immediate effect by mutual agreement unless otherwise specified.

12. **Review**

- 12.1 Any aspect of the work of the Council may be reviewed at any time by agreement between the two sides. The Council will contribute as appropriate to any relevant review under the Agreement.

APPENDIX C

British-Irish Council Memorandum on Procedural Guidance

The Memorandum is an informal understanding and does not constitute a legally binding agreement. Nothing in it overrides the Multi-Party Agreement reached at Belfast on 10 April 1998 (“the Multi-Party Agreement”). Subject to that understanding, members are invited to act in accordance with the arrangements set out in the Memorandum.

Provisions of the Multi-Party Agreement and relevant supplementary arrangements

1. **A British-Irish Council (BIC) will be established under a new British-Irish Agreement to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands.**

The BIC is established by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the British-Irish Council done at Dublin on 8 March 1999.

2. **Membership of the BIC will comprise representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales, when established, and, if appropriate, elsewhere in the United Kingdom, together with representatives of the Isle of Man and the Channel Islands.**

(a) The following participating administrations will constitute the membership of the BIC:

- the Irish Government;
- the British Government;
- the Northern Ireland Executive Committee;
- the Scottish Executive;
- the Cabinet of the National Assembly for Wales;
- the Government of the Isle of Man;
- the Bailiwick of Guernsey;
- the Bailiwick of Jersey;

together with such other devolved institutions (but not local government bodies) as may be established at a future date in the regions of England.

- (b) Any administration may decide not to participate in a BIC meeting. The absence of representatives of a particular administration will not invalidate the proceedings.

3. **The BIC will meet in different formats: at summit level, twice per year; in specific sectoral format on a regular basis, with each side represented by the appropriate Minister; in an appropriate format to consider cross-sectoral matters.**
- (a) There will normally be two summit-level meetings each year. Each participating administration will normally be represented by the head(s) of that administration (the Prime Minister, the Taoiseach, the Northern Ireland First Minister and Deputy First Minister, the Scottish First Minister, the Welsh First Secretary and, in the Islands, the appropriate authorities). In the event of inability to attend, a substitute may attend. The heads of the administrations will be accompanied by such other members of their administrations as they deem appropriate.
 - (b) In the period between summit-level meetings, sectoral or cross-sectoral meetings will be convened as required to pursue the BIC's approved work programme (see paragraph 5 below). Each member will normally be represented by the responsible Minister or Ministers (or their equivalent) appropriate to the issue under discussion, together with such other delegation members as have been nominated.
 - (c) The BIC in any format may constitute working groups of officials to prepare its business and to carry out tasks remitted to them.
 - (d) The BIC will, at its first summit-level meeting or as soon as possible thereafter, establish a schedule for the location of future summit-level meetings. This schedule will be updated or revised as necessary from time to time. Equivalent schedules may also be drawn up in each sectoral and cross-sectoral format. While there is no requirement for a uniform schedule of locations to apply across all formats, members will endeavour to achieve the maximum possible degree of coordination between them. There will be no requirement on any member to host meetings. The same member may be designated to act as host of successive meetings.
 - (e) Save where otherwise decided by the members, meetings of the BIC, in all formats, will normally be chaired by the host member.
 - (f) The member designated as chair of any meeting of the BIC (hereafter the Chairing Member - CM) will, in consultation with the BIC secretariat, prepare for circulation to other members a draft agenda for that meeting, and will take full account of their views in preparing a definitive agenda. Any member may propose any matter for discussion in the appropriate format.
 - (g) The CM will work closely with the BIC secretariat in coordinating the preparation of reports for meetings of the BIC and its working groups, and in the other work of the secretariat in supporting the Council.

4. **Representatives of members will operate in accordance with whatever procedures for democratic authority and accountability are in force in their respective elected institutions.**
5. **The BIC will exchange information, discuss, consult and use best endeavours to reach agreement on cooperation on matters of mutual interest within the competence of the relevant Administrations. Suitable issues for early discussion in the BIC could include transport links, agricultural issues, environmental issues, cultural issues, health issues, education issues and approaches to EU issues. Suitable arrangements to be made for practical cooperation on agreed policies.**

A work programme will be adopted at the first summit-level meeting of the BIC or as soon as possible thereafter, and will be reviewed and amended as required at each successive summit-level meeting. More detailed work programmes relating to individual topics may be drawn up in the appropriate sectoral or cross-sectoral format.

- 6 & 7. **It will be open to the BIC to agree common policies or common actions. Individual members may opt not to participate in such common policies and common action.**

The BIC will normally operate by consensus. In relation to decisions on common policies or common actions, including their means of implementation, it will operate by agreement of all members participating in such policies or actions.

Members opting not to participate in common policies or common actions will not thereafter be involved in or covered by any decisions in relation to them.

8. **The members of the BIC, on a basis to be agreed between them, will provide such financial support as it may require.**

Save where otherwise decided by the members, the cost of providing meeting facilities and associated expenses in respect of any meeting of the BIC or of an official working group will be met by the host member. Each member will be responsible for the travel and subsistence costs of its own representatives.

9. **A secretariat for the BIC will be provided by the British and Irish Governments in coordination with officials of each of the other members.**

- (a) The BIC Secretariat will comprise British and Irish officials, based in London and Dublin respectively, in coordination with officials of each of the other members.
- (b) The Secretariat will assist the CM in preparing agendas for BIC meetings, and in coordinating the preparation of reports to meetings of the BIC. It will draw up the minutes of meetings. It will also compile the annual report referred to below (para. 12).

- (c) Overall, the Secretariat will have particular regard
 - i. to the guidance of the CM in its work, and
 - ii. to the interests and individual autonomy of each member.
- (d) The expenses of the Secretariat and other administrative support for the BIC will be met by the British and Irish Governments on a basis to be decided by them.

10. **In addition to the structures provided for under this agreement, it will be open to two or more members to develop bilateral or multilateral arrangements between them. Such arrangements could include, subject to the agreement of the members concerned, mechanisms to enable consultation, cooperation and joint decision making on matters of mutual interest; and mechanisms to implement any joint decisions they may reach. These arrangements will not require the prior approval of the BIC as a whole and will operate independently of it.**

Except with the approval of the British and Irish Governments, such bilateral or multilateral arrangements will not normally be supported by the Secretariat. However, the development of such arrangements, and progress made in work carried out under them, may with participants' approval be reported for information to the BIC as a whole.

11. **The elected institutions of the members will be encouraged to develop interparliamentary links, perhaps building on the British-Irish Interparliamentary Body.**

The BIC, at an early summit-level meeting, will consider how it might address this issue in conjunction with the elected institutions involved and with the BIIPB.

12. **The full membership of the BIC will keep under review the workings of the Council, including a formal published review at an appropriate time after the Agreement comes into effect, and will contribute as appropriate to any review of the overall political agreement arising from the multi-party negotiations.**

The BIC will publish an annual report on its operations, to be compiled by its Secretariat and approved by the members. The question of when it might be appropriate to prepare a formal published review of the BIC's workings will be kept under consideration.

British-Irish Intergovernmental Conference

Memorandum of Understanding on Supplementary Procedural Arrangements

1. Introduction

- 1.1 This Memorandum is made between the British and Irish Governments and constitutes a shared understanding regarding supplementary procedural arrangements relating to the operation of the British-Irish Intergovernmental Conference.
- 1.2 The Memorandum is an informal understanding and does not constitute a legally binding agreement. Nothing in it overrides the Multi-Party Agreement; nor does it have a bearing on those provisions of that Agreement concerning internal arrangements (constitutional, legislative or otherwise), in either jurisdiction, relating to democratic authority, accountability and the discharge and co-ordination of executive functions. Subject to that understanding, both sides will act in accordance with the procedures set out in the Memorandum.

2. Purpose of the Conference and Membership

- 2.1 The purpose and membership of the British-Irish Intergovernmental Conference will be as set out in the Multi-Party Agreement. It will remain open to both Governments to conduct bilateral business outside the Conference.

3. Meetings of the Conference

- 3.1 The two Governments will decide on an initial schedule of meetings of the Conference including regular and frequent meetings relating to non-devolved Northern Ireland matters. Additional meetings of the Conference may be convened at the request of either Government.
- 3.2 The Conference will normally meet at Summit level at least twice a year.
- 3.3 The Conference may remit to be considered by appropriate Ministers or officials, including the Secretariat, any matter coming before it.
- 3.4 The Conference may convene at any location within the United Kingdom or Ireland as jointly determined by the two Governments.

- 3.5 The agenda for each Conference meeting will be jointly decided in advance by the two Governments through the Secretariat.

4. Northern Ireland Administration

- 4.1 Where non-devolved matters relating to Northern Ireland are to be discussed at a meeting of the Conference, the Northern Ireland First Minister and the Northern Ireland Deputy First Minister acting jointly will ensure that there is relevant cross-community attendance at the meeting by Northern Ireland Ministers and junior Ministers ('Northern Ireland administration representatives'). The failure to attend or non-participation of Northern Ireland administration representatives will not, however, prevent the holding of a meeting of the Conference or otherwise affect its proceedings.
- 4.2 In accordance with the Multi-Party Agreement, the Conference will keep under review the workings of the British-Irish Agreement and the machinery and institutions established under it, including a formal published review three years after the Agreement comes into effect. Northern Ireland administration representatives will be invited to express views to the Conference in this context.
- 4.3 The Joint Secretariat will normally notify the First and Deputy First Minister no less than ten working days in advance of any Conference meetings and circulate an agenda no less than five working days in advance. The First Minister, the Deputy First Minister, and other members of the Northern Ireland Executive may make proposals concerning the agenda. However, it will be for the two Governments jointly to determine the content, order and format of Conference agenda.
- 4.4 Meetings of the Conference will normally begin with a bilateral session between the appropriate Ministers of the two Governments and their officials and advisers. When security-related matters are under discussion, such meetings may include police and security advisers and may be in restricted format. Where appropriate, the two Governments will subsequently give the Northern Ireland administration representatives, at the outset of the plenary sessions, a short oral report on discussions in the bilateral session.
- 4.5 Northern Ireland administration representatives may participate in discussion of all issues considered in the sessions which they attend. Officials of and advisers to Northern Ireland administration representatives may also attend.

5. Statements of the Conference

- 5.1 Any statements issued at the close of Conference meetings will be jointly decided by the two Governments. The two Governments will, where appropriate, take account of the views of the Northern Ireland administration representatives.

6. Secretariat and Support

- 6.1 The standing Joint Secretariat will be constituted and will, under the Multi-Party Agreement, operate in accordance with arrangements to be determined from time to time by the two Governments.
- 6.2 The Secretariat will provide support for the Conference, as appropriate, across its full remit to enable the Conference to carry out its functions. It may liaise as necessary with officials employed by or seconded to, or acting as support for the North-South Ministerial Council, the British-Irish Council, the Implementation Bodies, those of any other bilateral arrangements between the two Governments concerning matters of particular relevance to Northern Ireland as well as with the relevant Departments of the British and Irish Governments.
- 6.3 The Secretariat will be based in Northern Ireland. The two Governments will also designate officials in London and Dublin to support the work of the Secretariat, co-ordinate arrangements for Summit level meetings of the Conference and promote bilateral co-operation at all levels on matters of mutual interest.

7. Funding

- 7.1 The costs of each Conference meeting will be borne by the host Government with the travel and associated costs of Ministers, advisers and officials being borne by their respective Governments. The exception to this latter provision is the associated costs of Ministers, advisors and officials of the Northern Ireland Administration. These should be met directly from the funds of the Northern Ireland administration.
- 7.2 The two Governments will share the other costs arising from the operation of the Conference as well as the costs of the Joint Secretariat on an equitable basis to be determined by them.

8. Review and entry into operation

- 8.1 The arrangements in this Memorandum may be reviewed and varied by joint decision of the two Governments who will, where appropriate, take account of the views of the First Minister, Deputy First Minister, and of other members of the Northern Ireland Executive.
- 8.2 It will also be open to the First Minister, Deputy First Minister, and other members of the Northern Ireland Executive, to make proposals for changes in these arrangements in relation to the discussion of non-devolved Northern Ireland matters.

APPENDIX E

Membership of Lloyd's

1. A Minister holding office as First Minister, deputy First Minister, the Minister with responsibility for Finance, the Minister with responsibility for Trade & Industry or junior Ministers in these two departments or in the Office of the First Minister and the deputy First Minister should not become an underwriting member of Lloyd's. Such a Minister, if already a member of Lloyd's on appointment, should cease underwriting during tenure of that office.
2. Apart from those Ministers covered by the specific requirements of paragraph 1 above, any Minister who is an underwriting member of Lloyd's should not take an active part in the management of the affairs of syndicates of which he/she is a member, and should on appointment as a Minister withdraw from any such active participation in management. Ministers who are underwriting members of Lloyd's should arrange their syndicate participation solely through a Members Agent Pooling Arrangement (MAPA).
3. No Minister who is a current underwriting member of Lloyd's should take part in any departmental or collective discussions or decisions affecting Lloyd's whether directly or indirectly.
4. Some Ministers may have ceased underwriting but still have open syndicate commitments in respect of past membership. Such Ministers should take no part in those departmental or collective discussions or decisions affecting Lloyd's (whether directly or indirectly) if their continuing benefits or liabilities in respect of the period before cessation might thereby be affected, and might therefore make them vulnerable to reasonable suspicion of exerting or being in a position of undue influence.
5. Where a Minister is contemplating investing in a corporate entity at Lloyd's, or has made such an investment prior to Ministerial appointment, the provisions of Section 11 apply.
6. A Minister in whom powers under legislation relating to Lloyd's are vested should not delegate the exercise of those powers to any other Minister who is an underwriting member of Lloyd's or who still has open syndicate commitments in respect of past underwriting.
7. Every Minister is required, on first appointment to Ministerial office, to obtain the First Minister's and deputy First Minister's written permission before continuing a connection with Lloyd's, however nominal. Any Minister wishing to establish or re-establish any such connection during his term of appointment should likewise obtain the First Minister's and deputy First Minister's permission to do so. Before granting permission, the First Minister and deputy First Minister will need to be satisfied that the conditions indicated above will be met.
8. In addition, the Secretary of the Executive Committee is required to keep a list of all Ministers who are members of Lloyd's. He will ask all Ministers on appointment for the

first time to Ministerial office whether they are a member of Lloyd's and if so whether they propose to continue or to suspend underwriting while they hold that office. He will also ask those Ministers who are members of Lloyd's and who are appointed to a subsequent Ministerial office whether they propose to continue or suspend underwriting while they hold that office.

9. Where a Minister has a shareholding in an investment trust or any other entity which holds a corporate membership of Lloyd's, that shareholding should be treated on the same basis as any other by a Minister, see Section 11.

September 2006

Appendix 7

Directions from the Secretary of State



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Secretary of State for Northern Ireland

CU, Mr. Hoyle
Mr. Reynolds
Mr. Donnelly
Mr. Gorman
Mr. McQueen
Mr. Moore
Mr. Crowder
File

Mrs Eileen Bell, MLA
Speaker of the Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

26 May 2008

Dear Speaker,

ASSEMBLY STANDING ORDERS AND COMMITTEE

I wish to notify you that I have determined two directions under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006.

The first amends the Standing Orders that were notified to you on 10 May 2008.

The second directs that a Committee of the Assembly be established.

A copy of each direction is enclosed.

Further to this, under section 1(1) of the 2006 Act, I wish to refer the following matters to this Committee. Namely:


to scope the work which, in the view of the parties, needs to be done in preparation for Government

26 MAY 2006 16:48

SUPP PRIVATE OFFICE

NO. 508 P. 3

I am copying this letter to the leaders of all parties represented at the Assembly and to the two independent members.

pp  (PRIVATE SECRETARY)

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND
[Approved and signed in his absence]

26 MAY 2006 16:48

DO'S PRIVATE OFFICE

NO. 508 P. 4

NORTHERN IRELAND ACT 2006

**DIRECTION DETERMINED BY THE SECRETARY OF STATE AND
NOTIFIED TO THE PRESIDING OFFICER UNDER PARAGRAPH 4(1) OF
SCHEDULE 1 TO THE NORTHERN IRELAND ACT 2006**

1. The Standing Orders notified to the Presiding Officer on 10 May 2006¹ shall be amended in accordance with paragraphs 2 and 3.

2. After Standing Order 11B there shall be inserted the following:

" 11C. Committees of the Assembly

(A) Where

(i) the Assembly decides by cross-community support; or

(ii) the Secretary of State directs,

that a Committee be established, the Business Committee shall make arrangements to establish that Committee in accordance with any such decision or direction.

(B) Any decision of the Assembly to establish a Committee shall provide for the Committee's terms of reference and membership.

(C) The procedures of any Committee so established shall be such as the Committee itself shall determine, unless otherwise provided for by a decision of the Assembly or direction of the Secretary of State.

(D) In these Standing Orders, references to "Committee" shall include any working group."

3. Standing Order 12(b) shall be replaced with the following:

"(b) The following, namely:

¹ As amended by direction of the Secretary of State dated 22nd May 2006.


26 MAY 2006 16:48

SHEP PRIVATE OFFICE

NO. 508 P. 2

- (i) A vote on a matter in respect of which a petition of concern has been presented;
 - (ii) A vote on a decision to establish a Committee of the Assembly; or
 - (iii) A vote on any other matter as directed by the Secretary of State
- shall require cross-community support."

Signed

70  (PRIVATE SECRETARY)

SECRETARY OF STATE FOR NORTHERN IRELAND

[Approved and signed in his absence]

DATE: 26 May 2006

26 MAY 2006 16:48

DOES PRIVATE OFFICE

NO 508 7 4

NORTHERN IRELAND ACT 2006

DIRECTION DETERMINED BY THE SECRETARY OF STATE AND
NOTIFIED TO THE PRESIDING OFFICER UNDER PARAGRAPH 4(1) OF
SCHEDULE 1 TO THE NORTHERN IRELAND ACT 2006

1. I hereby direct that a Committee of the Assembly be established on necessary business relating to the preparation for Government. This Committee shall operate in accordance with the following paragraphs.
2. The Committee shall deal with such matters as I may refer and such other matters that the Committee itself agrees.
3. The membership of the Committee shall be up to three representatives from each party with more than 15 seats held in the Assembly and up to two representatives from any other party with two or more seats.
4. It shall be for the Committee to determine its own procedures, including arrangements for chairmanship.
5. Decisions of the Committee shall be by consensus.
6. The Committee may establish sub-committees to look at specific issues.
7. The Committee may refer matters to the Business Committee for debate in the Assembly.
8. The first meeting of the Committee shall take place on Tuesday 6 June.

Signed

PP



(PRIVATE SECRETARY)

SECRETARY OF STATE FOR NORTHERN IRELAND

[Approved and signed in his absence]

DATE: 26 May 2006

3 JUN 2006 15:17

SOFS PRIVATE OFFICE



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Mrs Eileen Bell, MLA
Speaker of the Assembly
Parliament Buildings
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By fax: 028 9062 1959

ASSEMBLY BUSINESS

Under Paragraph 2 of Schedule 1 to the Northern Ireland Act 2006, I hereby direct that the Assembly shall meet at the date and time set out below.

Tuesday 6 June 2006 Assembly to sit at 2.00pm

In addition, further to my direction of 28 May under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006, I hereby direct that the date of the first meeting of the Committee of the Assembly on necessary business relating to the preparation for Government ("the Preparation for Government Committee") be brought forward. The first meeting of this Committee shall now take place on Monday 5 June at 11.00am. The Committee may refer matters to the Business Committee for its consideration or for debate in the Assembly.

I would hope that this Committee will be in a position to refer issues to the Business Committee for scheduling for debate when the Assembly meets on Tuesday. I will therefore defer a decision on what referral I may make for 6 June until I have received any recommendations for future Assembly business that the Business Committee might make following the inaugural meeting of the Preparation for Government Committee on Monday.

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND

5 JUN 2006 18:09

BOFS PRIVATE OFFICE

NO. 541 P. 2



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Secretary of State for Northern Ireland

Mrs Eileen Bell, MLA
Speaker of the Assembly
Parliament Buildings
Stormont
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BT4 3XX

By fax: 028 9052 1859

5 June 2006

Dear Speaker

ASSEMBLY BUSINESS: PREPARATION FOR GOVERNMENT COMMITTEE

Further to my earlier direction, under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006, I hereby direct that the second meeting of the Committee of the Assembly on necessary business relating to the preparation for Government ("the Preparation for Government Committee") be held on Tuesday 6 June at a time to be determined by the Clerk Assistant.

Fiona McCoy
Private Secretary

PR

RT HON PETER HAIN MP
SECRETARY OF STATE FOR NORTHERN IRELAND

(Approved by the Secretary of State and signed in his absence)

cc Mr Hain
Mr Reynolds
Mr Good
Ms Donnelly
Mrs Mitchell
File

12/06 2008 13:45 FAX

001



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Secretary of State for Northern Ireland

cc Mr Blair
Mr Reynolds
Mr Good
Ms Dunwoody
~~Mr [redacted]~~
File.

Mrs Eileen Bell MLA
Speaker of the Assembly
Parliament Buildings
Stormont
Belfast
BT4 3XX

Dear Speaker,

PREPARATION FOR GOVERNMENT COMMITTEE

I was grateful for sight of your letter to the Committee on the subject of arrangements for chairing the Committee.

I want to offer my support for your explanation of the importance of protecting the impartiality of your position. I have privately expressed my appreciation for the manner in which you have discharged the responsibilities of that office since your appointment. I can assure you that your discharge of those responsibilities continues to enjoy my support.

However, I am keen that the Committee should make some progress. Whilst I share your views on the impartiality from party politics of the Speaker, as we agreed when we spoke last week, I believe that the trust which Assembly Members have shown in your Office and its incumbents offers a way forward for the Committee and that an arrangement whereby Mr Jim Wells and Mr Francie Molloy, whom I appointed on 11 May to the Office of the Speaker to act as deputy presiding officers, be responsible in rotation for chairing that committee, offers the best prospect for the Committee to make the progress that is required. Mr Wells and Mr Molloy, in chairing the

JW



SECRETARIES OF STATE

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Preparation for Government Committee, will bring the same impartiality to the committee proceedings as they would when deputising for you in plenary.

Therefore, under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006 ("the 2006 Act"), I direct that the meetings of the Preparation for Government Committee, established under my direction of 26 May 2006, shall be chaired by the deputy presiding officers appointed by me under Paragraph 3(1) of Schedule 1 to the 2006 Act.

I further direct that the Committee shall meet on Monday 12 June at 4pm under the chairmanship of Mr Wells and on Tuesday 13 June under the chairmanship of Mr Molloy at a time to be determined by the Clerk Assistant. From 13 June onward, the Committee shall agree the date and timing of further meetings. If at any meeting the relevant deputy presiding officer is unable to act, or chooses not to, that meeting shall be chaired by the other.

JP 

[Private Secretary]

THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland
[Approved by the Secretary of State and signed in his absence]

09



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Secretary of State for Northern Ireland

Mrs Eileen Bell MLA
Speaker of the Assembly
Parliament Buildings
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BT4 3XX

3 July 2006

Dear Speaker,

Thank you for your letters of 21 June and 27 June 2006 recording the views of the Business Committee on issues for plenary debate by the Assembly, the date of summer recess and arrangements for setting up a working group on economic issues.

I have reflected on these views, on the progress that has been made in the Preparation for Government Committee and on the discussions between the Prime Minister, the Taoiseach and the parties last Thursday. The statement that was issued by the Prime Minister and the Taoiseach following these discussions, and the associated work plan, set out both Governments' objectives for the coming weeks for achieving the goal of a restored Executive by 24 November. The work plan rightly envisages a key role for the Assembly as well as for individual parties. My decisions, set out in this letter, about Assembly business reflect this key role and responsibility and the timeframe in the work plan.

I have determined that:

- There should be a plenary debate of the Assembly at 10:30 on Friday 7 July.
- The Assembly should rise at close of business on Friday 7 July and should return on Monday 4 September.

/TW



SECRETARY OF STATE
FOR NORTHERN IRELAND

2003



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This should be taken as a direction under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006. I will notify you on Wednesday of the subject for debate on 7 July, after the PFG and Business Committee have met, by a referral under Section 1(1) of that Act.

As envisaged in the work plan published by the two Governments yesterday, I am also directing, under Paragraph 4 (1) of Schedule 1 to the 2006 Act, that the Preparation for Government Committee continues its work during the summer recess at times to be agreed by that Committee. I regard the work of that Committee as of particular importance in addressing the issues highlighted in the work plan. I understand from discussions with the parties that similar issues have also been identified in the context of the PFG debates.

The remit of this Assembly, as set out in the 2006 Act, is to 'take part in the preparations for the restoration of devolved government in Northern Ireland'. It seems right, therefore, that the PFG in taking forward their work both share their thinking with and take the views of Assembly members.

I would, therefore, be grateful if the PFG, with the help of the Chairs in facilitating and leading discussion, could take account of the issues and timeframe set out in the work plan published by the two Governments in developing its work and propose to the Business Committee issues for plenary debate in the Assembly. I am referring these matters to the PFG under section 1(1) of the 2006 Act.

My current intention is that there should be a plenary debate of the Assembly on 4 September and a further debate on Tuesday 5 September. I would be grateful if the Business Committee could advise me by Wednesday 30 August on appropriate

RTW



DIRECTOR OF PEOPLE

2004



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topics which emerge from the Preparation for Government Committee for those debates and on the sequencing of issues for debate.

I have noted that parties have different views on the best way to give effect to the agreement in the Assembly debate on 15 May to a working group on recommendations to a restored Executive on the economic challenges facing Northern Ireland. Given that the aim of such discussion is to make preparation for the work of a restored Executive, I am referring the matter of discussion of economic issues to the PFG under section 1(1) of the 2006 Act and directing them, under Paragraph 4 (1) of Schedule 1 to that Act, to set up a sub-group and report back to the Assembly in September.

I am also directing, under Paragraph 4(1) of Schedule 1, that the PFG set up sub-groups on two issues identified in the two Governments' published work plan – 'changes to the institutions' and 'devolution of criminal and justice and policing'. These two sub-groups should also report back through the PFG to the Assembly. Should the PFG wish to establish sub groups additional to these two – for example on rural planning – I would welcome this.

I direct that the membership of sub groups should comprise one PFG member from each party plus five other members (one from each of the five parties on PFG) with a particular interest or expertise in the issue being considered. The sub-groups should be chaired alternately by the two independent chairs of the PFG. If the PFG decides that further independent chairs are needed for such sub-groups, I will invite the UUP, SDLP and Alliance parties to nominate suitable candidates to me. These names, along with the two deputy Speakers, can then comprise a list of independent chairs from which the PFG can choose when setting up sub-groups. In selecting suitable candidates it is important that they, like the two deputy speakers, have the skills and

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experience both to secure the confidence of all parties in their ability to act independently and to facilitate and lead discussion. After discussing progress in the PFG with the deputy Speakers I wish to clarify that their role should be not merely to preside but to promote consensus in all meetings of the PFG and its sub groups.

I should perhaps say again on the issue of consensus that whilst I continue to believe that it is right that the parties reach agreement on recommendations that are put to me for Assembly debate, I do not think it is right that any party should use the basis of consensus as an opportunity to exercise a veto unreasonably or as an opportunity to prevent the effective operation of or progress in the Business Committee or the PFG. Rather, I hope that members of these committees will seek to achieve agreement in discussion.

I very much welcome the three plenary debates that have taken place in the Assembly. I look forward to the further work, as set out above, resulting from the first debate on economic issues.

You will be aware that the consultation on PPS14 relating to rural planning has now ended and responses are being analysed. I have asked my officials to ensure that the points raised in the Assembly's debate are included in that analysis. As I have said previously, I will take account of the views of Assembly where there is cross community support and, of course, a restored Assembly will have the power to take forward policy in this area – as in others – as it sees fit.

The debate on industrial rating was a valuable one. Members were obviously well-informed in relation to this issue, reiterating the arguments for changing the policy that those from the manufacturing sector have expressed to me. I remain concerned, however, that any changes to the policy as it stands would require

/NW



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significant spending cuts to front line services. We estimate that the loss of rates revenue, should industrial rating be capped at 25%, in the period to 2011 would be £106m. The policy provides a commitment to a review after two years. I very much hope that a restored Assembly will be in place to conduct that review and to take whatever decisions it considers appropriate in light of it.

I should like to take this opportunity to thank you, your colleagues on the Business Committee and the PFG and the Assembly Clerks for their work for the Assembly over the last seven weeks. This has been a challenging period for all concerned and I am grateful for the commitment that there has clearly been to making the current Assembly work as effectively as the circumstance allow. We all shared frustration in the early weeks that time was expended on procedural issues at the expense of substantive debate. I know that there has also been frustration about the difficulties of agreeing business for plenary sessions. But I believe that there has been valuable progress and I hope that the parties will use the summer constructively to ensure that the Assembly can actively prepare for Government when it reconvenes in September, through plenary debates both on issues that are proposed to the Business Committee by the PFG and other motions that individual parties or MLAs may table.

Yours sincerely,
Fiona McKay
Private Secretary.

PP

THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland
(Approved by the Secretary of State and signed in his absence)

11/11



DIVISION OF RECORDS



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Secretary of State for Northern Ireland

Deputy Speaker of the Assembly
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11 July 2006

We met this morning to discuss my letter to the Speaker of 3 July in which I directed the setting up of three subgroups of the Preparation for Government Committee (PFG). You had a number of queries that I was happy to clarify at the meeting and also by way of this letter and the attached direction and referral.

The particular points on which you sought clarification on behalf of the PFG were:

- Am I making a direction to set up the subgroups under Paragraph 4(1) of Schedule 1 to the Northern Ireland Act 2006 and a referral as to the issues for discussion in these subgroups under section 1(1) of that Act?

I confirm that I am making a direction and a referral to set up the three specified subgroups.

- Do I intend the subgroups to operate by consensus or by majority vote?

I am content for them to operate by simple majority of those voting

- Am I content for the subgroups to meet if one or more parties do not attend?





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The attached direction directs that the membership of the subgroups should be two representatives from each of the parties represented on the PFG. If, however, for any reason a party is not able to be represented at a subgroup meeting, or chooses not to do so, I am content for the subgroup nevertheless to meet, I am also content for substitutes.

- Do I envisage discussions of the subgroup on devolution of justice and policing to include the issues of criminality and decommissioning raised at the PFG meetings?
- It is for each subgroup to determine what subjects are relevant to their discussions of the issue that I am referring to them. I am content for the subgroup on devolution of justice and policing to consider issues of criminality and decommissioning if they agree to do so. It is of course also open to the PFG, under the direction I issued on 26 May 2006 establishing the PFG, to establish any other sub committees to look at specific issues.

I hope that this letter and the attached direction and referral are helpful and that the PFG will act on this direction and referral when it next meets. I understand a meeting is scheduled for Monday 17 June.

Thank you again for your work for the Assembly and the PFG. Please do not hesitate to get in touch if you require any further clarification or wish to discuss any matter.

I am copying this letter to the Speaker.


THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland





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NORTHERN IRELAND ACT 2006

**DIRECTION DETERMINED BY THE SECRETARY OF STATE AND
NOTIFIED UNDER PARAGRAPH 4(1) OF SCHEDULE 1 TO THE
NORTHERN IRELAND ACT 2006 AND A REFERRAL UNDER SECTION
1(1) OF THAT ACT**

1. Further to my direction of 26 May 2006 establishing the Preparation for Government Committee, I hereby direct that the Preparation for Government Committee shall establish three subgroups. I refer the following matters to each of those subgroups respectively.

- Devolution of justice and policing
- Changes to the institutions
- The economic challenges facing Northern Ireland

The subgroups should operate in accordance with the following paragraphs.

2. Each subgroup shall deal with such matters as each subgroup agrees are relevant to the matter referred above and shall deal with such other matters as I may refer in the future.
3. The membership of each subgroup shall be two representatives from each of the parties represented on the Preparation for Government Committee (PFG). One of each of the two party representatives shall be a member of the PFG.
4. Each subgroup shall be chaired by either of the two independent Chairs of the Preparation for Government Committee. If the Preparation for Government Committee decides that further independent chairs are needed for such subgroups I will invite the UUP, SDLP and the Alliance parties to nominate suitable candidates to me in accordance with my letter to the Speaker dated 3 July 2006.
5. A subgroup may meet whether or not all party representatives are present.



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6. Each party present shall have a single vote. Decisions of a subgroup shall be by simple majority of those voting.
7. It shall be for the Preparation for Government Committee to determine any other necessary procedures.
8. Each subgroup shall report to the Preparation for Government Committee in accordance with the terms of reference set by the Preparation for Government Committee.

A handwritten signature in black ink, appearing to be 'D. M. L.', written over a horizontal line.

SECRETARY OF STATE FOR NORTHERN IRELAND

DATE: 11-7-06



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Secretary of State for Northern Ireland

Deputy Speaker of the Assembly
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19 September 2006

PREPARATION FOR GOVERNMENT COMMITTEE REPORTS

Thank you for your welcome to the Preparation for Government Committee (PfG) session I attended yesterday and for your courtesy, and that of other PfG members, in the running of that session. As I said at this session, I am grateful for the work the PfG has completed over the summer period and much encouraged by the way in which all the parties have worked together to reach agreement in key areas and, even where agreement on specific issues has not yet been achieved, have nevertheless produced valuable reports of their work for MLAs and others to consider. I am pleased that both the report of the Economic Sub group and the report on Law and Order issues have been put to the Assembly for plenary debate.

I would similarly like to see the Assembly have the opportunity to consider the conclusions of the PfG discussions of Changes to the Institutions and Rights; Safeguards; Equality Issues and Victims. I understand, however, that because of the continuing concerns of Sinn Féin about the nature of plenary debates at this time in the current Assembly, although the Committee has agreed its report on equality and rights, they were not able to achieve consensus on printing the report.

I note Sinn Féin's position but I am reluctant to deny MLAs the chance to see the conclusions of the full range of PfG work over the summer. I have, therefore, decided to direct under paragraph 4(1) of schedule 1 to the Northern Ireland Act



OFFICIAL SEAL



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2006 that the report on Rights; Safeguards; Equality Issues and Victims be printed and published. I would be grateful if this could be arranged so that the Business Committee can advise me on the best timing next week for the Assembly to debate the report.

I am copying this letter to the Speaker.

A handwritten signature in black ink, appearing to be 'J. Hain'.

THE RT HON PETER HAIN MP
Secretary of State for Northern Ireland



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Secretary of State for Northern Ireland

Deputy Speaker of the Assembly
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26 September 2006

PREPARATIONS FOR GOVERNMENT COMMITTEE REPORTS

I understand that the Preparation for Government Committee met yesterday and agreed a report on Institutional Issues but were unable to reach consensus on the printing and publication of that report.

As with other PFG reports, I would like the Assembly to have the opportunity to consider the conclusions of the Preparation for Government Committee discussions and report.

For this reason I hereby direct, under paragraph 4(1) of schedule 1 to the Northern Ireland Act 2006 that the report on Institutional Issues be printed and published.

I would be grateful if this could be arranged so that the Business Committee can advise me on the best timing next week for the Assembly to debate the report.

I am copying this letter to the Speaker.

Yours Sincerely

JACQUELINE SORR
PRIVATE SECRETARY

RT HON PETER HAIN MP
Secretary of State for Northern Ireland
(Approved by the Secretary of State and Signed in his Absence)

Appendix 8

Work Plan Published by the two Governments

NORTHERN IRELAND POLITICAL PROCESS: WORK PLAN

July/August

During the summer parties continue to address necessary issues in preparation for government and to consult their members and communities.

- Preparation for Government Committee continues its work (i) identifying the issues that need to be addressed and (ii) preparing a programme of work to enable the Assembly to address these (to be agreed and announced by end August).
- MLAs and parties discharge responsibilities towards employees, landlords etc in respect of ending of salaries and allowances from 24 November.

September

During the autumn efforts to elect FM/DFM continue. Parties hold discussions with each other and the Governments on changes to the institutions. Discussions with parties continue on support for and devolution of policing.

- W/B 4 September: Assembly returns.
- W/B 11 September: Peter Hain and Dermot Ahern take stock of progress on all outstanding issues with the parties.
- Timetabled subjects in plenary on preparation for Government; Preparation for Government Committee continues its work.

October

*Parties conclude discussions on all outstanding issues.
Taoiseach and Prime Minister continue to monitor progress closely.*

- W/B 2 October: Governments receive and publish IMC report.
- Assembly sessions to prepare for Government continue.
- Final consultations within parties if necessary, and confirmation of readiness to finalise preparations for government.
- Parties conclude discussions and finalise draft Programme for Government and draft Ministerial Code.

Either

November

Parties and Governments make final preparations for restoration of the institutions.

- W/B 20 November: last opportunity to amend Standing Orders and introduce Emergency Bill (on changes to the institutions) at Westminster following all-party agreement to restore devolution.
- 24 November: last opportunity for selecting FMDFM and Executive and affirming pledge of office. By midnight Secretary of State notifies Presiding Officer of intention to make a Restoration Order [effective on Monday 27 November].
- W/B 27 November: Ministers arrive at Departments. Executive meets.

Or

November

- 24 November: Salaries and allowances for MLAs and financial assistance to parties stop.

December

- BIIGC at Prime Ministerial Summit level to launch new British Irish partnership arrangements.

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