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The Northern Ireland Bill

Bill 62 of 2008-09

This Bill is designed to assist with the devolution of policing and justice to Northern Ireland by making amendments to the *Northern Ireland Act 1998*. These amendments add to the options for appointing the Policing and Justice Minister already set out in the 1998 Act. It also provides for changes to the *Judicature (Northern Ireland) Act 1978* and the *Justice (Northern Ireland) Act 2002* in respect of judicial appointments and removals. All stages of the Bill are expected to be taken in the Commons on 4 March 2009.

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Summary of main points

Although the *Northern Ireland Act 1998* provided for the devolution of executive and legislative powers to Northern Ireland, responsibility for policing and justice remained at Westminster. These areas were identified by the Act as 'reserved' and therefore able to be devolved at a later date. The St Andrews Agreement 2006, which began the process for re-establishing devolution in Northern Ireland in 2007, included commitments to press on with the devolution of policing and justice.

This Bill is part of a complex sequence of events to ensure that devolution of policing and justice takes place. Section 4 of the *Northern Ireland Act 1998* allows for transfers to be made using the Order in Council procedure but this is subject to the Assembly having passed the necessary resolution on a cross-community vote. Final Orders to transfer responsibility would then be subject to approval at Westminster.

The question of the arrangements for appointing the Minister of Justice and Policing has already been the subject of UK legislation on a number of occasions. Tensions between the Democratic Unionist Party (DUP) and Sinn Fein (SF) on the method of appointment were a major factor in the failure of the Executive to meet from June to November 2008. Various mechanisms were suggested to break the deadlock.

On 18 November 2008 the Northern Ireland First and Deputy First Ministers announced that they had agreed a process to complete the devolution by proposing initial arrangements for ministerial oversight of a policing and justice department. They also proposed that responsibilities relating to the appointment and removal of judges should pass to the Judicial Appointments Commission and that the Assembly should agree permanent arrangements for appointments by 1 May 2012.

The current Bill offers a new option for the appointment of the Minister to be added to the menu of options already in the *Northern Ireland Act 1998*. Schedule 1 provides for a model whereby a single Minister is nominated by a Member of the Northern Ireland Assembly and elected on a cross-community vote. This appointment would not be subject to the d'Hondt procedure used for filling the other posts in the Northern Ireland Executive and would take place before the d'Hondt process is used to nominate the other Ministers. This initial department would be dissolved on 1 May 2012 unless the Assembly had either passed a resolution on a cross-community basis to continue with the arrangements provided for in the Bill, or put in place alternative future arrangements for the ministerial oversight of that department by legislation at Stormont.

The Bill also makes some changes to allow for executive functions within a reserved field to be conferred on a devolved body where deemed appropriate. This will allow executive functions relating to certain policing and justice matters to be transferred to the Executive by Order even where the legislative competence remained reserved.

The Bill would transfer the responsibility for the appointment of certain judicial office holders to the Northern Ireland Judicial Appointments Commission (rather than the First and Deputy First Ministers as had previously been envisaged under the *Justice (Northern Ireland) Act 2002*). Furthermore, the removal of listed judicial office holders would become primarily the responsibility of the Lord Chief Justice of Northern Ireland (rather than the First and Deputy First Ministers). Additional amendments would also be made to the *Judicature (Northern*

Ireland) Act 1978, relating to the appointment and tenure of the Lord Chief Justice, Lord Justices of Appeal and certain High Court judges in Northern Ireland.

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I Background

The *Good Friday (Belfast) Agreement* of 1998 resulted in elections to the new Northern Ireland Assembly in July 1998. Efforts to make devolution work faltered, however, and by 14 October 2002 devolution had been suspended under the terms of the *Northern Ireland Act 2000*. A number of attempts were made by the UK and Irish Governments and Northern Irish parties to restore devolution. These culminated in the *St Andrews Agreement* of 13 October 2006. The *Northern Ireland (St Andrews Agreement) Act 2006* made legislative changes to the *Northern Ireland Act 1998* to enable devolution to take place.¹ A series of Library Papers and Notes have set out recent developments.²

Elections to the Northern Ireland Assembly were held on 7 March 2007. The DUP secured 36 of the 108 seats, with Sinn Fein taking 28. The Ulster Unionist Party won 18 seats, the SDLP 16, and the Alliance Party seven seats. The Independent Health Coalition, the Green Party and the PUP gained one seat respectively.

On 26 March 2007 the two main party leaders in Northern Ireland agreed a settlement and the House of Commons passed emergency legislation in the form of the *Northern Ireland (St Andrews Agreement) Act 2007* (amending the 2006 Act) which allowed that agreement to take effect and for devolution to be restored. However, the question of devolving policing and justice powers remained outstanding.

1 The Northern Ireland Executive

The appointment of the Northern Ireland Executive is governed by the *Northern Ireland Act 1998*, as amended. Sections 16 and 18 in particular have been subject to amendment by the *Northern Ireland Act (St Andrews Agreement) Act 2006*. Sections 16A to 16C govern the appointment and resignation of the First Minister and Deputy First Minister; both have to be appointed by the Assembly at the same time.

Section 18 of the 1998 Act requires ministerial posts within the Executive to be allocated according to the proportion of seats held by each party in the Assembly, by using the d'Hondt formula. This is a mathematical calculation used to allocate seats under party list voting systems. The principle of the system is that seats are won singly and successively on the basis of the highest average. The d'Hondt formula is also used to allocate seats on Assembly Committees.³ The current make up of the Executive is given below. There is a Ministerial Code of Conduct and Pledge of Office for members of the Executive.⁴

The Rev Ian Paisley stood down as First Minister on 5 June 2008 after first announcing his intention to step down as First Minister and leader of the DUP on 4 March. In April the decision for Peter Robinson to take over as both leader of the DUP and as First Minister was ratified by the 120 members of the party's executive. Rev Ian Paisley

¹ For details, see [Library Research Paper 06/56](#) and [Library Research Paper 07/32](#)

² See Devolution Heading at http://www.parliament.uk/works/notes_on_parliament_and_constitution.cfm#devolution

³ The Northern Ireland Assembly website offers a simple introduction to the use of d'Hondt in allocating seats in the Executive and in committees at <http://www.niassembly.gov.uk/io/summary/d'hondt.htm>

⁴ The current text is at <http://www.northernireland.gov.uk/index/ministerial-code/ministerial-code-1.5-ministerial-code-of-conduct>

passed on leadership of the DUP to Peter Robinson on 14 April but was not due to resign as First Minister until after the US Investment Conference in Northern Ireland in May. However tensions between the DUP and Sinn Fein delayed Rev Ian Paisley's departure until 4 June when an agreement was reached between the DUP and Sinn Fein on a mechanism for discussing a number of contentious political issues.⁵ The agreement is believed to have been reached after the intervention of the UK, Irish and US governments.⁶ It meant that a special sitting of the Assembly could go ahead the next day where the new First Minister Peter Robinson could be appointed and Deputy First Minister Martin McGuinness reappointed. First and Deputy First Minister are linked positions so if Sinn Fein had declined to nominate a Deputy First Minister, it would not have been possible to appoint Mr Robinson, despite the fact that following the St Andrews Agreement the actual process of appointments to these positions was rejigged.

A new Executive was formed on 9 June 2008 with new Culture, Environment and Finance Ministers. The new Executive members are as follows:

- Ms Michelle Gildernew (Sinn Fein) - Agriculture and Rural Affairs Minister
- Mr Gregory Campbell (DUP) – Culture, Arts and Leisure Minister (replacing Mr Edwin Poots)
- Ms Caitriona Ruane (Sinn Fein) – Education Minister
- Sir Reg Empey (UUP) – Employment and Learning Minister
- Ms Arlene Foster (DUP) – Enterprise, Trade and Investment Minister (replacing Mr Nigel Dodds)
- Mr Sammy Wilson (DUP) – Environment Minister (replacing Ms Arlene Foster)
- Mr Nigel Dodds (DUP) – Finance and Personnel Minister (replacing Mr Peter Robinson)
- Mr Michael McGimpsey – Health, Social Services and Public Safety Minister
- Mr Conor Murphy (Sinn Fein) – Regional Development Minister
- Ms Margaret Ritchie (SDLP) – Social Development Minister⁷

A. The failure of the Executive to meet from June to November 2008

The Northern Ireland Executive did not meet from 19 June 2008 until 19 November 2008, due to several policy disagreements, including the transfer of policing and justice powers, Irish language issues and the siting of a new sports stadium.⁸ There are a range

⁵ 'End of Stormont impasse as deal is struck', *Financial Times*, 05 June 2008

⁶ 'Tensions return to Ulster politics as Paisley says farewell', *Guardian*, 06 June 2008

⁷ <http://www.niassembly.gov.uk/members/minister.htm>
<http://www.niassembly.gov.uk/members/membership07.htm>

⁸ 'It's make your mind up time for MLAs', *Belfast Telegraph*, 16 July 2008

of options for selecting a minister to take responsibility for policing and justice, which are discussed in Section IIE2 below.

The lack of Executive meetings was significant to Northern Ireland because of the way the Northern Ireland Assembly and Executive work. Tony McCusker, a former advisor to Mo Mowlam, David Trimble and Seamus Mallon, commented that:

[t]he Agreement provided a series of checks and balances to ensure that a majority could not ride roughshod over a minority. So while there was provision for individual ministerial power, ministers have to operate within the Programme for Government agreed by the Executive Committee and endorsed by the Assembly on a cross-community basis. Decisions requiring the approval of more than one minister could be referred to the Executive, so that consensus between nationalists and unionists would almost always be required for controversial decisions. The St Andrews Agreement in fact entrenched the requirement for Executive consensus on difficult issues.

In early July 2008 efforts were made by Northern Ireland Executive ministers to arrange an Executive meeting before the end of July because otherwise they could not meet again until September. A meeting was scheduled for 24 July but it was cancelled a few days before. Sinn Fein wanted a meeting agenda set beforehand otherwise it was stated they would not attend.⁹ Over 30 items of business were delayed by the cancellation of Executive meetings. In late July the Alliance Party offered to take over a new Justice Ministry even temporarily to encourage the Executive meetings to restart but the offer came with stipulations.¹⁰

On 30 August the Alliance Party leader, David Ford said that the party would attend talks between the DUP and Sinn Fein over the devolution of policing and justice powers despite his rejection in early August of the idea that an Alliance party member heading a new justice ministry.¹¹ On 7 October the DUP suggested that a member of the Alliance Party could be placed on a committee to address the issue of the devolution of policing and justice powers.¹²

Although the Northern Ireland Assembly was officially in recess, concerns over the next meeting of the Executive continued during August. In early August the DUP indicated that they were prepared for an autumn election if the Executive stalemate led to one. SDLP Leader Mark Durkan also tried to trigger an early recall of the Assembly to discuss concerns of the lack of recent Executive meetings. Thirty signatures were required to initiate a special debate. The SDLP approached the UUP to make up the remaining signatures required but on 22 August it was announced that the UUP had decided not to support the strategy.¹³ The situation was further complicated when the Sinn Fein Leader

⁹ 'Stand-off hits hopes of Executive meeting', *Belfast Telegraph*, 21 July 2008

¹⁰ 'Inside the executive', *Fortnight*, September 2008

¹¹ 'Alliance role in stand-off talks', *BBC News*, 30 August 2008, http://news.bbc.co.uk/1/hi/northern_ireland/7589290.stm

¹² 'Alliance could sit on policing devolution committee', *Press Association Newswire-Northern Ireland*, 7 October 2008

¹³ 'Stormont drama deepens as Executive meeting cancelled', *Belfast Telegraph*, 22 July 2008

in the Dail, Caoimhghin O Caolain indicated that “the patience of republicans should not be taken for granted.”¹⁴

UUP leader, Sir Reg Empey requested clarification from the Sinn Fein leadership over the comments. Peter Robinson as Leader of the DUP responded to Caoimhghin O Caolain’s comments and argued that he had been trying to ensure that the Executive met:

When Ministers were appointed they made public and legally-binding pledges which are not being fulfilled. This cannot continue. A meeting of the Executive has been scheduled for 18th September. If this meeting were not to take place it is self-evident that there would be serious consequences for the good government of Northern Ireland and indeed potentially for those who refuse to fulfil their legal obligations.¹⁵

The 19th Independent Monitoring Commission (IMC) report was published on 3 September 2008. The IMC was established in January 2004, following the *Northern Ireland (Monitoring etc) Act 2003*.¹⁶ The report stated that the IRA Army Council had effectively disappeared. The DUP welcomed the report but wanted proof that the IRA Army Council would never be active again. The official position of the DUP with regards to the devolution of policing and justice powers was that it could only be achieved when there was the required community confidence. Therefore the IMC report was seen as a positive step but not sufficient to gain the community confidence required by the DUP. The Executive stalemate therefore continued. On 16 September a SDLP promoted motion was put to and agreed by the Assembly as follows:

That this Assembly notes with concern that the Executive has not met since June and notes the backlog of papers requiring due consideration by the Executive on important issues such as post-primary education, the Maze and PPS14; calls on the First Minister and deputy First Minister to ensure that the Executive meets to address important papers being brought forward by Ministers, to consider the regional impact of the economic downturn and measures which might mitigate its impact on households, businesses, employment and the regional economy including expediting the start dates for major public works agreed in the Investment Strategy, rejecting water charges and prioritising interventions against rising fuel poverty; calls on the First Minister and deputy First Minister to table a paper on the devolution of policing and justice matters for consideration by the Executive; and reaffirms the recommendations of the Assembly and Executive Review Committee’s Report on the Inquiry into the devolution of policing and justice matters which highlighted issues which needed to be considered, examined or discussed by the Assembly and/or discussed by the political parties before the devolution of policing and justice.¹⁷

¹⁴ ‘Growing concern at delay in policing and justice transfer-O Caolain’, *Sinn Fein*, 24 August 2008, <http://www.sinnfeinleinsterhouse.com/en/press-centre/entry/1734>

¹⁵ ‘SF should stop looking over their shoulders and give leadership’, *DUP*, 26.08.2008, <http://www.dup.org.uk/>

¹⁶ <http://www.independentmonitoringcommission.org/>

¹⁷ Private Member’s Business, 16 September 2008, <http://www.niassembly.gov.uk/record/reports2008/080916.htm#5>

The 20th report by the Independent Monitoring Commission was published on 10 November 2008.¹⁸ The report asserted the need for the devolution of policing and justice powers to Northern Ireland. Two reasons were provided for this, first that it allowed for greater integration of law enforcement and domestic policy and secondly, the need for the criminal justice system to adapt to new circumstances.

It is a commonplace that there is no form of crime which the police and criminal justice agencies can defeat on their own. They need the support of the whole community and of public bodies. Criminals – not least continuing and former paramilitaries who remain criminally active – are experienced and resourceful. It is essential in our view that the full weight of public agencies is directed against them. We ask, for example, whether the maximum effort is being made to ensure that they are not able to defraud industrial or agricultural subsidies. Do public agencies direct their full efforts against criminals who fraudulently claim benefits? Where they incur debts with utility companies are any ensuing court orders rigorously pursued? Can the Assembly and Executive play a part in persuading financial institutions not to support businesses which may be a cover for illegal activity?¹⁹

The Executive finally met on 20 November 2008, following a breakthrough on 18 November. Peter Robinson and Martin McGuinness agreed outstanding issues with respect to the devolution of policing and justice in the form of a letter on 18 November to the Assembly Review Committee (see below)

We have agreed certain arrangements for the discharge of policing and justice functions by the Assembly. We believe that the practical experience gained by the operation of these arrangements will inform decisions on the long term structures which would be appropriate for the continued discharge of policing and justice functions.

The following arrangements would be subject to a sunset clause which would bring them to an end not later than May 2012. Following a period of operation, they would be reviewed in the light of the experience. Permanent arrangements would then be put in place by May 2012. There would be no fall back arrangements and therefore there would be a necessity for the parties to agree a way forward by this time.

Any Justice Minister elected during the period of these arrangements up until May 2012, would require a majority of Assembly members present and voting, including a majority of designated nationalists and a majority of designated unionists. If during this period, a vacancy occurred, it would be filled in the same way.

In order to ensure the independence of the Judiciary, responsibilities in relation to the appointment and removal of judicial office holders would rest with the Judicial Appointments Commission.

We would be minded that John Larkin QC be invited to become Attorney General.

¹⁸ Independent Monitoring Commission 20th Report, <http://www.independentmonitoringcommission.org/documents/uploads/Twentieth%20Report.pdf>

¹⁹ Independent Monitoring Commission 20th Report <http://www.independentmonitoringcommission.org/documents/uploads/Twentieth%20Report.pdf>

We have agreed that the department will be known as the Department of Justice.²⁰

Shaun Woodward, the Secretary of State for Northern Ireland, made the following written statement to the House on 19 November 2008:

On 18 November, the First Minister and Deputy First Minister announced their respective parties, the DUP and Sinn Fein, had reached an historic agreement on the process which would facilitate the devolution of policing and justice powers to the Northern Ireland Assembly.

The parties also agreed the Northern Ireland Executive, which has not met since June, will begin meeting again on Thursday 20 November and will continue on a weekly basis until business is up to date, whereupon the Executive will revert to fortnightly meetings.

This breakthrough represents a new chapter for Northern Ireland, marking the beginning of an agreed process that will end in the transfer of policing and justice powers from this House to locally elected politicians in the power-sharing Assembly at Stormont.

It sets out the initial structure of a new Department of Justice and the arrangements for the election of a new Justice Minister.

It also provides for responsibility for the appointment and removal of judicial office holders to rest with the Judicial Appointments Commission.

All of these arrangements will be time-limited and the parties have agreed that they will come to an end before May 2012, at which point permanent arrangements will need to be made.

As well as agreeing the steps to transfer these crucial powers, the events of this week mark the maturing of democracy in Northern Ireland. Negotiations that led to the Belfast and St. Andrews Agreements were driven by the British and Irish Governments. Yesterday's agreement was the product of negotiations between the political parties of Northern Ireland; its essential strength will rest in being an agreement made by Belfast and in Belfast for all the people of Northern Ireland.

The British Government remain ready to help the parties continue moving the process forward and will now finish preparations for legislation and the orders for the transfer of powers when the Assembly expresses its wish to effect the transition.²¹

The first press statement from the Executive on 20 November 2008 emphasised the benefits of its meeting:

The Executive has decided there will be no water charges next year, saving the average household here around £160.

At a time when families are already under mounting financial pressure Ministers said it would be unfair to add a further burden.

The Executive was also brought up to date on the successful financial negotiations in Downing Street earlier in the week, the net effect of which has been to remove pressures facing the Executive amounting to up to £400million in this and next year, allowing water bills to be deferred next year. In terms of the

²⁰ See letter from First and Deputy First Minister to the Chairman of the Assembly and Executive Review Committee 18 November 2008 in Appendix 5 to the First Report of the Committee 2008-09 January 2009 at http://www.niassembly.gov.uk/assem_exec/2007mandate/reports/report22_08_09R.htm#Exec

²¹ [HC Deb 19 Nov 2008 c23WS](#)

wider issues facing the Executive, the Prime Minister also agreed to make available access to £100million to address a range of issues.

There was a lengthy discussion at the Executive meeting about the credit crunch and the global economic downturn and it was decided the next meeting on Thursday, November 27, would be entirely devoted to finding ways to help cushion the effects of the recession. Ministers have been asked to submit their costed proposals to that meeting.

The Executive agreed to ramp up the number of meetings between now and Christmas at which the economy will be a key agenda item and the December monitoring process is to be accelerated so that decisions can be debated in the Assembly before Christmas.

The Assembly is to be asked to delay its recess to consider those decisions.²²

The Executive has continued to meet and on 2 December 2008 Peter Robinson and Martin McGuinness visited the then President Bush in the US for talks, as part of a mission to secure inward investment.²³ In December the Executive published *Your Executive, Working for You*, which set out a summary of its achievements.²⁴

II Devolution of policing and justice powers

A. Background

The Assembly exercises full legislative authority for those areas within the responsibility of the Northern Ireland Government Departments. These subject areas broadly correspond with the areas devolved to Scotland and Wales, but are less extensive than those devolved to Stormont under the *Government of Ireland Act 1920*. The *Belfast Agreement* stated that the British Government was ready in principle to devolve responsibility for policing and justice issues in the context of the full implementation of the *Agreement* (p 23). This was repeated in the *Joint Declaration of the British and Irish Governments* in December 2003 (see above) and the *Proposals* of December 2004.

As with the *Northern Ireland Constitution Act 1973* there are three categories of legislative powers; excepted, reserved and transferred. Excepted matters are subjects reserved to Westminster which will not be transferred. Schedule 2 specifies excepted matters and includes elections, international relations and judicial appointments. Schedule 3 set out reserved matters; these are subjects which could be transferred to the Assembly at a later date. Matters transferred to the Assembly are matters which are not excepted or reserved. There is potential for rolling devolution since reserved powers can be transferred to the Assembly individually, but such transfers are dependent on cross-community support and the necessary Westminster approval. It is also possible to transfer subjects back. Section 4(2) of the 1998 Act enables the Secretary of State to lay

²² "Executive back in business and making a difference", 20 November 2008

<http://www.northernireland.gov.uk/executive-statements-index/executive-statement-20-november-2008.htm>

²³ "First Minister and Deputy First Minister meet with US President", 2 December 2008

<http://www.northernireland.gov.uk/news/news-ofmdfm/news-ofmdfm-december-2008/news-ofmdfm-021208-first-minister-and.htm>

²⁴ *Your Executive: Working for You* at <http://www.northernireland.gov.uk/your-executive-working-for-you.pdf>

orders making a reserved matter a transferred matter and vice versa, provided that there is cross-community Assembly assent.

The *Northern Ireland Act 1998* provided for a new Northern Ireland power-sharing Executive, with a maximum of 10 ministers (excluding the First and Deputy First Ministers) (s17(4)). However, unlike other Northern Ireland Ministerial offices, which are always filled using the d'Hondt system, the Minister(s) overseeing policing and justice matters may alternatively be elected by cross-community vote in the Assembly following amendments to the 1998 Act explained below.²⁵

1. Models for appointing a Minister of Policing and Justice

The Northern Ireland Office (NIO) issued a consultation paper on 16 February 2006 *Devolving Policing and Justice in Northern Ireland: A Discussion Paper* outlining what was intended to be devolved and areas where further thought was necessary in order to achieve the devolution of these functions.²⁶ The consultation paper noted that before devolution of justice and policing the Assembly would need to consider how the devolved administration would re-organise itself. The paper set out appropriate options:

4.2 Consistent with the Agreement, whatever new model is agreed should contain adequate safeguards to protect the rights and interests of all sides of the community while ensuring that there is effective decision-taking capability.

4.3 Without prejudice to the views of the parties it is possible to identify a number of models:

4.3.1 A single Justice Department, headed by one Minister (perhaps supported by a Junior Minister from the other tradition). This was broadly the approach favoured by the Criminal Justice Review. A single Department has the advantage of facilitating a joined-up approach to the criminal justice system. A variant would be to agree a rotation arrangement so that the Department changed hands between parties after a fixed interval.

4.3.2 A single Justice Department headed by two Ministers, with decisions requiring the agreement of both, similar to the arrangement provided for in the Northern Ireland Act where the First Minister and deputy First Minister act jointly in carrying out their statutory functions. (As a variation on this, the First Minister and deputy First Minister could themselves take on the roles of the two ministerial heads of a new Department.) Any double-headed arrangements of this sort would strengthen cross-community accountability but could weaken decision taking capability. It would therefore be particularly important to consider whether this model would be likely to prove robust and workable.

4.3.3 Responsibilities for justice to be added to those of the First Minister and deputy First Minister, perhaps supported by additional Junior Ministers. Two key issues here are whether it would be workable for the First Minister and deputy First Minister to provide ministerial oversight in these key areas in addition to all their other responsibilities; and whether such an arrangement would fundamentally change the nature of the Office of the First Minister and deputy First Minister, and the relationship between that Office and the Northern Ireland Departments.

²⁵ The cross-community vote may take two forms: parallel consent or weighted majority. See Library Research Paper 06/56 p26 for further details

²⁶ http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf

4.3.4 Two Departments (say Policing and Justice), with the two Ministers each coming from a different tradition. Splitting the portfolios could reduce risks of deadlock but weaken efforts to integrate the system more effectively.

4.4 In settling this issue, account will need to be taken of both political balance and effective governance.

Section 17 of the *Northern Ireland (Miscellaneous Provisions) Act 2006* inserted a new section 21A into the *Northern Ireland Act 1998* to allow a variety of models for a new Department for policing and justice. Schedule 4A to the Act set out relevant procedures as explained in the *Explanatory Notes*:

81. This new Schedule [4A] to the 1998 Act sets out the procedures that will apply where one of the departmental structures provided for by new section 21A is adopted. Part 1 of the Schedule provides for the case in which two Ministers in charge act jointly; Part 2 for the alternative rotational model. The Schedule requires, in both cases, that the First Minister and Deputy First Minister nominate two members of the Assembly to head up the department. The nomination must be approved by a resolution of the Assembly passed with cross-community support, in accordance with paragraph 4(4) or 8(4) of the Schedule. It is possible in either case for the First Minister or Deputy First Minister to be nominated.

82. Both Parts 1 and 2 of the Schedule make provision for what happens if one of the Ministers ceases to hold office, requiring the nomination process to begin again. They also deal with how the nomination and appointment of Ministers under either scheme will affect the nomination and appointment of Ministers to other Northern Ireland Departments under section 18 of the 1998 Act.

83. Part 3 of new Schedule 4A enables further modifications to be made by Order in Council, under the affirmative resolution procedure, in consequence of one of the new departmental structures being adopted. For example, in the event of one of the structures being adopted, it would be necessary to make modifications to Schedule 12A to the 1998 Act.

The rotational ministerial model in this legislation was very unusual in terms of British constitutional practice, and would appear to raise issues of ministerial accountability.²⁷ However, the power-sharing nature of the Northern Ireland Executive means that the traditional Westminster notions of ministerial accountability are already subject to considerable modification.

Further modifications were made to Schedule 4A by Schedule 5 of the *Northern Ireland (Justice and Security) Act 2007*, which achieved royal assent on 24 May 2007. The *Explanatory Notes* to this Act state:

Schedule 5: Northern Ireland department with policing and justice functions

143. Schedule 5 to the Act inserts an additional Part 3A into Schedule 4A to the Northern Ireland Act 1998, and sets out the detail of the new model provided for in section 44. The provisions will only have effect if a Northern Ireland department with policing and justice functions using this model is set up either by an Assembly Act or by an Order in Council.

²⁷ For a discussion of this issue see Library Research Paper 04/31 *Individual Ministerial Responsibility- Issues and Examples*

144. *Paragraph 11B* of new Part 3A modifies the normal arrangements set out in section 16A of the Northern Ireland Act 1998 for appointing the First and deputy First Ministers and Northern Ireland Ministers following an Assembly election. This ensures that the Minister and deputy Minister of the new department for policing and justice are appointed after the First and deputy First Minister, but before the other Northern Ireland Ministers. This is needed to ensure that the relevant Ministerial office is counted for the purposes of the d'Hondt formula for allocating ministerial posts. (Section 16A of the Northern Ireland Act 1998 was inserted by section 8 of the Northern Ireland (St Andrews Agreement) Act 2006.)

145. *Paragraph 11C* provides for a modification of the d'Hondt process which is set out in section 18 of the Northern Ireland Act 1998 so that, where a party is entitled to two or more Ministerial offices under d'Hondt, the new Ministerial office will count as the party's second, rather than its first, choice of office.

146. *Paragraph 11D* ensures that the deputy Minister (who will not be a member of the Executive) is not counted as holding a Ministerial office for d'Hondt purposes. It also specifies that the functions of the deputy Minister will be determined by the Minister and deputy Minister acting jointly, after consultation with the First Minister and deputy First Minister.

147. *Paragraph 11E* sets out the arrangements for electing the Minister and deputy Minister. Any member of the Assembly may stand for election, provided they belong to one of the two largest political designations, they are nominated by another member, and their party's nominating officer agrees. The Minister and deputy Minister must come from different designations; and both must be elected with cross-community support on a 50:50 basis. Once elected they must affirm the pledge of office before taking up post. The two Ministers stand for election individually, so if one ceases to hold office, the other may remain in post. The exception to this is in circumstances where a new Minister comes from the different designation from his predecessor, necessitating a change in the designation of the deputy Minister as well.

148. *Paragraph 11F* provides that, as with other models and other Ministries, the First Minister and deputy First Minister are not precluded from holding the office of Minister or deputy Minister of the new department by virtue of their being First or deputy First Minister. It also provides that candidates for Minister or deputy Minister may not come from parties excluded by the Assembly or by the Secretary of State.

149. *Paragraph 11G* provides that where a new Minister comes from a different political party from his predecessor and thus unbalances the Executive, the d'Hondt process will be run anew. The exception, again as with other models, is where the original party refused to agree the nomination of a new candidate or a successful candidate refused to affirm the pledge of office

The complexity of drafting illustrates the difficulty in achieving a formula for appointment which satisfies the different political traditions in Northern Ireland. These amendments to the original 1998 legislation in the *Northern Ireland (Miscellaneous Provisions) Act 2006* and the *Northern Ireland (Justice and Security) Act 2007* now offer seven different options for the appointment of a Minister for Justice and Policing and if the Bill is enacted there will be eight, as follows:

- a. *Models applicable to all ministerial departments (ss.16A-18 & 21 of the Northern Ireland Act 1998)***²⁸
1. Single Minister selected by d'Hondt
 2. Portfolio integrated within OFMDFM
 3. Portfolio in the charge of the First and Deputy First Minister acting jointly
- b. *Models applicable only to a department with policing and justice functions (provided for in s.21A of, and Sch.4A to, the Northern Ireland Act 1998)***²⁹
4. Single elected Minister (*s.21A(3) and part 1 of Sch.4A*)
 5. Two Ministers acting jointly (*s.21A(4) and part 2 of Sch.4A*)
 6. Two Ministers who rotate between Minister/junior Minister roles (*s.21A(5) and part 3 of Sch.4A*)
 7. Minister supported by a Deputy Minister (*s.21A(5A) and part 3A of Sch 4A*)

The *Northern Ireland Bill 2008-09* would provide for a further option, if enacted.

8. Single elected minister nominated by any member of the Assembly (*new s.21A(3A) and part 1A of Schedule 4A, provided for in Schedule 1 to the current Northern Ireland Bill*)

Further details of this option are given in Part II, E below. When (or if) policing and justice functions are devolved, the Assembly may choose any one of these eight models.

B. Policing

1. The Patten Report

A central concern of the *Belfast Agreement* was to bring about a police service capable of attracting and sustaining support from across Northern Ireland as a whole. To facilitate this, the Agreement proposed the establishment of an Independent Commission on Policing for Northern Ireland. Chris Patten was appointed to chair this Commission and it published its plans in September 1999.³⁰ There were 175 recommendations, covering a range of issues including the composition, size and structure of the Police Service and the creation of new accountability structures. The report stressed the importance of human rights and community policing in achieving support for policing. Specific recommendations included:

- Renaming the Royal Ulster Constabulary

²⁸ With the exception of the arrangements for appointing the First and deputy First Minister (ss.16A-16C) which were inserted by the Northern Ireland (St Andrews Agreement) Act 2006, these provisions were in the Northern Ireland Act 1998 as originally enacted.

²⁹ S.21A and Sch.4A were inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006 and amended by the Northern Ireland (St Andrews Agreement) Act 2006, the Justice & Security (Northern Ireland) Act 2007 and, if it is enacted, by the current Northern Ireland Bill.

³⁰ *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland*, September 1999. Further background is in Library Research Paper 00/58.

- The creation of a new Policing Board, to replace the Police Authority, with a majority of Board members being members of the Northern Ireland Assembly
- The establishment of District Policing Partnerships (DPPs)
- Contracted out recruitment of police officers and staff, with community representatives on recruitment panels
- All candidates for the police service who achieve a specified standard of merit in a selection procedure being entered into a pool from which an equal number of Catholics and non-Catholics should then be drawn as recruits (known as 50:50 recruitment)
- The appointment of an eminent person, from a country other than the UK or Ireland to act as an Oversight Commissioner to supervise implementation of the Commission's recommendations.
- A Police Ombudsman to deal with complaints

2. Implementing Patten

The renamed Police Service of Northern Ireland was established in November 2001. The new accountability structures, including the Policing Board, the Police Ombudsman's Office and the 29 DPPS are all in place. As at 1 January 2009, 3,341 recruits had been appointed to the PSNI under the 50:50 provisions since April 2002, and the overall proportion of Catholics had risen from just over 8% to just over 25%.³¹ The target is to increase it to 30% by 2010/11; the Government has stated that it is on track to meet this, and that the policy will cease at that point.³²

Tom Constantine (a former Director of the US Drugs Enforcement Agency) was appointed Oversight Commissioner in June 2000, and was later replaced by his Chief of Staff, Al Hutchinson. The post was originally for five years, but was later extended to May 2007. The Commissioner's final report provided an assessment of progress since Patten. This stated that "the intent of the Independent Commission in establishing a human rights approach to policing has been largely accomplished by policy, progress and structures",³³ and noted what it called the "continued success" of the Northern Ireland Policing Board and District Policing Partnerships. The document also reported progress on community policing, policing public order situations, and said that whilst not all the recommendations on recruitment had been implemented, "the accomplishments had been significant".³⁴ Remaining areas of concern included:

- Delays in the devolution of policing and justice
- The unwillingness of all political parties to participate in the Policing Board as called for by the Patten report.³⁵

³¹ Source: Northern Ireland Office personal communication, 4 February 2009

³² [HC Deb 20 January 2009 c1247W](#)

³³ Office of the Oversight Commissioner, [Report 19](#) - May 2007

³⁴ p12

³⁵ Sinn Fein only joined the Policing Board and District Policing Partnerships in May 2007

- Problems for DPPs in influencing annual policing plans and dealing with a new tier of police organisation – the eight District Command Units introduced recently to oversee what have now become 29 areas³⁶

C. The Assembly and Executive Review Committee report March 2008

Following the restoration of devolution to Northern Ireland in May 2007, the Government continued to reiterate its commitment to completing the process of devolution by enabling the transfer of policing and justice powers to the devolved administration by the May 2008 deadline. The *Northern Ireland (St Andrews Agreement) Act 2006*, section 18(1) required the Assembly to report to the Secretary of State for Northern Ireland by 27 March 2008 on their readiness for transfer of policing and justice functions. In order for devolution of policing and justice powers to be given effect, a motion to that effect needs to be put to the Northern Ireland Assembly by the First Minister and Deputy First Minister and passed by a cross-community vote. The Assembly Executive Review Committee was charged with examining proposals to transfer power to the Northern Ireland Executive.

The Chief Constable, Sir Hugh Orde, appeared before the Assembly Executive Review Committee on 8 January 2008. In his opening statement to the Committee Sir Hugh said “from our point of view, I have said consistently that there is no reason why devolution of policing and justice should not happen”.³⁷

A survey commissioned by the Northern Ireland Office in February 2008 indicated that there was popular public support in favour of the devolution of policing and justice powers in Northern Ireland.³⁸ Commenting on the findings of the survey, the Secretary of State said:

There are those who have been saying there is no support for the transfer of powers – I am not sure what they are basing that on.

While an opinion poll is not science, I think it does show that when the parties reach agreement as to when they want to devolve policing and justice they will be supported by an overwhelming majority of the public.³⁹

On 11 March 2008 the Assembly and Executive Review Committee published the report on its inquiry into devolution of policing and justice powers in Northern Ireland.⁴⁰ The committee concluded that the May 2008 deadline set for transferring the powers could be met and recommended:

³⁶ Op cit pp35-7

³⁷ http://www.niassembly.gov.uk/assem_exec/2007mandate/reports/report22_07_08R.htm#Appendix2

³⁸ http://www.nio.gov.uk/polling_results_on_attitudes_towards_devolution_of_policing_and_justice.pdf

³⁹ ‘Majority of public support devolution of policing and justice’, *Northern Ireland Office*, 22 February 2008

⁴⁰ *Report on the inquiry into the devolution of Policing and Justice Matters* 26 February 2008 2007-08 AERC http://www.niassembly.gov.uk/assem_exec/2007mandate/assem_exec_reports.htm

...that the political parties commit to further discussions to produce recommendations on the ministerial model to be adopted and the method by which the Assembly would make the ministerial appointment/s and that it will be necessary for these discussions to take place before the devolution of policing and justice matters.⁴¹

The Committee also considered matters relating to an appropriate ministerial model, the procedures to be used for filling the ministerial post(s) and offered a number of solutions ranging from a single ministerial post to a number of permutations of a possible shared ministerial position. In relation to the likely structures of any new policing and justice department, the Committee endorsed the earlier decision taken by the Committee on the Programme for Government that there should be a single department that would exercise powers in relation to policing and justice matters. The Committee also examined how matters of governance and accountability might operate after devolution.

On the same day the Northern Ireland Office also published illustrative draft legislation for the devolution of policing and justice powers in order to transfer powers when asked to do so. The text of the draft legislation is available from the following link at the bottom of this page and is discussed in more detail below.⁴²

The report by the Assembly and Executive Review Committee on the transfer of policing and justice powers was laid before the House of Commons on 25 March 2008. Shaun Woodward made the following written ministerial statement to the House of Commons:

In accordance with section 18(2) of the Northern Ireland (St. Andrews Agreement) Act 2006, I have today laid before the House a copy of the report submitted to me by the Assembly under section 18(1) of that Act.

The report is another important step towards the transfer of responsibility for policing and justice to the Northern Ireland Assembly, and the completion of devolution in Northern Ireland.

The transformation of Northern Ireland from conflict to peace has progressed with speed and confidence since the restoration of the Assembly on 8 May last year. I have no doubt that all parties, and the people of Northern Ireland, are committed to maintaining the momentum of change and to completing the formal process of devolution by transferring policing and justice powers from Westminster to the Assembly. The first steps towards this were taken last year with Sinn Fein taking up seats on the Policing Board and on District Policing Partnerships. The next step is for the Assembly to agree a date on which they will accept their responsibility for the delivery of local policing and justice services as they did last year in respect of other local public services and in respect of the Northern Ireland economy. The Assembly report, which I am today laying before Parliament, helps to pave the way for such a decision.

The report sets out in some detail those subject matters that all parties agree should transfer to the Assembly as part of the policing and justice package. The

⁴¹ Recommendation 19

http://www.niassembly.gov.uk/assem_exec/2007mandate/reports/report22_07_08R.htm

Devolving Policing and Justice in Northern Ireland: Illustrative Draft Legislation 11 March 2008 Northern Ireland Office

http://www.nio.gov.uk/devolving_policing_and_justice_in_northern_ireland__illustrative_draft_legislation.pdf

Assembly also agreed that there should be a single department of justice overseeing these matters once they devolve. I welcome this important progress. The Assembly's report calls on the political parties to continue discussions on the outstanding issues of timing and ministerial structures, agreement on which will enable the handing over of those policing and justice powers that the Assembly have agreed should transfer. The Government support this call for further discussions and stand ready to assist the parties in reaching agreement on the completion of devolution at the earliest possible date. To this end my Department will have ready the practical arrangements required to make the transfer once the Assembly requests it, including a first draft of the necessary legislation, made available to Members of the Assembly to facilitate their debate.⁴³

Tensions between the DUP and SF on the method of appointment were a major factor in the failure of the Executive to meet from June to November 2008. Various mechanisms were suggested to break the deadlock.

The Devolution Monitoring reports from the Constitution Unit at University College London set out options in September 2008 for resolving the impasse as follows:

On the critical issue of devolution of policing and justice, talks continued at Downing Street, at the Northern Ireland Office and involving the Republic's government over the summer, as did direct negotiations between the DUP and SF. On 4 August, the first signs of movement emerged when Messrs Robinson and McGuinness wrote jointly to the assembly's Assembly and Executive Review Committee, tasked to report on the matter, indicating proposals on which their two parties were agreed.

First, there would be a combined policing and justice department headed by a single minister; secondly, the minister would be elected on a cross-community vote in the assembly (ie not by means of the d'Hondt procedure, which would have automatically ceded the post to the SDLP); and, finally and crucially, neither the DUP nor SF would nominate one of its MLAs for the position. This raised but did not resolve the issue of whether there would be an additional member of the executive or whether two existing departments would be merged to keep the number to ten, the limit in the Northern Ireland Act 1998 implementing the Belfast agreement.⁴⁴

The Assembly and Executive Review Committee met again from September 2008 and produced a second report in January 2009.⁴⁵ This was debated in the Assembly on 20 January 2009. It was summarised as follows by the Chair of the Committee, Jimmy Spratt (DUP):

As I mentioned, this is the first of two planned reports. It deals with the departmental structure; the powers to be transferred; the timing thereof; and the appointment of the Minister. The first six recommendations of the report — on pages 10, 11 and 12 — deal with the Department and its structure. The Department is to be known as the "Department of Justice", and it is proposed to

⁴³ [HC Deb 25 March 2008 c6WS](#)

⁴⁴ Northern Ireland Devolution Monitoring Report: September 2008, *UCL Constitution Unit*, http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/NI_Sept08.pdf

⁴⁵ *First Report on the arrangements for the devolution of policing and justice matters* Session 2008-09 at http://www.niassembly.gov.uk/assem_exec/2007mandate/reports/report22_08_09R.htm

create it as additional to the 11 Departments that make up the Northern Ireland Executive. With the exception of the Judicial Appointments Commission, the various organisations that currently deliver the range of policing and justice services will, in the main, be attached and accountable to the Department of justice.

Recommendation 7 reaffirms an earlier decision, reflected in the Committee's original report, about the range of powers to be devolved, and recommendation 8 signals that those powers:

"should cease to be reserved matters at the point of devolution".

Quite when that will occur depends largely on the further work that the Committee needs to do. That is why, at present, there is not a specific date for the transfer of those powers.

Recommendations 9, 10, 11 and 12 — on pages 14 and 15 of the report — deal with what are described as "interim arrangements" for appointing, removing and replacing the Minister of justice. It is proposed that those arrangements will apply until May 2012.

The Committee decided that it wished to give further consideration to the Minister's role in, and relationship with, the Northern Ireland Executive. That residual issue, together with the question of the most appropriate location for the Public Prosecution Service, are matters to which the Committee will return, and will address in its second report.⁴⁶

SDLP MLAs expressed concern about proposed arrangements for nominating a Minister. The SDLP consider that the Minister should be nominated using the d'Hondt procedure, as provided for in the *Good Friday Agreement*, otherwise the DUP would have a monopoly in the appointment. Alliance MLAs however argued that in order to obtain agreement on devolution, it should be possible to adjust the 1998 Act.

The Constitution Unit Devolution Monitoring report on Northern Ireland, issued in January 2009, summarised the negotiations of the previous six months as follows:

Underpinning the bilateral negotiations was the prior agreement that the justice minister would not, for the moment, be nominated by the DUP or SF and that s/he would be elected by the assembly *via* the 'parallel consent' procedure, rather than the d'Hondt mechanism under which other departmental ministers are appointed. An earlier potential compromise had unravelled when it emerged that the DUP and SF disagreed on the connotation of the phrase 'at all times' in a letter Messrs Robinson and McGuinness had sent to the Executive and Review Committee in July.

This had said that devolution 'should be based on a single department in which policing and justice powers would reside with a single minister elected at all times from the assembly in a way which would ensure cross-community support'. The DUP said this referred to a requirement that a devolved policing/justice minister would have to enjoy cross-community assembly support (implying an effective DUP veto), while SF claimed it was a stipulation that the minister would always come from the assembly, rather than be appointed from outside.⁴⁷

⁴⁶ Northern Ireland Assembly Official Report 20 January 2009
<http://www.niassembly.gov.uk/record/reports2008/090120.htm#7>

⁴⁷ *Northern Ireland Devolution Monitoring Report* January 2009 Constitution Unit, UCL
http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/NI_Jan09.pdf

The Constitution Unit report also speculated on the timing of the transfer of policing and justice powers, and whether this could be achieved before the June 2009 European Parliament elections.

D. The process of devolving policing and justice

A NIO consultation paper *Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals* set out the processes necessary for devolution in March 2008, as noted above. This summarised the process as follows:

2.1 In order to devolve policing and justice, it is necessary to make three types of change to the statute book:

- to transfer policing and justice matters to the Northern Ireland Assembly's full **legislative competence**;
- flowing from the transfer of legislative competence, to transfer Ministerial and other **functions** to the appropriate devolved institutions; and
- to make a series of other largely self-explanatory **consequential amendments** – for example, changing references to Parliament to refer instead to the Assembly.

2.3 In order to devolve policing and justice, it is necessary to amend Schedule 3 to the 1998 Act (so that policing and justice matters are no longer classed as reserved matters).

2.4 Section 4 of the 1998 Act contains a procedure for moving matters (in either direction) between the transferred and reserved fields. This can be done by Order in Council at Westminster, subject to the Assembly first having passed a resolution, supported by a cross-community vote, requesting the transfer (subsection (3)). In addition, in relation to the transfer of a *policing and justice matter* (as opposed to the transfer of any other reserved matter), the Act requires that the motion be tabled by the First and deputy First Ministers acting jointly and that it is approved by the so called 'parallel consent' form of cross-community vote (that is to say, an overall majority of those voting plus a majority of designated Nationalists voting and a majority of designated Unionists voting (subsection (2A))). The final Orders are then subject to approval by both Houses of Parliament before coming into effect.

...

Transfer of functions and consequential amendments

2.6 As well as transferring legislative competence to the Assembly, it is also necessary to transfer a very wide range of statutory functions in the reserved field currently conferred on UK Ministers such as the Secretary of State – to the appropriate devolved authorities. Section 86 of the 1998 Act provides the power to make this sort of amendment by Order in Council. Section 86A of the 1998 Act provides the power to transfer functions under the Extradition Act 2003 and the Crime (International Co-operation) Act 2003 (which cover excepted matters).

2.7 Indicative drafts of what Orders under sections 86 and 86A might look like are set out at **Annexes C, D & E**. The draft at Annex C deals only, at this stage, with *primary legislation and Orders in Council*; a further such order, dealing with amendments to *subordinate legislation*, is in preparation. The draft at Annex D deals specifically with matters relating to the courts and the functions of the Lord Chancellor. The draft at Annex E deals specifically with extradition and mutual legal assistance functions. As with the section 4 Order, the final text of these drafts may change to reflect the Assembly's report.

...

2.15 It is normal practice in Northern Ireland for statutory functions to be conferred on *Departments* rather than on *Ministers*. This has been the case since 1921 – originally from the Ministries Act (NI) 1921, superseded by the Ministries Act (NI) 1944 and currently the Departments (NI) Order 1999, which provides that Departments exercise their functions under the direction and control of the Minister⁴⁸

This paper built on earlier work by the NIO in February 2006 *Devolving Policing and Justice in Northern Ireland: A Discussion Paper*, referred to above.⁴⁹

E. The Northern Ireland Bill 2008-09

1. Introduction

This Bill is part of a complex sequence of events to ensure devolution of policing and justice takes place. There is no statutory deadline which must be met for this. Legislation at Westminster is necessary before legislation in the Assembly that must be completed before devolution of policing and justice can take place through Orders in Council.

On 12 February 2009 an NIO press release noted:

Secretary of State, Shaun Woodward MP, has given notice today of the Government's intention to introduce legislation later this month which will enable policing and justice powers to be transferred from Westminster to Stormont when the Northern Ireland Assembly asks for it and Parliament agrees.

Mr Woodward said: "We gave a commitment at St Andrews to ensure that when the parties in Northern Ireland were ready to complete devolution with the transfer of policing and criminal justice powers from me as Secretary of State to a locally accountable Minister, the necessary legislation to allow that to happen would be in place.

"The legislation which will be introduced on February 23 and have its Second Reading on March 4 fulfils that commitment and maintains the momentum towards the completion of devolution that was signalled by the agreement between the DUP and Sinn Fein on November 18.

"The Bill deals with technical points which will allow the Assembly to move to the next stage of completing devolution.

"The route map published by the First Minister and deputy First Minister last November included Westminster legislation to give effect to those elements of the process that required primary legislation.

"It provides one more model for a Justice Department, reflecting the views of AERC, and deals with the appointment of judges.

"It represents a vital building block in the devolution process which will be followed through when the parties agree a date."⁵⁰

⁴⁸ http://www.nio.gov.uk/devolving_policing_and_justice_in_northern_ireland__illustrative_draft_legislation.pdf

⁴⁹ http://www.nio.gov.uk/devolving_police_and_justice_in_northern_ireland_a_discussion_paper.pdf
"Legislation vital building block in devolution process -Woodward" 12 February 2009 *Northern Ireland Office* <http://www.nio.gov.uk/legislation-vital-building-block-in-devolution-process-woodward/media-detail.htm?newsID=15873>

On 23 February 2009 Mr Woodward made a written ministerial statement to Parliament on the formal introduction to the Bill:

On 18 November, an historic agreement was announced by the First Minister and deputy First Minister setting out a process which would pave the way to the devolution of policing and justice powers to the Northern Ireland Assembly.

The agreement, and the subsequent report of the Assembly and Executive Review Committee on the modalities of devolution contained a number of significant decisions on the shape of the post-devolution framework for the administration of policing and justice in Northern Ireland.

The Government are committed to helping to move the process forward in whatever way they can.

I am therefore today introducing a Bill to Parliament to give effect to those elements of the November statement and the AERC report that require primary legislation.

The Bill does not provide for when devolution will happen, nor does it provide for what is to devolve—both of these still require further consideration by the parties and ultimately by Parliament.

It does however provide a framework for the post-devolution administration of justice by providing for a new ministerial model which the Assembly can use to set up a new Department of Justice.

It also provides for certain functions in relation to judicial appointments and removals to rest with the Judicial Appointments Commission rather than the First and deputy First Ministers.

In addition, later this week I will be laying an Order under section 17(4) of the Northern Ireland Act 1998 to increase the maximum number of ministerial offices to 11. This will enable the Assembly to give effect to the recommendation of the AERC report that a department with policing and justice functions should be established as an additional department to the existing departments which make up the Northern Ireland Executive.

The Assembly is currently prevented from establishing an additional department by section 17 of the Northern Ireland Act which limits the number of ministerial offices to ten.

Separately I will also commence a number of provisions under the Northern Ireland (Miscellaneous Provisions) Act 2006 and the Justice and Security (Northern Ireland) Act 2007. This will ensure that when the Northern Ireland Assembly makes a decision to legislate to set up the new Department of Justice it has a full range of options to choose from.

There are still important decisions to be taken by the Northern Ireland Assembly on the timing of devolution and on what functions they wish to see devolve.

However, these measures provide the framework for those decisions to be taken and represent another significant step for Northern Ireland on the path to the completion of devolution.⁵¹

2. The appointment of a Minister for Justice

In summary, the Bill provides for another option in the appointment of a Minister for Policing and Justice. If enacted, the Assembly will choose from this and the previous seven options for the period until May 2012. The option in the current Bill is likely to be the one gaining most support in the Assembly at presently constituted. If this option is

⁵¹ [HC Deb 23 Feb 2009 c8WS](#)

chosen, the Assembly will be able to pass a resolution to ensure that the model continues after 2012 and will not need to enact its own legislation. It is important to note that the Bill does not set a statutory deadline for the transfer of policing and justice. Further detail is set out below.

Clause 1 and Schedule 1 of the Bill amend section 21A and Schedule 4A of the *Northern Ireland Act 1998* to allow an Assembly Member (rather than the First and Deputy First Minister) to nominate the Minister for Policing and Justice. The nomination would then be approved by an Assembly vote. This procedure includes the use of the cross-community voting procedure (the support of a majority of the members voting on the motion for the resolution, a majority of the designated Nationalists voting, and a majority of the designated Unionists voting) This form is known as parallel consent. Para 1(2) clarifies that the Schedule is to be considered an excepted matter under the 1998 Act, but the *Explanatory Notes* clarify that this does not affect the ability of the Assembly to legislate in this area to the extent authorised by the provisions.

If this new model of appointment is chosen, then the nomination of the Policing and Justice Minister is made after the appointment of the First and Deputy First Minister and the other ministerial posts. The Minister would not be selected under the d'Hondt formula and would not count towards the parties' entitlements to ministerial offices for the purposes of d'Hondt. See the *Explanatory Notes* to the Bill for further detail.⁵² The *Notes* also set out the processes to be followed for the Policing and Justice Minister to cease to hold office following a resolution of the Assembly based on cross-community voting. The provisions already inserted into the 1998 Act by the *Northern Ireland (Monitoring Commission etc) Act 2003* in respect of exclusion of parties not committed to peaceful means are specifically applied to the model of nomination set out in Schedule 1 to this Bill. The *Explanatory Notes* state:

33...Under those paragraphs, a minister whose party is excluded by a direction made by the Secretary of State under section 30A(5) is able to resume, immediately, his previous ministerial office if Parliament does not approve the direction.⁵³

Schedule 1 also deals with the transitional arrangements until 1 May 2012, as set out in the *Explanatory Notes*:

34. As mentioned above, the agreement between the First and deputy First Ministers was that this ministerial model would apply for an initial period but the Assembly would be required to review the arrangements and to put in place permanent arrangements by 1 May 2012. This Part of the Schedule sets out the transitional arrangements that will apply until 1 May 2012 or, if earlier, the point at which the Assembly puts in place permanent arrangements for the department ("the transitional period"). *Paragraphs 6 to 8* apply only if the initial model chosen for the justice department is the one set out in Schedule 1 to this Bill.

⁵² See in particular paras 26-29 at <http://www.publications.parliament.uk/pa/cm200809/cmbills/062/en/09062x--.htm>

⁵³ See para 33 at <http://www.publications.parliament.uk/pa/cm200809/cmbills/062/en/09062x--.htm>

35. *Paragraph 6* sets aside the provisions of section 18(1)(b) of the 1998 Act when the first justice department is established. The effect of this is to remove the requirement - that would normally obtain when a determination is made under section 17(1) of the 1998 Act following the establishment of a new department - for all Northern Ireland Ministers to cease to hold office at the point that devolution of policing and justice occurs.

36. Section 32(3)(a) of the 1998 Act requires that, following an election, the Secretary of State is obliged to propose a date for a new Assembly election should a new Executive not be formed within seven days of the new Assembly first meeting. *Paragraph 7* provides that during the transitional period the Assembly may, if necessary, keep trying to elect a justice minister beyond the seven day deadline without triggering another Assembly election.

37. *Paragraph 8(1)* provides that the first justice department will be dissolved on 1 May 2012 unless the Assembly, by that date, either has passed a resolution to continue the department on the same basis beyond 1 May 2012 or has put in place alternative future arrangements for the ministerial oversight of that department. *Paragraph 8(2)* provides that any such resolution must be passed with cross-community support.

38. *Paragraph 8(3)* provides that a new Act of the Assembly under paragraph 8(1)(b) may provide for the department to continue operating. The effect of this is to avoid the need to dissolve the department and re-establish it. *Paragraph 8(4) and (5)* enables the Act to switch the ministerial model used to fill that ministerial office.

39. *Paragraph 8(9)* provides that the Assembly may choose to dissolve the department at any time. It may then set up a new department in line with the provisions of the 1998 Act.

40. *Paragraphs 9 and 10* make consequential amendments to sections 21B and 21C of the 1998 Act so that these sections apply only if the departmental model described in 21A(5A), that is a minister supported by a deputy minister, is chosen for the first justice department at the time the department is established.⁵⁴

Clause 4 amends the procedure under section 86 of the *Northern Ireland Act 1998* whereby matters are devolved to Northern Ireland. The *Explanatory Notes* state: “when policing and justice matters are devolved, certain aspects of these matters will remain reserved in terms of the Northern Ireland Assembly’s legislative competence - such as where it remains important to retain a UK-wide framework in a particular area. However, within those areas, the most appropriate body or individual to carry out an executive function may be a devolved body. The amendment to section 86 allows executive functions within the reserved field to be conferred on a devolved body.”⁵⁵

⁵⁴ <http://www.publications.parliament.uk/pa/cm200809/cmbills/062/en/09062x--.htm>

⁵⁵ Para 20, *ibid*

III Judicial appointments

A. Judicial Appointments in Northern Ireland

1. Background

a. *The Northern Ireland Judicial Appointments Commission*

The Northern Ireland Judicial Appointments Commission (the Commission) was established on 15 June 2005 as an independent public body under the *Justice (Northern Ireland) Acts 2002 & 2004*. Details about the historic position are available in the Library Research Papers 02/07 *The Justice (Northern Ireland) Bill* and 04/22 *The Justice (Northern Ireland) Bill [HL]*.

The Commission replaced the Office of the Commissioner for Judicial Appointments for Northern Ireland which closed on 22 September 2006.⁵⁶ The Commission was established to select and recommend candidates for judicial office in Northern Ireland. It is expected to select on merit, through fair and open competition and by selecting from the widest possible range of eligible candidates.

In answer to a Parliamentary Question in November 2008 on the criteria to be used for the appointment of judges in Northern Ireland following the expected devolution of policing and justice, Paul Goggins, Minister of State at the Northern Ireland Office, indicated that:

Under section 5 of the *Justice (Northern Ireland) Act 2002*, the selection of a person for judicial office, within the remit of the Judicial Appointments Commission for Northern Ireland (up to and including High Court judge), is to be made solely on the basis of merit. Subject to that, the Commission is to engage in a programme of action to secure as far as reasonably practicable that those holding judicial office are reflective of the community in Northern Ireland. The requirements of section 5 apply both before and after the devolution of policing and justice.⁵⁷

The Commission is also expected to make progress with the appointment of more women to judicial office. In October 2005, Bridget Prentice, a minister at the then Department for Constitutional Affairs, said:

Increasing numbers of women are being appointed to the judiciary in Northern Ireland. Two of the last five appointments to the county court bench were women. The *Justice (Northern Ireland) Act 2002* changed the eligibility requirement for judicial appointments to require a prescribed number of years standing as a barrister or solicitor rather than, as previously, a prescribed number of years in practice. This change will ensure that women who take a career break from legal practice are not disadvantaged. The Northern Ireland Judicial Appointments Commission which was established in June 2005 now has responsibility for recommendations for judicial appointments, and one of its statutory responsibilities

⁵⁶ Information about the Office of the Commissioner for Judicial Appointments for Northern Ireland is available at: <http://cjani.courtsni.gov.uk/>

⁵⁷ [HC Deb 10 November 2008 c773W](#)

is to engage in a programme of action which is designed to secure, so far as it is reasonably practicable to do so (and consistent with appointment on merit), appointments to the judiciary such that those holding such offices are reflective of the community in Northern Ireland.⁵⁸

The Commission consists of 13 members (Commissioners) appointed by the Lord Chancellor drawn from the judiciary, legal profession and members of the public who are not lawyers.⁵⁹ The Commission's Chairman is currently Rt Hon Sir Brian Kerr, Lord Chief Justice. It is currently funded by Government through the Northern Ireland Court Service. The *Justice (Northern Ireland) Act 2002* provides that the Lord Chancellor, when making appointments to the Northern Ireland Judicial Appointments Commission, is to make such arrangements as will, so far as is practicable, secure that the membership of the commission is reflective of the community in Northern Ireland.

In summer of 2008, in answer to a Parliamentary Question, Lord Hunt of Kings Heath provided details about the religious “tradition” of the various Commissioners, noting that:

The current membership of the Northern Ireland Judicial Appointments Commission, in terms of community balance, comprises six members who are regarded as Catholic, three who are regarded as Protestant and two who are regarded as belonging to neither community. Two judicial member positions are currently vacant. The Lord Chancellor and those responsible for making nominations to the commission endeavour, so far as is practicable, to secure that the membership of the commission is reflective of the community in Northern Ireland.⁶⁰

Schedule 1 to the *Justice (Northern Ireland) Act 2004* transferred to the Lord Chancellor functions exercisable by the First Minister and deputy First Minister, acting jointly, in relation to the Northern Ireland Judicial Appointments Commission.

The Commission recommends one candidate to the Lord Chancellor for each vacancy. Eligibility qualifications/requirements for appointment to the various judicial offices that fall within the Commission's remit are normally set out in the governing legislation for the particular office and will appear in the relevant advertisement and associated scheme paperwork. The Commission may only recommend for appointment to judicial office those who meet the eligibility requirements.

A [flowchart](#) is available from the Commission which shows the detailed appointment process.⁶¹ The Commission's [annual reports and accounts](#) are also available on its website.⁶²

Statistics in respect of the number of judges appointed between 1990 and 2008 are set out as Appendix A to this paper.

⁵⁸ [HC Deb 31 October 2005 c779W](#)

⁵⁹ A list of current Commissioners is available from the Commission's website: <http://www.nijac.org/whoweare.htm>

⁶⁰ [HL Deb 2 July 2008 c41-2WA](#)

⁶¹ Available at: <http://www.nijac.org/whatwedo/appointmentprocess.pdf>

⁶² Available at: <http://www.nijac.org/publications/annualreports.htm>

Information about the recent changes to the judicial appointments system in England and Wales, starting with the *Constitutional Reform Act 2005*, which established the Judicial Appointments Commission, is available in Library Standard Note 4717 [Judicial Appointments](#).

2. Northern Ireland Judicial Appointments Ombudsman

The *Constitutional Reform Act 2005* established a Judicial Appointments Ombudsman for Northern Ireland. The Ombudsman's office assumed its responsibilities on 25 September 2006.

The Ombudsman investigates complaints from applicants for judicial appointments where maladministration or unfairness is alleged to have occurred in the process by:

- the Northern Ireland Judicial Appointments Commission (the Commission) or Committees of the Commission;
- the Northern Ireland Court Service; or,
- the Lord Chancellor.

The current Ombudsman, Mr Karamjit Singh CBE, was appointed by the Queen, on recommendation of the Lord Chancellor, for an initial five year term which expires on 24 September 2011. He took office on 25 September 2006.⁶³

The Ombudsman will consider individual complaints from applicants for judicial office who are unhappy with some aspect of the Commission's, the Lord Chancellor's or NI Court Service's, handling of their application and who claim to have been adversely affected.

3. The proposals

The *Explanatory Notes* to the Bill set out the background to these proposals. In particular, they note that on 18 November 2008, the Northern Ireland First and Deputy First Ministers indicated that, in addition to agreeing a process to complete the devolution of policing and justice to the Northern Ireland Assembly, they had agreed a proposal that on devolution of these functions, the responsibility for the appointment of judicial office holders should transfer to the NI Judicial Appointments Commission (rather than the First and Deputy First Ministers as had previously been envisaged under the *Justice (Northern Ireland) Act 2002*). Furthermore, the removal of listed judicial office holders would become primarily the responsibility of the Lord Chief Justice of Northern Ireland rather than the First and Deputy First Ministers. Additional amendments would also be made to the *Judicature (Northern Ireland) Act 1978*, relating to the appointment and tenure of the Lord Chief Justice, Lord Justices of Appeal and certain High Court judges in Northern Ireland.

⁶³ Information about Mr Singh is available at: <http://www.nijao.gov.uk/profile.htm>

4. The clauses relating to the Judiciary in Northern Ireland

Clause 2 and **Schedules 2 to 6** make provision for functions relating to the appointment and removal of judicial office holders to be exercised by the NI Judicial Appointments Commission.

Clause 2 would give effect to Schedule 2, which substitutes new provisions for those contained in the *Judicature (Northern Ireland) Act 1978* relating to the appointment and removal of the Lord Chief Justice, Lord Justices of Appeal and certain judges of the High Court in Northern Ireland. The Schedule would introduce new sections 12 to 12C to the *Judicature (Northern Ireland) Act 1978*.

The *Explanatory Notes* to the Bill indicate that new section 12 would provide for the appointment of the Lord Chief Justice and Lord Justices of Appeal, by Her Majesty, on the recommendation of the Prime Minister. Before making a recommendation, the Prime Minister would be obliged to consult the Lord Chief Justice (or if that office were vacant, or the Lord Chief Justice were unavailable, the senior Lord Justice of Appeal) and the NI Judicial Appointments Commission.

New section 12A provides for the appointment of High Court judges by Her Majesty. The appointment process (whereby appointments would be made on the recommendation of the Lord Chancellor, following selection by the NI Judicial Appointments Commission) is laid out in a new Schedule 3 to the 2002 Act, as substituted by Schedule 3, paragraph 13 of the Bill (discussed further below).

Schedule 2 would also replace section 12B (Tenure of Office) of the *Judicature (Northern Ireland) Act 1978* with new sections 12B and 12C. New sections 12B and 12C relate to the tenure of office of the Lord Chief Justice, Lord Justices of Appeal and certain High Court judges. This would be a further amendment, replacing the changes recently made by s133 of the *Constitutional Reform Act 2005*.

New section 12B provides that the Lord Chief Justice could be removed by Her Majesty following an address by both Houses of Parliament. A motion for an address could only be made in the House of Commons by the Prime Minister and in the House of Lords by the Lord Chancellor (or if the Lord Chancellor is not a member of the House of Lords, by another Minister at his request).

Prior to making such a motion, new section 12B (4) to (6) would require a number of criteria to be met. In particular, the provisions would require the following:

- the Prime Minister (after consulting with the Lord Chancellor) would have to convene a tribunal⁶⁴, consisting of (a) a person holding high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) but who does not hold and has never held the office of Lord Chief Justice, Lord Justice of Appeal or judge of the High Court;⁶⁵ (b) a person who is, or has been a judge of the Court of Appeal of England

⁶⁴ This requirement for a tribunal based removal system for senior judges appears to be unique to Northern Ireland.

⁶⁵ It is not entirely plain from the face of the legislation or *Explanatory Notes* what judge this would be, but it may be that the judge would have to be a judge of the UK Supreme Court.

and Wales or the Inner House of the Court of Session; and (c) a lay member of the NI Judicial Appointments Commission;

- the tribunal would have to have report to the Prime Minister recommending removal on the grounds of misbehaviour;
- the report would have to be laid before both Houses.

Where the Prime Minister and Lord Chancellor were considering making a motion, the Prime Minister would be entitled to suspend the Lord Chief Justice from office under s 12B (7). The suspension would prevent the Lord Chief Justice from carrying out the functions of his office but would not affect his other rights as holder of the office (new section 12B (8)).

Further details about the composition and selection of the tribunal are contained in new section 12B (9) to (15).

New section 12C relates to Lord Justices of Appeal and certain High Court judges who hold office during good behaviour (subject to section 26 of and Schedule 7 to the *Judicial Pensions and Retirement Act 1993*). As with the Lord Chief Justice, a judge could be removed by Her Majesty on an address of both Houses of Parliament, such a motion being made in the House of Commons by the Prime Minister and in the House of Lords by the Lord Chancellor (or another Minister at the Lord Chancellor's request where the Lord Chancellor is not a member of the House of Lords).

New section 12C(4) provides that no motion should be made unless the Lord Chief Justice or Northern Ireland Judicial Appointments Ombudsman has (after consulting the other) convened a tribunal, which has reported that the judge be removed from the office on the grounds of misbehaviour. The Prime Minister and Lord Chancellor would then be obliged to consult the Lord Chief Justice as to whether to accept the tribunal's recommendation. A copy of the tribunal's report would have to be laid before both Houses before a motion was made.

New section 12C(7) makes provision for the suspension of a judge by the Prime Minister or Lord Chancellor with the agreement of the Lord Chief Justice. New section 12C (9) to (15) contain details of the composition and selection of the tribunal. Section 12C (16) makes plain that the provisions only apply to High Court judges appointed before section 7 of the 2002 Act (Removal from listed judicial office) comes into force.

As mentioned above, **Schedule 3** of the Bill would make amendments to the 2002 Act, changing the appointment and removal provisions which were prospectively conferred on the First and Deputy First Ministers. Section 5 of and Schedule 3 to the 2002 Act had prospectively transferred responsibility for the appointment and recommendation of persons for appointment from the Lord Chancellor to the First and Deputy First Ministers.

Paragraph 3 and 13 to **Schedule 3** of the Bill would be substituted for section 5 and Schedule 3 of the 2002 Act and provide that post devolution appointments made by Her Majesty would continue to be made on the recommendation of the Lord Chancellor, following selection by the NI Judicial Appointments Commission. It further provides that after devolution, office holders currently appointed by the Lord Chancellor, who would (under the 2002 Act) have been appointed by the First and Deputy First Minister acting jointly, would instead be appointed by the NI Judicial Appointments Commission.

Parts 1 and 2 of the new **Schedule 3** do not include a provision for the Lord Chancellor to ask the NI Judicial Appointments Commission to reconsider their selection. Previously the Lord Chancellor had been able to ask for a review and the Government states that this amendment “enhances the Commission’s role.”

Part 4 to new **Schedule 3** makes general provisions about selections and provides, *inter alia*, that the selection of a person appointed under the Schedule to a listed office must be made solely on the basis of merit, but that subject to that proviso, the Commission must engage in “a programme of action” which:

- is designed to secure, so far as reasonably practicable, that appointments for listed offices are reflective of the community in Northern Ireland; and
- requires the Commission, so far as it is reasonably practicable to do so, to secure that a range of persons reflective of the community in Northern Ireland is available for consideration by the Commission whenever it is selecting a person to be appointed.

Paragraphs 5-7 to **Schedule 3** of the Bill amend sections 6 to 8 of the 2002 Act, which would have the effect of giving the responsibility for the removal of listed judicial office holders to the Lord Chief Justice as head of the judiciary in Northern Ireland. Removal would require a recommendation to have been made by a tribunal convened by the Lord Chief Justice or Judicial Appointments Ombudsman. Paragraph 7 provides details of the constitution of the removals tribunal.

Schedule 4 to the Bill would transfer to the NI Judicial Appointments Commission the power to appoint certain judicial office holders currently appointed by the Lord Chancellor, whilst Schedule 5 details the consequential amendments and transitional provisions which would operate.

Schedule 6 inserts a new section 29C into the *Northern Ireland Act 1998*. This provides for a review of the arrangements relating to judicial appointments and removals. In particular, a duty would be placed on the NI Assembly to review the arrangements put in place under Schedules 2 to 5 and report its findings before 1 May 2012.

Paragraph 2 to Schedule 6 would preclude the appointment of new members to the Northern Ireland Judicial Appointments Commission in the absence of agreement on permanent arrangements for judicial appointments and removals. Any agreement would require the support of the majority of assembly members voting on the motion for the resolution, and in addition, a majority of both the designated Nationalists and Unionists voting.

IV Other miscellaneous amendments – the status of the Director of Public Prosecutions in Northern Ireland

Clause 3 would include an amendment to section 30 of the 2002 Act. Clause 3(2) would insert a new section 30A to the 2002 Act which would provide that the Director of Public Prosecutions in Northern Ireland would be a corporation sole.⁶⁶

New section 30A (2) would allow the Director to do anything, apart from borrowing money, that was calculated to facilitate the exercise of his or her functions, or was incidental or conducive to the exercise of those functions. The *Explanatory Notes* state that this arrangement will facilitate the holding of property, rights and liabilities by the Director in his or her own right.

V The expedited passage of the Bill

In common with a number of Northern Ireland bills since the *Good Friday (Belfast) Agreement*, this Bill is due to have all its Commons stages taken in one day.⁶⁷ This list below sets out the Northern Ireland bills taken in one day in the Commons since the *Northern Ireland Act 1998* together with the date on which all stages were taken. Background is given in the various Library Research Papers produced at the time of the debates:

- *Northern Ireland Bill 1998-99* 13 July 1999⁶⁸
- *Northern Ireland Bill 1999-2000* 8 February 2000⁶⁹
- *Northern Ireland Assembly Elections Bill 2002-03* 17 March.2003⁷⁰
- *Northern Ireland Assembly (Elections and Periods of Suspension) Bill 2002-03* 12 May 2003⁷¹
- *Northern Ireland (Monitoring etc) Bill [HL] 2002-03* 17 September 2003⁷²
- *Northern Ireland (St Andrews Agreement) Bill 2006-07* 21 January 2006⁷³
- *Northern Ireland (St Andrews Agreement) (No 2) Bill 2006-07* 27 March.2007⁷⁴

In addition, the *Northern Ireland Bill 2005-06* passed the Commons in two days; 26 and 27 April 2006.⁷⁵

⁶⁶ A corporation is an entity which has legal personality, i.e. it is capable of enjoying and being subject to legal rights and duties. A corporate sole consists of one member only and his or her successors.

⁶⁷ A Parliamentary Information List produced by the Commons Library lists Government bills since 1979 first introduced in the Commons where Commons stages have been taken in one day at [Government Bills passing the Commons in one day](#)

⁶⁸ No Research Paper was produced for this bill

⁶⁹ [Library Research Paper 00/13](#)

⁷⁰ [Library Research Paper 03/21](#)

⁷¹ [Library Research Paper 03/43](#)

⁷² [Library Research Paper 03/69](#)

⁷³ [Library Research Paper 06/56](#)

⁷⁴ [Library Research Paper 07/32](#)

⁷⁵ [Library Research Paper 06/23](#)

The Lords Constitution Committee has announced an inquiry into “constitutional issues that may arise when there is resort to emergency legislation”⁷⁶. The Committee began taking evidence in the week beginning 23 February 2009.

The motion to facilitate taking all Commons stages in one day (by allowing tabling of amendments before second reading) was initially objected to on the 23 and 24 February 2009.⁷⁷ The motion was then debated on 25 February 2009. The Deputy Leader of the House, Chris Bryant, said:

One other point is material. The House requires speed only because there will be further stages after the Bill completes its passage here—namely, a Bill in the Assembly to establish the department of justice and a resolution by the Assembly, followed by Orders in Council, which must then come before the House.

Mr. Deputy Speaker, you agreed with me that the motion is a simple one. I recognise that the time scale for the legislation is compressed, but the Government have allowed 10 days between the introduction of the Bill and the debates to ensure that all right hon. and hon. Members can familiarise themselves with the detail and, if necessary and if they choose to do so, table amendments before Second Reading. I hope that the motion has the support of the House today.⁷⁸

Shailesh Vara, for the Conservatives, indicated that the Official Opposition would be supporting the motion. David Heath, for the Liberal Democrats, argued that there was time, in a light legislative session, for full consideration of a five clause bill:

What might be the reason for the proposal to table amendments before the basic principles of the Bill have been considered on Second Reading? There are two possible arguments. One is that the urgency of the matter will be such that a programme motion will receive ready assent from hon. Members once it is put before the House, because the urgency is transparent. However, we know that the deadline to complete the remaining stages of the Bill in good order—as many of us want to do—before Royal Assent is not until the end of March. This is the lightest legislative Session that we have ever had, and there is ample time to give more than one day to the consideration of this important Bill. It could have historic significance for Northern Ireland and we ought to give it proper consideration. The argument that we need to be able to table amendments early because this is a matter of urgency is unsustainable, because it would be quite possible for the House to maintain its normal procedures without difficulty in this regard.

The other, less satisfactory, argument would be to suggest that there was consensus among all those in the House on the objectives and details of the Bill and that any amendments should be tabled early to enable proper and swift progress to be made. I do not believe that such consensus exists, however. Yes, there is consensus on the final objective of the Bill. I doubt whether any hon. Member does not wish to see the repatriation to Northern Ireland of the justice

⁷⁶ Call for Evidence: Emergency Legislation 29 January 2009 *Lords Select Committee on the Constitution* <http://www.parliament.uk/documents/upload/CFE.doc>

⁷⁷ HC Deb 24 February 2009 c265

⁷⁸ HC Deb 25 February 2009 c329

functions to ensure proper devolution. The issue is not the final objective, but the detail.

The Bill is not that long; it contains only five clauses. It would not take long to give any amendments proper consideration in Committee in the normal way. So we are talking about a week—or perhaps two, at a maximum—in Committee. That would not disturb the timetable— [*Interruption.*] ⁷⁹

The Labour backbencher, Andrew Mackinlay, argued that there should be a day between second reading and committee stage and third reading:

I rise because I have objected to this motion over the past two nights and because I have consistently criticised in this House successive Secretaries of the State for Northern Ireland for pulling the same stunt time and again. They always come to the House saying that legislation must be passed not expeditiously, but in one day. That is repugnant to me, and it should be repugnant to this House, as it makes a total nonsense of what we do here.

Following up the point of the hon. Member for Somerton and Frome (Mr. Heath), speaking for myself—I will perhaps elaborate when we debate the programme motion next week—I think that all we needed was the separation of one evening between Second Reading and then Committee and Third Reading. Indeed, it was originally intended that the legislation would be dealt with this afternoon. ⁸⁰

Mr Heath pointed out that the provisional business for the Lords was that the Bill would have a second reading on March 9 and report and third reading on 11 March. Mark Durkan, for the SDLP, also protested at the speed of the proceedings, noting:

It has been said that this timetable is necessitated by the requirements of the Assembly. As other hon. Members have pointed out, there is no reference or record showing that the Assembly has made such a request or that there is such a demand, and there is no business specifically timetabled for the Assembly in this respect, even though some of us regret that fact. The Assembly and Executive Review Committee has not agreed anything that would suggest that it expects legislation to be introduced within a given time. The relevant legislation in the Assembly would have to be tabled jointly by the First Minister and the Deputy First Minister, and I know of no agreement between them to do so or with the Committee to schedule business in the Assembly on that basis. The House therefore cannot rely on the impression that was given by the Deputy Leader of the House in that respect. ⁸¹

Nigel Dodds and Peter Robinson of the DUP also argued that there was no end date for the devolution of policing and justice and that therefore, there was time for debate both in Westminster and at the Assembly. ⁸² However, the motion was passed without a division, the speakers in the debate accepting that if it were negatived, this would prevent the tabling of amendments before second reading on 4 March. However, these issues are likely to be raised again when the programme motion for the Bill is taken on 4 March.

⁷⁹ [HC Deb 25 February 2009 c330](#)

⁸⁰ [Ibid, c330](#)

⁸¹ [HC Deb 25 February 2009 c335](#)

⁸² [Ibid, c330-331](#)

A. Commencement provisions

Clauses 1, 3(2), 4 and 5 and Schedule 1 are due to come into force on royal assent, according to **Clause 5 of the Bill**. This clause also makes provision for statutory instruments by order by the Secretary of State for supplementary, incidental or consequential provisions. These are however subject to affirmative resolution of both Houses. The extent provisions are set out in **Clause 5(2)** as follows:

An amendment or repeal contained in this Act has the same extent as the enactment or instrument or relevant part of the enactment or instrument to which the amendment or repeal relates.

Appendix Judicial Appointments 1990-2008⁸³

NB Lord Chief Justice =LCJ and Lord Justice of Appeal=LJ of Appeal in the following table

Judicial appointments made in Northern Ireland

	LCJ	LJ of Appeal	High Court	County court	Resident magistrate	District judge	Master of the High Court	Coroner
1990				2			1	
1991					1			
1992				1	1			1
1993		2	3		3		2	
1994				2	1			
1995		1	1	1	1			
1996						1		
1997	1	1	1	2	2	1		
1998		1		3	2		1	
1999			2		2		1	
2000				1	2	1		
2001			1	1			1	
2002					1			
2003			1	1	2			
2004	1	1	2	4				
2005			1	1	4		2	
2006							1	3
2007		2	2		6		1	
2008		1	1					1

Note: Appointments have been made to other types of judicial role

Sources:

HC Deb 29 November 2005 c383W

Northern Ireland Judicial Appointments Commission officials

Northern Ireland Court Service officials

⁸³ Contributed by Gavin Berman, Social and General Statistics