



## The Hillsborough Agreement

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This note outlines the background to, content of, and moves to implement the agreement reached at Hillsborough Castle between the Democratic Unionist Party and Sinn Fein on 4 February 2010. The full text of the Agreement is included as an appendix to the note. The note also outlines related developments in Northern Ireland, including the announcement on 8 February 2010 by General de Chastelain, the head of the Independent International Commission on Decommissioning, that the Irish National Liberation Army, the Official IRA and the South-East Antrim Ulster Defence Association had decommissioned their weapons. General background on political developments in Northern Ireland is given in Library Standard Note [SN/PC/5297](#), Northern Ireland – political developments since October 2009.

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## 1 Background

Under the *Northern Ireland Act 1998* responsibility for policing and justice was reserved to Westminster, enabling the subject to be transferred at a future date. The 2006 *St Andrews Agreement* included commitments to press on with the transfer, and on 18 November 2008 the Northern Ireland First and Deputy First Ministers announced that they had agreed on a process to complete the devolution by proposing initial arrangements for ministerial oversight of a policing and justice department. The *Northern Ireland Act 2009* added to the options, contained within the *Northern Ireland Act 1998*, for the method of appointing the justice Minister. For further information on the background to the devolution of policing and justice powers see Library Research Paper 09/18 *The Northern Ireland Bill*.<sup>1</sup>

For the transfer to be completed, the Northern Ireland Assembly firstly had to pass legislation setting up a Department of Justice. The *Department of Justice Bill*, which does this, passed all its stages in the Northern Ireland Assembly on 30 November 2009.<sup>2</sup> The Bill also sets out the arrangements for the appointment of a minister to head the Department. A full text of the Bill is available at:

[http://www.niassembly.gov.uk/legislation/primary/2009/nia1\\_09.htm](http://www.niassembly.gov.uk/legislation/primary/2009/nia1_09.htm).

However, the *Department of Justice Bill* is of a preparatory nature only. For devolution to take place the details of the transfer must be agreed to and a resolution transferring policing and justice powers must be passed in the Assembly by means of a cross-community vote. Devolution would then be subject to final approval from Westminster.

The political disagreement between Sinn Fein and the DUP over the timing of the transfer intensified in the period immediately following the passage of the *Department of Justice Bill*.

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<sup>1</sup> All available at [http://www.parliament.uk/works/notes\\_on\\_parliament\\_and\\_constitution.cfm#devolution](http://www.parliament.uk/works/notes_on_parliament_and_constitution.cfm#devolution)

<sup>2</sup> "NI justice bill passes last stage", 1 December 2009 *BBC News*

Martin McGuinness, Deputy First Minister, indicated that Sinn Fein would expect a resolution by Christmas, but in his speech to the DUP conference, First Minister Peter Robinson indicated that he would not be held to any deadline for the transfer.<sup>3</sup> Meanwhile both Gordon Brown and David Cameron agreed new funding arrangements to support policing and justice if necessary.<sup>4</sup>

There was public disagreement between Martin McGuinness and Peter Robinson at the meeting with the Irish Taoiseach, Brian Cowen, on 15 December 2009.<sup>5</sup> But at the end of December there was some press comment to the effect that an agreement would be made on the issue of the Parades Commission, paving the way for DUP acceptance of devolution.<sup>6</sup> On 16 December Shaun Woodward, Secretary of State for Northern Ireland, announced that he would reappoint the current Parades Commissioners for another year, pending agreement on the future of the Commission.<sup>7</sup>

On 11 January 2010 Peter Robinson stood down temporarily as First Minister to resolve the standards of conduct issues relating to himself and his wife, Iris. This followed media allegations that Mrs Robinson had given funding for a small business to a young man, who it was alleged she was in a relationship with, without making a declaration of the donations from businessmen.<sup>8</sup> Mr Robinson subsequently resumed his role as First Minister on 4 February, announcing that, following a 'comprehensive' examination, Paul Maguire QC had found no evidence to suggest that he had broken the ministerial code.<sup>9</sup>

On 12 January there were all party talks with the Northern Ireland Secretary at Stormont, with some indications of optimism as to a resolution.<sup>10</sup> The question of abolishing the Parades Commission continued to be a barrier to resolution and on 25 January Gordon Brown and Brian Cowen held talks in Northern Ireland in an effort to save the talks.<sup>11</sup> After three days the two Prime Ministers left the talks, which continued with the Northern Ireland Secretary and the Irish Foreign Minister present. Gordon Brown and Brian Cowen had announced that if agreement was not reached by Friday 29 January then they would set out their own proposals. However, the talks were allowed to continue through and past this deadline.<sup>12</sup> Following ten days of intense negotiation, it was announced just before midnight on 4 February that the DUP and Sinn Fein had reached an agreement, with Peter Robinson stating that it had gained unanimous support from the DUP's Assembly Members.<sup>13</sup>

## 1.1 Decommissioning

The *Northern Ireland Arms Decommissioning Act 1997 (Amnesty Period) Order 2009* came into force on 13 February 2009. The Act extended the deadline for decommissioning without prosecution to 9 February 2010.<sup>14</sup> In December 2008 Shaun Woodward, Secretary of State

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<sup>3</sup> "DUP will not walk away from Assembly" 21 November 2009 *Belfast Telegraph*

<sup>4</sup> "Cameron ends long silence with Sinn Fein" 22 October 2009 *Times*. See HC Deb 21 October 2009 c909 and Dep 2009/2572

<sup>5</sup> "Stony faces, sharp words...the gulf between our first ministers", 15 December 2009 *Belfast Telegraph*.

<sup>6</sup> "Stormont: New year deal on parades will save assembly, say unionists" 31 December 2009

<sup>7</sup> "[Parades commissioners re-appointed](#)", 17 December 2009 *BBC News*

<sup>8</sup> "Robinson steps aside as First Minister. Leader to take six week break as fallout over wife's affair continues", 12 January 2010 *Belfast Telegraph*

<sup>9</sup> "Peter Robinson back as Northern Ireland first minister", 4 February 2010 *BBC News*

<sup>10</sup> "Back devolution, unionists urged" 13 January 2010, *BBC News*

<sup>11</sup> "Late night policing and justice talks 'hard going' 26 January 2010 *BBC News*

<sup>12</sup> "The road to a deal on devolution has been long and hard, strewn with crises, stand-offs and compromise", 6 February 2010 *Belfast Telegraph*

<sup>13</sup> "Dramatic midnight briefing signals a done deal", 5 February 2010 *Belfast Telegraph*

<sup>14</sup> [http://www.opsi.gov.uk/si/si2009/uksi\\_20090281\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090281_en_1)

for Northern Ireland, announced that this would be the last extension of the amnesty period and stated that the deadline would be brought forward if significant progress was not being made.<sup>15</sup>

On 8 February 2010 the Irish National Liberation Army, the Official IRA and the South East Antrim UDA announced that they had decommissioned their weapons. Shaun Woodward welcomed the announcement in a statement:

This is another hugely significant day in the history of Northern Ireland. On the eve of the end of the decommissioning legislation, these acts of decommissioning and those that have gone before are recognition that the future of Northern Ireland must be a peaceful one, free from violence and the fear of violence.<sup>16</sup>

The amnesty period ended on 9 February in Northern Ireland and on 25 February in the Republic of Ireland.<sup>17</sup> On 3 March 2010 the IICD presented a six month report to the Government, which confirmed that since September 2009 decommissioning events had been carried out with the Ulster Defence Association, the Official Irish Republican Army, the Irish National Liberation Army, the UDA South East Antrim Group and the Shoukri Paramilitary Element. The report stated that in all cases the IICD were informed that the weapons decommissioned constituted all those under the control of the particular organisation. As noted in the report's conclusion, the mandate of the IICD was terminated with effect from 9 February and it will now complete its final report before standing down.<sup>18</sup>

## **2 The Hillsborough Agreement**

Under the agreement made at Hillsborough on 4 February 2010, the First Minister and deputy First Minister will table a joint resolution for a cross-community vote in the Northern Ireland Assembly on 9 March. If this is agreed to, they 'will support all necessary steps in the Assembly to ensure devolution of powers by the 12 April.' Additionally, the Government will set out the parliamentary schedule for the required legislation to effect devolution.

The Agreement notes the importance of an independent judiciary. It also states that the Chief Constable will be operationally responsible for directing and controlling the police, with the PSNI having operational responsibility for policing and for implementing the policies set by the Department of Justice.

The Agreement also sets out the role of the Justice Minister. The Minister will have the same status in the Executive as other ministers and will be able to make "quasi-judicial" decisions without the involvement of the Executive as a whole. In addition, the Justice Minister will bring forward proposals outlining the changes that they feel are needed to the way the Executive works in order to allow the Justice Minister to deal with urgent or confidential matters without involving the whole Executive. Before the implementation of any agreed changes the Executive will normally grant retrospective approval to any decision, where it deems the Minister has acted "reasonably". However, the First Minister and deputy First Minister may, acting jointly, require any matter to be brought before the Executive, or refuse to grant retrospective approval. All issues that cut across the responsibility of two or more Ministers, legislative proposals and spending plans for the Ministry of Justice would require

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<sup>15</sup> For more detail see [SN/PC/5029](#), Political developments in Northern Ireland since October 2008

<sup>16</sup> <http://www.nio.gov.uk/woodward-welcomes-acts-of-decommissioning/media-detail.htm?newsID=16410>

<sup>17</sup> "Northern Ireland decommissioning body stands down", 9 February 2010 *BBC News*

<sup>18</sup> Full report available at [http://www.nio.gov.uk/iicd\\_report.pdf](http://www.nio.gov.uk/iicd_report.pdf)

Executive consideration. The Agreement states that any new arrangements are expected to be in place by the summer recess.

On the issue of parades, the Agreement contains a commitment for a new mechanism to deal with disputed marches. Peter Robinson and Martin McGuinness will chair a working group of six people which will bring forward agreed proposals, within three weeks, for a new framework. The members of this committee included three members from the DUP, all Orangemen, and three Sinn Fein members, including Agriculture Minister Michelle Gildernew.<sup>19</sup> On 23 February the working group delivered its report to the First Minister and deputy First Minister. It is not due to be made public.<sup>20</sup>

Following completion of the consultation process a Bill will be finalised, for which a timetable is outlined in the Agreement.

During the talks at Hillsborough, party papers were exchanged that made suggestions on improving the functioning of the Executive. Sir Reg Empey, leader of the Ulster Unionist Party, and Margaret Ritchie, leader of the Social Democratic and Labour Party, will be asked to co-chair a working group which will make recommendations on how the Executive might function better and how delivery may be improved. The group will commence work before the end of February 2010.

Another working group, chaired by junior Ministers, and involving all of the parties of the Executive, will be set up in order to identify all Executive papers and decisions that are still pending. Junior Ministers will make recommendations by the end of February on whether and how progress can be made on the identified outstanding matters. This will include a programme of work detailing how any remaining issues will be resolved.

Additionally, The First Minister and deputy First Minister will oversee an exercise of examining the St. Andrews Agreement and identifying all matters contained in it which “have not been faithfully implemented or actioned.” They will provide a report to the Executive by the end of February detailing the level of progress made on each outstanding matter. The First and deputy First Minister will also seek approval from the Executive to set up a working group to make recommendations on how progress can be made on those matters identified as un-actioned. The working group will be asked to make an initial report by the end of March. The First Minister and deputy first Minister will then agree a programme to effect completion of the agreed conclusions of the working group.

## **2.1 Key dates of the Hillsborough Agreement**

- 23 February 2010 – Date by which the working group on parades will report on its agreed outcomes to the First Minister and deputy First Minister.
- End of February 2010 – Date by which the working group established to examine how the Executive might function better will commence work.
- End of February 2010 – Date by which the working group set up to examine pending Executive decisions will make recommendations.
- End of February 2010 – Date by which the report will be submitted to the Executive that identifies the un-actioned areas of the St. Andrews Agreement.

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<sup>19</sup> “New parades body members named”, 9 February *Belfast Telegraph*

<sup>20</sup> “Parades group deliver report”, 24 February 2010 *BBC News*

- 9 March 2010 – Cross community vote in the Northern Ireland Assembly on the joint resolution tabled by the First Minister and deputy First Minister.
- 12 April 2010 – Date by which policing and justice powers will be devolved.

### **3 The Prime Minister’s statement on 8 February 2010**

The Prime Minister, Gordon Brown, welcomed the agreement reached at Hillsborough in a statement to the House of Commons on 8 February 2010, proclaiming it as ‘a significant and defining moment.’ He firstly commented on the announcement made by General de Chastelain, the head of the Independent International Commission on Decommissioning, that the Irish National Liberation Army, the Official IRA and the South-East Antrim Ulster Defence Association had decommissioned their weapons.<sup>21</sup>

After paying tribute to individuals involved in the process, both past and present, the Prime Minister went on to highlight four crucial points of the Agreement. Firstly, he stated that:

...the parties have resolved the outstanding issues on the transfer of policing and justice powers and agreed a timetable for the completion of the final stages of devolution. Following cross-community consultation, the First and Deputy First Ministers will jointly table a resolution seeking a transfer of policing and justice powers by means of a cross-community vote in the Northern Ireland Assembly four weeks from tomorrow, on 9 March, for devolution to occur on 12 April. This Parliament will then be asked to approve the necessary transfer orders so that devolution can occur on that date.<sup>22</sup>

Secondly:

...the parties have agreed how the devolution of policing and justice will work in practice and, in particular, how the relationship between the Justice Minister and the Executive will work.

Thirdly:

...the parties have committed to a new and improved framework for regulating and adjudicating parades, which will maximise cross-community support. At its core is a commitment to ensuring local dialogue, transparency and mediation, as well as specific proposals for dealing with parades. The First and Deputy First Ministers will set up a co-chaired working party to take forward that work, and legislation on the agreed outcomes will be completed in the Northern Ireland Assembly before the end of this year.

And fourthly:

...the agreement proposes to address how devolved Government could work better in Northern Ireland. In the talks, all parties raised the issue of the need for greater efficiency, transparency and inclusiveness. It is clear from the agreement that that was firmly recognised. The First and Deputy First Ministers have proposed three very important working groups at executive level, which will begin work immediately...

The first working group will consider how the Executive might function better and how delivery might be improved. The two others will deal with all outstanding Executive

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<sup>21</sup> See <http://www.nio.gov.uk/woodward-welcomes-acts-of-decommissioning/media-detail.htm?newsID=16410> for more details.

<sup>22</sup> HC Deb 8 February 2010 cc624-627

business and make recommendations on how progress can be made on all matters outstanding from the St. Andrews agreement.

Finally, the Prime Minister stated that the agreement,

...will lead to a better functioning Northern Ireland Executive who are better able to focus on growth, jobs, public services and, of course, law and order. I believe that our duty now is to do all we can to encourage the parties to support and give effect to this agreement. Subject to the cross-community vote on 9 March, the First Minister and Deputy First Minister have now agreed to support an accelerated passage for the budget Bill and any related Assembly steps to ensure devolution of powers by 12 April.

David Cameron, the leader of the Conservative Party, in his response to the Prime Minister's statement, welcomed the agreement reached between the DUP and Sinn Fein and stated his party's support for the devolution of policing and justice powers. Mr Cameron also highlighted a number of issues that he felt required further clarification. Firstly, he noted the risk of further difficult negotiations in 2012:

As I understand it, under current legislation the Department of Justice in Northern Ireland, which would of course then be responsible for those matters, is due to be dissolved on 1 May 2012 unless there is agreement on its replacement. Does that not mean that there is a risk of there being another set of very difficult negotiations unless we can resolve that now?<sup>23</sup>

On the issue of parading Mr Cameron stated:

The commission established by the First Minister and Deputy First Minister is given just three weeks from 9 February to come forward with agreed proposals. Can the Prime Minister tell us what will happen to the proposed vote on policing and justice powers in the Assembly on 9 March if that deadline is not met, particularly given that there is a linkage between the two issues?

Mr Cameron also asked about the provision in place for the other political parties in Northern Ireland to study the agreement, and what consideration would be given to any concerns they may have. He also requested clarification of any agreements made at Hillsborough that are not in the text of the Agreement.

The Prime Minister acknowledged the potential for difficulties in 2012 when the Department of Justice is set to dissolve:

...it is true to say that the parties agreed that it should not at this point be changed, and that to do so might have made it more difficult to get the agreement they have. However, I have no doubt that if the devolution of policing and justice works, all parties will want it to move forward in exactly the way that has been designed, including after 2012.<sup>24</sup>

The Prime Minister also stated that he believed that the UUP and the SDLP were looking at the proposals that day, and expressed the hope that: 'they come to the view that we move forward with it and support the cross-community vote on 9 March.'

Nick Clegg, the leader of the Liberal Democrat party, also congratulated the Prime Minister and welcomed the agreement. He did, however, note one area for concern:

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<sup>23</sup> HC Deb 8 February 2010 cc627-629

<sup>24</sup> HC Deb 8 February 2010 c629

...that there is little in the agreement on how to build progress on community relations on the ground, which is where it counts, on everything from public services to the role of community groups. Perhaps the current agreement is simply not the appropriate place for such a commitment. Yet it is undoubtedly true that a political agreement between the parties will be durable only if it is accompanied by concrete steps towards greater integration between the communities.<sup>25</sup>

Peter Robinson, the Northern Ireland First Minister, gave his commitment to 'ensuring that every element of this agreement is firmly implemented.' He also emphasised the importance of community confidence:

It therefore becomes imperative that the institutions being changed have the support of the community and that there is confidence among that community. It can be expressed in two ways – through the consultation process outlined in the agreement and through the support of the all the parties in the Assembly, and without that we cannot move forward.<sup>26</sup>

Mark Durkan, former leader of the SDLP, welcomed the agreement, and stated that the SDLP supported the date for the devolution of policing and justice and would vote for it in the Assembly. He did though note a concern, 'about how the Minister is to be appointed, as that departs from the Good Friday Agreement.' He also stated that:

...some of us are also concerned about the relationship between the devolved and non-devolved functions[?]. That interface could be sensitive, and we would not want controversies arising in which the Minister of justice for northern Ireland is left pleading ignorance and importance. That would not be good for the integrity and credibility of a devolved justice system.<sup>27</sup>

Other Members of the House, including Sir Patrick Cormack, Chair of the Northern Ireland Affairs Committee, congratulated the Prime Minister and welcomed the agreement. Concerns were raised, by Andrew Mackay, over the insufficient involvement of the UUP and SDLP in the negotiations process.<sup>28</sup>

### **3.1 Further reaction to the Agreement**

In an article in the *Belfast Telegraph* on 12 February Jim Allister, leader of the Traditional Unionist Voice, argued that in assenting to the Hillsborough Agreement the DUP had 'caved in to republicanism':

The truth is Sinn Fein had the gun to the DUP's head and, rather than face an election, they rolled over and delivered the Sinn Fein agenda. This is the reality for a once strong Peter Robinson now impotently joined at the hip with Martin McGuinness.

Mr Allister further alleged that the Executive veto on the operation of the Justice Department made the deal 'all the sweeter' for Sinn Fein:

With every piece of justice legislation and all funding to the department having to pass through the Executive, Sinn Fein, through its veto, can exert control, just as it has done

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<sup>25</sup> HC Deb 8 February 2010 cc630-631

<sup>26</sup> HC Deb 8 February 2010 cc632-633

<sup>27</sup> HC Deb 8 February 2010 cc633-634

<sup>28</sup> HC Deb 8 February 2010 cc634-640



through capricious blocking of papers for months from other departments as part of its pressure to secure policing and justice.<sup>29</sup>

The TUV leader questioned the gains the DUP received from the deal:

And what do the DUP get in return? A review of a review of parading! But, meantime, before a possible name change, the Parades Commission stays while the processes are altered to impose mandatory dialogue between the Loyal Orders and recalcitrant objectors and possible adjudicators appointed by the joint First Ministers.

How empowering McGuinness to appoint his own placemen as adjudicators is likely to resolve parading beats me...

In an article for the *Belfast Telegraph*, Margaret Ritchie, leader of the SDLP, was also critical of aspects of the agreement made at Hillsborough. After dubbing the agreement a 'non-agreement', she stated that it was 'a gerrymander to suit a DUP veto, with the acquiescence of Sinn Fein.' In contrast to the commitments contained within the agreement, she also called for the Parades Commission to be retained and 'given an enhanced role on mediation.'<sup>30</sup> Ms Ritchie commented that, whilst her party welcomed the progress made towards the devolution of policing and justice powers:

The Hillsborough Agreement is a Hillsborough arrangement. It consists of one new department and three working groups and there is no finality in respect of that.

In the days following its publication Peter Robinson defended the agreement against its critics.<sup>31</sup> Nevertheless, the First Minister also confirmed that he would be prepared to collapse the Assembly if Sinn Fein does not honour the commitments made at Hillsborough:

Everybody has recognised that there are methods available, particularly to the two main parties in the Assembly, that can be used at any and all times to bring down institutions, to ensure that things do not work and to act as vetoes.

He went on to state:

It's well recognised that just as the leader of the Ulster Unionist Party once wrote out his post-dated resignation and eventually caused a suspension of the Assembly, just as it was reported in the newspapers that the Deputy First Minister was prepared to resign — and unquestionably if he had done we would have probably ended up with something worse than suspension of the Assembly, probably the collapse of the Assembly — so too have I the ability to do exactly the same things as both of them if I felt there was bad faith on the part of the signatories to this agreement.

However, Mr Robinson also claimed he had faith that Sinn Fein would honour their commitments.

#### **4 Developments since publication of the Agreement**

On 16 February 2010 Martin McGuinness and Peter Robinson launched an advertising campaign to encourage people in Northern Ireland to read the Hillsborough Agreement. The First Ministers stated that they wanted to 'hear people's views'. However, Mark Durkan, of the SDLP, argued that the advert came 'dangerously close' to electioneering on behalf of Sinn Fein and the DUP. Similarly, Jim Allister criticised the campaign claiming that:

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<sup>29</sup> "Sinn Fein has picked the DUP's 'triple lock'", 12 February *Belfast Telegraph*

<sup>30</sup> "Hillsborough Agreement is a phoney deal, says SDLP's new leader", 17 February 2010

The joint DUP/Sinn Fein advert launched today, at huge public expense, is a mere vanity stunt and fraud, because the public response will not change one jot of their inter-party agreement; it will remain a humiliating defeat for unionism.<sup>32</sup>

#### **4.1 Briefing from the Secretary of State to the Assembly and Executive Review Committee**

On 18 February 2010 Shaun Woodward, Secretary of State for Northern Ireland, delivered a briefing to the Assembly and Executive Review Committee on the devolution of policing and justice matters.<sup>33</sup> Jimmy Spratt, Chair of the Committee, began proceedings by stating that the Committee aimed to publish its report in time to inform debate on 9 March, when the cross community vote on policing and justice was due to take place.

Mr Woodward began by setting out the moves that will be made in Westminster to allow policing and justice powers to be devolved:

...the Assembly's legislation to create the new justice Department was given Royal Assent on 12 February. The necessary Westminster transfer Orders will be completed in the next two weeks, so they could be laid before Parliament as soon as the cross-community vote in the Assembly has been agreed. Our aim, for the benefit of the Committee, is that transfer Orders will complete their passage through Parliament by 25 March.

He also outlined the arrangements for the transfer of funding:

The finances are in place to ensure that when policing and justice powers are transferred, the justice Department will have a secure and sufficient financial basis. The Committee will have questions on those arrangements, but, overall, the sum that will be transferred to the Northern Ireland Executive for policing and justice is £1.328 billion. That is all but £26 million of the NIO's current policing and justice budget, and all of the £132 million of the Northern Ireland Court Service's budget, which is part of the Ministry of Justice, rather than the NIO.

Mr Woodward further stated that the Northern Ireland Executive will have the additional £800 million that was agreed with the Prime Minister in October 2009, emphasising that this would 'only be available if the Assembly agrees to the request for the transfer of powers.'

The Secretary of State then outlined the national security protocol, noting that it was 'not a legal document, but a practical expression':

Therefore, national security will remain a matter for the Secretary of State for Northern Ireland, although I am equally conscious that policing and justice matters in Northern Ireland cannot be completely separated from matters of national security.

It is vital, therefore, that the Secretary of State and the Justice Minister establish a clarity about their respective statutory responsibilities and that the Justice Minister have access to information necessary and proper to fulfil those responsibilities.

When issues of national security arise, there will be an interface between the justice Minister and the Secretary of State. That interface needs to be practical, flexible, based in principle, and, of course, ensure that both can meet their statutory responsibilities. The protocol is based on the presumption of consultation and

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<sup>31</sup> "Robinson: I could have walked away...but I have a duty", 10 February 2010 *Belfast Telegraph*

<sup>32</sup> "Northern Ireland leaders want views on castle deal", 16 February 2010 *BBC News*

<sup>33</sup> Full text of the briefing is available at:  
[http://www.niassembly.gov.uk/record/committees2009/AER/100218\\_BriefingfromSecretaryofState.htm](http://www.niassembly.gov.uk/record/committees2009/AER/100218_BriefingfromSecretaryofState.htm)

communication and on sharing of relevant and appropriate information. That means regular meetings, and it places a burden on the Secretary of State to share relevant information with the justice Minister.

Mr Woodward further explained this protocol in response to a question from Committee member Mr Maskey:

I stress to the Committee that it is my firm commitment that, as I laid out in the protocol, the presumption is to communicate. Critically, that is the direction of the protocol. The presumption is to consult, and there is the responsibility on the Secretary of state to do so. Not to do so would leave that Secretary of state accountable to Parliament.

The Secretary of State answered questions from the Committee members regarding the areas he had covered, and ended by emphasising the importance of the vote on 9 March.

It was reported on 5 March 2010 that the report had been finished by the Committee, and would “be circulated around Assembly Members for next Tuesday’s crucial cross-community vote on whether to approve the transfer of powers from London to Belfast.”<sup>34</sup>

## 5 Cross community vote of 9 March

On 6 March 2010 the Orange Order gave their support to the agreement reached between the DUP and Sinn Fein. This was highlighted as “critical in securing the support of DUP backbenchers” ahead of the vote on 9 March.<sup>35</sup> However, in the days prior to the vote in the Assembly, the Ulster Unionist Party refused to confirm that they would support the motion to transfer policing and justice powers, insisting that other issues including “the dysfunctional nature of the current Executive” must first be addressed. The party’s leader, Sir Reg Empey, stated that the Executive “must be capable of exercising its existing powers before such an important issue as policing and justice is devolved”.<sup>36</sup> Weekend “telephone diplomacy” between the UUP leader and Hillary Clinton, US Secretary of State, did not lead to a change in the party’s position. Mr Empey stated that his party still intended to vote ‘no’, but that a final decision would be made on the Monday evening prior to the Assembly vote.<sup>37</sup>

On Monday 8 March Shaun Woodward, Secretary of State for Northern Ireland, released the results of a poll that had been commissioned by the Northern Ireland Office. The poll claimed that 75% of those questioned wanted to see policing and justice powers devolved, with 73% of those indicating their support for the UUP also expressing support for the transfer of powers.<sup>38</sup> However, the poll came under attack from the UUP who brandished it as a “publicity stunt” by the Northern Ireland Office. Similarly, Jim Allister, leader of the Traditional Unionist Voice, attacked the poll stating:

How predictable! The next staging of post of the Belfast Agreement process needs helped over the line, primarily to keep Sinn Fein happy, and right on cue Hillary Clinton is on the phone and the NIO conveniently produces a poll!<sup>39</sup>

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<sup>34</sup> “Report on policing and justice powers complete”, 5 March 2010 *Belfast Telegraph*

<sup>35</sup> “Devolved justice a step closer in Northern Ireland”, 7 March 2010 *The Times*

<sup>36</sup> “UUP doubt over devolving justice”, 5 March 2010 *BBC News*

<sup>37</sup> “UUP won’t back down over justice devolution”, 8 March 2010 *Belfast Telegraph* and “Clinton calls leaders over deal”, 7 March 2010 *BBC News*

<sup>38</sup> “Poll shows support for transfer of powers”, 8 March 2010 *Belfast Telegraph*

<sup>39</sup> “Transfer of powers poll comes under fire”, 8 March 2010 *Belfast Telegraph*

It was also revealed in the press that former US President, George W Bush, had called David Cameron, leader of the Conservative Party, to request that he use his influence to persuade the UUP to endorse the transfer. However, press reports claimed that David Cameron informed the former president that he believed it to be a decision for the Ulster Unionists to make locally and that they could not be forced to vote in favour.<sup>40</sup>

At a meeting held on the evening of Monday 8 March 2010 the UUP executive backed a decision made by the party's leadership to vote against the devolution of policing and justice powers the following day. A statement issued by the party stated:

The executive committee of the Ulster Unionist Party notes with regret there has been no positive response forthcoming from other parties, to our reasonable requirements to enable our support for the devolution of policing and justice to be forthcoming at this time.

The Ulster Unionist Party wants to see these powers exercised by a local minister accountable to local representatives. However the conditions must be right – we must show that the Assembly can handle the power that it has before it takes on even more contentious powers.

Accordingly the Executive Committee has resolved that as matters stand, the party will oppose the transfer of the powers to the Northern Ireland Assembly and mandates our Assembly Group to act accordingly.<sup>41</sup>

The DUP had previously signalled that it would not endorse the agreement unless the UUP gave its support. However, following the UUP's decision, the press reported that the DUP was now "poised to press ahead with the devolution plan."<sup>42</sup>

The vote on the transfer of powers took place on Tuesday 9 March 2010. The complete text of the debate is available at:

<http://www.niassembly.gov.uk/record/reports2009/100309.pdf>

The motion was agreed by parallel consent. As expected, the UUP voted against the proposals. Their leader, Sir Reg Empey, defended this decision:

As a democratic political party pledged to make power-sharing work in an inclusive manner for all the people of Northern Ireland, we exercise our rights, refusing to bow to the blackmail and bullying to which we have been subjected in recent weeks.<sup>43</sup>

Regarding the UUP's decision to vote against the transfer, David Cameron stated that:

Concerns about the functioning of the executive as a genuine four-party coalition prevented the Ulster Unionists from backing today's vote, and I hope these will now be resolved in a spirit of genuine partnership.

Mr Cameron further added, however, that his party had long supported the transfer of policing and justice powers.<sup>44</sup>

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<sup>40</sup> "UUP united against a deal on policing, insists MLA", 9 March 2010 *Belfast Telegraph* & ""Bush to Tories: don't derail Ireland deal", 9 March 2010 *Guardian*

<sup>41</sup> "UUP pact in firing line as party opts to oppose deal", 9 March 2010 *Belfast Telegraph*

<sup>42</sup> "Poll shows support for transfer of powers", 8 March 2010 *Belfast Telegraph*

<sup>43</sup> "Decision on policing is broadly welcomed" 10 March 2010 *Belfast Telegraph*

<sup>44</sup> "PM hails 'historic' justice vote", 9 March 2010 *BBC News*

The voting breakdown was as follows:<sup>45</sup>

Designation	All	Unionist	Nationalist	Other
<b>Total</b>	105	52	44	9
<b>Yes</b>	88 (83.8%)	35 (67.3%)	44 (100%)	9 (100%)
<b>No</b>	17	17	0	0

The result of the vote was welcomed by politicians both within and outside Northern Ireland. Peter Robinson, Northern Ireland First Minister, claimed that it represented a “defining moment”, whilst deputy First Minister, Martin McGuinness, stated that, “this is a challenge to us all but it is one to which we all must rise”.<sup>46</sup> The Prime Minister, Gordon Brown, also welcomed the vote, claiming that “politics of progress had now replaced politics of division” and that “the most powerful message [had been sent] to those who would return to violence: that democracy and tolerance will prevail.”<sup>47</sup> Hillary Clinton stated that the vote would “help cement the hard-won gains of the past decade.”<sup>48</sup>

Not all reactions to the vote, however, were as positive. Sir Reg Empey claimed that:

We have not had a single solitary discussion at leadership level of what we are going to do with policing and justice. It is a bit like doing your driving test without doing your driving lessons.<sup>49</sup>

The SDLP leader, Margaret Ritchie, also expressed a degree of scepticism, stating that her party still had “serious concerns” over the process and the “gerrymandering of the justice ministry.”<sup>50</sup> Whilst stating that the SDLP supported the devolution of policing and justice powers, Ms Ritchie claimed that there “was little integrity in the process and it will ultimately unravel”.<sup>51</sup> TUV leader, Jim Allister, also expressed objections, stating that “today will go down as a victory for IRA/Sinn Fein”.<sup>52</sup>

Following the affirmative cross community vote, devolution is subject to final approval from Westminster. In her business statement to the House on 11 March 2010 Harriet Harman, Leader of the House of Commons, announced that on 22 March a motion would be put to the House to approve three statutory instruments relating to Northern Ireland devolution.<sup>53</sup> The statutory instruments, which will allow for the transfer of powers to take place, were laid before the House on 10 March, and the motions to approve them are as follows:

1. NORTHERN IRELAND

Mr Secretary Woodward

That the draft Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, which was laid before this House on 10 March, be approved.

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<sup>45</sup> Northern Ireland Assembly Official Report (Hansard), 9 March 2010 p301

<sup>46</sup> “Decision on policing is broadly welcomed”, 10 March *Belfast Telegraph*

<sup>47</sup> “PM hails ‘historic’ justice vote”, 9 March 2010 *BBC News*

<sup>48</sup> “Clinton hails ‘leadership’ for clinching deal” 10 March 2010 *Belfast Telegraph*

<sup>49</sup> “PM hails ‘historic’ justice vote”, 9 March 2010 *BBC News*

<sup>50</sup> “PM hails ‘historic’ justice vote, 9 March 2010 *BBC News*

<sup>51</sup> “Devolution will be completed within a month”, 10 March 2010 *Belfast Telegraph*

<sup>52</sup> “Decision on policing is broadly welcomed”, 10 March 2010 *Belfast Telegraph*

<sup>53</sup> HC Deb, 11 March 2010 c431

2. NORTHERN IRELAND

Mr Secretary Woodward

That the draft Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, which was laid before this house on 10 March, be approved.

3. JUSTICE

Secretary Jack Straw

That the draft Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010, which was laid before this House on 10 March 2010, be approved<sup>54</sup>

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<sup>54</sup> <http://www.publications.parliament.uk/pa/cm/cmfbusi/c01.htm>

## Appendix

### Agreement at Hillsborough Castle 5 February 2010

Section 1 – Policing and Justice

Section 2 – Parades

Section 3 – Improving Executive Functions

Section 4 – Outstanding Executive Business

Section 5 – Outstanding St Andrews Review

**1. This text is an affirmation of our shared belief in the importance of working together in a spirit of partnership to deliver success for the entire community.**

**2. We wish to see this agreement reflect our willingness to ensure the Executive and the Assembly reflect better this spirit of partnership, mutual respect and equality which remain vital for the success of devolution.**

**3. We recognise the importance of improving the efficiency of the Executive and greater inclusiveness. The outworking of this agreement will allow the uninterrupted functioning of the Assembly and Executive.**

#### **Section 1 – Policing and Justice**

##### **Devolution Timetable**

1. Following community consultation the First Minister and deputy First Minister will table jointly a resolution for a cross-community vote in the Assembly on 9 March. Following affirmation of the resolution they will support all necessary steps in the Assembly to ensure devolution of powers by the 12 April. The Government will set out publicly the Parliamentary schedule for the related transfer orders required to effect devolution. Policing and justice powers will be devolved on that day.

##### **The Department of Justice - Model**

2. The Assembly's Department of Justice Bill, which completed its passage in December, establishes the new Department of Justice and sets out the arrangements for the appointment of the Justice Minister. It provides that there will be a single Justice Minister in charge of the Department of Justice which will be responsible for devolved policing and justice policy and legislation. The Justice Minister will be elected by a cross community vote in the Assembly following a nomination by any MLA.

##### **Identification of Justice Minister**

3. On Monday 8 February 2010 the First Minister and deputy First Minister will convene a meeting of party leaders to consider applications of interest for the post

of Justice Minister. The purpose of this meeting will be to allow the First Minister and deputy First Minister to identify which candidate they believe is best able to command cross-community support in the Assembly.

### **Independence of Judiciary and Chief Constable**

4. We believe that the independence of the judiciary is essential in a democratic society which supports the rule of law. It is of paramount importance that the judicial function remains independent of Government and immune from any partisan or political interest. Public confidence requires that judicial decisions are taken in a fair, impartial, objective and consistent manner. This confidence can only be maintained if judges are able to act with independence.
5. As part of the devolved policing arrangements the Chief Constable will be operationally responsible for directing and controlling the police. The PSNI will have operational responsibility for policing, and for implementing the policies and objectives set by the Department of Justice and the Policing Board.

### **Addendum to Programme for Government**

6. There will be an addendum to the Programme for Government (PfG) for the Department of Justice which will be drafted by the Justice Minister and brought to the Assembly for approval. We believe that in bringing forward his/her proposals the Justice Minister should give consideration to the following:
  - The addendum should be drafted in such a way as to be a seamless fit into the current PfG, conforming to the format of the existing document;
  - Some of the work of existing departments touch upon the proposed functions of a new DOJ for example the good relations unit in OFMDFM has a key role in dealing with community relations. The addendum should reflect that ongoing work and be drafted collaboratively with officials from relevant departments;
  - Confidence, avoidable delay, rehabilitation, recidivism and the interests of victims and witnesses are key elements of any addendum. Developing policies which support effective policing should also be part of any forward work programme.
7. The necessary actions to support the agreed policies could usefully include, inter alia:
  - Building upon the ongoing Tribunal Reform programme;
  - Learning from international best practice in matters of criminal justice;
  - Full provision of adequate funding and other resources for legal services to the disadvantaged in society, ensuring equality of access to justice for all;
  - Establishment of a sentencing guidelines council;
  - Review of alternatives to custody;
  - Adequate provision of diversionary alternatives to prosecution;
  - The powers of the Prisoner Ombudsman to be reviewed in light of experience elsewhere;



- A review of the conditions of detention, management and oversight of all prisons;
- A comprehensive strategy for the management of offenders;
- Consideration of a women's prison, which is fit for purpose and meets international obligations and best practice;
- Review of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice;
- Development of a Victims Code of Practice setting out a minimum standard of service that criminal justice agencies will be expected to provide to victims of crime; to include the right of victims to be kept informed about all aspects of the progress of their case (including decisions whether or not to prosecute following a complaint, to accept pleas to alternative charges or to discontinue a prosecution); the outcome of court hearings; offenders bail conditions; forthcoming appeals; post-sentence issues; and compensation applications to providing assistance to victims including material, psychological and social assistance through governmental, voluntary and community-based means at all stages of the criminal justice system.
- It is envisaged that there would be a presumption of full and frank disclosure of information by the PPS to a Victim under the Code except where to do so would prejudice the administration of justice or fail a public interest test. Consideration could be given to place all or part of the Code on a statutory footing;
- A miscellaneous provisions bill.

### **Relationship between Justice Minister and Executive**

8. The Justice Minister will have the same status in the Executive as other Ministers – the Justice Minister will have the same standing in terms of attending and voting at the Executive and as with other Ministers the operation of the Department would be subject to his/her direction and control. In this context as with other Ministers the Justice Minister would have responsibility for operational matters within the Department.
9. Having regard to the particular responsibilities of the Justice Minister we have agreed that quasi-judicial decisions shall be made by the Justice Minister without recourse to the Executive.
10. The Justice Minister will bring any proposals he/she believes necessary to the Executive detailing how the Ministerial Code or Procedural Guidance should be amended to ensure effective decision-making in relation to urgent, confidential or other matters in his/her Department which would normally require consideration by the Executive. Pending the implementation of any agreed amendments to the Ministerial code or procedural guidance, the Executive would normally grant retrospective approval to any decisions in which the Minister had acted reasonably. However, the First Minister and deputy First Minister, acting jointly may require any matter to be brought to the Executive for consideration or agree jointly that retrospective approval would not be granted. Notwithstanding the above all issues which cut across the responsibility of two or more ministers, legislative proposals and financial allocations to the Department of Justice would require Executive

consideration. It is expected that any new arrangements would be in place by the summer recess.

### **Additional Financial Settlement – Letter from the Prime Minister dated 21 October**

Dear Peter and Martin,

I promised to write to you setting out the elements of the financial settlement that you agreed to present to your respective parties. Our discussions on the finance have been careful, detailed and considered and I am grateful to you for the time you have given to them. Together we have, I believe, achieved an outcome in which we each have confidence and which will ensure that when policing and justice powers are transferred, the Northern Ireland Justice Department will have a secure financial foundation which we all recognise is important in ensuring confidence in the policing and justice services across the community. I believe the settlement which is outlined below is a good settlement which will meet the needs of a devolved Justice Department.

The key elements of the settlement are:

- The Northern Ireland Executive will have access to the reserve to meet any exceptional security pressures relating to policing and justice. On the same basis, HM Treasury will be prepared to make available up to an additional £37.4 million in 2010/11.
- Capital budgets in the next CSR period will be sufficient to enable the Executive to take forward routine, but necessary work, to maintain the operational capacity of existing assets, to complete the police training college and to come to its own view about the relative priorities for new capital expenditure including Magilligan Prison and other projects in the period ahead.
- The legal aid allocation is a £20 million a year addition to baseline through to the end of 2012/13, after which efficiency savings will be expected to take effect, allowing the baseline increase to be reduced to £14 million a year. To meet additional pressures over the next two years, including other courts pressures, we agree the need on a one-off basis for a further £12 million. If, in the event, pressures turn out to be higher than this, HM Treasury will provide further money from the reserve up to a maximum of £39 million. Until the end of 2012/13 this access to the reserve will not be recouped from future EYF.
- HM Government will gift the four agreed former military bases to the Northern Ireland Executive. It would be anticipated that a portion of the land in Omagh will be used for an educational campus but it would be expected that disposal proceeds from the other sites would be used, on a basis agreed with HM Treasury, to meet exceptional resource pressures (including potentially equal pay claims). HM Treasury will work with the Northern Ireland Executive to help ensure that any timing issues, related to delays in securing these disposal proceeds as a consequence of market conditions, can be addressed on an agreed basis.
- On police pensions, previously identified pressures of £101 million can be fully addressed through technical changes which will include a public expenditure neutral DEL to AME reclassification.

- There are potential pressures (the "long list") of around £15 million in 2010/11 on resources relating to policing, prisons and probation. This should fall to around £10 million a year in the next CSR period. Baselines will need to be sufficient to meet these pressures. In addition £30 million in unallocated EYF and underspends generated in future years will be available to meet pressures.
- Prior to devolution the Secretary of State for Northern Ireland and the head of the PSNI will agree on how front-line policing is protected while ensuring the greatest efficiency.
- Hearing Loss. The Northern Ireland Executive will meet the first £12m of claims in any one year. Any sums incurred above that will be met through access to the reserve, based on annual agreement between the Northern Ireland Executive and HM Treasury on the litigation strategy. To assist the Northern Ireland Executive to meet the expected £12m a year pressure, the Treasury will be prepared to acquire from the Northern Ireland Executive sellable assets worth up to £12 million a year for five years, or £60 million in total. HM Treasury and Northern Ireland Executive will need to agree on the valuation methodology.

I believe that this is a very strong settlement which will ensure that all the people of Northern Ireland continue to have high quality policing and justice services.

## **Section 2 – Parades**

1. The Parades Commission is tasked with regulating and adjudicating on parading. We are committed to a new and improved framework fashioned by all stakeholders and maximising cross community support.
2. The First Minister and deputy First Minister have agreed to set up a co-chaired working group comprising six members, appointed by them, with experience of dealing with parading issues which will bring forward agreed outcomes which they believe are capable of achieving cross community support for the new and improved framework. This work will begin immediately and will be completed within three weeks.
3. We recognise that support from all sides of the community has the potential to create a new improved framework for the management and regulation of public assemblies including parades and related protests. We believe that such a framework should reflect the key principles of:
  - Local people providing local solutions;
  - Respect for the rights of those who parade, and respect for the rights of those who live in areas through which they seek to parade. This includes the right for everyone to be free from sectarian harassment;
  - Recognising that at times there are competing rights;
  - Transparency, openness and fairness;
  - Independent decision making.

4. The working group has been tasked to take forward work in the following areas, building on the interim report of the Strategic Review of Parading. This will inform the public consultation, as part of the schedule, as set out in the timetable below:
  - Procedures relating to the receipt and notification of parades and assemblies; objections relating to them; necessary actions arising from the lodging of objections; and the facilitation of dialogue and mediation;
  - In the event of the failure of mediation, recourse to independent adjudications and procedures;
  - Adjudication arrangements comprising an appropriate mix of lay and legal expertise with sufficient resources to operate effectively and efficiently;
  - A code of conduct which is legally enforceable;
  - The right of citizens to freedom from all forms of harassment.
5. The working group by agreement may add to the above points.
6. The First Minister and deputy First Minister will promote and support the agreed outcomes of the working group.
7. We recognise that any improved regulatory framework must be capable of maximising cross community support.
8. Following the completion of the consultation process a Bill will be finalised.
9. The First Minister and deputy First Minister will support all necessary steps in the Assembly to ensure that the Bill completes all stages before the end of 2010. In parallel the First Minister and deputy First Minister will take the necessary steps to enable the reclassification of parades as a transferred matter.
10. Where there is a need, support will be provided to help local communities and those who parade to find local solutions to contentious parades and related protests. This will encourage local accommodation and will take account of lessons to be learnt from successful local models. It is envisaged that in the case of the most difficult situations, additional ongoing support will be provided to encourage resolution of contention.
11. We will promote and support direct dialogue with, and the involvement of, representatives of the Loyal Orders, band parade organisers, local residents' groups and other stakeholders, as this work is advanced. We will also encourage the participation of local elected representatives in the process of resolution. This work will start as soon as possible.
12. The current adjudication mechanism of the Parades Commission will continue until the new improved arrangements are in place.

### **Parading - Timetable**

Assumes maximum priority in Assembly at all stages.

FM/dFM appoint working group	8 February
Working group begins work	9 February

Working group completes work and reports on agreed outcomes to FM/dFM	By 23 February
Commencement of the drafting of Bill to implement working group agreed outcomes (working group to assist during drafting process to confirm Bill delivers agreed outcomes)	End w/c 22 Feb
Draft Bill completed	Late March
Assembly assumes responsibility for the parades legislation	Late March/early April
Draft Bill published for consultation	Late March/early April
Completion of consultation	w/c 8 June
Consideration of consultation responses and finalise Bill	w/c 15 June
Executive approves introduction of Bill in September	w/c 29 June
<i>Assembly summer recess (assuming returns on 6 September)</i>	
Text of Bill submitted to Speaker and Speaker fulfils all formal requirements to legislate in the Assembly	w/c 6 September
Bill introduced (at least 7 working days after submission to Speaker)	w/c 13 September
Second stage	w/c 20 September
Committee Stage (30 working days under SO33 – can be shortened with accelerated passage)	w/c 27 September
<i>Halloween Recess 1 week</i>	
Consideration Stage	w/c 15 November
Further Consideration Stage	w/c 22 November
Final Stage	w/c 29 November
Bill submitted for Royal Assent	w/c 6 December
Royal Assent (if urgency procedure can be invoked under s.15(3) of 1998 Act)	w/c 13 December

### **Section 3 – Improving Executive Function and Delivery**

1. Party papers have been exchanged during the Talks at Hillsborough Castle making suggestions on how the Executive might function better and how delivery might be improved.

2. The First Minister and deputy First Minister will seek approval from the Executive to set up a Working Group to consider all proposed arrangements and make recommendations.

3. The Working Group, which would comprise representatives from all parties on the Executive, should consider any proposals and make recommendations to the Executive for new and improved processes. Sir Reg Empey and Margaret Ritchie will be asked to co-chair this Working Group and to commence their work by the end of February.

#### **Section 4 – Outstanding Executive Business**

1. Junior Ministers will chair a Working Group involving all of the Parties in the Executive and oversee an exercise of trawling for and identifying all Executive papers and decisions which are still pending. They will be tasked to provide a report to the Executive detailing the level of progress made on each outstanding matter and Junior Ministers will make recommendations on whether and how progress could be made on any and all outstanding matters by the end of February. This will include a programme of work detailing how any remaining outstanding issues will be resolved.

#### **Section 5 – Outstanding Issues from St Andrews**

1. The First Minister and deputy First Minister will oversee an exercise of examining the St Andrews Agreement and identifying all matters contained within it which have not been faithfully implemented or actioned. The First Minister and deputy First Minister will provide a report to the Executive by the end of February detailing the level of progress made on each outstanding matter.

2. The First Minister and deputy First Minister will seek approval from the Executive to set up a Working Group to make recommendations on how progress could be made on those matters which have not been actioned. Junior Ministers will be asked to chair this Working Group and make an initial report by the end of March.

3. Within four weeks of the Working Group's initial report the First Minister and deputy First Minister will agree a programme to effect completion of the agreed conclusions of the Working Group.